

FE DOCKET NO.: 96-59-NG

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

ITEM	PREPARED OR FILED BY	FILING TYPE	DESCRIPTION OF DOCUMENT	DATED	DATE FILED OR ISSUED
1	CHEVRON U.S.A., INC ✓	APPLICATION	Application for Long Term Authority to Import Natural Gas from Canada	96-08-09	96-08-09
2	CHEVRON U.S.A., INC ✓	SP	Application for Long Term Authority to Import Natural Gas from Canada	96-08-21	96-08-21
3	CHEVRON U.S.A., INC ✓	SP	Application for Long Term Authority to Import Natural Gas from Canada	96-08-28	96-08-28
4	DOE/FE ✓	ORDER	Order--1194 Granting Long-Term Authority to Import Natural Gas	96-08-30	96-08-30
5	CHEVRON U.S.A., INC ✓	CONTRACT AMENDMENT	Executed Natural Gas Sale Agreement Between Chevron & Chevron Canada Resources, Ltd.	96-09-16	96-09-16



August 7, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3029  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

Office of Fuels Program, Fossil Energy  
U.S. Department of Energy  
Docket Room 3F-056, FE 50  
Forrestall Building  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3464  
Fax (713) 754-3366

Chevron U.S.A. Inc.  
DOE/FE Docket No. 96 -59-NG

REC'D DOE/FE  
1996 AUG -9 A 10:31

Gentlemen.

Pursuant to Part 590 of Title 10 of the Code of Federal Regulations, Chevron U.S.A. Inc. seeks authority to import natural gas from Canada for a period beginning on September 1, 1996 and continuing through October 31, 2005. Chevron U.S.A. Inc. will be selling this gas to Natural Gas Clearinghouse under two proposed Natural Gas Purchase and Sale Agreements.

Enclosed are an original and sixteen copies of the application for import authorization, along with a check for the filing fee of \$50.00.

Please date-stamp one copy of the application and return it in the enclosed self-addressed stamped envelope. Thank you for your assistance.

Sincerely,

Gary M. Smale

Enclosures

United States of America  
Before the  
Department of Energy  
Office of Fossil Energy  
Washington, D.C.

1995 AUG -9 A 10:32

Chevron U.S.A. Inc.

§

Docket No. REC'D DOE/FE

Application of  
Chevron U.S.A. Inc.  
for Authorization to Import  
Natural Gas from Canada

Pursuant to Section 3 of the Natural Gas Act ("NGA") and Part 590 of the Department of Energy's ("DOE") Regulations thereunder, 10 C.F.R. 590.100, et seq., Chevron U.S.A. Inc. ("Chevron") submits this Application for an order authorizing importation of natural gas from Canada.

In support thereof, Chevron states the following:

I. Name of Applicant;  
Service Representative

Applicant's exact legal name is Chevron U.S.A. Inc. The names, titles, and mailing addresses of the persons to whom all communications concerning this Application should be addressed, and who are designated to receive service pursuant to 10 C.F.R. 590.202(a), are as follows:

Gary M. Smale  
Chevron U.S.A. Inc.  
1301 McKinney Street, Suite 2258  
Houston, Texas 77010

J. Jeannie Myers  
Chevron U.S.A. Inc.  
1301 McKinney Street, Suite 2254  
Houston, TX 77010

## II. Affiliations

Chevron is a Pennsylvania corporation with a place of business at 1301 McKinney Street, Houston, Texas 77010, and is authorized to do business in the United States. Chevron is a wholly-owned subsidiary of Chevron Corporation, a Delaware corporation. Another wholly-owned subsidiary of Chevron Corporation, Chevron Canada Resources ("CCR"), explores for and produces oil and gas in Canada. CCR's place of business is 500 Fifth Avenue S.W., Calgary, Alberta, Canada T2P 0L7.

As a purchaser and reseller of natural gas, Chevron intends to operate as a non-jurisdictional company, and will refrain from engaging in transactions which would make Chevron a "natural gas company" subject to the jurisdiction of the Federal Energy Regulatory Commission.

## III. Nature of Request

Chevron requests an order authorizing it to import up to 74,000 Mcf per day (approximately 75,000 MMBtu per day) of natural gas from Canada for a period

beginning September 1, 1996 and continuing through October 31, 2005, in order that Chevron may sell such gas to Natural Gas Clearinghouse ("NGC"). NGC is Colorado general partnership with a place of business at 13430 Northwest Freeway, Suite 1200, Houston, Texas 77040. NGC is a subsidiary of NGC Corporation, a Delaware corporation.

Subject to approval of the import authorization sought herein, gas sales to NGC will commence on or after September 1, 1996, and will continue for five (5) years, and from year to year thereafter, until terminated by either party as set forth in the two proposed Natural Gas Purchase and Sale Agreements which are attached hereto and made a part of this Application.

Chevron anticipates that the Agreements underlying this request for import authorization will continue in beyond their respective five year primary terms and will continue to operate for as long as Chevron's existing firm capacity on Pacific Gas Transmission ("PGT") remains in effect. Chevron's firm transportation agreement with PGT is effective through October 31, 2005. Therefore, Chevron requests authorization to import up to 74,000 Mcf per day of natural gas from Canada for a period beginning September 1, 1996 and ending October 31, 2005. Chevron will notify the Director, Office of Fuels Programs, if either of the two underlying gas sales Agreements with NGC are terminated before October 31, 2005.

#### IV. Security of Supply

The gas will be supplied by CCR, or by other producer groups or associations or pipeline companies that sell natural gas in Canada. The gas will primarily be provided by CCR from sources of supply in the Provinces of Alberta and British Columbia. Presently CCR has uncommitted deliverabilities of approximately 150,000 Mcf per day. Furthermore, CCR is engaged in the acquisition, exploration and development of gas-producing properties in Canada. The affiliate relationship between Chevron and CCR assures that the natural gas supply for the requested import is secure.

#### V. Facilities and Environmental Impact

The imported gas will be transmitted through existing pipeline facilities of PGT. No new construction of facilities is proposed, therefore approval of this Application will not have any environmental impact.

#### VI. Sale Provisions

Chevron has entered into an agreement to contribute certain assets, including most of its natural gas marketing assets in the United States, into a new subsidiary of Chevron. NGC Corporation will merge into this new entity, at which time Chevron will own approximately 28% of the combined entity. The newly formed company will retain the name NGC Corporation. Subject to the satisfaction of the Federal Trade Commission, Chevron and NGC Corporation contemplate that formation of the new company will be final on September 1, 1996. Once the new company is formed,

Natural Gas Clearinghouse ("NGC") will be a subsidiary of the new company. Chevron and NGC will then enter into the two proposed Natural Gas Purchase and Sale Agreements described below.

The Agreements provide for the delivery and sale of natural gas to NGC at the intersection of PGT and Pacific Gas & Electric Company's ("PG&E") 400 Line located at Malin, Oregon, and for the delivery and sale of natural gas to NGC at the interconnection of PGT and PG&E's 401 Line, also at Malin, Oregon. For convenience, these Agreements will be referred to hereafter as the "400 Line Agreement" and "401 Line Agreement". Both the 400 Line Agreement and the 401 Line Agreement will continue for primary terms of five years, and will continue from year to year thereafter until terminated by either party upon written notice provided not less than ninety days prior to the end of the primary term or any annual renewal term thereafter.

On each day during the term of the 400 Line Agreement, Chevron will make available for sale to NGC at the delivery point a "Daily Contract Quantity" of 40,000 MMBtu of natural gas. On each day during the term of the 401 Line Agreement, Chevron will make available for sale to NGC at the delivery point a "Daily Contract Quantity" of 31,348 MMBtu of natural gas. Under the Agreements, Chevron may nominate and deliver a quantity of gas ("Nominated Daily Quantity") that is less than the Daily Contract Quantity, in which case Chevron will keep NGC whole by

reimbursing it for any cost incurred by NGC in acquiring replacement gas. On each day during the term of the Agreements, NGC will take the full Nominated Daily Quantities delivered by Chevron, up to, but not to exceed, the Daily Contract Quantities.

For each MMBtu of gas delivered to NGC under the 400 Line Agreement, NGC will pay Chevron a "Commodity Charge" to be equal to the Bidweek Average spot gas price quoted in "Natural Gas Intelligence" California Border & Non-Utility End-User Citygate Tables for deliveries during the delivery month to PGT/PG&E at Malin, Oregon (400 Line), plus a premium of \$0.01 per MMBtu. For each MMBtu of gas delivered to NGC under the 401 Line Agreement, NGC will pay Chevron a "Commodity Charge" to be equal to the Bidweek Average spot gas price quoted for the delivery month in "Natural Gas Intelligence" California Border & Non-Utility End-User Citygate Tables, Southern California Border Average, less the Kern Station Access Fee and the PG&E "as-available" off-system transportation rate, plus a premium of \$0.01 per MMBtu. The Agreements provide other terms and conditions that will ensure that sale of the gas will always be at a fair market value.

Chevron will be responsible for all costs associated with transportation to the delivery point at Malin, Oregon. Chevron will utilize its existing firm transportation rights on PGT.



The Agreements contain no minimum take obligations, no make-up obligations, and no take-or-pay provisions.

#### Justification

Chevron presently is authorized to import up to 73 Bcf of natural gas from Canada for a period of two (2) years from the date of first deliveries. Such authorization was granted by DOE/FE Order No. 1160, dated April 29, 1996, in FE Docket No. 96-17-NG. The imported gas is currently sold by Chevron in the United States under short and medium term contracts. Most of these short and medium term contracts will be assigned to NGC under the provisions of the merger agreement between the two companies. NGC will become the party responsible for performance and administration of the contracts.

Chevron contemplates that the import arrangement after the merger will continue as before. CCR will ship the gas to the international border near Kingsgate, British Columbia and Eastport, Idaho. Chevron will take title to the gas immediately after it is imported into the United States. The gas will be shipped under Chevron's existing firm transportation on PGT and delivered to NGC under the provisions of the Agreements described above and attached hereto.

Based on its current assessment of the natural gas market, Chevron believes that the Agreements reached with NGC are as competitive as possible and will remain so throughout the terms of the Agreements. Chevron requires the import authorization

requested herein in order to provide NGC with the Daily Contract Quantities specified in the Agreements, plus a sufficient quantity of gas to meet PGT's in-kind fuel requirements, presently two and one-half percent (2.5%) of the daily quantity transported

Chevron will file quarterly sales and price reports detailing the quantity of gas imported into the United States under the authorization requested herein and the value of such gas at the border.

#### VII. Conclusion

WHEREFORE, Chevron respectfully requests that its authorization to import natural gas from Canada be granted as set forth above.

Respectfully submitted,

CHEVRON U.S.A. INC.

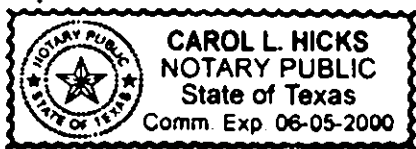


D. R. Dunn

Date: August 7, 1996

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS       §

This instrument was acknowledged before me on the 7<sup>th</sup> day of August, 1996, by D. R. Dunn, Vice-President and General Manager of Chevron Natural Gas Business Unit, a part of Chevron U.S.A.. Inc., a Pennsylvania corporation, on behalf of said corporation.



Carol L. Hicks  
Notary Public, State of Texas

My Commission Expires: 06-05-2000

Opinion of Counsel

Pursuant to 10 C.F.R. §590.202(c), I have examined the certificate and by-laws of Chevron U.S.A. Inc. ("Chevron"), and have determined that the proposed import of natural gas is within the corporate powers of Chevron.

J. Jeannie Myers  
J. Jeannie Myers  
Counsel  
(713) 754-3451

Dated: August 7, 1996

May 17, 1996

**NATURAL GAS PURCHASE AND SALE AGREEMENT**

**(PG&E LINE 400)**

**BETWEEN**

**CHEVRON U.S.A. INC.**

**AS "SELLER"**

**AND**

**NATURAL GAS CLEARINGHOUSE**

**AS "BUYER"**

May 17, 1996

## NATURAL GAS PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 1996 (the "Effective Date"), by and between NATURAL GAS CLEARINGHOUSE, a Colorado general partnership, herein referred to as "Buyer", and CHEVRON U.S.A. INC., a Pennsylvania corporation, herein referred to as "Seller".

### WITNESSETH

WHEREAS, Seller has certain natural gas available for sale, which natural gas Seller is willing to sell to Buyer as provided herein; and

WHEREAS, Buyer desires to purchase such gas from Seller on a firm basis, subject to all of the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS


For the purpose of this Agreement, the following definitions are applicable:

- 1.1. The term "Agreement" means this agreement, including all exhibits attached hereto and all amendments hereof that may be made from time to time.
- 1.2. The term "Btu" means British thermal unit, and is the quantity of heat required to raise the temperature of 1 pound of water from 58.5° to 59.5° Fahrenheit.
- 1.3. The term "Business Day" means any day on which commercial banks in Houston, Texas, are open for general business.
- 1.4. The term "Contract Year" means the 12-month period from \_\_\_\_\_ of each year through \_\_\_\_\_ of the succeeding year during the term hereof.
- 1.5. The term "day" means a period of 24 consecutive hours, coinciding with the gas day of PGT.
- 1.6. The term "FERC" means the Federal Energy Regulatory Commission or successor agency.
- 1.7. The term "gas" means natural gas to be made available by Seller and taken by Buyer under the terms of this Agreement.

- 1.8. The term "Locked Price" means the price per MMBtu to be paid by Buyer, in lieu of the otherwise applicable Commodity Charge, for Locked Quantities of gas purchased hereunder. A Locked Price shall be determined in accordance with Section 8.4. hereof.
- 1.9. The term "Locked Quantities" means quantities of gas to be sold by Seller and purchased by Buyer during any month during the term hereof, as to which a Locked Price has been established.
- 1.10. The term "MMBtu" means 1,000,000 British thermal units.
- 1.11. The term "month" means the period beginning on the first day of a calendar month and ending on the first day of the next succeeding month.
- 1.12. The term "Party" or "Parties" means Seller and/or Buyer under this Agreement.
- 1.13. The term "Delivery Point" means the interconnection between PGT and the 400 Line of PG&E at Malin, Oregon, where Seller shall deliver gas hereunder for the account of Buyer, or any alternate location to which the Parties may agree on a case-by-case basis.
- 1.14. The term "PGT Transportation Agreement" means Seller's Firm Transportation Service Agreement with PGT for delivery into PG&E's 400 Line via PGT's original system.
- 1.15. The term "PGT" means Pacific Gas Transmission Company.
- 1.16. The term "PG&E" means Pacific Gas & Electric Company.
- 1.17. The term "Transporter" means PGT.
- 1.18. The term "Unlocked Quantities" means quantities of gas as to which no Locked Price has been established.
- 1.19. The term "Daily Contract Quantity" or "DCQ" means 40,000 MMBtu of gas per day, or such lesser quantity as Seller may designate as provided in Section 2.4.

## ARTICLE 2. QUANTITY; NOMINATIONS; KEEP-WHOLE OBLIGATIONS

2.1. **Seller's Obligation.** On each day during the term hereof, Seller will make available to Buyer at the Delivery Point the Daily Contract Quantity, unless Seller has advised Buyer, as provided in Sections 2.3. or 2.4. below, that Seller intends to deliver less than the Contract Quantity and keep Buyer whole as provided in Section 2.5. below.



**2.2. Buyer's Obligation.** On each day during the term hereof, subject to any Delivery Point Capacity Constraints (which will be addressed as provided in Section 3.3. below), Buyer shall take from Seller, if made available at the Delivery Point, the Nominated Daily Quantity, not to exceed, however, the Daily Contract Quantity.

**2.3. Purchase Nominations.** At least 48 hours before PGT's first of the month nomination deadline each month, Seller shall advise Buyer, using a form similar to Exhibit "A" hereto, of the quantity which Seller expects to deliver to Buyer under this Agreement during the upcoming month (the "Nominated Daily Quantity"). In the absence of such a notification, the Nominated Daily Quantity will be deemed to be equal to the Daily Contract Quantity, effective as of the first day of the upcoming month and continuing until changed by Seller as hereafter provided. Thereafter, Seller shall have the right to make daily nomination changes by advising Buyer at least two hours prior to PGT's nomination deadline for the day on which the change is to be effective. Buyer agrees to use its best efforts to accept and implement nominations after the deadlines stated above, subject to the requirements and willingness of PGT.

**2.4. Permanent Reduction of Daily Contract Quantity.** Upon not less than ninety days' prior written notice, Seller may advise Buyer of a permanent reduction of the Daily Contract Quantity. Upon such notification, Seller and Buyer shall endeavor to agree on a mechanism to compensate Buyer for any losses resulting from such reduction in the DCQ from the effective date of such reduction until the expiration of the primary term of this Agreement as stated in Article 15., which losses shall be limited to the amount, if any, by which Buyer's cost of replacement gas exceeds the amount Buyer would have paid Seller for the gas under this Agreement in the absence of Seller's DCQ reduction. It is anticipated that such mechanism will be similar to the monthly keep-whole mechanism described in Section 2.5.1., but Buyer will also offer Seller long term alternatives if such alternatives are available and could reduce Seller's long term keep-whole costs. Any dispute regarding the appropriate mechanism for long term keep-whole shall be resolved by binding arbitration in accordance with Article 17. Seller may utilize the procedure described in this Section 2.4. from time to time to accomplish additional permanent reductions in the DCQ as needed by Seller to take advantage of other marketing opportunities, subject in each case to the above notice and keep-whole requirements.

## **2.5. Keep Whole Obligation**

**2.5.1.** If Seller nominates less than the Daily Contract Quantity for any month, (the difference between the Daily Contract Quantity and the Nominated Daily Quantity for such month, multiplied by the number of days in the applicable month, being referred to as the "Monthly Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, and if Buyer notifies Seller that Buyer, as a result of Seller's decision to nominate less than the Daily Contract Quantity for such month, has had to acquire replacement supplies of gas to serve Buyer's markets on PG&E's 400 Line at a cost in excess of that which would have been payable to Seller under this Agreement, then Seller shall

reimburse Buyer for its cost of acquiring a quantity of replacement gas not to exceed the Monthly Nomination Deficiency Quantity, less the amount Buyer would have paid Seller for the same quantity of gas if purchased under this Agreement. Buyer agrees to use its best efforts to acquire any such replacement gas at the lowest price reasonably available to Buyer, and to advise Seller of the costs of any alternative approaches (which shall be reflective of the current California market). If the parties mutually agree upon Buyer's replacement cost Seller shall reimburse Buyer based upon the mutually agreeable price; otherwise, Seller shall reimburse Buyer based on Buyer's actual and reasonable cost of acquiring the replacement supplies.

2.5.2. If Seller reduces its nomination for any day after the first of the month (the difference between the initial Nominated Daily Quantity and the reduced amount nominated by Seller for such day being referred to as the "Daily Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, then the Daily Market Price shall be subtracted from the Commodity Charge payable under this Agreement and the result shall be multiplied by the Daily Nomination Deficiency Quantity to determine the keep-whole payment for that day. If the keep-whole payment for a particular day is a positive number, that amount shall be credited to Seller. If the keep-whole payment for a particular day is a negative number, that amount shall be charged to Seller. For purposes of this Section, the Daily Market Price shall be the price, reflective of current market, which Buyer advises Seller will be applicable to replacement supplies purchased by Buyer on a daily basis to replace the Daily Nomination Deficiency Quantity. If Seller desires to reduce its nomination after the first of the month and can advise Buyer of the duration of the reduction, Buyer will use reasonable efforts to acquire replacement gas for the duration of Seller's nomination reduction if Seller desires that such an acquisition of replacement supplies be made in lieu of the daily keep-whole mechanism. In that event, the keep-whole payment or credit for the period of such nomination reduction will be based upon the agreed replacement cost, rather than the Daily Market Price, and Seller shall not, during the announced period of such nomination reduction, increase its nomination without Buyer's consent.

2.5.3. If Seller's initial Nominated Daily Quantity is less than the Daily Contract Quantity and Seller desires to increase its nomination at any time after the first of the month, then Buyer shall advise Seller of the current market price which will apply to the increased quantity above the initial Nominated Daily Quantity and consult with Seller regarding any alternative approaches. Seller may then accept the price proposed by Buyer for the increased quantity or elect not to deliver such increased quantity.

### **ARTICLE 3. FAILURE TO PERFORM**

3.1. **Seller's Failure to Make Gas Available.** If Seller fails, in whole or in part, to make available to Buyer the Nominated Daily Quantity on any day, and if such failure is not excused by an event of force majeure or by Buyer's failure or inability to



receive the gas, Buyer shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in delivery, multiplied by Buyer's cost per MMBtu of cover supplies, less the Commodity Charge which would have been payable but for the failure to deliver. Seller agrees to pay Buyer any liquidated damages to which Buyer is entitled under this Section 3.1. on or before the 10th day after Seller receives a written calculation of the amount of such liquidated damages from Buyer. Buyer shall use reasonable efforts to obtain any replacement supplies at the lowest reasonable price.

**3.2. Buyer's Failure to Purchase Gas.** If Buyer fails, in whole or in part, to purchase the Nominated Quantity on any day, and if such failure is not excused by an event of force majeure, a Delivery Point Capacity Constraint as described in Section 3.3., or Seller's failure to make such quantity available, Seller shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in Buyer's purchases, multiplied by the Commodity Charge which would have been payable on such day less the amount realized by Seller in an alternate sale of the gas not taken. Buyer agrees to pay Seller any liquidated damages to which Buyer is entitled under this Section 3.2. on or before the 10th day after Buyer receives a written calculation of the amount of such liquidated damages from Seller. Seller shall use reasonable efforts to obtain the highest price reasonably available when making any alternate sale of gas not taken by Buyer.

**3.3. Delivery Point Capacity Constraints.** The Parties recognize that capacity constraints in PG&E's 400 Line may from time to time prevent Buyer from accepting one hundred percent of Seller's Nominated Daily Quantity at the Delivery Point. Buyer agrees that it will maintain markets with at least 100,000 MMBtu per day of firm transportation capacity on the PG&E 400 Line and will utilize the nominating capacity of those markets to receive gas from Seller under this Agreement. If on any day Buyer has nominated at least 100,000 MMBtu of gas for delivery to such markets on the PG&E 400 Line, plus any additional quantity that Buyer can nominate for delivery to Chevron Products Company's Richmond Refinery consistent with the terms of Buyer's gas supply contract with Chevron Products Company, and Buyer is nevertheless awarded less take-away capacity on the PG&E 400 Line than Seller's Nominated Daily Quantity under this Agreement, a "Delivery Point Capacity Constraint" shall be deemed to exist and Buyer shall be excused from purchasing that portion of the Nominated Daily Quantity which cannot be delivered into the PG&E 400 Line. In that event, Buyer shall consult with Seller regarding Seller's options for the gas subject to the Delivery Point Capacity Constraint, which shall include, without limitation, making its own sale of such gas to a third party with no associated keep-whole obligation to Buyer, or agreeing to an alternate Delivery Point where Buyer can accept such gas under the terms of this Agreement, but at a mutually agreeable price which is reflective of the current California market.

**3.4. No Special Damages.** THE REMEDIES SPECIFIED IN SECTIONS 2.5., 3.1. AND 3.2. ABOVE AND SECTION 8.4.5. BELOW SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR SELLER'S FAILURE TO DELIVER GAS OR BUYER'S FAILURE TO PURCHASE GAS ACCORDING TO THIS AGREEMENT. IN NO EVENT

SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT.

3.5. **No Third Party Beneficiaries.** It is specifically agreed that there are no third party beneficiaries to this Agreement, and that this Agreement shall not impart any rights enforceable by any person, firm, organization, or corporation not a Party hereto.

## ARTICLE 4. TRANSPORTATION

4.1. **Transportation Guidelines.** The rules, guidelines, operational procedures and policies of the Transporter, as they may be changed from time to time, shall define and control the manner in which gas delivered and sold under this Agreement is transported. Seller and Buyer each agree to provide to the other, in as prompt a manner as reasonable, all information necessary to permit scheduling pursuant to such requirements.

### 4.2. **Transportation Imbalances.**

4.2.1. General. If Seller delivers to the Transporter or Buyer takes at the Delivery Point a quantity of gas not equal to the quantity nominated and confirmed for transportation, a "Transportation Imbalance" may occur. Upon notification by the other Party or the Transporter that a Transportation Imbalance exists, each Party will exercise due diligence to correct the Transportation Imbalance, subject to any restrictions imposed by Transporter. Buyer and Seller agree to use due diligence to prevent or diminish any occurrences of Transportation Imbalances, and to minimize any resulting imbalance penalties through the use of imbalance trading or netting procedures, or other methods offered by the Transporter. Adjustments to transportation nominations made pursuant to this paragraph shall not modify or impair the Parties' obligations or remedies as set forth in Article 3.

4.2.2. Imbalance Cashouts. The Transporter's tariff or applicable contracts may contain provisions under which, in the event of Transportation Imbalances related to the gas sold and purchased hereunder, a Party to this Agreement may be required to purchase net imbalance quantities from the Transporter, or to sell net imbalance quantities to the Transporter, at prices determined pursuant to the Transporter's tariff or the applicable contract (such purchases and/or sales being referred to herein as "cash-outs"). If one Party hereto is required by the Transporter to cash out an imbalance caused by the other Party's failure to deliver or receive the quantity of gas nominated and confirmed for transportation, the Party whose act or omission caused the Transportation Imbalance shall reimburse the other Party for the penalty component of the cash-out price. For purposes of this Agreement, the penalty component of a cash-out price shall be the amount by which the price at which a Party is required to buy the cashed-out quantity exceeds the Commodity Charge effective when the imbalance accrued, or the amount by which the Commodity Charge in effect

when the imbalance accrued exceeds the price at which a Party is required to sell the cashed-out quantity. Due to the possibility of graduated penalties in the Transporter's tariff, several different penalty components may apply to portions of a Transportation Imbalance. Once determined, any penalty components of cash-out prices shall be multiplied by the quantities cashed out to which such penalties are applicable.

4.2.3. Other Transportation Penalties. Seller shall hold Buyer harmless from all costs and penalties in addition to those described in Section 4.2.2. which may be assessed by Transporter as a result of over-delivery or under-delivery of gas caused by Seller. Buyer shall hold Seller harmless from all costs and penalties in addition to those described in Section 4.2.2. which may be assessed by Transporter as a result of over-takes or under-takes of gas caused by Buyer.

4.2.4. Minimization of Penalties. If any costs or penalties associated with the transportation of gas are anticipated, the Party becoming aware that such costs or penalties may be assessed or incurred shall inform the other Party promptly after the Party becomes aware, followed by notice in writing. Each Party shall then promptly cooperate in good faith with the other Party to minimize or eliminate, if possible, such costs or penalties. The Parties shall cooperate with each other and with the Transporter to verify delivery and receipt of the Nominated Purchase Quantity on a timely basis.

4.3. Upstream Transportation. Subject to Section 9.1., Seller shall be responsible for transportation to the Delivery Point(s) and payment of all transportation charges relating thereto.

## ARTICLE 5. QUALITY

5.1. Specifications of Transporter. All gas delivered hereunder shall conform to the quality specifications set forth in the transportation agreement and/or tariff of the Transporter delivering the gas at the Delivery Point. Seller's tender of gas which does not meet such quality specifications shall be deemed a failure to deliver gas for purposes of Article 3. hereof.

## ARTICLE 6. DELIVERY AND PRESSURE; TITLE AND CONTROL; LIABILITY

6.1. Delivery and Pressure. All gas to be sold and purchased hereunder shall be delivered to Buyer at the Delivery Point at the pressure maintained in the facilities of PGT from time to time.

6.2. Title and Control. Title to the gas delivered hereunder shall pass to and vest in Buyer at the Delivery Point. Seller shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to Buyer, and Buyer shall be deemed to be in exclusive control and possession of said gas thereafter.

**6.3. Liability.** The Party deemed to be in control and possession of the gas sold hereunder shall be responsible for and shall indemnify, defend and hold the other Party harmless with respect to any losses, claims, liabilities or damages arising therefrom when such gas is deemed to be in that Party's control and possession.

## **ARTICLE 7. MEASUREMENT**

The unit of volume for measurement of gas delivered hereunder shall be 1 cubic foot of gas. The sales unit of the gas shall be 1 MMBtu, determined on a dry basis. All measurements of gas delivered and sold hereunder shall be in accordance with the provisions of the tariff of the Transporter, insofar as such tariff applies at the Delivery Point.

## **ARTICLE 8. COMMODITY CHARGE**

**8.1. Calculation of Commodity Charge.** For each MMBtu of gas delivered to Buyer by Seller at the Delivery Point(s), Buyer shall pay Seller a "Commodity Charge" calculated as follows:

8.1.1. For the quantity of gas delivered in any month and not subject to a Delivery Point Capacity Constraint, as defined in Section 3.3., or a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be equal to the Bidweek Average spot gas price quoted in "Natural Gas Intelligence" California Border & Non-Utility End-User Citygate Tables for deliveries during the delivery month to PGT/PG&E at Malin, Oregon (400 Line), plus a "Premium" of \$0.01 per MMBtu.

8.1.2. For the quantity of gas delivered in any month subject to a Delivery Point Capacity Constraint as defined in Section 3.3., and any quantity subject to or a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be the price agreed to between the parties. Any such mutually agreed prices shall be confirmed in writing as soon as possible following agreement, but in no event more than five Business Days thereafter.

**8.2. Non-Publication of Index or Pipeline Tariff Changes.** If any index required for establishing the Commodity Charge is not published in the applicable publication, or if significant changes in the marketplace (including, but not limited to, restructuring of PGT's or PG&E's rates or capacity allocation procedures) render the current index unsatisfactory for determining the Commodity Charge, then, in the absence of mutual agreement to the contrary, a replacement index shall be determined by binding arbitration in accordance with Article 17. hereof. In any such arbitration, each party shall submit its proposal for the replacement index and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of gas delivered to the Facility under all of the terms and conditions of this Agreement.

Pending determination of a new index, whether by agreement or arbitration, the last available index shall be used, subject to retroactive adjustment after the new index is determined. In addition, if as a result of any change in either PGT's or PG&E's tariff, any provision of this Agreement produces an inequitable result for either Party, the affected Party may request a renegotiation of that provision. In the absence of mutual agreement, any such issues may be submitted to binding arbitration in accordance with Article 17.

