



**Enron Capital & Trade  
Resources Corp.**

P. O. Box 1188  
Houston, TX 77251-1188

February 6, 1998

*98-12-16*

U.S. Department of Energy  
Office of Fuels Programs  
1000 Independence Avenue S.W.  
Washington, D.C. 20585

Dear Sirs:

Enclosed for filing is two originals and sixteen (16) copies of the Application of Enron Capital & Trade Resources Corp. for Authorization to Import Natural Gas from Canada. Please file stamp the extra copy and return to me in the stamped, self-addressed envelope enclosed.

The U.S. Dept. of Energy is currently in possession of our check in the amount of \$50 for applicable fees.

Thank you in advance for your prompt attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Monica Jordan" followed by a stylized flourish.

Monica C. Jordan

Enclosures

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

Enron Capital & Trade Resources Corp.

§

FE Docket No.

98-12-NG

APPLICATION OF ENRON CAPITAL & TRADE  
RESOURCES CORP. FOR AUTHORIZATION  
TO IMPORT NATURAL GAS FROM CANADA

I. ACTION SOUGHT FROM THE OFFICE OF FOSSIL FUELS

Pursuant to Section 3 of the Natural Gas Act of 1938, as amended, 15 U.S.C. § 717b (1994 Supp.), Section 201 of the Energy Policy Act of 1992, 15 U.S.C. § 717b(b)-(c) (1994 Supp.), Delegation Order Nos. 0204-111, 49 Fed. Reg. 6684 (Feb. 22, 1984) and 0204-127, 54 Fed. Reg. 11437 (Mar. 20, 1991) of the United States Department of Energy ("DOE"), and Part 590 of the DOE's regulations, 10 C.F.R. Part 590, Enron Capital & Trade Resources Corp. ("ECT") hereby requests that the DOE's Office of Fossil Energy grant it long-term authorization to import up to 9,051 Mcf of natural gas per day (approximately 3.31 Bcf annually) at a receipt point located near Niagara, Ontario and other receipt points along the Canada-U.S. border, for a term commencing on November 1, 1998 or such other date on which deliveries commence under the transactions specified below, and terminating ten years following the commencement date. In support of this application, ECT presents the following:

II. OFFICIAL SERVICE LIST

All correspondence and communication in regard to this application should be addressed to the following individuals, who should be placed on the official service list for this docket, pursuant to 10 C.F.R. § 590.202(a).

Monica C. Jordan, Attorney  
Enron Capital & Trade Resources Corp.  
P.O. Box 1188  
Houston, Texas 77251-1188  
(713) 853-5910  
(713) 646-3393 - Fax

Leslie J. Lawner, Attorney  
Enron Capital & Trade Resources Corp.  
712 North Lea  
Roswell, New Mexico 88201  
(505) 623-6778  
(505) 625-2820

### III. DESCRIPTION OF THE PARTIES AND PROPOSED TRANSACTION.

#### A. Background.

ECT is a Delaware corporation and is a wholly-owned subsidiary of Enron Corp. Its principal place of business is located in Houston, Texas, with other offices located in Dublin, Ohio, Chicago, Illinois, Long Beach, San Francisco and Auburn, California, Omaha, Nebraska, Kansas City, Missouri, Denver, Colorado, and Tulsa, Oklahoma. ECT, the successor to Enron Gas Marketing, Inc., is one of the largest buyers and sellers of natural gas in North America, with physical and financial volumes in excess of 30 billion cubic feet per day. ECT is the parent corporation of Enron Capital & Trade Resources Canada Corp. ("ECT Canada"), which is the purchaser of the natural gas subject to this application from a supplier in the Province of Alberta, and the seller of the gas to ECT at the international boundary.

ECT proposes to import the natural gas from Canada at the export point near Niagara, in the Province of Ontario. However, as this supply forms part of ECT's corporate portfolio, ECT may wish to bring these volumes in to the U.S. at other points along the U.S.-Canadian border from time to time. In order to retain flexibility, ECT requests that the subject import authorization not be restricted to a single point of import.

ECT will use the Canadian natural gas supplies imported hereunder to enhance its overall corporate supply portfolio. The natural gas to be imported will be produced in Alberta, and will be transported to market through NOVA Gas Transmission Ltd. ("NOVA"), TransCanada PipeLines Limited ("TCPL") and National Fuel Gas Supply Corporation ("National Fuel"). The gas will flow on NOVA for firm delivery service to Empress, Alberta at the inter-connect of TCPL and then across Canada on the facilities of TCPL to the inter-connect of TCPL and National Fuel at the Niagara, Ontario export point. The gas will continue on the facilities of National Fuel to a delivery point near Leidy, Pennsylvania. The gas will then be delivered to markets or to interconnecting pipeline systems for delivery to markets in the northeastern United States.

#### B. Supply

ECT will purchase the gas supplies from ECT Canada under an Enfolio Master Firm Purchase/Sale Agreement ("Master Agreement") dated June 1, 1994. This Master Agreement contemplates the parties entering into various transactions for the firm purchase and sale of gas to which the Agreement is to apply. The import arrangement contemplated hereunder is subject to the Master Agreement pursuant to a Confirmation Letter between ECT and ECT Canada dated January 30, 1997 (the "Confirmation Letter"). The Confirmation Letter provides for the sale by ECT Canada to ECT of 9,051 Mcf of gas per day, to be delivered at the U.S.-Canada border near Niagara, Ontario for the period from November 1, 1998 or such commencement date and will terminate ten years from the commencement

date. If ECT, as Buyer, fails to schedule the minimum daily quantity (MinDQ) or daily contract quantity (DCQ), this constitutes a Buyer's Deficiency Default and Buyer's Deficient quantity shall be the difference between the DCQ or MinDQ and the quantity of gas scheduled for such day. ECT will then be required to pay ECT Canada the sum of an amount equal to the product of Buyer's Deficiency Quantity multiplied by the Replacement Price Differential plus liquidated damages equal to \$0.15 multiplied by Buyer's Deficiency Quantity to cover ECT Canada's administrative and operational costs. The Replacement Price Differential means the positive difference, if any, obtained by subtracting the lesser of (a) the price obtained by Seller in an incremental, arms-length sale(s) to a third party of a quantity of gas equal to Buyer's Deficiency Quantity for such day, less incremental transportation charges to the Seller, and including other basis adjustments or (b) the Spot Price for the day in which Buyer's Deficiency Default occurred from the Contract Price. Buyer shall not be liable to Seller for any amount for failing to Schedule or receive any volumes which are designated by Seller or Buyer to be Fuel Gas or which are deemed to be Fuel Gas. The Master Agreement and the Confirmation Letters are attached hereto as Exhibit "A".

ECT Canada has entered into a purchase arrangement with Canadian Natural Resources ("CNR") under a Master Firm Gas Purchase/Sale Agreement dated August 26, 1993 with a Confirmation Letter dated January 30, 1997. CNR will sell ECT Canada a maximum daily quantity of gas up to 9,051 Mcf per day at AECO "C" /NIT, Alberta for the period of November 1, 1998 or such commencement date and will terminate ten years from the commencement date.

C. Transportation

The Alberta-sourced natural gas will be transported from the field to the contract delivery point at AECO "C" /NIT through NOVA. ECT Canada is in the process of acquiring sufficient NOVA capacity, with renewal rights, for transportation of the 3.31 Bcf of gas to be imported annually and has a Letter of Understanding dated December 18, 1996 verifying the same. The natural gas will be transported from the contract delivery point via the NOVA facilities and onto the Canada-U.S. border near Niagara, Ontario through TCPL facilities.

ECT will purchase the gas from ECT Canada on the Canadian side of the International Border at a point near the interconnect between TCPL and National Fuel.

D. Markets

ECT manages a large portfolio of fixed-price natural gas risk management contracts in the world; it holds equity interests in and markets power from four operating natural gas-fired power projects in North America; it is the largest supplier of gas to the electric generation industry in North America and is among the leading entities arranging new capital to the North American energy industry.

The natural gas which ECT will acquire under the import authorization requested herein will be used as part of ECT's overall corporate gas supply portfolio. It is generally expected that the subject natural gas will be used to serve the U.S. northeast markets currently under long-term contracts to ECT.

IV. THE AUTHORIZATION SOUGHT IS CONSISTENT WITH THE PUBLIC INTEREST

The long-term import authorization sought by ECT herein is not inconsistent with the public interest, as required by Section 3 of the Natural Gas Act. As that section states, the importation of natural gas "from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas" is deemed to be consistent with the public interest and must be granted "without modification or delay." Since the authorization ECT seeks is to import natural gas produced in Canada, a nation with which the U.S. has a free trade agreement covering the sales of natural gas, the proposed transaction satisfies the public interest criteria as expressed in Section 3 of the NGA.

