

FE DOCKET NO.: 97-35-NG

APPLICANT(S): UNITED STATES GYPSUM COMPANY

ITEM	PREPARED OR FILED BY	FILING TYPE	DESCRIPTION OF DOCUMENT	DATED	DATE FILED OR ISSUED
1 ✓	UNITED STATES GYPSUM COMPANY	APPLICATION	Application for Long-Term Authorization to Import Natural Gas from Canada \$50.00	97-04-22	97-04-22
2 ✓	DOE/FE	ORDER	Order 1272--Granting Long-Term Authority to Import Natural Gas from Canada	97-05-06	97-05-06

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

REC'D DOE/FE
11/17/97 2 P 3:35

United States Gypsum Company)

FE Docket No. 97-35-NG

**APPLICATION OF UNITED STATES GYPSUM COMPANY
FOR AN ORDER AUTHORIZING THE IMPORT OF
NATURAL GAS FROM CANADA**

Pursuant to Section 3 of the Natural Gas Act ("NGA"),^{1/} Department of Energy ("DOE") Delegation Order Nos. 0204-111 and 0204-127,^{2/} and Office of Fossil Energy ("FE") regulations,^{3/} United States Gypsum Company ("U.S. Gypsum") submits this application for an order granting long-term authority to import natural gas from Canada. Specifically, U.S. Gypsum requests authority to import up to 5,000,000 Mcf per year (approximately 13,600 Mcf/day) of natural gas for a 10-year term commencing on November 1, 1998 through November 1, 2008.

I. IDENTITY OF THE APPLICANT

The exact legal name of the applicant is United States Gypsum Company. U.S. Gypsum is a manufacturer of wallboard and other products with plants located in more than 20 states. U.S. Gypsum requires a substantial quantity of natural gas in its manufacturing processes. The location of U.S. Gypsum's principal place of business is 125 South Franklin St., Chicago, Illinois 60606-

^{1/} 15 U.S.C. 717b.

^{2/} 49 Fed. Reg. 6690 (Feb.22, 1984), 1 ERA ¶70,032 (1984); 54 Fed. Reg. 11437 (Mar. 20, 1989), 1 FE ¶70.051 (1989).

^{3/} 10 C.F.R. Part 590 (1996).

4678. The names, titles, and mailing addresses of persons to whom official correspondence concerning this application should be addressed are:

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II. THE PROPOSED EXPORT ACTIVITY

A. Scope of the Activity

U.S. Gypsum seeks authority to import from Canada up to 5,000,000 Mcf of natural gas per year (approximately 13,600 Mcf/day of gas) for use in the industrial facilities of U.S. Gypsum and its affiliates and for sale to others during periods when this gas is not needed in or deliverable to the manufacturing facilities of U.S. Gypsum or its affiliates.

B. Source and Security of Gas Supply

U.S. Gypsum has entered into a firm Natural Gas Purchase and Sale Contract ("Contract") with Husky Oil Operations, Ltd. ("Husky"), a Canadian corporation, to purchase approximately 13,566 Mcf/day of natural gas (plus a quantity equal to the fuel retainage requirements on TransCanada PipeLines, Ltd. ("TCPL")), for a 10-year term beginning on November 1, 1998. Under the terms of the Contract, Husky is obligated to sell and U.S. Gypsum is obligated to

purchase the full 13,566 Mcf/day. Husky has applied for a Removal Permit and submitted data to demonstrate to the Alberta Energy and Utilities Board ("AEUB") that Husky possesses the necessary reserves to support issuance of a Removal Permit by AEUB to Husky. Similarly, Husky has submitted data to the NEB to support issuance of an Export License to U.S. Gypsum. (See note 4, supra.) If Husky were to fail to deliver for any reason, U.S. Gypsum would purchase gas on the open market from replacement sources until Husky could satisfactorily restore service.^{4/}

C. Transportation Arrangements

Pursuant to the terms of the Contract, Husky will enter into necessary transportation arrangements to deliver natural gas to U.S. Gypsum into TCPL at Empress, Alberta. U.S. Gypsum will take title to the gas at the Empress interconnection point (unless it elects to take title within Alberta) and will ship the gas through TCPL to two points on the U.S. - Canadian border, one at Chipewa, Ontario and the other at Niagara Falls, Ontario. At Niagara Falls, Ontario, TCPL will deliver approximately 10,600 Mcf/day to Tennessee Gas Pipeline Co. ("Tennessee") which will transport the gas to downstream transporters for eventual delivery to U.S. Gypsum or its affiliates. At Chipewa, Ontario, TCPL will deliver 3,000 Mcf/day to Empire Gas Pipeline ("Empire"), which will then transport the gas U.S. Gypsum's industrial facilities. Depending upon the needs of its manufacturing facilities and the availability of pipeline transportation, U.S. Gypsum may arrange, from time-to-time, for delivery of gas purchased from Husky to other locations where U.S. transportation arrangements can be made. U.S. Gypsum currently expects

^{4/} In the event of an unexcused failure to sell or purchase gas, the party failing to meet its obligations will reimburse the performing party for its "cover costs", if any, in a replacement purchase or sale.

to have firm transportation service agreements with various U.S. pipelines, including, *inter alia*, TCPL, Empire, Tennessee and East Tennessee Natural Gas Co. ("East Tennessee").

D. Gas Purchase Price

The contract specifies that U.S. Gypsum shall pay Husky a market price for each unit of gas received by U.S. Gypsum as set forth in the monthly confirming statements of TCPL. The market price is calculated by reference to the "NIT Monthly Price," which is a spot price index published by the Canadian Gas Price Reporter. In addition, U.S. Gypsum shall pay certain transportation costs incurred by Husky for transportation of the gas from its production facilities to the Empress, Alberta delivery point. Husky and U.S. Gypsum have agreed that in the event that the "NIT Monthly Price" is not available for the relevant month or is no longer published by the Canadian Gas Market Reporter, the parties will negotiate in good faith to establish a "Substitute NIT Monthly Price." Husky and U.S. Gypsum have also agreed that if such negotiations fail to yield a "Substitute NIT Monthly Price," either party is entitled to refer the matter to binding arbitration in accordance with the Contract's Dispute Resolution terms, in order to establish a fair and equitable "Substitute Monthly NIT Price."

E. Reporting Requirements

Consistent with the reporting requirements outlined by FE in its guidance document issued on October 4, 1993, U.S. Gypsum will notify FE in writing, within two weeks after import deliveries begin, of the date that the first import delivery occurred. Additionally, unless such reporting is waived by FE, U.S. Gypsum will provide to FE Quarterly Reports, filed the month following each calendar quarter, indicating by month:

- a. The total volume of imports in Mcf;

- b. Average purchase price per MMBtu at the international border;
- c. Identity of the seller;
- d. Estimated or actual duration of each purchase agreement;
- e. Identity of transporters;
- f. Point(s) of entry;
- g. Markets served; and
- h. Whether imports are being made on an interruptible or firm basis.

F. Potential Environmental Impact

Approval of this import application will have no adverse environmental impact. No construction of new or additional border facilities is required to perform the proposed import activity.^{2'}

^{2'} East Tennessee and USG Pipeline Company, two expected downstream domestic transporters of a portion of the imported gas, will construct pipeline facilities to deliver gas to U.S. Gypsum. The Federal Energy Regulatory Commission ("FERC") has voted to approve an expansion by East Tennessee that will transport gas owned by U.S. Gypsum (Docket No. CP96-686-000), and FERC is reviewing USG Pipeline Company's pending certificate application for facilities downstream of East Tennessee (Docket No. CP97-202-000). FERC is conducting relevant environmental reviews. Importantly, however, construction by those pipelines does not depend on whether or not this import application is approved. Consequently, that construction cannot be deemed a result or impact of this application. Similarly, minor downstream facilities (approximately 3 miles of 4-inch pipe) will be constructed by U.S. Gypsum to connect one of its plants to Empire Gas Pipeline within New York. U.S. Gypsum intends to construct those facilities regardless of the outcome of this docket. In any event, no adverse environmental impacts are expected from that construction, and all necessary permits and regulatory reviews, including from the New York Public Service Commission, will be obtained before any construction is undertaken. Further, U.S. Gypsum and its affiliates operate many manufacturing plants, and U.S. Gypsum will desire the full quantity that it proposes to import whether or not the gas is delivered to the specific plants that U.S. Gypsum currently foresees as the primary users.

III. STANDARD OF REVIEW

Section 3 of the NGA, as amended by the Energy Policy Act of 1992,⁶ states that

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

The U.S. and Canada are parties to a free trade agreement.⁷ Accordingly, the NGA requires FE to approve the U.S. Gypsum application for an order authorizing long-term imports of natural gas pursuant to the Contract "without modification or delay."

IV. EXHIBITS

In support of its application, U.S. Gypsum submits the following exhibits:

- Exhibit A - Opinion of Counsel required by FE regulation.
- Exhibit B - Gas Sales Contract between Husky Oil Operations Ltd. and United States Gypsum Company.

VI. ACTION REQUESTED

U.S. Gypsum requests that FE issue an order granting U.S. Gypsum authority to import up to 5,000,000 Mcf of natural gas annually (approximately 13,600 Mcf/day) from Canada to the

⁶ Pub. L. No. 102-486, § 201 (1992).

⁷ The North American Free Trade Agreement between the United States, Canada, and Mexico became effective January 1, 1994.

United States over a 10-year period commencing on November 1, 1998 through November 1, 2008.

Respectfully submitted,

By:


William H. Penniman

Bonding Yee

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1275 Pennsylvania Avenue, N.W.

Washington, D.C. 20004-2404

(202) 383-0100

Attorneys for

United States Gypsum Company

April 22, 1997

OPINION OF COUNSEL

Pursuant to the regulations of the Office of Fossil Energy, 10 C.F.R. §590.202(c), I have examined the articles of incorporation and the bylaws of the United States Gypsum Company and have determined that the proposed importation of natural gas is within the corporate powers of such corporation.



Dean H. Goossen

Dated: April 16, 1997

**NATURAL GAS PURCHASE
AND SALE CONTRACT**

Between

UNITED STATES GYPSUM COMPANY

as **BUYER**

- and -

HUSKY OIL OPERATIONS LTD.

as **SELLER**

**NATURAL GAS PURCHASE
AND SALE CONTRACT**

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ARBITRATION PROCEDURES

NATURAL GAS PURCHASE AND SALE CONTRACT

THIS Natural Gas Purchase and Sale Contract made as of February 18, 1997

Between

UNITED STATES GYPSUM COMPANY
(Buyer)

- and -

HUSKY OIL OPERATIONS LTD.
(Seller)

WHEREAS Seller desires to sell and deliver Gas to Buyer and Buyer desires to purchase and receive Gas from Seller in the quantities and under the terms and conditions of this Contract;

NOW THEREFORE, in consideration of the premises and the mutual covenants, promises and agreements set forth in this Contract, Buyer and Seller hereby agree as follows:

ARTICLE 1.0 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Except where this Contract expressly states another meaning, in this Contract the following terms shall have the following meanings:

"Affiliate": means any Person: (a) that controls a Party; (b) that is controlled by a Party; or, (c) that is controlled by the same Person that controls a Party; it being understood and agreed that for purposes of this definition the terms controls and controlled by shall mean the power to direct or cause the direction of the management and policies of another Person whether through the ownership of shares, a contract, agency, trust arrangement or any other means, either directly or indirectly, that results in control in fact and without restricting the generality of the foregoing includes, with respect to the ownership of shares carrying not less than 50% of the voting rights regardless of whether such ownership occurs directly or indirectly, as contemplated above.