**8.3. Price Renegotiation.** Beginning two years after the Effective Date, either Party may request renegotiation of the Commodity Charge payable under this Agreement if such Party believes in good faith that the current methodology does not reflect the fair market value of gas delivered to the Delivery Points under similar contractual terms. If either Party requests renegotiation pursuant to this Section 8.3., the Parties shall meet and attempt in good faith to reach agreement on a different formula for calculation of the Commodity Charge. If the Parties are unable to reach agreement within 60 days after delivery of the request for renegotiation, then upon 30 days prior written notice, either Party may require that the issue be submitted to binding arbitration in accordance with Article 17. hereof. In any such arbitration, each party shall submit a detailed proposal for calculation of the Commodity Charge and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of spot gas delivered to the Delivery Point, prior to addition of the Premium (which shall not be subject to change by arbitration during the primary term of this Agreement). If the Commodity Charge is redetermined by arbitration as provided above, then neither party shall have the right to again have such issue submitted to arbitration for at least twelve months following the decision of the arbitrators.

**8.4. Locked Price.** Subject to the terms set forth herein, in lieu of paying the applicable Commodity Charge hereunder, Seller may lock the price of all or a portion of the gas to be sold hereunder during any of the 12 months immediately following the date of Seller's request to lock price (insofar as such months are during the term hereof), by notifying one of Buyer's authorized representatives by telephone of Seller's desire to lock price on such gas. If Seller opts for such a Locked Price and the Commodity Charge otherwise payable is based in part upon a published index, or other base amount, plus a monetary adjustment, the Locked Price so established shall replace the index or base amount as to Locked Quantities affected by such Locked Price, but the monetary adjustment shall still be applied to such Locked Quantities.

**8.4.1. Timing for Requesting Locked Price.** Seller may request quote of a Locked Price for gas to be delivered hereunder by telephone on any regular Chevron Business Day, between the hours of 8:30 a.m. and 2:00 p.m., local Houston, Texas time, up to and including the 7th Business Day prior to the beginning of the month to which the Locked Price shall apply. The Parties acknowledge and agree that all telephone conversations between them relating to a Locked Price may be recorded by either Party, or both, for purposes of establishing the terms and conditions associated with the Locked Price. The Parties also agree that the taped conversation may be used

to prove the terms and conditions associated with a Locked Price if the Parties subsequently disagree on such terms and conditions.

8.4.2. Procedures. As soon as possible after Seller's telephonic request, but in any event within 24 hours (excluding weekends and holidays), Buyer shall determine the price per MMBtu at which it is willing and able to lock price and shall notify Seller's authorized representative of such price. The Locked Price will be based on the NYMEX (or other exchange selected by Seller) posting for the natural gas futures contract applicable to the month(s) requested by Buyer and prevailing at the time of Buyer's request for a Locked Price, plus a basis differential adjustment to equate the posted price with an imputed price at the applicable Delivery Point. If Seller accepts such Locked Price, then Buyer shall forward to Seller a "Price Lock Confirmation", similar to the form attached hereto as Exhibit "B", which specifies the terms to which the Parties have agreed. Said Price Lock Confirmation shall be forwarded to Seller prior to the end of the month in which deliveries are to be made. The terms set forth in the Price Lock Confirmation shall be binding upon the Parties unless Seller notifies Buyer in writing that Seller disputes one or more of the terms set forth in said Price Lock Confirmation within 48 hours, exclusive of weekends and Chevron holidays, after Seller receives the same. Any terms which remain undisputed after expiration of said period shall be binding on the Parties, and the Parties shall work together in good faith to resolve any disputes as expeditiously as possible.

8.4.3. Multiple Price Locks. Seller may request and establish a Locked Price on gas quantities for a particular month more than once, so long as Seller meets the requirements of this Section 8.4. with regard to timing. Buyer at its option may include all Locked Prices and Locked Quantities in one Price Lock Confirmation for any applicable month.

8.4.4. Irrevocability; Nominations; Allocation. Once a Locked Price has been established for a delivery month hereunder, the Locked Price shall be irrevocable as to the affected Locked Quantities, and shall not thereafter be subject to change. Additionally, for any month as to which a Locked Price has been established, Seller shall be obligated to nominate and deliver a quantity of gas not less than the Locked Quantities then in effect. If Seller elects to establish a Locked Price for less than all of the gas to be delivered in any applicable month, and/or if Buyer and Seller have established more than one Locked Price for different Locked Quantities, the first gas delivered during said month shall be the first Locked Quantities established, followed by any additional Locked Quantities in the order they were established, followed by any Unlocked Quantities of gas.

8.4.5. Failure to Deliver Locked Quantities. If Seller fails to deliver the full quantity of gas subject to a Locked Price in any month, then, to the extent such failure is not the result of force majeure or Buyer's failure to purchase the gas made available, Seller shall pay Buyer liquidated damages calculated as follows. The unexcused deficient quantity of gas subject to a Locked Price shall be multiplied by the difference between the Locked Price and the settlement price of the natural gas futures

contract on NYMEX (or other applicable exchange) for the Month in which the deficiency occurred, plus or minus the basis differential set forth in the Price Lock Confirmation. In addition, if Buyer has entered into a financial instrument, including, without limitation, an over-the-counter basis swap, for purposes of hedging the risk associated with the basis differential component of the Locked Price, Seller shall reimburse Buyer one hundred percent (100%) of the actual losses incurred by Buyer under such financial instrument to the extent such losses result from Seller's unexcused failure to purchase gas subject to a Locked Price. Buyer shall exercise its best efforts to minimize such losses (including for example the early termination of financial instruments if Buyer reasonably believes at the time of termination that early termination may minimize such losses). Seller's obligation to deliver gas subject to a Locked Price is a monthly obligation and not a daily obligation and therefore for purposes of this Section Seller shall have complied with its obligation to deliver quantities of gas subject to a Locked Price if it delivers such quantities during the course of the Month.

8.4.6. Cessation of Futures Trading. If natural gas futures contracts cease to be traded on the New York Mercantile Exchange or on any other mercantile exchange acceptable to Buyer in its sole discretion, then after such cessation Buyer shall be relieved of any and all obligation to establish Locked Prices hereunder.

## **ARTICLE 9. MANAGEMENT OF TRANSPORTATION ARRANGEMENTS**

9.1. **Arrangements To Be Managed By Buyer.** Buyer hereby agrees to manage on Seller's behalf the PGT Transportation Agreement. Buyer shall remain responsible for management of such agreement until the earlier of (a) the termination of this Agreement, or (b) Seller's written revocation of Buyer's management authority, which may apply to less than one hundred percent of the capacity if Seller is simultaneously reducing the DCQ under this Agreement as provided in Section 2.4. Buyer's management responsibilities shall include, but not be limited to, making transportation nominations, releasing unused capacity to replacement shippers for Seller's account, resolving imbalances, and otherwise performing the day-to-day actions necessary under the PGT Transportation Agreement.

9.2. **Appointment of Buyer as Seller's Agent.** If necessary to accomplish the objectives of this Agreement, Seller shall appoint Buyer as Seller's agent for day to day administration of the PGT Transportation Agreement, including the placing of transportation nominations, the adjustment of imbalances, and the reconciliation of statements. Upon request, Seller shall provide such documentation of Buyer's Agency as the Transporter may reasonably require. Notwithstanding the foregoing, Buyer shall not amend, terminate, or otherwise modify the PGT Transportation Agreement without Seller's prior written consent.

9.3. **Capacity Release and Revenue Sharing.** During any period when less than one hundred percent of Seller's capacity under the PGT Transportation

Agreement is being utilized for deliveries under this Agreement, Buyer, as Seller's agent shall have the right to either (a) propose to Seller opportunities to utilize such capacity for purchases from and sales to third parties at margins exceeding the variable cost of transportation (in which case Buyer shall retain one-half of the net profits resulting from such transactions and Seller shall receive the other one-half of such net profits), or (b) post the unused capacity for release under conditions and with recall rights approved by Seller (in which case Buyer receive from Seller \$0.01 per MMBtu of released capacity as a service fee and Seller shall receive as a credit against its PGT demand charges the full consideration paid by the replacement shipper). The effect of this Section 9.3. is limited to short term capacity release transactions (i.e., one month or less) and shall not prevent Seller from entering into long term or permanent capacity release transactions for its own account with no obligation to compensate Buyer. In addition, it is not the intent of this Section 9.3. for Buyer to share in any benefit of lower cost replacement supplies when Buyer acquires replacement supplies for Seller's account under Section 2.5. using Seller's PGT capacity.

## **ARTICLE 10. BILLING AND PAYMENT**

**10.1. Billing and Payment.** Not later than the 15th day of each month, Buyer shall provide Seller a payment statement (which may be transmitted by electronic facsimile) setting forth the quantities of gas delivered at the Delivery Point(s) during the preceding month, the amount due therefor and any other charges, credits or adjustments due under the terms hereof. If actual quantities are not available by the time Buyer prepares its payment statement, Buyer may prepare such statement based on the quantities nominated and confirmed for transportation, subject to appropriate adjustments to actual quantities when available. Buyer shall make payment by wire transfer of all amounts due Seller by the last Business Day of the month following the delivery month.

**10.2. Billing Disputes.** If a dispute arises as to the amount payable in any statement rendered hereunder, Buyer shall nevertheless pay when due the amount not in dispute under such statement. Such payment shall not be deemed to be a waiver of the right by Buyer to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver by Seller of any underpayment. If Buyer fails to forward the entire undisputed amount due to Seller when same is due, interest on the unpaid portion shall accrue at a rate equal to 2% above the prime rate charged by Wells Fargo Bank, San Francisco, from time to time, or the maximum legal rate, whichever is the lesser, compounded daily from the date such payment is due until the same is paid. If Buyer's failure to pay the undisputed portion of any statement rendered hereunder continues beyond five days after the due date for such payment, then Seller, in addition to all other legal remedies available to it, shall have the right and option upon written notice to Buyer to (a) suspend further deliveries of gas until such default shall have been cured, and (b) terminate this Agreement if the payment default is not cured within five days after such written notice is given.



**10.3. Notice of Dispute.** If Buyer withholds payment of any disputed amount as authorized herein, Buyer shall within 15 days after the due date of the disputed statement submit to Seller a written explanation of the dispute and any available supporting documentation. The Parties shall then cooperate in good faith to resolve such dispute as expeditiously as possible, and the portion, if any, of such disputed amount eventually determined to be due shall bear interest at the rate stated in Section 10.2. from the original due date until the date actually paid.

**10.4. Audit.** Each Party shall have the right at its own expense to examine and audit at any reasonable time the books, records and charts of the other to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement. Upon request, Buyer shall also make available to Seller for audit purposes any relevant records of the Transporter to which Buyer has access. A formal audit of accounts shall not be made more often than once each Contract Year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither Party shall be required to maintain books, records or charts for a period of more than 2 Contract Years following the end of the Contract Year to which they are applicable. Neither Party shall have any right to question or contest any charge or credit if the matter is not called to the attention of the other Party in writing within 2 years of the end of the Contract Year in question.

**10.5. Setoff.** All payments will be made without setoff or counterclaim; provided, however, that upon a Party's (the defaulting Party) failure to make payment of undisputed amounts on the due date, the other Party (the non-defaulting Party) may, at its option and in its discretion, setoff against any amounts owed to the defaulting Party any amounts owed by the defaulting Party under this Agreement or otherwise. The obligations of the non-defaulting Party and the defaulting Party under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The non-defaulting Party will give the defaulting Party notice of any setoff made under this Section 10.5. as soon as practicable after the setoff is made provided that failure to give such notice shall not offset the validity of the setoff.

## **ARTICLE 11. TAXES**

The price for gas delivered hereunder is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the gas prior to its delivery to or for the account of Buyer at the Delivery Point(s), and all such taxes shall be borne and paid exclusively by Seller. The price does not include any Federal, Indian, State or local sale, use, consumption, or similar taxes of whatever designation which may now or hereafter be imposed on the transfer of title or possession of the gas to or for the account of Buyer, or on Buyer's subsequent use or disposition thereof. Any such taxes shall be paid by Buyer directly to the taxing authority unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid. If Buyer claims exemption from any such taxes, Buyer

shall provide Seller a tax exemption certificate or other appropriate documentation thereof.

## **ARTICLE 12. LAWS AND REGULATION**

This Agreement is subject to all valid laws, orders, rules and/or regulations of any and all duly constituted governmental authorities, Federal, State or local, to the extent such laws, regulations, and orders are applicable and effective from time to time.

## **ARTICLE 13. FORCE MAJEURE**

**13.1. Suspension of Obligations.** If either Party hereto fails, wholly or in part, as a result of force majeure to carry out its obligations under this Agreement, other than to make payment for gas delivered hereunder, then upon such Party's giving notice and full particulars of such force majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

**13.2. Definition of Force Majeure.** The term "force majeure" as employed herein means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, hurricanes or storms, hurricane or storm warnings which result in the precautionary shut-down or evacuation of production facilities, earthquakes, fires, floods, washouts, arrest and restraints of governments or people, governmental restrictions on exports of gas from Canada into the United States or imports of gas into the United States from Canada, curtailment or interruption of firm transportation (by PGT, PG&E, or any upstream pipeline, including Canadian pipelines), civil disturbances, explosions, breakage or accidents to machinery, equipment, or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other cause beyond the reasonable control of the Party affected which renders that Party unable to carry out its obligations under this Agreement. The settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

## ARTICLE 14. WARRANTY OF TITLE AND ROYALTIES

**14.1. Title.** Seller hereby warrants title to the gas sold by it hereunder and its right to sell the same and warrants that all such gas shall be delivered by Seller free from all liens, encumbrances and adverse claims, including, but not limited to liens to secure payment of production taxes, severance taxes and other taxes.

**14.2. Royalties and Other Charges.** Seller shall pay or cause to be paid all royalties and other sums due on the gathering and handling of the gas prior to its delivery to Buyer. Seller shall indemnify and save Buyer harmless from and against all suits, actions, damages, costs and expenses arising from or out of any breach of this provision.

## ARTICLE 15. TERM

This Agreement shall commence on the Effective Date and shall continue in force and effect, unless terminated earlier under the provisions hereof, for a primary term of five years, and year to year thereafter until and unless terminated by either party upon prior written notice delivered not less than ninety days prior to the end of the primary term or any annual renewal term thereafter.

## ARTICLE 16. CONFIDENTIALITY

**16.1. Confidentiality.** Each Party agrees that it will maintain the commercial terms of this Agreement in strictest confidence and that it will not cause or permit disclosure of those terms to any third party without the express written consent of the other Party hereto; provided, however, that such third party restriction does not apply to affiliated companies. Disclosures otherwise prohibited by this Article 16. may be made by either Party (1) to the extent necessary for such Party to enforce its rights hereunder against the other Party, (2) to the extent a Party is contractually or legally bound to disclose financial information to a third party such as a royalty owner or partner, or (3) only to the extent to which a Party hereto is required to disclose all or part of this Agreement by a statute or by a court, agency, or other governmental body exercising jurisdiction over the subject matter hereof, by order, by regulation or by other compulsory process (including, but not limited to, deposition, subpoena, interrogatory, or request for production of documents).

**16.2. Notification of Disclosure.** If either Party is or becomes aware of a fact, obligation or circumstance that has resulted or may result in a disclosure authorized in Section 16.1., it shall so notify the other Party promptly and shall provide documentation or an explanation of the disclosure as soon as it is available. Each

Party further agrees to cooperate to the fullest extent in seeking confidential status to protect any material so disclosed.

**16.3. Disclosure to Consultants or Counsel.** The Parties hereto acknowledge that consultants or legal counsel may, from time to time, be provided with a copy of this Agreement and agree that such disclosure does not require consent by the other Party, provided that such consultants or counsel are obligated to abide by the terms and conditions of this Article 16.

## **ARTICLE 17. ARBITRATION**

**17.1. All Disputes Arbitration.** All disputes between the parties arising under this Agreement shall be submitted to arbitration in accordance with this Article 17., and the parties hereby expressly waive all rights to have any such disputes heard before a court of law, except the right to enforce an arbitration award as described in Section 17.5. Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and not by the arbitration acts, statutes or rules of any other jurisdiction.

**17.2. Procedure.** In the event the parties are unable to resolve a dispute arising under this Agreement after exercising good faith efforts to do so, either party may require that the matter be resolved through binding arbitration by submitting a written notice to the other. The notice shall name the noticing party's arbitrator and shall contain a statement of the issue(s) presented for arbitration. Within fifteen days after receipt of a notice of arbitration, the other party shall name its arbitrator by written notice and may designate any additional issue(s) for arbitration. The two named arbitrators shall select the third arbitrator within fifteen days after the date on which the second arbitrator was named. Should the two arbitrators fail to agree on the selection of the third arbitrator, either party shall be entitled to request the Senior Judge of the United States District Court of the Southern District of Texas to select the third arbitrator. All arbitrators shall be qualified by education or experience within the energy industry to decide the issues presented for arbitration. No arbitrator shall be a current or former director, officer or employee of either party, or its affiliates; an attorney (or member of a law firm) who has rendered legal services to either party, or its affiliates, within the preceding three years; or an owner of any of the common stock of either party or its affiliates.

**17.3. Arbitration Hearings.** The three arbitrators shall commence the arbitration hearing within twenty-five days following the appointment of the third arbitrator. The proceeding shall be held at a mutually acceptable site in Houston, Texas. If the parties are unable to agree on a site, the arbitrators shall select a site. The arbitrators shall have the authority to establish rules and procedures governing the arbitration hearing. Each party shall have the opportunity to present its evidence at the hearing. The arbitrators may call for the submission of pre-hearing statements of position and legal authority, but no post-hearing briefs shall be submitted. After the presentation of the evidence has concluded, each party shall submit to the arbitration

panel a final offer of its proposed resolution of the dispute. The arbitration panel shall not have the authority to award incidental (except as specifically provided herein), consequential, special, punitive or exemplary damages. In addition, if the issue under consideration is limited to a determination of an amount of money owed by one Party to the other, the arbitration panel shall be charged to select from the two proposals the one which the panel finds to be the most reasonable and consistent with the terms and conditions of this Agreement, and the arbitration panel shall not average the Parties' proposals or otherwise craft its own remedy. The arbitrators' decision must be rendered within thirty days following the conclusion of the hearing or submission of evidence, but no later than 90 days after appointment of the third arbitrator. All evidence submitted in an arbitration proceeding, transcripts of such proceedings, and all documents submitted by the parties in an arbitration proceeding shall be deemed confidential information subject to Article 16., above.

**17.4. Arbitration Decision.** The decision of the arbitrators or a majority of them, shall be in writing and shall be final and binding upon the parties as to the issue submitted. Each party shall bear the expense and cost of own attorneys and witnesses, its own arbitrator and one-half of the expense and cost of the third arbitrator.

**17.5. Enforcement of Award.** Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable attorneys' fees in any court proceeding brought to enforce or collect any award or judgment rendered by the arbitrators.

## **ARTICLE 18. MISCELLANEOUS**

**18.1. Waivers.** No waiver by either Seller or Buyer of any default of the other under this Agreement shall operate as a waiver of future default, whether of like or different character nature.

**18.2. Binding Nature; Assignment As Security.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns, or the heirs, administrators, or executors of the Parties hereto. Either Party hereto may assign its right, title and interest in, to and under this Agreement, including without limitation, any and all renewals, extensions, amendments, and/or supplements herein to any individual, bank, trustee, company or corporation as security for any notices, bonds or other obligations or securities of such assignor; provided, however, that no such assignment shall in any way operate to enlarge, alter or change any obligation of the other Party hereto.

**18.3. Assignment.** Seller and Buyer reserve the right to assign this Agreement in its entirety to any of their affiliates; however, ultimate responsibility for performance hereunder shall remain with the respective Party hereto. Except provided in the

foregoing sentence, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not unreasonably be withheld. Notwithstanding the foregoing, either Party shall have the right to condition such Party's consent to an assignment of this Agreement to an unaffiliated third party on the agreement of the assignee to a renegotiation of the terms of this Agreement within one year after the effective date of the assignment.

**18.4. Notices.** Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United States Mail, to the Parties hereto at the addresses shown below or at such other addresses as may hereafter be furnished to the other Party in writing:

**BUYER:** Invoices, Notices, and Correspondence:

Natural Gas Clearinghouse

[address]

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopy: \_\_\_\_\_

**SELLER:** Correspondence and Notices:

Chevron U.S.A. Inc.

[Address & contacts]

Telephone: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Payments Shall Be Made By Wire Transfer To:

Chevron U.S.A. Inc.

Account No. \_\_\_\_\_

[Bank]

ABA Ref. No. \_\_\_\_\_

Statements:

Natural Gas Clearinghouse

[Address]

Any notice initially delivered by telecopy shall be confirmed by regular mail within 1 week after transmission of the telecopy, but an inadvertent failure to confirm by regular mail shall not impact the effectiveness of the telecopied notice.

**18.5. Choice of Law.** Except as provided in Article 17., all disputes directly or indirectly arising from or connected with this Agreement shall be resolved in

accordance with the laws of the State of Texas; however, conflict-of-laws provisions that would require application of the law of some other state shall be disregarded in their entirety.

**18.6. Modifications.** No modification of the terms and provisions of this Agreement shall be or become effective except pursuant to and upon the due and mutual execution of an appropriate supplemental written contract by the Parties hereto.

**18.7. Conflicts of Interest.** No director, employee, or agent of either Party shall give or receive any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this Agreement. Any mutually agreeable representative(s) authorized by either Party may audit the applicable records of the other Party solely for the purpose of determining whether there has been compliance with this paragraph.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original contract.

SELLER:

CHEVRON U.S.A. INC.

By \_\_\_\_\_  
[Title]

BUYER:

NATURAL GAS CLEARINGHOUSE

By \_\_\_\_\_

Title \_\_\_\_\_

May 17, 1996

## EXHIBIT "A"

To Natural Gas Purchase and Sale Agreement effective as of \_\_\_\_\_, between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer.

### Form for Nominations

[Date]  
Nomination of Gas  
[Month, Year]  
Contract No. \_\_\_\_\_

Natural Gas Clearinghouse

Attention Gas Control

Gentlemen:

Chevron U.S.A. Inc. hereby nominates the following quantities of gas for sale during the month indicated above, in accordance with the terms of the captioned contract, at the following delivery point:

Effective Date of Nomination:	Quantity (MMBtus/day)		Delivery Point
	Current Nomination	New Nomination	

Very truly yours,

Chevron U.S.A. Inc.

By \_\_\_\_\_

Title \_\_\_\_\_



**EXHIBIT "B"**

[Date]

Price Lock Confirmation  
Gas Purchase Agreement  
Our Contract No. \_\_\_\_\_

Chevron U.S.A. Inc.  
[Address]

Gentlemen:

In accordance with that certain Natural Gas Purchase and Sale Agreement dated effective \_\_\_\_\_, by and between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer, which agreement is incorporated herein and made a part hereof, Buyer hereby confirms establishment of the following "Locked Price" and "Locked Quantities" as previously discussed and agreed orally:

Date of Parties' Oral Agreement: \_\_\_\_\_  
Month of Delivery Affected: \_\_\_\_\_  
Locked Quantities (MMBtus/day): \_\_\_\_\_  
Locked Price (\$/MMBtu): \_\_\_\_\_  
Basis differential adjustment (\$/MMBtu): \_\_\_\_\_  
Previously Locked Quantities for this month: \_\_\_\_\_  
Remaining Unlocked Quantities (MMBtus/day): \_\_\_\_\_

This Sales Confirmation is binding upon the Parties unless Buyer notifies Seller of a dispute with all or a portion hereof 48 hours (exclusive of weekends and Chevron holidays) after Buyer's receipt hereof.

Very truly yours,

Natural Gas Clearinghouse

By \_\_\_\_\_  
Trading Representative

Date \_\_\_\_\_

Approval & Execution:  
Review: CA \_\_\_\_\_ T/MTR \_\_\_\_\_

May 17, 1996

**NATURAL GAS PURCHASE AND SALE AGREEMENT**

**(PG&E LINE 401)**

**BETWEEN**

**CHEVRON U.S.A. INC.**

**AS "SELLER"**

**AND**

**NATURAL GAS CLEARINGHOUSE**

**AS "BUYER"**

May 17, 1996

## NATURAL GAS PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into as of \_\_\_\_\_, 1996 (the "Effective Date"), by and between NATURAL GAS CLEARINGHOUSE, a Colorado general partnership, herein referred to as "Buyer", and CHEVRON U.S.A. INC., a Pennsylvania corporation, herein referred to as "Seller".

### WITNESSETH

WHEREAS, Seller has certain natural gas available for sale, which natural gas Seller is willing to sell to Buyer as provided herein; and

WHEREAS, Buyer desires to purchase such gas from Seller on a firm basis, subject to all of the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS

For the purpose of this Agreement, the following definitions are applicable:

- 1.1. The term "Agreement" means this agreement, including all exhibits attached hereto and all amendments hereof that may be made from time to time.
- 1.2. The term "Btu" means British thermal unit, and is the quantity of heat required to raise the temperature of 1 pound of water from 58.5° to 59.5° Fahrenheit.
- 1.3. The term "Business Day" means any day on which commercial banks in Houston, Texas, are open for general business.
- 1.4. The term "Contract Year" means the 12-month period from \_\_\_\_\_ of each year through \_\_\_\_\_ of the succeeding year during the term hereof.
- 1.5. The term "day" means a period of 24 consecutive hours, coinciding with the gas day of PGT.
- 1.6. The term "FERC" means the Federal Energy Regulatory Commission or successor agency.
- 1.7. The term "gas" means natural gas to be made available by Seller and taken by Buyer under the terms of this Agreement.

1.8. The term "Locked Price" means the price per MMBtu to be paid by Buyer, in lieu of the otherwise applicable Commodity Charge, for Locked Quantities of gas purchased hereunder. A Locked Price shall be determined in accordance with Section 8.4. hereof.

1.9. The term "Locked Quantities" means quantities of gas to be sold by Seller and purchased by Buyer during any month during the term hereof, as to which a Locked Price has been established.

1.10. The term "MMBtu" means 1,000,000 British thermal units.

1.11. The term "month" means the period beginning on the first day of a calendar month and ending on the first day of the next succeeding month.

1.12. The term "Party" or "Parties" means Seller and/or Buyer under this Agreement.

1.13. The term "Delivery Point" means the interconnection between PGT and PG&E's Line 401 at Malin, Oregon, where Seller shall deliver gas hereunder for the account of Buyer; or any alternate location to which the Parties may agree on a case-by-case basis.

1.14. The term "PGT Expansion Agreement" means Seller's Firm Transportation Service Agreement with PGT for delivery into PG&E's 401 Line via PGT's expanded system.

1.15. The term "PGT" means Pacific Gas Transmission Company.

1.16. The term "PG&E" means Pacific Gas & Electric Company.

1.17. The term "Transporter" means PGT.

1.18. The term "Unlocked Quantities" means quantities of gas as to which no Locked Price has been established.

1.19. The term "Daily Contract Quantity" or "DCQ" means 31,348 MMBtu of gas per day, or such lesser quantity as Seller may designate as provided in Section 2.4.

1.20. The term "Southern California Index" means the Bidweek Average spot gas price quoted for the delivery month in "Natural Gas Intelligence" California Border & Non-Utility End-User Citygate Tables. Southern California Border Average.

1.21. The term "Net Kern Station Access Fee" means the current Access Fee, if any, charged by SoCalGas for deliveries into its system at the Kern River Station interconnect between PG&E's 401 Line and SoCalGas, less the associated credit generally available to customers on SoCalGas's system.

## ARTICLE 2. QUANTITY; NOMINATIONS; KEEP-WHOLE OBLIGATIONS

**2.1. Seller's Obligation.** On each day during the term hereof, Seller will make available to Buyer at the Delivery Point the Daily Contract Quantity, unless Seller has advised Buyer, as provided in Sections 2.3. or 2.4. below, that Seller intends to deliver less than the Contract Quantity and keep Buyer whole as provided in Section 2.5. below.

**2.2. Buyer's Obligation.** On each day during the term hereof, Buyer shall take from Seller, if made available at the Delivery Point, the Nominated Daily Quantity, not to exceed, however, the Daily Contract Quantity.

**2.3. Purchase Nominations.** At least 48 hours before PGT's first of the month nomination deadline each month, Seller shall advise Buyer, using a form similar to Exhibit "A" hereto, of the quantity which Seller expects to deliver to Buyer under this Agreement during the upcoming month (the "Nominated Daily Quantity"). In the absence of such a notification, the Nominated Daily Quantity will be deemed to be equal to the Daily Contract Quantity, effective as of the first day of the upcoming month and continuing until changed by Seller as hereafter provided. Thereafter, Seller shall have the right to make daily nomination changes by advising Buyer at least two hours prior to PGT's nomination deadline for the day on which the change is to be effective. Buyer agrees to use its best efforts to accept and implement nominations after the deadlines stated above, subject to the requirements and willingness of PGT.

**2.4. Permanent Reduction of Daily Contract Quantity.** Upon not less than ninety days' prior written notice, Seller may advise Buyer of a permanent reduction on the Daily Contract Quantity. Upon such notification, Seller and Buyer shall endeavor to agree on a mechanism to compensate Buyer for any losses resulting from such reduction in the DCQ from the effective date of such reduction until the expiration of the primary term of this Agreement as stated in Article 15., which losses shall be limited to the amount, if any, by which Buyer's cost of replacement gas exceeds the amount Buyer would have paid Seller for the gas under this Agreement in the absence of Seller's DCQ reduction. It is anticipated that such mechanism will be similar to the monthly keep-whole mechanism described in Section 2.5.1., but Buyer will also offer Seller long term alternatives if such alternatives are available and could reduce Seller's long term keep-whole costs. Any dispute regarding the appropriate mechanism for long term keep-whole shall be resolved by binding arbitration in accordance with Article 17. Seller may utilize the procedure described in this Section 2.4. from time to time to accomplish additional permanent reductions in the DCQ as needed by Seller to take advantage of other marketing opportunities, subject in each case to the above notice and keep-whole requirements.

**2.5. Keep Whole Obligation**

2.5.1. If Seller nominates less than the Daily Contract Quantity for any month, (the difference between the Daily Contract Quantity and the Nominated Daily Quantity for such month, multiplied by the number of days in the applicable month, being referred to as the "Monthly Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, and if Buyer notifies Seller that Buyer, as a result of Seller's decision to nominate less than the Daily Contract Quantity for such month, has had to acquire replacement supplies of gas to serve Buyer's markets on PG&E's 401 Line at a cost in excess of that which would have been payable to Seller under this Agreement, then Seller shall reimburse Buyer for its cost of acquiring a quantity of replacement gas not to exceed the Monthly Nomination Deficiency Quantity, less the amount Buyer would have paid Seller for the same quantity of gas if purchased under this Agreement. Buyer agrees to use its best efforts to acquire any such replacement gas at the lowest price reasonably available to Buyer, and to advise Seller of the costs of any alternative approaches (which shall be reflective of the current California market), including the impact of any transportation rate adjustments as described in Section 8.1.1. If the parties mutually agree upon Buyer's replacement cost, Seller shall reimburse Buyer based upon the mutually agreeable price; otherwise, Seller shall reimburse Buyer based on Buyer's actual and reasonable cost of acquiring the replacement supplies.