V. ENVIRONMENTAL CONSIDERATIONS

As a result of the amendment of Section 3 of the Natural Gas Act effectuated by the Energy Policy Act of 1992, an environmental review of an import application is not required under the National Environmental Policy Act. See DOE/FE Order No. 762. Any environmental assessment or analysis necessary due to pipeline construction to serve ECT will be performed by the Federal Energy Regulatory Commission.

ECT Canada has already received the necessary export permits from the National Energy Board of Canada authorizing the long-term export of the gas made the subject of this transaction (License No. GL-279).

VI. OTHER FEDERAL ACTION

Neither ECT nor any other party has any pending applications with any other federal agency with respect to the proposed import of natural gas.

VII. CONCLUSION

WHEREFORE, ECT requests that the Department of Energy Office of Fossil Energy grant it the authorization sought herein to import up to 9,051 Mcf/d of natural gas from Canada for a ten year term commencing November 1, 1998, or such commencement date as set forth above.

Respectfully submitted,



Monica C. Jordan,  
Attorney

ENRON CAPITAL & TRADE RESOURCES CORP.  
P.O. Box 1188  
1400 Smith Street  
Houston, Texas 77251-1188

United States Department of Energy  
Office of Fossil Energy  
1000 Independence Ave. SW  
Washington, D.C. 20585

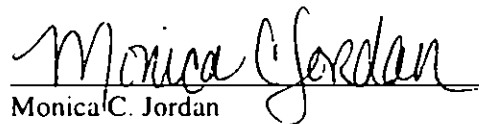
Re: Application of Enron Capital & Trade Resources Corp. for  
Long-Term Authorization to Import Canadian Natural Gas

To Whom It May Concern:

This opinion is rendered in connection with the application of Enron Capital & Trade Resources Corp. ("ECT") for authorization under Section 3 of the Natural Gas Act to import up to 9,051 Mcf of natural gas per day (up to 3.31 Bcf annually), at a receipt point located near Niagara, Ontario and other receipt points along the Canada-U.S. border, for a term commencing on November 1, 1998 or such other date on which deliveries commence under the transactions specified below, and terminating November 1, 2008.

Based upon my understanding of the application and my examination of the relevant documents, records and matters of law, it is my opinion that the proposed import of natural gas from Canada by ECT, as contemplated in the instant application, is within the corporate power of ECT.

Very truly yours,

  
Monica C. Jordan

**EXHIBIT "A"**  
**SUPPLY ARRANGEMENTS**

Enfolio Master Firm Purchase/Sale Agreement between  
Enron Capital & Trade Resources Corp. and Enron Capital  
& Trade Resources Canada dated June 1, 1994

Confirmation Letter between ECT and ECT Canada  
dated January 30, 1997



# ENFOLIO MASTER FIRM PURCHASE AGREEMENT

II

Gas Marketing, Inc., a Delaware corporation ("Company"), and Enron Gas Canada Corp., an Alberta, Canada corporation ("Customer"), referred to collectively as the "Parties," enter into this Master Firm Purchase/Sale Agreement together with all Transactions, collectively, this "Agreement" effective as of the 1st Day of June, 1994 (the "Effective Date"). The ENFOLIO General Provisions set forth in Appendix "1" shall apply to this Agreement.

**ARTICLE 1. TERM** This Agreement shall govern all Transactions and be in effect for a term of one year from the Effective Date. It shall then continue in effect from Month to Month, unless terminated by either Party upon 30 Days prior written notice to the other Party; provided, this Agreement shall continue to apply to all Transactions then in effect until all Transactions are completed. Termination of this Agreement in all instances shall be subject to Section 8.4.

**ARTICLE 2. SCOPE OF AGREEMENT** 2.1. Scope of Agreement. Company and Customer from time to time during the term hereof may, but are not obligated to, enter into Transactions for the firm purchase and sale of Gas to which this Agreement shall apply. Each Transaction shall be effectuated and evidenced as set forth in this Article 2 and shall constitute a part of this Agreement. Each Transaction shall be construed as one with this Agreement and any discrepancy between this Agreement and a Transaction shall be resolved in favor of the Transaction. Each Transaction shall provide whether the Transaction is based upon DCQ quantity obligations or MinMQ or MinDQ and MaxDQ quantity obligations, in which case the applicable alternative definitions and provisions set forth in this Agreement shall apply.

Transaction Procedures. It is the intent of the Parties to facilitate Transactions in accordance with the agreed procedures in this Article 2 and assure that such Transactions are valid and enforceable as a result of the use of these procedures for the mutual benefit of the Parties. Any Transaction may be formed and effectuated (i) by a written paper-based Transaction Agreement executed by the Parties (including by facsimile and/or counterparts) or (ii) in a recorded telephone conversation between the Parties occurring on any Business Day during the Pricing Hours whereby an offer and acceptance shall constitute the agreement of the Parties to a Transaction as evidenced by the Transaction Tape; provided, each Party may stipulate by prior notice to the other Party that any particular contemplated Transaction may be effectuated and formed only by means of procedure (i) above. The Parties shall be legally bound by each Transaction from the time they agree to its terms in accordance with this Article 2 and acknowledge that each Party will rely thereon in doing business related to the Transaction. The Transaction Tape is adopted by the Parties as a means by which a Transaction is reduced to tangible form, and the Parties to a Transaction are identified and authenticate a Transaction. Any Transaction formed and effectuated pursuant to the foregoing shall be considered to be a "writing" or "in writing" and to have been "signed" and any Transaction Tape shall be considered to constitute an "original" document evidencing the Transaction. Each Party consents to the recording of its employees' telephone conversations without any further notice. SEE RIDER TRANSACTION AGREEMENT REQUIRED

2.3. Equipment and Transaction Tape. Company shall at its expense maintain equipment necessary to regularly record Transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided, Company shall not be liable for any malfunction of equipment or the operation thereof in respect of any Transaction WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. No Transaction shall be vitiated should a malfunction occur in equipment regularly utilized for recording Transactions or retaining Transaction Tapes or the operation thereof, and in such event, the Transaction shall be evidenced by the written and computer records of the

Parties concerning the Transaction made contemporaneously with the telephone conversation.

2.4. Confirmations. In addition to, but not in lieu of, the foregoing, the Parties agree that Company may confirm a recorded telephonic Transaction by forwarding to Customer a facsimile Confirmation and that a reasonable time for the receipt by Customer of a Confirmation is within 24 hours of the Transaction formation. Company does hereby adopt its letterhead, including its address, as its signature on any Confirmation as the identification of Company and authentication by Company of the Confirmation, and such letterhead shall be sufficient to verify that Company originated the Confirmation. The Parties agree that any objections to the contents of the Confirmation shall be made in writing on or before the Confirm Deadline for all purposes hereunder and at law.

2.5. Enforcement of Transactions. The Parties agree not to contest or assert a defense to the validity or enforceability of telephonic Transactions entered into in accordance with this Agreement under laws relating to (i) whether certain agreements are to be in writing or signed by the Party to be thereby bound or (ii) the authority of any employee of the Party if the employee name and the Identification Code of the Party are stated in the Transaction Tape.

**ARTICLE 3. QUANTITY OBLIGATIONS** 3.1. Seller's Sales Obligation. Seller shall Schedule, or cause to be Scheduled, at the Delivery Point(s) on a firm basis each Gas Day a quantity of Gas equal to the quantity properly requested by Buyer up to the DCQ or MaxDQ, if applicable ("Buyer's Requested Quantity"). Unless otherwise agreed nothing in this Agreement, and in particular this Article 3, shall require or permit either Party to Schedule Gas at a point other than a Delivery Point or in excess of the DCQ, Maximum Daily Delivery Point Quantity or MaxDQ, as applicable.

3.2. Seller's Failure to Schedule. If on any Gas Day Seller fails to Schedule Buyer's Requested Quantity, then such occurrence shall constitute a "Seller's Deficiency Default" and "Seller's Deficiency Quantity" shall be the numerical difference between Buyer's Requested Quantity and the amount of Gas Scheduled for such Gas Day. In the event of a Seller's Deficiency Default, Seller shall pay Buyer the sum of the following: (i) an amount equal to the product of the Seller's Deficiency Quantity multiplied by the Replacement Price Differential, plus (ii) liquidated damages equal to \$0.15 multiplied by Seller's Deficiency Quantity to cover Buyer's administrative and operational costs. During any Month in which Seller's nonperformance continues for a period of five consecutive Gas Days Buyer may elect upon notice to Seller, without liability, not to recommence Scheduling Gas hereunder for the remainder of such Month, but for no longer period. Subject to offset pursuant to Section 3.5, payment to Buyer shall be made no later than 10 Days after receipt by Seller of Buyer's invoice for same.