"Average": a value that is computed by dividing the sum of a set of amounts by the number of those amounts;

"British thermal unit" or "Btu": the amount of energy required to raise the temperature of one pound of pure water from 59 degrees Fahrenheit to 60 degrees Fahrenheit at a constant pressure of 14.73 pounds per square inch absolute;

"Business Day": all days excluding Saturdays, Sundays, all statutory holidays under the laws of the Province of Alberta or Canada, and holidays honored by major commercial banks in New York City;

"Buyer": United States Gypsum Company;

"Buyer's Transporters": TCPL;

"Canadian Regulatory Authorities": the federal, provincial or local governmental agencies, boards, commissions or other authorities in Canada, which have jurisdiction over the production, sale, removal, export or transportation of Gas or other matters in question, including, without limitation, the National Energy Board and any successor agency, the Alberta Energy and Utilities Board and any successor agency, and the federal and provincial Ministers and Governors-in-Council;

"Cdn.\$": Canadian currency;

"Confidential Information": this Contract and all data, documents and information that either Party to this Contract designates as being confidential when that Party makes available or discloses that data, those documents or that information to the other Party;

"Contract": this Natural Gas Purchase and Sale Contract, including the Exhibit to this Contract, and all supplements and amendments to this Contract from time to time;

"Contract Term": the term for Gas purchases and sales under this Contract beginning at 0800 hours Mountain Time on the Effective Date and ending immediately prior to 0800 hours Mountain Time on November 1, 2008;

"Contract Year": a period of 12 consecutive Months beginning at 0800 hours Mountain Time on January 1st and ending immediately prior to 0800 hours Mountain Time on the next November 1st;

"Daily Contract Quantity" or "DCQ":

(a) the sum of:

(i) 300.3 10^3M^3 ; plus

(ii) a quantity of Gas equal to TCPL's then current fuel requirements for 300.3 10³M³ firm transportation service from Empress to Niagara;

plus

(b) the sum of:

(i) 83.9 10³M³; plus

(ii) a quantity of Gas equal to TCPL's then current fuel requirements for 83.9 10³M³ firm transportation service from Empress to Chippewa.

If at any time in the future TCPL converts its system of Gas measurements from a volumetric based system to a system based upon heat content, Buyer and Seller shall amend this Contract and is reasonably required to reflect such change, including converting the foregoing quantities making up the DCQ GJs or MMBtus so that the aggregate DCQ yields a quantity delivered by TCPL to Buyer at the outlet to TCPL's facilities located at or near Niagara and Chippewa at the Canadian-U.S. border. The Parties acknowledge and agree that if as a result of such conversion Seller's capacity on Seller's Transporter is insufficient to meet all of Seller's firm markets, Seller shall prorate deliveries under all firm gas contracts in proportion to Seller's maximum daily obligations thereunder;

"Daily Delivery Obligation": for any Day, Seller's obligation to deliver to Buyer or for Buyer's account a quantity of Gas equal to 100% of the DCQ;

"Daily Market Price": for any Day, that price described as the "Daily Spot Gas Price at AECO 'C' & Nova Inventory Transfer - weighted average price" (in Cdn.\$/GJ) specified for that Day in the *Canadian Domestic Gas Price Report*, as published by "Canadian Gas Price Reporter", a publication of Canadian Enerdata Ltd. For greater certainty, the Daily Market Price for any Day that falls on a weekend shall be the "Daily Spot Price at AECO 'C' & Nova Inventory Transfer - weighted average price" specified for that particular Day and not the price specified as the "Weekend" or Weekend price in respect of that weekend;

"Day": a period of 24 consecutive hours, beginning at 0800 hours Mountain Time on any day and ending immediately prior to 0800 hours Mountain Time on the next following day; with the reference date for any Day being the calendar date on which the 24-hour period commences; and "Daily" has a corresponding meaning;

"Delivery Point": the delivery point indicated in Section 3.1 (**Delivery Point**);

"DOE": the United States Department of Energy, Office of Fossil Energy, or its successor agency;

"Effective Date": the later of the inservice date of the TCPL transportation described in Section 4.2 (Buyer's Transportation Arrangements) or November 1, 1998, provided however such date cannot be later than November 1, 2000;

"Failing Party": the Party described in Section 5.4 (Reimbursement);

"Force Majeure": the occurrences described in Section 14.2 (Force Majeure), subject to the limitations described in Section 14.3 (Limitation on Right to Claim Force Majeure);

"Gas": a combustible mixture of simple hydrocarbon compounds satisfying the energy and quality specifications of TCPL;

"Gas Price": the price payable from time to time for Gas purchased and sold under this Contract, as determined in accordance with Article 11.0 (Gas Price);

"GJ": gigajoules or one billion (1,000,000,000) Joules;

"Goods and Services Tax" or "GST": the goods and services tax imposed pursuant to the *Excise Tax Act* (Canada), and any similar tax imposed by a province of Canada on the recipient of goods or services which may be supplied under this Contract;

"Heating Value": the quantity of heat, measured in MMBtus per Mcf, produced by combustion in air of one cubic foot of anhydrous Gas at a temperature of 60 degrees Fahrenheit and a constant pressure of 14.73 pounds per square inch absolute, the air being at the same temperature and pressure as the Gas, after the products of combustion are cooled to the initial temperature of the Gas and air, and after condensation of the water formed by that combustion; provided however if the water vapor content is seven pounds per Mcf or less, the Gas shall be deemed dry;

"Joules": the work; done when the point of application of a force of one (1) newton is displaced a distance of one (1) meter in the direction of the force;

"Mcf": the quantity of Gas occupying a volume of 1,000 cubic feet, at a temperature of 60 degrees Fahrenheit, and at a pressure of 14.73 pounds per square inch absolute;

"MMBtu": 1,000,000 Btus;

"Month": the period beginning on the first Day of a calendar month and ending immediately prior to the first Day of the next succeeding calendar month; and **"Monthly"** has a corresponding meaning;

"Mountain Time": either Mountain Standard Time or Mountain Daylight Time, as the case may be;

"NIT Monthly Price": for any Month, that price described as the "AECO 'C' & Nova Inventory Transfer 'One Month Spot' Index" (in Cdn.\$/GJ) specified for that Month, published by "Canadian Gas Price Reporter", a publication of Canadian Enerdata Ltd.;

"NOVA": NOVA Gas Transmission Ltd. or the system of pipelines owned and operated by it for the transmission of Gas, as the context may require;

"Parties": Seller and Buyer; and **"Party"**: Seller or Buyer, as the subject matter or context may require;

"Penalized Party": the Party described in Section 5.4 (**Reimbursement**);

"Person": includes any individual, firm, partnership, company, corporation, government, governmental body, agency, instrumentality, unincorporated body of persons or association;

"Prime Rate": the floating nominal annual rate of interest announced from time to time by Canadian Imperial Bank of Commerce, Main Branch, Calgary, Alberta as its reference rate then in effect for determining interest rates on Canadian dollar denominated commercial loans made by that bank in Canada, in all cases adjusting automatically on the effective date of any change to that rate without the necessity of any notice to either Party of each announced change to that rate;

"Seller": Husky Oil Operations Ltd.;

"Seller's Transporter": NOVA (or other pipeline transporter as provided in Section 4.2 (**Seller's Transportation Arrangements**));

"TCPL": TransCanada PipeLines Limited;

"Termination Payment": the payment described as such in Section 15.3 (**Termination Payment**);

"United States" or **"U.S."**: the United States of America;

"U.S Regulatory Authorities": the federal, state or local governmental agencies or other authorities in the U.S. that have jurisdiction over the sale, import or transportation of Gas or other matters regarding this Contract, including without limitation the DOE; and

"Variable Deliveries/Receipts": has the meaning set forth in Section 5.2 (**Adjustments for Variable Deliveries/Receipts**).

1.2 Interpretation

In this Contract:

(a) the masculine shall include the feminine and neuter, the feminine shall include the masculine and neuter, the singular shall include the plural and the plural shall include the singular;

(b) the word "person" shall include an individual, a corporation, a partnership, an unincorporated syndicate, an unincorporated organization, an unincorporated association, a joint venture, a tenancy-in-common, or a government or any agency or political subdivision thereof;

(c) the division of this Contract into Articles, Sections and Exhibits, the provision of a Table of Contents and the insertion of headings are for convenience of reference only and shall not be considered or taken into account in the interpretation or construction of this Contract or decreed in any way to qualify, modify or explain the effect of any term or provision of this Contract;

(d) words, phrases or expressions which are not defined in this Contract and which have a generally accepted meaning in the custom and usage of the business of the exploration, production, transportation, distribution, marketing or sale of Gas in Canada shall have that meaning;

(e) whenever any units of currency are referred to in this Contract, those amounts shall be deemed to be in lawful money of Canada unless otherwise indicated;

(f) "herein", "hereof", "hereunder" and similar expressions mean and refer to this Contract. References to Articles, Sections and Exhibits followed by a number mean and refer to the specified Article, Section or Exhibit of this Contract;

(g) all references to legislation apply to amendments to that legislation, any re-enactment of that legislation and any successor legislation which substantially adopts or duplicates that legislation; and

(h) "day" means a calendar day.

1.3 Conversions

(a) Metric to/from Imperial

For conversions between Imperial (U.S.) units and Systems International (metric) units, the following shall apply:

(i) one GJ of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius shall be considered equivalent to 0.9482133 MMBtu of Gas at a standard condition of 14.73 pounds per square inch absolute and 60 degrees Fahrenheit;

(ii) one MMBtu of Gas at a standard condition of 14.73 pounds per square inch absolute and 60 degrees Fahrenheit shall be considered equivalent to 1.054615 GJ of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius;

(iii) one Mcf of Gas at a standard condition of 14.73 pounds per square inch absolute and 60 degrees Fahrenheit shall be considered equivalent to 28.3200276 cubic meters of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius; and

(iv) one cubic meter of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius shall be considered equivalent to 0.0353107 Mcf of Gas at a standard condition of 14.73 pounds per square inch absolute and 60 degrees Fahrenheit.

(b) U.S.\$ to/from Cdn.\$

For conversions between U.S.\$ and Cdn.\$, the following shall apply:

(i) any conversion from U.S.\$ to Cdn.\$ or *vice versa* with respect to any charge or amount for any day shall be made using the noon midpoint spot exchange rate for that day for the Canadian dollar in terms of U.S. dollars or *vice versa* as published by the Bank of Canada; and

(ii) any conversions from U.S.\$ to Cdn.\$ or *vice versa* with respect to any charges or amounts for any Month shall be calculated at the rate of exchange for that Month. The rate of exchange for a Month shall be the Average of the noon midpoint spot exchange rates each day in that Month for the Canadian dollar in terms of U.S. dollars or *vice versa*, as published by the Bank of Canada.

If no noon midpoint spot exchange rate is published for any day during any Month, the last noon midpoint spot exchange rate published by the Bank of Canada prior to that day shall be deemed to be the applicable rate of exchange for that day and shall be used in calculating the rate of exchange for that Month.

1.4 Conflict

In the event of any conflict between the provisions in the Exhibit and the provisions in the main body of this Contract, the provisions in the main body shall prevail.

1.5 Time

Time shall be of the essence in this Contract.

1.6 Exhibit

The following Exhibit is attached to and forms part of this Contract:

Exhibit I - Arbitration Procedures

ARTICLE 2.0
QUANTITY AND DELIVERIES

2.1 Sale of Gas

On the Effective Date and on each Day thereafter during the Contract Term, Seller shall sell and deliver to Buyer and Buyer shall purchase and accept delivery from Seller a quantity of Gas equal to 100% of the Daily Contract Quantity, in accordance with and subject to the terms of this Contract.

2.2 Buyer's Purchase Obligations

(a) Buyer's Nominations

Each Day during the Contract Term Buyer shall nominate a quantity of Gas equal to 100% of the DCQ.