2.5.2. If Seller reduces its nomination for any day after the first of the month (the difference between the initial Nominated Daily Quantity and the reduced amount nominated by Seller for such day being referred to as the "Daily Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, then the Daily Market Price shall be subtracted from the Commodity Charge payable under this Agreement and the result shall be multiplied by the Daily Nomination Deficiency Quantity to determine the keep-whole payment for that day. If the keep-whole payment for a particular day is a positive number, that amount shall be credited to Seller. If the keep-whole payment for a particular day is a negative number, that amount shall be charged to Seller. For purposes of this Section, the Daily Market Price shall be the price, reflective of current market, which Buyer advises Seller will be applicable to replacement supplies purchased by Buyer on a daily basis to replace the Daily Nomination Deficiency Quantity. If Seller desires to reduce its nomination after the first of the month and can advise Buyer of the duration of the reduction, Buyer will use reasonable efforts to acquire replacement gas for the duration of Seller's nomination reduction if Seller desires that such an acquisition of replacement supplies be made in lieu of the daily keep-whole mechanism. In that event, the keep-whole payment or credit for the period of such nomination reduction will be based upon the agreed replacement cost, rather than the Daily Market Price, and Seller shall not, during the announced period of such nomination reduction, increase its nomination without Buyer's consent.

2.5.3. If Seller's initial Nominated Daily Quantity is less than the Daily Contract Quantity and Seller desires to increase its nomination at any time after the first of the month, then Buyer shall advise Seller of the current market price which will apply to the increased quantity above the initial Nominated Daily Quantity and consult

with Seller regarding any alternative approaches. Seller may then accept the price proposed by Buyer for the increased quantity or elect not to deliver such increased quantity.

### **ARTICLE 3. FAILURE TO PERFORM**

**3.1. Seller's Failure to Make Gas Available.** If Seller fails, in whole or in part, to make available to Buyer the Nominated Daily Quantity on any day, and if such failure is not excused by an event of force majeure or by Buyer's failure or inability to receive the gas, Buyer shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in delivery, multiplied by Buyer's cost per MMBtu of cover supplies, less the Commodity Charge which would have been payable but for the failure to deliver. Seller agrees to pay Buyer any liquidated damages to which Buyer is entitled under this Section 3.1. on or before the 10th day after Seller receives a written calculation of the amount of such liquidated damages from Buyer. Buyer shall use reasonable efforts to obtain any replacement supplies at the lowest reasonable price.

**3.2. Buyer's Failure to Purchase Gas.** If Buyer fails, in whole or in part, to purchase the Nominated Quantity on any day, and if such failure is not excused by an event of force majeure or Seller's failure to make such quantity available, Seller shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in Buyer's purchases, multiplied by the Commodity Charge which would have been payable on such day less the amount realized by Seller in an alternate sale of the gas not taken. Buyer agrees to pay Seller any liquidated damages to which Buyer is entitled under this Section 3.2. on or before the 10th day after Buyer receives a written calculation of the amount of such liquidated damages from Seller. Seller shall use reasonable efforts to obtain the highest price reasonably available when making any alternate sale of gas not taken by Buyer.

**3.3. No Special Damages.** THE REMEDIES SPECIFIED IN SECTIONS 2.5., 3.1. AND 3.2. ABOVE AND SECTION 8.4.5. BELOW SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR SELLER'S FAILURE TO DELIVER GAS OR BUYER'S FAILURE TO PURCHASE GAS ACCORDING TO THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT.

**3.4. No Third Party Beneficiaries.** It is specifically agreed that there are no third party beneficiaries to this Agreement, and that this Agreement shall not impart any rights enforceable by any person, firm, organization, or corporation not a Party hereto.

## ARTICLE 4. TRANSPORTATION

4.1. **Transportation Guidelines.** The rules, guidelines, operational procedures and policies of the Transporter, as they may be changed from time to time, shall define and control the manner in which gas delivered and sold under this Agreement is transported. Seller and Buyer each agree to provide to the other, in as prompt a manner as reasonable, all information necessary to permit scheduling pursuant to such requirements.

### 4.2. **Transportation Imbalances.**

4.2.1. General. If Seller delivers to the Transporter or Buyer takes at the Delivery Point a quantity of gas not equal to the quantity nominated and confirmed for transportation, a "Transportation Imbalance" may occur. Upon notification by the other Party or the Transporter that a Transportation Imbalance exists, each Party will exercise due diligence to correct the Transportation Imbalance, subject to any restrictions imposed by Transporter. Buyer and Seller agree to use due diligence to prevent or diminish any occurrences of Transportation Imbalances, and to minimize any resulting imbalance penalties through the use of imbalance trading or netting procedures, or other methods offered by the Transporter. Adjustments to transportation nominations made pursuant to this paragraph shall not modify or impair the Parties' obligations or remedies as set forth in Article 3.

4.2.2. Imbalance Cashouts. The Transporter's tariff or applicable contracts may contain provisions under which, in the event of Transportation Imbalances related to the gas sold and purchased hereunder, a Party to this Agreement may be required to purchase net imbalance quantities from the Transporter, or to sell net imbalance quantities to the Transporter, at prices determined pursuant to the Transporter's tariff or the applicable contract (such purchases and/or sales being referred to herein as "cash-outs"). If one Party hereto is required by the Transporter to cash out an imbalance caused by the other Party's failure to deliver or receive the quantity of gas nominated and confirmed for transportation, the Party whose act or omission caused the Transportation Imbalance shall reimburse the other Party for the penalty component of the cash-out price. For purposes of this Agreement, the penalty component of a cash-out price shall be the amount by which the price at which a Party is required to buy the cashed-out quantity exceeds the Commodity Charge effective when the imbalance accrued, or the amount by which the Commodity Charge in effect when the imbalance accrued exceeds the price at which a Party is required to sell the cashed-out quantity. Due to the possibility of graduated penalties in the Transporter's tariff, several different penalty components may apply to portions of a Transportation Imbalance. Once determined, any penalty components of cash-out prices shall be multiplied by the quantities cashed out to which such penalties are applicable.

4.2.3. Other Transportation Penalties. Seller shall hold Buyer harmless from all costs and penalties in addition to those described in Section 4.2.2. which may



be assessed by Transporter as a result of over-delivery or under-delivery of gas caused by Seller. Buyer shall hold Seller harmless from all costs and penalties in addition to those described in Section 4.2.2. which may be assessed by Transporter as a result of over-takes or under-takes of gas caused by Buyer.

4.2.4. Minimization of Penalties. If any costs or penalties associated with the transportation of gas are anticipated, the Party becoming aware that such costs or penalties may be assessed or incurred shall inform the other Party promptly after the Party becomes aware, followed by notice in writing. Each Party shall then promptly cooperate in good faith with the other Party to minimize or eliminate, if possible, such costs or penalties. The Parties shall cooperate with each other and with the Transporter to verify delivery and receipt of the Nominated Purchase Quantity on a timely basis.

4.3. Upstream Transportation. Subject to Section 9.1., Seller shall be responsible for transportation to the Delivery Point(s) and payment of all transportation charges relating thereto.

## ARTICLE 5. QUALITY

5.1. Specifications of Transporter. All gas delivered hereunder shall conform to the quality specifications set forth in the transportation agreement and/or tariff of the Transporter delivering the gas at the Delivery Point. Seller's tender of gas which does not meet such quality specifications shall be deemed a failure to deliver gas for purposes of Article 3. hereof.

## ARTICLE 6. DELIVERY AND PRESSURE; TITLE AND CONTROL; LIABILITY

6.1. Delivery and Pressure. All gas to be sold and purchased hereunder shall be delivered to Buyer at the Delivery Point at the pressure maintained in the facilities of PGT from time to time.

6.2. Title and Control. Title to the gas delivered hereunder shall pass to and vest in Buyer at the Delivery Point. Seller shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to Buyer, and Buyer shall be deemed to be in exclusive control and possession of said gas thereafter.

6.3. Liability. The Party deemed to be in control and possession of the gas sold hereunder shall be responsible for and shall indemnify, defend and hold the other Party harmless with respect to any losses, claims, liabilities or damages arising therefrom when such gas is deemed to be in that Party's control and possession.

## ARTICLE 7. MEASUREMENT

The unit of volume for measurement of gas delivered hereunder shall be 1 cubic foot of gas. The sales unit of the gas shall be 1 MMBtu, determined on a dry basis. All measurements of gas delivered and sold hereunder shall be in accordance with the provisions of the tariff of the Transporter, insofar as such tariff applies at the Delivery Point.

## ARTICLE 8. COMMODITY CHARGE

**8.1. Calculation of Commodity Charge.** For each MMBtu of gas delivered to Buyer by Seller at the Delivery Point(s), Buyer shall pay Seller a "Commodity Charge" calculated as follows:

8.1.1. For the quantity of gas delivered in any month and not subject to a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be equal to the Southern California Index, less the Net Kern Station Access Fee and the PG&E "as available" off-system transportation rate, plus a "Premium" of \$0.01 per MMBtu. To the extent that Buyer can obtain a lower "as available" transportation rate on PG&E's 401 Line by making a volume commitment to PG&E, Buyer shall advise Seller of the available discount and the commitment required to receive the discount. If Seller so requests, Buyer shall take advantage of such reduced rate and shall use that reduced rate in the foregoing calculation of the Commodity Charge. If however, as a result of Seller delivering less than the DCQ to Buyer under this Agreement, Buyer fails to meet its volume commitment and is required to pay a higher unit transportation rate, then that higher rate shall be used in calculating the Commodity Charge.

8.1.2. For any quantity subject to or a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be the price agreed to between the parties. Any such mutually agreed prices shall be confirmed in writing as soon as possible following agreement, but in no event more than five Business Days thereafter.

**8.2. Non-Publication of Index or Pipeline Tariff Changes.** If any index required for establishing the Commodity Charge is not published in the applicable publication, or if significant changes in the marketplace (including, but not limited to, restructuring of PGT's or PG&E's rates or capacity allocation procedures) render the current index unsatisfactory for determining the Commodity Charge, then, in the absence of mutual agreement to the contrary, a replacement index shall be determined by binding arbitration in accordance with Article 17. hereof. In any such arbitration, each party shall submit its proposal for the replacement index and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of

gas delivered to the Facility under all of the terms and conditions of this Agreement. Pending determination of a new index, whether by agreement or arbitration, the last available index shall be used, subject to retroactive adjustment after the new index is determined. In addition, if as a result of any change in either PGT's or PG&E's tariff, any provision of this Agreement produces an inequitable result for either Party, the affected Party may request a renegotiation of that provision. In the absence of mutual agreement, any such issues may be submitted to binding arbitration in accordance with Article 17.

**8.3. Price Renegotiation.** Beginning two years after the Effective Date, either Party may request renegotiation of the Commodity Charge payable under this Agreement if such Party believes in good faith that the current methodology does not reflect the fair market value of gas delivered to the Delivery Points under similar contractual terms. If either Party requests renegotiation pursuant to this Section 8.3., the Parties shall meet and attempt in good faith to reach agreement on a different formula for calculation of the Commodity Charge. If the Parties are unable to reach agreement within 60 days after delivery of the request for renegotiation, then upon 30 days prior written notice, either Party may require that the issue be submitted to binding arbitration in accordance with Article 17. hereof. In any such arbitration, each party shall submit a detailed proposal for calculation of the Commodity Charge and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of gas delivered to the Delivery Point, prior to addition of the Premium (which shall not be subject to change by arbitration during the primary term of this Agreement). If the Commodity Charge is redetermined by arbitration as provided above, then neither party shall have the right to again have such issue submitted to arbitration for at least twelve months following the decision of the arbitrators.

**8.4. Locked Price.** Subject to the terms set forth herein, in lieu of paying the applicable Commodity Charge hereunder, Seller may lock the price of all or a portion of the gas to be sold hereunder during any of the 12 months immediately following the date of Seller's request to lock price (insofar as such months are during the term hereof), by notifying one of Buyer's authorized representatives by telephone of Seller's desire to lock price on such gas. As an alternative, Seller may request, and Buyer shall offer, a separate lock of (a) the Southern California Index component of the Commodity Charge, (b) the PG&E transportation rate component of the Commodity Charge, or (c) both of such components, but in the event either or both of such components are separately stated and locked, Seller shall be obligated to keep Buyer whole for any increased costs reasonably incurred by Buyer as a result of curtailment or interruption of transportation of the gas delivered hereunder on PG&E subsequent to the Delivery Point. Such keep whole obligation shall be limited to Buyer's out of pocket cost of remedying the situation in the most economical manner available, which may include either (c) paying a higher transportation rate on PG&E to avoid curtailment, or (d) purchasing replacement gas in Southern California at current market prices. In addition, in the event of a lock of separate components, the Net Kern Station Access Fee shall remain a separate but unlocked component of the Commodity Charge. If Seller opts for a Locked Price or a locked price component and the Commodity Charge

otherwise payable is based in part upon a published index, or other base amount, plus a "Premium", the Locked Price or locked component so established shall replace the index or base amount as to Locked Quantities affected by such Locked Price or locked component, but the Premium shall still be applied to such Locked Quantities.

8.4.1. Timing for Requesting Locked Price. Seller may request quote of a Locked Price for gas to be delivered hereunder by telephone on any regular Chevron Business Day, between the hours of 8:30 a.m. and 2:00 p.m., local Houston, Texas time, up to and including the 7th Business Day prior to the beginning of the month to which the Locked Price shall apply. The Parties acknowledge and agree that all telephone conversations between them relating to a Locked Price may be recorded by either Party, or both, for purposes of establishing the terms and conditions associated with the Locked Price. The Parties also agree that the taped conversation may be used to prove the terms and conditions associated with a Locked Price if the Parties subsequently disagree on such terms and conditions.

8.4.2. Procedures. As soon as possible after Seller's telephonic request, but in any event within 24 hours (excluding weekends and holidays), Buyer shall determine the price per MMBtu at which it is willing and able to lock price and shall notify Seller's authorized representative of such price. The Locked Price will be based on the NYMEX (or other exchange selected by Buyer) posting for the natural gas futures contract applicable to the month(s) requested by Seller and prevailing at the time of Seller's request for a Locked Price, plus a basis differential adjustment to equate the posted price with an imputed price at the applicable Delivery Point, and an adjustment for the Net Kern Station Access Fee if one or both of the components of the Commodity Charge is being locked separately. The Locked Price shall be stated as either a single price applicable at the Delivery Point or as separate components of the Commodity Charge, depending upon the form of Seller's request and the parties' agreement. If Seller accepts a Locked Price or a separate lock of either or both components of the Commodity Charge, then Buyer shall forward to Seller a "Price Lock Confirmation", similar to the form attached hereto as Exhibit "B", which specifies the terms to which the Parties have agreed. Said Price Lock Confirmation shall be forwarded to Seller prior to the end of the month in which deliveries are to be made. The terms set forth in the Price Lock Confirmation shall be binding upon the Parties unless Seller notifies Buyer in writing that Seller disputes one or more of the terms set forth in said Price Lock Confirmation within 48 hours, exclusive of weekends and Chevron holidays, after Seller receives the same. Any terms which remain undisputed after expiration of said period shall be binding on the Parties, and the Parties shall work together in good faith to resolve any disputes as expeditiously as possible.

8.4.3. Multiple Price Locks. Seller may request and establish a Locked Price on gas quantities for a particular month more than once, so long as Seller meets the requirements of this Section 8.4. with regard to timing. Buyer at its option may include all Locked Prices and Locked Quantities in one Price Lock Confirmation for any applicable month.

8.4.4. Irrevocability, Nominations, Allocation. Once a Locked Price or locked component has been established for a delivery month hereunder, the Locked Price or locked component shall be irrevocable as to the affected Locked Quantities, and shall not thereafter be subject to change. Additionally, for any month as to which a Locked Price or locked component has been established, Seller shall be obligated to nominate and deliver a quantity of gas not less than the Locked Quantities then in effect. If Seller elects to establish a Locked Price or locked component for less than all of the gas to be delivered in any applicable month, and/or if Buyer and Seller have established more than one Locked Price or locked component for different Locked Quantities, the first gas delivered during said month shall be the first Locked Quantities established, followed by any additional Locked Quantities in the order they were established, followed by any Unlocked Quantities of gas.

8.4.5. Failure to Deliver Locked Quantities. If Seller fails to deliver the full quantity of gas subject to a Locked Price in any month, then, to the extent such failure is not the result of force majeure or Buyer's failure to purchase the gas made available, Seller shall pay Buyer liquidated damages calculated as follows. The unexcused deficient quantity of gas subject to a Locked Price shall be multiplied by the difference between the Locked Price and the settlement price of the natural gas futures contract on NYMEX (or other applicable exchange) for the Month in which the deficiency occurred, plus or minus the basis differential set forth in the Price Lock Confirmation. In addition, if Buyer has entered into a financial instrument, including, without limitation, an over-the-counter basis swap, for purposes of hedging the risk associated with the basis differential component of the Locked Price, Seller shall reimburse Buyer one hundred percent (100%) of the actual losses incurred by Buyer under such financial instrument to the extent such losses result from Seller's unexcused failure to purchase gas subject to a Locked Price. Buyer shall exercise its best efforts to minimize such losses (including for example the early termination of financial instruments if Buyer reasonably believes at the time of termination that early termination may minimize such losses). Seller's obligation to deliver gas subject to a Locked Price is a monthly obligation and not a daily obligation and therefore for purposes of this Section Seller shall have complied with its obligation to deliver quantities of gas subject to a Locked Price if it delivers such quantities during the course of the Month.

8.4.6. Cessation of Futures Trading. If natural gas futures contracts cease to be traded on the New York Mercantile Exchange or on any other mercantile exchange acceptable to Buyer in its sole discretion, then after such cessation Buyer shall be relieved of any and all obligation to establish Locked Prices hereunder.

## ARTICLE 9. MANAGEMENT OF TRANSPORTATION ARRANGEMENTS

9.1. **Arrangements To Be Managed By Buyer.** Buyer hereby agrees to manage on Seller's behalf the PGT Transportation Agreement. Buyer shall remain responsible for management of such agreement until the earlier of (a) the termination of

this Agreement, or (b) Seller's written revocation of Buyer's management authority, which may apply to less than one hundred percent of the capacity if Seller is simultaneously reducing the DCQ under this Agreement as provided in Section 2.4.. Buyer's management responsibilities shall include, but not be limited to, making transportation nominations, releasing unused capacity to replacement shippers for Seller's account, resolving imbalances, and otherwise performing the day-to-day actions necessary under the PGT Transportation Agreement.

**9.2. Appointment of Buyer as Seller's Agent.** If necessary to accomplish the objectives of this Agreement, Seller shall appoint Buyer as Seller's agent for day to day administration of the PGT Transportation Agreement, including the placing of transportation nominations, the adjustment of imbalances, and the reconciliation of statements. Upon request, Seller shall provide such documentation of Buyer's Agency as the Transporter may reasonably require. Notwithstanding the foregoing, Buyer shall not amend, terminate, or otherwise modify the PGT Transportation Agreement without Seller's prior written consent.

**9.3. Capacity Release and Revenue Sharing.** During any period when less than one hundred percent of Seller's capacity under the PGT Transportation Agreement is being utilized for deliveries under this Agreement, Buyer, as Seller's agent, shall have the right to either (a) propose to Seller opportunities to utilize such capacity for purchases from and sales to third parties at margins exceeding the variable cost of transportation (in which case Buyer shall retain one-half of the net profits resulting from such transactions and Seller shall receive the other one-half of such net profits), or (b) post the unused capacity for release under conditions and with recall rights approved by Seller (in which case Buyer receive from Seller \$0.01 per MMBtu of released capacity as a service fee and Seller shall receive as a credit against its PGT demand charges the full consideration paid by the replacement shipper). The effect of this Section 9.3. is limited to short term capacity release transactions (i.e., one month or less) and shall not prevent Seller from entering into long term or permanent capacity release transactions for its own account with no obligation to compensate Buyer. In addition, it is not the intent of this Section 9.3. for Buyer to share in any benefit of lower cost replacement supplies when Buyer acquires replacement supplies for Seller's account under Section 2.5. using Seller's PGT capacity.

## **ARTICLE 10. BILLING AND PAYMENT**

**10.1. Billing and Payment.** Not later than the 15th day of each month, Buyer shall provide Seller a payment statement (which may be transmitted by electronic facsimile) setting forth the quantities of gas delivered at the Delivery Point(s) during the preceding month, the amount due therefor and any other charges, credits or adjustments due under the terms hereof. If actual quantities are not available by the time Buyer prepares its payment statement, Buyer may prepare such statement based on the quantities nominated and confirmed for transportation, subject to appropriate

adjustments to actual quantities when available. Buyer shall make payment by wire transfer by the last Business Day of the month following the delivery month.

**10.2. Billing Disputes.** If a dispute arises as to the amount payable in any statement rendered hereunder, Buyer shall nevertheless pay when due the amount not in dispute under such statement. Such payment shall not be deemed to be a waiver of the right by Buyer to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver by Seller of any underpayment. If Buyer fails to forward the entire undisputed amount due to Seller when same is due, interest on the unpaid portion shall accrue at a rate equal to 2% above the prime rate charged by Wells Fargo Bank, San Francisco, from time to time, or the maximum legal rate, whichever is the lesser, compounded daily from the date such payment is due until the same is paid. If Buyer's failure to pay the undisputed portion of any statement rendered hereunder continues beyond five days after the due date for such payment, then Seller, in addition to all other legal remedies available to it, shall have the right and option upon written notice to Buyer to (a) suspend further deliveries of gas until such default shall have been cured, and (b) terminate this Agreement if the payment default is not cured within five days after such written notice is given.

**10.3. Notice of Dispute.** If Buyer withholds payment of any disputed amount as authorized herein, Buyer shall within 15 days after the due date of the disputed statement submit to Seller a written explanation of the dispute and any available supporting documentation. The Parties shall then cooperate in good faith to resolve such dispute as expeditiously as possible, and the portion, if any, of such disputed amount eventually determined to be due shall bear interest at the rate stated in Section 10.2. from the original due date until the date actually paid.

**10.4. Audit.** Each Party shall have the right at its own expense to examine and audit at any reasonable time the books, records and charts of the other to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement. Upon request, Buyer shall also make available to Seller for audit purposes any relevant records of the Transporter to which Buyer has access. A formal audit of accounts shall not be made more often than once each Contract Year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither Party shall be required to maintain books, records or charts for a period of more than 2 Contract Years following the end of the Contract Year to which they are applicable. Neither Party shall have any right to question or contest any charge or credit if the matter is not called to the attention of the other Party in writing within 2 years of the end of the Contract Year in question.

**10.5. Setoff.** All payments will be made without setoff or counterclaim; provided, however, that upon a Party's (the defaulting Party) failure to make payment of undisputed amounts on the due date, the other Party (the non-defaulting Party) may, at its option and in its discretion, setoff against any amounts owed to the defaulting Party any amounts owed by the defaulting Party under this Agreement or otherwise. The obligations of the non-defaulting Party and the defaulting Party under this Agreement in

respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The non-defaulting Party will give the defaulting Party notice of any setoff made under this Section 10.5. as soon as practicable after the setoff is made provided that failure to give such notice shall not offset the validity of the setoff.

## **ARTICLE 11. TAXES**

The price for gas delivered hereunder is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the gas prior to its delivery to or for the account of Buyer at the Delivery Point(s), and all such taxes shall be borne and paid exclusively by Seller. The price does not include any Federal, Indian, State or local sale, use, consumption, or similar taxes of whatever designation which may now or hereafter be imposed on the transfer of title or possession of the gas to or for the account of Buyer, or on Buyer's subsequent use or disposition thereof. Any such taxes shall be paid by Buyer directly to the taxing authority unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid. If Buyer claims exemption from any such taxes, Buyer shall provide Seller a tax exemption certificate or other appropriate documentation thereof.

## **ARTICLE 12. LAWS AND REGULATION**

This Agreement is subject to all valid laws, orders, rules and/or regulations of any and all duly constituted governmental authorities, Federal, State or local, to the extent such laws, regulations, and orders are applicable and effective from time to time.

## **ARTICLE 13. FORCE MAJEURE**

**13.1. Suspension of Obligations.** If either Party hereto fails, wholly or in part, as a result of force majeure to carry out its obligations under this Agreement, other than to make payment for gas delivered hereunder, then upon such Party's giving notice and full particulars of such force majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

**13.2. Definition of Force Majeure.** The term "force majeure" as employed herein means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, hurricanes or storms, hurricane or storm warnings which result in the precautionary shut-down or evacuation of production facilities, earthquakes, fires, floods, washouts,



arrest and restraints of governments or people, governmental restrictions on exports of gas from Canada into the United States or imports of gas into the United States from Canada, curtailment or interruption of firm transportation by PGT or any upstream pipeline, including Canadian pipelines, curtailment or interruption of "as available" transportation by PG&E, civil disturbances, explosions, breakage or accidents to machinery, equipment, or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other cause beyond the reasonable control of the Party affected which renders that Party unable to carry out its obligations under this Agreement. The settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

#### **ARTICLE 14. WARRANTY OF TITLE AND ROYALTIES**

**14.1. Title.** Seller hereby warrants title to the gas sold by it hereunder and its right to sell the same and warrants that all such gas shall be delivered by Seller free from all liens, encumbrances and adverse claims, including, but not limited to liens to secure payment of production taxes, severance taxes and other taxes.

**14.2. Royalties and Other Charges.** Seller shall pay or cause to be paid all royalties and other sums due on the gathering and handling of the gas prior to its delivery to Buyer. Seller shall indemnify and save Buyer harmless from and against all suits, actions, damages, costs and expenses arising from or out of any breach of this provision.

#### **ARTICLE 15. TERM**

This Agreement shall commence on the Effective Date and shall continue in force and effect, unless terminated earlier under the provisions hereof, for a primary term of five years, and year to year thereafter until and unless terminated by either party upon prior written notice delivered not less than ninety days prior to the end of the primary term or any annual renewal term thereafter.

#### **ARTICLE 16. CONFIDENTIALITY**

**16.1. Confidentiality.** Each Party agrees that it will maintain the commercial terms of this Agreement in strictest confidence and that it will not cause or permit disclosure of those terms to any third party without the express written consent of the other Party hereto; provided, however, that such third party restriction does not apply to affiliated companies. Disclosures otherwise prohibited by this Article 16. may be made

by either Party (1) to the extent necessary for such Party to enforce its rights hereunder against the other Party, (2) to the extent a Party is contractually or legally bound to disclose financial information to a third party such as a royalty owner or partner, or (3) only to the extent to which a Party hereto is required to disclose all or part of this Agreement by a statute or by a court, agency, or other governmental body exercising jurisdiction over the subject matter hereof, by order, by regulation or by other compulsory process (including, but not limited to, deposition, subpoena, interrogatory, or request for production of documents).

**16.2. Notification of Disclosure.** If either Party is or becomes aware of a fact, obligation or circumstance that has resulted or may result in a disclosure authorized in Section 16.1., it shall so notify the other Party promptly and shall provide documentation or an explanation of the disclosure as soon as it is available. Each Party further agrees to cooperate to the fullest extent in seeking confidential status to protect any material so disclosed.

**16.3. Disclosure to Consultants or Counsel.** The Parties hereto acknowledge that consultants or legal counsel may, from time to time, be provided with a copy of this Agreement and agree that such disclosure does not require consent by the other Party, provided that such consultants or counsel are obligated to abide by the terms and conditions of this Article 16.

## **ARTICLE 17. ARBITRATION**

**17.1. All Disputes Arbitration.** All disputes between the parties arising under this Agreement shall be submitted to arbitration in accordance with this Article 17., and the parties hereby expressly waive all rights to have any such disputes heard before a court of law, except the right to enforce an arbitration award as described in Section 17.5. Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and not by the arbitration acts, statutes or rules of any other jurisdiction.

**17.2. Procedure.** In the event the parties are unable to resolve a dispute arising under this Agreement after exercising good faith efforts to do so, either party may require that the matter be resolved through binding arbitration by submitting a written notice to the other. The notice shall name the noticing party's arbitrator and shall contain a statement of the issue(s) presented for arbitration. Within fifteen days after receipt of a notice of arbitration, the other party shall name its arbitrator by written notice and may designate any additional issue(s) for arbitration. The two named arbitrators shall select the third arbitrator within fifteen days after the date on which the second arbitrator was named. Should the two arbitrators fail to agree on the selection of the third arbitrator, either party shall be entitled to request the Senior Judge of the United States District Court of the Southern District of Texas to select the third arbitrator. All arbitrators shall be qualified by education or experience within the energy industry to decide the issues presented for arbitration. No arbitrator shall be a current or former director, officer or employee of either party, or its affiliates; an

attorney (or member of a law firm) who has rendered legal services to either party, or its affiliates, within the preceding three years; or an owner of any of the common stock of either party or its affiliates.

**17.3. Arbitration Hearings.** The three arbitrators shall commence the arbitration hearing within twenty-five days following the appointment of the third arbitrator. The proceeding shall be held at a mutually acceptable site in Houston, Texas. If the parties are unable to agree on a site, the arbitrators shall select a site. The arbitrators shall have the authority to establish rules and procedures governing the arbitration hearing. Each party shall have the opportunity to present its evidence at the hearing. The arbitrators may call for the submission of pre-hearing statements of position and legal authority, but no post-hearing briefs shall be submitted. After the presentation of the evidence has concluded, each party shall submit to the arbitration panel a final offer of its proposed resolution of the dispute. The arbitration panel shall not have the authority to award incidental (except as specifically provided herein), consequential, special, punitive or exemplary damages. In addition, if the issue under consideration is limited to a determination of an amount of money owed by one Party to the other, the arbitration panel shall be charged to select from the two proposals the one which the panel finds to be the most reasonable and consistent with the terms and conditions of this Agreement, and the arbitration panel shall not average the Parties' proposals or otherwise craft its own remedy. The arbitrators' decision must be rendered within thirty days following the conclusion of the hearing or submission of evidence, but no later than 90 days after appointment of the third arbitrator. All evidence submitted in an arbitration proceeding, transcripts of such proceedings, and all documents submitted by the parties in an arbitration proceeding shall be deemed confidential information subject to Article 16., above.

