

OFFICE OF FOSSIL ENERGY  
NATURAL GAS DIVISION  
DOCKET INDEX

FE DOCKET NO.: 97-40-NG

APPLICANT(S): COENERGY TRADING COMPANY

ITEM	PREPARED OR FILED BY	FILING TYPE	DESCRIPTION OF DOCUMENT	DATED	DATE FILED OR ISSUED
1	COENERGY TRADING COMPANY ✓	APPLICATION	Application for Long-Term Authorization to Import Natural Gas from Canada	96-05-13	96-05-13
2	DOE/FE ✓	ORDER	Order 1290--Granting Long-Term Authority to Import Natural Gas from Canada	97-07-25	97-07-25



**CoEnergy Trading Company**

A subsidiary of MCN Corporation, Detroit, MI

150 West Jefferson • Suite 1800 • Detroit, MI 48226  
(313) 256-6000 • (313) 256-5739 FAX

May 12, 1997

97-40-NB

REC'D DOE/FE  
MAY 13 PM 1:58

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

**Re: Application of CoEnergy Trading Company to Import Natural from Canada**

Gentlemen:

Enclosed herewith is an original and fifteen copies of the above-referenced application. Also enclosed is a check for \$50 in payment of the filing fee.

An additional copy of the application has been included with the filing. I would appreciate it if you would date stamp it and return it to me in the enclosed self-addressed envelope.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

*Harold M. Newland*

Harold M. Newland  
Senior Attorney

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

CoEnergy Trading Company )

FE Docket No. 97-40-N6

APPLICATION OF COENERGY TRADING COMPANY  
FOR AUTHORIZATION TO IMPORT  
NATURAL GAS FROM CANADA

CoEnergy Trading Company, pursuant to Section 3 of the Natural Gas Act ("NGA") and the regulations of the Department of Energy ("DOE") at 10 CFR Part 590, hereby requests authorization to import natural gas from Canada on a long-term basis, all as more fully described below.

1. The exact legal name of applicant is CoEnergy Trading Company ("CTC"), a Michigan corporation having its principal place of business at 150 W. Jefferson Street, Suite 1800, Detroit, Michigan 48226. CTC is a wholly-owned subsidiary of MCN Investment Corporation located in Detroit, Michigan, which is in turn a wholly owned subsidiary of MCN Energy Group Inc., also located in Detroit, Michigan. CTC is engaged in the business of buying and selling natural gas.

2. All correspondence concerning this application should be addressed to:

D. Guy Jarvis  
Director, Market Development  
CoEnergy Trading Company  
185 Asylum Street, Suite 3200  
Hartford, Ct. 06103  
(860) 275-6462

Harold M. Newland  
Senior Attorney  
CoEnergy Trading Company  
500 Griswold Street 10th Floor  
Detroit, Michigan 48226  
(313) 256-5189

3. CTC requests authorization to import up to 80,000 Mcf per day (29.2 Bcf annually) of Canadian gas (the "Import Quantity") for a 10-year period commencing on the actual in-service date under CTC's long-term transportation contract with TransCanada PipeLines Limited ("TCPL") (the "Import Term"). The Import Quantity will enter the United States either at: (a) the proposed interconnection of the Trans Quebec and Maritimes Pipeline ("TQ&M") and the Portland Natural Gas Transmission System ("PNGTS") located near Pittsburg, N.H., or (b) the existing interconnection of TCPL and Great Lakes Gas Transmission Limited Partnership ("GLGT"), located near Noyes, Minnesota.

4. CTC has executed firm gas purchase contracts with three Canadian gas producers, Gulf Canada Resources Limited (30 Mmcf/d), Suncor Inc. (30 Mmcf/d), and AEC Oil & Gas (20 Mmcf/d), which provide for the firm delivery of the Import Quantity over the Import Term. Copies of these contracts are attached hereto as Exhibit A. Under each contract the seller warrants that it has, and shall continue to have, adequate and sufficient supplies to meet its obligations under the contract, and that it shall provide evidence of such supplies as is necessary to obtain Canadian federal and provincial export authorizations. In addition, CTC has executed a precedent agreement with TCPL which provides that the parties shall enter into a transportation contract under which TCPL will transport the Import

Quantity over the Import Term on a primary firm basis to PNGTS and on a secondary firm basis to other points on the TCPL and GLGT systems. Secondary deliveries will be accommodated using diversion rights on TCPL or by accessing GLGT capacity through TCPL's capacity release or enhanced capacity release programs. A copy of the precedent agreement along with summaries of TCPL's diversion, capacity release and enhanced capacity release programs are attached hereto as Exhibit B.

5. The three Canadian gas purchase contracts require CTC to buy gas on a 100% load factor basis. There are no take-or-pay or makeup provisions in the contracts. However, there are financial penalties for non-performance by either Buyer or Seller. All quantities are priced using formulas and monthly indices to ensure the ongoing market sensitivity and competitiveness of the supplies.

6. The Import Quantity will be used to serve two distinct segments of CTC's market portfolio:

(a) First, CTC will use a portion of the Import Quantity to fulfill its redelivery obligation under 10-year exchange agreements with Bay State Gas Company and its affiliate, Northern Utilities, Inc. Beginning in April, 1998, Bay State and Northern Utilities will deliver up to 7.5 Bcf of gas to CTC during the period from April through October of each year, and CTC will be obligated to redeliver equivalent quantities during the following November through March, at a rate of up to 50,000 MMBtu per day. Redeliveries will be made at the interconnection of TCPL and PNGTS. Both Bay State and Northern Utilities will then transport the gas utilizing firm transportation held by each on PNGTS. The

gas redelivered by CTC will be used to serve existing and new growth demand in Bay State's and Northern Utilities' franchise areas located in Massachusetts, New Hampshire and Maine. This imported gas should be competitive with other winter only firm supply options available in the northeast. The agreements include a small annual fee escalator and as billed costs related to TCPL capacity which should ensure the competitiveness of the exchange over time.

(b) Second, CTC will utilize the remaining portion of the Import Quantity to serve various markets throughout the upper midwest and northeast. CTC's projections for its existing firm natural gas requirements in Michigan and the northeast for the Import Term demonstrate an annual shortfall of 50.4 Bcf when compared to CTC's existing gas supplies and interstate pipeline capacities. CTC's market portfolio includes a range of commercial, industrial, gas distributor and power generation customers. The imported gas will also figure prominently in CTC's summer storage injection plans at storage facilities located in Michigan. CTC itself is the holder of 30,000 Mcf/d of firm pipeline capacity on the proposed PNGTS to facilitate downstream transport of this gas. Sales to customers in the upper midwest and northeast will require that the imported gas be competitively priced over time.

7. CoEnergy has no corporate or other affiliation with any of the Canadian gas suppliers, TCPL or any of the markets CTC expects to serve with the Imported Quantity.

However, an affiliate of CTC, MCNIC East Coast Pipeline Company, is a 20% equity partner

in the Portland Natural Gas Transmission System partnership, which will construct and operate PNGTS, over which a substantial portion of the Import Quantity will be transported.

8. No new facilities will be required by CTC to import the Import Quantity from Canada. Any potential environmental impacts from this project will stem from the expansion of TCPL in Canada and the construction of the proposed PNGTS in the United States. These issues will be fully reviewed by the National Energy Board of Canada with respect to the TCPL facilities, and the Federal Energy Regulatory Commission with respect to the PNGTS facilities (Docket No.CP96-249-000).

9. CTC has filed, concurrently herewith, a related application with the DOE for long-term authority to export natural gas into Canada for subsequent re-import into the United States. With the exception of this application, and those matters referred to in paragraph No. 8 above, neither this matter, nor a related matter, is being considered by any other part of the DOE, including the Federal Energy Regulatory Commission, or any other federal agency or department. CTC has, however, applied to the National Energy Board of Canada for authority to export the natural gas that is the subject of this import application.

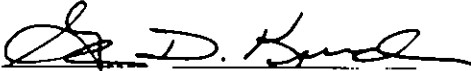
10. Attached hereto as Exhibit C is an opinion of counsel pursuant to 10 CFR Section 590.202(e).

11. The gas purchase contracts referred to in paragraph No.4 above are subject to the receipt by CTC of all necessary regulatory authorizations by October 1, 1997. Accordingly, CTC asks that the DOE issue the authorization requested herein no later than October 1, 1997.

WHEREFORE, CTC requests that the Office of Fossil Energy issue an order authorizing CTC to import the Import Quantity for the Import Term, all as more specifically set forth above.

Respectfully submitted,

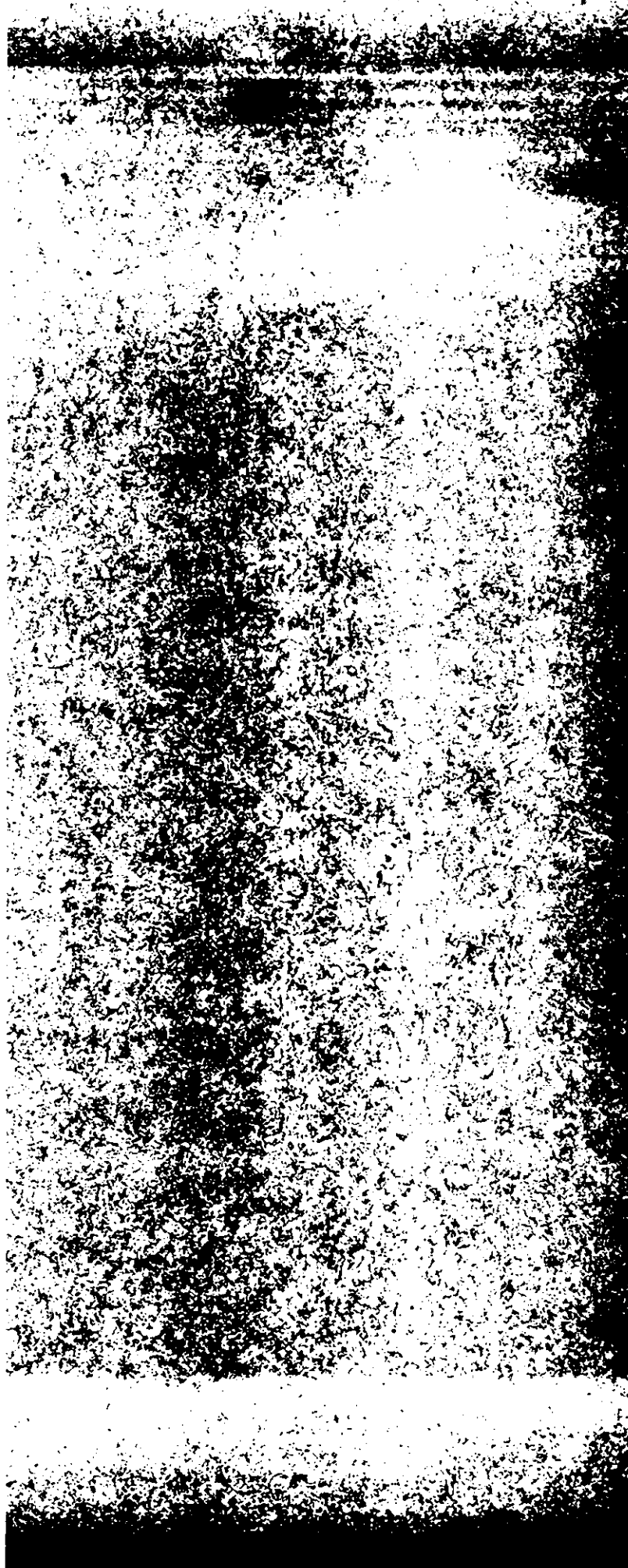
COENERGY TRADING COMPANY

By   
Glen D. Kinder  
President

Dated: May 7, 1997







*S* *RW*

**GAS PURCHASE AGREEMENT**

This Agreement, made and entered into as of the 18 day of November, 1996 by and between AEC Oil & Gas Partnership ("AEC Partnership") acting for itself and as agent for Alberta Energy Company Ltd. ("AEC") and as agent for AEC West Ltd. ("AEC West") (all hereinafter jointly referred to as "Seller") and CoEnergy Trading Company ("Buyer"), a Michigan corporation.

**INTRODUCTION**

WHEREAS AEC Partnership is a general partnership formed under the laws of the Province of Alberta the partners of which are AEC and AEC West;

AND WHEREAS pursuant to an Appointment Agreement made effective May 1, 1996, AEC appointed AEC Partnership as agent to deal with all matters relating to AEC's and AEC West's oil and gas activities;

AND WHEREAS Buyer desires to purchase natural gas from Seller and Seller desires to sell natural gas to Buyer on a long-term firm basis in the quantities and subject to the terms and conditions hereinafter set forth.

Therefore, in consideration of the mutual benefits to be derived from so doing, the parties hereto agree as follows:

**ARTICLE I**  
**SALE AND PURCHASE OBLIGATION**

1.1. Buyer shall each day nominate and purchase from Seller at the Point of Delivery, the Daily Quantity of natural gas.

1.2. Seller shall each day deliver and sell to Buyer at the Point of Delivery, the Daily Quantity of natural gas.

1.3. The "Daily Quantity" shall mean the sum of 566.6 10<sup>3</sup>m<sup>3</sup> (20,000 Mcf) plus the daily pipeline fuel requirements of TransCanada PipeLines Limited ("TCPL") for service from Empress, Alberta to Emerson, Manitoba and Great Lakes Gas Transmission Limited Partnership ("Great Lakes") for service from its Western Zone to its Eastern Zone.

**L4** (a) If either party (the "Defaulting Party") fails to meet its obligations to deliver or receive gas under this Agreement and its failure is not excused by any provision of this Agreement, then the Defaulting Party shall pay the non-Defaulting party any monetary loss experienced upon the commercially reasonable purchase of replacement gas, or the commercially reasonable sale of gas to an alternative market, as the case may be, plus any firm transportation demand charges incurred by the other party for unutilized pipeline capacity as a direct result of the Defaulting Party's failure to perform, plus \$0.50/Gj.

(b) For purposes of determining the prices of replacement supply and markets contemplated in this section, the parties agree to utilize the average daily index as published by the Canadian Gas Price Reporter under the heading "Daily Spot Gas Price at AECO C & Nova Inventory Transfer". For purposes of determining the value of unutilized firm service charges hereunder, Seller's unutilized demand charges shall not exceed the effective Nova Gas Transmission Limited ("Nova") rate for export service and Buyer's unutilized demand charges shall not exceed the Allocated Transport as defined in Section 2.1 hereunder.

(c) The parties agree to employ their respective best efforts in securing replacement supply and markets as contemplated by 1.4(a), in order that unutilized demand charges may be avoided.

(d) Should the Defaulting Party fail to deliver or receive gas 2 or more times, or for greater than a total of 30 days, in any twelve month period, then the non-Defaulting Party may terminate this Agreement upon 10 days prior written notice. Upon termination, the non-Defaulting Party shall be entitled to liquidated damages as provided in Article IX.

**L5** Buyer shall provide Seller with notice of any requested nomination change no later than 8:00 A.M., M.S.T. on the day prior to the date which Buyer would like any such change to be effective. Any requests for nomination changes made by Buyer after this time may be accommodated by Seller on a reasonable efforts basis.

**L6** The parties shall cooperate to eliminate imbalances between nominations and deliveries on Nova, TCPL and Great Lakes. If during any month, however, Buyer or Seller receives an invoice from one of these pipelines which includes an imbalance penalty charge, cash out costs, or similar penalties ("imbalance penalty charge"), both parties shall use their reasonable best efforts to determine the validity as well as the cause of the imbalance penalty charge. If the parties determine that the imbalance penalty charge was due to Buyer's failure to meet its obligations under this Agreement, then Buyer shall pay the imbalance penalty charge. If the parties determine that the imbalance penalty was due to Seller's failure to meet its obligations under this Agreement, then

Seller shall pay such imbalance penalty charge. If the parties cannot agree, the matters shall be resolved pursuant to Section 6.2.

ARTICLE II  
PRICE

2.1 The price per Gj, applicable to the Daily Quantity of natural gas sold hereunder on any day (excluding the fuel requirements of TCPL and Great Lakes), shall be calculated as follows:

Price = Index less Allocated Transport where

Index = the monthly index price for the relevant sales month as published in the Gas Daily Price Guide under the section titled "Monthly Contract Index, Michigan, MichCon, large, mcf."

Allocated Transport = the 100% load factor firm service rate in effect on TCPL for service from Empress, Alberta to Highwater, Quebec minus the 100% load factor firm service rate in effect on TCPL for service from St. Clair, Michigan to Highwater, Quebec.

2.2 All TCPL and Great Lakes fuel requirements delivered to Buyer pursuant to Section 1.1 shall be on an "in kind" basis. Buyer shall not be obligated to make payment of any kind to Seller respecting the subject quantities.

2.3 If any of the indexes or publications referenced in Section 1.4 or 2.1 cease publication, the parties shall agree upon replacements to be utilized in this Agreement.

2.4 All prices under this Agreement shall be denominated in \$Cdn/Gj and any amounts denominated in \$U.S. shall be converted to \$Cdn based on the average Bank of Canada noon day spot rate for the preceding month.

2.5 Seller shall pay all taxes imposed on, or with respect to the gas, prior to its delivery at the Point of Delivery. Buyer shall pay all taxes imposed on, or with respect to the gas, including any Goods and Services Tax imposed under Part IX of the Excise Tax Act (Canada), as amended (the "GST"), at or after its delivery at the Point of Delivery. If Buyer is entitled to purchase natural gas free from any such taxes, including GST, Buyer shall furnish Seller the necessary exemption or resale certificate.

ARTICLE III  
TERM

3.1 This Agreement shall become effective as of the date first written above, and shall continue in effect for a period of ten years after the Commencement Date.

3.2 The "Commencement Date" under this Agreement shall be the actual in service date under Buyer's TCPL long term transportation contract for service from the Point of Delivery to the interconnect between TCPL and the proposed Portland Natural Gas Transmission System, near Highwater, Quebec.

3.3 If the Commencement Date has not occurred by November 1, 2000, either party may terminate this Agreement upon five days prior written notice to the other party.

3.4 Except as otherwise provided in this Agreement, where a party fails to perform a material obligation of this Agreement (the "Defaulting Party"), and fails to cure such failure within 30 days of receipt of a notice of such failure from the non-Defaulting Party, then the non-Defaulting Party may, upon prior notice suspend or terminate this Agreement within 10 days after the 30 day curative period expires. Upon termination, the non-Defaulting Party shall be entitled to liquidated damages as provided in Article IX.

ARTICLE IV  
DELIVERY

4.1 The Point of Delivery for all gas purchased and sold hereunder shall be the interconnection of the facilities of TCPL and Nova, located near Empress, Alberta.

4.2 Delivery and receipt of gas sold hereunder shall be as nearly as practicable at uniform hourly and daily rates of flow.

4.3 Seller shall be responsible for making all arrangements with any pipelines necessary for the firm transportation of the gas sold hereunder to the Point of Delivery, and for paying for such transportation. Buyer shall be responsible for making all arrangements with any pipelines necessary for the firm transportation of the gas sold hereunder from the Point of Delivery, and for paying for such transportation.