(b) Failure to Purchase

Buyer's failure to purchase 100% of the DCQ on any Day during the Contract Term, unless that failure is excused due to Force Majeure or Seller's failure to deliver the nominated quantity, shall obligate Buyer to pay Seller as non-refundable liquidated damages an amount equal to the product of:

- (i) the positive difference, if any, between:
 - (A) the NIT Monthly Price for the relevant Day per GJ plus Cdn.\$0.10 per GJ; and
 - (B) the Daily Market Price for that Day for each GJ;

multiplied by

- (ii) the positive difference between:
 - (A) the DCQ; and
 - (B) the quantity of gas purchased by Buyer on that Day.

The damages set forth in this Section 2.2(b) are in addition to Buyer's obligation to pay the Transportation Demand charge pursuant to Section 11.2 (Gas Price) and are intended to compensate Seller for lost revenue, administrative expenses and other costs associated with Buyer's failure to purchase.

Seller shall retain all rights and remedies available to Seller at law or equity to enforce Buyer's obligation to pay those liquidated damages.

2.3 Seller's Delivery Obligations

(a) Daily Delivery Obligation

Each Day during the Contract Term, Seller shall be obligated to deliver to Buyer or for Buyer's account a quantity of Gas equal to 100% of the DCQ.

(b) Failure to Deliver

Seller's failure to deliver 100% of the DCQ on any Day during the Contract Term, unless that failure is excused due to Force Majeure or Buyer's failure to take, shall obligate Seller to pay Buyer as non-refundable liquidated damages an amount equal to the product of:

(i) the positive difference, if any, between:

(A) the Daily Market Price per GJ for the relevant Day plus Cdn.\$0.05 per GJ; and

(B) the NIT Monthly Price for that day per GJ plus Cdn.\$0.05 per GJ;

multiplied by

(ii) the positive difference between:

(A) the DCQ; and

(B) the quantity of gas delivered by Seller on that Day.

The damages set forth in this Section 2.3(b) are intended to compensate Buyer for lost revenue, administrative expenses and other costs associated with Seller's failure to deliver.

In addition, if Seller fails to deliver the quantity of Gas scheduled by Buyer up to the DCQ, Buyer shall be excused from paying Seller for any Variable Transportation Charges or Demand Transportation Charges applicable to the undelivered quantity; unless that failure is excused due to Force Majeure or Buyer's failure to take.

Buyer shall retain all rights and remedies available to Buyer at law or equity to enforce Seller's obligation to pay those liquidated damages.

2.4 Substitute Daily Market Price

If at any time during the Contract Term the Daily Market Price is not available for the relevant Day or is no longer published in the manner described in the definition for Daily Market Price in Section 1.1 (**Definitions**), a Party learning of such unavailability shall provide notice (a "Substitute Daily Market Price Notice") thereof to the other Party, in which event the Parties shall attempt to agree on a replacement market price index (the "Substitute Daily Market Price") for purposes of determination of the amount payable by Buyer or Seller pursuant to Sections 2.2(b) (**Failure to Purchase**) and 2.3(b) (**Failure to Deliver**) or, as applicable, for that Day or in respect of the balance of the Contract Term, as applicable.

If the Parties are unable to reach agreement on a Substitute Daily Market Price within 15 Business Days following the delivery of the Substitute Daily Market Price Notice, either Party shall be entitled to submit the matter for determination by final offer arbitration in accordance with Article 16.0 (**Dispute Resolution**).

If the determination of the Substitute Daily Market Price is submitted to arbitration, the arbitrator/panel shall be required to select either the final offer of Seller or the final offer of Buyer which, in the opinion of the arbitrator/panel, most accurately reflects the price of daily spot gas delivered on NOVA at AECO 'C' by way of NOVA's inventory transfer process for a particular Day.

ARTICLE 3.0 DELIVERY POINT

3.1 Delivery Point

Gas purchased and sold under this Contract shall be delivered by Seller to Buyer at Empress, Alberta, at the inlet flange at the interconnect between NOVA and TCPL or, if necessary to prevent curtailment or otherwise approved by and at no additional expense to Buyer, other pipelines delivering at Empress into TCPL.

For the purpose of determining extraction rights at the Cochrane and Empress Extraction Plants, the Parties will assume that Buyer will take delivery of the Gas downstream of both the Cochrane and Empress Extraction Plants.

3.2 Operational Information

Seller shall provide NOVA with the necessary operational information that NOVA requires to effect completion of the inventory transfer of a quantity of Gas equal to 100% of the DCQ at 0800 Mountain Time each Day during the Contract Term.

3.3 Substitute Delivery Point

If at any time during the Contract Term the ability of Seller to deliver or Buyer to receive Gas at the Delivery Point is terminated or materially altered to the disadvantage of one or both of the Parties through no fault of its own and cannot be replaced, the Parties shall attempt to agree on a substitute Delivery Point (a "Substitute Delivery Point") for the delivery of Gas to be sold by Seller to Buyer hereunder, and any adjustment ("Price Adjustment") to the manner in which the Gas Price is to be determined resulting from the change in Delivery Point to the Substitute Delivery Point necessary to preserve or maintain the economic benefits intended to flow to each of the Parties hereunder. In addition, if for any period Buyer desires to receive any or all Gas sold hereunder at a substitute Delivery Point, Buyer may receive such by way of NOVA's inventory transfer process or Gas at the inlet to AECO-C by giving notice to Seller or may receive such Gas at any other substitute Delivery Point with Seller's consent which shall not be unreasonably withheld. Buyer agrees that it shall not be unreasonable for Seller to withhold its consent if the change to such substitute Delivery Point will result in Seller incurring additional cost which is not reimbursed by Buyer.

ARTICLE 4.0 TRANSPORTATION ARRANGEMENTS

4.1 Buyer's Transportation Arrangements

Buyer acknowledges and agrees that it will undertake to obtain prior to November 1, 1998 firm transportation service from TCPL for the transportation of the DCQ from Empress to Niagara and to Chippewa. If Buyer is unable to obtain such transportation prior to the Effective Date, this Contract shall terminate on November 1, 2000. Once such transportation is obtained, Buyer shall maintain firm transportation on the TCPL throughout the Contract Term in an amount sufficient to receive 100% of the DCQ each Day at the Delivery Point. Buyer shall be solely responsible for all transportation charge payments of TCPL to receive and transport from the Delivery Point the quantities of Gas purchased and sold under this Contract.

4.2 Seller's Transportation Arrangements

Seller shall maintain firm capacity on Seller's Transporter (currently NOVA) throughout the Contract Term in an amount sufficient to deliver to Buyer 100% of the DCQ each Day at the Delivery Point. (Seller may use a pipeline transporter other than NOVA with Buyer's consent.) Seller shall be solely responsible for all transportation charge payments to Seller's Transporter (currently NOVA) for delivery of the quantities of Gas purchased and sold under this Contract to the Delivery Point. Notwithstanding the foregoing, if it becomes advantageous to Buyer for Buyer to hold such firm transportation on NOVA, Buyer may elect to do so, subject to any necessary consent of NOVA and provided that Seller does not incur any additional costs, by assuming Seller's transportation agreement on NOVA for firm transportation from the NOVA inventory transfer process delivery

point or AECO-C to Empress or by giving sufficient notice to Seller to protect Seller from holding equivalent unused firm transportation reserved on NOVA to serve Buyer.

ARTICLE 5.0 OBLIGATIONS AND PENALTIES ON NOVA OR TCPL

5.1 Notice of Supply Failure

If, at any time, Seller is unable to deliver or becomes aware of any circumstance or matter by which Seller anticipates that it will be unable to deliver the Daily Delivery Obligation, then Seller shall use reasonable efforts to provide Buyer with verbal and fax notice of that anticipated supply failure as soon as is reasonable under the circumstances. Seller shall also provide Buyer written communication within seven days of that verbal and fax notification detailing the reasons and circumstances for that supply failure.

5.2 Adjustments for Variable Deliveries/Receipts

If on any Day Seller delivers, or causes to be delivered, or Buyer takes or causes to be taken, for Buyer's account at the Delivery Point a quantity of Gas that is greater or less than what was nominated and scheduled ("Variable Deliveries/Receipts") for delivery and receipt at the Delivery Point, and those Variable Deliveries/Receipts cause, or potentially may cause, Buyer or Seller to incur a penalty, as levied by NOVA or TCPL in accordance with the provisions of its Gas transportation tariff, or loss of Gas then the Parties shall cooperate promptly to adjust their Gas nominations and/or deliveries under this Contract as necessary to bring deliveries and receipts into balance so that penalties or losses are avoided or minimized to the extent possible.

Adjustments to Gas nominations or deliveries pursuant to this Section shall not affect, reduce or vary Seller's Daily Delivery Obligations nor Buyer's Daily Contract Quantity purchase obligations under this Contract.

5.3 Responsibility for Imbalance Penalties

Seller shall be financially responsible for all penalties which are assessed by NOVA or TCPL in accordance with the provisions of its Gas transportation tariff against Buyer or Seller as a result of Seller's failure to perform any of its obligations under this Contract and/or Seller's Variable Deliveries/Receipts on any Day being above or below the quantity of Gas which Seller, in accordance with the nomination procedures in effect at the time, agreed to deliver to Buyer at the Delivery Point on that Day. Should those penalties result partially from Seller's failure to perform or its Variable Deliveries/Receipts and partially from other causes, Seller shall be responsible for only that part of the penalties resulting from Seller's failure to perform or its Variable Deliveries/Receipts.

Buyer shall be financially responsible for all penalties which are assessed by NOVA or TCPL in accordance with the provisions of its Gas transportation tariff against Buyer or Seller as a result of

Buyer's failure to perform any of its obligations under this Contract and/or Buyer's Variable Deliveries Receipts on any Day being above or below the quantity of Gas which Buyer, in accordance with the nomination procedures in effect at the time, nominated and agreed to accept at the Delivery Point on that Day. Should those penalties result partially from Buyer's failure to perform or its Variable Deliveries/Receipts and partially from other causes, Buyer shall be responsible for only that part of the penalties resulting from Buyer's failure to perform or its Variable Deliveries/Receipts.

As between the Parties, for purposes of assessing responsibility for and/or reimbursement of imbalance penalties under this Section 5.3 and Section 5.4 (**Reimbursement**), a Party whose Variable Deliveries/Receipts cause the incurrence of penalties shall not be relieved by its experiencing Force Majeure from responsibility for and/or reimbursement of the other Party for imbalance penalties until the Party whose Variable Deliveries/Receipts cause the penalties has given notice of the Force Majeure to the other Party (or until the other Party otherwise is notified of the Variable Deliveries/Receipts) and such other Party has had an opportunity to adjust its scheduled volumes in order to halt the imbalance.

5.4 Reimbursement

If any penalties are imposed on a Party (the "Penalized Party") by NOVA or TCPL in accordance with the provisions of Section 5.3 (**Responsibility for Imbalance Penalties**) or this Section 5.4 as a result of the other Party's Variable Deliveries/Receipts or the other Party's failure to perform any of its obligations under this Contract (the "Failing Party"), the Failing Party shall, on written notice by the Penalized Party, reimburse the Penalized Party the dollar amount of those penalties, or the Penalized Party's part of those penalties, within 14 days following receipt of that notice.

The Parties agree to provide and/or make available to each other for review any and all records and data to which they have access that support and document the claim for reimbursement of a penalty that is assessed by NOVA or TCPL. If there is a dispute involving Seller, Buyer and/or NOVA or TCPL concerning those penalties, the Parties shall resolve the dispute in accordance with Article 16.0 (**Dispute Resolution**), to the extent possible.

ARTICLE 6.0 GAS SPECIFICATIONS

6.1 General Specifications

The Heating Value, delivery pressure, temperature and other quality specifications of the Gas sold and purchased under this Contract shall conform to the minimum standards of the TCPL pipeline system, as set forth in TCPL's Gas transportation tariff, and shall otherwise be merchantable pipeline quality Gas.