**17.4. Arbitration Decision.** The decision of the arbitrators or a majority of them, shall be in writing and shall be final and binding upon the parties as to the issue submitted. Each party shall bear the expense and cost of own attorneys and witnesses, its own arbitrator and one-half of the expense and cost of the third arbitrator.

**17.5. Enforcement of Award.** Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable attorneys' fees in any court proceeding brought to enforce or collect any award or judgment rendered by the arbitrators.

## **ARTICLE 18. MISCELLANEOUS**

**18.1. Waivers.** No waiver by either Seller or Buyer of any default of the other under this Agreement shall operate as a waiver of future default, whether of like or different character nature.

**18.2. Binding Nature; Assignment As Security.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns, or the heirs, administrators, or executors of the Parties hereto. Either Party hereto may assign its right, title and interest in, to and under this Agreement, including without limitation, any and all renewals, extensions, amendments, and/or supplements herein to any individual, bank, trustee, company or corporation as security for any notices, bonds or other obligations or securities of such assignor; provided, however, that no such assignment shall in any way operate to enlarge, alter or change any obligation of the other Party hereto.

**18.3. Assignment.** Seller and Buyer reserve the right to assign this Agreement in its entirety to any of their affiliates; however, ultimate responsibility for performance hereunder shall remain with the respective Party hereto. Except provided in the foregoing sentence, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not unreasonably be withheld. Notwithstanding the foregoing, either Party shall have the right to condition such Party's consent to an assignment of this Agreement to an unaffiliated third party on the agreement of the assignee to a renegotiation of the terms of this Agreement within one year after the effective date of the assignment.

**18.4. Notices.** Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United States Mail, to the Parties hereto at the addresses shown below or at such other addresses as may hereafter be furnished to the other Party in writing:

**BUYER:** Invoices, Notices, and Correspondence:..

Natural Gas Clearinghouse  
[address]

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Telecopy: \_\_\_\_\_

**SELLER:** Correspondence and Notices:

Chevron U.S.A. Inc.  
[Address & contacts]

Telephone: \_\_\_\_\_

Telecopy: \_\_\_\_\_

Payments Shall Be Made By Wire Transfer To:

Chevron U.S.A. Inc.

Account No. \_\_\_\_\_

[Bank]

ABA Ref. No. \_\_\_\_\_

Statements:

Natural Gas Clearinghouse

[Address]

Any notice initially delivered by telecopy shall be confirmed by regular mail within 1 week after transmission of the telecopy, but an inadvertent failure to confirm by regular mail shall not impact the effectiveness of the telecopied notice.

**18.5. Choice of Law.** Except as provided in Article 17., all disputes directly or indirectly arising from or connected with this Agreement shall be resolved in accordance with the laws of the State of Texas; however, conflict-of-laws provisions that would require application of the law of some other state shall be disregarded in their entirety.

**18.6. Modifications.** No modification of the terms and provisions of this Agreement shall be or become effective except pursuant to and upon the due and mutual execution of an appropriate supplemental written contract by the Parties hereto.

**18.7. Conflicts of Interest.** No director, employee, or agent of either Party shall give or receive any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this Agreement. Any mutually agreeable representative(s) authorized by either Party may audit the applicable records of the other Party solely for the purpose of determining whether there has been compliance with this paragraph.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original contract.

SELLER:

CHEVRON U.S.A. INC.

By \_\_\_\_\_  
[Title]

BUYER:

NATURAL GAS CLEARINGHOUSE

By \_\_\_\_\_

Title \_\_\_\_\_

May 17, 1996

## EXHIBIT "A"

To Natural Gas Purchase and Sale Agreement effective as of \_\_\_\_\_, between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer.

### Form for Nominations

[Date]  
Nomination of Gas  
[Month, Year]  
Contract No. \_\_\_\_\_

Natural Gas Clearinghouse

Attention Gas Control

Gentlemen:

Chevron U.S.A. Inc. hereby nominates the following quantities of gas for sale during the month indicated above, in accordance with the terms of the captioned contract, at the following delivery point:

Effective Date of Nomination:	Quantity (MMbtus/day)		Delivery Point
	Current Nomination	New Nomination	

Very truly yours,

Chevron U.S.A. Inc.

By \_\_\_\_\_

Title \_\_\_\_\_

# EXHIBIT "B"

[Date]

Price Lock Confirmation  
Gas Purchase Agreement  
Our Contract No. \_\_\_\_\_

Chevron U.S.A. Inc.  
[Address]

Gentlemen:

In accordance with that certain Natural Gas Purchase and Sale Agreement dated effective \_\_\_\_\_, by and between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer, which agreement is incorporated herein and made a part hereof, Buyer hereby confirms establishment of the following "Locked Price" and "Locked Quantities" as previously discussed and agreed orally:

Date of Parties' Oral Agreement: \_\_\_\_\_  
Month of Delivery Affected: \_\_\_\_\_  
Locked Quantities (MMBtus/day): \_\_\_\_\_  
Locked Price (\$/MMBtu): \_\_\_\_\_  
Basis differential adjustment (\$/MMBtu): \_\_\_\_\_  
Previously Locked Quantities for this month: \_\_\_\_\_  
Remaining Unlocked Quantities (MMBtus/day): \_\_\_\_\_

This Sales Confirmation is binding upon the Parties unless Buyer notifies Seller of a dispute with all or a portion hereof 48 hours (exclusive of weekends and Chevron holidays) after Buyer's receipt hereof.

Very truly yours,

Natural Gas Clearinghouse

By \_\_\_\_\_  
Trading Representative

Date \_\_\_\_\_

Approval & Execution:  
Review: CA \_\_\_\_\_ T/M/TR \_\_\_\_\_



# CHEVRON FACSIMILE MESSAGE

CHEVRON LAW DEPARTMENT  
1301 MCKINNEY STREET  
HOUSTON, TEXAS 77010

REC'D DOE/FE

1996 AUG 28 A 9:28

FACSIMILE NO. (713) 754-3366

DATE: August 21, 1996

TIME: 3:45 P.M. CST

TO:

NAME: Patrick Fleming

COMPANY: Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Forrestasll Building  
1000 Independence Aveue, S.W.  
Washington D.C. 20585

Room:

FAX NO.: (202) 586-6050

FROM:

NAME: Gary M. Smale

ROOM NO.: Chevron U.S.A. Inc.  
Room 2258  
P.O. Box 3721  
Houston, TX 77252

PHONE: (713) 754-3464

NUMBER OF PAGES (INCLUDING COVER) 9

COMMENTS:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE NOTIFY SENDER



August 21, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3029  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

*Via Facsimile*

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3484  
Fax (713) 754-3388

Mr. Patrick Fleming  
Office of Fuels Programs, Fossil Energy  
U. S. Department of Energy  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington D.C. 20585

**Chevron U.S.A. Inc.**  
**FE Docket No. 96-59-NG**

Dear Mr. Fleming:

Attached is a draft of the Gas Marketing Agreement between Chevron U.S.A. Inc. ("CUSA") and Chevron Canada Resources ("CCR") that I referred to in our phone conversation. As I mentioned, this draft of the agreement refers only to the 400 Line Agreement between CUSA and Natural Gas Clearinghouse. If the proposed marketing arrangement for the 400 Line Agreement is agreed to by CCR, a similar agreement would be drafted for the 401 Line Agreement. The pricing information is set forth under Article 8 on Page 4.

I will provide a copy of the final agreements as soon as they are agreed and entered into by CUSA and CCR.

Please call me at (713) 754-3464 if there is any additional matter that I can clarify. Thank you for your prompt consideration of Chevron's application.

Sincerely,

Gary M. Smale

August 10, 1996, Draft

## Gas Marketing Agreement

This Agreement is entered into as of the first day of September, 1996, between CHEVRON U.S.A. INC., a Pennsylvania corporation ("CUSA") and CHEVRON CANADA RESOURCES LIMITED, a partnership ("CCR").

### Recitals

- A. CCR, a producer of natural gas from sources in Canada and a purchaser of gas from other producers and marketers in Canada, desires to pursue opportunities to sell a portion of its available gas to CUSA for resale in the United States.
- B. CUSA, a producer of natural gas from sources in the United States, currently holds a blanket import license from the United States government, allowing it to import from Canada up to 73 billion cubic feet of natural gas from Canada into the United States, and has personnel, resources and facilities allowing it to transport and deliver natural gas within the United States. In addition, contemporaneously with this Agreement, CUSA is entering into a Natural Gas Purchase and Sale Agreement (the "NGC 400 Line Agreement") under which CUSA will sell to Natural Gas Clearinghouse ("NGC"), subject to the terms and conditions of that agreement, approximately 40,000 MMBtu per day of natural gas.
- C. CCR desires to sell gas to CUSA for resale by CUSA to NGC under the NGC 400 Line Agreement, subject to the terms and conditions set forth herein.

### Agreement

In consideration of the recitals and of the covenants set forth in this Agreement, the parties hereto agree as follows:

#### 1. Definitions

For purposes of this Agreement, the following definitions apply:

- 1.1. The term "International Border" means the boundary line between the United States of America and Canada.
- 1.2. The term "Marketing Fee" means the fee to be paid by CCR to CUSA as compensation for U.S. Marketing Services.
- 1.3. The term "NGC 400 Line Agreement" means the Natural Gas Purchase and Sale Agreement between CUSA, as seller, and Natural Gas Clearinghouse, as buyer, being entered into contemporaneously with this Agreement and providing for delivery of gas by CUSA to NGC into the 400 Line of Pacific Gas & Electric Company's intrastate pipeline system at Malin, Oregon. A copy of the NGC 400 Line Agreement is attached hereto and incorporated herein by reference.

- 1.4. The term "U.S. Marketing Services" means services to be performed by CUSA in support of CCR's desire to sell gas for delivery into the United States, including, but not limited to, the following:
- 1.4.1. Monitoring of contract obligations, consulting with CCR regarding contract elections under the NGC 400 Line Agreement, and making such elections in accordance with CCR's wishes;
  - 1.4.2. Arranging for and contracting for transportation of gas from the International Border to the applicable Delivery Points under the NGC 400 Line Agreement, and performing gas nominations and other gas control functions in connection with such transportation; and
  - 1.4.3. Purchasing gas from CCR at the International Border for redelivery in the United States of America under the NGC 400 Line Agreement.
- 1.5. The term "U.S. Import Services" means services to be performed by CUSA in support of CCR's desire to sell gas for delivery into the United States, including, but not limited to, the following:
- 1.5.1. Obtaining and maintaining in effect all necessary import licenses and permits from the United States government and/or any state or local entity having jurisdiction;
  - 1.5.2. Accepting gas from CCR at the International Border for redelivery to CUSA; and
  - 1.5.3. Redelivering gas in the United States of America at the International Border to CUSA, for resale under the NGC 400 Line Agreement.

## **2. Provision of Services**

### **2.1. U.S. Marketing Services**

As needed and upon request, CUSA shall provide U.S. Marketing Services to CCR. CCR shall reimburse CUSA for all costs and expenses incurred by CUSA in providing U.S. Marketing Services (including any costs and expenses for which CCR is liable pursuant to Section 7 hereof), and shall pay CUSA the Marketing Fee set forth in Section 9.

### **2.2. U.S. Import Services**

As needed and upon request, CUSA shall provide U.S. Import Services to CCR. CCR shall not be required to reimburse CUSA, as the case may be, for any costs or expenses incurred in providing of U.S. Import Services.

**3. Obligations of CCR**

**3.1. Acquisition of Regulatory Approvals**

Provision of services by CUSA under this Agreement is expressly subject to CCR's meeting, on a continuous basis, all Canadian federal, provincial, and local regulatory requirements to allow it to export gas from the province of production and from Canada.

**3.2. Other Prerequisites**

Provision of services by CUSA under this Agreement is expressly subject to CCR's performance of all acts necessary and appropriate to allow further performance by CUSA of its obligations hereunder and under the NGC 400 Line Agreement. Such acts include but are not limited to (1) production or purchase of gas; (2) transportation of such gas to the International Border; and (3) consultation with CUSA on a continuing basis in order to give CUSA adequate time and information to perform their obligations hereunder and under the NGC 400 Line Agreement.

**3.3. Performance in accordance with the NGC 400 Line Agreement**

CCR agrees to deliver gas to CUSA during the term of this Agreement at times and in quantities necessary to allow CUSA to perform its obligations under the NGC 400 Line Agreement, it being understood that the NGC 400 Line Agreement is being entered into at CCR's request and for CCR's benefit. CCR further agrees to consult with CUSA and keep CUSA informed of all matters that will affect CUSA's obligations to NGC under the NGC 400 Line Agreement.

**4. Transportation Imbalances and Penalties**

If any costs or penalties associated with the transportation of gas are anticipated, the party becoming aware that such costs or penalties may be assessed or incurred shall inform the other party as soon as the party becomes aware. Each party shall cooperate in good faith with the other party to minimize or eliminate imbalances and, if possible, minimize or eliminate penalties associated with such imbalances. The parties shall cooperate with each other and with the pipeline transporter(s) to verify delivery and receipt of monthly nominated quantities on a timely basis.

**5. Title and Control**

Title to the Gas delivered hereunder shall pass to CUSA at the International Border. CCR shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to the International Border; and CUSA shall be deemed to be in exclusive control and possession of said gas thereafter.

**6. Force Majeure**

The performance of any of the obligations hereunder, other than financial, of any party may be delayed or suspended while, but only as long as, such party is prevented from

performance by force majeure, as defined in the NGC 400 Line Agreement. As between the parties hereto, the party experiencing a force majeure occurrence shall be excused from performance in accordance with the terms of the NGC 400 Line Agreement.

**7. Standards; Liability**

CUSA shall perform its duties hereunder in a reasonably prudent manner, as if it were performing said duties on its own behalf. CCR shall indemnify and save CUSA free and harmless from any and all losses, liabilities, claims, demands, damages, and causes of action arising directly or indirectly from CCR's acts or omissions in performing this Agreement, including any costs, penalties, or liabilities incurred by CUSA as a result of noncompliance with the NGC 400 Line Agreement if such costs, penalties, or liabilities are incurred by CUSA as a result of (a) CCR's failure to deliver gas to CUSA in a manner and quantity consistent with CUSA's obligations under the NGC 400 Line Agreement or (b) CCR's failure to provide notice of force majeure, changes in scheduled volumes, timely contract elections when such are required, or any other communications required by the NGC 400 Line Agreement.

**8. Sales Agreement Revenues**

The price to be paid by CUSA to CCR for gas delivered pursuant to this Agreement, shall equal the weighted average sales price received by CUSA for all gas sold under the NGC 400 Line Agreement, less any expenses that CCR is obliged to reimburse pursuant to Section 2.1, and less the Marketing Fee provided for in Section 9.

**9. Marketing Fee**

In consideration of CUSA's performance of U.S. Marketing Services, CCR shall pay CUSA a Marketing Fee per MMBtu of gas delivered to CUSA, which shall be calculated monthly by dividing the sum of \$25,000 (U.S.) by the number of MMBtus delivered to CUSA by CCR for redelivery under the NGC 400 Line Agreement. At any time, but not more frequently than once every 12 months, either party may request in writing renegotiation of the Marketing Fee, and if so requested, the parties shall negotiate in good faith in an attempt to reach a mutually agreeable Marketing Fee or calculation method therefor. If the parties cannot reach agreement within 30 days after the receipt by the receiving party of such written request for renegotiation, then the Marketing Fee per MMBtu shall remain at its then-current amount.

**10. Measurement**

For all purposes under this Agreement, measurements conducted by the pipeline transporter(s) in Canada and the United States of America shall conclusively be deemed accurate, unless and until corrected by said transporter(s), whether or not such corrections are made at the request of a party hereto.

## **11. Billing and Payment**

### **11.1. Procedures**

Monthly, CUSA shall furnish CCR with the following information for deliveries of gas under Sales Agreements:

- 11.1.1. Quantities of gas sold under the NGC 400 Line Agreement during the applicable month;
- 11.1.2. Prices received for gas sold under the NGC 400 Line Agreement during such month;
- 11.1.3. The weighted average sales price per MMBtu for all sales under the NGC 400 Line Agreement during such month;
- 11.1.4. The expenses incurred by CUSA during such month which are directly reimbursable by CCR;
- 11.1.5. The Marketing Fee applicable to each MMBtu of gas sold under the NGC 400 Line Agreement; and
- 11.1.6. Calculation of the total amount due CCR, based on the sold quantities multiplied by the weighted average sales price, less reimbursable expenses and applicable Marketing Fees.

After determination of the amount due CCR, CUSA shall wire transfer the amount due to CCR. The parties shall then cooperate in good faith to resolve any billing disputes as expeditiously as possible.

### **11.2. Right to Audit**

Each of the parties hereto shall have the right at its own expense to examine and audit at any reasonable time the books, records and charts of the other party, to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement, or to confirm full performance of and compliance with all obligations assumed hereunder by the party being audited. Upon request, each party shall also make available to the other party for audit purposes any relevant records of any pipeline transporter(s) to which such party has access. A formal audit of accounts shall not be made more often than once every calendar year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither party shall be required to maintain books, records or charts for a period of more than 2 calendar years following the end of the calendar year to which they are applicable.

## **12. Notices**

Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United

States and/or Canadian Mail, by recognized express courier, or by telecopy to the parties hereto at the addresses shown below, or at such other addresses as may hereafter be furnished to the other party in writing:

CCR:            Correspondence, Notices, Statements, Payments:  
Chevron Canada Resources  
500 Fifth Avenue S.W.  
Calgary, Alberta CANADA T2P 0L7  
Attention Gas Supply Administrator  
Telecopy (403) 234-6212

CUSA:           Notices and Correspondence:  
Chevron U.S.A. Inc.  
P. O. Box 2100  
1301 McKinney Avenue  
Houston, Texas 77252  
Attention Contract Administration  
Telecopy (713) 754-5838

Statements:  
Chevron U.S.A. Inc.  
P.O. Box J - Section 980  
Concord, California 94524-2060  
Attention M. F. Aw

**13. Term**

This Agreement shall commence as of the effective date stated above and shall remain in full force and effect for a term coextensive with that of the NGC 400 Line Agreement.

**14. Assignment**

Neither party shall assign this Agreement without the prior written consent of the other party, and any such attempted assignment shall be null and void. However, any company or entity assuming all or substantially all of a party's assets, through merger, acquisition, reorganization, stock purchase, or otherwise, shall succeed to the rights and obligations of



IN WITNESS WHEREOF, this Agreement is executed by the parties on the dates indicated below, but effective as of the date first above written.

**CHEVRON CANADA  
RESOURCES**, by its  
Managing Partner, Chevron  
Canada Resources Limited

**CHEVRON U.S.A. INC.**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

AUG 28 1996

## CHEVRON FACSIMILE MESSAGE

CHEVRON LAW DEPARTMENT  
1301 MCKINNEY STREET  
HOUSTON, TEXAS 77010

FACSIMILE NO. (713) 754-3366

DATE: August 28, 1996

TIME: 2:45 P.M. CST

TO:

NAME: Patrick Fleming

COMPANY: Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Forrestasll Building  
1000 Independence Avenue, S.W.  
Washington D.C. 20585

Room:

FAX NO.: (202) 586-6050

FROM:

NAME: Gary M. Smale

ROOM NO.: Chevron U.S.A. Inc.  
Room 2258  
P.O. Box 3721  
Houston, TX 77252

PHONE: (713) 754-3464

NUMBER OF PAGES (INCLUDING COVER) 9

COMMENTS:

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NUMBER OF PAGES (INCLUDING COVER) 9

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IF YOU DO NOT RECEIVE ALL PAGES, PLEASE NOTIFY SENDER



**Chevron**

August 28, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3028  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

Mr. Patrick Fleming  
Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3464  
Fax (713) 754-3386

**Chevron U.S.A. Inc.**  
**FE Docket No. 96-59-NG**

Dear Mr. Fleming:

Attached is a revised draft of the Gas Marketing Agreement between Chevron U.S.A. Inc. ("Chevron") and Chevron Canada Resources ("CCR"). It is my understanding that both Chevron and CCR have agreed to the provisions set forth in this version of the agreement. The price Chevron will pay CCR will be equal to the weighted average sales price received by Chevron for all imported gas sold in the United States, less the Marketing Fee provided for in Section 9 and any expenses that CCR is obliged to reimburse pursuant to Section 2.1.

Chevron will continue to import gas into the State of New York under the two-year authorization granted in DOE/FE Order No. 1160, FE Docket No. 96-17-NG, to supply a Gas Purchase and Sale Agreement between Chevron and Georgia-Pacific Corporation. Chevron Natural Gas Services, Inc., an affiliate of Chevron, will continue to import gas from Canada under the 15-year authorization granted in DOE/FE Order No. 938, FE Docket No. 94-31-NG, to supply a Gas Purchase and Sale Agreement between Chevron and Hermiston Generating Company.

Please call me at (713) 754-3464 if I can provide any further information regarding our application.

Sincerely,

Gary M. Smale  
Compliance Supervisor

## Natural Gas Sale Agreement

This Agreement is entered into as of the first day of September, 1996, between CHEVRON U.S.A. INC., a Pennsylvania corporation ("CUSA") and CHEVRON CANADA RESOURCES LIMITED, as managing partner for the Canadian general partnership ("CCR").

### Recitals

A. CCR, a producer of natural gas from sources in Canada and a purchaser of gas from other producers and marketers in Canada, desires to sell a portion of its available gas to CUSA for resale in the United States.

B. CUSA, a producer of natural gas from sources in the United States, currently holds a blanket import license from the United States government, allowing it to import from Canada up to 73 billion cubic feet of natural gas from Canada into the United States for short term sales and has applied for a long term import license to import gas for resale under long term contracts. CUSA also has personnel, resources and facilities allowing it to transport and deliver natural gas within the United States. In addition, CUSA has heretofore entered into, or will enter into contemporaneously with this Agreement, the Natural Gas Purchase and Sale Agreements described on Exhibit "A" hereto (the "U.S. Marketing Agreements") under which CUSA resells or will resell to various buyers the gas purchased from CCR hereunder. Individual U.S. Marketing Agreements may also be added to or deleted from Exhibit "A" from time to time upon written agreement between the parties.

C. CCR desires to sell gas to CUSA at the International Border for resale by CUSA to the buyers under the U.S. Marketing Agreements, subject to the terms and conditions set forth herein.

### Agreement

In consideration of the recitals and of the covenants set forth in this Agreement, the parties hereto agree as follows:

#### 1. Definitions

1.1 The term "International Border" means the boundary line between the United States of America and Canada.

1.2 The term "PGT Capacity" means (a) the 40,000 MMBtu per day of firm Existing capacity on Pacific Gas Transmission Company ("PGT") acquired by CUSA through capacity release from Pacific Gas & Electric Company, and (b) the 31,348 MMBtu per day of firm Expansion capacity on PGT acquired by CUSA directly from PGT. The parties intentions with respect to CUSA's acquisition and use of the PGT Capacity and CCR's rights and obligations related to the PGT Capacity are set forth in a separate Memorandum of Understanding between CUSA and CCR dated October 17, 1994, which Memorandum of Understanding is incorporated herein by reference. The term "PGT Capacity" also includes the 20,000 MMBtu per day of firm Expansion capacity on PGT acquired by CUSA directly from PGT to service the Hermiston

Facility of U.S. Generating Company as set forth in a Memorandum of Understanding between CCR and Chevron Natural Gas Services, Inc., a subsidiary of CUSA, dated February 28, 1994, which Memorandum of Understanding is incorporated herein by reference.

1.3 The term "Marketing Fee" means the fee to be paid to CUSA for U.S. Marketing Services.

1.4 The term "U.S. Marketing Agreements" means the Natural Gas Purchase and Sale Agreements between CUSA, as seller, and various third parties, as buyer, described on Exhibit "A" hereto, as Exhibit "A" may be amended from time to time. Some of the U.S. Marketing Agreements are currently in existence and others are being entered into contemporaneously with this Agreement or may be entered into in the future. CCR hereby acknowledges receipt of a copy of each of the U.S. Marketing Agreements.

1.5 The term "U.S. Marketing Services" means services to be performed by CUSA in the United States, including, but not limited to, the following:

1.5.1 Monitoring of contract obligations with respect to the PGT Capacity and the U.S. Marketing Agreements and consulting with CCR regarding contract elections with respect to the PGT Capacity and the U.S. Marketing Agreements,

1.5.2 Arranging for and contracting for transportation of gas from the International Border to the applicable Delivery Points under the U.S. Marketing Agreements, and performing or causing to be performed gas nominations and other gas control functions in connection with such transportation;

1.5.3 Purchasing gas from CCR at the International Border for redelivery in the United States of America under the U.S. Marketing Agreements; and

1.5.4 Providing or arranging for legal and regulatory support on matters pertaining to the importation and transportation of CCR's gas into the U.S. and/or the U.S. Marketing Agreements.

1.6 The term "U.S. Import Services" means services to be performed by CUSA in the United States, including, but not limited to, the following:

1.6.1 Obtaining and maintaining in effect all necessary import licenses and permits from the United States government and/or any state or local entity having jurisdiction;

1.6.2 Accepting gas from CCR at the International Border for resale under the U.S. Marketing Agreements.

## **2. Provision of Services**

### **2.1 U.S. Marketing Services**

As needed and upon request, CUSA shall provide U.S. Marketing Services to CCR. CCR shall reimburse CUSA for all costs and expenses incurred by CUSA in providing U.S. Marketing Services (including any costs and expenses for which CCR is liable pursuant to Section 7 hereof, any costs and expenses associated with the PGT Capacity, and any costs and expenses invoiced to CUSA by third parties with whom CUSA has contracted for the provision of U.S. Marketing Services), and shall pay CUSA the Marketing Fee set forth in Section 9.

### **2.2 U.S. Import Services**

As needed and upon request, CUSA shall provide U.S. Import Services to CCR. CCR shall not be required to reimburse CUSA, as the case may be, for any costs or expenses incurred in providing of U.S. Import Services (including any costs and expenses invoiced to CUSA by third parties with whom CUSA has contracted for the provision of U.S. Import Services).

## **3. Obligations of CCR**

### **3.1 Acquisition of Regulatory Approvals**

Provision of services by CUSA under this Agreement is expressly subject to CCR's meeting, on a continuous basis, all Canadian federal, provincial, and local regulatory requirements to allow it to export gas from the province of production and from Canada.

### **3.2 Other Prerequisites**

Provision of services by CUSA under this Agreement is expressly subject to CCR's performance of all acts necessary and appropriate to allow further performance by CUSA of its obligations hereunder and under the U.S. Marketing Agreements. Such acts include but are not limited to (1) production or purchase of gas; (2) transportation of such gas to the International Border; and (3) consultation with CUSA on a continuing basis in order to give CUSA or its designee adequate time and information to perform its obligations hereunder and under the U.S. Marketing Agreements.

### **3.3 Performance in accordance with the U.S. Marketing Agreements**

CCR agrees to deliver gas to CUSA during the term of this Agreement at times and in quantities necessary to allow CUSA to perform its obligations under the U.S. Marketing Agreements. CCR further agrees to consult with CUSA and keep CUSA informed of all matters that will affect CUSA's obligations to the buyers under the U.S. Marketing Agreements. CUSA shall not extend, terminate or amend any of the U.S. Marketing Agreements without first consulting with CCR.

#### **4. Transportation Imbalances and Penalties**

If any costs or penalties associated with the transportation of gas are anticipated, the party becoming aware that such costs or penalties may be assessed or incurred shall inform the other party as soon as the party becomes aware. Each party shall cooperate in good faith with the other party to minimize or eliminate imbalances and, if possible, minimize or eliminate penalties associated with such imbalances. The parties shall cooperate with each other and with the pipeline transporter(s) to verify delivery and receipt of monthly nominated quantities on a timely basis.

#### **5. Title and Control**

Title to the Gas delivered hereunder shall pass to CUSA at the International Border. CCR shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to the International Border; and CUSA shall be deemed to be in exclusive control and possession of said gas thereafter.

For purposes of this agreement, CUSA is in no way or form acting as agent for CCR or any of its partners for the purpose of carrying on business in the United States.

#### **6. Force Majeure**

The performance of any of the obligations hereunder, other than financial, of any party may be delayed or suspended while, but only as long as, such party is prevented from performance by force majeure, as defined in the applicable U.S. Marketing Agreement. As between the parties hereto, the party experiencing a force majeure occurrence shall be excused from performance in accordance with the terms of the applicable U.S. Marketing Agreement.

#### **7. Standards; Liability**

CUSA shall perform its duties hereunder in a reasonably prudent manner, as if it were performing said duties on its own behalf. CCR shall indemnify and save CUSA free and harmless from any and all losses, liabilities, claims, demands, damages, and causes of action arising directly or indirectly from CCR's acts or omissions in performing this Agreement, including any costs, penalties, or liabilities incurred by CUSA as a result of noncompliance with the U.S. Marketing Agreements if such costs, penalties, or liabilities are incurred by CUSA as a result of (a) CCR's failure to deliver gas to CUSA in a manner and quantity consistent with CUSA's obligations under the U.S. Marketing Agreements or (b) CCR's failure to provide notice of force majeure, changes in scheduled volumes, timely contract elections when such are required, or any other communications required by the U.S. Marketing Agreements.

#### **8. Sales Agreement Revenues**

The price to be paid at the border by CUSA to CCR for gas delivered pursuant to this Agreement, shall equal the weighted average sales price received by CUSA for all gas sold under the U.S. Marketing Agreements, less any expenses that CCR is obliged to reimburse pursuant to Section 2.1, and less the Marketing Fee provided for in Section 9.



## **9. Marketing Fee**

In consideration of CUSA's performance of U.S. Marketing Services, CCR shall pay CUSA a Marketing Fee of Nine Thousand U.S. Dollars (\$9,000 U.S.) per month, which Marketing Fee may be deducted by CUSA from proceeds due to CCR under this Agreement. At any time, but not more frequently than once every 12 months, either party may request in writing renegotiation of the Marketing Fee, and if so requested, the parties shall negotiate in good faith in an attempt to reach a mutually agreeable Marketing Fee or calculation method therefor. If the parties cannot reach agreement within 30 days after the receipt by the receiving party of such written request for renegotiation, then the Marketing Fee per MMBtu shall remain at its then-current amount.