ARTICLE V  
MEASUREMENT AND QUALITY

5.1 The unit of volume for the purpose of measuring gas delivered hereunder shall be 1000 cubic meters ( $10^3\text{m}^3$ ). The unit of heating value used for pricing and payment purposes hereunder shall be the gigajoule (Gj).

5.2 The measurement of all gas sold hereunder, and the determination of its heating value, shall be performed by TCPL. All gas sold hereunder shall be measured, and its heating value determined, in accordance with, and shall conform to the quality and pressure specifications contained in, TCPL's then effective gas transportation tariff.

5.3 For any conversions under this Agreement of quantities of gas denominated in  $10^3\text{m}^3$ 's into quantities of gas denominated in Gj's, the conversion factor shall equal the actual factor in use for the subject month by TCPL at Empress, Alberta. For any conversions under this Agreement of quantities of gas denominated in Mcf's into quantities of gas denominated in  $10^3\text{m}^3$ 's, the conversion factor shall be  $1 \text{ Mcf} = .02832784 \text{ } 10^3\text{m}^3$ .

ARTICLE VI  
BILLING AND PAYMENT

6.1 Seller shall render a statement to Buyer on or before the 15th day of the month following each month in which gas is delivered and sold hereunder (the "Billing Month") showing the quantity of gas delivered in the immediately preceding month and the payment due to Seller. Buyer shall pay Seller the amount billed in the statement on or before the later of 10 days after receipt of the statement or the 25th day of the Billing Month. All payments to Seller shall be made by wire transfer to the address indicated in Section 15.1. Any statements rendered by Buyer to Seller under this Agreement shall also be governed by this Article VI.

6.2 In the event that Buyer disputes any portion of a statement rendered pursuant to Section 6.1, the total amount billed in the statement shall nevertheless be paid when due. If the parties cannot resolve the dispute within 30 days after such payment, or, in the event that the parties cannot agree on responsibility for any imbalance penalty charge pursuant to Section 1.6, the matter shall be submitted to three experts familiar with the natural gas business (the "Experts") who shall examine the records and billings and make a written report thereon, which shall be delivered to each party. Each of Buyer and Seller shall appoint one of the Experts, and the two appointed Experts shall appoint the third. Failing agreement of the two appointed experts to elect a third, the parties agree to request a court of competent jurisdiction to appoint the third expert. The decision

rendered by the Experts in this report shall be binding upon both parties. The fees and expenses of the Experts incurred in connection with such determination, shall be paid by the party against whom the decision is rendered. However, if both parties prevail with respect to some part of the Experts' determination, the fees and expenses of the Experts shall be allocated among the parties in a manner appropriate to the Experts' determination. In addition to any fees and expenses of the Experts as may be due, each party shall pay for its own expenses, including attorney's fees, with respect to any such dispute.

6.3 Should Buyer fail to pay the amount of any statement rendered by Seller when such amount is due, Buyer shall pay Seller interest thereon from the date due until the date of payment at an annual rate equal to the lesser of (1) the prime rate at the main branch in Calgary, Alberta of the Royal Bank of Canada for Canadian dollar commercial loans, as such rate may change from time to time, plus 2%, or (2) the maximum rate allowed by law. In addition, Seller may, upon 10 days prior written notice to Buyer, suspend further deliveries of gas under this Agreement until such amount is paid, and/or terminate this Agreement.

6.4 Each party shall have the right, at its expense and during normal business hours, to have an independent accounting firm conduct an audit of the books and records of the other party to the extent necessary to verify the accuracy of any statement rendered under this Agreement in the preceding 24 month period. Any such audit shall remain confidential between the parties.

6.5 Should Seller find at any time within 24 months after the date of any statement rendered by it that there has been an undercharge or an overcharge in the amount billed in the statement, it may, in the case of an undercharge, submit a statement for such undercharge, and Buyer, upon verifying the same, shall pay such amount within 30 days after receipt of the statement, with interest as provided for in Section 6.3. Any overcharge, if it has been paid by Buyer, and any amount ultimately determined to be an overcharge pursuant to Section 6.2, shall be refunded by Seller, with interest as provided for in Section 6.3.

6.6 Should Buyer find at any time within 24 months after the date of any statement rendered by Seller that there has been an overcharge or undercharge in the amount billed in the statement, and if it has paid any overcharge, the overcharge, if verified by Seller, shall be refunded within 30 days of notification by Buyer, with interest as provided for in Section 6.3. Any undercharge, if verified by Seller, shall be submitted to Buyer on Seller's next statement, with interest as provided for in Section 6.3.

6.7 Should either party terminate this Agreement pursuant to Section 6.3 because of the other party's failure to pay amounts owed, the terminating party shall be entitled to liquidated damages as provided in Article IX.



ARTICLE VII  
GUARANTEE

7.1 Buyer, upon request, shall provide Seller with, and maintain, a guarantee from its parent, MCN Investment Corporation, in the form attached hereto as Exhibit A.

7.2 Should Buyer fail to comply with any request for a guarantee pursuant to Section 7.1, Seller may refuse to commence, suspend and/or terminate service under this Agreement. Upon termination, Seller shall be entitled to liquidated damages as provided in Article IX.

ARTICLE VIII  
BANKRUPTCY, INSOLVENCY, ETC

8.1 (a) In the event that either party (the "Defaulting Party"): (1) becomes bankrupt or insolvent, however evidenced, or becomes unable to pay its debts as they fall due; (2) files a petition or otherwise commences a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or proceeding commenced against it; (3) has a liquidator, administrator, receiver, conservator or trustee appointed with respect to it or any substantial portion of its property or assets; then in any such event the Non-Defaulting Party shall have the right to immediately terminate this Agreement by written notice.

(b) Upon termination under Section 8.1(a), a settlement payment equal to the difference between the Market Value and the Contract Value of this Agreement shall be paid to Buyer if the Market Value exceeds the Contract Value and to Seller if the opposite is the case. Any settlement payment shall be discounted to present value at the time of termination to take into account the period between the date of termination and the date on which such amount would otherwise have been due under this Agreement. The parties agree that the present value discount rate to be used herein shall be the yield of United States Treasury notes for the same term as the remaining term in the Agreement, plus 100 basis points.

(c) "Contract Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the simple average of the bid and offer fixed/floating swap price quotes for the MichCon index, as determined by three independent sources, for the remaining term of this Agreement, less the then current Allocated Transport.

(d) "Market Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the simple average of the bid and offer fixed/floating swap price quotes for the Empress index, as determined by three independent sources, for the remaining term of this Agreement.

8.2 The Performing Party's rights under this Article VIII are in addition to any other rights it may have.

## ARTICLE IX LIQUIDATED DAMAGES

9.1 (a) If Buyer terminates this Agreement pursuant to Sections 1.4, 3.4, 6.3 or 7.2, it shall be entitled to damages from Seller equal to the amount by which the Market Value exceeds the Contract Value of this Agreement. If Seller terminates this Agreement pursuant to Sections 1.4, 3.4, 6.3 or 7.2, it shall be entitled to damages from Buyer equal to the amount by which the Contract Value of this Agreement exceeds the Market Value. Such damages shall be discounted to present value at the time of termination to take into account the period between the date of termination and the date on which such moneys would otherwise have been due if paid under this Agreement. The discount rate to be used shall be the yield of U.S. Treasury notes for the same term as the remaining term in the Agreement, plus 100 basis points.

(b) "Contract Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the simple average of the bid and offer fixed/floating swap price quotes for the MichCon index, as determined by three independent sources, for the remaining term of this Agreement, less the then current Allocated Transport.

(c) "Market Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the simple average of the bid and offer fixed/floating swap price quotes for the Empress index, as determined by three independent sources, for the remaining term of this Agreement.

(d) Each party reserves the right to set off all amounts which the other party owes to it under this Agreement against all amounts which it owes the other party under this Agreement.

ARTICLE X  
WARRANTIES & INDEMNIFICATIONS

10.1 Seller represents and warrants to Buyer that Seller has and shall obtain and have available throughout the term of this Agreement supplies of natural gas adequate and sufficient to satisfy Seller's obligations under this Agreement, including but not limited to Seller's obligations under Article I hereof, and that Seller possesses and shall possess the unfettered right to sell and deliver natural gas from such supplies to Buyer in fulfillment of such obligations.

10.2 Seller shall provide evidence of gas reserves and deliverability as are necessary for Seller to obtain a removal permit from the Alberta Energy and Utilities Board issued pursuant to the Gas Resources Preservation Act of Alberta authorizing the removal of the Daily Quantity from the province on each day for the full term of this Agreement and as are necessary for Buyer to obtain an export license pursuant to the National Energy Board Act of Canada authorizing the export from Canada of the Daily Quantity on each day for the full term of this Agreement.

10.3 Seller warrants that at the time of delivery it will have the right to deliver the gas sold hereunder and that it will indemnify Buyer and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas, and royalties, taxes, license fees or charges on such gas, to the extent that they arise or attach prior to delivery at the Point of Delivery.

10.4 Buyer shall indemnify Seller and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas, and royalties, taxes including GST, license fees or charges on such gas, to the extent that they arise or attach at and after delivery at the Point of Delivery.

ARTICLE XI  
FORCE MAJEURE

11.1 If an event specified under Section 11.2 occurs which is not within the control of a party, and causes that party to fail to perform all or part of an obligation under this Agreement, then the party (the "Claiming Party") may claim "Force Majeure", but only to the extent that event directly causes the Claiming Party to fail to perform all or part of that obligation under this Agreement. Such a claim suspends performance of the obligation of the Claiming Party and any related obligation of the other party, but does not suspend performance of any obligation to pay money due under this Agreement. The suspension period shall be in effect for so long as the event causes the failure to

perform. However, the Claiming Party must do everything commercially reasonable to restore performance as soon as possible.

**11.2** An event of "Force Majeure" specifically means, and is limited to, only an event of: (i) curtailment, for any reason whatsoever, reallocation or pro-rationing of a party's firm transportation service used to transport gas subject to this Agreement, as authorized by the published tariff, policies or procedures of the respective pipeline company, and regardless of whether or not the pipeline company has issued a formal notice of force majeure (ii) an order of any court, regulatory tribunal or government body, the effect of which is to make the continued performance by one or both parties under this Agreement illegal or prohibited.

**11.3** If any party claims Force Majeure for more than 120 consecutive days the other party has the right, without any costs or penalties as may be contemplated by this Agreement, and, upon ten days prior written notice, to terminate this Agreement.

**11.4** A Claiming Party may not claim Force Majeure protection under this Agreement if:

- (a) the event resulting in the performance failure was caused by a negligent act, negligent omission or by a breach of this Agreement or other contract by the Claiming party;
- (b) the Claiming Party did not do everything commercially reasonable to avoid the performance failure or to restore performance as soon as possible;
- (c) Force Majeure notice requirements under this Agreement are not complied with.

**11.5** Notice by the Claiming Party must be given to the other party as soon as possible once a Force Majeure event has occurred. Oral notice should be given if possible, but written notice must be given, containing all details necessary to describe the event, how long it will last, the obligations affected, and the time and date performance are expected to be restored. Force Majeure protection will not be available if written notice is not given in a timely fashion. The Claiming Party will give notice within two business days after the Force Majeure condition is remedied, to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of its covenants or obligations under this Agreement.

**11.6** During an event of Force Majeure, the Claiming Party must cease interruptible deliveries to other markets served by the delivering pipeline, if it is Seller, and purchases from interruptible supply sources served by the receiving pipeline, if it is Buyer, prior to suspending the performance obligation under this Agreement. The

Claiming party then must treat the other party equitably with its other firm customers served by such delivering pipeline or receiving pipeline, as the case may be, with whom it has contracts for a substantially similar term, on a proportionate basis with regard to the remaining supply available for market, if it is Seller, and to remaining market availability, if it is Buyer.

**ARTICLE XII**  
**REGULATORY AUTHORIZATIONS**

12.1 Buyer shall be responsible for securing all necessary import and export authorizations from the National Energy Board of Canada and the United States Department of Energy.

12.2 Seller shall be responsible for securing all necessary regulatory authorizations from the Alberta Energy and Utilities Board or other provincial body having jurisdiction over the purchase and sale hereunder.

**ARTICLE XIII**  
**REGULATION**

13.1 This Agreement is subject to all valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

**ARTICLE XIV**  
**POSSESSION AND LIABILITY**

14.1 Seller shall be deemed in exclusive control and possession of the gas sold hereunder and responsible for any damage or injury caused thereby until it is delivered at the Point of Delivery. Buyer shall be deemed in exclusive control and possession of said gas and responsible for any damage or injury caused thereby after it is delivered by Seller at the Point of Delivery.

**ARTICLE XV**  
**NOTICES**

15.1 Unless otherwise provided herein, all communications from one party to the other shall be in writing and sent by registered mail, overnight mail or facsimile transmission, and shall be effective upon receipt thereof. However, routine communications, including monthly statements, shall be considered as duly delivered

when mailed by either registered or overnight or facsimile transmission. All communications should be addressed to:

CoEnergy Trading Company  
150 W. Jefferson, Suite 1800  
Detroit, Michigan 48226  
Attn: Glen D. Kinder  
Telephone: 313-256-6000  
Fax: 313-256-5739

AEC Oil & Gas Partnership  
3900, 421 - 7th Ave. S.W.  
Calgary, Alberta T2P 4K9  
Attn: Manager Gas Supply & Trading  
Telephone: 403-266-8332  
Fax: 403-266-8180

**Payments:**

Wire transfer to:  
NBD Bank  
c/o CoEnergy Trading Company  
Account Number 1253483  
ABA Number: 072000326  
611 Woodward Avenue  
Detroit, Michigan 48226

**Payments:**

Wire transfer to:  
Royal Bank of Canada  
339 - 8th Avenue S.W.  
Calgary, Alberta  
Account #: 103-422-2  
Transit #: 00009

The foregoing addresses and numbers may be changed by either party upon written notice to the other party.

**ARTICLE XVI**  
**NON-WAIVER OF FUTURE DEFAULTS**

**16.1** No waiver by either party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

**ARTICLE XVII**  
**ASSIGNMENT**

**17.1** (a) Any company which shall succeed by purchase, merger, or consolidation to the properties of a party hereto shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. No assignment of this Agreement or any of its rights or obligations hereunder shall be made by either party without the written consent of the other first obtained. The provisions of this article shall not in any way prevent either party from pledging or mortgaging its rights hereunder

as security for its indebtedness. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties hereto.

(b) No assignment shall be effective unless and until the assignee shall have delivered to the non-assigning party an agreement in writing whereby the assignee agrees to be bound by the assignor's obligations under the relevant agreement. No assignment, even with the other party's approval or consent, shall relieve the assigning party of any of its obligations thereunder unless the other party expressly releases the assigning party from its obligations.

#### ARTICLE XVIII CONDITIONS PRECEDENT

**18.1** The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) execution by Buyer of a firm transportation contract with TCPL, necessary to meet Buyer's obligations under this Agreement, on terms and conditions acceptable to Buyer;

(b) receipt by the parties of all necessary regulatory authorizations on terms satisfactory to the receiving party.

The parties are obligated to act in good faith to satisfy the conditions precedent. If these conditions precedent have not been satisfied by October 1, 1997, then thereafter and until such time as they have been satisfied, either party may terminate this Agreement, without any penalty or cost, upon five days prior written notice to the other party.

#### ARTICLE XIX FURTHER ASSURANCES

**19.1** Each party and its respective legal representative, successors, and assigns shall, without further consideration, execute, acknowledge and deliver any and all documents and instruments which, from time to time, may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

ARTICLE XX  
SEVERABILITY

20.1 If any court of competent jurisdiction determines that any provision of this Agreement is invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect, except that this Agreement shall terminate if a provision governing price, quantity, term or Point of Delivery is determined to be invalid.

ARTICLE XXI  
LIMITATION ON DAMAGES

21.1 Neither party shall be liable to the other for any incidental, consequential (including lost profits), indirect, exemplary, or punitive damages.

ARTICLE XXII  
JOINT AND SEVERAL LIABILITY

22.1 AEC, AEC West and AEC Partnership are jointly and severally liable for, and each has the duty of fully performing, Seller's obligations under this Agreement. As such, Buyer may take legal action against all or any one of them upon breach of Seller's obligations under this Agreement. Notice to the AEC Partnership under Section 15.1 shall be deemed notice to AEC and AEC West as well.

ARTICLE XXII  
ENTIRE AGREEMENT

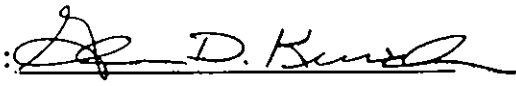
23.1 This Agreement, including Exhibit A, constitutes the entire agreement between the parties concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreements or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect. This Agreement may be modified or amended only by a writing duly executed by both parties.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

COENERGY TRADING COMPANY

AEC OIL & GAS PARTNERSHIP

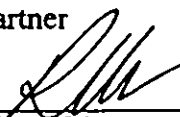
Hand  
By: 

Title: President

By:   
J.W. Stephure

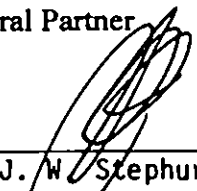
Title: Vice-President

By: Alberta Energy Company Ltd.  
General Partner


By:   
R.W. Oliver

Title: Vice-President

By: AEC West Ltd.  
General Partner

By:   
J. W. Stephure

Title: Executive Vice-President

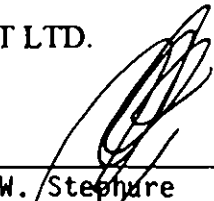
By:   
J. W. Stephure  
Title: Vice-President

ALBERTA ENERGY COMPANY LTD.

By:   
R. W. Oliver

Title: Vice-President

AEC WEST LTD.

By:   
J. W. Stephure

Title: Executive Vice-President

[MCN INVESTMENT CORPORATION LETTERHEAD]

[Date]

AEC Oil & Gas Partnership  
3900, 421 - 7th Ave. S.W.  
Calgary, Alberta, Canada T2P 4K9

Re: Guarantee

Gentlemen:

This letter confirms recent discussions between MCN Investment Corporation ("MCNIC") and AEC Oil & Gas Partnership ("AEC") concerning a guarantee by MCNIC in favor of AEC, Alberta Energy Company Ltd. and AEC West Ltd. ("Seller"). In consideration for Seller entering into a natural gas sales agreement with CoEnergy Trading Company ("CTC"), a wholly owned subsidiary of MCNIC, dated November \_\_\_, 1996 (the "Agreement"), MCNIC agrees as follows:

1. Upon demand and notice from Seller of default by CTC under the Agreement, MCNIC hereby, except as provided below, absolutely, unconditionally and irrevocably for the term of the Agreement guarantees payment to Seller of all amounts payable from time to time by CTC to Seller under the Agreement. MCNIC further agrees to pay any and all reasonable expenses which may be paid or incurred by Seller in enforcing this guarantee.
2. This guarantee is subject to the rights and defenses of CTC under the Agreement.
3. With respect to any amounts due from CTC, MCNIC waives presentment, demand for payment and protest. MCNIC further waives legal action by Seller against CTC as a precondition to MCNIC's obligation under this guarantee.
4. The liability of MCNIC under this guarantee shall not be affected by any modification or amendment of the Agreement, any insolvency or bankruptcy of CTC, or any release or discharge resulting therefrom.
5. MCNIC consents to any extension of time for performance by CTC under the Agreement, without notice to MCNIC.