6.2 Non-Conforming Gas

If the Gas tendered for delivery by Seller to Buyer during any Day of the Contract Term fails to conform to any of the specifications set forth in Section 6.1 (**Specifications**), Buyer may refuse to take that Gas until that Gas conforms with those specifications or may purchase that Gas and make changes necessary to bring that Gas into conformity with those specifications. If Buyer elects to take any off-specification Gas, Seller shall reimburse Buyer for any reasonable expenses incurred by Buyer in effecting any of those changes made by Buyer.

6.3 Purchase and Delivery Obligations

For purposes of determining Buyer's purchase obligations pursuant to Section 2.2(a) (**Buyer's Nominations**) and Seller's Daily Delivery Obligations pursuant to Section 2.3(a) (**Daily Delivery Obligation**), Gas that TCPL refuses to accept delivery of as a result of that Gas failing to meet the quality specifications or title warranty requirements of this Contract shall be considered Gas that Seller does not deliver.

ARTICLE 7.0 MEASUREMENT OF GAS

7.1 Units of Measurement

The unit of measurement for all purposes of this Contract, except where otherwise specified, shall be the GJ.

7.2 Reliance on Measurements by TCPL

The Parties acknowledge and agree that:

- (a) neither Party is responsible for, nor accepts any liability for, the physical measurement of the Gas purchased and sold under this Contract;
- (b) all measurements made by TCPL, as they may be adjusted by TCPL from time to time, shall be final and binding on the Parties and shall be utilized for all purposes of this Contract;
- (c) they shall rely on TCPL to provide statements for each Month showing the total quantity of Gas delivered for that Month; and
- (d) payments to Seller for Gas purchased under this Contract, payments to Seller or Buyer for liquidated damages for nonperformance under the provisions of Section 12.2 (**Seller's Liquidated Damages Statement**) and Section 12.3 (**Buyer's Liquidated Damages Statement**), and/or payments to Buyer or Seller for penalties assessed by TCPL for Variable Deliveries/Receipts or failures to perform obligations described in Section 5.2 (**Adjustments for Variable Deliveries/ Receipts**),

Section 5.3 (**Responsibility for Imbalance Penalties**) and Section 5.4 (**Reimbursement**), shall be made in accordance with TCPL's statements.

(e) Payments to Seller for penalties assessed by NOVA for Variable Deliveries/Receipts shall be made in accordance with NOVA's statement, provided that if NOVA's delivery statements cannot be reconciled with TCPL's statement of receipts after reasonable efforts by the Parties, TCPL's statement of receipts shall govern.

7.3 Errors in Statements

Notwithstanding Section 7.2 (**Reliance on Measurements by TCPL**), if a Party believes there is an error in TCPL's or NOVA's statement, including an error in the determination of any imbalance penalty or that Party's share thereof, that Party shall pay in full any disputed amount in TCPL's or NOVA's statement in accordance with the provisions of this Contract but subject to the reimbursement obligations in this Contract, and both Parties shall endeavor in good faith to resolve the dispute with TCPL or NOVA. Payment made in accordance with any disputed statement shall be reconciled by arbitration as set forth in Article 16.0 (**Dispute Resolution**) to the extent possible.

7.4 Delivery in a Common Stream

The Parties each recognize that the Gas purchased by Buyer under this Contract shall be from a commingled stream of Gas and shall be received for Buyer's account at the Delivery Point.

ARTICLE 8.0 POSSESSION, TITLE AND WARRANTIES

8.1 Transfer of Title and Possession

Title to, possession of and risk of loss respecting Gas sold, purchased and delivered under this Contract shall pass from Seller to Buyer, and shall vest in Buyer, at the Delivery Point upon completion of the inventory transfer for that Day. As between Seller and Buyer, until title to the Gas passes to Buyer, Seller shall be deemed to have exclusive control and possession of the Gas and shall be responsible for and shall indemnify Buyer with respect to all costs, losses, damages, injuries to persons or property, or liabilities arising from or out of Seller's title, possession, custody or control of that Gas. At Buyer's request, Seller agrees to defend on behalf of Buyer all suits, claims and actions arising from or out of any adverse claims by any or all persons to that Gas which relate to matters occurring prior to possession and title to that Gas passing to Buyer.

Subject to the indemnification provided by Seller in Section 8.3 (**Title Indemnity**), as between Seller and Buyer, after title to the Gas passes to Buyer, Buyer shall be deemed to have exclusive control and possession of the Gas and shall be responsible for and shall indemnify Seller with respect to all costs, losses, damages, injuries to persons or property, or liabilities arising from or out of Buyer's title, possession, custody or control of that Gas. At Seller's request, Buyer agrees to defend on behalf

of Seller all suits, claims and actions arising from or out of any adverse claims by any or all persons to that Gas which relate to matters occurring after possession and title to that Gas passes to Buyer.

8.2 Seller's Warranties

Seller hereby covenants, warrants and represents to Buyer that:

(a) Seller shall have good right or title to all Gas that permits Seller to sell all Gas delivered to Buyer at the Delivery Point;

(b) that Gas shall be free and clear of all liens, defects in title and any adverse claims whatsoever; and

(c) Seller has full right and absolute authority to enter into this Contract and to sell the Gas delivered or tendered for delivery under this Contract.

8.3 Title Indemnity

Seller shall defend, indemnify and hold Buyer harmless from and in respect of all suits, actions, causes of action, debts, accounts, damages, costs (including legal costs on a solicitor and his own client basis), losses and expenses of every nature and kind whatsoever arising from or in connection with any liens, defects in title or adverse claims of any or all persons to the Gas sold and delivered to Buyer under this Contract or the royalties, taxes, licence fees or other charges on that Gas that arise or are levied prior to delivery at the Delivery Point. If any claim based on a lien, or defect in title, or other adverse claim is prosecuted against Buyer in respect of any of that Gas, Buyer may withhold from any amount otherwise payable by Buyer to Seller hereunder as security for the performance of Seller's obligations under this Contract, up to the amount of that claim plus Buyer's legal expenses, without interest, until that claim has been finally resolved, unless Seller shall have furnished a surety bond or other form of security satisfactory to Buyer in connection with that claim.

ARTICLE 9.0 PAYMENTS OF TAXES AND OTHER CHARGES

9.1 Seller's Payment Obligations

Seller shall at all times bear and pay:

(a) all rentals, royalties and other payments due to all mineral and royalty owners and all amounts due under all documents as may appear of record or otherwise to be binding on Seller, regarding the Gas sold and delivered to Buyer under this Contract and shall pay all other persons having any interests in the Gas sold to Buyer under this Contract which arise prior to the Delivery Point;

(b) all fees, costs and other charges incurred for any gathering or production area charges, treatment, processing or transportation charges (including compressor fuel or liquid shrinkage charges or quantities of Gas furnished) to transport Gas from the wellhead or gathering facilities to the Delivery Point; and

(c) all production, business, transfer, severance, sales, value-added, excise, GST, gross receipts and/or any other taxes and other assessments and levies imposed on Seller regarding the extraction, production or severing of Gas from the ground or attributable to the Gas delivered to Buyer under this Contract which arise or are applicable prior to or on a concurrent basis with delivery of that Gas to Buyer at the Delivery Point.

9.2 Buyer's Payment Obligations

Buyer shall pay or cause to be paid all taxes, levies and assessments imposed on Buyer with respect to Gas delivered under this Contract after its receipt by Buyer at the Delivery Point.

9.3 Taxes on Facilities

Neither Party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other Party used for the purpose of carrying out the provisions of this Contract.

ARTICLE 10.0 TERM OF CONTRACT

10.1 Term

This Contract shall be in full force and effect and continue, except as otherwise provided for herein, as and from the Effective Date until final settlement between the Parties of the amounts owing under this Contract.

Deliveries and purchases of Gas under this Contract shall only be required during the Contract Term.

ARTICLE 11.0 GAS PRICE

11.1 Payment for Gas Deliveries

Buyer shall pay Seller the Gas Price as determined in accordance with this Article 11.0 for all quantities of Gas nominated by Buyer and delivered by Seller to Buyer at the Delivery Point each Month.

11.2 Gas Price

The price (the "Gas Price") for Gas purchased by Buyer from Seller under this Contract shall be calculated Monthly and expressed in Canadian dollars for Gas at the Delivery Point. The Gas Price for each Month shall be determined in accordance with the following formula:

$$\text{Gas Price} = \text{Commodity Charge plus Variable Transportation Charge plus Demand Transportation Charge}$$

Where:

"Commodity Charge" is equal to:

(a) the sum of:

- (i) NIT Monthly Price for such Month; plus
- (ii) Cdn.\$0.05;

multiplied by

(b) the number of GJs of Gas received by Buyer or for Buyer's account as set forth in confirming statements received from TCPL for such Month.

"Variable Transportation Charge" is equal to the variable transportation costs, which equal the as-billed commodity, fuel and other variable costs, associated with transporting the volumes under this Contract on NOVA (export delivery service to Empress currently under NOVA Rate Schedule T-4) for such Month, converted into or expressed in Cdn.\$/GJ.

"Demand Transportation Charge" is equal to the as-billed demand charges on NOVA (export delivery service to Empress currently under NOVA Rate Schedule T-4), on the applicable capacity reserved on Seller's behalf on NOVA required to deliver the DCQ under this Contract for such Month, converted into or expressed in Cdn.\$/GJ.

Buyer acknowledges that the Transportation Demand Charge is to be paid on the full contract volume, regardless of the volume of gas nominated for by Buyer, with an adjustment only for failure of delivery by Seller as provided in Section 2.3(b) (**Failure to Deliver**).

11.3 Substitute NIT Monthly Price

If at any time during the Contract Term (i) the NIT Monthly Price is not available for the relevant Month or is no longer published in the manner described in the definition for NIT Monthly Price in

Section 1.1 (**Definitions**) or (ii) NOVA fundamentally alters its tolling structure in a manner that has the effect of disassociating the market price payable by way of the inventory transfer process from the price payable at AECO-C, a Party learning of such unavailability or disassociation shall provide notice (a "Substitute Monthly Price Notice") thereof to the other Party, in which event the Parties shall attempt to agree on a replacement market price index (the "Substitute Monthly Price") or a replacement Variable Transportation Charge or Demand Transportation Charge ("**Replacement Transportation Charge**") for purposes of determination of the amount payable by Buyer or Seller pursuant to Section 11.2 (**Gas Price**) for that Month or in respect of the balance of the Contract Term, as applicable.

If the Parties are unable to reach agreement on a Substitute Monthly Price or Replacement Transportation Charge within 15 Business Days following the delivery of the Substitute Monthly Price Notice; either Party shall be entitled to submit the matter for determination by final offer arbitration in accordance with Article 16.0 (**Dispute Resolution**).

If the determination of the Substitute Monthly Price or Replacement Transportation Charge is submitted to arbitration, the arbitrator/panel shall be required to select either the final offer of Seller or the final offer of Buyer which, in the opinion of the arbitrator/panel, most nearly restores the Parties to the economic positions they occupied under this Contract prior to the change leading to the Substitute Monthly Price Notice.

11.4 Goods and Services Tax

The Gas Price does not include any amounts payable by Buyer for GST.

Any GST which is required to be collected from Buyer shall be shown separately as an extra item on all invoices and statements issued by Buyer. Seller shall be duly registered under the provisions of the governing GST legislation throughout any period during which GST is applicable to a "taxable supply" (as defined in the governing GST legislation) which is supplied to Buyer by Seller. Seller agrees to provide to Buyer at the time at which any GST is charged, such documents and particulars relating to the "taxable supply" as may be required by Buyer to substantiate a claim for an input or other tax credit under the provisions of the governing GST legislation in respect of the GST charged.