3.3. Buyer's Purchase Obligation. Buyer shall Schedule, or cause to be Scheduled, at the Delivery Point(s) on a firm basis each Gas Day a quantity of Gas equal to the DCQ; provided, (i) if the MinMQ is applicable to a Transaction, Buyer shall Schedule, or cause to be Scheduled, at the Delivery Point(s) on a firm basis each Month a minimum quantity of Gas equal to the MinMQ and (ii) if the MinDQ is applicable to a Transaction, Buyer shall Schedule, or cause to be Scheduled, at the Delivery Point(s) on a firm basis each Day a minimum quantity of Gas equal to the MinDQ.

3.4. Buyer's Failure to Schedule. If on any Gas Day Buyer fails to Schedule the DCQ or MinDQ, if applicable, then such occurrence shall constitute a "Buyer's Deficiency Default" and "Buyer's Deficiency Quantity" shall be the numerical difference between the DCQ or MinDQ, if applicable, and the quantity of Gas Scheduled for such Gas Day; provided, if the MinMQ is applicable to a Transaction, (i) the Buyer's Deficiency Default shall occur if Buyer fails to Schedule the MinMQ for any Month and (ii) the Buyer's Deficiency Quantity shall be the numerical difference between the MinMQ and the quantity of Gas Scheduled for such Month. In the event of a Buyer's Deficiency Default, Buyer shall pay Seller the sum of the following: (i) an amount equal to the product of Buyer's Deficiency Quantity multiplied by the

Replacement Price Differential, plus (ii) liquidated damages equal to \$0.15 multiplied by Buyer's Deficiency Quantity to cover Seller's administrative and operational costs. respect to DCQ and MinDQ obligations, during any Month in which Buyer's performance continues for a period of five consecutive Gas Days Seller may elect notice to Buyer, without liability, not to recommence Scheduling Gas for the order of such Month, but for no longer period. Subject to offset pursuant to Section 3.5, payment to Seller shall be made in accordance with the Billing and Payment provisions set forth in Appendix "1."

**3.5. Offset.** In the event that Buyer and Seller are each required to pay an amount in the same Month under Section 3.2 and Section 3.4, or under Section 3.2 and the Billing and Payment provisions set forth in Appendix "1", then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their obligations to pay through offset, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party the difference between the amounts owed.

**ARTICLE 4. DEFAULTS AND REMEDIES** 4.1. **Early Termination.** If a Triggering Event (defined in Section 4.2) occurs with respect to either Party at any time during the term of this Agreement, the other Party (the "Notifying Party") may (i) upon two Business Days written notice to the first Party, which notice shall be given no later than 60 Days after the discovery of the occurrence of the Triggering Event, establish a date on which any or all Transactions selected by it and this Agreement in respect thereof will terminate ("Early Termination Date") except as provided in Section 8.4, and (ii) withhold any payments due in respect of such Transactions; provided, upon the occurrence of any Triggering Event listed in item (iv) of Section 4.2 as it may apply to any party, the Transactions selected by the Notifying Party and this Agreement in respect thereof shall automatically terminate, without notice, as if an Early Termination Date had been immediately declared except as provided in Section

If an Early Termination Date occurs, the Notifying Party shall in good faith estimate its damages, including its associated costs and attorneys' fees, resulting from the termination of the terminated Transactions (the "Termination Payment"). The Termination Payment will be determined by (i) comparing the value of (a) the remaining term, quantities and prices under each such Transaction had it not been terminated to (b) the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third party offer or which are reasonably expected to be available in the market under a replacement contract for each such Transaction and (ii) ascertaining the associated costs and attorneys' fees. To ascertain the market prices of a replacement contract the Notifying Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in Gas swap contracts and other bona fide third party offers, all adjusted for the length of the remaining term and the basis differential. Upon the netting of all terminated Transactions, if the calculation of the Termination Payment does not result in damages to the Notifying Party, the Termination Payment shall be zero. The Notifying Party shall give the Affected Party (defined in Section 4.2) written notice of the amount of the Termination Payment, inclusive of a statement showing its determination. The Affected Party shall pay the Termination Payment to the Notifying Party within 10 Days of receipt of such notice. At the time for payment of any amount due under this Article 4, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder. If the Affected Party disagrees with the calculation of the Termination Payment, the issue shall be submitted to arbitration pursuant to this Agreement and the resulting Termination Payment shall be due and payable within three Days after the award.

4.2. **Triggering Event** shall mean, with respect to a Party (the "Affected Party"): (i) failure by the Affected Party to make, when due, any payment required under this Agreement if such failure is not remedied within five Business Days after written notice of such failure is given to the Affected Party; provided, the payment is not the subject of a good faith dispute as described in the Billing and Payment provisions or (ii) any representation or warranty made by the Affected Party in this Agreement shall prove to have been false or misleading in any material respect when

made or deemed to be made or (iii) the failure by the Affected Party to perform any covenant set forth in this Agreement (other than its obligations to make any payment or obligations which are otherwise specifically covered in this Section 4.2 as a separate Triggering Event), and such failure is not excused by Force Majeure or cured within five Business Days after written notice thereof to the Affected Party or (iv) the Affected Party shall (a) make an assignment or any general arrangement for the benefit of creditors, (b) file a petition or otherwise commence, authorize or acquiesce in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or have such petition filed against it and such proceeding remains undismissed for 30 Days, (c) otherwise become bankrupt or insolvent (however evidenced) or (d) be unable to pay its debts as they fall due or (v) Seller's unexcused failure to Schedule the Buyer's Requested Quantity requested by Buyer for a cumulative period of 30 or more Gas Days in a 12 Month period in any one Transaction or (vi) Buyer's unexcused failure to Schedule the DCQ or MinDQ for a cumulative period of 30 or more Gas Days in a 12 Month period in any one Transaction, or, if applicable, the MinDQ for a cumulative period of three Months in a 12 Month period in any one Transaction or (vii) the occurrence of a Material Adverse Change of the Affected Party; provided, such Material Adverse Change shall not be considered if the Affected Party establishes, and maintains throughout the term hereof, a Letter of Credit (naming the Notifying Party as the beneficiary) in an amount equal to the sum of (in each case rounding upwards for any fractional amount to the next \$ 500,000.00) (a) the Notifying Party's Termination Payment plus (b) if the Notifying Party is Seller, the aggregate of the amounts Seller is entitled to receive under each Transaction for Gas Scheduled during the 60 Day period preceding the Material Adverse Change (the amount of said Letter of Credit to be adjusted quarterly to reflect amounts owing at that point in time) or (viii) the Affected Party fails to establish, maintain, extend or increase a Letter of Credit when required pursuant to this Agreement, or after reasonable notice fails to replace the issuing bank with another bank acceptable to the beneficiary.

4.3. **Other Events.** In the event Buyer under a Transaction is regulated by a federal, state or local regulatory body, and such body shall disallow all or any portion of any costs incurred or yet to be incurred by Buyer under any provision of this Agreement, such action shall not operate to excuse Buyer from performance of any obligation nor shall such action give rise to any right of Buyer to any refund or retroactive adjustment of the Contract Price provided in any Transaction. Notwithstanding the foregoing, if the Affected Party's activities hereunder become subject to regulation of any kind whatsoever under any law (other than with respect to New Taxes) to a greater or different extent than that existing on the Effective Date and such regulation either (i) renders this Agreement illegal or unenforceable or (ii) materially adversely affects the business of the Affected Party, with respect to its financial position or otherwise, then in the case of (i) above, either Party, and in the case of (ii) above, only the Affected Party, shall at such time have the right to declare an Early Termination Date in accordance with the provisions hereof; provided, notwithstanding the rights of the Parties to declare an Early Termination Date as above stated, the Affected Party shall be liable for payment of the Termination Payment calculated by the non-Affected Party as provided in Section 4.1.

4.4. **Offset.** Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and defenses consistent with Section 8.3 (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or out of this Agreement. All outstanding Transactions and the obligations to make payment in connection therewith or under this Agreement may be offset against each other, set off or recouped therefrom.