## **10. Measurement**

For all purposes under this Agreement, measurements conducted by the pipeline transporter(s) in Canada and the United States of America shall conclusively be deemed accurate, unless and until corrected by said transporter(s), whether or not such corrections are made at the request of a party hereto.

## **11. Billing and Payment**

### **11.1 Procedures**

Monthly, CUSA shall furnish CCR with the following information for deliveries of gas under Sales Agreements:

11.1.1 Quantities of gas sold under each of the U.S. Marketing Agreements during the applicable month;

11.1.2 Prices received for gas sold under each of the U.S. Marketing Agreements during such month;

11.1.3 The weighted average sales price per MMBtu for all sales under the U.S. Marketing Agreements during such month;

11.1.4 The expenses incurred by CUSA during such month which are directly reimbursable by CCR;

11.1.5 The portion of the Marketing Fee payable in such month; and

11.1.6 Calculation of the total amount due CCR, based on the sold quantities multiplied by the weighted average sales price, less reimbursable expenses and applicable Marketing Fees.

After determination of the amount due CCR, CUSA shall wire transfer the amount due to CCR. The parties shall then cooperate in good faith to resolve any billing disputes as expeditiously as possible.

## 11.2 Right to Audit

Each of the parties hereto shall have the right at its own expense to examine and audit at any reasonable time the books, records and charts of the other party, to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement, or to confirm full performance of and compliance with all obligations assumed hereunder by the party being audited. Upon request, each party shall also make available to the other party for audit purposes any relevant records of any pipeline transporter(s) to which such party has access. A formal audit of accounts shall not be made more often than once every calendar year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither party shall be required to maintain books, records or charts for a period of more than 2 calendar years following the end of the calendar year to which they are applicable except as required by either the IRS or Revenue Canada.

## 12. Notices

Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United States and/or Canadian Mail, by recognized express courier, or by telecopy to the parties hereto at the addresses shown below, or at such other addresses as may hereafter be furnished to the other party in writing:

CCR:            Correspondence, Notices, Statements, Payments:  
Chevron Canada Resources  
500 Fifth Avenue S.W.  
Calgary, Alberta CANADA T2P 0L7  
Attention: Natural Gas Contract Administration  
Telephone: (403) 234-5577  
Telecopy (403) 234-6212

CUSA:          Notices and Correspondence:  
Chevron U.S.A. Inc.  
P. O. Box 2100  
1301 McKinney Avenue  
Houston, Texas 77252  
Attention: Natural Gas Contract Administration  
Telephone: (713) 754-2437  
Telecopy (713) 754-2536

Statements:  
Chevron U.S.A. Inc.  
P.O. Box J - Section 980  
Concord, California 94524-2060  
Attention: Dave Davis

**13. Term**

This Agreement shall commence as of the effective date stated above and shall remain in full force and effect so long as any of the U.S. Marketing Agreements are in effect.

**14. Effect On Prior Agreements**

This Agreement supersedes and replaces the following agreements between the parties:

- (a) Intercompany Gas Marketing Agreement dated August 1, 1991.
- (b) Gas Marketing Agreement dated November 1, 1993.
- (c) Gas Sale and Purchase Agreement dated February 28, 1994.

In addition, any other prior agreements between the parties are superseded by this Agreement to the extent that any terms of such agreements conflict with the terms of this Agreement.

**15. Assignment**

Neither party shall assign this Agreement without the prior written consent of the other party, and any such attempted assignment shall be null and void. However, any company or entity assuming all or substantially all of a party's assets, through merger, acquisition, reorganization, stock purchase, or otherwise, shall succeed to the rights and obligations of such party under this Agreement.

**16. Applicable Law**

This Agreement shall be governed by the laws of the State of Texas, without any recourse, however, to that state's doctrines, statutes or case law pertaining to conflicts of laws.

**IN WITNESS WHEREOF**, this Agreement is executed by the parties on the dates indicated below, but effective as of the date first above written.

**CHEVRON CANADA  
RESOURCES**, by its  
Managing Partner, Chevron  
Canada Resources Limited

**CHEVRON U.S.A. INC.**

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit "A"**

to Gas Marketing Agreement

between

**CHEVRON U.S.A. INC. and CHEVRON CANADA RESOURCES LIMITED**

**U.S. Marketing Agreements**

1. Gas Purchase and Sale Agreement effective September 1, 1996, between Chevron U.S.A. Inc. and Natural Gas Clearinghouse (PG&E 400 Line).
2. Gas Purchase and Sale Agreement effective September 1, 1996, between Chevron U.S.A. Inc. and Natural Gas Clearinghouse (PG&E 401 Line).
3. Gas Purchase and Sale Agreement dated February 28, 1994, between Chevron U.S.A. Inc. and Hermiston Generating Company, L.P.
4. Gas Purchase and Sale Agreement dated November 1, 1993, between Chevron U.S.A. Inc. and Georgia-Pacific Corporation, and associated Agency Agreement dated November 1, 1993, between Georgia-Pacific Corporation, Chevron Natural Gas Services, Inc., and North Country Gas Pipeline Corporation.



**Chevron**

1996 SEP 16 A 9:48

September 12, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3029  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

REC'D DOE/FE

Mr Anthony J. Como  
Office of Fuels Programs  
Fossil Energy  
Room 3F-056  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3464  
Fax (713) 754-3366

**FE Docket No. 96-59-NG**  
**Chevron U.S.A. Inc.**  
**Notice of First Deliveries**

Dear Mr. Como:

On August 30, 1996, the Office of Fossil Energy issued DOE/FE Order No. 1194, granting Chevron U.S.A. Inc. ("Chevron") authorization to import up to 74,000 Mcf per day of natural gas from Canada for a period beginning on September 1, 1996, and continuing through October 31, 2005. In accordance with the reporting requirements specified in Order No. 1194, please be advised that the first deliveries of the natural gas imported under the subject authorization commenced September 1, 1996.

Please call me at (713) 754-3464 if I can provide any further information concerning this notice.

Please place a date stamp on the attached copy of this letter and return it in the enclosed envelope.

Sincerely,

Gary M. Smale  
Compliance Supervisor

# CHEVRON FACSIMILE MESSAGE

CHEVRON LAW DEPARTMENT  
1301 MCKINNEY STREET  
HOUSTON, TEXAS 77010

FACSIMILE NO. (713) 754-3366

DATE: August 28, 1996

TIME: 10:30 A.M. CST

TO:

NAME: John Glynn

COMPANY: Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Forrestall Building  
1000 Independence Avenue, S.W.  
Washington D.C. 20585

Room:

FAX NO.: (202) 586-6050

FROM:

NAME: Gary M. Smale

ROOM NO.: Chevron U.S.A. Inc.  
Room 2258  
P.O. Box 3721  
Houston, TX 77252

PHONE: (713) 754-3464

NUMBER OF PAGES (INCLUDING COVER) 2

COMMENTS:

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE NOTIFY SENDER



August 30, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3029  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

Mr. John Glynn  
Office of Fuels Programs, Fossil Energy  
U.S. Department of Energy  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3464  
Fax (713) 754-3366

**Chevron U.S.A. Inc.**  
**DOE/FE Docket No. 96-59-NG**

Dear Mr. Glynn:

Certain "midstream" assets (gathering systems and processing plants, gas marketing assets, etc.) owned by Chevron U.S.A. Inc. were contributed to a newly formed 100% owned subsidiary of Chevron U.S.A. Inc., named Midstream Combination Corporation ("Midstream"). Midstream was merged with NGC Corporation to form a new company that would also be named NGC Corporation. Chevron will own approximately 28% of the new NGC Corporation, which will own and control assets contributed by both Midstream and the old NGC Corporation.

As part of the merger process, Chevron assigned most of the contracts previously administered by Chevron's natural gas marketing unit to Midstream. After the merger, the new NGC Corporation will assign the former Chevron gas marketing contracts to Natural Gas Clearinghouse. Natural Gas Clearinghouse will become the party responsible for performance and administration of the contracts.

Please call me at (713) 754-3464 if I can provide any further information.

Sincerely,

A handwritten signature in cursive script that reads "Gary M. Smale".

Gary M. Smale

REC'D DOE/FE  
PROGRAMS

1996 AUG 30 A 11:41

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

1996 AUG 30 P 1:23

REC'D DOE/FE

CHEVRON U.S.A. INC.

FE DOCKET NO. 96-59-NG

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

DOE/FE ORDER NO. 1194

AUGUST 30 1994



## I. DESCRIPTION OF REQUEST

On August 9, 1996, as supplemented August 21, 1996, and August 28, 1996, Chevron U.S.A. Inc. (Chevron)<sup>1/</sup> filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA)<sup>2/</sup> and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting authorization to import up to 74,000 Mcf (approximately 75,000 MMBtu) per day of natural gas from Canada. The term of the proposed authorization is for a period beginning September 1, 1996, through October 31, 2005. Chevron will import the gas and sell it to Natural Gas Clearinghouse (NGC).<sup>3/</sup> The gas will be supplied to Chevron primarily by Chevron Canada Resources (CCR) from reserves in the Provinces of Alberta and British Columbia.<sup>4/</sup>

The import arrangement contemplates that CCR will ship the gas to the border of the United States and Canada near Kingsgate, British Columbia/Eastport, Idaho. Chevron will take title to the gas immediately after it is imported into the United States. The

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1/ Chevron is a Pennsylvania corporation with a place of business in Houston, Texas. It is a wholly-owned subsidiary of Chevron Corporation, a Delaware corporation.

2/ 15 U.S.C. § 717b.

3/ NGC is a subsidiary of NGC Corporation, a Delaware corporation. Chevron has entered into an agreement to transfer certain assets, including most of its natural gas marketing assets in the United States to a new subsidiary of Chevron. NGC Corporation will merge into this new entity, at which time Chevron will own approximately 28 percent of the combined entity. The newly formed company will retain the name NGC Corporation. Chevron and NGC Corporation contemplate that formation of the new company will be final September 1, 1996. Once the new company is formed, NGC will be a subsidiary of the new company. Chevron contemplates that the import arrangement after the merger will continue as before.

4/ CCR, a producer of natural gas in Canada, is a wholly-owned subsidiary of Chevron Corporation.

gas will be shipped from the international border under Chevron's existing firm transportation on the pipeline facilities of Pacific Gas Transmission Company (PGT) and delivered to NGC at the interconnection of PGT and Pacific Gas & Electric Company's (PG&E) 400 Line located at Malin, Oregon, and at PGT and PG&E's 401 Line, also located at Malin, Oregon. The agreements for the sale of natural gas to NGC shall be referred to hereafter as the 400 Line Agreement and the 401 Line Agreement.

Chevron filed unsigned copies of both the 400 and 401 Line Agreements dated May 17, 1996. Chevron and NGC will enter into the proposed natural gas purchase and sales agreements after the merger of Chevron and NGC Corporation is complete. The contracts are for a primary term of five years, and will continue from year to year thereafter until terminated by either party upon written notice.

On each day during the term of the 400 Line Agreement, Chevron will make available for sale to NGC at the delivery point a daily contract quantity of 40,000 MMBtu of natural gas. On each day during the term of the 401 Line Agreement, Chevron will make available for sale to NGC at the delivery point a daily contract quantity of 31,348 MMBtu of natural gas. Under the agreements, Chevron may nominate and deliver a quantity of gas that is less than the daily contract quantity, in which case Chevron would reimburse NGC for any cost incurred in acquiring replacement gas. On each day during the term of the agreements, NGC would take the full nominated daily quantities delivered by Chevron, up to, but not to exceed, the daily contract quantities.



For each MMBtu of gas delivered under the 400 Line Agreement, NGC would pay Chevron a commodity charge equal to the Bidweek Average spot gas price quoted in Natural Gas Intelligence California Border & Non-Utility End-User Citygate Tables for deliveries during the delivery month to PGT/PG&E at Malin, Oregon (400 Line), plus a premium of \$0.01 per MMBtu. For each MMBtu of gas delivered under the 401 Line Agreement, NGC would pay Chevron a commodity charge equal to the Bidweek Average spot gas price quoted for the delivery month in Natural Gas Intelligence California Border & Non-Utility End-User Citygate Tables, Southern California Border Average, less the Kern Station Access Fee and the PG&E "as available" off-system transportation rate, plus a premium of \$0.01 per MMBtu. The agreements provide other terms and conditions that would ensure the sale of the gas would always be at a fair market value. The agreements contain no minimum take obligations, no make-up obligations, and no take-or-pay provisions.

Chevron would be responsible for all costs associated with transportation to the delivery point, Malin, Oregon. Chevron would use its existing firm transportation rights on PGT. Chevron requires the import authorization to provide NGC with the daily contract quantities specified in the agreements (71,348 Mcf per day), plus a sufficient quantity of gas to meet PGT's in-kind fuel requirements (2,652 Mcf per day).

The price Chevron pays to CCR to import the gas at the international border would be a "net back" price. Chevron has filed an unsigned copy of the Gas Marketing Agreement, effective

September 1, 1996, between Chevron and CCR. The "net back" price to be paid by Chevron to CCR for gas delivered under the Gas Marketing Agreement would equal the weighted average sales price received by Chevron for all of the natural gas which it imports and sells in the United States (including the gas sold under both the NGC 400 and 401 Line Agreements), less certain expenses CCR is obligated to reimburse Chevron for under the provisions of the Gas Marketing Agreement, and less a marketing fee per MMBtu calculated monthly.

I. FINDING

The application filed by Chevron has been evaluated to determine if the proposed import arrangement meets the public interest requirement of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the importation of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. The authorization sought by Chevron 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. Chevron U.S.A. (Chevron) is authorized to import from Canada up to 74,000 Mcf (approximately 75,000 MMBtu) per day of natural gas. The term of the authorization shall begin on September 1, 1996, and continue through October 31, 2005. This gas shall be imported near Kingsgate, British Columbia/Eastport, Idaho, under the provisions of the proposed Gas Marketing Agreement between Chevron and Chevron Canada Resources (CCR) and the proposed 400 Line and 401 Line Gas Purchase and Sale Agreements between Chevron and Natural Gas Clearinghouse (NGC) filed in this docket.

B. Within two weeks after their execution, Chevron shall provide signed copies of its Gas Marketing Agreement with CCR and its 400 Line and 401 Line Gas Purchase and Sale Agreements with NGC to the Office of Fuels Programs (OFP), Fossil Energy, Room 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

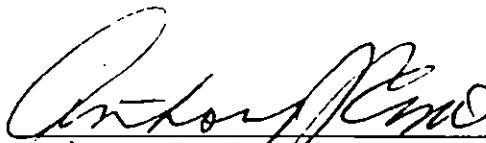
C. Within two weeks after deliveries begin, Chevron shall provide written notification to OFP of the date that the first imports of natural gas authorized in Ordering Paragraph A above occurred.

D. With respect to the natural gas imports authorized by this Order, Chevron shall file with OFP, within 30 days following each calendar quarter, quarterly reports showing by month the total volume (in Mcf) imported and the average purchase price per

MMBtu paid at the international border. The information for a particular month shall list separately the volumes imported under the 400 Line and 401 Line Gas Purchase and Sales Agreements with NGC and the price paid for these volumes under the Gas Marketing Agreement with CCR. If any volumes are transported to any delivery point other than Malin, Oregon, Chevron must identify the volumes, the point(s) of delivery, and the final disposition of the supply, by state.

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

Issued in Washington, D.C., on August 30, 1996.



---

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



1996 SEP 16 A 9:50

September 12, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3029  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

REC'D DOE/FE  
COMMERCIAL ENERGY PROGRAM

Mr. Anthony J. Como  
Office of Fuels Programs  
Fossil Energy  
Room 3F-056  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3464  
Fax (713) 754-3366

**FE Docket No. 96-59-NG**  
**Chevron U.S.A. Inc.**

Dear Mr. Como:

On August 30, 1996, the Office of Fossil Energy issued DOE/FE Order No. 1194, granting Chevron U.S.A. Inc. ("Chevron") authorization to import up to 74,000 Mcf per day of natural gas from Canada for a period beginning on September 1, 1996, and continuing through October 31, 2005. In its Application requesting such import authorization, Chevron provided unsigned copies of the Natural Gas Purchase and Sale Agreements under which the imported gas will be delivered and sold to Natural Gas Clearinghouse. In accordance with the reporting requirements specified in Order No. 1194, please find copies of the executed Agreements between Chevron and Natural Gas Clearinghouse for deliveries into PG&E Line 400 and into PG&E Line 401.

Also enclosed are copies of an executed Natural Gas Sale Agreement between Chevron and Chevron Canada Resources, Ltd.

I apologize for the poor copy quality of the signatures on the Line 400 and Line 401 Agreements. I was provided a poor copy to use as an original. Please call me at (713) 754-3464 if can provide any further information.

Please place a date stamp on the attached copy of this letter and return it in the enclosed envelope.

Sincerely,

Gary M. Smale  
Compliance Supervisor



**NATURAL GAS PURCHASE AND SALE AGREEMENT**

**(PG&E LINE 400)**

**BETWEEN**

**CHEVRON U.S.A. INC.**

**AS "SELLER"**

**AND**

**NATURAL GAS CLEARINGHOUSE**

**AS "BUYER"**

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# NATURAL GAS PURCHASE AND SALE AGREEMENT

## (PG&E LINE 400)

THIS AGREEMENT is made and entered into as of September 1, 1996 (the "Effective Date"), by and between NATURAL GAS CLEARINGHOUSE, a Colorado general partnership, herein referred to as "Buyer", and CHEVRON U.S.A. INC., a Pennsylvania corporation, herein referred to as "Seller".

### WITNESSETH

WHEREAS, Seller has certain natural gas available for sale, which natural gas Seller is willing to sell to Buyer as provided herein; and

WHEREAS, Buyer desires to purchase such gas from Seller on a firm basis, subject to all of the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS

For the purpose of this Agreement, the following definitions are applicable:

- 1.1. The term "Agreement" means this agreement, including all exhibits attached hereto and all amendments hereof that may be made from time to time.
- 1.2. The term "Btu" means British thermal unit, and is the quantity of heat required to raise the temperature of 1 pound of water from 58.5° to 59.5° Fahrenheit.
- 1.3. The term "Business Day" means any day on which commercial banks in Houston, Texas, are open for general business.
- 1.4. The term "Contract Year" means the 12-month period from September 1 of each year through August 31 of the succeeding year during the term hereof.
- 1.5. The term "day" means a period of 24 consecutive hours, coinciding with the gas day of PGT.
- 1.6. The term "FERC" means the Federal Energy Regulatory Commission or successor agency.
- 1.7. The term "gas" means natural gas to be made available by Seller and taken by Buyer under the terms of this Agreement.

1.8. The term "Locked Price" means the price per MMBtu to be paid by Buyer, in lieu of the otherwise applicable Commodity Charge, for Locked Quantities of gas purchased hereunder. A Locked Price shall be determined in accordance with Section 8.4. hereof.

1.9. The term "Locked Quantities" means quantities of gas to be sold by Seller and purchased by Buyer during any month during the term hereof, as to which a Locked Price has been established.

1.10. The term "MMBtu" means 1,000,000 British thermal units.

1.11. The term "month" means the period beginning on the first day of a calendar month and ending on the first day of the next succeeding month.

1.12. The term "Party" or "Parties" means Seller and/or Buyer under this Agreement.

1.13. The term "Delivery Point" means the interconnection between PGT and the 400 Line of PG&E at Malin, Oregon, where Seller shall deliver gas hereunder for the account of Buyer, or any alternate location to which the Parties may agree on a case-by-case basis.

1.14. The term "PGT Transportation Agreement" means Seller's Firm Transportation Service Agreement with PGT for delivery into PG&E's 400 Line via PGT's original system.

1.15. The term "PGT" means Pacific Gas Transmission Company.

1.16. The term "PG&E" means Pacific Gas & Electric Company.

1.17. The term "Transporter" means PGT.

1.18. The term "Unlocked Quantities" means quantities of gas as to which no Locked Price has been established.

1.19. The term "Daily Contract Quantity" or "DCQ" means 40,000 MMBtu of gas per day, or such lesser quantity as Seller may designate as provided in Section 2.4.

## ARTICLE 2.

### QUANTITY; NOMINATIONS; KEEP-WHOLE OBLIGATIONS

2.1. **Seller's Obligation.** On each day during the term hereof, Seller will make available to Buyer at the Delivery Point the Daily Contract Quantity, unless Seller has advised Buyer, as provided in Sections 2.3. or 2.4. below, that Seller intends to deliver less than the Contract Quantity and keep Buyer whole as provided in Section 2.5. below.

**2.2. Buyer's Obligation.** On each day during the term hereof, subject to any Delivery Point Capacity Constraints (which will be addressed as provided in Section 3.3. below), Buyer shall take from Seller, if made available at the Delivery Point, the Nominated Daily Quantity, not to exceed, however, the Daily Contract Quantity.

**2.3. Purchase Nominations.** At least 48 hours before PGT's first of the month nomination deadline each month, Seller shall advise Buyer, using a form similar to Exhibit "A" hereto, of the quantity which Seller expects to deliver to Buyer under this Agreement during the upcoming month (the "Nominated Daily Quantity"). In the absence of such a notification, the Nominated Daily Quantity will be deemed to be equal to the Daily Contract Quantity, effective as of the first day of the upcoming month and continuing until changed by Seller as hereafter provided. Thereafter, Seller shall have the right to make daily nomination changes by advising Buyer at least two hours prior to PGT's nomination deadline for the day on which the change is to be effective. Buyer agrees to use its best efforts to accept and implement nominations after the deadlines stated above, subject to the requirements and willingness of PGT.

**2.4. Permanent Reduction of Daily Contract Quantity.** Upon not less than ninety days' prior written notice, Seller may advise Buyer of a permanent reduction of the Daily Contract Quantity. Upon such notification, Seller and Buyer shall endeavor to agree on a mechanism to compensate Buyer for any losses resulting from such reduction in the DCQ from the effective date of such reduction until the expiration of the primary term of this Agreement as stated in Article 15., which losses shall be limited to the amount, if any, by which Buyer's cost of replacement gas exceeds the amount Buyer would have paid Seller for the gas under this Agreement in the absence of Seller's DCQ reduction. It is anticipated that such mechanism will be similar to the monthly keep-whole mechanism described in Section 2.5.1., but Buyer will also offer Seller long term alternatives if such alternatives are available and could reduce Seller's long term keep-whole costs. Any dispute regarding the appropriate mechanism for long term keep-whole shall be resolved by binding arbitration in accordance with Article 17. Seller may utilize the procedure described in this Section 2.4. from time to time to accomplish additional permanent reductions in the DCQ as needed by Seller to take advantage of other marketing opportunities, subject in each case to the above notice and keep-whole requirements.

## **2.5. Keep Whole Obligation**

2.5.1. If Seller nominates less than the Daily Contract Quantity for any month, (the difference between the Daily Contract Quantity and the Nominated Daily Quantity for such month, multiplied by the number of days in the applicable month, being referred to as the "Monthly Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, and if Buyer notifies Seller that Buyer, as a result of Seller's decision to nominate less than the Daily Contract Quantity for such month, has had to acquire replacement supplies of gas to serve Buyer's markets on PG&E's 400 Line at a cost in excess of that which would have been payable to Seller under this Agreement, then Seller shall

reimburse Buyer for its cost of acquiring a quantity of replacement gas not to exceed the Monthly Nomination Deficiency Quantity, less the amount Buyer would have paid Seller for the same quantity of gas if purchased under this Agreement. Buyer agrees to use its best efforts to acquire any such replacement gas at the lowest price reasonably available to Buyer, and to advise Seller of the costs of any alternative approaches (which shall be reflective of the current California market). If the parties mutually agree upon Buyer's replacement cost Seller shall reimburse Buyer based upon the mutually agreeable price; otherwise, Seller shall reimburse Buyer based on Buyer's actual and reasonable cost of acquiring the replacement supplies.

2.5.2. If Seller reduces its nomination for any day after the first of the month (the difference between the initial Nominated Daily Quantity and the reduced amount nominated by Seller for such day being referred to as the "Daily Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, then the Daily Market Price shall be subtracted from the Commodity Charge payable under this Agreement and the result shall be multiplied by the Daily Nomination Deficiency Quantity to determine the keep-whole payment for that day. If the keep-whole payment for a particular day is a positive number, that amount shall be credited to Seller. If the keep-whole payment for a particular day is a negative number, that amount shall be charged to Seller. For purposes of this Section, the Daily Market Price shall be the price, reflective of current market, which Buyer advises Seller will be applicable to replacement supplies purchased by Buyer on a daily basis to replace the Daily Nomination Deficiency Quantity. If Seller desires to reduce its nomination after the first of the month and can advise Buyer of the duration of the reduction, Buyer will use reasonable efforts to acquire replacement gas for the duration of Seller's nomination reduction if Seller desires that such an acquisition of replacement supplies be made in lieu of the daily keep-whole mechanism. In that event, the keep-whole payment or credit for the period of such nomination reduction will be based upon the agreed replacement cost, rather than the Daily Market Price, and Seller shall not, during the announced period of such nomination reduction, increase its nomination without Buyer's consent.

2.5.3. If Seller's initial Nominated Daily Quantity is less than the Daily Contract Quantity and Seller desires to increase its nomination at any time after the first of the month, then Buyer shall advise Seller of the current market price which will apply to the increased quantity above the initial Nominated Daily Quantity and consult with Seller regarding any alternative approaches. Seller may then accept the price proposed by Buyer for the increased quantity or elect not to deliver such increased quantity.

### **ARTICLE 3. FAILURE TO PERFORM**

**3.1. Seller's Failure to Make Gas Available.** If Seller fails, in whole or in part, to make available to Buyer the Nominated Daily Quantity on any day, and if such failure is not excused by an event of force majeure or by Buyer's failure or inability to

receive the gas, Buyer shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in delivery, multiplied by Buyer's cost per MMBtu of cover supplies, less the Commodity Charge which would have been payable but for the failure to deliver. Seller agrees to pay Buyer any liquidated damages to which Buyer is entitled under this Section 3.1. on or before the 10th day after Seller receives a written calculation of the amount of such liquidated damages from Buyer. Buyer shall use reasonable efforts to obtain any replacement supplies at the lowest reasonable price.

**3.2. Buyer's Failure to Purchase Gas.** If Buyer fails, in whole or in part, to purchase the Nominated Quantity on any day, and if such failure is not excused by an event of force majeure, a Delivery Point Capacity Constraint as described in Section 3.3., or Seller's failure to make such quantity available, Seller shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in Buyer's purchases, multiplied by the Commodity Charge which would have been payable on such day less the amount realized by Seller in an alternate sale of the gas not taken. Buyer agrees to pay Seller any liquidated damages to which Buyer is entitled under this Section 3.2. on or before the 10th day after Buyer receives a written calculation of the amount of such liquidated damages from Seller. Seller shall use reasonable efforts to obtain the highest price reasonably available when making any alternate sale of gas not taken by Buyer.

**3.3. Delivery Point Capacity Constraints.** The Parties recognize that capacity constraints in PG&E's 400 Line may from time to time prevent Buyer from accepting one hundred percent of Seller's Nominated Daily Quantity at the Delivery Point. Buyer agrees that it will maintain markets with at least 100,000 MMBtu per day of firm transportation capacity on the PG&E system and will utilize that nominating capacity to receive gas from Seller under this Agreement (subject to PG&E's acceptance of such nominations). If on any day Buyer has nominated at least 100,000 MMBtu of gas covered by this Agreement for such markets on the PG&E 400 Line, plus any additional quantity that Buyer can nominate for delivery to Chevron Products Company's Richmond Refinery consistent with the terms of Buyer's gas supply contract with Chevron Products Company, and Buyer is nevertheless awarded less take-away capacity on the PG&E 400 Line than Seller's Nominated Daily Quantity under this Agreement, a "Delivery Point Capacity Constraint" shall be deemed to exist and Buyer shall be excused from purchasing that portion of the Nominated Daily Quantity which cannot be delivered into the PG&E 400 Line. In that event, Buyer shall consult with Seller regarding Seller's options for the gas subject to the Delivery Point Capacity Constraint, which shall include, without limitation, making its own sale of such gas to a third party with no associated keep-whole obligation to Buyer, or agreeing to an alternate Delivery Point where Buyer can accept such gas under the terms of this Agreement, but at a mutually agreeable price which is reflective of the current California market. If PG&E changes its current curtailment practice of pro rata reductions in all customer nominations, Buyer agrees to use its best efforts to avoid a disproportionate adverse effect on Seller by attempting in good faith to nominate gas covered by this Agreement under transportation agreements which, taken in the aggregate over a period of time, are not curtailed to a greater degree than PG&E's

average curtailment on the 400 Line. In addition, if PG&E hereafter changes its capacity allocation procedure from one based on Maximum Daily Quantities to one based on average actual capacity utilization, either party may require a renegotiation of the terms of this Section.

**3.4. No Special Damages.** THE REMEDIES SPECIFIED IN SECTIONS 2.5., 3.1. AND 3.2. ABOVE AND SECTION 8.4.5. BELOW SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR SELLER'S FAILURE TO DELIVER GAS OR BUYER'S FAILURE TO PURCHASE GAS ACCORDING TO THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT.

**3.5. No Third Party Beneficiaries.** It is specifically agreed that there are no third party beneficiaries to this Agreement, and that this Agreement shall not impart any rights enforceable by any person, firm, organization, or corporation not a Party hereto.

## **ARTICLE 4. TRANSPORTATION**

**4.1. Transportation Guidelines.** The rules, guidelines, operational procedures and policies of the Transporter, as they may be changed from time to time, shall define and control the manner in which gas delivered and sold under this Agreement is transported. Seller and Buyer each agree to provide to the other, in as prompt a manner as reasonable, all information necessary to permit scheduling pursuant to such requirements.

### **4.2. Transportation Imbalances.**

**4.2.1. General.** If Seller delivers to the Transporter or Buyer takes at the Delivery Point a quantity of gas not equal to the quantity nominated and confirmed for transportation, a "Transportation Imbalance" may occur. Upon notification by the other Party or the Transporter that a Transportation Imbalance exists, each Party will exercise due diligence to correct the Transportation Imbalance, subject to any restrictions imposed by Transporter. Buyer and Seller agree to use due diligence to prevent or diminish any occurrences of Transportation Imbalances, and to minimize any resulting imbalance penalties through the use of imbalance trading or netting procedures, or other methods offered by the Transporter. Adjustments to transportation nominations made pursuant to this paragraph shall not modify or impair the Parties' obligations or remedies as set forth in Article 3.