ARTICLE 12.0 BILLINGS AND PAYMENTS

12.1 Monthly Statements

On or before the 15th day of each Month after deliveries of Gas have commenced under this Contract and subject to Buyer receiving a confirming statement from TCPL, Seller shall send a statement to Buyer by facsimile transmission stating the total quantity of Gas delivered during the immediately preceding Month and the amount due therefore (as determined in accordance with Section 11.2 (**Gas**

Price)). Buyer shall pay Seller the amount owed by the 25th day of the Month following the Month in respect of which the statement has been issued, which payment shall be payable by way of the industry standard wire transfer or in such other manner as the Parties may agree from time to time. Unless Buyer elects otherwise, Buyer's payment shall be made in Canadian currency. If a confirming statement from TCPL as to the actual total quantity of Gas delivered and received under this Contract in any Month is not available by the 15th day of the following Month, then payment by Buyer to Seller shall be based on Seller's good faith estimate of deliveries under this Contract. The estimated quantities will be corrected to reflect actual total quantities on the statement for the Month in which confirmation of those actual total quantities is received from TCPL. Buyer and Seller agree that the said corrected, actual total quantities shall agree and conform with the quantities reported by TCPL.

12.2 Seller's Liquidated Damages Statement

Each Month, Seller shall (if applicable) provide Buyer with a statement detailing any liquidated damages due to Seller from Buyer pursuant to Section 2.2(b) (**Failure to Purchase**) for any Days in the previous Month.

Buyer shall pay Seller, subject to Buyer's reasonable concurrence with the accuracy of Seller's statement, the amount of those liquidated damages within 15 days after Buyer's receipt of that statement.

12.3 Buyer's Liquidated Damages Statement

Each Month Buyer shall (if applicable) provide Seller a statement detailing any liquidated damages due to Buyer from Seller pursuant to Section 2.3(b) (**Failure to Deliver**) for any Days in the previous Month.

Seller shall pay Buyer, subject to Seller's reasonable concurrence with the accuracy of Buyer's statement, the amount of those liquidated damages within 15 days after Seller's receipt of that statement.

12.4 Set-Off Rights

Buyer or Seller, as applicable, may set-off against payments due by it under this Contract:

- (a) the amount of any liquidated damages due to Seller pursuant to Section 2.2(b) (**Failure to Purchase**);
- (b) the amount of any liquidated damages due to Buyer pursuant to Section 2.3(b) (**Failure to Deliver**);
- (c) amounts owed to it as a Penalized Party pursuant to Section 5.4 (**Reimbursement**);

- (d) amounts regarding adverse claims as provided in Section 8.3 (**Title Indemnity**); and
- (e) the amount of any Termination Payment due to it pursuant to Section 15.3 (**Termination Payment**).

12.5 Non-Payment

The following provisions shall apply to the non-payment of amounts due and payable pursuant to this Contract:

(a) Interest on Past Due Amounts

If either Party fails to pay all of the amount due to the other Party on any statement provided under this Contract when that amount becomes due, then commencing on the date that payment becomes due, interest shall accrue on the unpaid portion of the amount due until that payment is made at the rate per annum equal to the Prime Rate plus one percentage point unless a lower rate is mandated by any governmental authority having jurisdiction, in which case that different rate shall be used. Interest at the applicable rate shall be compounded monthly until paid. That interest shall be paid when demanded and shall be payable both before and after demand, default and judgment.

(b) Where Interest is Not Payable

Notwithstanding the foregoing interest shall not be payable if the failure to make a payment or adjustment to a previous billing statement is the result of an adjustment by TCPL to its statements or reports (other than due to the fault of the Party owing money or its agent) or is the result of the action of any governmental authority having jurisdiction unless the payment of interest is so mandated by that governmental authority.

(c) Suspension of Deliveries or Termination

If any failure by Buyer to pay Seller pursuant to Section 12.1 (**Monthly Statements**) continues for a period of 30 days after payment is due, other than due to a good faith billing dispute and subject to Section 8.3 (**Title Indemnity**) and Section 12.4 (**Set-Off Rights**), Seller may, upon 3 Business Days notice to Buyer, in addition to any other remedies that Seller may have under the terms of this Contract or otherwise, Seller may at its sole option either, suspend delivery of Gas sold and purchased under this Contract until Buyer pays the amount that is due for deliveries previously made and interest thereon or terminate this Contract in accordance with the provision of Article 15 (**Termination Rights**).

During any period of suspension Seller shall be relieved of all obligations to deliver Gas to Buyer under this Contract and Buyer shall be subject to the provisions of Section 2.2 (Failure to Purchase).

12.6 Errors in Statements

(a) Adjustments for Errors

In the event an error is discovered in the amount shown due in any statement rendered under this Contract, an appropriate correction shall be made. Claims for errors by either Party shall be made promptly by the other Party. Any refund and/or adjustment resulting from the orders, rules or regulations issued by any governmental authority having jurisdiction regarding the purchase and sale of Gas under this Contract shall also be made promptly after notice of the required refund and/or adjustment is provided.

(b) Repayment of Overcharges

If either Party overcharges the other Party in relation to this Contract and that other Party pays the statement containing the overcharge, the Party that has overcharged shall refund to that other Party the amount of the overcharge within 30 days after the final determination of that overcharge. The Party that has overcharged shall pay interest on the amount of the overcharge in accordance with the provisions of Section 12.5(a) (**Interest on Past Due Amounts**). That interest shall be calculated from the date that the other Party paid the overcharge to the date that the other Party is reimbursed for that overcharge.

(c) Underpayment

If Seller under calculates the payment for Gas purchased under the provisions of this Contract, Buyer shall pay to Seller the amount of the underpayment within 30 days after the final determination of the underpayment. Buyer shall not be liable for any interest charges on the amount of the underpayment unless that underpayment resulted from Buyer's error in information which Buyer is obligated to provide hereunder. If Buyer becomes liable for interest charges, interest shall be calculated and payable on the amount of the underpayment in accordance with the provisions of Section 12.5(a) (**Interest on Past Due Amounts**), from the date that the underpaid amounts would have otherwise been payable if Buyer's error had not been made to the date that Buyer pays that underpayment.

12.7 Currency of Payment

Unless otherwise expressly herein provided to the contrary, all charges and amounts under this Contract shall be expressed and paid in Canadian dollars.

12.8 Examination of Records

The following provisions shall apply regarding retention and examination of records and resolution of disputes:

(a) Examination Rights

Subject to the provisions of Section 20.3 (**Confidential Information**), each Party, including that Party's duly authorized agents and consultants, shall have the right, at all reasonable times, to examine or audit the relevant books, records and accounts of the other Party in connection with Gas purchased and sold under this Contract to the extent reasonably necessary to verify the accuracy of any receipt, delivery, statement, charge, computation, payment or demand made under this Contract including Seller's computation of the Gas Price.

(b) Duration of Examination Rights

Each Party shall make available to the other Party its relevant books, records and accounts, or true and complete copies thereof, for 36 months after the Month in respect of which the statement in question is provided.

(c) Limitation Period

Notwithstanding any other provision of this Contract to the contrary, neither Party shall be entitled to dispute errors or discrepancies in statements provided pursuant to this Contract relating to the quantity of Gas delivered under this Contract, or the amount paid or payable with respect to that Gas or otherwise payable hereunder, unless that Party notifies the other Party regarding that dispute within 36 months after the Month in respect of which the statement in question is provided.

12.9 Payments on Non-Business Days

Whenever the day for any payment under this Contract falls on a day (the "Relevant Date") that is not a Business Day, then the day for payment shall be the first preceding day that is a Business Day if the Relevant Date falls on a day other than a Sunday or a Monday and shall be the first following day that is a Business Day if the Relevant Date falls on a Sunday or a Monday.

12.10 Financial Responsibility

Should the credit worthiness or financial responsibility of either Party become unsatisfactory to the other Party (acting reasonably) at any time during which this Contract is in effect as a result of adverse changes in creditworthiness after the execution of this Agreement, satisfactory security may be required before further deliveries or purchases under this Contract are made. Satisfactory security shall mean sufficient security in the form and for the term specified by the Party demanding assurances (acting reasonably), including, but not limited to, a standby irrevocable letter of credit,

a prepayment, a security interest in and assets acceptable to the demanding Party or a performance bond or guarantee by a creditworthy entity.

The Parties agree that an adverse change shall be deemed to have not occurred so long as any senior unsecured long-term indebtedness of a Party shall be rated equal to or greater than BBB- by Standard & Poors Rating Group, a division of McGraw Hill, Inc. and its successors, or equal to or greater than Baa3 by Moody's Investors Services, Inc. or its successors, or the equivalent of such categories used by any other nationally recognized securities rating agency which makes ratings of securities publicly available, or a Party can demonstrate on a reasonable basis that its financial well-being and capacity is otherwise equivalent to such ratings. Notwithstanding the foregoing, in the event that either Party shall:

- (a) make an assignment or any general arrangement for the benefit of creditors;
- (b) default in the payment or performance of any obligation to the other Party under this Contract;
- (c) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or have such petition files or proceeding commenced against it;
- (d) otherwise become bankrupt or insolvent;
- (e) be unable to pay its debts as they fall due; or
- (f) failed to give adequate security for or assurance of its ability to perform its further obligations under this Contract within 5 business days of a reasonable request by the other Party,

then the other Party shall have the right to withhold or suspend receipts or deliveries or terminate the Contract without prior notice, in addition to setting off amounts owed and any and all other remedies available hereunder or pursuant to law.

ARTICLE 13.0 GAS SUPPLY

13.1 Source of Supply

Seller may supply Gas to Buyer from any source.

ARTICLE 14.0 FORCE MAJEURE

14.1 Suspension of Obligations

Except with regard to Buyer's or Seller's obligations to make payments due under this Contract (including, without limitation, any payments under Sections 5.3 (**Responsibility for Imbalance Penalties**), or 5.4 (**Reimbursement**), and subject to Section 14.3 (**Limitation on Right to Claim Force Majeure**)), if either Party fails, in whole or in part, to observe or perform any of the covenants or obligations herein imposed upon it and such failure shall have been occasioned by, or in connection with, or in consequence of an event of Force Majeure, such covenants or obligations shall be suspended from the time the Party claiming Force Majeure gives notice of the Force Majeure to the other Party and for so long as such event of Force Majeure continues, and, during such period, the Party affected shall not be liable to the other Party in damages or otherwise by reason thereof. That event of Force Majeure shall, as far as possible, be remedied with all reasonable dispatch. The failure to perform all or the applicable part of those covenants and obligations due to an event of Force Majeure, which failure continues despite all reasonable efforts to restore performance, shall not be deemed a breach of those covenants and obligations or the applicable part of those covenants and obligations by that Party. Notice of the Force Majeure shall be given orally and promptly followed by written notice. Such notice shall describe the basis for the claim of Force Majeure in full particulars and shall set forth the expected duration of the Force Majeure.

14.2 Force Majeure

"Force Majeure" as used in this Contract means: acts of God, including landslides, lightning, earthquakes, fires, storms, floods and washouts; strikes, lockouts or other industrial disturbances; nonperformance, interruption, curtailment, stoppage or pro-rationing of firm transportation service by one or more of Buyer's Transporters whether or not any such transporter is claiming an event of force majeure under the applicable transportation agreements; government, regulatory, administrative, or judicial actions; restraints, decisions, rules, laws, regulations or orders; civil disturbances, acts of public enemies, sabotage, wars, blockades, riots, insurrections, epidemics, arrests or restraints of rulers and people; and any other causes or occurrences, whether of the kind herein enumerated or otherwise, not within the reasonable control of the Party claiming Force Majeure, and which, by the exercise of due diligence, could not have been prevented or overcome by that Party.