**ARTICLE 5. FORCE MAJEURE** This Article 5 is the sole and exclusive excuse of performance permitted under this Agreement and all other excuses at law or in equity are WAIVED to the extent permitted by law. Except with respect to payment obligations, in the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations hereunder, it is agreed that upon such Party's giving notice and full particulars of such Force Majeure to the other Party as soon as

reasonably possible (such notice to be confirmed in writing), the obligations of the giving such notice, to the extent they are affected by such event, shall be terminated from the inception and during the continuance of the Force Majeure for a period of up to 60 Days in the aggregate during any 12 Month period, but for no period. The Party receiving notice of Force Majeure may immediately take such action as it deems necessary at its expense for the entire 60 Day period or any part thereof. The Parties expressly agree that upon the expiration of the 60 Day period Force Majeure shall no longer apply to the obligations hereunder and both Buyer and Seller shall be obligated to perform. The cause of the Force Majeure shall be remedied with all reasonable diligence and dispatch; provided, unless otherwise agreed no provision herein shall require or permit Seller or Buyer to Schedule quantities of Gas (a) in excess of the DCQ, Maximum Daily Delivery Point Quantity or MaxDQ, as applicable, or (b) at points other than the Delivery Point(s).

**ARTICLE 6. TAXES** 6.1. Allocation of and Indemnity for Taxes. The Contract Price includes full reimbursement for, and Seller is liable for and shall pay, or cause to be paid, or reimburse Buyer if Buyer has paid, all Taxes applicable to the Gas sold upstream of the Delivery Point(s). In the event Buyer is required to remit such Tax, the amount thereof shall be deducted from any sums becoming due to Seller hereunder. Seller shall indemnify, defend and hold harmless Buyer from any Claims for such Taxes. The Contract Price does not include reimbursement for, and Buyer is liable for and shall pay, cause to be paid, or reimburse Seller if Seller has paid, all Taxes applicable to the Gas sold downstream of or at the Delivery Point(s), including any Taxes imposed or collected by a taxing authority with jurisdiction over Buyer. Buyer shall indemnify, defend and hold harmless Seller from any Claims for such Taxes.

6.2. New Taxes. A. If (a) a New Tax occurs and (b) Buyer or Seller would be responsible for such New Tax if it were a Tax under Section 6.1 and (c) such New Tax is, due to and on the basis of laws, regulations and applicable contracts of Buyer, directly or indirectly, as of the effective date of the New Tax, of the type which Buyer can pass directly through to, or be reimbursed by, another person or entity in the chain of Gas supply, such Buyer shall pay or cause to be paid, or reimburse Seller if Seller has paid, all such New Taxes and Buyer shall indemnify, defend and hold harmless Seller from any Claims for such Taxes; provided, if Buyer does not identify its contracts for long-term fixed sourcing in the ordinary course of its business and cannot identify applicable contracts, this Paragraph A shall not apply. B. If (a) a New Tax occurs and (b) either Buyer or Seller would be responsible for such New Tax if it were a Tax under Section 6.1, and (c) Paragraph A does not apply, such responsible Buyer or Seller (the "Taxed Party") shall be entitled to declare an Early Termination Date in accordance with the provisions of this Agreement subject to the following conditions; provided, prior to and including the initial Agreement Period (as defined) invoked under this Section 6.2, New Taxes shall be allocated as if they were Taxes as provided in Section 6.1: (a) the Taxed Party must give the non-Taxed Party at least 30 Days prior written notice (the "Agreement Period") of its intent to declare an Early Termination Date (and which notice shall be given no later than 90 Days after the later of the enactment or effective date of the relevant New Tax), and prior to the proposed Early Termination Date Buyer and Seller shall attempt to reach a mutual agreement as to the sharing of the New Tax, (b) if a mutual sharing agreement is not reached, the non-Taxed Party shall have the right, but not the obligation, upon written notice to the Taxed Party within the Agreement Period, to pay the New Tax for any continuous period it so elects on a Month to Month basis, and in such case the Taxed Party shall not have the right during such continuous period to declare the Early Termination Date on the basis of the New Taxes, (c) should the non-Taxed Party at its election agree to pay the New Tax on a Month to Month basis, then upon 30 Days prior written notice to the Taxed Party of its election to cease payment of such New Tax, the Taxed Party shall then be liable for the payment of the New Tax and the Parties shall again be subject to this Section 6.2 as if the New Tax had an effective date as of the date the non-Taxed Party ceases payment of such New Tax, (d) if a mutual sharing agreement is not reached and the non-Taxed Party does not elect to pay the New Tax for any period of time within the Agreement Period, the Early Termination Date shall take effect and all Transactions must be terminated and be subject to the same Early Termination Date.

(e) the Early Termination Date shall be effected as if a Triggering Event had occurred and the Termination Payment calculated as set forth in Section 4.1 shall be payable; provided, both Seller and Buyer pursuant to Section 4.1 shall calculate their respective Termination Payments resulting from the termination of all Transactions as if they each were a Notifying Party; provided further, if the calculation of the Termination Payments results in either the non-Taxed Party's or the Taxed Party's having either a gain or loss (after netting its gains against its losses), the Parties shall share equally such net gain due, or be responsible to pay to the Party having the net loss, one-half of the Termination Payment and (f) such Termination Payment shall be payable as provided in Section 4.1 and its calculation shall be subject to arbitration as provided in the ENFOLIO General Provisions.

6.3. Cooperation. Upon request, a Party shall provide a certificate of exemption or other evidence of exemption from any Tax and each Party agrees to cooperate with the other in obtaining an exemption and minimizing Taxes payable in respect of all Transactions.

**ARTICLE 7. TITLE, RISK OF LOSS, INDEMNITY AND BALANCING** 7.1. Title, Risk of Loss and Indemnity. As between the Parties, Seller shall be deemed to be in exclusive control and possession of Gas Scheduled hereunder and responsible for any damage or injury caused thereby prior to the time the same shall have been delivered to Buyer. After delivery of Gas to Buyer at the Delivery Point(s), Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby. Title to Gas Scheduled hereunder shall pass from Seller to Buyer at the Delivery Point(s). Seller and Buyer each assumes all liability for and shall indemnify, defend and hold harmless the other Party from any Claims, including injury to and death of persons, arising from any act or incident occurring when title to the Gas is vested in the Indemnifying Party. IT IS THE INTENT OF THE PARTIES THAT THIS INDEMNITY AND THE LIABILITY ASSUMED UNDER IT BE WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY INDEMNIFIED PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

7.2. Correction of Imbalances, Cashouts and Penalties. Differences between Scheduled quantities and actual quantities delivered and received hereunder ("Imbalances") will be corrected or settled in cash or Gas or by offset as the Parties agree. Additionally, in the event of (a) an imbalance on Buyer's Transporter's system caused by Seller or Seller's Transporter's delivery of less or more than the Scheduled quantity for any Gas Day (in which case Seller shall be the "Responsible Party") or (b) an imbalance on Seller's Transporter's system caused by Buyer or Buyer's Transporter's receipt of more or less than the Scheduled quantity for any Gas Day (in which case Buyer shall be the "Responsible Party"), the Responsible Party shall be liable for and reimburse to the other Party any associated Transporter penalties or cashout costs and losses incurred by such other Party. In the event the tariff of either Buyer's or Seller's Transporter provides for cashouts on the basis of the aggregation of all overdeliveries and underdeliveries between such Transporter and Buyer or Seller, respectively (the "Aggregate Transporter Imbalance"), and the nature of the imbalance (overdelivery or underdelivery) attributable to the Responsible Party is the same as the Aggregate Transporter Imbalance (overdelivery or underdelivery), the Responsible Party shall participate in the other Party's cashout settlement of the Aggregate Transporter Imbalance on the basis of only the Responsible Party's pro-rata share thereof.

**ARTICLE 8. MISCELLANEOUS** 8.1. Notices. All notices, including, without limitation, consents, and communications made pursuant to this Agreement shall be made as specified in Exhibit "A." Notices required to be in writing shall be delivered in written form by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close in which case it shall be deemed received at the close of the next Business Day) or such earlier time confirmed by the receiving Party. Notice 1

overnight mail or courier shall be deemed to have been received two Business Days after it was sent or such earlier time confirmed by the receiving Party. Any notices hereunder in respect of the declaration of an Early Termination Date shall be addressed and sent to the attention of the Corporate Secretary of Buyer or at the notice address in Exhibit "A." Any Party may change its addresses by giving notice of same in accordance herewith.

**8.2. Transfer.** This Agreement, including, without limitation, each indemnification, shall inure to and bind the permitted successors and assigns of the Parties; provided, neither Party shall transfer this Agreement without the prior written approval of the other Party which may be withheld entirely at the option of such Party; provided further, either Party may transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other Party, but no such transfer shall operate to relieve the transferor Party of its obligations hereunder. Any Party's transfer in violation of this Section 8.2 shall be void.