**4.2.2. Imbalance Cashouts.** The Transporter's tariff or applicable contracts may contain provisions under which, in the event of Transportation Imbalances related to the gas sold and purchased hereunder, a Party to this Agreement may be required to purchase net imbalance quantities from the Transporter, or to sell net imbalance quantities to the Transporter, at prices determined pursuant to



the Transporter's tariff or the applicable contract (such purchases and/or sales being referred to herein as "cash-outs"). If one Party hereto is required by the Transporter to cash out an imbalance caused by the other Party's failure to deliver or receive the quantity of gas nominated and confirmed for transportation, the Party whose act or omission caused the Transportation Imbalance shall reimburse the other Party for the penalty component of the cash-out price. For purposes of this Agreement, the penalty component of a cash-out price shall be the amount by which the price at which a Party is required to buy the cashed-out quantity exceeds the Commodity Charge effective when the imbalance accrued, or the amount by which the Commodity Charge in effect when the imbalance accrued exceeds the price at which a Party is required to sell the cashed-out quantity. Due to the possibility of graduated penalties in the Transporter's tariff, several different penalty components may apply to portions of a Transportation Imbalance. Once determined, any penalty components of cash-out prices shall be multiplied by the quantities cashed out to which such penalties are applicable.

4.2.3. Other Transportation Penalties. Seller shall hold Buyer harmless from all costs and penalties in addition to those described in Section 4.2.2. which may be assessed by Transporter as a result of over-delivery or under-delivery of gas caused by Seller. Buyer shall hold Seller harmless from all costs and penalties in addition to those described in Section 4.2.2. which may be assessed by Transporter as a result of over-takes or under-takes of gas caused by Buyer.

4.2.4. Minimization of Penalties. If any costs or penalties associated with the transportation of gas are anticipated, the Party becoming aware that such costs or penalties may be assessed or incurred shall inform the other Party promptly after the Party becomes aware, followed by notice in writing. Each Party shall then promptly cooperate in good faith with the other Party to minimize or eliminate, if possible, such costs or penalties. The Parties shall cooperate with each other and with the Transporter to verify delivery and receipt of the Nominated Purchase Quantity on a timely basis.

4.3. Upstream Transportation. Subject to Section 9.1., Seller shall be responsible for transportation to the Delivery Point(s) and payment of all transportation charges relating thereto.

## **ARTICLE 5. QUALITY**

5.1. Specifications of Transporter. All gas delivered hereunder shall conform to the quality specifications set forth in the transportation agreement and/or tariff of the Transporter delivering the gas at the Delivery Point. Seller's tender of gas which does not meet such quality specifications shall be deemed a failure to deliver gas for purposes of Article 3. hereof.

**ARTICLE 6.**  
**DELIVERY AND PRESSURE; TITLE AND CONTROL; LIABILITY**

**6.1. Delivery and Pressure.** All gas to be sold and purchased hereunder shall be delivered to Buyer at the Delivery Point at the pressure maintained in the facilities of PGT from time to time.

**6.2. Title and Control.** Title to the gas delivered hereunder shall pass to and vest in Buyer at the Delivery Point. Seller shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to Buyer, and Buyer shall be deemed to be in exclusive control and possession of said gas thereafter.

**6.3. Liability.** The Party deemed to be in control and possession of the gas sold hereunder shall be responsible for and shall indemnify, defend and hold the other Party harmless with respect to any losses, claims, liabilities or damages arising therefrom when such gas is deemed to be in that Party's control and possession.

**ARTICLE 7.**  
**MEASUREMENT**

The unit of volume for measurement of gas delivered hereunder shall be 1 cubic foot of gas. The sales unit of the gas shall be 1 MMBtu, determined on a dry basis. All measurements of gas delivered and sold hereunder shall be in accordance with the provisions of the tariff of the Transporter, insofar as such tariff applies at the Delivery Point.

**ARTICLE 8.**  
**COMMODITY CHARGE**

**8.1. Calculation of Commodity Charge.** For each MMBtu of gas delivered to Buyer by Seller at the Delivery Point(s), Buyer shall pay Seller a "Commodity Charge" calculated as follows:

8.1.1. For the quantity of gas delivered in any month and not subject to a Delivery Point Capacity Constraint, as defined in Section 3.3., or a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be equal to the Bidweek Average spot gas price quoted in "Natural Gas Intelligence" California Border & Non-Utility End-User Citygate Tables for deliveries during the delivery month to PGT/PG&E at Malin, Oregon (400 Line), plus a "Premium" of \$0.01 per MMBtu.

8.1.2. For the quantity of gas delivered in any month subject to a Delivery Point Capacity Constraint as defined in Section 3.3., and any quantity subject to or a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be the price agreed to between the parties. Any such mutually agreed prices shall be

confirmed in writing as soon as possible following agreement, but in no event more than five Business Days thereafter.

**8.2. Non-Publication of Index or Pipeline Tariff Changes.** If any index required for establishing the Commodity Charge is not published in the applicable publication, or if significant changes in the marketplace (including, but not limited to, restructuring of PGT's or PG&E's rates or capacity allocation procedures) render the current index unsatisfactory for determining the Commodity Charge, then, in the absence of mutual agreement to the contrary, a replacement index shall be determined by binding arbitration in accordance with Article 17, hereof. In any such arbitration, each party shall submit its proposal for the replacement index and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of gas delivered to the Facility under all of the terms and conditions of this Agreement. Pending determination of a new index, whether by agreement or arbitration, the last available index shall be used, subject to retroactive adjustment after the new index is determined. In addition, if as a result of any change in either PGT's or PG&E's tariff, any provision of this Agreement produces an inequitable result for either Party, the affected Party may request a renegotiation of that provision. In the absence of mutual agreement, any such issues may be submitted to binding arbitration in accordance with Article 17.

**8.3. Price Renegotiation.** Beginning two years after the Effective Date, either Party may request renegotiation of the Commodity Charge payable under this Agreement if such Party believes in good faith that the current methodology does not reflect the fair market value of gas delivered to the Delivery Points under similar contractual terms. If either Party requests renegotiation pursuant to this Section 8.3., the Parties shall meet and attempt in good faith to reach agreement on a different formula for calculation of the Commodity Charge. If the Parties are unable to reach agreement within 60 days after delivery of the request for renegotiation, then upon 30 days prior written notice, either Party may require that the issue be submitted to binding arbitration in accordance with Article 17, hereof. In any such arbitration, each party shall submit a detailed proposal for calculation of the Commodity Charge and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of spot gas delivered to the Delivery Point, prior to addition of the Premium (which shall not be subject to change by arbitration during the primary term of this Agreement). If the Commodity Charge is redetermined by arbitration as provided above, then neither party shall have the right to again have such issue submitted to arbitration for at least twelve months following the decision of the arbitrators.

**8.4. Locked Price.** Subject to the terms set forth herein, in lieu of paying the applicable Commodity Charge hereunder, Seller may lock the price of all or a portion of the gas to be sold hereunder during any of the 12 months immediately following the date of Seller's request to lock price (insofar as such months are during the term hereof), by notifying one of Buyer's authorized representatives by telephone of Seller's desire to lock price on such gas. If Seller opts for such a Locked Price and the Commodity Charge otherwise payable is based in part upon a published index, or other

base amount, plus a monetary adjustment, the Locked Price so established shall replace the index or base amount as to Locked Quantities affected by such Locked Price, but the monetary adjustment shall still be applied to such Locked Quantities.

8.4.1. Timing for Requesting Locked Price. Seller may request quote of a Locked Price for gas to be delivered hereunder by telephone on any regular Chevron Business Day, between the hours of 8:30 a.m. and 2:00 p.m., local Houston, Texas time, up to and including the 7th Business Day prior to the beginning of the month to which the Locked Price shall apply. The Parties acknowledge and agree that all telephone conversations between them relating to a Locked Price may be recorded by either Party, or both, for purposes of establishing the terms and conditions associated with the Locked Price. The Parties also agree that the taped conversation may be used to prove the terms and conditions associated with a Locked Price if the Parties subsequently disagree on such terms and conditions.

8.4.2. Procedures. As soon as possible after Seller's telephonic request, but in any event within 24 hours (excluding weekends and holidays), Buyer shall determine the price per MMBtu at which it is willing and able to lock price and shall notify Seller's authorized representative of such price. The Locked Price will be based on the NYMEX (or other exchange selected by Seller) posting for the natural gas futures contract applicable to the month(s) requested by Buyer and prevailing at the time of Buyer's request for a Locked Price, plus a basis differential adjustment to equate the posted price with an imputed price at the applicable Delivery Point. If Seller accepts such Locked Price, then Buyer shall forward to Seller a "Price Lock Confirmation", similar to the form attached hereto as Exhibit "B", which specifies the terms to which the Parties have agreed. Said Price Lock Confirmation shall be forwarded to Seller prior to the end of the month in which deliveries are to be made. The terms set forth in the Price Lock Confirmation shall be binding upon the Parties unless Seller notifies Buyer in writing that Seller disputes one or more of the terms set forth in said Price Lock Confirmation within 48 hours, exclusive of weekends and Chevron holidays, after Seller receives the same. Any terms which remain undisputed after expiration of said period shall be binding on the Parties, and the Parties shall work together in good faith to resolve any disputes as expeditiously as possible.

8.4.3. Multiple Price Locks. Seller may request and establish a Locked Price on gas quantities for a particular month more than once, so long as Seller meets the requirements of this Section 8.4. with regard to timing. Buyer at its option may include all Locked Prices and Locked Quantities in one Price Lock Confirmation for any applicable month.

8.4.4. Irrevocability; Nominations; Allocation. Once a Locked Price has been established for a delivery month hereunder, the Locked Price shall be irrevocable as to the affected Locked Quantities, and shall not thereafter be subject to change. Additionally, for any month as to which a Locked Price has been established, Seller shall be obligated to nominate and deliver a quantity of gas not less than the Locked Quantities then in effect. If Seller elects to establish a Locked Price for less than all of

the gas to be delivered in any applicable month, and/or if Buyer and Seller have established more than one Locked Price for different Locked Quantities, the first gas delivered during said month shall be the first Locked Quantities established, followed by any additional Locked Quantities in the order they were established, followed by any Unlocked Quantities of gas.

8.4.5. Failure to Deliver Locked Quantities. If Seller fails to deliver the full quantity of gas subject to a Locked Price in any month, then, to the extent such failure is not the result of force majeure or Buyer's failure to purchase the gas made available, Seller shall pay Buyer liquidated damages calculated as follows. The unexcused deficient quantity of gas subject to a Locked Price shall be multiplied by the difference between the Locked Price and the settlement price of the natural gas futures contract on NYMEX (or other applicable exchange) for the Month in which the deficiency occurred, plus or minus the basis differential set forth in the Price Lock Confirmation. In addition, if Buyer has entered into a financial instrument, including, without limitation, an over-the-counter basis swap, for purposes of hedging the risk associated with the basis differential component of the Locked Price, Seller shall reimburse Buyer one hundred percent (100%) of the actual losses incurred by Buyer under such financial instrument to the extent such losses result from Seller's unexcused failure to purchase gas subject to a Locked Price. Buyer shall exercise its best efforts to minimize such losses (including for example the early termination of financial instruments if Buyer reasonably believes at the time of termination that early termination may minimize such losses). Seller's obligation to deliver gas subject to a Locked Price is a monthly obligation and not a daily obligation and therefore for purposes of this Section Seller shall have complied with its obligation to deliver quantities of gas subject to a Locked Price if it delivers such quantities during the course of the Month.

8.4.6. Cessation of Futures Trading. If natural gas futures contracts cease to be traded on the New York Mercantile Exchange or on any other mercantile exchange acceptable to Buyer in its sole discretion, then after such cessation Buyer shall be relieved of any and all obligation to establish Locked Prices hereunder.

## **ARTICLE 9. MANAGEMENT OF TRANSPORTATION ARRANGEMENTS**

9.1. **Arrangements To Be Managed By Buyer.** Buyer hereby agrees to manage on Seller's behalf the PGT Transportation Agreement. Buyer shall remain responsible for management of such agreement until the earlier of (a) the termination of this Agreement, or (b) Seller's written revocation of Buyer's management authority, which may apply to less than one hundred percent of the capacity if Seller is simultaneously reducing the DCQ under this Agreement as provided in Section 2.4.. Buyer's management responsibilities shall include, but not be limited to, making transportation nominations, releasing unused capacity to replacement shippers for Seller's account, resolving imbalances, and otherwise performing the day-to-day actions necessary under the PGT Transportation Agreement.

**9.2. Appointment of Buyer as Seller's Agent.** If necessary to accomplish the objectives of this Agreement, Seller shall appoint Buyer as Seller's agent for day to day administration of the PGT Transportation Agreement, including the placing of transportation nominations, the adjustment of imbalances, and the reconciliation of statements. Upon request, Seller shall provide such documentation of Buyer's Agency as the Transporter may reasonably require. Notwithstanding the foregoing, Buyer shall not amend, terminate, or otherwise modify the PGT Transportation Agreement without Seller's prior written consent.

**9.3. Capacity Release and Revenue Sharing.** During any period when less than one hundred percent of Seller's capacity under the PGT Transportation Agreement is being utilized for deliveries under this Agreement, Buyer, as Seller's agent shall have the right to either (a) propose to Seller opportunities to utilize such capacity for purchases from and sales to third parties at margins exceeding the variable cost of transportation (in which case Buyer shall retain one-half of the net profits resulting from such transactions and Seller shall receive the other one-half of such net profits), or (b) post the unused capacity for release under conditions and with recall rights approved by Seller (in which case Buyer receive from Seller \$0.01 per MMBtu of released capacity as a service fee and Seller shall receive as a credit against its PGT demand charges the full consideration paid by the replacement shipper). The effect of this Section 9.3. is limited to short term capacity release transactions (i.e., one month or less) and shall not prevent Seller from entering into long term or permanent capacity release transactions for its own account with no obligation to compensate Buyer. In addition, it is not the intent of this Section 9.3. for Buyer to share in any benefit of lower cost replacement supplies when Buyer acquires replacement supplies for Seller's account under Section 2.5. using Seller's PGT capacity.

## **ARTICLE 10. BILLING AND PAYMENT**

**10.1. Billing and Payment.** Not later than the 15th day of each month, Buyer shall provide Seller a payment statement (which may be transmitted by electronic facsimile) setting forth the quantities of gas delivered at the Delivery Point(s) during the preceding month, the amount due therefor and any other charges, credits or adjustments due under the terms hereof. If actual quantities are not available by the time Buyer prepares its payment statement, Buyer may prepare such statement based on the quantities nominated and confirmed for transportation, subject to appropriate adjustments to actual quantities when available. Buyer shall make payment by wire transfer of all amounts due Seller by the last Business Day of the month following the delivery month.

**10.2. Billing Disputes.** If a dispute arises as to the amount payable in any statement rendered hereunder, Buyer shall nevertheless pay when due the amount not in dispute under such statement. Such payment shall not be deemed to be a waiver of the right by Buyer to recoup any overpayment, nor shall acceptance of any payment be

deemed to be a waiver by Seller of any underpayment. If Buyer fails to forward the entire undisputed amount due to Seller when same is due, interest on the unpaid portion shall accrue at a rate equal to 2% above the prime rate charged by Wells Fargo Bank, San Francisco, from time to time, or the maximum legal rate, whichever is the lesser, compounded daily from the date such payment is due until the same is paid. If Buyer's failure to pay the undisputed portion of any statement rendered hereunder continues beyond five days after the due date for such payment, then Seller, in addition to all other legal remedies available to it, shall have the right and option upon written notice to Buyer to (a) suspend further deliveries of gas until such default shall have been cured, and (b) terminate this Agreement if the payment default is not cured within five days after such written notice is given.

**10.3. Notice of Dispute.** If Buyer withholds payment of any disputed amount as authorized herein, Buyer shall within 15 days after the due date of the disputed statement submit to Seller a written explanation of the dispute and any available supporting documentation. The Parties shall then cooperate in good faith to resolve such dispute as expeditiously as possible, and the portion, if any, of such disputed amount eventually determined to be due shall bear interest at the rate stated in Section 10.2. from the original due date until the date actually paid.

**10.4. Audit.** Each Party shall have the right at its own expense to examine and audit at any reasonable time the books, records and charts of the other to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement. Upon request, Buyer shall also make available to Seller for audit purposes any relevant records of the Transporter to which Buyer has access. A formal audit of accounts shall not be made more often than once each Contract Year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither Party shall be required to maintain books, records or charts for a period of more than 2 Contract Years following the end of the Contract Year to which they are applicable. Neither Party shall have any right to question or contest any charge or credit if the matter is not called to the attention of the other Party in writing within 2 years of the end of the Contract Year in question.

**10.5. Setoff.** All payments will be made without setoff or counterclaim; provided, however, that upon a Party's (the defaulting Party) failure to make payment of undisputed amounts on the due date, the other Party (the non-defaulting Party) may, at its option and in its discretion, setoff against any amounts owed to the defaulting Party any amounts owed by the defaulting Party under this Agreement or otherwise. The obligations of the non-defaulting Party and the defaulting Party under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The non-defaulting Party will give the defaulting Party notice of any setoff made under this Section 10.5. as soon as practicable after the setoff is made provided that failure to give such notice shall not offset the validity of the setoff.

## **ARTICLE 11. TAXES**

The price for gas delivered hereunder is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the gas prior to its delivery to or for the account of Buyer at the Delivery Point(s), and all such taxes shall be borne and paid exclusively by Seller. The price does not include any Federal, Indian, State or local sale, use, consumption, or similar taxes of whatever designation which may now or hereafter be imposed on the transfer of title or possession of the gas to or for the account of Buyer, or on Buyer's subsequent use or disposition thereof. Any such taxes shall be paid by Buyer directly to the taxing authority unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid. If Buyer claims exemption from any such taxes, Buyer shall provide Seller a tax exemption certificate or other appropriate documentation thereof.

## **ARTICLE 12. LAWS AND REGULATION**

This Agreement is subject to all valid laws, orders, rules and/or regulations of any and all duly constituted governmental authorities, Federal, State or local, to the extent such laws, regulations, and orders are applicable and effective from time to time.

## **ARTICLE 13. FORCE MAJEURE**

**13.1. Suspension of Obligations.** If either Party hereto fails, wholly or in part, as a result of force majeure to carry out its obligations under this Agreement, other than to make payment for gas delivered hereunder, then upon such Party's giving notice and full particulars of such force majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

**13.2. Definition of Force Majeure.** The term "force majeure" as employed herein means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, hurricanes or storms, hurricane or storm warnings which result in the precautionary shut-down or evacuation of production facilities, earthquakes, fires, floods, washouts, arrest and restraints of governments or people, governmental restrictions on exports of gas from Canada into the United States or imports of gas into the United States from Canada, curtailment or interruption of firm transportation (by PGT, PG&E, or any upstream pipeline, including Canadian pipelines), civil disturbances, explosions, breakage or accidents to machinery, equipment, or lines of pipe, freezing of wells or



lines of pipe, partial or entire failure of wells, and any other cause beyond the reasonable control of the Party affected which renders that Party unable to carry out its obligations under this Agreement. The settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

## **ARTICLE 14. WARRANTY OF TITLE AND ROYALTIES**

**14.1. Title.** Seller hereby warrants title to the gas sold by it hereunder and its right to sell the same and warrants that all such gas shall be delivered by Seller free from all liens, encumbrances and adverse claims, including, but not limited to liens to secure payment of production taxes, severance taxes and other taxes.

**14.2. Royalties and Other Charges.** Seller shall pay or cause to be paid all royalties and other sums due on the gathering and handling of the gas prior to its delivery to Buyer. Seller shall indemnify and save Buyer harmless from and against all suits, actions, damages, costs and expenses arising from or out of any breach of this provision.

## **ARTICLE 15. TERM**

This Agreement shall commence on the Effective Date and shall continue in force and effect, unless terminated earlier under the provisions hereof, for a primary term of five years, and year to year thereafter until and unless terminated by either party upon prior written notice delivered not less than ninety days prior to the end of the primary term or any annual renewal term thereafter.

## **ARTICLE 16. CONFIDENTIALITY**

**16.1. Confidentiality.** Each Party agrees that it will maintain the commercial terms of this Agreement in strictest confidence and that it will not cause or permit disclosure of those terms to any third party without the express written consent of the other Party hereto; provided, however, that such third party restriction does not apply to affiliated companies. Disclosures otherwise prohibited by this Article 16. may be made by either Party (1) to the extent necessary for such Party to enforce its rights hereunder against the other Party, (2) to the extent a Party is contractually or legally bound to disclose financial information to a third party such as a royalty owner or partner, or (3) only to the extent to which a Party hereto is required to disclose all or part of this Agreement by a statute or by a court, agency, or other governmental body exercising

jurisdiction over the subject matter hereof, by order, by regulation or by other compulsory process (including, but not limited to, deposition, subpoena, interrogatory, or request for production of documents).

**16.2. Notification of Disclosure.** If either Party is or becomes aware of a fact, obligation or circumstance that has resulted or may result in a disclosure authorized in Section 16.1., it shall so notify the other Party promptly and shall provide documentation or an explanation of the disclosure as soon as it is available. Each Party further agrees to cooperate to the fullest extent in seeking confidential status to protect any material so disclosed.

**16.3. Disclosure to Consultants or Counsel.** The Parties hereto acknowledge that consultants or legal counsel may, from time to time, be provided with a copy of this Agreement and agree that such disclosure does not require consent by the other Party, provided that such consultants or counsel are obligated to abide by the terms and conditions of this Article 16.

## **ARTICLE 17. ARBITRATION**

**17.1. All Disputes Arbitration.** All disputes between the parties arising under this Agreement shall be submitted to arbitration in accordance with this Article 17., and the parties hereby expressly waive all rights to have any such disputes heard before a court of law, except the right to enforce an arbitration award as described in Section 17.5. Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and not by the arbitration acts, statutes or rules of any other jurisdiction.

**17.2. Procedure.** In the event the parties are unable to resolve a dispute arising under this Agreement after exercising good faith efforts to do so, either party may require that the matter be resolved through binding arbitration by submitting a written notice to the other. The notice shall name the noticing party's arbitrator and shall contain a statement of the issue(s) presented for arbitration. Within fifteen days after receipt of a notice of arbitration, the other party shall name its arbitrator by written notice and may designate any additional issue(s) for arbitration. The two named arbitrators shall select the third arbitrator within fifteen days after the date on which the second arbitrator was named. Should the two arbitrators fail to agree on the selection of the third arbitrator, either party shall be entitled to request the Senior Judge of the United States District Court of the Southern District of Texas to select the third arbitrator. All arbitrators shall be qualified by education or experience within the energy industry to decide the issues presented for arbitration. No arbitrator shall be a current or former director, officer or employee of either party, or its affiliates; an attorney (or member of a law firm) who has rendered legal services to either party, or its affiliates, within the preceding three years; or an owner of any of the common stock of either party or its affiliates.

**17.3. Arbitration Hearings.** The three arbitrators shall commence the arbitration hearing within twenty-five days following the appointment of the third arbitrator. The proceeding shall be held at a mutually acceptable site in Houston, Texas. If the parties are unable to agree on a site, the arbitrators shall select a site. The arbitrators shall have the authority to establish rules and procedures governing the arbitration hearing. Each party shall have the opportunity to present its evidence at the hearing. The arbitrators may call for the submission of pre-hearing statements of position and legal authority, but no post-hearing briefs shall be submitted. After the presentation of the evidence has concluded, each party shall submit to the arbitration panel a final offer of its proposed resolution of the dispute. The arbitration panel shall not have the authority to award incidental (except as specifically provided herein), consequential, special, punitive or exemplary damages. In addition, if the issue under consideration is limited to a determination of an amount of money owed by one Party to the other, the arbitration panel shall be charged to select from the two proposals the one which the panel finds to be the most reasonable and consistent with the terms and conditions of this Agreement, and the arbitration panel shall not average the Parties' proposals or otherwise craft its own remedy. The arbitrators' decision must be rendered within thirty days following the conclusion of the hearing or submission of evidence, but no later than 90 days after appointment of the third arbitrator. All evidence submitted in an arbitration proceeding, transcripts of such proceedings, and all documents submitted by the parties in an arbitration proceeding shall be deemed confidential information subject to Article 16., above.

**17.4. Arbitration Decision.** The decision of the arbitrators or a majority of them, shall be in writing and shall be final and binding upon the parties as to the issue submitted. Each party shall bear the expense and cost of own attorneys and witnesses, its own arbitrator and one-half of the expense and cost of the third arbitrator.

**17.5. Enforcement of Award.** Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable attorneys' fees in any court proceeding brought to enforce or collect any award or judgment rendered by the arbitrators.

## **ARTICLE 18. MISCELLANEOUS**

**18.1. Waivers.** No waiver by either Seller or Buyer of any default of the other under this Agreement shall operate as a waiver of future default, whether of like or different character nature.

**18.2. Binding Nature; Assignment As Security.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns, or the heirs, administrators, or executors of the Parties hereto. Either Party hereto may assign its right, title and interest in, to and under this Agreement, including without limitation, any

and all renewals, extensions, amendments, and/or supplements herein to any individual, bank, trustee, company or corporation as security for any notices, bonds or other obligations or securities of such assignor; provided, however, that no such assignment shall in any way operate to enlarge, alter or change any obligation of the other Party hereto.

**18.3. Assignment.** Seller and Buyer reserve the right to assign this Agreement in its entirety to any of their affiliates; however, ultimate responsibility for performance hereunder shall remain with the respective Party hereto. Except provided in the foregoing sentence, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not unreasonably be withheld. Notwithstanding the foregoing, either Party shall have the right to condition such Party's consent to an assignment of this Agreement to an unaffiliated third party on the agreement of the assignee to a renegotiation of the terms of this Agreement within one year after the effective date of the assignment.

**18.4. Notices.** Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United States Mail, to the Parties hereto at the addresses shown below or at such other addresses as may hereafter be furnished to the other Party in writing:

SELLER: Correspondence and Notices:

Chevron U.S.A. Inc.  
P.O. Box 2100  
Houston, TX 77252  
Attention: Midstream Business Unit Alliance Manager  
(CPDN)  
Telephone: 713-754-2437 or 713-754-4518  
Telecopy: 713-754-2536

Payments Shall Be Made By Wire Transfer To:

Chevron U.S.A. Production Company  
Account No.5951704  
First National Bank of Chicago – Chicago, IL]  
ABA Ref. No. 071000013

BUYER: Correspondence and Notices:

Natural Gas Clearinghouse  
13430 Northwest Freeway, Suite 1200  
Houston, TX 77040-6095  
Attention: Contract Administration, Molly Cook  
Telephone: 713-507-3713  
Telecopy: 713-507-6834

Payments Shall Be Made By Wire Transfer To:

Natural Gas Clearinghouse  
Account No. 55-53911  
First National Bank of Chicago – Chicago, IL  
ABA Ref. No. 071000013

Any notice initially delivered by telecopy shall be confirmed by regular mail within 1 week after transmission of the telecopy, but an inadvertent failure to confirm by regular mail shall not impact the effectiveness of the telecopied notice.

**18.5. Choice of Law.** Except as provided in Article 17., all disputes directly or indirectly arising from or connected with this Agreement shall be resolved in accordance with the laws of the State of Texas; however, conflict-of-laws provisions that would require application of the law of some other state shall be disregarded in their entirety.

**18.6. Modifications.** No modification of the terms and provisions of this Agreement shall be or become effective except pursuant to and upon the due and mutual execution of an appropriate supplemental written contract by the Parties hereto.

**18.7. Conflicts of Interest.** No director, employee, or agent of either Party shall give or receive any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this Agreement. Any mutually agreeable representative(s) authorized by either Party may audit the applicable records of the other Party solely for the purpose of determining whether there has been compliance with this paragraph.

[End of Contract -- Signatures on Next Page]

Signature Page to NATURAL GAS PURCHASE AND SALE AGREEMENT between  
NATURAL GAS CLEARINGHOUSE and CHEVRON U.S.A. INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original contract.

SELLER:

CHEVRON U.S.A. INC.

By *F. P. [Signature]* <sup>134</sup>

Title ASSISTANT SECRETARY

BUYER:

NATURAL GAS CLEARINGHOUSE

By *[Signature]* <sup>764</sup>

Title *[Signature]*

**ALISA STUBS  
VICE PRESIDENT AND  
GENERAL MANAGER  
TERM SUPPLY, PROCESSING  
AND ASSET MANAGEMENT**

## EXHIBIT "A"

To Natural Gas Purchase and Sale Agreement effective as of September 1, 1996, between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer.

### Form for Nominations

[Date]  
Nomination of Gas  
[Month, Year]  
Contract No. \_\_\_\_\_

Natural Gas Clearinghouse

Attention Gas Control

Gentlemen:

Chevron U.S.A. Inc. hereby nominates the following quantities of gas for sale during the month indicated above, in accordance with the terms of the captioned contract, at the following delivery point:

Effective Date of Nomination:	Quantity (MMBtus/day)		Delivery Point
	Current Nomination	New Nomination	

Very truly yours,

Chevron U.S.A. Inc.

By \_\_\_\_\_

Title \_\_\_\_\_

## EXHIBIT "B"

[Date]

Price Lock Confirmation  
Gas Purchase Agreement  
Our Contract No. \_\_\_\_\_

Chevron U.S.A. Inc.  
[Address]

Gentlemen:

In accordance with that certain Natural Gas Purchase and Sale Agreement effective as of September 1, 1996, by and between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer, which agreement is incorporated herein and made a part hereof, Buyer hereby confirms establishment of the following "Locked Price" and "Locked Quantities" as previously discussed and agreed orally:

Date of Parties' Oral Agreement: \_\_\_\_\_  
Month of Delivery Affected: \_\_\_\_\_  
Locked Quantities (MMBtus/day): \_\_\_\_\_  
Locked Price (\$/MMBtu): \_\_\_\_\_  
Basis differential adjustment (\$/MMBtu): \_\_\_\_\_  
Previously Locked Quantities for this month: \_\_\_\_\_  
Remaining Unlocked Quantities (MMBtus/day): \_\_\_\_\_

This Sales Confirmation is binding upon the Parties unless Buyer notifies Seller of a dispute with all or a portion hereof 48 hours (exclusive of weekends and Chevron holidays) after Buyer's receipt hereof.