Notwithstanding the above, however, the term "Force Majeure" shall not include:

- (a) any preferential right by third parties to purchase or call back Gas;
- (b) any increases or decreases in the cost or resale price of Gas caused by the market, other than price controls imposed by a governmental or regulatory authority;

- (c) any increases or decreases in the cost of processing or transporting Gas;
- (d) any non-performance or interruption of interruptible transportation service as defined in the third party transporter Gas tariff or service agreement;
- (e) any events caused by lack of finances of the Party claiming the occurrence of an event of Force Majeure or that was related to the payment of any amount or amounts due under this Contract;
- (f) any failure of Seller's Gas delivered to NOVA to meet the Gas quality specifications provided in this Contract;
- (g) Seller's delivery shortfalls due to insufficient reserves or deliverability to or into NOVA;
- (h) Seller's failure in maintaining or neglecting to maintain sufficient well, gathering or processing systems, or other such gas production facilities to a standard and capacity ensuring that Seller can meet its obligations hereunder; or
- (i) any non-performance, interruption, curtailment, stoppage or pro-rationing of Seller's firm NOVA receipt capacity service, whether or not NOVA is claiming force majeure, which has the effect of reducing Seller's available firm NOVA receipt capacity service by less than 15%.

14.3 Limitation on Right to Claim Force Majeure

Neither Party shall be entitled to the benefit of the provisions of Section 14.1 (**Suspension of Obligations**) under any of the following circumstances:

- (a) to the extent that the failure was caused by the negligence or contributory negligence of the Party claiming suspension;
- (b) to the extent that the failure was caused by the Party claiming suspension having failed to diligently attempt to remedy the condition and remove the cause or circumstances of Force Majeure in an adequate manner, or having failed to resume with all reasonable dispatch the performance of such covenants or obligations when the event of Force Majeure is over; and/or
- (c) unless, as soon as reasonably possible after the happening of the Force Majeure relied on to suspend a Party's covenants or obligations, or as soon as reasonably possible after determining that the occurrence was in the nature of Force Majeure and would affect the claiming Party's ability to observe or perform any of its covenants or obligations under this Contract, the Party claiming suspension shall have given to the other Party notice to the effect that by reason of Force Majeure (the nature whereof shall be therein specified) the claiming Party is unable to perform the particular covenants or obligations.

14.4 Resumption of Performance

The Party claiming suspension of its obligations under this Contract pursuant to Section 14.1 (**Suspension of Obligations**) shall give notice to the other Party, as soon as possible after the event of Force Majeure shall have been remedied, to the effect that the event of Force Majeure has been remedied and that such Party has resumed, or is then in a position to resume, the performance of the suspended covenants or obligations.

14.5 Strikes, Lockouts, Etc.

Notwithstanding anything to the contrary in this Article 14.0 (**Force Majeure**), either expressed or implied, the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the Party involved therein. That Party may make settlement of any strike, lockout or other industrial disturbance at the time and on such terms and conditions as that Party deems to be advisable. No delay in making that settlement shall deprive that Party of the benefit of Section 14.1 (**Suspension of Obligations**).

14.6 No Extension of Contract Term

No claim of Force Majeure by either Buyer or Seller shall extend the Contract Term.

ARTICLE 15.0 TERMINATION RIGHTS

15.1 Termination Rights

This Contract may be terminated in the following circumstances:

- (a) Seller shall have the right to terminate this Contract if Buyer fails to purchase 100% of the Daily Contract Quantity for 30 consecutive or non-consecutive Days in any consecutive twelve month period if those failures to purchase are not excused by any other provision in this Contract;
- (b) Buyer shall have the right to terminate this Contract if Seller fails to deliver its Daily Delivery Obligation for 30 consecutive or non-consecutive Days in any consecutive twelve month period if those failures to deliver are not excused by any other provision in this Contract;
- (c) the other Party shall have the right to terminate this Contract if a Party:
 - (i) becomes bankrupt or insolvent;
 - (ii) commits or suffers any act of bankruptcy or insolvency or is the subject of any petition for bankruptcy which is not dismissed within ten (10) Business Days;

(iii) or its property becomes subject to a receivership pursuant to a statute or otherwise; or

(iv) seeks protection from the demands of its creditors pursuant to any legislation enacted for that purpose;

(d) if less than 10% of the DCQ flows for 60 consecutive or nonconsecutive Days or more during any twelve month period due to an event of Force Majeure, the Party whose ability to perform is not affected by the event of Force Majeure shall have the right to terminate this Contract; or

(e) if any government or governmental or regulatory agency or authority having jurisdiction takes any action which establishes the price that Gas is to be sold at under this Contract, either Party, if adversely affected, shall have the right to terminate this Contract within 90 days of the effective date of such action.

(f) Seller exercises its option to terminate pursuant to Section 12.5(c) (**Suspension of Deliveries or Termination**).

15.2 Notice of Termination

A Party that is entitled to terminate this Contract pursuant to this Article 15.0 (**Termination Rights**) shall provide written notice (the "Termination Notice") of its election to terminate to the other Party.

This Contract shall automatically terminate 10 days after the date of that notice (the "Termination Date").

15.3 Termination Payment

(a) Payment of Termination Payment

In the event a Party terminates this Contract pursuant to Section 15.1(a), Section 15.1(b) or Section 15.1(c), that Party (the "Terminating Party") shall be paid by the other Party (the "Other Party") an amount (the "Termination Payment") determined in accordance with this Section 15.3.

On or as soon as practicable following the delivery of the Termination Notice the Terminating Party shall calculate the amount of the Termination Payment in accordance with Section 15.2 (**Notice of Termination**) and will provide to the Other Party a statement (the "Termination Payment Statement") showing in reasonable detail such calculations (including all relevant quotations) and specifying any amount payable under this Section.

The Other Party shall pay to the Terminating Party an amount equal to the Termination Payment (if any) on or before two Business Days following the delivery of the Termination Payment Statement to the Other Party.

(b) Determination of Termination Payment

The Termination Payment shall be that amount determined on the basis of quotations from three Reference Market-makers (as described in Section 15.3(c) (**Reference Market-makers**)). Each quotation will be for the positive amount, if any, that the Terminating Party would have to pay to the quoting Reference Market-maker in consideration of an agreement between the Terminating Party and the quoting Reference Market-maker to enter into a replacement transaction (the "Replacement Transaction") that would have the effect of preserving for the Terminating Party the economic equivalent of its purchase or sale rights, as applicable, under this Contract that the Terminating Party would, but for the termination of this Contract, have enjoyed after the Termination Date. For this purpose, any amounts owing by either Party under this contract in respect of the period of time prior to the Termination Date are to be excluded. The Replacement Transaction would be subject to such documentation as the Terminating Party and the Reference Market-maker may, in good faith, agree. The Terminating Party will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of, or as soon as reasonably practicable after, the Termination Date. The day as of which those quotations are to be obtained will be selected in good faith by the Terminating Party. The Termination Payment shall be the Average of the quotations provided by the three Reference Market-makers.

If fewer than three quotations are provided, the Termination Payment shall equal the amount that the Terminating Party determines in good faith to be its total losses and costs, if any, in connection with this Contract, including any loss of bargain, cost of securing replacement markets or supplies (as applicable) or, at the election of the Terminating Party, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position. The Terminating Party shall determine such amount as of the Termination Date or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable.

(c) Reference Market-Makers

For the purpose of Section 15.3(b) (**Determination of Termination Payment**), the Reference Market-makers shall be three leading dealers in the energy derivatives market selected by the Terminating Party in good faith (i) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (ii) to the extent practicable, from among such dealers having an office in the City of Calgary. A Reference Market-maker may not be affiliated with or under the control of either Party.

(d) **Liquidated Damages**

The Parties agree that if the Termination Payment is determined by reference to quotations received from three Reference Market-makers in accordance with the first paragraph of Section 15.3(b) (**Determination of Termination Payment**), the amount thereby determined as the Termination Payment is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Contract neither Party will be entitled to recover any additional damages as a consequence of such losses.

15.4 Final Adjustments

Termination of this Contract for any reason shall be subject to any adjustments and the settlement of all accounts then outstanding between the Parties.

15.5 Survival of Rights and Obligations

Notwithstanding termination of this Contract for any reason:

(a) the rights and obligations of Seller or Buyer which accrued or relate to the period prior to the effective date of termination; and

(b) the provisions of Article 12.0 (**Billings and Payments**), including the examination rights in Section 12.8 (**Examination of Records**), and the provisions of Article 16.0 (**Dispute Resolution**) and Section 20.3 (**Confidential Information**);

shall continue to survive until settlement of outstanding accounts has been completed.

15.6 Relief From Further Obligations

Subject to Section 15.5 (**Survival of Rights and Obligations**), if either Party terminates this Contract, then both Parties shall be relieved of purchase and delivery obligations under this Contract that would have arisen after the Termination Date.

15.7 Termination Payment Limitation

For greater certainty, no Termination Payment shall be owed by a Party if termination of this Contract occurs due to

(a) a Party's failure or inability to obtain a regulatory authorization for which it is responsible under Section 19.7 (**Failure to Satisfy Conditions**), or

- (b) Buyer's inability to obtain Transportation as provided in Section 4.1 (**Buyer's Transportation Arrangements**).

ARTICLE 16.0 DISPUTE RESOLUTION

16.1 Arbitrable Disputes

Any dispute or issue arising out of this Contract and in respect of which this Contract refers to as being determined by arbitration may be submitted to arbitration by either Party in accordance with the procedure described in Exhibit I.

16.2 Continuation of Operations

Whenever there is an arbitration proceeding under this Article 16.0 (**Dispute Resolution**), operations under this Contract shall continue in the same fashion as they were conducted before the arbitration proceeding was commenced, without prejudice to either Party, pending a decision in the arbitration proceeding.

ARTICLE 17.0 ASSIGNMENT

17.1 Assignment

Either Party may, without relieving itself of its obligations under this Contract, assign any of its rights and obligations under this Contract to an Affiliate. Otherwise, neither Party shall assign that Party's rights and interests under this Contract without first obtaining the written consent of the other Party. The other Party shall, however, not unreasonably withhold consent to that assignment. A good faith concern that the assignee lacks the financial and operational ability to perform the obligations under this Contract that will be assumed by that assignee is a reasonable basis for withholding consent.

The Parties agree that the provisions of this Section 17.1 (**Assignment**) shall not in any way prevent either Party from bona fide pledging or mortgaging that Party's rights under this Contract as security for that Party's indebtedness, provided that if any security is enforced by sale the provisions set out above in this Section 17.1 (**Assignment**) shall apply to that sale.

17.2 Binding on Successors and Assigns

This Contract shall be binding on and shall inure to the benefit of the respective successors and approved assigns of each of the Parties.

ARTICLE 18.0
LIMITATION OF LIABILITY

18.1 Limitation of Liability

(a) Seller's Failure to Deliver

Buyer's sole and exclusive remedies and Seller's only liability for any failure by Seller to deliver the quantity of Gas provided in Section 2.1 (**Sale of Gas**) shall be as set forth in Section 2.3(b) (**Failure to Deliver**), Section 5.3 (**Responsibility for Imbalance Penalties**), Section 5.4 (**Reimbursement**), Section 15.1(b) (**Termination Rights**) and Section 15.3 (**Termination Payment**).

(b) Buyer's Failure to Purchase

Seller's sole and exclusive remedies and Buyer's only liability for any failure by Buyer to purchase the quantity of Gas provided in Section 2.1 (**Sale of Gas**) shall be as set forth in Section 2.2(b) (**Failure to Purchase**), Section 5.3 (**Responsibility for Imbalance Penalties**), Section 5.4 (**Reimbursement**), Section 15.1(a) (**Termination Rights**) and Section 15.3 (**Termination Payment**).

18.2 No Consequential Damages

Subject to Section 18.1 (**Limitation of Liability**) but notwithstanding any other provision of this Contract, in no event shall either Party be liable to the other Party for loss of anticipated profits, claims of the other Party's customers, loss or damage as a result of business interruption, reduction or termination of contracts, or any other special or indirect, incidental, consequential, exemplary or punitive damages or claims whatsoever, whether of the kind described in this Section or otherwise, which losses or claims arise out of, result from, or in any way are attributable to a Party's performance of or failure to perform that Party's obligations under the terms of this Contract.