6. This guarantee is for the benefit of Seller, its successors and assigns and shall be binding upon MCNIC, its successors and assigns.

7. MCNIC represents and warrants that it has authority to enter into this guarantee, and that the individual executing this guarantee on its behalf has the authority to do so.

8. MCNIC represents and warrants that no authorization or approval or other action by, and not notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by MCNIC of this guarantee, except such as have been duly obtained or made and are in full force and effect.

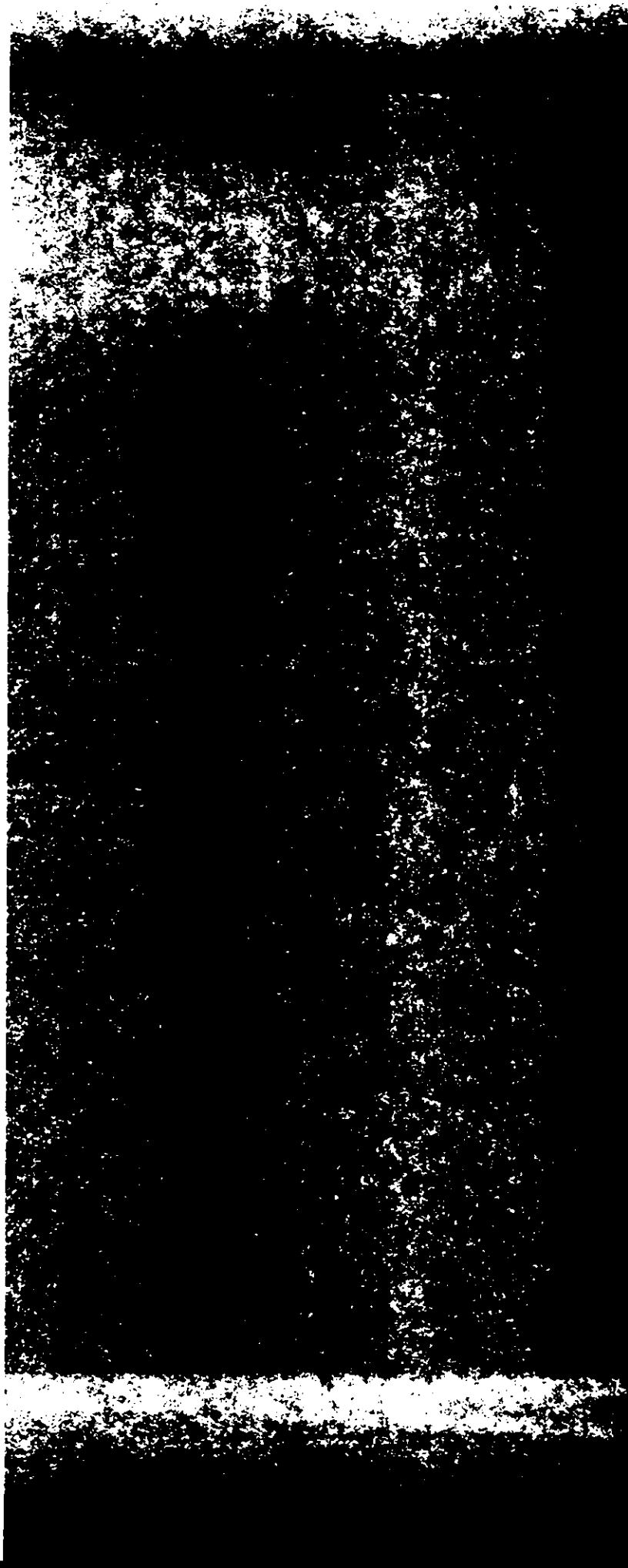
9. MCNIC shall not assign this guarantee without the prior consent of Seller.

10. This guarantee shall remain in full force and effect until the Agreement has terminated and all obligations of CTC thereunder have been satisfied.

11. This guarantee shall be governed by and construed in accordance with the laws of the State of Michigan. Any and all litigation related to this guaranty shall be brought in either a state or federal court within the State of Michigan.

12. All notices, requests, consents and demands hereunder shall be in writing, shall be effective upon receipt and shall be mailed, hand delivered or telecopied to MCNIC, with a copy to CTC, at its address or telecopy number specified beneath its signature hereto, or at such other address, or telecopy number as shall be designated by MCNIC in a notice to Seller.

Very truly yours,



## GAS PURCHASE AGREEMENT

This Agreement, made and entered into as of the 31<sup>st</sup> day of October, 1996 by and between Gulf Canada Resources Limited ("Seller"), a Canadian corporation and CoEnergy Trading Company ("Buyer"), a Michigan corporation.

### INTRODUCTION

WHEREAS, Buyer desires to purchase natural gas from Seller and Seller desires to sell natural gas to Buyer on a long-term 100% load factor basis in the quantities and subject to the terms and conditions hereinafter set forth.

Therefore, in consideration of the mutual benefits to be derived from so doing, the parties hereto agree as follows:

### ARTICLE I SALE AND PURCHASE OBLIGATION

1.1. Subject to an event defined as Force Majeure in Article XI below, Buyer shall each day nominate and purchase from Seller at the Point of Delivery, the Daily Quantity of natural gas.

1.2 Subject to an event defined as Force Majeure in Article XI below, Seller shall each day deliver and sell to Buyer at the Point of Delivery, the Daily Quantity of natural gas.

1.3 The "Daily Quantity" shall mean the sum of 849.8 10<sup>3</sup>m<sup>3</sup> (30,000 Mcf) plus the daily actual pipeline fuel requirements of TransCanada PipeLines Limited ("TCPL") for service from Empress, Alberta to Emerson, Manitoba or for service from Empress, Alberta to Highwater, Quebec, as the case may be.

1.4 If either party (the "Defaulting Party") fails to meet its obligations to deliver or receive gas under this Agreement and its failure is not excused by any provision of this Agreement, then the Defaulting Party shall pay the non-Defaulting Party the actual monetary loss incurred by the non-Defaulting Party for the commercially reasonable purchase of replacement gas, or the commercially reasonable sale of gas to an alternative market, as the case may be, plus any firm transportation demand charges incurred by the non-Defaulting Party for unutilized pipeline capacity as a direct result of the Defaulting Party's failure to perform, plus \$0.50/Gj. Should the Defaulting Party fail to deliver or receive gas four or more times, or for a total of 30 days in any twelve month period, then the non-Defaulting Party may terminate this Agreement upon 10 days prior written notice. Upon termination the non-Defaulting Party shall be entitled to liquidated damages as provided in Article IX.

**1.5** Buyer shall provide Seller with notice of any requested nomination change no later than 8:00 A.M., M.S.T. on the day prior to the date which Buyer would like any such change to be effective. Any requests for nomination changes made by Buyer after this time may be accommodated by Seller on a reasonable efforts basis.

**1.6** The parties shall cooperate to eliminate imbalances between nominations and deliveries on Seller's and Buyer's transporters. If during any month, however, Buyer or Seller receives an invoice from its transporter which includes an imbalance penalty charge, cash out costs, or similar penalties ("Imbalance Penalty Charge"), both parties shall use their reasonable best efforts to determine the validity as well as the cause of the imbalance penalty charge. If the parties determine that the Imbalance Penalty Charge was due to Buyer's failure to meet its obligations under this Agreement, then Buyer shall pay the Imbalance Penalty Charge. If the parties determine that the Imbalance Penalty Charge was due to Seller's failure to meet its obligations under this Agreement, then Seller shall pay such Imbalance Penalty Charge. If the parties cannot agree, the matters shall be resolved pursuant to Section 6.2.

## ARTICLE II PRICE

**2.1** The price per Gj, applicable to the Daily Quantity of natural gas sold hereunder on any day, shall equal the average monthly index price per Gj for the relevant sales month for Empress, Alberta as published in the Canadian Gas Price Reporter under the heading "Alberta, Border (Empress), Month Average Spot (One Month), Firm (100% LF)", plus \$0.065 /Gj.

**2.2** Buyer may elect at any time up to November 1, 1997 to change the index price referenced in Section 2.1 to the average monthly index price per Gj for the relevant sales month for AECO and NIT as published in the Canadian Gas Price Reporter under the heading "Alberta, AECO "C" & N.I.T. One Month Spot", plus the 100% load factor cost of Nova Gas Transmission Limited ("Nova") export delivery service, plus \$0.065/Gj.

**2.3** If any of the indexes or publications referenced in Section 2.1 or 2.2 cease publication, the parties shall agree upon replacements to be utilized in this Agreement.

**2.4** All prices under this Agreement shall be denominated in \$Cdn/Gj.

**2.5** Seller shall pay all taxes imposed on, or with respect to the gas, prior to its delivery at the Point of Delivery. Buyer shall pay all taxes imposed on, or with respect to, the gas, including any Goods and Services Tax imposed under Part IX of the Excise Tax Act (Canada), as amended (the "GST"), at or after its delivery at the Point of Delivery. If Buyer is entitled to purchase such gas free from any such taxes, including GST, Buyer shall furnish Seller the necessary exemption or resale certificate.

ARTICLE III  
TERM

3.1 This Agreement shall become effective as of the date first written above, and shall continue in effect for a period of ten years after the Commencement Date.

3.2 The "Commencement Date" under this Agreement shall be the actual in service date under Buyer's TCPL long term transportation contract for service from the Point of Delivery to the interconnect between TCPL and the proposed Portland Natural Gas Transmission System, near Highwater, Quebec. Buyer shall keep Seller apprised of any notices regarding the Commencement Date and in service date of the TCPL service.

3.3 If the Commencement Date has not occurred by November 1, 2000, either party may terminate this Agreement upon ten days prior written notice to the other party.

3.4 Except as otherwise provided in this Agreement, where a party fails to perform a material obligation of this Agreement (the "Defaulting Party"), and fails to cure such failure, or to commence to cure and diligently proceed to cure such failure, within 30 days of receipt of a notice of such failure from the non-Defaulting Party, then the non-Defaulting Party may, upon prior notice suspend or terminate this Agreement within 10 days after the 30 day curative period expires. Upon termination the non-Defaulting Party shall be entitled to liquidated damages as provided in Article IX.

ARTICLE IV  
DELIVERY & TRANSPORTATION

4.1 The Point of Delivery for all gas purchased and sold hereunder shall be the interconnection of the facilities of TCPL and Nova, located near Empress, Alberta.

4.2 Delivery and receipt of gas sold hereunder shall be as nearly as practicable at uniform hourly and daily rates of flow.

4.3 Seller shall be responsible for making all arrangements with any pipelines necessary for the firm transportation of the gas sold hereunder to the Point of Delivery, and for paying for such transportation. Buyer shall be responsible for making all arrangements with any pipelines necessary for the firm transportation of the gas sold hereunder from the Point of Delivery, and for paying for such transportation.

**ARTICLE V**  
**MEASUREMENT AND QUALITY**

5.1 The unit of measure for the purpose of measuring gas delivered hereunder shall be 1000 cubic meters (10<sup>3</sup>m<sup>3</sup>). The unit of heating value used for pricing and payment purposes hereunder shall be the gigajoule (Gj).

5.2 The measurement of all gas sold hereunder, and the determination of its heating value, shall be performed by TCPL. All gas sold hereunder shall be measured, and its heating value determined, in accordance with, and shall conform to the quality and pressure specifications contained in, TCPL's then effective gas transportation tariff.

**ARTICLE VI**  
**BILLING AND PAYMENT**

6.1 Seller shall render a statement to Buyer on or before the 15th day of the month following each month in which gas is sold hereunder (the "Billing Month") showing the quantity of gas delivered in the immediately preceding month and the payment due Seller. Buyer shall pay Seller the undisputed amount billed in the statement on or before the latter of 10 days after receipt of the statement or the 25th day of the Billing Month. All payments to Seller shall be made by wire transfer to the address indicated in Section 15.1. Any statements rendered by Buyer to Seller under this Agreement shall also be governed by this Article VI.

6.2 In the event that Buyer disputes any portion of a statement rendered pursuant to Section 6.1, the undisputed amount shall nevertheless be paid when due. If the parties cannot resolve the dispute within 30 days after such payment, or, in the event that the parties cannot agree on responsibility for any imbalance penalty charge pursuant to Section 1.6, the matter shall be submitted to a mutually agreed upon firm of nationally known public accountants or other third party with appropriate expertise (the "Expert") who shall examine the records and billings and make a written report thereon, which shall be delivered to each party. The decision rendered by the Expert in this report shall be binding upon both parties. The fees and expenses of the Expert incurred in connection with such determination, shall be paid by the party against whom the decision is rendered. However, if both parties prevail with respect to some part of the Expert's determination, the fees and expenses of the Expert shall be allocated among the parties in a manner appropriate to the Expert's determination. Each party shall pay for its own expenses, including attorney's fees, with respect to any such dispute.

6.3 Should Buyer fail to pay the undisputed amount of any statement rendered by Seller when such amount is due, or the disputed amount ultimately determined to be due pursuant to Section 6.2, Buyer shall pay Seller interest thereon from the date due until the date of payment at an annual rate equal to the lesser of (1) the prime rate at the main branch in Calgary, Alberta of the Royal Bank of Canada for Canadian dollar commercial loans, as such rate may



change from time to time, plus 2 %, or (2) the maximum rate allowed by law. In addition, notwithstanding anything herein to the contrary, Seller may, upon 10 days prior written notice to Buyer, suspend further deliveries of gas under this Agreement until such amount is paid, and/or terminate this Agreement.

6.4 Each party shall have the right, at its expense and during normal business hours, to have an independent accounting firm conduct an audit of the books and records of the other party to the extent necessary to verify the accuracy of any statement rendered under this Agreement in the preceding 24 month period. Any such audit shall remain confidential between the parties.

6.5 Should Seller find at any time within 24 months after the date of any statement rendered by it that there has been an undercharge or an overcharge in the amount billed in the statement, it may, in the case of an undercharge, submit a statement for such undercharge, and Buyer, upon verifying the same, shall pay such amount within 30 days after receipt of the statement, with interest as provided for in Section 6.3. Any overcharge, if it has been paid by Buyer, shall be refunded by Seller, with interest as provided for in Section 6.3.

6.6 Should Buyer find at any time within 24 months after the date of any statement rendered by Seller that there has been an overcharge or undercharge in the amount billed in the statement, and if it has paid any overcharge, the overcharge, if verified by Seller, shall be refunded within 30 days of notification by Buyer, with interest as provided for in Section 6.3. Any undercharge, if verified by Seller, shall be submitted to Buyer on Seller's next statement, with interest as provided for in Section 6.3

6.7 Should either party terminate this Agreement pursuant to Section 6.3 because of the other party's failure to pay amounts owed, the terminating party shall be entitled to liquidated damages as provided in Article IX.

## ARTICLE VII CREDITWORTHINESS

7.1 Upon execution of this Agreement, or at any time during the term hereof, should either party reasonably determine itself insecure with regard to the other party's ability to meet its payment obligations, either because of the other party's failure to meet the criteria for creditworthiness under a party's credit policy, or otherwise, either party may require that the other party do one of the following:

(a) provide the requesting party with a corporate guarantee of the subject party's performance under this Agreement in form and substance satisfactory to the party requesting such guarantee; or

(b) provide the requesting party with an irrevocable stand-by letter of credit in a total amount sufficient to cover amounts due hereunder for a 66 day period, in a form, and with a bank, acceptable to the requesting party;

Should a party fail to comply with any of the requirements set forth above within ten business days after receiving a request to do so from the requesting party, the requesting party may refuse to commence, or may suspend and/or terminate this Agreement. Upon termination the requesting party shall be entitled to liquidated damages as provided in Article IX.

## ARTICLE VIII BANKRUPTCY, INSOLVENCY, ETC.

**8.1** (a) In the event that either party (the "Defaulting Party") : (1) becomes bankrupt or insolvent, however evidenced, or becomes unable to pay its debts as they fall due; (2) files a petition or otherwise commences a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or proceeding commenced against it; (3) has a liquidator, administrator, receiver, conservator or trustee appointed with respect to it or any substantial portion of its property or assets; then in any such event the Non-Defaulting Party shall have the right on 10 days prior written notice to terminate this Agreement.

(b) Upon termination under Section 8.1(a), a settlement payment equal to the difference between the Market Value and the Contract Value of this Agreement shall be paid to Buyer if the Market Value exceeds the Contract Value and to Seller if the opposite is the case. Any settlement payment shall be discounted to present value at the time of termination to take into account the period between the date of termination and the date on which such amount would otherwise have been due under this Agreement. The parties agree that the present value discount rate to be used herein shall be the yield of United States Treasury notes for the same term as represented by the remaining term in the Agreement, plus 100 basis points.

(c) "Contract Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the contract price. The parties agree to use the simple average of the forward price quotes for the remaining term of this Agreement, as provided by three independent sources for the index used to calculate the contract price due under Article II.

(d) "Market Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the sum of (1) the simple average of the forward price quotes for the remaining term of this Agreement for the index in effect pursuant to Article II, plus (2) any commercially reasonable premium or discount Buyer must pay, or may be entitled to, in securing a firm supply for the remaining term of this Agreement, or, any commercially reasonable premium or discount Seller may be entitled to, or must accept in securing a firm market for the remaining term of this

Agreement, with both the price quotes and the premium or discount, if any, to be provided by three independent sources.

8.2 The Non-Defaulting Party's rights under this Article VIII are in addition to any other rights it may have.

#### ARTICLE IX LIQUIDATED DAMAGES

9.1 (a) If Buyer terminates this Agreement pursuant to Sections 1.4, 3.4, 6.3 or 7.1, it shall be entitled to damages from Seller equal to the amount by which the Market Value exceeds the Contract Value of this Agreement. If Seller terminates this Agreement pursuant to Sections 1.4, 3.4, 6.3 or 7.1, it shall be entitled to damages from Buyer equal to the amount by which the Contract Value of this Agreement exceeds the Market Value. Such damages shall be discounted to present value at the time of termination to take into account the period between the date of termination and the date on which such moneys would otherwise have been due if paid under this Agreement. The discount rate to be used shall be the yield of U.S. Treasury notes for the same term as the remaining term in the Agreement, plus 100 basis points.

(b) "Contract Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the contract price. The parties agree to use the simple average of the forward price quotes for the remaining term of this Agreement, as provided by three independent sources for the index used to calculate the contract price due under Article II.

(c) "Market Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the sum of (1) the simple average of the forward price quotes for the remaining term of this Agreement for the index in effect pursuant to Article II, plus (2) any commercially reasonable premium or discount Buyer must pay, or may be entitled to, in securing a firm supply for the remaining term of this Agreement, or, any commercially reasonable premium or discount Seller may be entitled to, or must accept in securing a firm market for the remaining term of this Agreement, with both the price quotes and the premium or discount, if any, to be provided by three independent sources.