Very truly yours,

Natural Gas Clearinghouse

By \_\_\_\_\_  
Trading Representative

Date \_\_\_\_\_

Approval & Execution:  
Review: CA \_\_\_\_\_ T/M/TR \_\_\_\_\_



**NATURAL GAS PURCHASE AND SALE AGREEMENT**

**(PG&E LINE 401)**

**BETWEEN**

**CHEVRON U.S.A. INC.**

**AS "SELLER"**

**AND**

**NATURAL GAS CLEARINGHOUSE**

**AS "BUYER"**

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# NATURAL GAS PURCHASE AND SALE AGREEMENT

(PG&E LINE 401)

THIS AGREEMENT is made and entered into as of September 1, 1996 (the "Effective Date"), by and between NATURAL GAS CLEARINGHOUSE, a Colorado general partnership, herein referred to as "Buyer", and CHEVRON U.S.A. INC., a Pennsylvania corporation, herein referred to as "Seller".

## WITNESSETH

WHEREAS, Seller has certain natural gas available for sale, which natural gas Seller is willing to sell to Buyer as provided herein; and

WHEREAS, Buyer desires to purchase such gas from Seller on a firm basis, subject to all of the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties hereto agree as follows:

### ARTICLE 1. DEFINITIONS

For the purpose of this Agreement, the following definitions are applicable:

1.1. The term "Agreement" means this agreement, including all exhibits attached hereto and all amendments hereof that may be made from time to time.

1.2. The term "Btu" means British thermal unit, and is the quantity of heat required to raise the temperature of 1 pound of water from 58.5° to 59.5° Fahrenheit.

1.3. The term "Business Day" means any day on which commercial banks in Houston, Texas, are open for general business.

1.4. The term "Contract Year" means the 12-month period from September 1 of each year through August 31 of the succeeding year during the term hereof.

1.5. The term "day" means a period of 24 consecutive hours, coinciding with the gas day of PGT.

1.6. The term "FERC" means the Federal Energy Regulatory Commission or successor agency.

1.7. The term "gas" means natural gas to be made available by Seller and taken by Buyer under the terms of this Agreement.

- 1.8. The term "Locked Price" means the price per MMBtu to be paid by Buyer, in lieu of the otherwise applicable Commodity Charge, for Locked Quantities of gas purchased hereunder. A Locked Price shall be determined in accordance with Section 8.4. hereof.
- 1.9. The term "Locked Quantities" means quantities of gas to be sold by Seller and purchased by Buyer during any month during the term hereof, as to which a Locked Price has been established.
- 1.10. The term "MMBtu" means 1,000,000 British thermal units.
- 1.11. The term "month" means the period beginning on the first day of a calendar month and ending on the first day of the next succeeding month.
- 1.12. The term "Party" or "Parties" means Seller and/or Buyer under this Agreement.
- 1.13. The term "Delivery Point" means the interconnection between PGT and PG&E's Line 401 at Malin, Oregon, where Seller shall deliver gas hereunder for the account of Buyer; or any alternate location to which the Parties may agree on a case-by-case basis.
- 1.14. The term "PGT Expansion Agreement" means Seller's Firm Transportation Service Agreement with PGT for delivery into PG&E's 401 Line via PGT's expanded system.
- 1.15. The term "PGT" means Pacific Gas Transmission Company.
- 1.16. The term "PG&E" means Pacific Gas & Electric Company.
- 1.17. The term "Transporter" means PGT.
- 1.18. The term "Unlocked Quantities" means quantities of gas as to which no Locked Price has been established.
- 1.19. The term "Daily Contract Quantity" or "DCQ" means 31,348 MMBtu of gas per day, or such lesser quantity as Seller may designate as provided in Section 2.4.
- 1.20. The term "Southern California Index" means the Bidweek Average spot gas price quoted for the delivery month in "Natural Gas Intelligence" California Border & Non-Utility End-User Citygate Tables, Southern California Border Average.
- 1.21. The term "Net Kern Station Access Fee" means the current Access Fee, if any, charged by SoCalGas for deliveries into its system at the Kern River Station interconnect between PG&E's 401 Line and SoCalGas, less the associated credit generally available to customers on SoCalGas's system.

## ARTICLE 2. QUANTITY; NOMINATIONS; KEEP-WHOLE OBLIGATIONS

**2.1. Seller's Obligation.** On each day during the term hereof, Seller will make available to Buyer at the Delivery Point the Daily Contract Quantity, unless Seller has advised Buyer, as provided in Sections 2.3. or 2.4. below, that Seller intends to deliver less than the Contract Quantity and keep Buyer whole as provided in Section 2.5. below.

**2.2. Buyer's Obligation.** On each day during the term hereof, Buyer shall take from Seller, if made available at the Delivery Point, the Nominated Daily Quantity, not to exceed, however, the Daily Contract Quantity.

**2.3. Purchase Nominations.** At least 48 hours before PGT's first of the month nomination deadline each month, Seller shall advise Buyer, using a form similar to Exhibit "A" hereto, of the quantity which Seller expects to deliver to Buyer under this Agreement during the upcoming month (the "Nominated Daily Quantity"). In the absence of such a notification, the Nominated Daily Quantity will be deemed to be equal to the Daily Contract Quantity, effective as of the first day of the upcoming month and continuing until changed by Seller, as hereafter provided. Thereafter, Seller shall have the right to make daily nomination changes by advising Buyer at least two hours prior to PGT's nomination deadline for the day on which the change is to be effective. Buyer agrees to use its best efforts to accept and implement nominations after the deadlines stated above, subject to the requirements and willingness of PGT.

**2.4. Permanent Reduction of Daily Contract Quantity.** Upon not less than ninety days' prior written notice, Seller may advise Buyer of a permanent reduction of the Daily Contract Quantity. Upon such notification, Seller and Buyer shall endeavor to agree on a mechanism to compensate Buyer for any losses resulting from such reduction in the DCQ from the effective date of such reduction until the expiration of the primary term of this Agreement as stated in Article 15., which losses shall be limited to the amount, if any, by which Buyer's cost of replacement gas exceeds the amount Buyer would have paid Seller for the gas under this Agreement in the absence of Seller's DCQ reduction. It is anticipated that such mechanism will be similar to the monthly keep-whole mechanism described in Section 2.5.1., but Buyer will also offer Seller long term alternatives if such alternatives are available and could reduce Seller's long term keep-whole costs. Any dispute regarding the appropriate mechanism for long term keep-whole shall be resolved by binding arbitration in accordance with Article 17. Seller may utilize the procedure described in this Section 2.4. from time to time to accomplish additional permanent reductions in the DCQ as needed by Seller to take advantage of other marketing opportunities, subject in each case to the above notice and keep-whole requirements.

## 2.5. Keep Whole Obligation

2.5.1. If Seller nominates less than the Daily Contract Quantity for any month, (the difference between the Daily Contract Quantity and the Nominated Daily Quantity for such month, multiplied by the number of days in the applicable month, being referred to as the "Monthly Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, and if Buyer notifies Seller that Buyer, as a result of Seller's decision to nominate less than the Daily Contract Quantity for such month, has had to acquire replacement supplies of gas to serve Buyer's markets on PG&E's 401 Line at a cost in excess of that which would have been payable to Seller under this Agreement, then Seller shall reimburse Buyer for its cost of acquiring a quantity of replacement gas not to exceed the Monthly Nomination Deficiency Quantity, less the amount Buyer would have paid Seller for the same quantity of gas if purchased under this Agreement. Buyer agrees to use its best efforts to acquire any such replacement gas at the lowest price reasonably available to Buyer, and to advise Seller of the costs of any alternative approaches (which shall be reflective of the current California market), including the impact of any transportation rate adjustments as described in Section 8.1.1. If the parties mutually agree upon Buyer's replacement cost, Seller shall reimburse Buyer based upon the mutually agreeable price; otherwise, Seller shall reimburse Buyer based on Buyer's actual and reasonable cost of acquiring the replacement supplies.

2.5.2. If Seller reduces its nomination for any day after the first of the month (the difference between the initial Nominated Daily Quantity and the reduced amount nominated by Seller for such day being referred to as the "Daily Nomination Deficiency Quantity") for any reason other than a force majeure event restricting Seller's ability to produce and deliver the DCQ, then the Daily Market Price shall be subtracted from the Commodity Charge payable under this Agreement and the result shall be multiplied by the Daily Nomination Deficiency Quantity to determine the keep-whole payment for that day. If the keep-whole payment for a particular day is a positive number, that amount shall be credited to Seller. If the keep-whole payment for a particular day is a negative number, that amount shall be charged to Seller. For purposes of this Section, the Daily Market Price shall be the price, reflective of current market, which Buyer advises Seller will be applicable to replacement supplies purchased by Buyer on a daily basis to replace the Daily Nomination Deficiency Quantity. If Seller desires to reduce its nomination after the first of the month and can advise Buyer of the duration of the reduction, Buyer will use reasonable efforts to acquire replacement gas for the duration of Seller's nomination reduction if Seller desires that such an acquisition of replacement supplies be made in lieu of the daily keep-whole mechanism. In that event, the keep-whole payment or credit for the period of such nomination reduction will be based upon the agreed replacement cost, rather than the Daily Market Price, and Seller shall not, during the announced period of such nomination reduction, increase its nomination without Buyer's consent.

2.5.3. If Seller's initial Nominated Daily Quantity is less than the Daily Contract Quantity and Seller desires to increase its nomination at any time after the

first of the month, then Buyer shall advise Seller of the current market price which will apply to the increased quantity above the initial Nominated Daily Quantity and consult with Seller regarding any alternative approaches. Seller may then accept the price proposed by Buyer for the increased quantity or elect not to deliver such increased quantity.

### **ARTICLE 3. FAILURE TO PERFORM**

**3.1. Seller's Failure to Make Gas Available.** If Seller fails, in whole or in part, to make available to Buyer the Nominated Daily Quantity on any day, and if such failure is not excused by an event of force majeure or by Buyer's failure or inability to receive the gas, Buyer shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in delivery, multiplied by Buyer's cost per MMBtu of cover supplies, less the Commodity Charge which would have been payable but for the failure to deliver. Seller agrees to pay Buyer any liquidated damages to which Buyer is entitled under this Section 3.1. on or before the 10th day after Seller receives a written calculation of the amount of such liquidated damages from Buyer. Buyer shall use reasonable efforts to obtain any replacement supplies at the lowest reasonable price.

**3.2. Buyer's Failure to Purchase Gas.** If Buyer fails, in whole or in part, to purchase the Nominated Quantity on any day, and if such failure is not excused by an event of force majeure or Seller's failure to make such quantity available, Seller shall be entitled to recover liquidated damages for such failure in an amount equal to the shortfall in Buyer's purchases, multiplied by the Commodity Charge which would have been payable on such day less the amount realized by Seller in an alternate sale of the gas not taken. Buyer agrees to pay Seller any liquidated damages to which Seller is entitled under this Section 3.2. on or before the 10th day after Buyer receives a written calculation of the amount of such liquidated damages from Seller. Seller shall use reasonable efforts to obtain the highest price reasonably available when making any alternate sale of gas not taken by Buyer.

**3.3. No Special Damages.** THE REMEDIES SPECIFIED IN SECTIONS 2.5., 3.1. AND 3.2. ABOVE AND SECTION 8.4.5. BELOW SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR SELLER'S FAILURE TO DELIVER GAS OR BUYER'S FAILURE TO PURCHASE GAS ACCORDING TO THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES FOR ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT.

**3.4. No Third Party Beneficiaries.** It is specifically agreed that there are no third party beneficiaries to this Agreement, and that this Agreement shall not impart any rights enforceable by any person, firm, organization, or corporation not a Party hereto.

## ARTICLE 4. TRANSPORTATION

**4.1. Transportation Guidelines.** The rules, guidelines, operational procedures and policies of the Transporter, as they may be changed from time to time, shall define and control the manner in which gas delivered and sold under this Agreement is transported. Seller and Buyer each agree to provide to the other, in as prompt a manner as reasonable, all information necessary to permit scheduling pursuant to such requirements.

### **4.2. Transportation Imbalances.**

4.2.1. General. If Seller delivers to the Transporter or Buyer takes at the Delivery Point a quantity of gas not equal to the quantity nominated and confirmed for transportation, a "Transportation Imbalance" may occur. Upon notification by the other Party or the Transporter that a Transportation Imbalance exists, each Party will exercise due diligence to correct the Transportation Imbalance, subject to any restrictions imposed by Transporter. Buyer and Seller agree to use due diligence to prevent or diminish any occurrences of Transportation Imbalances, and to minimize any resulting imbalance penalties through the use of imbalance trading or netting procedures, or other methods offered by the Transporter. Adjustments to transportation nominations made pursuant to this paragraph shall not modify or impair the Parties' obligations or remedies as set forth in Article 3.

4.2.2. Imbalance Cashouts. The Transporter's tariff or applicable contracts may contain provisions under which, in the event of Transportation Imbalances related to the gas sold and purchased hereunder, a Party to this Agreement may be required to purchase net imbalance quantities from the Transporter, or to sell net imbalance quantities to the Transporter, at prices determined pursuant to the Transporter's tariff or the applicable contract (such purchases and/or sales being referred to herein as "cash-outs"). If one Party hereto is required by the Transporter to cash out an imbalance caused by the other Party's failure to deliver or receive the quantity of gas nominated and confirmed for transportation, the Party whose act or omission caused the Transportation Imbalance shall reimburse the other Party for the penalty component of the cash-out price. For purposes of this Agreement, the penalty component of a cash-out price shall be the amount by which the price at which a Party is required to buy the cashed-out quantity exceeds the Commodity Charge effective when the imbalance accrued, or the amount by which the Commodity Charge in effect when the imbalance accrued exceeds the price at which a Party is required to sell the cashed-out quantity. Due to the possibility of graduated penalties in the Transporter's tariff, several different penalty components may apply to portions of a Transportation Imbalance. Once determined, any penalty components of cash-out prices shall be multiplied by the quantities cashed out to which such penalties are applicable.

4.2.3. Other Transportation Penalties. Seller shall hold Buyer harmless from all costs and penalties in addition to those described in Section 4.2.2. which may



be assessed by Transporter as a result of over-delivery or under-delivery of gas caused by Seller. Buyer shall hold Seller harmless from all costs and penalties in addition to those described in Section 4.2.2. which may be assessed by Transporter as a result of over-takes or under-takes of gas caused by Buyer.

4.2.4. Minimization of Penalties. If any costs or penalties associated with the transportation of gas are anticipated, the Party becoming aware that such costs or penalties may be assessed or incurred shall inform the other Party promptly after the Party becomes aware, followed by notice in writing. Each Party shall then promptly cooperate in good faith with the other Party to minimize or eliminate, if possible, such costs or penalties. The Parties shall cooperate with each other and with the Transporter to verify delivery and receipt of the Nominated Purchase Quantity on a timely basis.

4.3. **Upstream Transportation.** Subject to Section 9.1., Seller shall be responsible for transportation to the Delivery Point(s) and payment of all transportation charges relating thereto.

## ARTICLE 5. QUALITY

5.1. **Specifications of Transporter.** All gas delivered hereunder shall conform to the quality specifications set forth in the transportation agreement and/or tariff of the Transporter delivering the gas at the Delivery Point. Seller's tender of gas which does not meet such quality specifications shall be deemed a failure to deliver gas for purposes of Article 3. hereof.

## ARTICLE 6. DELIVERY AND PRESSURE; TITLE AND CONTROL; LIABILITY

6.1. **Delivery and Pressure.** All gas to be sold and purchased hereunder shall be delivered to Buyer at the Delivery Point at the pressure maintained in the facilities of PGT from time to time.

6.2. **Title and Control.** Title to the gas delivered hereunder shall pass to and vest in Buyer at the Delivery Point. Seller shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to Buyer, and Buyer shall be deemed to be in exclusive control and possession of said gas thereafter.

6.3. **Liability.** The Party deemed to be in control and possession of the gas sold hereunder shall be responsible for and shall indemnify, defend and hold the other Party harmless with respect to any losses, claims, liabilities or damages arising therefrom when such gas is deemed to be in that Party's control and possession.

## **ARTICLE 7. MEASUREMENT**

The unit of volume for measurement of gas delivered hereunder shall be 1 cubic foot of gas. The sales unit of the gas shall be 1 MMBtu, determined on a dry basis. All measurements of gas delivered and sold hereunder shall be in accordance with the provisions of the tariff of the Transporter, insofar as such tariff applies at the Delivery Point.

## **ARTICLE 8. COMMODITY CHARGE**

**8.1. Calculation of Commodity Charge.** For each MMBtu of gas delivered to Buyer by Seller at the Delivery Point(s), Buyer shall pay Seller a "Commodity Charge" calculated as follows:

8.1.1. For the quantity of gas delivered in any month and not subject to a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be equal to the Southern California Index, less the Net Kern Station Access Fee and the PG&E "as available" off-system transportation rate, plus a "Premium" of \$0.01 per MMBtu. To the extent that Buyer can obtain a lower "as available" transportation rate on PG&E's 401 Line by making a volume commitment to PG&E, Buyer shall advise Seller of the available discount and the commitment required to receive the discount. If Seller so requests, Buyer shall take advantage of such reduced rate and shall use that reduced rate in the foregoing calculation of the Commodity Charge. If however, as a result of Seller delivering less than the DCQ to Buyer under this Agreement, Buyer fails to meet its volume commitment and is required to pay a higher unit transportation rate, then that higher rate shall be used in calculating the Commodity Charge.

8.1.2. For any quantity subject to or a mutually agreed price determined in accordance with Section 2.5., the Commodity Charge shall be the price agreed to between the parties. Any such mutually agreed prices shall be confirmed in writing as soon as possible following agreement, but in no event more than five Business Days thereafter.

**8.2. Non-Publication of Index or Pipeline Tariff Changes.** If any index required for establishing the Commodity Charge is not published in the applicable publication, or if significant changes in the marketplace (including, but not limited to, restructuring of PGT's or PG&E's rates or capacity allocation procedures) render the current index unsatisfactory for determining the Commodity Charge, then, in the absence of mutual agreement to the contrary, a replacement index shall be determined by binding arbitration in accordance with Article 17. hereof. In any such arbitration, each party shall submit its proposal for the replacement index and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of

gas delivered to the Facility under all of the terms and conditions of this Agreement. Pending determination of a new index, whether by agreement or arbitration, the last available index shall be used, subject to retroactive adjustment after the new index is determined. In addition, if as a result of any change in either PGT's or PG&E's tariff, any provision of this Agreement produces an inequitable result for either Party, the affected Party may request a renegotiation of that provision. In the absence of mutual agreement, any such issues may be submitted to binding arbitration in accordance with Article 17.

**8.3. Price Renegotiation.** Beginning two years after the Effective Date, either Party may request renegotiation of the Commodity Charge payable under this Agreement if such Party believes in good faith that the current methodology does not reflect the fair market value of gas delivered to the Delivery Points under similar contractual terms. If either Party requests renegotiation pursuant to this Section 8.3., the Parties shall meet and attempt in good faith to reach agreement on a different formula for calculation of the Commodity Charge. If the Parties are unable to reach agreement within 60 days after delivery of the request for renegotiation, then upon 30 days prior written notice, either Party may require that the issue be submitted to binding arbitration in accordance with Article 17. hereof. In any such arbitration, each party shall submit a detailed proposal for calculation of the Commodity Charge and the arbitrators will be charged to select from the two proposals the one which best reflects the market price of gas delivered to the Delivery Point, prior to addition of the Premium (which shall not be subject to change by arbitration during the primary term of this Agreement). If the Commodity Charge is redetermined by arbitration as provided above, then neither party shall have the right to again have such issue submitted to arbitration for at least twelve months following the decision of the arbitrators.

**8.4. Locked Price.** Subject to the terms set forth herein, in lieu of paying the applicable Commodity Charge hereunder, Seller may lock the price of all or a portion of the gas to be sold hereunder during any of the 12 months immediately following the date of Seller's request to lock price (insofar as such months are during the term hereof), by notifying one of Buyer's authorized representatives by telephone of Seller's desire to lock price on such gas. As an alternative, Seller may request, and Buyer shall offer, a separate lock of (a) the Southern California Index component of the Commodity Charge, (b) the PG&E transportation rate component of the Commodity Charge, or (c) both of such components, but in the event either or both of such components are separately stated and locked, Seller shall be obligated to keep Buyer whole for any increased costs reasonably incurred by Buyer as a result of curtailment or interruption of transportation of the gas delivered hereunder on PG&E subsequent to the Delivery Point. Such keep whole obligation shall be limited to Buyer's out of pocket cost of remedying the situation in the most economical manner available, which may include either (c) paying a higher transportation rate on PG&E to avoid curtailment, or (d) purchasing replacement gas in Southern California at current market prices. In addition, in the event of a lock of separate components, the Net Kern Station Access Fee shall remain a separate but unlocked component of the Commodity Charge. If Seller opts for a Locked Price or a locked price component and the Commodity Charge

otherwise payable is based in part upon a published index, or other base amount, plus a "Premium", the Locked Price or locked component so established shall replace the index or base amount as to Locked Quantities affected by such Locked Price or locked component, but the Premium shall still be applied to such Locked Quantities.

8.4.1. Timing for Requesting Locked Price. Seller may request quote of a Locked Price for gas to be delivered hereunder by telephone on any regular Chevron Business Day, between the hours of 8:30 a.m. and 2:00 p.m., local Houston, Texas time, up to and including the 7th Business Day prior to the beginning of the month to which the Locked Price shall apply. The Parties acknowledge and agree that all telephone conversations between them relating to a Locked Price may be recorded by either Party, or both, for purposes of establishing the terms and conditions associated with the Locked Price. The Parties also agree that the taped conversation may be used to prove the terms and conditions associated with a Locked Price if the Parties subsequently disagree on such terms and conditions.

8.4.2. Procedures. As soon as possible after Seller's telephonic request, but in any event within 24 hours (excluding weekends and holidays), Buyer shall determine the price per MMBtu at which it is willing and able to lock price and shall notify Seller's authorized representative of such price. The Locked Price will be based on the NYMEX (or other exchange selected by Buyer) posting for the natural gas futures contract applicable to the month(s) requested by Seller and prevailing at the time of Seller's request for a Locked Price, plus a basis differential adjustment to equate the posted price with an imputed price at the applicable Delivery Point, and an adjustment for the Net Kern Station Access Fee if one or both of the components of the Commodity Charge is being locked separately. The Locked Price shall be stated as either a single price applicable at the Delivery Point or as separate components of the Commodity Charge, depending upon the form of Seller's request and the parties' agreement. If Seller accepts a Locked Price or a separate lock of either or both components of the Commodity Charge, then Buyer shall forward to Seller a "Price Lock Confirmation", similar to the form attached hereto as Exhibit "B", which specifies the terms to which the Parties have agreed. Said Price Lock Confirmation shall be forwarded to Seller prior to the end of the month in which deliveries are to be made. The terms set forth in the Price Lock Confirmation shall be binding upon the Parties unless Seller notifies Buyer in writing that Seller disputes one or more of the terms set forth in said Price Lock Confirmation within 48 hours, exclusive of weekends and Chevron holidays, after Seller receives the same. Any terms which remain undisputed after expiration of said period shall be binding on the Parties, and the Parties shall work together in good faith to resolve any disputes as expeditiously as possible.

8.4.3. Multiple Price Locks. Seller may request and establish a Locked Price on gas quantities for a particular month more than once, so long as Seller meets the requirements of this Section 8.4. with regard to timing. Buyer at its option may include all Locked Prices and Locked Quantities in one Price Lock Confirmation for any applicable month.

8.4.4. Irrevocability; Nominations; Allocation. Once a Locked Price or locked component has been established for a delivery month hereunder, the Locked Price or locked component shall be irrevocable as to the affected Locked Quantities, and shall not thereafter be subject to change. Additionally, for any month as to which a Locked Price or locked component has been established, Seller shall be obligated to nominate and deliver a quantity of gas not less than the Locked Quantities then in effect. If Seller elects to establish a Locked Price or locked component for less than all of the gas to be delivered in any applicable month, and/or if Buyer and Seller have established more than one Locked Price or locked component for different Locked Quantities, the first gas delivered during said month shall be the first Locked Quantities established, followed by any additional Locked Quantities in the order they were established, followed by any Unlocked Quantities of gas.

8.4.5. Failure to Deliver Locked Quantities. If Seller fails to deliver the full quantity of gas subject to a Locked Price in any month, then, to the extent such failure is not the result of force majeure or Buyer's failure to purchase the gas made available, Seller shall pay Buyer liquidated damages calculated as follows. The unexcused deficient quantity of gas subject to a Locked Price shall be multiplied by the difference between the Locked Price and the settlement price of the natural gas futures contract on NYMEX (or other applicable exchange) for the Month in which the deficiency occurred, plus or minus the basis differential set forth in the Price Lock Confirmation. In addition, if Buyer has entered into a financial instrument, including, without limitation, an over-the-counter basis swap, for purposes of hedging the risk associated with the basis differential component of the Locked Price, Seller shall reimburse Buyer one hundred percent (100%) of the actual losses incurred by Buyer under such financial instrument to the extent such losses result from Seller's unexcused failure to purchase gas subject to a Locked Price. Buyer shall exercise its best efforts to minimize such losses (including for example the early termination of financial instruments if Buyer reasonably believes at the time of termination that early termination may minimize such losses). Seller's obligation to deliver gas subject to a Locked Price is a monthly obligation and not a daily obligation and therefore for purposes of this Section Seller shall have complied with its obligation to deliver quantities of gas subject to a Locked Price if it delivers such quantities during the course of the Month.

8.4.6. Cessation of Futures Trading. If natural gas futures contracts cease to be traded on the New York Mercantile Exchange or on any other mercantile exchange acceptable to Buyer in its sole discretion, then after such cessation Buyer shall be relieved of any and all obligation to establish Locked Prices hereunder.

## **ARTICLE 9. MANAGEMENT OF TRANSPORTATION ARRANGEMENTS**

9.1. **Arrangements To Be Managed By Buyer.** Buyer hereby agrees to manage on Seller's behalf the PGT Transportation Agreement. Buyer shall remain responsible for management of such agreement until the earlier of (a) the termination of

this Agreement, or (b) Seller's written revocation of Buyer's management authority, which may apply to less than one hundred percent of the capacity if Seller is simultaneously reducing the DCQ under this Agreement as provided in Section 2.4. Buyer's management responsibilities shall include, but not be limited to, making transportation nominations, releasing unused capacity to replacement shippers for Seller's account, resolving imbalances, and otherwise performing the day-to-day actions necessary under the PGT Transportation Agreement.

**9.2. Appointment of Buyer as Seller's Agent.** If necessary to accomplish the objectives of this Agreement, Seller shall appoint Buyer as Seller's agent for day to day administration of the PGT Transportation Agreement, including the placing of transportation nominations, the adjustment of imbalances, and the reconciliation of statements. Upon request, Seller shall provide such documentation of Buyer's Agency as the Transporter may reasonably require. Notwithstanding the foregoing, Buyer shall not amend, terminate, or otherwise modify the PGT Transportation Agreement without Seller's prior written consent.

**9.3. Capacity Release and Revenue Sharing.** During any period when less than one hundred percent of Seller's capacity under the PGT Transportation Agreement is being utilized for deliveries under this Agreement, Buyer, as Seller's agent, shall have the right to either: (a) propose to Seller opportunities to utilize such capacity for purchases from and sales to third parties at margins exceeding the variable cost of transportation (in which case Buyer shall retain one-half of the net profits resulting from such transactions and Seller shall receive the other one-half of such net profits), or (b) post the unused capacity for release under conditions and with recall rights approved by Seller (in which case Buyer receive from Seller \$0.01 per MMBtu of released capacity as a service fee and Seller shall receive as a credit against its PGT demand charges the full consideration paid by the replacement shipper). The effect of this Section 9.3. is limited to short term capacity release transactions (i.e., one month or less) and shall not prevent Seller from entering into long term or permanent capacity release transactions for its own account with no obligation to compensate Buyer. In addition, it is not the intent of this Section 9.3. for Buyer to share in any benefit of lower cost replacement supplies when Buyer acquires replacement supplies for Seller's account under Section 2.5. using Seller's PGT capacity.

## **ARTICLE 10. BILLING AND PAYMENT**

**10.1. Billing and Payment.** Not later than the 15th day of each month, Buyer shall provide Seller a payment statement (which may be transmitted by electronic facsimile) setting forth the quantities of gas delivered at the Delivery Point(s) during the preceding month, the amount due therefor and any other charges, credits or adjustments due under the terms hereof. If actual quantities are not available by the time Buyer prepares its payment statement, Buyer may prepare such statement based on the quantities nominated and confirmed for transportation, subject to appropriate

adjustments to actual quantities when available. Buyer shall make payment by wire transfer by the last Business Day of the month following the delivery month.

**10.2. Billing Disputes.** If a dispute arises as to the amount payable in any statement rendered hereunder, Buyer shall nevertheless pay when due the amount not in dispute under such statement. Such payment shall not be deemed to be a waiver of the right by Buyer to recoup any overpayment, nor shall acceptance of any payment be deemed to be a waiver by Seller of any underpayment. If Buyer fails to forward the entire undisputed amount due to Seller when same is due, interest on the unpaid portion shall accrue at a rate equal to 2% above the prime rate charged by Wells Fargo Bank, San Francisco, from time to time, or the maximum legal rate, whichever is the lesser, compounded daily from the date such payment is due until the same is paid. If Buyer's failure to pay the undisputed portion of any statement rendered hereunder continues beyond five days after the due date for such payment, then Seller, in addition to all other legal remedies available to it, shall have the right and option upon written notice to Buyer to (a) suspend further deliveries of gas until such default shall have been cured, and (b) terminate this Agreement if the payment default is not cured within five days after such written notice is given.

**10.3. Notice of Dispute.** If Buyer withholds payment of any disputed amount as authorized herein, Buyer shall within 15 days after the due date of the disputed statement submit to Seller a written explanation of the dispute and any available supporting documentation. The Parties shall then cooperate in good faith to resolve such dispute as expeditiously as possible, and the portion, if any, of such disputed amount eventually determined to be due shall bear interest at the rate stated in Section 10.2. from the original due date until the date actually paid.

**10.4. Audit.** Each Party shall have the right at its own expense to examine and audit at any reasonable time the books, records and charts of the other to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement. Upon request, Buyer shall also make available to Seller for audit purposes any relevant records of the Transporter to which Buyer has access. A formal audit of accounts shall not be made more often than once each Contract Year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither Party shall be required to maintain books, records or charts for a period of more than 2 Contract Years following the end of the Contract Year to which they are applicable. Neither Party shall have any right to question or contest any charge or credit if the matter is not called to the attention of the other Party in writing within 2 years of the end of the Contract Year in question.