ARTICLE 19.0
GOVERNMENTAL RULES, REGULATIONS AND AUTHORIZATIONS

19.1 Applicable Laws

This Contract shall be subject to all valid applicable local, state, provincial and federal laws, orders, rules and regulations of any governmental body, agency or official having jurisdiction over the sale and purchase of Gas under this Contract.

19.2 Seller's Regulatory Authorizations

Seller shall, forthwith after execution of this Contract, make application for and thereafter diligently seek to obtain all necessary long-term certificates, permits, orders and authorizations from the

applicable Canadian Regulatory Authorities to enable the sale and removal of the DCQ under this Contract from the Province of Alberta and throughout the Contract Term. With consent of Buyer, Seller may produce the Gas from any other province provided that Seller shall have first obtained, in form and substance reasonably satisfactory to Buyer, any removal permit required therefore.

19.3 Buyer's Regulatory Authorizations

Buyer shall as soon as practicable and in any event sufficiently prior to the Effective Date apply for all necessary long-term certificates, permits, orders and authorizations from the applicable Canadian Regulatory Authorities to enable the sale and removal of the DCQ under this Contract from Canada and the purchase and import of that quantity of gas into the United States throughout the Contract Term, including a long-term authorization from the DOE.

19.4 Due Diligence

Each Party shall:

(a) act with all due diligence and use all commercially reasonable efforts in a timely fashion in applying for and obtaining the regulatory approvals described in Sections 19.2 (**Seller's Regulatory Authorizations**) and 19.3 (**Buyer's Regulatory Authorizations**) for which that Party is responsible;

(b) on request inform the other Party regarding progress in obtaining those regulatory approvals in a timely manner; and

(c) bear the costs of applying for and obtaining those regulatory approvals for which that Party is responsible.

19.5 Approval of Authorizations

On receipt by either Party of any of the certificates, permits, orders, licences or authorizations referred to in Sections 19.2 (**Seller's Regulatory Authorizations**) and 19.3 (**Buyer's Regulatory Authorizations**), on terms and conditions satisfactory to that Party, that Party shall promptly transmit to the other Party a copy of that certificate, permit, order, licence or authorization.

19.6 Notice of Non-Approval

If an application made by either Party for a certificates, permits, orders, licences or authorizations referred to in Sections 19.2 (**Seller's Regulatory Authorizations**) and 19.3 (**Buyer's Regulatory Authorizations**) is not approved as filed that Party shall promptly notify the other Party. In each case either Party shall be entitled to consider that the required regulatory approval has not been obtained.

19.7 Failure to Satisfy Conditions

Unless otherwise agreed, this Contract shall terminate on the Effective Date if either Party fails or is unable to obtain the regulatory approvals for which that Party is responsible by the Effective Date.

19.8 Maintenance

Seller and Buyer shall, except as otherwise provided herein, endeavor to maintain this Contract and all regulatory authorizations and approvals required by this Contract and shall not unilaterally petition to amend them.

19.9 Filing Requirements

Buyer and Seller agree, on request, to provide each other with any information necessary to comply with the reporting or filing requirements of any governmental authority having jurisdiction over this Contract or any removal, export, import, or transportation authorization needed to carry out the intent of this Agreement.

For greater certainty, Seller agrees to seek a permit for the removal of Gas from Alberta and any other permit needed to carry out this Contract and, on request, to provide Buyer with engineering, evidence as to sufficiency of reserves and deliverability and any other information that maybe necessary for Buyer to be able to (i) export that Gas from Canada, (ii) import the Gas into the U.S., or (iii) as otherwise necessary.

**ARTICLE 20.0
GENERAL PROVISIONS****20.1 Waivers**

Either Party in its sole discretion may waive a breach or default of a covenant or condition inserted in this Contract for the benefit or protection of that Party without thereby prejudicing that Party's right to rely on any other covenants or conditions inserted in this Contract for that Party's benefit or protection.

No waiver by Buyer or Seller of any breach or default shall operate as a waiver of a future default by that Party, whether of a like or different character.

No waiver by a Party shall be effective unless it is contained in a written instrument signed by authorized officers or representatives of that Party. That written waiver shall affect only the matter specifically identified in the instrument granting the waiver and shall not extend to any other matter.

The failure of a Party to give notice to the other Party or to take any other steps in exercising any right in respect of the breach or default of a covenant or condition of this Contract, shall not operate as a waiver of that right, breach or default.

20.2 Cumulative Remedies

Subject to Article 18.0 (**Limitation of Liability**), the provisions of this Contract, and the rights and remedies of a Party under this Contract, are cumulative and are without prejudice and in addition to any rights or remedies a Party may have at law or equity. No exercise by a Party of any right or remedy under this Contract, or at law or equity, shall operate so as to hinder or prevent the exercise by that Party of any other right or remedy except to the extent, if any, provided expressly in this Contract, or by law or equity.

20.3 Confidential Information

Each Party agrees that it will maintain this Contract and all Confidential Information regarding this Contract in strict confidence.

Confidential Information provided by one Party to the other Party shall be used by that other Party solely for the purposes specified in this Contract and shall not be disclosed to any third party except if necessary to carry out the provisions of this Contract or unless the Party that provided the Confidential Information has given its express written consent to that disclosure.

Notwithstanding the foregoing:

(a) either Party may, without consultation with or prior notice to the other Party, at any time and from time to time disclose the Confidential Information to any court, government, governmental agency, regulatory body or quasi judicial agency if and to the extent such disclosure may be required by applicable rules, regulations, procedures, requirements or practices or an order in that regard; provided that if either Party becomes aware of a judicial or administrative proceeding (other than export or import application proceedings as to which each Party is already on notice) that has resulted or that may result in a requirement to disclose any Confidential Information, it shall so notify the other Party immediately;

(b) Buyer shall be entitled to use the Gas Price payable under this Contract in any of its negotiations or arbitration's provided that Seller's name is kept confidential; and

(c) Seller shall be entitled to use the Gas Price payable under this Contract in any of its negotiations or arbitration's provided that Buyer's name is kept confidential.

Notwithstanding anything in this Contract, neither Party is required to disclose to the other Party any data, documents or information that the Party in its sole, good faith discretion deems to be subject to a confidentiality agreement or understanding or to be proprietary.

20.4 Notice

Every notice, request, demand, statement or other document provided for in this Contract shall be in writing and shall be directed to the Party to whom it is given at the following addresses:

SELLER

Husky Oil Operations Ltd.
707 - 8th Avenue S.W.
Calgary, Alberta
T2P 3G7

Attention: Manager - Natural Gas
Marketing
Fax Number: (403) 298-7425

BUYER

United States Gypsum Company
125 S. Franklin Street
Chicago, Illinois 60680-4124

Attention: Rob Cooper,
Ky Kennedy
Fax Number: 312-606-4532

Either Party may change its address from time to time by giving written notice of that change to the other Party.

20.5 Deemed Receipt

Any notice, request, demand, statement or other document required to be given under this Contract:

(a) may be given by overnight delivery service, by mail, by hand delivery or by facsimile transmission if the original of that facsimile transmission is also mailed within 24 hours after that facsimile transmission is sent, provided that operational notices requiring a response before the close of the next Business Day (e.g., notices of curtailment) shall also promptly be given verbally by telephone or by other means mutually acceptable to the Parties;

(b) if given by mail shall be sent by prepaid registered mail in the Canadian or U.S. mail and if given in that manner shall be deemed to have been effectively delivered to the addressee when actually received on a Business Day following the deposit thereof in the Canadian or U.S. mail, postage prepaid, and directed to the address of the Party as described in Section 20.4 (Notice); and

(c) if delivered by overnight courier or hand or sent by facsimile transmission shall be deemed to have been received by the addressee as soon as that delivery or facsimile transmission has been made provided that regarding facsimile transmissions, confirmation of transmission is received and the original copy is mailed as provided in Section 20.5(a). If that day is not a Business Day that delivery or facsimile transmission shall be deemed to have been received on the next Business Day.

Notwithstanding the foregoing at any time when a strike affects the Canadian or U.S. mail, all deliveries shall be made by hand or facsimile transmission.

20.6 Governing Law

The provisions of this Contract shall be interpreted in accordance with the laws of the Province of Alberta.

20.7 Severance

The Parties intend to comply fully with all laws and this Contract shall be construed consistently with all laws.

If any one or more terms or provisions of this Contract are found to be void or unenforceable for any reason, those terms and provisions shall be deleted from this Contract at that time and this Contract shall continue in full force and effect as if those terms and provisions were never a part of this Contract.

20.8 Entire Contract and Prior Letters

This Contract constitutes the entire agreement of the Parties regarding the matters provided or contemplated in this Contract. Except as specifically set forth in this Contract, the Parties have made or contemplated no other written or oral representations, warranties, obligations, assurances, conditions precedent, conditions subsequent, covenants or agreements.

This Contract supersedes all prior or contemporaneous discussions, negotiations, representations or agreements relating to the subject matter of this Contract including, without limitation, the letters both dated September 24, 1996 (the "Letters") between Seller and Buyer which Letters shall be hereby superseded in their entirety effective as of the Effective Date. For greater certainty and without limiting the foregoing, all Gas delivered by Seller to Buyer prior to the date of execution of this Contract, and all payments made by either Buyer or Seller to the other Party prior to the date of execution of this Contract, pursuant to the provisions of the Letters shall be deemed for all purposes to have been delivered or made under or pursuant to the provisions of this Contract.

20.9 Modification to Contract

Any modification of this Contract shall be in writing and shall be executed by both Seller and Buyer.

20.10 Further Assurances

Each Party shall from time to time and at all times after the date of this Contract on reasonable written request to do so, do, execute and deliver, or cause to be done, executed and delivered all further acts, deeds, assurances and things as may be reasonably required for more effectual implementing and carrying out the terms of this Contract.

20.11 Counterpart

This Contract may be executed in counterpart and if executed in that manner shall have the same effect as if the Parties had executed the same document. Each Party executing a counterpart of this Contract shall deliver one executed copy of that counterpart to the other Party.

IN WITNESS WHEREOF, the Parties have executed this Contract as attested by the hands of their proper officers duly authorized as of January 1, 1997.

HUSKY OIL OPERATIONS LTD.

By: [Signature]
JOHN C. S. LAU
Chairman of the Board

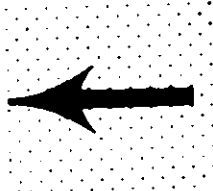
Witness: [Signature]

D.L. STOUT
Vice President

UNITED STATES GYPSUM COMPANY

By: [Signature]

Witness: [Signature]



SIGN
HERE

EXHIBIT I ARBITRATION PROCEDURES

Procedures applicable to arbitration's under this Contract include the following:

1. Commencement of Proceedings

Either Party (the "Initiating Party") may commence an arbitration proceeding by serving notice on the other Party (the "Receiving Party"), which notice shall contain the name of one arbitrator who would either function as a single arbitrator if the Receiving Party consents, or as one of a panel of three arbitrators if the Receiving Party does not so consent, a statement of the matters in dispute, a request for relief and the grounds therefore. Within 10 Business Days after receipt of that notice, the Receiving Party shall serve notice on the Initiating Party, which notice shall contain either a consent to the Initiating Party's arbitrator as the sole arbitrator or the name of the Receiving Party's arbitrator, a statement answering the Initiating Party's statement of the matters in dispute and specifying other matters that may also be in dispute, if any, a counter request for relief, if applicable, and the grounds therefore.

2. Appointment of Arbitrators

If the Receiving Party fails either to consent to a single arbitrator or to name a second arbitrator, then the Initiating Party's arbitrator shall function as a single arbitrator. If both Parties appoint their own arbitrator, the two arbitrators so appointed shall name a third arbitrator as presiding arbitrator or, if they fail to do so within 10 days of the second arbitrator's appointment, the Parties shall promptly meet and shall attempt to agree on and to appoint that third arbitrator. If the Parties are unable to agree within a further 10 days on the choice of a third arbitrator, then on application by either Party, the third arbitrator shall be appointed by a justice of the Court of Queen's Bench of Alberta.