9.2 Each party reserves the right to set off all amounts which the other party owes to it under this Agreement against all amounts which it owes the other party under this Agreement.

**ARTICLE X**  
**WARRANTIES & INDEMNIFICATIONS**

**10.1** Seller represents and warrants to Buyer that Seller has and shall obtain and have available throughout the term of this Agreement supplies of gas adequate and sufficient to satisfy Seller's obligations under this Agreement, including Seller's obligations under Article I hereof, and that Seller possesses and shall possess the unfettered right to sell and deliver natural gas from such supplies to Buyer in fulfillment of such obligations.

**10.2** Seller shall provide evidence of gas reserves and deliverability as are necessary for Seller to obtain a removal permit from the Alberta Energy and Utilities Board issued pursuant to the Gas Resources Preservation Act of Alberta authorizing the removal of the Daily Quantity from the province on each day for the full term of this Agreement, and as are necessary for Buyer to obtain an export license pursuant to the National Energy Board Act of Canada authorizing the export from Canada of the Daily Quantity on each day for the full term of this Agreement.

**10.3** Seller warrants that at the time of delivery it will have the right to deliver the gas sold hereunder and that it will indemnify Buyer and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas, and royalties, taxes, license fees or charges on such gas, to the extent that they arise or attach prior to delivery at the Point of Delivery.

**10.4** Buyer will indemnify Seller and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas, and royalties, taxes including GST, license fees or charges on such gas, to the extent that they arise or attach at and after delivery at the Point of Delivery.

**ARTICLE XI**  
**FORCE MAJEURE**

**11.1** If an event specified under Section 11.2 occurs which is not within the control of a party, and causes that party to fail to perform all or part of an obligation under this Agreement, then the party (the "Claiming Party") may claim "Force Majeure", but only to the extent that event directly causes the Claiming Party to fail to perform all or part of that obligation under this Agreement. Such a claim suspends performance of the obligation of the Claiming Party and any related obligation of the other party, but does not suspend performance of any obligation to pay money due under this Agreement. The suspension period shall be in effect for so long as the event causes the failure to perform. However, the Claiming Party must do everything commercially reasonable to restore performance as soon as possible.

**11.2** An event of "Force Majeure" specifically means, and is limited to, only an event of: (i) curtailment, for any reason whatsoever, reallocation or pro-rationing of a party's firm

transportation service, on Nova, TCPL or Great Lakes used to transport gas subject to this Agreement, as authorized by the published tariff, policies or procedures of the respective pipeline company, and regardless of whether or not the pipeline company has issued a formal notice of force majeure; or (ii) an order of any court, regulatory tribunal or government body, the effect of which is to make the continued performance by one or both parties under this Agreement illegal or prohibited.

**11.3** If any party claims Force Majeure for more than 365 consecutive days, the other party has the right, without any costs or penalties as may be contemplated by this Agreement, and, upon ten days prior written notice to terminate this Agreement.

**11.4** A Claiming Party may not claim Force Majeure protection under this Agreement if:

- (a) the event resulting in the performance failure was caused by a negligent act, omission or by a contract breach by the Claiming party;
- (b) the Claiming Party did not do everything commercially reasonable to avoid the performance failure or to restore performance as soon as possible;
- (c) Force Majeure notice requirements under this Agreement are not complied with.

**11.5** Notice by the Claiming Party must be given to the other party as soon as possible once a Force Majeure event has occurred. Oral notice should be given if possible, but written notice must be given, containing all details necessary to describe the event, how long it will last, the obligations affected, and the time and date performance is expected to be restored. Force Majeure protection will not be available if written notice is not given in a timely fashion. The Claiming Party will give notice as soon as possible after the Force Majeure condition is remedied, to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of its covenants or obligations under this Agreement.

**11.6** (a) If an event of Force Majeure affecting Buyer's ability to take gas occurs, Buyer shall first curtail all purchases of interruptible gas, to the extent such action will alleviate the effect of the event of Force Majeure on purchases hereunder, prior to reducing purchases of gas hereunder. Buyer shall not reduce purchases hereunder by a greater percentage than it reduces its other firm purchases of gas affected by the event of Force Majeure.

(b) If an event of Force Majeure affecting Seller's ability to deliver gas occurs, Seller shall first curtail all deliveries of interruptible gas, to the extent such action will alleviate the effect of the event of Force Majeure on sales hereunder, prior to reducing sales of

gas hereunder. Seller shall not reduce deliveries hereunder by a greater percentage than it reduces its other firm sales of gas affected by the event of Force Majeure.

ARTICLE XII  
REGULATORY AUTHORIZATIONS

12.1 Buyer shall be responsible for securing all necessary import and export authorizations from the National Energy Board of Canada and the United States Department of Energy.

12.2 Seller shall be responsible for securing all necessary regulatory authorizations from the Alberta Energy and Utilities Board or other provincial body having jurisdiction over the purchase and sale hereunder.

ARTICLE XIII  
REGULATION

13.1 This Agreement is subject to all valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

ARTICLE XIV  
POSSESSION AND LIABILITY

14.1 Seller shall be deemed in exclusive control and possession of the gas sold hereunder and responsible for any damage or injury caused thereby until it is delivered at the Point of Delivery. Buyer shall be deemed in exclusive control and possession of said gas and responsible for any damage or injury caused thereby after it is delivered by Seller at the Point of Delivery.

ARTICLE XV  
NOTICES

15.1 Unless specified otherwise in this Agreement, every nomination, notice or statement to be delivered by one party to the other must be in writing. Every such communication may be delivered by personal delivery, courier service, prepaid registered mail or fax. The address for all forms of deliveries to the recipient shall be as listed below:

CoEnergy Trading Company  
150 W. Jefferson, Suite 1800  
Detroit, Michigan 48226  
Attn: Glen D. Kinder  
Telephone: 313-256-6000  
Fax: 313-256-5739

Gulf Canada Resources Limited  
1600, 401 - 9th Ave. S.W.  
Calgary, Alberta T2P 2H7  
Attn: Director, Marketing  
Telephone: 403-233-4000  
Fax: 403-233-5517

Payments:

Payments:

Wire transfer to:

Wire transfer to:

NBD Bank  
c/o CoEnergy Trading Company  
Account Number 1253483  
ABA Number: 072000326  
611 Woodward Avenue  
Detroit, Michigan 48226

Toronto Dominion Bank  
c/o Gulf Canada Resources Limited  
Account Number 0312072  
Transit # 80609  
340 - 5th Avenue S.W.  
Calgary, Alberta

The foregoing addresses and numbers may be changed by either party upon written notice to the other party.

15.2 All communications will be deemed to be received by the recipient:

(a) upon the sender effecting courier or personal delivery, as the case may be;  
(b) at the time and date indicated on the registered mail receipt in the case of prepaid registered mail; and

(c) as indicated in the sender's telecopy records in the case of fax transmittals if received prior to 4:00 P.M. (recipient's time) on a day recipient is open for business generally, or, if not, on the next following business day.

**ARTICLE XVI**  
**NON-WAIVER OF FUTURE DEFAULTS**

16.1 No waiver by either party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

ARTICLE XVII  
ASSIGNMENT

17.1 (a) Any company which shall succeed a party hereto by purchase, merger, or consolidation shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. No assignment of this Agreement or any of its rights or obligations hereunder shall be made by either party without the written consent of the other first obtained, which consent cannot be unreasonably withheld. The provisions of this article shall not in any way prevent either party from pledging or mortgaging its rights hereunder as security for its indebtedness. Notwithstanding any other provision hereof, nothing herein shall limit, prohibit, or restrict the right of either party hereto to factor, sell, assign or otherwise dispose of accounts receivable or amounts owing or due and payable to it hereunder, or any portion thereof. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

(b) No assignment shall be effective unless and until the assignee shall have delivered to the non-assigning party an agreement in writing whereby the assignee agrees to be bound by the assignor's obligations under the relevant agreement. No assignment, even with the other party's approval or consent, shall relieve the assigning party of any of its obligations thereunder unless the other party expressly releases the assigning party from its obligations. Any such required assignment agreement cannot be unreasonably withheld.

ARTICLE XVIII  
CONDITIONS PRECEDENT

18.1 The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) execution by Buyer of a firm transportation contract with TCPL, necessary to meet Buyer's obligations under this Agreement, on terms and conditions acceptable to Buyer;

(b) receipt by the parties of all necessary regulatory authorizations on terms satisfactory to the receiving party.

The parties are obligated to act in good faith to satisfy the conditions precedent. If these conditions precedent have not been satisfied by October 1, 1997, either party may terminate this Agreement, without any penalty or cost, upon ten days prior written notice to the other party.



ARTICLE XIX  
FURTHER ASSURANCES

19.1 Each party and its respective legal representative, successors and assigns shall, without further consideration, execute, acknowledge and deliver any and all documents and instruments which, from time to time, may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

ARTICLE XX  
SEVERABILITY

20.1 If any court of competent jurisdiction determines that any provision of this Agreement is invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect, except that this Agreement shall terminate if a provision governing price, quantity or term is determined to be invalid.

ARTICLE XXI  
LIMITATION ON DAMAGES

21.1 Neither party shall be liable to the other for any incidental, consequential (including lost profits), indirect, exemplary, or punitive damages.

ARTICLE XXII  
ENTIRE AGREEMENT

22.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreements or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect. This Agreement may be modified or amended only by a writing duly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

COENERGY TRADING COMPANY

By: *[Signature]*

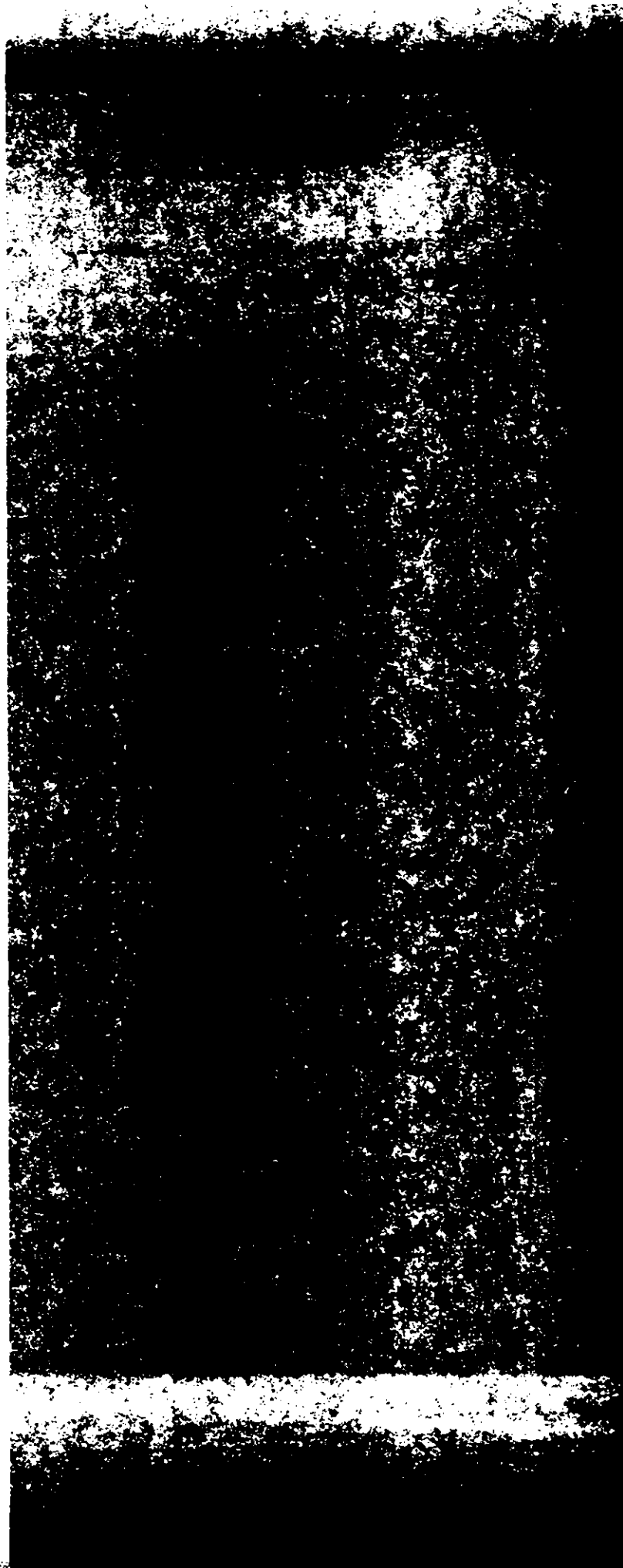
Title: President

*Handwritten:*  
D&J

GULF CANADA RESOURCES LIMITED

By: *[Signature]*

Title: *[Signature]*



## GAS PURCHASE AGREEMENT

This Agreement, made and entered into as of the 31 day of October, 1996 by and between Suncor Inc. ("Seller"), a Canadian corporation and CoEnergy Trading Company ("Buyer"), a Michigan corporation.

### INTRODUCTION

WHEREAS, Buyer desires to purchase natural gas from Seller and Seller desires to sell natural gas to Buyer on a long-term 100% load factor basis in the quantities and subject to the terms and conditions hereinafter set forth.

Therefore, in consideration of the mutual benefits to be derived from so doing, the parties hereto agree as follows:

### ARTICLE I SALE AND PURCHASE OBLIGATION

1.1. Subject to an event defined as Force Majeure in Article XI below, Buyer shall each day nominate and purchase from Seller at the Point of Delivery, the Daily Quantity of natural gas.

1.2 Subject to an event defined as Force Majeure in Article XI below, Seller shall each day deliver and sell to Buyer at the Point of Delivery, the Daily Quantity of natural gas.

1.3 The "Daily Quantity" shall mean the sum of 849.8 10<sup>3</sup>m<sup>3</sup> (30,000 Mcf) plus the daily actual pipeline fuel requirements of TransCanada PipeLines Limited ("TCPL") for service from Empress, Alberta to Emerson, Manitoba.

1.4 If either party (the "Defaulting Party") fails to meet its obligations to deliver or receive gas under this Agreement and its failure is not excused by any provision of this Agreement, then the Defaulting Party shall pay the non-Defaulting Party the actual monetary loss incurred by the non-Defaulting Party for the commercially reasonable purchase of replacement gas, or the commercially reasonable sale of gas to an alternative market, as the case may be, plus any firm transportation demand charges incurred by the non-Defaulting Party for unutilized pipeline capacity as a direct result of the Defaulting Party's failure to perform, plus \$0.50/Gj. Should the Defaulting Party fail to deliver or receive gas for a total of 60 days in any twelve month period, then the non-Defaulting Party may terminate this Agreement upon 10 days prior written notice. Upon termination the non-Defaulting Party shall be entitled to liquidated damages as provided in Article IX.

1.5 Buyer shall provide Seller with notice of any requested nomination change no later than 8:00 A.M., M.S.T. on the day prior to the date which Buyer would like any such change to be effective. Any requests for nomination changes made by Buyer after this time may be accommodated by Seller on a reasonable efforts basis.

1.6 The parties shall cooperate to eliminate imbalances between nominations and deliveries on Seller's and Buyer's transporters. If during any month, however, Buyer or Seller receives an invoice from its transporter which includes an imbalance penalty charge, cash out costs, or similar penalties ("imbalance penalty charge"), both parties shall use their reasonable best efforts to determine the validity as well as the cause of the imbalance penalty charge. If the parties determine that the imbalance penalty charge was due to Buyer's failure to meet its obligations under this Agreement, then Buyer shall pay the imbalance penalty charge. If the parties determine that the imbalance penalty was due to Seller's failure to meet its obligations under this Agreement, then Seller shall pay such imbalance penalty charge. If the parties cannot agree, the matters shall be resolved pursuant to Section 6.2.

## ARTICLE II PRICE

2.1 The price per Gj, applicable to the first 566.6 10<sup>3</sup>m<sup>3</sup> (20,000 Mcf) of natural gas sold hereunder on any day and the volume of gas equal to the total daily TCPL fuel requirements provided by Seller pursuant to Section 1.2 on any day, shall equal the average monthly index price per Gj for the relevant sales month for Empress, Alberta as published in the Canadian Gas Price Reporter under the heading "Alberta, Border (Empress), Month Average Spot (One Month), Firm (100% LF)", plus \$0.065 /Gj.

2.2 The price per Gj, applicable to the remaining 283.2 10<sup>3</sup>m<sup>3</sup> (10,000 Mcf) of natural gas sold hereunder on any day, shall be calculated as follows:

$$\text{Price} = \text{MIP} + (50\% \text{ times } (\text{MMN} - \text{MIP})) \quad \text{where}$$

MIP = the average monthly index price per Gj for the relevant sales month for Empress, Alberta as published in the Canadian Gas Price Reporter under the heading "Alberta, Border (Empress), Month Average Spot (One Month), Firm (100% LF)",

$$\text{MMN} = \text{Index} - \text{Transportation} - \text{Fuel} \quad \text{where}$$

Index = the monthly index price per Mcf for the relevant sales month as published in the Gas Daily Price Guide under the

section titled "Monthly Contract Index, Michigan, MichCon, large, mcf."

Transportation = the 100% load factor firm service rate in effect on TCPL for service from Empress, Alberta to Emerson, Manitoba plus the rolled-in 100% load factor firm service rate in effect on Great Lakes Gas Transmission Limited Partnership ("Great Lakes") for service from Emerson, Manitoba to St. Clair, Michigan.

Fuel = the price provided for in Section 2.1 times TCPL's monthly actual fuel requirement for service from Empress, Alberta to Emerson, Manitoba plus Great Lakes monthly actual fuel requirement for service from its Western Zone to its Eastern Zone.

2.3 If any of the indexes or publications referenced in Section 2.1 or 2.2 cease publication, the parties shall agree upon replacements to be utilized in this Agreement.

2.4 All prices under this Agreement shall be denominated in \$Cdn/Gj and any amounts denominated in \$U.S. shall be converted to \$Cdn on the basis of the noon exchange rate at the Bank of Canada on the first day of the month for which a price is being determined.

2.5 Seller shall pay all taxes imposed on, or with respect to the gas, prior to its delivery at the Point of Delivery. Buyer shall pay all taxes imposed on, or with respect to, the gas, including any Goods and Services Tax imposed under Part IX of the Excise Tax Act (Canada), as amended (the "GST"), at or after its delivery at the Point of Delivery. If Buyer is entitled to purchase such gas free from any such taxes, including GST, Buyer shall furnish Seller the necessary exemption or resale certificate.

### ARTICLE III TERM

3.1 This Agreement shall become effective as of the date first written above, and shall continue in effect for a period of ten years after the Commencement Date.

3.2 The "Commencement Date" under this Agreement shall be the later of (i) November 1, 1998 or (ii) the actual in service date under Buyer's TCPL long term transportation contract for service from the Point of Delivery to the interconnect between TCPL and the proposed Portland Natural Gas Transmission System, near Highwater, Quebec.