**8.3. Limitation of Remedies, Liability and Damages and Mitigation.** THE PARTIES DO HEREBY CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS HEREIN PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. SEE RIDER ANTICIPATORY REUDIATION UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR DIRECT DAMAGES, IN TORT, CONTRACT, UNDER ANY INDEMNITY PROVISION OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PENALTIES OR CHARGES ASSESSED BY ANY TRANSPORTER OR OTHER ENTITY FOR THE UNAUTHORIZED RECEIPT OF GAS BY THE OTHER PARTY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. BUYER ACKNOWLEDGES THAT IT HAS ENTERED INTO THIS AGREEMENT AND IS CONTRACTING FOR THE GOODS TO BE SUPPLIED BY SELLER BASED SOLELY UPON THE EXPRESS REPRESENTATIONS AND WARRANTIES HEREIN SET FORTH AND SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES, ACCEPTS SUCH GOODS "AS-IS" AND "WITH ALL FAULTS." SELLER EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE. EACH PARTY HEREBY WAIVES ALL RIGHTS UNDER, ARISING OUT OF OR ASSOCIATED WITH TEXAS & BUSINESS COMMERCE CODE SECTIONS 17.41 THROUGH 17.63 KNOWN AS THE DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT TO THE EXTENT ALLOWED BY LAW. The Parties acknowledge duty to mitigate damages hereunder. In this connection, the Parties recognize the ability to effectuate arrangements for the sale or purchase of Gas is conditioned upon the volatility of Gas markets, the creditworthiness and reliability of potential customers, the complexity and size of the portfolios of contracts managed by each Party and the need to conduct market business in an orderly manner. Therefore, the Parties agree that (a) three Business Days is a commercially

reasonable period to purchase or sell Gas in respect of a Seller's or Buyer's Deficiency Default and (b) three Business Days after the end of the Month in which the Early Termination Date occurs is a commercially reasonable period after the establishment of an Early Termination Date to determine the Termination Payment; provided, notwithstanding the foregoing, if Gas volumes made the basis of a Seller's or Buyer's Deficiency Default or a Party's determination of the Termination Payment are in excess of 20,000 MMBtu/Gas Day, the Parties recognize that a longer period may ordinarily be required to effectuate cover or determine the Termination Payment in an orderly manner so as not to adversely affect the Gas market. Each Party may utilize its discretion, with commercially reasonable foresight, to adjust the timing and staggering of the purchases or sales of Gas volumes in its efforts to mitigate damages. No claim that a Party failed to mitigate damages shall be grounded solely on the basis of counter Gas market movement.

**8.4. Winding Up Arrangements.** Upon the expiration of the Parties' sale and purchase obligations under this Agreement, any monies, penalties or other charges due and owing Seller shall be paid, any corrections or adjustments to payments previously made shall be determined, and any refunds due Buyer made, within 60 Days. Any imbalances in receipts or deliveries shall be corrected to zero balance within 60 Days. All indemnity obligations and audit rights shall survive the termination of this Agreement. The Parties' obligations provided in this Agreement shall remain in effect for the purpose of complying herewith.

**8.5. Applicable Law.** THIS AGREEMENT AND EACH TRANSACTION AND THE RIGHTS AND DUTIES OF THE PARTIES ARISING OUT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES AGREE THAT THIS AGREEMENT AND ALL TRANSACTIONS SHALL BE ACCEPTED AND FORMED IN THE STATE OF TEXAS ACCORDING TO THE PROCEDURES HEREIN SET FORTH.

**8.6. Document, Record Retention and Evidence.** This Agreement, the Exhibits and Appendices hereto, if any, and each Transaction, constitute the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. There are no prior or contemporaneous agreements or representations (whether oral or written) affecting the subject matter other than those herein expressed. Other than with respect to Transactions entered into in accordance with the procedures set forth in this Agreement and as otherwise herein expressly stated (the "Transaction Procedures"), no amendment or modification to this Agreement shall be enforceable, unless reduced to writing and executed by both Parties. The conduct of the Parties in accordance with the Transaction Procedures shall evidence a course of dealing and a course of performance accepted by the Parties in furtherance of this Agreement and all Transactions entered into by the Parties. The provisions of this Agreement shall not impart rights enforceable by any person, firm or organization not a Party or not bound as a Party, or not a permitted successor or assignee of a Party bound to this Agreement. Except as otherwise herein stated, any provision, article or section declared or rendered unlawful by a court of law or regulatory agency with jurisdiction over the Parties or deemed unlawful because of a statutory change will not otherwise affect the lawful obligations that arise under this Agreement. The headings used for the Articles herein are for convenience and reference purposes only. All Exhibits and Appendices referenced in this Agreement, if any, are incorporated. Any original executed Agreement or Transaction Agreement may be photocopied and stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation, if introduced as evidence in facsimile form, and the Transaction Tape, if introduced as evidence in its original form and as transcribed onto paper, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall contest the admissibility of the Transaction Tape in its original form, or photocopies of the transcription thereof, or photocopies of the Confirmation or the Imaged Agreement under either the business records exception to the hearsay rule or the best evidence rule on the basis that such were not originated or maintained in documentary form.

8.7. Confidentiality. Each Party shall not disclose terms of any Transaction to a third party (other than the Party's and its affiliates' employees, lenders, counsel or accountants who have agreed to keep such terms confidential) except in order to comply with any applicable law, order, regulation or exchange rule; provided, each Party shall notify the other Party of any proceeding of which it is aware which may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The provisions of the Agreement other than the terms of any Transaction are not subject to this confidentiality obligation. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation; provided, all monetary damages shall be limited to actual direct damages.

The Parties have executed this Agreement in multiple counterparts to be construed as one effective as of the Effective Date.

ENRON GAS MARKETING, INC.

By: [Signature]  
Title: VICE PRESIDENT

DBH

ENRON GAS SERVICES CANADA CORP.

By: [Signature]  
Title: PRESIDENT

MCH

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APPENDIX "1"  
ENFOLIO GENERAL PROVISIONS

**Usage and Definitions** All references to Articles and Sections are to those set in this Agreement. Reference to any document means such document as of time to time and reference to any Party includes any permitted successor or assignee thereof. The following definitions and any terms defined herein in this Agreement shall apply to this Agreement and all notices and communications made pursuant to this Agreement.

**"Btu"** means the amount of energy required to raise the temperature of one pound of pure water one degree Fahrenheit from 59 degrees Fahrenheit to 60 degrees Fahrenheit. The term **"MMBtu"** means one million Btus.

**"Buyer"** means the Party to a Transaction who is obligated to purchase Gas during a Period of Delivery.

**"C.T."** means Central Time.

**"Claims"** means all claims or actions, threatened or filed and whether groundless, false or fraudulent, that directly or indirectly relate to the subject matters of the indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

**"Confirmation"** means a written notice confirming the specific terms of a Transaction which may be in any form adequate at law; an example of a Confirmation which may be utilized hereunder is shown in "Exhibit B."

**"Confirm Deadline"** means 24 hours after a Party receives a Confirmation; provided, if the Confirmation is not received during a Business Day it shall be deemed received at the open of the next Business Day.

**"Contract Price"** means the price for the purchase or sale of Gas pursuant to a Transaction.

**"Daily Contract Quantity" ("DCQ")** means the quantity of Gas to be Scheduled each Gas Day pursuant to a Transaction.

**"Day"** means a period of 24 consecutive hours, beginning at midnight C.T. on any calendar Day. **"Business Day"** means a Day on which Federal Reserve member banks in New York City are open for business and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time. **"Gas Day"** means a period of 24 consecutive hours beginning at the time of the applicable Transporter's gas day.

**"Delivery Point(s)"** means the agreed point(s) of delivery pursuant to a Transaction.

**"Force Majeure"** means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party claiming suspension, and which by the exercise of due diligence such Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute performance therefor; provided, neither (i) the loss of Buyer's markets nor Buyer's inability economically to use or resell Gas purchased hereunder nor (ii) the loss or failure of Seller's Gas supply, including, without limitation, depletion of reserves or failure of production resulting from well freeze-offs, nor Seller's ability to sell Gas to a market at a more advantageous price, shall constitute an event of Force Majeure. **"Force Majeure"** shall include an event of Force Majeure occurring with respect to the facilities or services of Buyer's or Seller's Transporter.

**"GAAP"** means generally accepted accounting principles, consistently applied.

**"Gas"** means methane and other gaseous hydrocarbons meeting the quality standards and specifications of Buyer's Transporter.