**10.5. Setoff.** All payments will be made without setoff or counterclaim; provided, however, that upon a Party's (the defaulting Party) failure to make payment of undisputed amounts on the due date, the other Party (the non-defaulting Party) may, at its option and in its discretion, setoff against any amounts owed to the defaulting Party any amounts owed by the defaulting Party under this Agreement or otherwise. The obligations of the non-defaulting Party and the defaulting Party under this Agreement in

respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff. The non-defaulting Party will give the defaulting Party notice of any setoff made under this Section 10.5. as soon as practicable after the setoff is made provided that failure to give such notice shall not offset the validity of the setoff.

## **ARTICLE 11. TAXES**

The price for gas delivered hereunder is inclusive of all production, severance, ad valorem, or similar taxes levied on the production or transportation of the gas prior to its delivery to or for the account of Buyer at the Delivery Point(s), and all such taxes shall be borne and paid exclusively by Seller. The price does not include any Federal, Indian, State or local sale, use, consumption, or similar taxes of whatever designation which may now or hereafter be imposed on the transfer of title or possession of the gas to or for the account of Buyer, or on Buyer's subsequent use or disposition thereof. Any such taxes shall be paid by Buyer directly to the taxing authority unless Seller is required by law to collect and remit such taxes, in which case Buyer shall reimburse Seller for all amounts so paid. If Buyer claims exemption from any such taxes, Buyer shall provide Seller a tax exemption certificate or other appropriate documentation thereof.

## **ARTICLE 12. LAWS AND REGULATION**

This Agreement is subject to all valid laws, orders, rules and/or regulations of any and all duly constituted governmental authorities, Federal, State or local, to the extent such laws, regulations, and orders are applicable and effective from time to time.

## **ARTICLE 13. FORCE MAJEURE**

**13.1. Suspension of Obligations.** If either Party hereto fails, wholly or in part, as a result of force majeure to carry out its obligations under this Agreement, other than to make payment for gas delivered hereunder, then upon such Party's giving notice and full particulars of such force majeure in writing to the other Party as soon as practicable after the occurrence of the cause relied on, the obligations of the Party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch.

**13.2. Definition of Force Majeure.** The term "force majeure" as employed herein means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, hurricanes or storms, hurricane or storm warnings which result in the precautionary shut-down or evacuation of production facilities, earthquakes, fires, floods, washouts,



arrest and restraints of governments or people, governmental restrictions on exports of gas from Canada into the United States or imports of gas into the United States from Canada, curtailment or interruption of firm transportation by PGT or any upstream pipeline, including Canadian pipelines, curtailment or interruption of "as available" transportation by PG&E, civil disturbances, explosions, breakage or accidents to machinery, equipment, or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells, and any other cause beyond the reasonable control of the Party affected which renders that Party unable to carry out its obligations under this Agreement. The settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the Party having the difficulty.

#### **ARTICLE 14. WARRANTY OF TITLE AND ROYALTIES**

**14.1. Title.** Seller hereby warrants title to the gas sold by it hereunder and its right to sell the same and warrants that all such gas shall be delivered by Seller free from all liens, encumbrances and adverse claims, including, but not limited to liens to secure payment of production taxes, severance taxes and other taxes.

**14.2. Royalties and Other Charges.** Seller shall pay or cause to be paid all royalties and other sums due on the gathering and handling of the gas prior to its delivery to Buyer. Seller shall indemnify and save Buyer harmless from and against all suits, actions, damages, costs and expenses arising from or out of any breach of this provision.

#### **ARTICLE 15. TERM**

This Agreement shall commence on the Effective Date and shall continue in force and effect, unless terminated earlier under the provisions hereof, for a primary term of five years, and year to year thereafter until and unless terminated by either party upon prior written notice delivered not less than ninety days prior to the end of the primary term or any annual renewal term thereafter.

#### **ARTICLE 16. CONFIDENTIALITY**

**16.1. Confidentiality.** Each Party agrees that it will maintain the commercial terms of this Agreement in strictest confidence and that it will not cause or permit disclosure of those terms to any third party without the express written consent of the other Party hereto; provided, however, that such third party restriction does not apply to affiliated companies. Disclosures otherwise prohibited by this Article 16. may be made

by either Party (1) to the extent necessary for such Party to enforce its rights hereunder against the other Party, (2) to the extent a Party is contractually or legally bound to disclose financial information to a third party such as a royalty owner or partner, or (3) only to the extent to which a Party hereto is required to disclose all or part of this Agreement by a statute or by a court, agency, or other governmental body exercising jurisdiction over the subject matter hereof, by order, by regulation or by other compulsory process (including, but not limited to, deposition, subpoena, interrogatory, or request for production of documents).

**16.2. Notification of Disclosure.** If either Party is or becomes aware of a fact, obligation or circumstance that has resulted or may result in a disclosure authorized in Section 16.1., it shall so notify the other Party promptly and shall provide documentation or an explanation of the disclosure as soon as it is available. Each Party further agrees to cooperate to the fullest extent in seeking confidential status to protect any material so disclosed.

**16.3. Disclosure to Consultants or Counsel.** The Parties hereto acknowledge that consultants or legal counsel may, from time to time, be provided with a copy of this Agreement and agree that such disclosure does not require consent by the other Party, provided that such consultants or counsel are obligated to abide by the terms and conditions of this Article 16.

## **ARTICLE 17. ARBITRATION**

**17.1. All Disputes Arbitration.** All disputes between the parties arising under this Agreement shall be submitted to arbitration in accordance with this Article 17., and the parties hereby expressly waive all rights to have any such disputes heard before a court of law, except the right to enforce an arbitration award as described in Section 17.5. Arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., and not by the arbitration acts, statutes or rules of any other jurisdiction.

**17.2. Procedure.** In the event the parties are unable to resolve a dispute arising under this Agreement after exercising good faith efforts to do so, either party may require that the matter be resolved through binding arbitration by submitting a written notice to the other. The notice shall name the noticing party's arbitrator and shall contain a statement of the issue(s) presented for arbitration. Within fifteen days after receipt of a notice of arbitration, the other party shall name its arbitrator by written notice and may designate any additional issue(s) for arbitration. The two named arbitrators shall select the third arbitrator within fifteen days after the date on which the second arbitrator was named. Should the two arbitrators fail to agree on the selection of the third arbitrator, either party shall be entitled to request the Senior Judge of the United States District Court of the Southern District of Texas to select the third arbitrator. All arbitrators shall be qualified by education or experience within the energy industry to decide the issues presented for arbitration. No arbitrator shall be a current or former director, officer or employee of either party, or its affiliates; an

attorney (or member of a law firm) who has rendered legal services to either party, or its affiliates, within the preceding three years; or an owner of any of the common stock of either party or its affiliates.

**17.3. Arbitration Hearings.** The three arbitrators shall commence the arbitration hearing within twenty-five days following the appointment of the third arbitrator. The proceeding shall be held at a mutually acceptable site in Houston, Texas. If the parties are unable to agree on a site, the arbitrators shall select a site. The arbitrators shall have the authority to establish rules and procedures governing the arbitration hearing. Each party shall have the opportunity to present its evidence at the hearing. The arbitrators may call for the submission of pre-hearing statements of position and legal authority, but no post-hearing briefs shall be submitted. After the presentation of the evidence has concluded, each party shall submit to the arbitration panel a final offer of its proposed resolution of the dispute. The arbitration panel shall not have the authority to award incidental (except as specifically provided herein), consequential, special, punitive or exemplary damages. In addition, if the issue under consideration is limited to a determination of an amount of money owed by one Party to the other, the arbitration panel shall be charged to select from the two proposals the one which the panel finds to be the most reasonable and consistent with the terms and conditions of this Agreement, and the arbitration panel shall not average the Parties' proposals or otherwise craft its own remedy. The arbitrators' decision must be rendered within thirty days following the conclusion of the hearing or submission of evidence, but no later than 90 days after appointment of the third arbitrator. All evidence submitted in an arbitration proceeding, transcripts of such proceedings, and all documents submitted by the parties in an arbitration proceeding shall be deemed confidential information subject to Article 16., above.

**17.4. Arbitration Decision.** The decision of the arbitrators or a majority of them, shall be in writing and shall be final and binding upon the parties as to the issue submitted. Each party shall bear the expense and cost of own attorneys and witnesses, its own arbitrator and one-half of the expense and cost of the third arbitrator.

**17.5. Enforcement of Award.** Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. The prevailing party shall be entitled to reasonable attorneys' fees in any court proceeding brought to enforce or collect any award or judgment rendered by the arbitrators.

## **ARTICLE 18. MISCELLANEOUS**

**18.1. Waivers.** No waiver by either Seller or Buyer of any default of the other under this Agreement shall operate as a waiver of future default, whether of like or different character nature.

**18.2. Binding Nature; Assignment As Security.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns, or the heirs, administrators, or executors of the Parties hereto. Either Party hereto may assign its right, title and interest in, to and under this Agreement, including without limitation, any and all renewals, extensions, amendments, and/or supplements herein to any individual, bank, trustee, company or corporation as security for any notices, bonds or other obligations or securities of such assignor; provided, however, that no such assignment shall in any way operate to enlarge, alter or change any obligation of the other Party hereto.

**18.3. Assignment.** Seller and Buyer reserve the right to assign this Agreement in its entirety to any of their affiliates; however, ultimate responsibility for performance hereunder shall remain with the respective Party hereto. Except provided in the foregoing sentence, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which shall not unreasonably be withheld. Notwithstanding the foregoing, either Party shall have the right to condition such Party's consent to an assignment of this Agreement to an unaffiliated third party on the agreement of the assignee to a renegotiation of the terms of this Agreement within one year after the effective date of the assignment.

**18.4. Notices.** Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United States Mail, to the Parties hereto at the addresses shown below or at such other addresses as may hereafter be furnished to the other Party in writing:

**SELLER: Correspondence and Notices:**

Chevron U.S.A. Inc.  
P.O. Box 2100  
Houston, TX 77252  
Attention: Midstream Business Unit Alliance Manager  
(CPDN)  
Telephone: 713-754-2437 or 713-754-4518  
Telecopy: 713-754-2536

**Payments Shall Be Made By Wire Transfer To:**

Chevron U.S.A. Production Company  
Account No. 5951704  
First National Bank of Chicago - Chicago, IL]  
ABA Ref. No. 071000013

BUYER: Correspondence and Notices:

Natural Gas Clearinghouse  
13430 Northwest Freeway, Suite 1200  
Houston, TX 77040-6095  
Attention: Contract Administration, Molly Cook  
Telephone: 713-507-3713  
Telecopy: 713-507-6834

Payments Shall Be Made By Wire Transfer To:

Natural Gas Clearinghouse  
Account No. 55-53911  
First National Bank of Chicago – Chicago, IL  
ABA Ref. No. 071000013

Any notice initially delivered by telecopy shall be confirmed by regular mail within 1 week after transmission of the telecopy, but an inadvertent failure to confirm by regular mail shall not impact the effectiveness of the telecopied notice.

**18.5. Choice of Law.** Except as provided in Article 17., all disputes directly or indirectly arising from or connected with this Agreement shall be resolved in accordance with the laws of the State of Texas; however, conflict-of-laws provisions that would require application of the law of some other state shall be disregarded in their entirety.

**18.6. Modifications.** No modification of the terms and provisions of this Agreement shall be or become effective except pursuant to and upon the due and mutual execution of an appropriate supplemental written contract by the Parties hereto.

**18.7. Conflicts of Interest.** No director, employee, or agent of either Party shall give or receive any commission, fee, rebate, gift, or entertainment of significant cost or value in connection with this Agreement. Any mutually agreeable representative(s) authorized by either Party may audit the applicable records of the other Party solely for the purpose of determining whether there has been compliance with this paragraph.

[End of Contract -- Signatures on Next Page]

Signature Page to NATURAL GAS PURCHASE AND SALE AGREEMENT between  
NATURAL GAS CLEARINGHOUSE and CHEVRON U.S.A. INC.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals, each of which shall constitute and be an original contract.

SELLER:

CHEVRON U.S.A. INC.

By *F. P. Kelso* *JK*

Title ASSISTANT SECRETARY

BUYER:

NATURAL GAS CLEARINGHOUSE

By *Alisa Stath* *AS*

Title \_\_\_\_\_

ALISA STATH  
VICE PRESIDENT AND  
GENERAL MANAGER  
TERM SUPPLY, PROCESSING  
AND ASSET MANAGEMENT

## EXHIBIT "A"

To Natural Gas Purchase and Sale Agreement effective as of September 1, 1996, between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer.

### Form for Nominations

[Date]  
Nomination of Gas  
[Month, Year]  
Contract No. \_\_\_\_\_

Natural Gas Clearinghouse

Attention Gas Control

Gentlemen:

Chevron U.S.A. Inc. hereby nominates the following quantities of gas for sale during the month indicated above, in accordance with the terms of the captioned contract, at the following delivery point:

Effective Date of Nomination:	Quantity (MMbtus/day)		Delivery Point
	Current Nomination	New Nomination	

Very truly yours,

Chevron U.S.A. Inc.

By \_\_\_\_\_

Title \_\_\_\_\_

**EXHIBIT "B"**

[Date]

Price Lock Confirmation  
Gas Purchase Agreement  
Our Contract No. \_\_\_\_\_

Chevron U.S.A. Inc.  
[Address]

Gentlemen:

In accordance with that certain Natural Gas Purchase and Sale Agreement effective as of September 1, 1996, by and between Chevron U.S.A. Inc., as Seller, and Natural Gas Clearinghouse, as Buyer, which agreement is incorporated herein and made a part hereof, Buyer hereby confirms establishment of the following "Locked Price" and "Locked Quantities" as previously discussed and agreed orally:

Date of Parties' Oral Agreement: \_\_\_\_\_  
Month of Delivery Affected: \_\_\_\_\_  
Locked Quantities (MMBtus/day): \_\_\_\_\_  
Locked Price (\$/MMBtu): \_\_\_\_\_  
Basis differential adjustment (\$/MMBtu): \_\_\_\_\_  
Previously Locked Quantities for this month: \_\_\_\_\_  
Remaining Unlocked Quantities (MMBtus/day): \_\_\_\_\_

This Sales Confirmation is binding upon the Parties unless Buyer notifies Seller of a dispute with all or a portion hereof 48 hours (exclusive of weekends and Chevron holidays) after Buyer's receipt hereof.

Very truly yours,

Natural Gas Clearinghouse

By \_\_\_\_\_

Trading Representative

Date \_\_\_\_\_

Approval & Execution:

Review: CA \_\_\_\_\_ T/M/TR \_\_\_\_\_



## Natural Gas Sale Agreement

This Agreement is entered into as of the first day of September, 1996, between CHEVRON U.S.A. INC., a Pennsylvania corporation ("CUSA") and CHEVRON CANADA RESOURCES LIMITED, as managing partner for the Canadian general partnership ("CCR").

### Recitals

A. CCR, a producer of natural gas from sources in Canada and a purchaser of gas from other producers and marketers in Canada, desires to sell a portion of its available gas to CUSA for resale in the United States.

B. CUSA, a producer of natural gas from sources in the United States, currently holds a blanket import license from the United States government, allowing it to import from Canada up to 73 billion cubic feet of natural gas from Canada into the United States for short term sales and has applied for a long term import license to import gas for resale under long term contracts. CUSA also has personnel, resources and facilities allowing it to transport and deliver natural gas within the United States. In addition, CUSA has heretofore entered into, or will enter into contemporaneously with this Agreement, the Natural Gas Purchase and Sale Agreements described on Exhibit "A" hereto (the "U.S. Marketing Agreements") under which CUSA resells or will resell to various buyers the gas purchased from CCR hereunder. Individual U.S. Marketing Agreements may also be added to or deleted from Exhibit "A" from time to time upon written agreement between the parties.

C. CCR desires to sell gas to CUSA at the International Border for resale by CUSA to the buyers under the U.S. Marketing Agreements, subject to the terms and conditions set forth herein.

### Agreement

In consideration of the recitals and of the covenants set forth in this Agreement, the parties hereto agree as follows:

#### 1. Definitions

1.1 The term "International Border" means the boundary line between the United States of America and Canada.

1.2 The term "PGT Capacity" means (a) the 40,000 MMBtu per day of firm Existing capacity on Pacific Gas Transmission Company ("PGT") acquired by CUSA through capacity release from Pacific Gas & Electric Company, and (b) the 31,348 MMBtu per day of firm Expansion capacity on PGT acquired by CUSA directly from PGT. The parties intentions with respect to CUSA's acquisition and use

of the PGT Capacity and CCR's rights and obligations related to the PGT Capacity are set forth in a separate Memorandum of Understanding between CUSA and CCR dated October 17, 1994, which Memorandum of Understanding is incorporated herein by reference. The term "PGT Capacity" also includes the 20,000 MMBtu per day of firm Expansion capacity on PGT acquired by CUSA directly from PGT to service the Hermiston Facility of U.S. Generating Company as set forth in a Memorandum of Understanding between CCR and Chevron Natural Gas Services, Inc., a subsidiary of CUSA, dated February 28, 1994, which Memorandum of Understanding is incorporated herein by reference.

1.3 The term "Marketing Fee" means the fee to be paid to CUSA for U.S. Marketing Services.

1.4 The term "U.S. Marketing Agreements" means the Natural Gas Purchase and Sale Agreements between CUSA, as seller, and various third parties, as buyer, described on Exhibit "A" hereto, as Exhibit "A" may be amended from time to time. Some of the U.S. Marketing Agreements are currently in existence and others are being entered into contemporaneously with this Agreement or may be entered into in the future. CCR hereby acknowledges receipt of a copy of each of the U.S. Marketing Agreements.

1.5 The term "U.S. Marketing Services" means services to be performed by CUSA in the United States, including, but not limited to, the following:

1.5.1 Monitoring of contract obligations with respect to the PGT Capacity and the U.S. Marketing Agreements and consulting with CCR regarding contract elections with respect to the PGT Capacity and the U.S. Marketing Agreements,

1.5.2 Arranging for and contracting for transportation of gas from the International Border to the applicable Delivery Points under the U.S. Marketing Agreements, and performing or causing to be performed gas nominations and other gas control functions in connection with such transportation;

1.5.3 Purchasing gas from CCR at the International Border for redelivery in the United States of America under the U.S. Marketing Agreements; and

1.5.4 Providing or arranging for legal and regulatory support on matters pertaining to the importation and transportation of CCR's gas into the U.S. and/or the U.S. Marketing Agreements.

1.6 The term "U.S. Import Services" means services to be performed by CUSA in the United States, including , but not limited to, the following:

1.6.1 Obtaining and maintaining in effect all necessary import licenses and permits from the United States government and/or any state or local entity having jurisdiction;

1.6.2 Accepting gas from CCR at the International Border for resale under the U.S. Marketing Agreements.

## 2. Provision of Services

### 2.1 U.S. Marketing Services

As needed and upon request, CUSA shall provide U.S. Marketing Services to CCR. CCR shall reimburse CUSA for all costs and expenses incurred by CUSA in providing U.S. Marketing Services (including any costs and expenses for which CCR is liable pursuant to Section 7 hereof, any costs and expenses associated with the PGT Capacity, and any costs and expenses invoiced to CUSA by third parties with whom CUSA has contracted for the provision of U.S. Marketing Services), and shall pay CUSA the Marketing Fee set forth in Section 9.

### 2.2 U.S. Import Services

As needed and upon request, CUSA shall provide U.S. Import Services to CCR. CCR shall not be required to reimburse CUSA, as the case may be, for any costs or expenses incurred in providing of U.S. Import Services (including any costs and expenses invoiced to CUSA by third parties with whom CUSA has contracted for the provision of U.S. Import Services).

## 3. Obligations of CCR

### 3.1 Acquisition of Regulatory Approvals

Provision of services by CUSA under this Agreement is expressly subject to CCR's meeting, on a continuous basis, all Canadian federal, provincial, and local regulatory requirements to allow it to export gas from the province of production and from Canada.

### 3.2 Other Prerequisites

Provision of services by CUSA under this Agreement is expressly subject to CCR's performance of all acts necessary

and appropriate to allow further performance by CUSA of its obligations hereunder and under the U.S. Marketing Agreements. Such acts include but are not limited to (1) production or purchase of gas; (2) transportation of such gas to the International Border; and (3) consultation with CUSA on a continuing basis in order to give CUSA or its designee adequate time and information to perform its obligations hereunder and under the U.S. Marketing Agreements.

### 3.3 Performance in accordance with the U.S. Marketing Agreements

CCR agrees to deliver gas to CUSA during the term of this Agreement at times and in quantities necessary to allow CUSA to perform its obligations under the U.S. Marketing Agreements. CCR further agrees to consult with CUSA and keep CUSA informed of all matters that will affect CUSA's obligations to the buyers under the U.S. Marketing Agreements. CUSA shall not extend, terminate or amend any of the U.S. Marketing Agreements without first consulting with CCR.

### 4. Transportation Imbalances and Penalties

If any costs or penalties associated with the transportation of gas are anticipated, the party becoming aware that such costs or penalties may be assessed or incurred shall inform the other party as soon as the party becomes aware. Each party shall cooperate in good faith with the other party to minimize or eliminate imbalances and, if possible, minimize or eliminate penalties associated with such imbalances. The parties shall cooperate with each other and with the pipeline transporter(s) to verify delivery and receipt of monthly nominated quantities on a timely basis.

### 5. Title and Control

Title to the Gas delivered hereunder shall pass to CUSA at the International Border. CCR shall be deemed to be in exclusive control and possession of said gas prior to the time of delivery to the International Border; and CUSA shall be deemed to be in exclusive control and possession of said gas thereafter.

For purposes of this agreement, CUSA is in no way or form acting as agent for CCR or any of its partners for the purpose of carrying on business in the United States.

## 6. Force Majeure

The performance of any of the obligations hereunder, other than financial, of any party may be delayed or suspended while, but only as long as, such party is prevented from performance by force majeure, as defined in the applicable U.S. Marketing Agreement. As between the parties hereto, the party experiencing a force majeure occurrence shall be excused from performance in accordance with the terms of the applicable U.S. Marketing Agreement.

## 7. Standards; Liability

CUSA shall perform its duties hereunder in a reasonably prudent manner, as if it were performing said duties on its own behalf. CCR shall indemnify and save CUSA free and harmless from any and all losses, liabilities, claims, demands, damages, and causes of action arising directly or indirectly from CCR's acts or omissions in performing this Agreement, including any costs, penalties, or liabilities incurred by CUSA as a result of noncompliance with the U.S. Marketing Agreements if such costs, penalties, or liabilities are incurred by CUSA as a result of (a) CCR's failure to deliver gas to CUSA in a manner and quantity consistent with CUSA's obligations under the U.S. Marketing Agreements or (b) CCR's failure to provide notice of force majeure, changes in scheduled volumes, timely contract elections when such are required, or any other communications required by the U.S. Marketing Agreements.

## 8. Sales Agreement Revenues

The price per MMBtu to be paid at the border by CUSA to CCR for gas delivered each month pursuant to this Agreement, shall equal the weighted average sales price received by CUSA for all gas sold during such month under the U.S. Marketing Agreements and any gas sold during such month on a temporary basis under other agreements as a result of the failure of customers to purchase such gas under the U.S. Marketing Agreements, less any expenses that CCR is obliged to reimburse pursuant to Section 2.1, and less the Marketing Fee provided for in Section 9.

## 9. Marketing Fee

In consideration of CUSA's performance of U.S. Marketing Services, CCR shall pay CUSA a Marketing Fee of Nine Thousand U.S. Dollars (\$9,000 U.S.) per month, which Marketing Fee may be deducted by CUSA from proceeds due to CCR under this Agreement. At any time, but not more frequently than once every 12 months, either party may request in writing renegotiation of the Marketing Fee, and if so requested, the parties shall negotiate in good faith in an attempt to reach a mutually agreeable

Marketing Fee or calculation method therefor. If the parties cannot reach agreement within 30 days after the receipt by the receiving party of such written request for renegotiation, then the Marketing Fee per MMBtu shall remain at its then-current amount.

## 10. Measurement

For all purposes under this Agreement, measurements conducted by the pipeline transporter(s) in Canada and the United States of America shall conclusively be deemed accurate, unless and until corrected by said transporter(s), whether or not such corrections are made at the request of a party hereto.

## 11. Billing and Payment

### 11.1 Procedures

Monthly, CUSA shall furnish CCR with the following information for deliveries of gas under Sales Agreements:

11.1.1 Quantities of gas sold under each of the U.S. Marketing Agreements during the applicable month;

11.1.2 Prices received for gas sold under each of the U.S. Marketing Agreements during such month;

11.1.3 The weighted average sales price per MMBtu for all sales under the U.S. Marketing Agreements during such month;

11.1.4 The expenses incurred by CUSA during such month which are directly reimbursable by CCR;

11.1.5 The portion of the Marketing Fee payable in such month; and

11.1.6 Calculation of the total amount due CCR, based on the sold quantities multiplied by the weighted average sales price, less reimbursable expenses and applicable Marketing Fees.

After determination of the amount due CCR, CUSA shall wire transfer the amount due to CCR. The parties shall then cooperate in good faith to resolve any billing disputes as expeditiously as possible.

### 11.2 Right to Audit

Each of the parties hereto shall have the right at its own expense to examine and audit at any reasonable time the

books, records and charts of the other party, to the extent necessary to verify the accuracy of any statements or charges made under or pursuant to any of the provisions of this Agreement, or to confirm full performance of and compliance with all obligations assumed hereunder by the party being audited. Upon request, each party shall also make available to the other party for audit purposes any relevant records of any pipeline transporter(s) to which such party has access. A formal audit of accounts shall not be made more often than once every calendar year. Any inaccuracy will be promptly corrected when discovered; provided, however, that neither party shall be required to maintain books, records or charts for a period of more than 2 calendar years following the end of the calendar year to which they are applicable except as required by either the IRS or Revenue Canada.

## 12. Notices

Any notice, request, demand, or statement, provided for in this Agreement, except as otherwise herein provided, may be given in writing, delivered in person or by United States and/or Canadian Mail, by recognized express courier, or by telecopy to the parties hereto at the addresses shown below, or at such other addresses as may hereafter be furnished to the other party in writing:

CCR:            Correspondence, Notices, Statements, Payments:  
Chevron Canada Resources  
500 Fifth Avenue S.W.  
Calgary, Alberta CANADA T2P 0L7  
Attention: Natural Gas Contract Administration  
Telephone: (403) 234-5577  
Telecopy (403) 234-6212

CUSA:           Notices and Correspondence:  
Chevron U.S.A. Inc.  
P. O. Box 2100  
1301 McKinney Avenue  
Houston, Texas 77252  
Attention: Natural Gas Contract Administration  
Telephone: (713) 754-2437  
Telecopy (713) 754-2536

Statements:  
Chevron U.S.A. Inc.  
P.O. Box J - Section 980  
Concord, California 94524-2060  
Attention: Dave Davis

13. Term

This Agreement shall commence as of the effective date stated above and shall remain in full force and effect so long as any of the U.S. Marketing Agreements are in effect.

14. Effect On Prior Agreements

This Agreement supersedes and replaces the following agreements between the parties:

- (a) Intercompany Gas Marketing Agreement dated August 1, 1991.
- (b) Gas Marketing Agreement dated November 1, 1993.
- (c) Gas Sale and Purchase Agreement dated February 28, 1994.

In addition, any other prior agreements between the parties are superseded by this Agreement to the extent that any terms of such agreements conflict with the terms of this Agreement.

15. Assignment

Neither party shall assign this Agreement without the prior written consent of the other party, and any such attempted assignment shall be null and void. However, any company or entity assuming all or substantially all of a party's assets, through merger, acquisition, reorganization, stock purchase, or otherwise, shall succeed to the rights and obligations of such party under this Agreement.

16. Applicable Law

This Agreement shall be governed by the laws of the State of Texas, without any recourse, however, to that state's doctrines, statutes or case law pertaining to conflicts of laws.

IN WITNESS WHEREOF, this Agreement is executed by the parties effective as of the date first above written.

CHEVRON CANADA  
RESOURCES, by its  
Managing Partner, Chevron  
Canada Resources Limited

CHEVRON U.S.A. INC.

By: W.A. Scott  
Title: W.A. SCOTT  
ATTORNEY IN FACT

By: [Signature]  
Title: Vice President and General Manager  
of Chevron U.S.A. Production Co., a  
Division of Chevron U.S.A. Inc.



Exhibit "A"

to Gas Marketing Agreement

between

CHEVRON U.S.A. INC. and CHEVRON CANADA RESOURCES LIMITED

U.S. Marketing Agreements

1. Gas Purchase and Sale Agreement effective September 1, 1996, between Chevron U.S.A. Inc. and Natural Gas Clearinghouse (PG&E 400 Line).
2. Gas Purchase and Sale Agreement effective September 1, 1996, between Chevron U.S.A. Inc. and Natural Gas Clearinghouse (PG&E 401 Line).
3. Gas Purchase and Sale Agreement dated February 28, 1994, between Chevron U.S.A. Inc. and Hermiston Generating Company, L.P.
4. Gas Purchase and Sale Agreement dated November 1, 1993, between Chevron U.S.A. Inc. and Georgia-Pacific Corporation, and associated Agency Agreement dated November 1, 1993, between Georgia-Pacific Corporation, Chevron Natural Gas Services, Inc., and North Country Gas Pipeline Corporation.



**Chevron**

1996 SEP 16 A 9:48

September 12, 1996

Chevron U.S.A. Production Company  
1301 McKinney Street  
Houston, Texas 77010-3029  
Mail Address: P. O. Box 3725  
Houston, Texas 77253-3725

REC'D DOE/FE

Mr. Anthony J. Como  
Office of Fuels Programs  
Fossil Energy  
Room 3F-056  
Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Gary M. Smale  
Compliance Supervisor  
Law Department  
(713) 754-3464  
Fax (713) 754-3366

**FE Docket No. 96-59-NG**  
**Chevron U.S.A. Inc.**  
**Notice of First Deliveries**

Dear Mr. Como:

On August 30, 1996, the Office of Fossil Energy issued DOE/FE Order No. 1194, granting Chevron U.S.A. Inc. ("Chevron") authorization to import up to 74,000 Mcf per day of natural gas from Canada for a period beginning on September 1, 1996, and continuing through October 31, 2005. In accordance with the reporting requirements specified in Order No. 1194, please be advised that the first deliveries of the natural gas imported under the subject authorization commenced September 1, 1996.

Please call me at (713) 754-3464 if I can provide any further information concerning this notice.

Please place a date stamp on the attached copy of this letter and return it in the enclosed envelope.

Sincerely,

*Gary M. Smale*

Gary M. Smale  
Compliance Supervisor