3.3 If the Commencement Date has not occurred by November 1, 2000, either party may terminate this Agreement upon ten days prior written notice to the other party.

3.4 Except as otherwise provided in this Agreement, where a party fails to perform a material obligation of this Agreement ("the Defaulting Party") and fails to cure such failure, or to commence to cure and diligently proceed to cure such failure, within 30 days of receipt of a notice of such failure from the non-Defaulting Party, then the non-Defaulting Party may, upon prior notice, suspend or terminate this Agreement within 10 days after the 30 day curative period expires. Upon termination the non-Defaulting Party shall be entitled to liquidated damages as provided in Article IX.

#### ARTICLE IV DELIVERY & TRANSPORTATION

4.1 The Point of Delivery for all gas purchased and sold hereunder shall be the interconnection of the facilities of TCPL and Nova Gas Transmission Limited ("Nova"), located near Empress, Alberta.

4.2 Delivery and receipt of gas sold hereunder shall be as nearly as practicable at uniform hourly and daily rates of flow.

4.3 Seller shall be responsible for making all arrangements with any pipelines necessary for the firm transportation of the gas sold hereunder to the Point of Delivery, and for paying for such transportation. Buyer shall be responsible for making all arrangements with any pipelines necessary for the firm transportation of the gas sold hereunder from the Point of Delivery, and for paying for such transportation.

#### ARTICLE V MEASUREMENT AND QUALITY

5.1 The unit of measure for the purpose of measuring gas delivered hereunder shall be 1000 cubic meters ( $10^3\text{m}^3$ ). The unit of heating value used for pricing and payment purposes hereunder shall be the gigajoule (Gj).

5.2 The measurement of all gas sold hereunder, and the determination of its heating value, shall be performed by TCPL. All gas sold hereunder shall be measured, and its heating value determined, in accordance with, and shall conform to the quality and pressure specifications contained in, TCPL's then effective gas transportation tariff.

5.3 For any conversions under this Agreement of quantities of gas denominated in  $10^3\text{m}^3$ 's into quantities of gas denominated in GJ's, the conversion factor shall equal the actual factor in use for the subject month by TCPL at Empress, Alberta. For any conversions under this Agreement of quantities of gas denominated in Mcf's into quantities of gas denominated in  $10^3\text{m}^3$ 's, the conversion factor shall be  $1 \text{ Mcf} = .02832784 \text{ } 10^3\text{m}^3$ .

## ARTICLE VI BILLING AND PAYMENT

6.1 Seller shall render a statement to Buyer on or before the 15th day of the month following each month in which gas is sold hereunder (the "Billing Month") showing the quantity of gas delivered in the immediately preceding month and the payment due Seller. Buyer shall pay Seller the undisputed amount billed in the statement on or before the latter of 10 days after receipt of the statement or the 25th day of the Billing Month. All payments to Seller shall be made by wire transfer to the address indicated in Section 15.1. Any statements rendered by Buyer to Seller under this Agreement shall also be governed by this Article VI.

6.2 In the event that Buyer disputes any portion of a statement rendered pursuant to Section 6.1, the total undisputed amount shall nevertheless be paid when due. If the parties cannot resolve the dispute within 30 days after such payment, or, in the event that the parties cannot agree on responsibility for any imbalance penalty charge pursuant to Section 1.6, the matter shall be submitted to a mutually agreed upon firm of nationally known public accountants or other third party with appropriate expertise (the "Expert") who shall examine the records and billings and make a written report thereon, which shall be delivered to each party. The decision rendered by the Expert in this report shall be binding upon both parties. The fees and expenses of the Expert incurred in connection with such determination, shall be paid by the party against whom the decision is rendered. However, if both parties prevail with respect to some part of the Expert's determination, the fees and expenses of the Expert shall be allocated among the parties in a manner appropriate to the Expert's determination. Each party shall pay for its own expenses, including attorney's fees, with respect to any such dispute.

6.3 Should Buyer fail to pay the undisputed amount of any statement rendered by Seller when such amount is due, or the disputed amount ultimately determined to be due pursuant to Section 6.2, Buyer shall pay Seller interest thereon from the date due until the date of payment at an annual rate equal to the lesser of (1) the prime rate at the main branch in Calgary, Alberta of the Royal Bank of Canada for Canadian dollar commercial loans, as such rate may change from time to time, plus 2 %, or (2) the maximum rate allowed by law. In addition, notwithstanding anything herein to the contrary, Seller may,

upon 10 days prior written notice to Buyer, suspend further deliveries of gas under this Agreement until such amount is paid, and/or terminate this Agreement.

6.4 Each party shall have the right, at its expense and during normal business hours, to have an independent accounting firm conduct an audit of the books and records of the other party to the extent necessary to verify the accuracy of any statement rendered under this Agreement in the preceding 24 month period. Any such audit shall remain confidential between the parties.

6.5 Should Seller find at any time within 24 months after the date of any statement rendered by it that there has been an undercharge or an overcharge in the amount billed in the statement, it may, in the case of an undercharge, submit a statement for such undercharge, and Buyer, upon verifying the same, shall pay such amount within 30 days after receipt of the statement, with interest as provided for in Section 6.3. Any overcharge, if it has been paid by Buyer, shall be refunded by Seller, with interest as provided for in Section 6.3.

6.6 Should Buyer find at any time within 24 months after the date of any statement rendered by Seller that there has been an overcharge or undercharge in the amount billed in the statement, and if it has paid any overcharge, the overcharge, if verified by Seller, shall be refunded within 30 days of notification by Buyer, with interest as provided for in Section 6.3. Any undercharge, if verified by Seller, shall be submitted to Buyer on Seller's next statement, with interest as provided for in Section 6.3

6.7 Should either party terminate this Agreement pursuant to Section 6.3 because of the other party's failure to pay amounts owed, the terminating party shall be entitled to liquidated damages as provided in Article IX.

## ARTICLE VII CREDITWORTHINESS

7.1 Upon execution of this Agreement, or at any time during the term hereof, should either party reasonably feel itself insecure with regard to the other party's ability to meet its payment obligations, either because of the other party's failure to meet the criteria for creditworthiness under a party's credit policy, or otherwise, either party may require that the other party do one of the following:

(a) provide the requesting party with a corporate guarantee of the subject party's performance under this Agreement in form and substance satisfactory to the party requesting such guarantee; or



(b) provide the requesting party with an irrevocable stand-by letter of credit in a total amount sufficient to cover amounts due hereunder for a 66 day period, in a form, and with a bank, acceptable to the requesting party;

Should a party fail to comply with any of the requirements set forth above within ten business days after receiving a request to do so from the requesting party, the requesting party may refuse to commence, suspend and/or terminate this Agreement. Upon termination the requesting party shall be entitled to liquidated damages as provided in Article IX.

### ARTICLE VIII BANKRUPTCY, INSOLVENCY, ETC.

8.1 (a) In the event that either party (the "Defaulting Party") : (1) becomes bankrupt or insolvent, however evidenced, or becomes unable to pay its debts as they fall due; (2) files a petition or otherwise commences a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or proceeding commenced against it; (3) has a liquidator, administrator, receiver, conservator or trustee appointed with respect to it or any substantial portion of its property or assets; then in any such event the Non-Defaulting Party shall have the right on 10 days prior written notice to terminate this Agreement.

(b) Upon termination under Section 8.1(a), a settlement payment equal to the difference between the Market Value and the Contract Value of this Agreement shall be paid to Buyer if the Market Value exceeds the Contract Value and to Seller if the opposite is the case. Any settlement payment shall be discounted to present value at the time of termination to take into account the period between the date of termination and the date on which such amount would otherwise have been due under this Agreement. The parties agree that the present value discount rate to be used herein shall be the yield of United States Treasury notes for the same term as represented by the remaining term in the Agreement, plus 100 basis points.

(c) "Contract Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the contract price. The parties agree to use the simple average of the forward price quotes for the remaining term of this Agreement, as provided by three independent sources for the MichCon index and the Empress index, in calculating the contract price due under Sections 2.1 and 2.2.

(d) "Market Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the sum of (1) the simple average of the forward price quotes for

the remaining term of this Agreement for the Empress index, plus (2) any commercially reasonable premium or discount Buyer must pay, or may be entitled to, in securing a firm supply for the remaining term of this Agreement, or, any commercially reasonable premium or discount Seller may be entitled to, or must accept in securing a firm market for the remaining term of this Agreement, with both the price quotes and the premium or discount, if any, to be provided by three independent sources.

8.2 The Non-Defaulting Party's rights under this Article VIII are in addition to any other rights it may have.

#### ARTICLE IX TERMINATION & DAMAGES

9.1 (a) If Buyer terminates this Agreement pursuant to Sections 1.4, 3.4, 6.3 or 7.1, it shall be entitled to damages from Seller equal to the amount by which the Market Value exceeds the Contract Value of this Agreement. If Seller terminates this Agreement pursuant to Sections 1.4, 3.4, 6.3 or 7.1, it shall be entitled to damages from Buyer equal to the amount by which the Contract Value of this Agreement exceeds the Market Value. Such damages shall be discounted to present value at the time of termination to take into account the period between the date of termination and the date on which such moneys would otherwise have been due if paid under this Agreement. The discount rate to be used shall be the yield of U.S. Treasury notes for the same term as the remaining term in the Agreement, plus 100 basis points.

(b) "Contract Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the contract price. The parties agree to use the simple average of the forward price quotes for the remaining term of this Agreement, as provided by three independent sources for the MichCon index and the Empress index, in calculating the contract price due under Sections 2.1 and 2.2.

(c) "Market Value" means that portion of the contract quantity to be sold and purchased during that part of the term of this Agreement remaining at the time of termination multiplied by the sum of (1) the simple average of the forward price quotes for the remaining term of this Agreement for the Empress index, plus (2) any commercially reasonable premium or discount Buyer must pay, or may be entitled to, in securing a firm supply for the remaining term of this Agreement, or, any commercially reasonable premium or discount Seller may be entitled to, or must accept in securing a firm market for the remaining term of this Agreement, with both the price quotes and the premium or discount, if any, to be provided by three independent sources.

9.2 Each party reserves the right to set off all amounts which the other party owes to it under this Agreement against all amounts which it owes the other party under this Agreement.

ARTICLE X  
WARRANTIES & INDEMNIFICATIONS

10.1 Seller represents and warrants to Buyer that Seller has and shall obtain and have available throughout the term of this Agreement supplies of gas adequate and sufficient to satisfy Seller's obligations under this Agreement, including but not limited to Seller's obligations under Article I hereof, and that Seller possesses and shall possess the unfettered right to sell and deliver natural gas from such supplies to Buyer in fulfillment of such obligations.

10.2 Seller shall provide evidence of gas reserves and deliverability as are necessary for Seller to obtain a removal permit from the Alberta Energy and Utilities Board issued pursuant to the Gas Resources Preservation Act of Alberta authorizing the removal of the Daily Quantity from the province on each day for the full term of this Agreement, and as are necessary for Buyer to obtain an export license pursuant to the National Energy Board Act of Canada authorizing the export from Canada of the Daily Quantity on each day for the full term of this Agreement.

10.3 Seller warrants that at the time of delivery it will have the right to deliver the gas sold hereunder and that it will indemnify Buyer and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas, and royalties, taxes, license fees or charges on such gas, to the extent that they arise or attach prior to delivery at the Point of Delivery.

10.4 Buyer will indemnify Seller and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas, and royalties, taxes including GST, license fees or charges on such gas, to the extent that they arise or attach at and after delivery at the Point of Delivery.

ARTICLE XI  
FORCE MAJEURE

11.1 If an event specified under Section 11.2 occurs which is not within the control of a party, and causes that party to fail to perform all or part of an obligation under this Agreement, then the party (the "Claiming Party") may claim "Force Majeure", but

only to the extent that event directly causes the Claiming Party to fail to perform all or part of that obligation under this Agreement. Such a claim suspends performance of the obligation of the Claiming Party and any related obligation of the other party, but does not suspend performance of any obligation to pay money due under this Agreement. The suspension period shall be in effect for so long as the event causes the failure to perform. However, the Claiming Party must do everything commercially reasonable to restore performance as soon as possible.

11.2 An event of "Force Majeure" specifically means, and is limited to, only an event of: (i) curtailment, for any reason whatsoever, reallocation or pro-rationing of a party's firm transportation service, on Nova, TCPL or Great Lakes used to transport gas subject to this Agreement, as authorized by the published tariff, policies or procedures of the respective pipeline company, and regardless of whether or not the pipeline company has issued a formal notice of force majeure; or (ii) an order of any court, regulatory tribunal or government body, the effect of which is to make the continued performance by one or both parties under this Agreement illegal or prohibited.

11.3 If any party claims Force Majeure for more than 365 consecutive days, the other party has the right, without any costs or penalties as may be contemplated by this Agreement, and, upon ten days prior written notice to terminate this Agreement.

11.4 A Claiming Party may not claim Force Majeure protection under this Agreement if:

- (a) the event resulting in the performance failure was caused by a negligent act, omission or by a contract breach by the Claiming party;
- (b) the Claiming Party did not do everything commercially reasonable to avoid the performance failure or to restore performance as soon as possible;
- (c) Force Majeure notice requirements under this Agreement are not complied with.

11.5 Notice by the Claiming Party must be given to the other party as soon as possible once a Force Majeure event has occurred. Oral notice should be given if possible, but written notice must be given, containing all details necessary to describe the event, how long it will last, the obligations affected, and the time and date performance is expected to be restored. Force Majeure protection will not be available if written notice is not given in a timely fashion. The Claiming Party will give notice as soon as possible after the Force Majeure condition is remedied, to the effect that the same has been remedied and that such party has resumed, or is then in a position to resume, the performance of its covenants or obligations under this Agreement.

11.6 (a) If an event of Force Majeure affecting Buyer's ability to take gas occurs, Buyer shall first curtail all purchases of interruptible gas, to the extent such action will alleviate the effect of the event of Force Majeure on purchases hereunder, prior to reducing purchases of gas hereunder. Buyer shall not reduce purchases hereunder by a greater percentage than it reduces its other firm purchases of gas affected by the event of Force Majeure.

(b) If an event of Force Majeure affecting Seller's ability to deliver gas occurs, Seller shall first curtail all deliveries of interruptible gas, to the extent such action will alleviate the effect of the event of Force Majeure on sales hereunder, prior to reducing sales of gas hereunder. Seller shall not reduce deliveries hereunder by a greater percentage than it reduces its other firm sales of gas affected by the event of Force Majeure.

## ARTICLE XII REGULATORY AUTHORIZATIONS

12.1 Buyer shall be responsible for securing all necessary import and export authorizations from the National Energy Board of Canada and the United States Department of Energy.

12.2 Seller shall be responsible for securing all necessary regulatory authorizations from the Alberta Energy and Utilities Board or other provincial body having jurisdiction over the purchase and sale hereunder.

## ARTICLE XIII REGULATION

13.1 This Agreement is subject to all valid laws, orders, rules and regulations of duly constituted governmental authorities having jurisdiction.

## ARTICLE XIV POSSESSION AND LIABILITY

14.1 Seller shall be deemed in exclusive control and possession of the gas sold hereunder and responsible for any damage or injury caused thereby until it is delivered at the Point of Delivery. Buyer shall be deemed in exclusive control and possession of said gas and responsible for any damage or injury caused thereby after it is delivered by Seller at the Point of Delivery.

ARTICLE XV  
NOTICES

15.1 Unless specified otherwise in this Agreement, every nomination, notice or statement to be delivered by one party to the other must be in writing. Every such communication may be delivered by personal delivery, courier service, prepaid registered mail or fax. The address for all forms of deliveries to the recipient shall be as listed below:

CoEnergy Trading Company  
150 W. Jefferson, Suite 1800  
Detroit, Michigan 48226  
Attn: Glen D. Kinder  
Telephone: 313-256-6000  
Fax: 313-256-5739

Suncor Inc.  
2700, 112 - 4th Ave. S.W.  
Calgary, Alberta T2P 2v5  
Attn: Ken Robertson  
Telephone: 403-269-8169  
Fax: 403-269-6201

Payments:

Payments:

Wire transfer to:  
NBD Bank  
c/o CoEnergy Trading Company  
Account Number 1253483  
ABA Number: 072000326  
611 Woodward Avenue  
Detroit, Michigan 48226

Wire transfer to:  
Royal Bank of Canada  
c/o Suncor Inc.  
Account Number 0000737  
Transit # 01639

The foregoing addresses and numbers may be changed by either party upon written notice to the other party.

15.2 All communications will be deemed to be received by the recipient:

- (a) upon the sender effecting courier or personal delivery, as the case may be;
- (b) at the time and date indicated on the registered mail receipt in the case of prepaid registered mail; and
- (c) as indicated in the sender's telecopy records in the case of fax transmittals.

ARTICLE XVI  
NON-WAIVER OF FUTURE DEFAULTS

16.1 No waiver by either party of any one or more defaults by the other in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

ARTICLE XVII  
ASSIGNMENT

17.1 (a) Any company which shall succeed a party hereto by purchase, merger, or consolidation shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. No assignment of this Agreement or any of its rights or obligations hereunder shall be made by either party without the written consent of the other first obtained, which consent cannot be unreasonably withheld. The provisions of this article shall not in any way prevent either party from pledging or mortgaging its rights hereunder as security for its indebtedness. This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the parties hereto.

(b) No assignment shall be effective unless and until the assignee shall have delivered to the non-assigning party an agreement in writing whereby the assignee agrees to be bound by the assignor's obligations under the relevant agreement. No assignment, even with the other party's approval or consent, shall relieve the assigning party of any of its obligations thereunder unless the other party expressly releases the assigning party from its obligations.

ARTICLE XVIII  
CONDITIONS PRECEDENT

18.1 The obligations of the parties under this Agreement are subject to the following conditions precedent:

(a) execution by Buyer of a firm transportation contract with TCPL for firm service from Empress, Alberta to the interconnect between TCPL and the proposed Portland Natural Gas Transmission System near Highwater, Quebec, necessary to meet Buyer's obligations to Seller under this Agreement.

(b) receipt by Buyer, on terms and conditions satisfactory to Buyer, of all necessary regulatory authorizations, including those required to facilitate the export from Canada and the import into the United States of the gas subject to this Agreement.

(c) receipt by the Seller, on terms and conditions satisfactory to Seller, of all necessary regulatory authorizations, including those required to facilitate the export from the Province of Alberta of the gas subject to this Agreement.

The parties are obligated to act in good faith to satisfy the conditions precedent. If these conditions precedent have not been satisfied by October 1, 1997, then thereafter and until such time as they have been satisfied and notice of satisfaction received by the other party, either party may terminate this Agreement, without any penalty or cost, upon ten days prior written notice to the other party.

ARTICLE XIX  
FURTHER ASSURANCES

19.1 Each party and its respective legal representative, successors and assigns shall, without further consideration, execute, acknowledge and deliver any and all documents and instruments which, from time to time, may be reasonably requested by the other party to carry out the purpose and intent of this Agreement.