**"Identification Code"** means a Party's numerical code utilized for recorded telephonic Transactions, as follows: Company \_\_\_\_\_, Customer \_\_\_\_\_.

**"Indemnified Party"** and **"Indemnifying Party"** mean the Party receiving and providing an indemnity, respectively.

**"Interest Rate"** means, for any date, two percent over the per annum rate of interest announced as the "Prime Rate" from time to time for commercial loans by Citibank, N. A. as established by the administrative body of such bank charged with the responsibility of establishing such rate, as same may change from time to time; provided, the Interest Rate shall never exceed the maximum lawful rate permitted by applicable law.

**"Letter of Credit"** means an irrevocable standby letter of credit issued or confirmed in a form and by a commercial bank acceptable to the Party in whose favor it is issued.

**"Material Adverse Change"** means with respect to Company or Customer, either ceases to be owned or otherwise controlled by Enron Corp.; "owned or otherwise controlled by" meaning the direct or indirect ownership of at least 51% of the outstanding capital stock or other equity interests of Customer or Company having ordinary voting power.

**"MaxDG"** means the maximum quantity of Gas that Seller is required to Schedule per Gas Day pursuant to a Transaction, if applicable.

**"Maximum Daily Delivery Point Quantity"** means the maximum quantity of Gas which may be Scheduled per Gas Day at each Delivery Point where there are multiple Delivery Points applicable to a Transaction.

**"MinDG"** means the minimum quantity of Gas that Buyer is required to Schedule per Gas Day pursuant to a Transaction, if applicable.

**"MinMQ"** means for any Month the minimum quantity of Gas per Gas Day that Buyer is obligated to Schedule times the number of Days in the Month pursuant to a Transaction, if applicable.

**"Month"** means a period of time beginning at midnight C.T. on the first Day of any calendar Month and ending at midnight C.T. on the first Day of the following calendar Month.

**"New Taxes"** means (i) any Taxes enacted and effective after the Effective Date, including, without limitation, that portion of any Taxes or New Taxes that constitutes an increase, or (ii) any law, order, rule or regulation, or interpretation thereof, enacted and effective after the Effective Date resulting in the application of any Taxes to a new or different class of parties.

**"Period of Delivery"** means the period from the date Scheduling obligations are to commence to the date same are to terminate under a Transaction.

**"Pipeline"** means a company authorized to ship Gas on behalf of itself or others on physical Gas transmission facilities.

**"Pricing Hours"** means the hours C.T. from 8:00 a.m. to 5:00 p.m. of each Business Day.

**"Replacement Price Differential"** means (i) in the event of a Seller's Deficiency Default, the positive difference, if any, obtained by subtracting the Contract Price from the greater of (a) the cost to Buyer, including incremental transportation costs and other basis adjustments, to replace Seller's Deficiency Quantity for such Gas Day (but excluding penalties or charges for unauthorized receipts of Gas by Buyer) or (b) the Spot Price for the Gas Day in which Seller's Deficiency Default occurred, and (ii) in the event of a Buyer's Deficiency Default, the positive difference, if any, obtained by subtracting the lesser of (a) the price obtained by Seller in an incremental, arms-length sale(s) to a third party of a quantity equal to Buyer's Deficiency Quantity for such Gas Day, less incremental transportation charges to Seller, and including other basis adjustments, or (b) the Spot Price for the Gas Day in which Buyer's Deficiency Default occurred (or if the MinMQ is applicable, the Spot Price for the middle Gas Day of the Month in which Buyer's Deficiency Default occurred), from the Contract Price.

**"Scheduling"** or **"Schedule"**, when used in reference to Seller, means to make Gas available, or cause Gas to be made available, at the Delivery Point(s) for delivery to or for the account of Buyer, including making all Pipeline nominations, and when used in reference to Buyer, means to cause Buyer's Transporter to make available at the Delivery Point(s) transportation capacity sufficient to permit Buyer's Transporter to receive on a firm basis the quantities Seller has available at such Delivery Point(s), including making all Pipeline nominations. Gas shall be deemed to have been Scheduled when confirmed by Transporter.

**"Seller"** means the Party to a Transaction who is obligated to sell Gas during a Period of Delivery.

**"Spot Price"** means the price set forth in *Gas Daily*® (Pasha Publications, Inc.), or successor publication, in the column "Daily Price Survey" under the listing applicable to the geographic location agreed pursuant to a Transaction for the relevant Gas Day. If there is no single price published for that particular Gas Day, but there is published a range of prices under the above column and listing, then the Spot Price shall be the average of such high and low prices. In the event that no price or range of prices is published for that particular Gas

Day, then the Spot Price shall be the average of the following: the price (determined as stated above) for each of the first Gas Day immediately preceding and following the Gas Day in which the default occurred for which a Spot Price can be determined.

**"Taxes"** means any or all ad valorem, property, occupation, severance, production, extraction, first use, conservation, Btu or energy, gathering, transport, Pipeline, utility, gross receipts, gas or oil revenue, gas or oil import, privilege, sales, use, consumption, excise, lease, transaction, and other or new taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth.

**"Transaction"** means an agreement and any amendment or modification thereof made in accordance herewith for the purchase or sale of Gas to be performed hereunder.

**"Transaction Agreement"** means a written paper-based agreement executed by the Parties to form and effectuate a Transaction which may be substantially in the form set forth in Exhibit "B-1."

**"Transaction Tape"** means the tape recording of a recorded Transaction effectuated in accordance with Article 2.

**"Transporter"** means either the Pipeline delivering or receiving Gas at a Delivery Point in a Transaction.

• **Representations and Warranties** As a material inducement to entering into this Agreement, including each Transaction, each Party, with respect to itself, hereby represents and warrants to the other Party continuing throughout the term of this Agreement as follows: (i) there are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that materially adversely affect its ability to perform this Agreement or the rights of the other Party under this Agreement, (ii) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and it has the legal right, power and authority and is qualified to conduct its business, and to execute and deliver this Agreement and perform its obligations under the same and each Transaction, and all regulatory authorizations have been maintained as necessary for it to legally perform its obligations hereunder, (iii) the making and performance by it of this Agreement is within its powers, has been duly authorized by all necessary action on its part, and it will not violate any provision of law or any rule, regulation, order, writ, judgment, decree or other determination presently in effect applicable to it or its governing documents, (iv) each of this Agreement and each Transaction when entered into constitutes a legal, valid and binding act and obligation of it, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending, (v) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it, (vi) it has assets of \$5,000,000 or more according to its most recent financial statements prepared in accordance with GAAP and knowledge and experience in financial matters that enable it to evaluate the merits and risks of this Agreement, and (vii) it is not in a disparate bargaining position with the other Party.

• **Operations and Delivery Scheduling Requests.** Not later than two Business Days prior to the earlier of Buyer's or Seller's Transporter's nomination deadline for the first Gas Day of each Month during a Period of Delivery, Buyer agrees to provide to Seller facsimile notice of the quantities Buyer requests Seller to Schedule for each Gas Day of such Month. Should Buyer desire to change the requested quantities Scheduled, Buyer shall provide to Seller facsimile notice thereof not later than one Business Day prior to the earlier of Buyer's or Seller's Transporter's nomination deadline for the applicable Gas Day. In the event the nomination or Scheduling deadline of a Transporter conflicts with these notification dates, Buyer and Seller agree to modify the notification dates accordingly. Scheduling requests to Seller will be accepted at the telephone number and shall be confirmed by facsimile as set forth in Exhibit "A."

• **Transportation.** Seller shall obtain, or cause to be obtained, transportation to the Delivery Point, and Buyer shall obtain, or cause to be obtained, transportation from the Delivery Point.

• **Gas Specifications.** Seller represents that all Gas delivered hereunder shall meet or exceed the specifications of Buyer's Transporter.

• **Multiple Delivery Point Allocation.** In the event a Transaction shall contain more than one Delivery Point, the Parties shall specify a Maximum Daily Delivery Point Quantity for each Delivery Point. The Delivery Points which shall be utilized for delivery of Gas and the quantities of Gas to be Scheduled for delivery at such Delivery Points shall be determined by Seller in its sole discretion within each applicable Maximum Daily Delivery Point Quantity. Seller shall provide to Buyer a list of Delivery Points and quantities determined by it within a period of time necessary to permit Buyer to make nominations.