3. Experience

The arbitrator or presiding arbitrator of the panel appointed hereunder shall be:

- (a) generally knowledgeable in the areas of gas production, transportation, marketing and distribution;
- (b) qualified by education or experience to decide the particular matters in dispute;
- (c) an impartial party; and
- (d) not be an employee or agent of either Party or of any of their affiliates.

The other arbitrators will have similar qualifications as the presiding arbitrator but may not be wholly independent or may be partial to the Party that appoints that arbitrator.

Each arbitrator may be a citizen of any country, provided that no arbitrator can have a direct financial interest in the result of the arbitration.

4. Matters to Be Considered

The arbitrator or the panel, as the case may be, shall have no authority, power or right to render any decision which alters, changes, amends, modifies, adds to or subtracts from, any of the provisions of this Contract.

5: Location of Arbitration Hearings

Unless otherwise agreed to by the Parties, the place of any arbitration hearing shall be Calgary, Alberta. The exact location of any hearing shall be determined by the arbitrator or the panel (or a majority thereof).

6. Hearing

The arbitrator or the panel, as the case may be, shall promptly hear and determine the matters in dispute after giving the parties due notice of hearing and a reasonable opportunity to be heard.

7. Decision

The arbitrator or the panel (or a majority thereof), as the case may be, shall render a decision within 30 days after an appointment of the arbitrator or the third arbitrator on the panel, as the case may be, subject to any reasonable delay due to unforeseen circumstances. The decision of the arbitrator, or the decision of the panel (or a majority thereof), as the case may be, shall be made in writing and shall be final and binding on the Parties as to the matters submitted to arbitration. The Parties shall abide by and comply with the decision. There shall be no appeal from that decision and an order confirming the decision or judgment may be entered in any Court having jurisdiction. The Parties agree that the decision of the arbitrator or the panel (or a majority thereof), as the case may be, shall be the sole and exclusive remedy between them regarding the issue in dispute and that any costs or fees incidental to enforcing the decision shall, to the maximum extent permitted by law, be charged against the Party resisting that enforcement. The Parties shall execute, acknowledge and deliver all such documents or assurances as may be necessary to implement the decision. The written decision of the arbitrator or the panel (or a majority thereof), as the case may be, may be issued with or without a written opinion. Either Party may request a written opinion with regard to a decision and, if a request is made, a written opinion shall be issued expeditiously; provided that, implementation of and compliance with the decision shall not be delayed pending the issuance of a written opinion.

8. Costs

Subject to paragraph 15, each Party shall bear the expense of prosecuting its own case and each Party shall pay the compensation and expenses of its named arbitrator when a panel is selected. The compensation and expenses of a sole arbitrator or a third arbitrator and all administration costs of the arbitration shall be paid in equal parts by the Parties.

9. Failure to Participate

The failure of either Party to participate in any arbitration proceeding as scheduled by the arbitrator or the panel, as the case may be, shall not delay the proceeding. Notwithstanding a Party's failure to participate, the arbitrator or the panel, as the case may be, shall proceed to consider submissions, to take evidence, and to issue a decision as though that Party were a participant in the arbitration proceeding and the decision shall be final and binding on that non-participating Party in accordance with paragraph 7 above.

10. Provisional Remedies

The arbitrator or the panel (or a majority thereof), as the case may be, may grant such provisional remedies as it deems necessary and appropriate in its sole discretion.

11. Arbitration Procedures

Except as herein otherwise expressly provided, all arbitration proceedings conducted pursuant to this Exhibit I shall be conducted in accordance with the *Arbitration Act* (Alberta).

12. Conflicts

The presiding arbitrator shall, from the time of appointment and throughout the arbitration proceeding, immediately disclose to the Parties any circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality. The presiding arbitrator may be discharged by either Party by providing written notice to the presiding arbitrator and to the other Party within ten days of that disclosure.

13. Withdrawal

If an arbitrator is discharged or withdraws from office, within ten days a substitute shall be appointed by the Party who appointed the arbitrator being replaced, and hearings previously held may be repeated at the discretion of the presiding arbitrator. If the presiding arbitrator is discharged or withdraws from office, the other two arbitrators shall appoint a substitute within ten days, and any hearings previously held shall be repeated.

14. Process

(a) Statement of Case

Within five days after the arbitrator or the panel has been appointed, the Initiating Party shall provide a copy of its notice of arbitration to each arbitrator, including a written statement of the matters in dispute, request for relief and grounds therefore and the Receiving Party shall provide a copy of its statement answering the Initiating Party's statement.

(b) Schedule

The arbitrator or the panel (or a majority thereof) shall establish a schedule for discovery, presentation of evidence, and hearing. The panel shall hold a prearbitration meeting with the Parties to discuss hearing dates and the procedures to be followed in the arbitration.

(c) Evidence

The arbitrator or the panel (or a majority thereof) shall decide what forms of discovery are appropriate. The arbitrator or the panel shall not have the authority to retain or appoint experts to report to them.

(d) Arbitrable Matters

The arbitrator or the panel (or a majority thereof) may rule on its own jurisdiction. A Party's participation in the appointment of arbitrators does not preclude raising such a plea that a matter is not arbitrable, but the jurisdictional challenge must be raised prior to the submission of the Receiving Party's statement answering the Initiating Party's statement.

(e) Final Offers

In the event the arbitration is required to be conducted as final offer arbitration, on or before the date established by the arbitrator or the panel for the delivery thereof, each of the Parties shall provide the arbitrator or the panel with a proposal (a "Final Offer") with respect to the matter in dispute. The arbitrator or the panel shall provide each Party with a copy of the other Party's Final Offer once both Final Offers have been received. The arbitrator or the panel shall be instructed and required to consider the two Final Offers and shall only have the authority to select without modification the one Final Offer which the arbitrator or the panel (or a majority thereof) believes best satisfies the applicable criteria set forth in the Contract. Each Party shall submit all written material including argument, documentary proof, written statements of witnesses and any other material by the date to be specified by the arbitrator or the panel.

15. Remedies

The arbitrator or the panel cannot order any remedy except monetary damages, procedural orders and declaratory orders, except that the arbitrator or the panel may, notwithstanding anything in this Exhibit I, allocate the costs of arbitration between the Parties; for example, the entire costs of the proceeding, including legal fees, may be awarded to the prevailing Party. Unless otherwise specifically provided by the Contract, the arbitrator or the panel may not direct any reformation of the contract. For greater certainty, in the event the arbitration is required to be conducted as final offer arbitration, the arbitrator or the panel shall be required to accept (and render as its decision) the Final Offer of one of the Parties.

16. Confidentiality

The arbitrators shall provide the decision in confidence to both Parties and shall not disclose to any third party the contents of the decision nor any of the statements or evidence received in the arbitration unless ordered to do so by a court or agency of competent jurisdiction. The Parties shall not disclose the contents of the decision to any third party (excluding regulatory agencies having an interest in the Contract) except as permitted under the confidentiality provisions of this Contract.

17. Corrections

Within 30 days after receipt of the decision, a Party may request a modification of the decision due to any computational, clerical, or typographical errors. The arbitrator or the panel (or a majority thereof) shall act on that request within 15 days.

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

DOE/FE
MAY 5 A 8:01

UNITED STATES GYPSUM COMPANY)

FE DOCKET NO. 97-35-NG

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

DOE/FE ORDER NO. 1272

MAY 6, 1997

I. DESCRIPTION OF REQUEST

On April 22, 1997, United States Gypsum Company (U.S. Gypsum) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA) ^{1/} and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting authorization to import from Canada up to 5,000,000 Mcf per year (approximately 13,600 Mcf per day) of natural gas for a ten-year period beginning November 1, 1998, through November 1, 2008. U.S. Gypsum is a corporation under the laws of the State of Delaware with its principal place of business in Chicago, Illinois. The imported gas would be used in the industrial facilities of U.S. Gypsum and its affiliates and for sale to others during periods when this gas is not needed in or deliverable to the manufacturing facilities of U.S. Gypsum or its affiliates.

Pursuant to the terms of a natural gas purchase and sale contract dated February 18, 1997, between U.S. Gypsum and Husky Oil Operations Ltd. (Husky), U.S. Gypsum will purchase 13,600 Mcf per day of natural gas at a price, which is to be adjusted monthly, based on a spot market price index (the "NIT Monthly Price") published in the Canadian Gas Price Reporter, plus \$0.05 (Cnd). In addition, U.S. Gypsum shall pay certain transportation costs incurred by Husky for transportation of the gas from its production facilities to Empress, Alberta.

Transportation from Empress, Alberta, to the U.S./Canada border shall be obtained by U.S. Gypsum on the pipeline system of

^{1/} 15 U.S.C. § 717b.

TransCanada PipeLines Limited (TCPL). U.S. Gypsum states that 10,600 Mcf per day of the imported natural gas will enter the United States at the interconnection of TransCanada PipeLines Ltd. and Tennessee Gas Pipeline Company (Tennessee) at Niagara Falls, New York. Tennessee would transport the gas to downstream transporters for eventual delivery to U.S. Gypsum or its affiliates. In addition, at Grand Island, New York, TCPL would deliver 3,000 Mcf per day of gas to the pipeline facilities of Empire Gas Pipeline, which would then transport the gas to U.S. Gypsum's industrial facilities. Depending upon its manufacturing facilities needs, U.S. Gypsum may arrange, from time-to-time, for the gas purchased from Husky to be delivered at other import locations where U.S. transportation arrangements can be made.

II. FINDING

The application filed by U.S. Gypsum 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 import 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 U.S. Gypsum 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. United States Gypsum Company (U.S. Gypsum) is authorized to import from Canada up to 5,000,000 Mcf per year (approximately 13,600 Mcf per day) of natural gas from November 1, 1998, through November 1, 2008, under the terms and conditions of the gas purchase and sales agreement dated February 18, 1997, between U.S. Gypsum and Husky Oil Operations Ltd (Husky). This natural gas may be imported at the interconnect of TransCanada PipeLines Limited (TCPL) and Tennessee Gas Pipeline Company at Niagara Falls, New York, and the interconnect of TCPL and Empire State Pipeline at Grand Island, New York, or other border points.

B. Within two weeks after deliveries begin, U.S. Gypsum shall provide written notification to the Office of Natural Gas & Petroleum Import and Export Activities, Fossil Energy, Room 3F-056, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the date that the first import of natural gas authorized in Ordering Paragraph A above occurred.


C. With respect to the natural gas imports authorized by this Order, U.S. Gypsum shall file with the Office of Natural Gas & Petroleum Import and Export Activities, within 30 days following each calendar quarter, a quarterly report indicating by month the volumes and prices of natural gas imported pursuant to this Order. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. If imports have occurred, U.S. Gypsum must report total monthly volumes in

Mcf by border point and the average purchase price of gas per MMBtu delivered at each of the international border points and paid to Husky. The monthly price information shall itemize separately the monthly demand and commodity charges, and, if applicable, deficiency charges. U.S. Gypsum also shall provide a breakdown of the import volumes delivered to its facilities by State.

For any imported volumes sold to third parties, U.S. Gypsum shall report: (1) the name of the purchaser(s); (2) the estimated or actual duration of the agreement(s); (3) the name of the U.S. transporter(s); (4) the point(s) of entry; (5) the geographic market(s) served; and (6) whether sales are being made on an interruptible or firm basis.

D. The first quarterly report required by Ordering Paragraph C of this Order is due not later than January 30, 1999, and should cover the period from November 1, 1998, through the end of the fourth calendar quarter, December 31, 1998.

Issued in Washington, D.C., on May 6, 1997.


Fr. Wayne E. Peters
Manager, Natural Gas Regulation
Office of Natural Gas & Petroleum
Import and Export Activities
Office of Fossil Energy