ARTICLE XX  
SEVERABILITY

20.1 If any court of competent jurisdiction determines that any provision of this Agreement is invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect, except that this Agreement shall terminate if a provision governing price, quantity or term is determined to be invalid.

ARTICLE XXI  
LIMITATION ON DAMAGES

21.1 Neither party shall be liable to the other for any incidental, consequential (including lost profits), indirect, exemplary, or punitive damages.

ARTICLE XXII  
ENTIRE AGREEMENT

22.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreements or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no force and effect. This Agreement may be modified or amended only by a writing duly executed by both parties.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

COENERGY TRADING COMPANY

SUNCOR INC,

By *S. D. Kind*

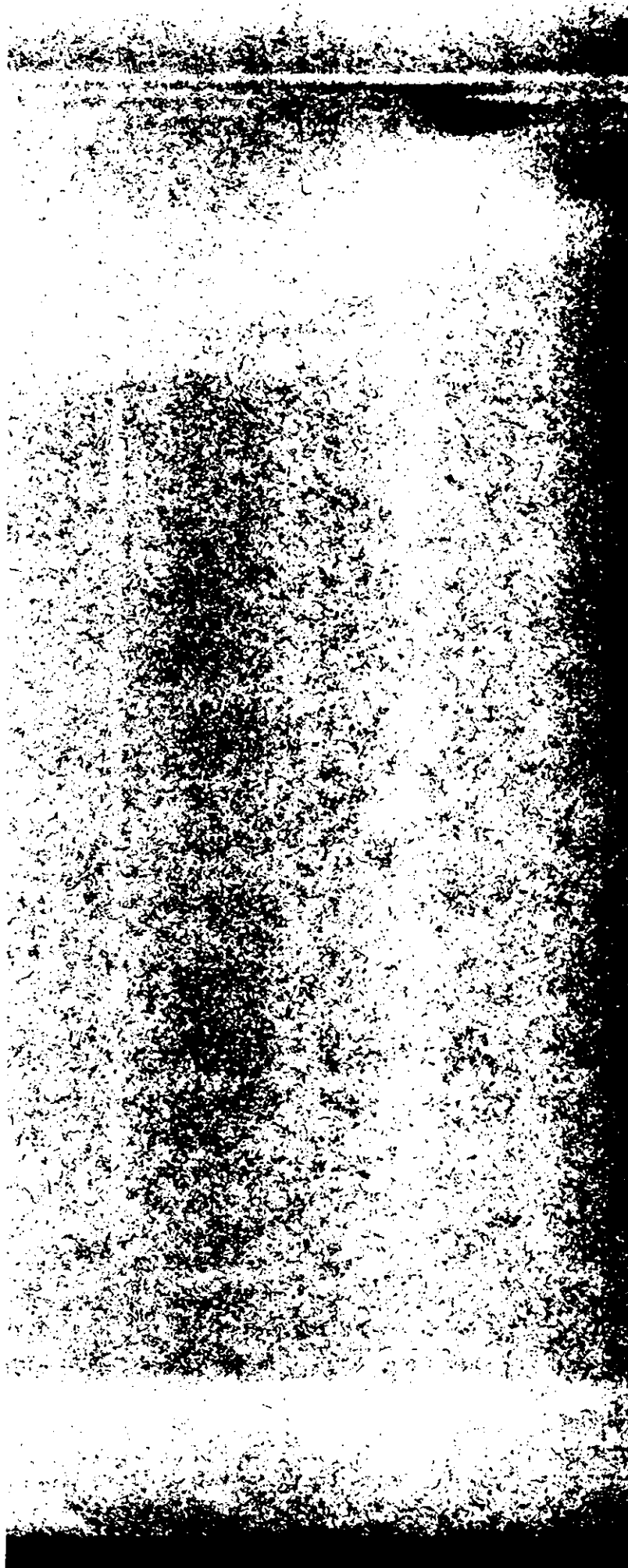
By: *[Signature]*

Title: President

Title: *Executive Vice President*

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DMS  
LHM*



**FIRM TRANSPORTATION SERVICE CONTRACT**

THIS FIRM SERVICE CONTRACT FOR FIRM TRANSPORTATION SERVICE, made as of  
the \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

BETWEEN:

TRANSCANADA PIPELINES LIMITED  
a Canadian corporation  
("TransCanada")

OF THE FIRST PART

and

COENERGY TRADING COMPANY  
a company incorporated under the laws of the  
State of Michigan  
("Shipper")

OF THE SECOND PART

WITNESSES THAT:

WHEREAS TransCanada owns and operates a natural gas pipeline system extending from a point near the Alberta/Saskatchewan border where TransCanada's facilities interconnect with the facilities of NOVA Gas Transmission Ltd. easterly to the Province of Quebec with branch lines extending to various points on the Canada/United States of America International Border; and

WHEREAS Shipper has satisfied in full, or TransCanada has waived, each of the conditions precedent set out in Sections 1.1 (b) and (c) of TransCanada's Firm Transportation Service Toll Schedule referred to in Section 7.1 hereof (the "FT Toll Schedule"); and

WHEREAS Shipper has requested and TransCanada has agreed to transport volumes of gas that are delivered by Shipper or Shipper's agent to TransCanada at the Receipt Point referred to in Section 3.2 hereof (the "Receipt Point"), to the Delivery Point referred to in Section 3.1 hereof (the "Delivery Point") pursuant to the terms and conditions of this Contract; and

WHEREAS the parties hereto have entered into an agreement dated as of the 21st day of February, 1997, (the "Precedent Agreement") which bound them to enter into a Contract pertaining to the Requested Long-Haul Service, as described in the Precedent Agreement, and substantially upon the terms and conditions hereinafter described; and

WHEREAS the conditions precedent of the Precedent Agreement have been satisfied or waived pursuant to the Requested Long-Haul Service; and

WHEREAS the volumes of gas delivered hereunder by Shipper or Shipper's agent to TransCanada are to be removed from the province of production of such gas by Shipper and/or Shipper's suppliers and/or its (their) designated agent(s) pursuant to valid and subsisting permits and/or such other authorizations in respect thereof.

NOW THEREFORE THIS CONTRACT WITNESSES THAT, in consideration of the covenants and agreement herein contained, the parties hereto covenant and agree as follows:

#### **ARTICLE I - COMMENCEMENT OF SERVICE**

1.1 TransCanada shall use reasonable efforts to have the additional facilities (and/or obtain such transportation arrangements on other natural gas transmission systems) as may be required to effect the transportation of the Requested Long-Haul Service volumes hereunder (the "Necessary Long-Haul Capacity") in place by November 1, 1998, or as soon as possible thereafter. TransCanada's ability to provide service by November 1, 1998, will be subject to, inter alia,

- (a) the timing of receipt by Shipper and TransCanada of the authorizations referred to in paragraphs 1 and 2 of the Precedent Agreement which are required prior to the commencement of construction of TransCanada's facilities and the timing of the commencement of the services required by TransCanada (if any) on the pipeline systems of Great Lakes Gas Transmission Limited Partnership, Union Gas Limited and Trans Quebec and Maritimes Pipeline Inc.; and
- (b) the lead time required for the acquisition, construction and installation of those facilities required by TransCanada.

TransCanada shall use reasonable efforts to provide Shipper with ten (10) days advance Notice of the anticipated availability of the Necessary Long-Haul Capacity (the "Advance Long-Haul Notice"). TransCanada shall give Shipper Notice of the actual date of availability of the Necessary Long-Haul Capacity ("TransCanada's Long-Haul Notice"), and service hereunder shall not commence prior to the actual date of availability of the Necessary Long-Haul Capacity.

1.2 The date of commencement of service hereunder (the "Date of Commencement") shall be the earlier of:

- (a) the date for which Shipper first nominates and TransCanada authorizes service hereunder; or
- (b) the tenth (10th) day following the day on which Shipper received TransCanada's Long-Haul Notice;

PROVIDED that Shipper shall not be obligated to a Date of Commencement which is earlier than November 1, 1998, unless mutually agreed upon by both parties.

1.3 At least five (5) days prior to the Date of Commencement, as defined in Section 1.2 hereof, Shipper shall provide TransCanada with its best estimate of its nomination (pursuant to Section XXII, Nominations and Unauthorized Volumes of the General Terms and Conditions) for the first seven (7) days of service under the Contract.

## **ARTICLE II - GAS TO BE TRANSPORTED**

2.1 Subject to the provisions of this Contract, the FT Toll Schedule, the List of Tolls, and the General Terms and Conditions referred to in Section 7.1 hereof, TransCanada shall provide transportation service hereunder for Shipper in respect of a volume of gas which, in any one day from the Date of Commencement of Service shall not exceed 2,266.2  $10^3\text{m}^3$  (the "Contract Demand").

## **ARTICLE III - DELIVERY POINT AND RECEIPT POINT**

3.1 The Delivery Point hereunder is the point specified as such in Exhibit "1" which is attached hereto and made a part hereof.

3.2 The Receipt Point hereunder is the point specified as such in Exhibit "1" hereof.

#### **ARTICLE IV - TOLLS**

4.1 Shipper shall pay for all transportation service hereunder from the Date of Commencement in accordance with TransCanada's FT Toll Schedule, List of Tolls and General Terms and Conditions set out in TransCanada's Transportation Tariff as the same may be amended or approved from time to time by the NEB.

#### **ARTICLE V - TERM OF CONTRACT**

5.1 This Contract shall be effective from the date hereof and shall continue for a period of ten (10) years after the Date of Commencement.

#### **ARTICLE VI - NOTICES**

6.1 Any notice, request or demand ("Notice") to or upon the respective parties hereto shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally or by courier, first class mail, or telecopier to the address hereinafter mentioned:

<b>IN THE CASE OF TRANSCANADA:</b>	<b>TransCanada PipeLines Limited</b>
(i) mailing address:	P.O. Box 1000 Station M Calgary, Alberta T2P 4K5
(ii) delivery address:	TransCanada PipeLines Tower 111 - 5th Avenue S.W. Calgary, Alberta T2P 3Y6 Attention: Manager, Transportation Services Telecopy: (403) 267-8620
(iii) nominations:	Attention: Manager, Electronic Commerce Telecopy: (403) 267-6338/6339
(iv) invoices:	Attention: Manager, Revenue Accounting Telecopy: (403) 267-1074



7.2 The headings used throughout this Contract, the FT Toll Schedule, the List of Tolls, and the General Terms and Conditions are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions thereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

7.3 This Contract shall be construed and applied, and be subject to the laws of the Province of Alberta, and, when applicable, the laws of Canada, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction.

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

COENERGY TRADING COMPANY

TRANSCANADA PIPELINES LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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



**EXHIBIT "1"**

This is EXHIBIT "1" to the FIRM SERVICE CONTRACT for FIRM TRANSPORTATION SERVICE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_ between TRANSCANADA PIPELINES LIMITED ("TransCanada") and COENERGY TRADING COMPANY ("Shipper")

The Delivery Point hereunder is the point of interconnection between the pipeline facilities of Trans Quebec and Maritimes Pipeline Inc. and Portland Natural Gas Transmission System which is located at:

East Hereford, Quebec

The Receipt Point hereunder is the point of interconnection between the pipeline facilities of TransCanada and NOVA Gas Transmission Ltd. which is located at:

Empress, Alberta

## PRECEDENT AGREEMENT

THIS PRECEDENT AGREEMENT made as of the 21st day of February, 1997.

BETWEEN:

TRANSCANADA PIPELINES LIMITED  
a Canadian corporation  
("TransCanada")

OF THE FIRST PART

AND:

COENERGY TRADING COMPANY  
a company incorporated under the laws of the  
State of Michigan  
("Shipper")

OF THE SECOND PART

WITNESSES THAT:

WHEREAS TransCanada owns and operates a natural gas pipeline system extending from a point near the Alberta/Saskatchewan border where TransCanada's facilities interconnect with the facilities of NOVA Gas Transmission Ltd. easterly to the Province of Quebec with branch lines extending to various points on the Canada/United States of America International Border; and

WHEREAS TransCanada utilizes capacity available from its own natural gas transmission system and from its firm transportation service entitlements on the natural gas transmission systems of the Great Lakes Gas Transmission Limited Partnership, Union Gas Limited, and Trans Quebec and Maritimes Pipeline Inc. ("TQM") (the "Combined Capacity") to enable it to provide transportation service to its customers; and

WHEREAS on September 5, 1996 and September 17, 1996 Shipper requested TransCanada to transport up to a total of  $2\,266.2 \times 10^3 \text{m}^3$  per day of natural gas from the point of interconnection of the facilities of TransCanada and NOVA Gas Transmission Ltd. at or near Empress, Alberta (the "Receipt Point"), to the point of interconnection between the facilities of TQM and Portland Natural Gas Transmission System located at or near East Hereford, Quebec (the "Delivery Point") commencing

November 1, 1998 or as soon as possible thereafter and terminating ten (10) years after the commencement of service (the "Requested Long-Haul Service"); and

WHEREAS TransCanada is not able to provide the Requested Long-Haul Service from the Receipt Point to commence on November 1, 1998, but anticipates that it would be able to provide similar FT service from the point of interconnection between the facilities of TransCanada and Great Lakes Gas Transmission Limited Partnership located at the Canadian side of the Canada/United States International border near St. Clair, Michigan (the "Requested Short-Haul Service"), subject to timely regulatory approvals and installation of necessary facilities, which will have no effect on TransCanada's ability to provide FT Service to those parties with a higher priority than Shipper, and who may be in TransCanada's 1998/1999 Contract Year Facilities Application Queue; and

WHEREAS Shipper is willing to accept the Requested Short-Haul Service, effective November 1, 1998, but wishes to replace this service with the Requested Long-Haul Service if and when TransCanada is able to provide the Requested Long-Haul Service for Shipper; and

WHEREAS TransCanada and Shipper recognize that an increase to the Combined Capacity may be necessary to accommodate the Requested Short-Haul Service and Requested Long-Haul Service, and, subject to the terms and conditions of this Precedent Agreement, TransCanada is willing to use all reasonable efforts to increase the Combined Capacity to the extent necessary in order to provide Shipper with the Requested Short-Haul Service and Requested Long-Haul Service; and

WHEREAS Shipper has provided TransCanada with evidence of natural gas supply, market and upstream and downstream transportation arrangements corresponding to the Requested Short-Haul Service and Requested Long-Haul Service; and

WHEREAS, TransCanada and Shipper have executed a financial assurances agreement dated \_\_\_\_\_ (such financial assurances agreement, as amended from time to time, being hereinafter called the "Financial Agreement"), pertaining to the financial security to be provided to TransCanada by Shipper in connection with the payment of transportation charges for the provision of the Requested Short-Haul Service and Requested Long-Haul Service; and

WHEREAS subject to the terms and conditions of this Precedent Agreement, TransCanada and Shipper desire to enter into firm service transportation contracts for both the Requested Short-Haul Service and Requested Long-Haul Service, which will be executed simultaneously and substantially in the forms attached hereto as Exhibit "A" and Exhibit "B" respectively, which will be subject to the terms and

- 3 -

conditions thereof at that time approved by the National Energy Board (the "NEB") (the "Firm Transportation Contracts").

NOW THEREFORE THIS AGREEMENT WITNESSES THAT, in consideration of the covenants and agreements herein contained, the parties hereto covenant and agree as follows:

1. Shipper shall use all reasonable efforts to do, or cause to be done, all lawful acts that may be necessary to:
  - (a) qualify Shipper for service under the Firm Transportation Contracts by complying, inter alia, with the "Availability" provisions of the FT Toll Schedule as set out in TransCanada's Transportation Tariff, as amended from time to time (the "Availability Provisions"), and
  - (b) present any evidence to TransCanada pertaining to Shipper's natural gas supply ("Shipper's Gas"), markets, and upstream and downstream transportation arrangements that are germane to the Requested Short-Haul Service and Requested Long-Haul Service and that may be required by TransCanada to fulfill the requirements of the NEB, the NEB Act and the NEB's Guidelines for Filing Requirements (the latter two as may be amended from time to time) in seeking approval for TransCanada's facilities application(s) in relation to the Requested Short-Haul Service and Requested Long-Haul Service (the "Additional Information"), and to the extent that such Additional Information is not available, Shipper shall provide TransCanada with the written reasons therefor, and
  - (c) obtain, or have others obtain where required, such certificates, permits, orders, licenses and authorizations from regulators or other governmental agencies in the United States and Canada, as the case may be, as are necessary to enable Shipper, or others designated by Shipper, to export from the United States and import and deliver into Canada to TransCanada for the Requested Short-Haul Service and to remove from the province of production and deliver to TransCanada at the Receipt Point and to receive from TransCanada, to export from Canada, and to import and deliver into the United States at the Delivery Point, the quantities of natural gas to be transported by TransCanada under the Firm Transportation Contracts (individually, a "Shipper Authorization" and collectively, the "Shipper Authorizations"); provided that nothing herein shall obligate Shipper to appeal any decision of a regulatory or judicial authority which has the effect of denying any such certificate, permit, order, license or authorization or granting same on conditions unsatisfactory to the parties hereto.

2. TransCanada shall use all reasonable efforts to do, or cause to be done, all lawful acts that may be necessary to:

- (a) obtain, or cause to be obtained where required, such certificates, permits, licenses, orders and other authorizations as are necessary to enable it to increase the Combined Capacity to provide Shipper with the Requested Short-Haul Service and Requested Long-Haul Service (individually, a "TransCanada Authorization" and collectively the "TransCanada Authorizations") providing that nothing herein shall obligate TransCanada to appeal any decision of a regulatory or judicial authority which has the effect of denying any such certificate, permit, order, license or authorization or granting same on conditions unsatisfactory to the parties hereto, and
- (b) obtain all the corporate financial arrangements on terms satisfactory to TransCanada that, in its sole discretion, are necessary to finance the construction of any facilities required to increase the Combined Capacity to the extent necessary to provide Shipper with the Requested Short-Haul Service and Requested Long-Haul Service.

3. If Shipper does not provide TransCanada with the Additional Information requested pursuant to Paragraph 1(b) hereof, or reasons satisfactory to TransCanada for not providing the said Additional Information, on or before the date so identified in writing by TransCanada; TransCanada may terminate this Precedent Agreement by providing Notice of its intention to do so to Shipper. If Shipper has not provided TransCanada with the Additional Information or given satisfactory reasons (in TransCanada's sole discretion) for not providing such Additional Information within fifteen (15) days following receipt of such Notice by Shipper, this Precedent Agreement shall terminate and shall thereafter have no further force or effect.

4. Upon obtaining each of the Shipper Authorizations, Shipper shall promptly provide to TransCanada a copy of such Shipper Authorization (unless TransCanada has already received a copy as a result of being an interested party in the regulatory proceedings wherein the authorization was issued) and Notice of Shipper's acceptance or rejection of such Shipper Authorization. TransCanada shall within thirty (30) days of receipt of such Notice from Shipper give Notice to Shipper of TransCanada's acceptance or rejection of such Shipper Authorization. If TransCanada does not respond to the Shipper's Notice within such thirty (30) day period, TransCanada shall be deemed to have accepted such Shipper Authorization. Acceptance of any Shipper Authorization by Shipper or TransCanada shall not be unreasonably withheld and any Notice of rejection of a Shipper Authorization shall be accompanied by written reasons for such rejection.