• **Operational Flow Orders.** Should either Party receive an operational flow order or other order or notice from a Transporter requiring action to be taken in connection with this Agreement or Gas flowing under this Agreement ("OFO"), such Party shall immediately notify the other Party of the OFO and provide the other Party a copy of same by facsimile. The Parties shall take all actions required by the OFO within the time prescribed. Each Party shall indemnify, defend and hold harmless the other Party from any Claims, including, without limitation, all non-compliance penalties and attorneys' fees, associated with an OFO of which the Indemnifying Party failed to give the Indemnified Party the notice required hereunder or (ii) under which the Indemnifying Party failed to take the action required by the OFO within the time prescribed.

• **Financial Matters: Billing, Invoice Date, Charges and Payment.** By the 10th Day of each calendar Month following the Month in which Gas was Scheduled under a Transaction, Seller shall provide Buyer with a written statement setting forth Gas Scheduled during the preceding Month, and other charges due Seller, including, without limitation, deficiency charges under Article 3. Billing and payment will be based on Scheduled quantities. Within five Business Days of the request of either Party, the other Party shall provide, to the extent it has a legal right of access thereto and/or such statement is then available, a copy of the Transporter's allocation or imbalance statement applicable to Gas sold hereunder for the requested period. The difference, if any, between Scheduled and actual quantities delivered or accepted shall be treated as imbalances under Article 7. Buyer shall remit any amounts due by the 10th Day following Buyer's receipt of Seller's statement. Payment of all funds shall be made by wire transfer, in U. S. funds on a same day basis to the account designated on Exhibit "A." If Buyer or Seller should fail to remit any amounts in full when due hereunder interest on the unpaid portion shall accrue from the date due at a rate equal to the Interest Rate. Billings, payments and statements shall be made by wire transfer to the accounts or the addresses/facsimiles specified in Exhibit "A."

• **Suspension of Performance.** If either Party fails to make a timely payment and such failure is not remedied within two Business Days after such Party receives written notice of default, the nondefaulting Party, in addition to other remedies, may suspend the Scheduling of Gas until such amount, including interest, is paid; provided, if the defaulting Party, in good faith, shall dispute the amount of any such billing or part thereof and shall pay such amounts as it concedes to be correct, no suspension shall be permitted.

• **Audit Rights.** For a period of two years from the date of termination of a Transaction Buyer or Seller or any third party representative thereof shall have the right, upon reasonable notice and at reasonable times, to examine the books and records of the other to the extent reasonably necessary to verify the accuracy of any billing statement, payment demand, charge, payment or computation made under this Agreement. The records of the Parties shall be retained in accordance with Section 8.6 for a like period to facilitate the audit rights of the Parties.

• **Financial Information.** If requested by Customer, Company shall deliver (i) within 120 Days following the end of each fiscal year, a copy of the annual report of Enron Corp. containing consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of the quarterly report of Enron Corp. containing unaudited consolidated financial statements for such fiscal quarter. If requested by Company, Customer (or its Guarantor) shall deliver (i) within 120 Days following the end of each fiscal year, a copy of its annual report containing consolidated financial statements for such fiscal year certified by independent certified public accountants and (ii) within 60 Days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in

accordance with GAAP; provided, should any such statements not be timely due to a delay in preparation or certification, such delay shall not be considered a default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

**Warranty of Title to Gas** Seller in any Transaction warrants that title to Gas to be sold by Seller is free from all production burdens, liens and adverse claims and warrants its right to sell the same. Seller agrees to indemnify, defend and hold harmless Buyer against all Claims to or against the title of said Gas. In the event any Claim is asserted to said Gas, Buyer, in addition to other remedies, may suspend its obligation to pay for said Gas up to the amount of such Claim.

**Alternate Price Redetermination** If any or all of the indices used to determine the Spot Price or the Contract Price are not available in the future, the Parties agree to promptly negotiate a mutually satisfactory alternate index for the Spot Price or Contract Price (each an "Alternate Price"). If the Parties cannot agree by the end of the first Month for which the Spot Price or Contract Price could not be determined, then Seller and Buyer shall each prepare a prioritized list of up to five alternative published reference postings or prices representative of spot prices for Gas delivered in the same geographic area. Each Party shall submit its list to the other within 10 Days after the end of the first Month for which the price could not be determined. The first listed index appearing in Seller's list that also appears in Buyer's list shall constitute the replacement index. If no common indices appear on the lists, each Party shall submit a new list adding two indices within 10 Days. If either Party fails to provide timely a list, such Party's list shall not be considered. From and after the "Renegotiation Date," which shall be the date the Spot Price or Contract Price is no longer available, until the Alternate Price is determined, the Alternate Price shall be the average of the Spot Price(s) or Contract Price(s) in effect during the 12 Months preceding the Month in which the Renegotiation Date occurred, which price shall be effective until the Alternate Price is determined. Upon determination of a new Alternate Price, the Spot Price or Contract Price, as applicable, will be adjusted retroactively to the Renegotiation Date.

**Effect of Waiver or Consent** No waiver or consent by either Party, express or implied, of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver or consent to any other default or defaults whether of a like or different nature. Failure by a Party to complain of any act of the other Party or to declare the other Party in default with respect to this Agreement, regardless of how long that failure continues, shall not constitute a waiver by that Party of its rights with respect to that default until the applicable statute of limitations period has run.

**Indemnifications** With respect to each indemnification included in this Agreement the indemnity is given to the extent authorized by law and the following provisions shall be considered applicable. The Indemnified Party shall promptly notify the Indemnifying Party in writing of any Claim and the Indemnifying Party shall have the right to assume the investigation and defense thereof, including the employment of counsel, and shall be obligated to pay the related attorneys' fees; provided, the Indemnified Party shall have the right to employ separate counsel and participate in the defense of any Claim, however, the attorneys' fees of such counsel shall be paid by the Indemnified Party unless the employment of such counsel has been consented to in writing by the Indemnifying Party or the Indemnifying Party has failed to assume the defense and employ counsel in a timely manner; provided further, if the named parties to any Claim include both Parties, and the Indemnified Party shall have been advised by counsel that there may be a legal defense available to it which is different from those available to the Indemnifying Party, the Indemnified Party may elect to employ separate counsel at the expense of the Indemnifying Party, in which case the Indemnifying Party shall pay all attorneys' fees of such counsel and shall not have the right to assume the defense of the Claim on behalf of the Indemnified Party. The Parties shall use reasonable efforts to cooperate in the defense of any Claim. The Indemnifying Party shall not be liable for any settlement of a Claim without its express written consent thereto. The Indemnified Party shall reimburse the Indemnifying Party for payments made or costs incurred in respect of an indemnity with respect to any judgment, insurance, bond, surety or other recovery made with respect to an event covered by the indemnity.

**Arbitration** Any dispute or need of interpretation arising out of this Agreement pertaining to the calculation of a Termination Payment shall be submitted to binding arbitration by one arbitrator with over eight years of professional experience in the

commodity futures market, derivative products and the Gas industry and who has not previously been employed by either Party, and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such arbitrator shall either be as mutually agreed by the Parties within 30 Days after written notice from either Party requesting arbitration, or failing agreement, shall be selected under the expedited rules of the American Arbitration Association (the "AAA") using the above criteria. Such arbitration shall be held in alternating locations of the home offices of Seller and Buyer, commencing with Seller's office. The rules of the AAA shall apply to the extent not inconsistent with the rules herein specified. Either Party may initiate arbitration by written notice to the other Party and the arbitration shall be conducted according to the following: (i) not later than seven Days prior to the hearing date set by the arbitrator each Party shall submit a brief with a single dollar figure for settlement, (ii) the hearing shall be conducted on a confidential basis without continuance or adjournment, (iii) the arbitrator shall be limited to selecting only one of the two figures submitted by the Parties, (iv) each Party shall divide equally the cost of the hearing and each shall be responsible for its own expenses and those of its counsel and representatives and (v) evidence concerning the financial position or organizational make-up of the Parties, any offer made or the details of any negotiation prior to arbitration and the cost to the Parties of their representatives and counsel shall not be permissible.

**Authority for Transactions** Each Party represents to the other Party that each of its employees has authority to enter into Transactions pursuant to this Agreement on its behalf. Identification and authority of a Party's employee engaging in a recorded telephonic Transaction shall be conclusively established for all purposes by a statement on the Transaction Tape by the employee of the employee's name and the Party's Identification Code; provided, failure to state either the employee name or the Identification Code shall not constitute evidence of any lack of authority of the employee to effectuate and form a Transaction.