5. Upon obtaining each of the TransCanada Authorizations, TransCanada shall promptly provide to Shipper a copy of such TransCanada Authorization (unless Shipper has received a copy as a result of being an interested party in the regulatory proceedings wherein the authorization was issued) and Notice of TransCanada's acceptance or rejection of such TransCanada Authorization. Shipper shall within thirty (30) days of receipt of such Notice from TransCanada give Notice to TransCanada of Shipper's acceptance or rejection of such TransCanada Authorization. If Shipper does not respond to TransCanada's Notice within such thirty (30) day period, Shipper shall be deemed to have accepted such TransCanada Authorization. Acceptance of any TransCanada Authorization by TransCanada or Shipper shall not be unreasonably withheld and any Notice of rejection of a TransCanada Authorization shall be accompanied by written reasons for such rejection.

6. In the event of a rejection by Shipper or TransCanada of a Shipper Authorization or a TransCanada Authorization, either party shall thereafter have the right, but not the obligation, to terminate this Precedent Agreement by providing Notice (the "Authorization Failure Notice") of its intention to do so to the other party and this Precedent Agreement shall terminate on the thirtieth (30th) day next following the date of receipt of the Authorization Failure Notice by such other party and thereafter, have no further force or effect unless, within such thirty (30) day period, the parties agree in writing that this Precedent Agreement shall not terminate as aforesaid.

7. The parties shall execute the Firm Transportation Contracts forthwith after:

- (a) Shipper has complied to TransCanada's satisfaction with the Availability Provisions referred to in paragraph 1(a) hereof;
- (b) Shipper and TransCanada have each received and accepted all of the Shipper Authorizations and TransCanada Authorizations pursuant to paragraphs 4 and 5 hereof;
- (c) TransCanada has made or determined that it can make all the corporate financial arrangements as referred to in Paragraph 2(b) hereof; and
- (d) Shipper has supplied to TransCanada the financial assurances as agreed to in the Financial Agreement ("Financial Assurances").

Provided however, that if Shipper fails to execute and return to TransCanada the Firm Transportation Contracts within thirty (30) days of receipt thereof by Shipper, TransCanada may, in its sole discretion,

- 8 -

terminate this Precedent Agreement by providing Notice (the "Termination Notice") of its intention to do so to Shipper. If Shipper has not executed and returned the Firm Transportation Contracts to TransCanada within five (5) days following receipt by Shipper of the Termination Notice, this Precedent Agreement shall immediately terminate and have no further force or effect. Any termination of the Precedent Agreement as aforesaid shall not be construed as an election of remedies and TransCanada may pursue any other legal and equitable remedy available to TransCanada in respect of Shipper's breach of its obligation to execute the Firm Transportation Contracts. Upon execution of the Firm Transportation Contracts by the parties, this Precedent Agreement shall thereupon terminate and have no further force or effect.

8. Notwithstanding any other provision in this Agreement, if by February 27 1998, any of the requirements referred to in paragraph 7 hereof have not been satisfied, then either party may thereafter declare its intention to terminate this Precedent Agreement by providing Notice of such party's intention to the other party. If any of the requirements referred to in paragraph 7 hereof remain unsatisfied on the thirtieth (30th) day next following receipt of such Notice, this Precedent Agreement shall thereupon terminate and shall thereafter have no further force or effect.

9. Any notice, request or demand ("Notice") to or upon the respective parties hereto shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally or by courier, first class mail, or telecopier to the address hereinafter mentioned:

In the case of TransCanada:

TransCanada PipeLines Limited

(i) Mailing Address:

P.O. Box 1000, Station M  
Calgary, Alberta  
T2P 4K5

(ii) Delivery Address:

TransCanada PipeLines Tower  
111 - 5th Avenue S.W.  
Calgary, Alberta  
T2P 3Y6  
Attention: Manager, Transportation Services  
Telecopier: (403) 267-8620

**In the case of Shipper:**

**CoEnergy Trading Company**

(i) **Mailing Address:**

**150 West Jefferson, Suite 1800  
Detroit, Michigan 48226**

(ii) **Delivery Address:**

**same as above**

**Attention: President**

**Telecopier: (313) 256-5739**

Such Notice sent as aforesaid shall be deemed to have been received by the party to whom it is sent: (a) at the time of its delivery if personally delivered or if sent by telecopier, or (b) on the day following transmittal thereof if sent by courier, or (c) on the third day following the transmittal thereof if sent by first class mail; provided however, that in the event normal mail service, courier service, or telecopier service shall be interrupted by a cause beyond the control of the parties hereto, then the party sending the Notice shall utilize any service that has not been so interrupted or shall personally deliver such Notice. Each party shall provide Notice to the other of any change of address for the purposes hereof.

10. Any company which shall succeed by purchase, merger or consolidation to the assets substantially or in entirety, of Shipper or TransCanada, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Precedent Agreement. Either party may, without relieving itself of its obligations under this Precedent Agreement, assign any of its rights and obligations hereunder to an affiliate (as such term is defined in the Canada Business Corporations Act) of such party without the consent of the other party hereto, but otherwise no assignment of this Precedent Agreement or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the written consent thereto of the other party, such consent not to be unreasonably withheld. It is agreed, however, that the restrictions on assignment contained in this paragraph shall not in any way prevent either party to this Precedent Agreement from pledging or mortgaging its rights hereunder as security for its indebtedness. This Precedent Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

11. This Agreement shall be construed and applied in accordance with, and be subject to, the laws of the Province of Alberta, and, where applicable, the laws of Canada, and shall be subject to the rules, regulations, decisions and orders of any regulatory or legislative authority having jurisdiction over the matters contained herein.



12. Shipper represents that neither Shipper nor any third party acting on behalf of Shipper have executed arrangements with other parties with respect to the acquisition of natural gas which would have the effect of eliminating Shipper's need for the Requested Short-Haul Service and Requested Long-Haul Service, and Shipper agrees that it shall not enter into any such arrangements without the prior written consent of TransCanada while this Precedent Agreement is in effect.

13. TransCanada and Shipper hereby stipulate and agree that this Precedent Agreement is executed for the sole benefit of TransCanada and Shipper, including all successors and assignees permitted under the terms of this Precedent Agreement. TransCanada and Shipper expressly intend that no rights under this Precedent Agreement inure to any other parties.

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

COENERGY TRADING COMPANY

TRANSCANADA PIPELINES LIMITED

Per: *Coleen D. Kinder*

Per: *Rick Parnell*

Name: COLEEN D. KINDER

Name: Rick Parnell  
Director, Market Development  
Transportation Marketing

Title: PRESIDENT

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

Per: \_\_\_\_\_

Per: *Barry G. Luft*

Name: \_\_\_\_\_

Name: Barry G. Luft  
Vice-President

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

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

Standard Form Contract	
Transportation Ser.	<input checked="" type="checkbox"/>
Contract Admin.	<input checked="" type="checkbox"/>
Legal	<input checked="" type="checkbox"/>

**FIRM TRANSPORTATION SERVICE CONTRACT**

THIS FIRM SERVICE CONTRACT FOR FIRM TRANSPORTATION SERVICE, made as of  
the \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

BETWEEN:

TRANSCANADA PIPELINES LIMITED  
a Canadian corporation  
("TransCanada")

OF THE FIRST PART

and

COENERGY TRADING COMPANY  
a company incorporated under the laws of the  
State of Michigan  
("Shipper")

OF THE SECOND PART

WITNESSES THAT:

WHEREAS TransCanada owns and operates a natural gas pipeline system extending from a point near the Alberta/Saskatchewan border where TransCanada's facilities interconnect with the facilities of NOVA Gas Transmission Ltd. easterly to the Province of Quebec with branch lines extending to various points on the Canada/United States of America International Border; and

WHEREAS Shipper has satisfied in full, or TransCanada has waived, each of the conditions precedent set out in Sections 1.1 (b) and (c) of TransCanada's Firm Transportation Service Toll Schedule referred to in Section 7.1 hereof (the "FT Toll Schedule"); and

WHEREAS Shipper has requested and TransCanada has agreed to transport volumes of gas that are delivered by Shipper or Shipper's agent to TransCanada at the Receipt Point referred to in Section 3.2 hereof (the "Receipt Point"), to the Delivery Point referred to in Section 3.1 hereof (the "Delivery Point") pursuant to the terms and conditions of this Contract; and

WHEREAS the parties hereto have entered into an agreement dated as of the 21st day of February, 1997, (the "Precedent Agreement") which bound them to enter into a Contract pertaining to the Requested Short-Haul Service, as described in the Precedent Agreement, and substantially upon the terms and conditions hereinafter described; and

WHEREAS the conditions precedent of the Precedent Agreement have been satisfied or waived pursuant to the Requested Short-Haul Service; and

WHEREAS the volumes of gas delivered hereunder by Shipper or Shipper's agent to TransCanada are to be imported into Canada from the United States of America and then exported back to the United States of America by Shipper and/or Shipper's suppliers and/or its (their) designated agent(s) pursuant to valid and subsisting regulatory approvals and/or such other authorizations in respect thereof.

NOW THEREFORE THIS CONTRACT WITNESSES THAT, in consideration of the covenants and agreement herein contained, the parties hereto covenant and agree as follows:

#### **ARTICLE I - COMMENCEMENT OF SERVICE**

1.1 TransCanada shall use reasonable efforts to have the additional facilities (and/or obtain such transportation arrangements on other natural gas transmission systems) as may be required to effect the transportation of the volumes hereunder (the "Necessary Short-Haul Capacity") in place by November 1, 1998, or as soon as possible thereafter. TransCanada's ability to provide service by November 1, 1998, will be subject to, inter alia.

- (a) the timing of receipt by Shipper and TransCanada of the authorizations referred to in paragraphs 1 and 2 of the Precedent Agreement which are required prior to the commencement of construction of TransCanada's facilities and the timing of the commencement of the services required by TransCanada (if any) on the pipeline systems of Union Gas Limited and Trans Quebec and Maritimes Pipeline Inc.; and
- (b) the lead time required for the acquisition, construction and installation of those facilities required by TransCanada.

TransCanada shall use reasonable efforts to provide Shipper with ten (10) days advance Notice of the anticipated availability of the Necessary Short-Haul Capacity (the "Advance Short-Haul Notice"). TransCanada shall give Shipper Notice of the actual date of availability of the Necessary Short-Haul Capacity ("TransCanada's Short-Haul Notice"), and service hereunder shall not commence prior to the actual date of availability of the Necessary Short-Haul Capacity.

1.2 The date of commencement of service hereunder (the "Date of Commencement") shall be the earlier of:

- (a) the date for which Shipper first nominates and TransCanada authorizes service hereunder; or
- (b) the tenth (10th) day following the day on which Shipper received TransCanada's Short-Haul Notice;

PROVIDED that Shipper shall not be obligated to a Date of Commencement which is earlier than November 1, 1998, unless mutually agreed upon by both parties.

1.3 At least five (5) days prior to the Date of Commencement, as defined in Section 1.2 hereof, Shipper shall provide TransCanada with its best estimate of its nomination (pursuant to Section XXII, Nominations and Unauthorized Volumes of the General Terms and Conditions) for the first seven (7) days of service under the Contract.

## **ARTICLE II - GAS TO BE TRANSPORTED**

2.1 Subject to the provisions of this Contract, the FT Toll Schedule, the List of Tolls, and the General Terms and Conditions referred to in Section 7.1 hereof, TransCanada shall provide transportation service hereunder for Shipper in respect of a volume of gas which, in any one day from the Date of Commencement of Service shall not exceed  $2,266.2 \times 10^3 \text{m}^3$  (the "Contract Demand").

## **ARTICLE III - DELIVERY POINT AND RECEIPT POINT**

3.1 The Delivery Point hereunder is the point specified as such in Exhibit "1" which is attached hereto and made a part hereof.

3.2 The Receipt Point hereunder is the point specified as such in Exhibit "1" hereof.

#### ARTICLE IV - TOLLS

4.1 Shipper shall pay for all transportation service hereunder from the Date of Commencement in accordance with TransCanada's FT Toll Schedule, List of Tolls and General Terms and Conditions set out in TransCanada's Transportation Tariff as the same may be amended or approved from time to time by the NEB.

#### ARTICLE V - TERM OF CONTRACT

5.1 This Contract shall be effective from the date hereof and shall continue until the earlier of :

- (a) the commencement of the Requested Long-Haul Service as described in the Precedent Agreement, or
- (b) ten (10) years after the Date of Commencement of the Requested Short-Haul Service.

#### ARTICLE VI - NOTICES

6.1 Any notice, request or demand ("Notice") to or upon the respective parties hereto shall be in writing and shall be validly communicated by the delivery thereof to its addressee, either personally or by courier, first class mail, or telecopier to the address hereinafter mentioned:

#### **IN THE CASE OF TRANSCANADA:**

TransCanada PipeLines Limited

(i) mailing address:

P.O. Box 1000  
Station M  
Calgary, Alberta  
T2P 4K5

(ii) delivery address:

TransCanada PipeLines Tower  
111 - 5th Avenue S.W.  
Calgary, Alberta  
T2P 3Y6

Attention: Manager, Transportation  
Services  
Telecopy: (403) 267-8620

- |                    |  |
|--------------------|--|
| (iii) nominations: | Attention: Manager, Electronic Commerce<br>Telecopy: (403) 267-6338/6339   |
| (iv) invoices:     | Attention: Manager, Revenue Accounting<br>Telecopy: (403) 267-1074         |
| (v) other matters: | Attention: Manager, Transportation<br>Services<br>Telecopy: (403) 267-8620 |

**IN THE CASE OF SHIPPER:**

CoEnergy Trading Company

- |                        |   |
|------------------------|---|
| (i) mailing address:   | 150 West Jefferson, Suite 1800<br>Detroit, Michigan<br>U.S.A 48226<br>Attention: President<br>Telecopy: (313)256-5739 |
| (ii) delivery address: | same as above   |
| (iii) nominations:     | Attention: Director, Transportation & Operations<br>Telecopy: (313)256-5739   |
| (iv) invoices:         | Attention: Director, Transportation & Operations<br>Telecopy: (313)256-5739   |
| (v) other matters:     | Attention: President<br>Telecopy: (313)256-5739   |

Any such Notice shall be sent in order to ensure prompt receipt of such Notice by the other party. Such Notice sent as aforesaid shall be deemed to have been received by the party to whom it is sent at the time of its delivery if personally delivered or if sent by telecopier, or on the day following transmittal thereof if sent by courier, or on the third day following the transmittal thereof if sent by first class mail; PROVIDED however, that, in the event normal mail service, courier service, or telecopier service shall be interrupted by a cause beyond the control of the parties hereto, then the party sending the Notice shall utilize any service that has not been so interrupted or shall deliver such Notice. Each party shall provide Notice to the other of any change of address for the purposes hereof.

**ARTICLE VII - MISCELLANEOUS PROVISIONS**

7.1 The FT Toll Schedule, the List of Tolls, and the General Terms and Conditions set out in TransCanada's Transportation Tariff as amended or approved from time to time by the NEB are all by reference made a part of this Contract and operations hereunder shall, in addition to

the terms and conditions of this Contract, be subject to the provisions thereof. TransCanada shall notify Shipper at any time that TransCanada files with the NEB revisions to the FT Toll Schedule, the List of Tolls, and/or the General Terms and Conditions (the "Revisions") and shall provide Shipper with a copy of the Revisions.

7.2 The headings used throughout this Contract, the FT Toll Schedule, the List of Tolls, and the General Terms and Conditions are inserted for convenience of reference only and are not to be considered or taken into account in construing the terms or provisions thereof nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

7.3 This Contract shall be construed and applied, and be subject to the laws of the Province of Alberta, and, when applicable, the laws of Canada, and shall be subject to the rules, regulations and orders of any regulatory or legislative authority having jurisdiction.

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

COENERGY TRADING COMPANY

TRANSCANADA PIPELINES LIMITED

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Per: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**EXHIBIT "1"**

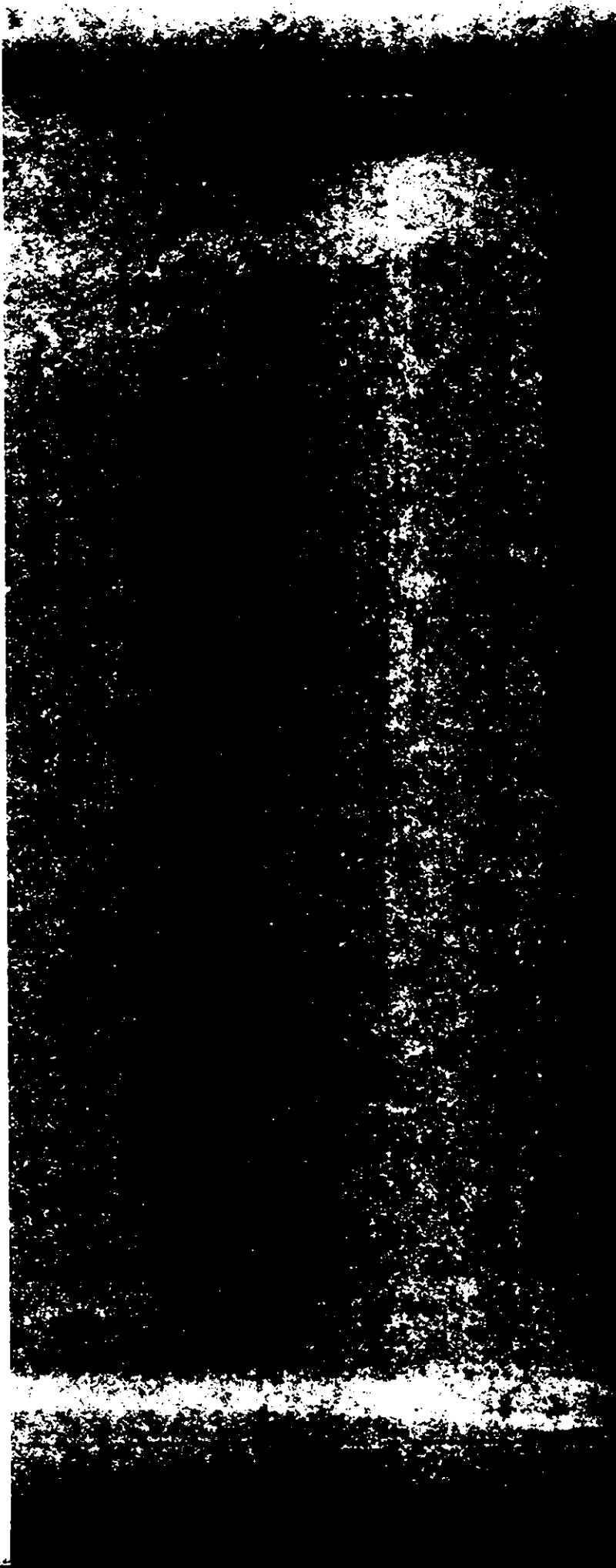
This is EXHIBIT "1" to the FIRM SERVICE CONTRACT for FIRM TRANSPORTATION SERVICE, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 199 \_\_ between TRANSCANADA PIPELINES LIMITED ("TransCanada") and COENERGY TRADING COMPANY ("Shipper")

The Delivery Point hereunder is the point of interconnection between the pipeline facilities of Trans Quebec and Maritimes Pipeline Inc. and Portland Natural Gas Transmission System which is located at:

East Hereford, Quebec

The Receipt Point hereunder is the point of interconnection between the pipeline facilities of TransCanada and Great Lakes Gas Transmission Limited Partnership which is located at:  
the Canadian side of the Canada/United States International border near St. Clair, Michigan.





# DIVERSIONS

A diversion is a delivery to a destination other than the primary destination specified in a shippers' firm transportation contract.

TransCanada's diversions gives shippers:

- the flexibility to access alternative markets, and
- the opportunity to avoid unabsorbed demand charges.

Shippers can nominate a diversion up to the daily contract demand, although the actual authorized volume may vary day-to-day based on other shippers' contractual entitlements and operational constraints.

## TYPES OF DIVERSIONS

There are several different types of diversions as described below:

### *Downstream*

A downstream diversion occurs when gas flows in the same direction as the actual flow of gas, relative to the contracted delivery point. The diverted point is downstream of the contracted point.

### *Upstream*

A diversion is upstream when it flows in the opposite direction to the actual flow of gas, relative to the contracted delivery point. The diverted point is upstream of the contracted point.

### *Winter*

Winter diversions can be nominated from November 1 to March 31.

### *Summer*

Summer diversions can be nominated from April 1 to October 31.

## PRIORITY

Throughout the year all diversions requested are considered taking into account transportation and metering capacity constraints.

Shippers can divert gas when TransCanada has sufficient capacity to a delivery point other than the contracted delivery point.

### *Winter*

During the winter period diversions are "firm" between points upstream or between points downstream of a system bottleneck. Winter diversions have priority equal to firm service except when diversions are downstream through a bottleneck. In this case, the diversion has a lower priority than FT.

### *Summer*

During the summer period, however, all diversions must be considered "quasi-firm," that is they have priority higher than IT but lower than FT. This occurs because TransCanada needs to meet firm seasonal obligations over the summer period when ambient temperatures work to reduce the capacity of the system.

## DIVERSIONS

### **NOMINATING**

Forward your request for a diversion to TransCanada by 1000 hours MT on the day before the service is requested.

Enter your nomination into the NrG Highway or fax a shipper Nomination E2 form to nominate a diversion.

### **LOCATING DIVERSIONS IN THE TARIFF**

Section XV of the General Terms and Conditions of TransCanada's tariff presents the exact detail of priorities of diversions - or call your Transportation Services representative.

# CAPACITY RELEASE (CR)

If available, TransCanada will release a portion of its firm capacity held on the Great Lakes Gas Transmission Company (Great Lakes) system. You can access markets off the Great Lakes system through a reduction in your Firm Transportation (FT) or Firm Service Tendered (FST) contract.

## Summary

Access TransCanada's capacity on Great Lakes from Emerson to St. Clair. This service is available to FT or FST shippers with contracts to the Eastern Zone or export points downstream of St. Clair, Michigan.

## Request

Simply submit a written request specifying the FT or FST contract volume that will be reduced, and the term of release to TransCanada's Transportation Services department.

## TransCanada Approval

Requests are forwarded to TransCanada's Gas Control Operations department for approval. Requests are approved if the service can be offered without adversely affecting system performance. If TransCanada is able to accommodate a shippers' request, it will enter into a pre-arranged capacity release at the maximum rate with you, the replacement shipper. Successful applicants will receive a Schedule A for execution.

## Requirements for Service

Before releasing a portion of capacity on Great Lakes, TransCanada must:

- execute a CR Agreement and Schedule A with the replacement shipper;
- confirm that the replacement shipper has executed a FT Service Agreement with Great Lakes;
- confirm that the replacement shipper has an export license from the NEB and an import license from the United States Department of Energy; and
- ensure nominations to TransCanada and Great Lakes are timely.

## Posting of Release

Upon entering into an agreement with a replacement shipper, the terms will be posted on Great Lakes' electronic bulletin board.

## Facilities Construction

Not applicable

## Priority

Firm

## CAPACITY RELEASE (CR)

TCPL Receipt Point

Empress

TCPL Delivery Point

Emerson

Alternate Receipt/Delivery Points on GLGT

Shippers who enter into an arrangement with TransCanada have access to alternate receipt/delivery points on the Great Lakes system. This allows replacement shippers additional comfort and contract optimizing opportunities, which includes access to Michigan storage.

Re-release

Yes, TransCanada provides the replacement shipper with the opportunity to re-release capacity held on Great Lakes. Replacement shippers must provide written notification to both TransCanada and Great Lakes prior to re-release.

Diversion Rights

No

Contract Term

A Capacity Release Agreement is an umbrella contract that is activated by the execution of each Schedule A to the CR Agreement.

Assignments

A CR can be requested in conjunction with a temporary assignment of FT or FST capacity with a delivery point in the Eastern Zone or with a delivery point downstream of St. Clair, Michigan.

Assignments of any FT or FST contract capacity, in whole or in part, into which the CR service is incorporated require TransCanada's prior written consent.

Fuel Required

Yes, for both the TransCanada and the Great Lakes systems.

## CAPACITY RELEASE (CR)

### Toll

TransCanada reduces its entitlement to transportation service on Great Lakes and the replacement shipper will reduce its entitlement to transportation service on TransCanada. The replacement shipper effectively steps into TransCanada's shoes and pays Great Lakes the maximum allowable rates and charges in effect under Rate Schedule FT of Great Lakes' tariff. Great Lakes subsequently credits TransCanada's monthly transportation service invoice for the released capacity and TransCanada in turn passes that credit on to the replacement shipper.

For the CR volume a replacement shipper will pay:

- demand charges to their original point or delivery area under their TransCanada FT contract and commodity charges to Emerson II or the full Eastern Zone FST toll;
- Great Lakes directly for capacity released by TransCanada; and
- the greater of the delivery pressure toll at Emerson II, Manitoba, and the delivery pressure toll(s) applicable under the FT or FST contract.

For the CR volume a replacement shipper will receive:

- a reservation fee credit from TransCanada for capacity released.

# ENHANCED CAPACITY RELEASE (ECR)

Similar to Capacity Release, but allows a shipper to replace the volume of gas dropped off on the Great Lakes system with an equivalent volume at St. Clair or Dawn to keep the shippers' original market whole. Enhanced Capacity Release (ECR) allows a shipper to access two markets from one transportation contract.

## Summary

ECR enables shippers to retain the Firm Transportation (FT) contract entitlement to a primary delivery point, while allowing access to TransCanada's firm transportation capacity on the Great Lakes system.

By replacing the gas delivered through the Great Lakes system with equivalent volumes at St. Clair or Dawn, shippers can make two deliveries on a single transportation contract.

All shippers need is a minimum one-year FT contract to the Eastern Zone or an export point downstream of St. Clair, Michigan, to take advantage of this service.

## Request

Simply submit a written request specifying the FT contract volume which will be reduced to allow the delivery onto the Great Lakes system and the term of the release to TransCanada's Transportation Services department.

## TransCanada Approval

Requests are forwarded to TransCanada's Gas Control Operations department for approval. Requests are approved if the service can be offered without adversely affecting system performance. If TransCanada is able to accommodate a shippers' request, it will enter into a pre-arranged capacity release at the maximum rate with you, the replacement shipper. Successful applicants will receive a contract addendum for execution.

## Requirements for Service

Before releasing a portion of FT capacity on Great Lakes, TransCanada must:

- execute a ECR contract and addendum with the replacement shipper;
- confirm that the replacement shipper has executed a FT Service Agreement with Great Lakes;
- confirm that the replacement shipper has an export license (and import if required) from the NEB and an import license from the United States Department of Energy; and
- ensure nominations to TransCanada and Great Lakes are timely.

## ENHANCED CAPACITY RELEASE (ECR)

### Posting of Release

Upon entering into an agreement with a replacement shipper, the terms will be posted on Great Lakes' electronic bulletin board.

### Facilities Construction

No

### Priority

Firm

### TCPL Receipt Point

Empress

### TCPL Delivery Point

Emerson

### TCPL Re-delivery Point

St. Clair or Dawn

### Alternate Receipt/Delivery Points on GLGT

Shippers who enter into an arrangement with TransCanada have access to alternate receipt/delivery points on the Great Lakes system. This allows replacement shippers additional comfort and contract optimizing opportunities, which includes access to Michigan storage.

### Re-release

Yes, TransCanada provides the replacement shipper with the opportunity to re-release capacity held on Great Lakes. Replacement shippers must provide written notification to both TransCanada and Great Lakes prior to re-release.

### Diversion Rights

Diversion rights will remain intact at the primary delivery point in the FT contract for all volumes redelivered under an ECR contract.

### Contract Term

The ECR contract is an umbrella contract that is activated by the execution of each addendum to the ECR contract.

### Assignments

Assignments of any contracts, in whole or in part, into which the ECR service is incorporated require TransCanada's prior written consent.

### Fuel Required

Yes, for both the TransCanada and Great Lakes systems.



## ENHANCED CAPACITY RELEASE (ECR)

### Toll

TransCanada reduces its entitlement to transportation service on Great Lakes and the replacement shipper will reduce its entitlement to transportation service on TransCanada. The replacement shipper effectively steps into TransCanada's shoes and pays Great Lakes the maximum allowable rates and charges in effect under Rate Schedule FT of Great Lakes' tariff. Great Lakes subsequently credits TransCanada's monthly transportation service invoice for the released capacity and TransCanada in turn passes that credit on to the replacement shipper.

For the ECR volume a replacement shipper will pay:

- demand charges to their original point or delivery area under their TransCanada FT contract;
- commodity charges to Emerson II and from the designated re-delivery point to the primary delivery point under the FT contract;
- Great Lakes directly for capacity released by TransCanada;
- the greater of the delivery pressure toll at Emerson II, Manitoba, and the delivery pressure toll(s) applicable under the FT contract; and
- ECR surcharge.

For the ECR volume a replacement shipper will receive:

- a reservation fee credit from TransCanada for capacity released.

### ECR Surcharge

The ECR surcharge will be charged on all released volumes that are to be re-delivered to TransCanada at St. Clair or Dawn. The surcharge is the difference between the demand charges a replacement shipper would pay for delivery of gas to TransCanada's Eastern Zone by contracting for each individual transportation component (less 50% of the currently effective TransCanada Administrative and General charges) and the demand charges that the same replacement shipper would pay to the Eastern Zone on the TransCanada system. See Section 5 for the ECR surcharge calculation.





**CoEnergy Trading Company**

A subsidiary of MCN Corporation, Detroit, MI

150 West Jefferson • Suite 1800 • Detroit, MI 48226  
(313) 256-6000 • (313) 256-5739 FAX

May 7, 1997

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

Re:       Application of CoEnergy Trading Company for  
          Authorization to Import Natural Gas From Canada

Gentlemen:

Pursuant to Section 590.202(c) of the Regulations of the Department of Energy (10 CFR Sec. 590.202(c)), I hereby advise you that in my opinion the proposed import of natural gas that is the subject of the above-referenced application is within the corporate powers of CoEnergy Trading Company.

Very truly yours,

*Harold M. Newland*

Harold M. Newland  
Senior Attorney

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

\_\_\_\_\_  
COENERGY TRADING COMPANY  
\_\_\_\_\_

)  
)  
)  
FE DOCKET NO. 97-40-NG

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

DOE/FE ORDER NO. 1290

JULY 25, 1997

## I. DESCRIPTION OF REQUEST

On May 13, 1997, CoEnergy Trading Company (CTC) 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) <sup>1/</sup> and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting authorization to import up to 80,000 Mcf per day (29.2 Bcf annually) of Canadian natural gas. The term of the authorization would be for a period of 10 years commencing November 1, 1998, or for 10 years after the commencement date of deliveries if deliveries begin after November 1, 1998. CTC, a Michigan corporation with its principal place of business in Detroit, Michigan, is a wholly owned subsidiary of MCN Investment Corporation located in Detroit, Michigan, which is a wholly owned subsidiary of MCN Energy Group, Inc., also located in Detroit, Michigan. CTC is engaged in the business of buying and selling natural gas.

The authorized quantity of natural gas would be imported at the proposed interconnection of the Trans Quebec and Maritimes Pipeline (TQ&M) and the Portland Natural Gas Transmission System (PNGTS) located near Pittsburg, New Hampshire, or the existing interconnection of TransCanada PipeLines Limited (TCPL) and Great Lakes Gas Transmission Limited Partnership (GLGT) located near Noyes, Minnesota.

CTC submitted with its application gas supply contracts with three Canadian gas producers: Gulf Canada Resources Limited (Gulf Canada) at 30 MMcf/d; Suncor Inc. (Suncor) at 30 MMcf/d; and AEC Oil & Gas Partnership (AEC Partnership) at 20

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1. 15 U.S.C. § 717b.

Mmcf/d. The three Canadian supply contracts require CTC to buy gas on a 100% load factor basis and provide for the firm delivery of the import quantity over the import term. There are no take-or-pay provisions in the contracts but there are financial penalties for non-performance by either contracting party. All quantities are priced using formulae and monthly indices to insure, according to the application, the ongoing market sensitivity and competitiveness of supplies.<sup>2/</sup>

The imported gas would be used to serve two distinct segments of CTC's market portfolio. First, CTC would use a portion of this gas to fulfill its redelivery obligation under 10-year exchange agreements with Bay State Gas Company and its affiliate, Northern Utilities, Inc. The exchange agreements

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2. (1) As stated in CTC's gas purchase agreement (GPA) with Gulf Canada, dated October 31, 1996, the price per GJ, shall equal the average monthly index price per GJ for the relevant sales month for Empress, Alberta, as published in the Canadian Gas Price Reporter under the heading "Alberta, Border (Empress), Month Average Spot (One Month), Firm (100%LF)", plus \$0.065/GJ; (2) CTC's GPA with Suncor dated October 31, 1996, sets the price per GJ for the first 20,000 Mcf of natural gas sold under the contract plus the total daily TCPL fuel requirements provided by Suncor at a price equal to the same average monthly index price per GJ as the Gulf Canada GPA. The price per GJ for the remaining 10,000 Mcf of natural gas is calculated at the MIP+ (50% times the monthly contract index minus TCPL's service costs minus the MIP); (3) the GPA with AEC Partnership, dated November 18, 1996, calculates the price per GJ, applicable to the daily quantity of natural gas sold (excluding the fuel requirements of TCPL and Great Lakes), at the relevant monthly index price published in the Gas Daily Price Guide under the section titled "Monthly Contract Index, Michigan, MichCon, large, Mcf", less an allocated rate for 100% load factor firm service from Empress, Alberta, to Highwater, Quebec.

All prices under all three agreements shall be denominated in \$Cdn/GJ and any amounts denominated in \$U.S. shall be converted to \$Cdn based on the average bank of Canada noon day spot rate for the preceding month.

include a small annual fee escalator and as billed costs related to TCPL capacity. Second, CTC would use the remaining portion of the import quantity to serve various markets, including commercial, industrial, gas distributor, and power generation customers, throughout the upper Midwest and Northeast. The imported gas would also figure prominently in CTC's summer storage injection plans at storage facilities located in Michigan.

## II. FINDING

The application filed by CTC 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 CTC to import natural gas from Canada, a nation with which a free trade agreement is in effect meets the section 39(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. CoEnergy Trading Company (CTC) is authorized to import up to 80,000 Mcf per day (29.2 Bcf annually) from Canada. The term of the authorization is for a period of 10 years commencing

November 1, 1998, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998. This gas may be imported from Canada at the proposed interconnection of the Trans Quebec and Maritimes Pipeline and the Portland Natural Gas Transmission System near Pittsburg, New Hampshire, or the existing interconnection of TransCanada PipeLines Limited and Great Lakes Gas Transmission Limited Partnership located near Noyes, Minnesota.

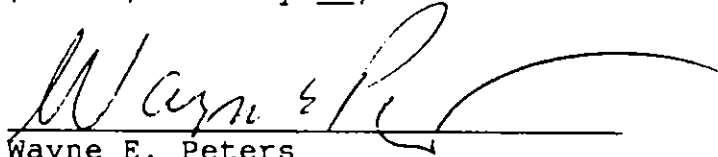
B. Within two weeks after deliveries begin, CTC shall provide written notification to the Office of Natural Gas & Petroleum Import and Export Activities, Fossil Energy, Room 3F-056, FE-34, Forestall Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, of the date that the first import of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

C. With respect to the natural gas imports authorized by this Order, CTC shall file with the Office of Natural Gas & Petroleum Import and Export Activities, within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made. Quarterly reports must be filed whether or not initial deliveries have begun. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. If imports have occurred, CTC must report total monthly volumes in Mcf and the average purchase price per MMBtu at the international border. The information for a particular month shall list separately the volumes under each of the gas purchase agreements between CTC and its three Canadian suppliers.



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 July 15, 1997.



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

UNITED STATES OF AMERICA

[6450-01-P]

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

[FE DOCKET NO. 97-40-NG]

COENERGY TRADING COMPANY

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

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CoEnergy Trading Company (CoEnergy) long-term authorization to import up to 80,000 Mcf per day (29.9 Bcf annually) of natural gas from Canada. The term of the authorization is for a period of 10 years commencing November 1, 1998, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998. This gas may be imported from Canada at the proposed interconnection of the Trans Quebec and Maritimes Pipeline and the Portland Natural Gas Transmission System near Pittsburg, New Hampshire, or the existing interconnection of TransCanada PipeLines Limited and Great Lakes Gas Transmission Limited Partnership located near Noyes, Minnesota.

This order is available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586-9478. The docket

room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., August 12, 1997.



*for*

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



**CoEnergy Trading Company**

A subsidiary of MCN Energy Group Inc., Detroit, MI

97-40

**D. Guy Jarvis**  
Director, Market Development

1400 Canterra Tower • 400-3rd Avenue S.W.  
Calgary, Alberta T2P 4H2  
(403) 263-8157 • (403) 269-8868 FAX

**March 24, 1999**

**United States Department of Energy  
Office of Natural Gas & Petroleum Import and Export Activities  
Fossil Energy, Room 3F-056, FE-34, Forestall Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585**

**Re: DOE/FE Order No. 1290**

CoEnergy Trading Company wishes to advise that initial imports of natural gas under the subject order commenced on March 10, 1999.

Should you have any questions on this matter, please feel free to contact myself at 403-263-8157.

**Yours truly,**

**CoEnergy Trading Company**

**D. Guy Jarvis**  
Vice President

REC'D DOE/FE  
SEC'D DOE/FE  
1999 APR - 8 A 9:27  
1999 APR - 8 A 9:27