EXHIBIT "A"  
ENFOLIO MASTER FIRM PURCHASE/SALE AGREEMENT

NOTICE AND COMMUNICATION

COMPANY:

Notices/Correspondence:  
Enron Gas Marketing, Inc.  
P.O. Box 1188  
Houston, Texas 77251-1188  
Attn: Commercial Operations  
Facsimile No. (713) 646-8420

Invoices:  
Enron Gas Marketing, Inc.  
P.O. Box 1188  
Houston, Texas 77251-1188  
Attn: Commercial Operations  
Facsimile No. (713) 646-8420

Payments:  
Enron Gas Marketing, Inc.  
ABA Routing 111000025 Nations Bank Tx  
Account 4140327387

Nominations: 1(800)356-9427/1(800)FLOWGAS

Confirmations: EGM Gas Trading 1(713)646-2531

TO CUSTOMER:

Notices/Correspondence:  
Enron Gas Services Canada Corp.  
Canterra Tower, Suite 3500  
400 - 3rd Avenue S.W.  
Calgary, Alberta T2P 4H2  
Attn: Corporate Secretary  
Phone # (403) 974-6703  
Facsimile # (403) 974-6707

Invoices:  
Enron Gas Services Canada Corp.  
Canterra Tower, Suite 3500  
400 - 3rd Avenue S.W.  
Calgary, Alberta T2P 4H2  
Attn: Manager, Accounting  
Phone # (403) 974-6728  
Facsimile # (403) 974-6706

Payments:  
Enron Gas Services Canada Corp.  
The Toronto-Dominion Bank  
Commercial Banking Center  
2 Calgary Place, 340-5th Avenue, S.W.  
Calgary, Alberta T2P 4H2  
Bank #004 Branch #80609  
Account # 0805 0465537  
Phone # (403) 292-1100  
Facsimile # (403) 292-1217

Nominations:  
Phone # (403) 974-6752  
Facsimile # (403) 974-6706  
Confirmations:  
Phone # (403) 974-6752  
Facsimile # (403) 974-6706

EXHIBIT "B"  
ENFOLIO MASTER FIRM PURCHASE/SALE AGREEMENT

SAMPLE OF CONFIRMATION ON COMPANY LETTERHEAD (INCLUDING NAME AND ADDRESS) TO CONFIRM TELEPHONIC TRANSACTIONS UNDER SECTION 2.4

Confirmation shall confirm the Transaction agreed to on \_\_\_\_\_, 19\_\_\_\_ and binding between Enron Gas Services Canada Corp. ("Customer") and Enron Gas Marketing, Inc. ("Company") regarding the firm purchase and sale of Gas under the following terms and conditions. \_\_\_\_\_ to purchase and receive (Buyer) and \_\_\_\_\_ to sell and deliver (Seller). Transaction number \_\_\_\_\_.

DAILY CONTRACT QUANTITY (DCQ):  
MAXDQ (if applicable):  
MINMQ (if applicable):  
MINDQ (if applicable):  
DELIVERY POINT(S):  
CONTRACT PRICE (per MMBtu):  
PERIOD OF DELIVERY:  
SPOT PRICE LOCATION:

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This Confirmation is being provided pursuant to and in accordance with the ENFOLIO Master Firm Purchase/Sale Agreement in effect between Customer and Company (the "Agreement") and constitutes part of and is subject to all of the terms and provisions of such Agreement. All capitalized terms herein used, but not defined, shall have the meanings set forth in the Agreement. Company does hereby adopt its letterhead, including its address, as its signature in respect of the identification of Company and the authentication by Company of this Confirmation. Any objection of Customer to this Confirmation must be made by written notice to Company prior to the Confirm Deadline, as agreed and defined in the Agreement.

EXHIBIT "B-1"  
ENFOLIO MASTER FIRM PURCHASE/SALE AGREEMENT

SUGGESTED FORM OF TRANSACTION AGREEMENT FOR USE WITH TRANSACTIONS FORMED UNDER SECTION 2.2(a)

Transaction Agreement (this "Agreement") shall form and effectuate the current proposal between Enron Gas Services Canada Corp. ("Customer") and Enron Gas Marketing, Inc. ("Company") regarding the firm purchase and sale of Gas under the following terms and conditions. \_\_\_\_\_ to purchase and receive (Buyer) and \_\_\_\_\_ to sell and deliver (Seller). Transaction number \_\_\_\_\_.

DAILY CONTRACT QUANTITY (DCQ):  
MAXDQ (if applicable):  
MINMQ (if applicable):  
MINDQ (if applicable):  
DELIVERY POINT(S):  
CONTRACT PRICE (per MMBtu):  
PERIOD OF DELIVERY:  
SPOT PRICE LOCATION:

\_\_\_\_\_  
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This Transaction Agreement is being provided pursuant to and in accordance with the ENFOLIO Master Firm Purchase/Sale Agreement in effect between Customer and Company and constitutes part of and is subject to all of the terms and provisions of such Agreement. Please execute this Transaction Agreement and return an executed copy to Company. Your execution should reflect the appropriate party in your organization who has the authority to enter into this Transaction. Upon receipt by Company of this executed Transaction Agreement it shall constitute a Transaction formed and effectuated under Section 2.2(a) of the above referenced Master Agreement. In the event Customer alters the terms of this Transaction Agreement in any manner or fails to execute and return to Company this Transaction Agreement within 24 hours of its receipt thereof, there will be no Transaction under the above referenced Master Agreement pursuant to this Transaction Agreement.

ENRON GAS SERVICES CANADA CORP.

ENRON GAS MARKETING, INC.

\_\_\_\_\_  
(Title) \_\_\_\_\_  
Date) \_\_\_\_\_

\_\_\_\_\_  
(Title) \_\_\_\_\_  
(Date) \_\_\_\_\_

January 30, 1997

Enron Capital & Trade Resources Corp.  
1400 Smith Street  
Houston, Texas 77251-1188

**ECT CANADA  
FILE COPY**

Attention: Julie Gomez, Vice President

**CONFIRMATION LETTER**

This Confirmation Letter confirms the specific terms of the agreement between Enron Capital & Trade Resources Canada Corp. ("Seller" or "ECT Canada") and Enron Capital & Trade Resources Corp. ("Buyer" or "ECTR") regarding the sale and purchase of natural gas:

I. **CONDITIONS PRECEDENT:** Package #1: The obligations of Seller and Buyer, respectively, to deliver and sell and to take and purchase 5,581.0 Mcf's per Day ("Package #1") as provided for in this Confirmation Letter shall not arise prior to the satisfaction, or waiver, of each of the following conditions precedent (a), (b) and (c) below (collectively the "Conditions Precedent for Package #1"):

(a) Seller shall have obtained all approvals and firm transportation agreements necessary to transport 5,581.0 Mcf's per Day on the facilities of NOVA Gas Transmission Limited ("NOVA") for firm delivery service to Empress, Alberta ("Empress"), at the interconnect of NOVA with the facilities of TransCanada PipeLines Limited ("TCPL") for the Period of Delivery; and

(b) Seller shall have obtained all approvals and firm transportation agreements necessary to transport 5,581.0 Mcf's per Day on the 1998 expansion facilities of TCPL from Empress to Niagara, Ontario, at the interconnect of TCPL and National Fuel Gas Supply Corporation ("National Fuel") ("Niagara"), and Buyer shall have obtained all approvals and firm transportation agreements necessary to transport 5,581.0 Mcf's per Day on the 1997 expansion facilities of National Fuel from Niagara to Leidy, Pennsylvania ("Leidy"), each for the Period of Delivery; and

(c) Seller shall have obtained all regulatory approvals necessary to remove 5,581.0 Mcf's per Day from Alberta, and Buyer shall have obtained all regulatory approvals necessary to export 5,581.0 Mcf's per Day from Canada, and import 5,581.0 Mcf's per Day to the United States.

Package #2: The obligations of Seller and Buyer, respectively, to deliver and sell and to take and purchase 3,470.0 Mcf's per Day ("Package #2") as provided for in this Confirmation Letter shall not arise prior to the satisfaction, or waiver, of each of the following conditions precedent (a), (b) and (c) below (collectively the "Conditions Precedent for Package #2"):

(a) Seller shall have obtained all approvals and firm transportation agreements necessary to transport 3,470.0 Mcf's per Day on the facilities of NOVA for firm delivery service to Empress for the Period of Delivery; and

(b) Seller shall have obtained all approvals and firm transportation agreements necessary to transport 3,470.0 Mcf's per Day on the 1998 expansion facilities of TCPL from Empress to Niagara, and Buyer shall have obtained all approvals and firm transportation agreements necessary to transport 3,470.0 Mcf's per Day on the 1998 expansion facilities of National Fuel from Niagara to Leidy, each for the Period of Delivery; and

3500 Conterra Tower • 400 3rd Avenue SW • Calgary Alberta T2P 4K2 • 403 974 6700 • Fax 403 974 6700

(c) Seller shall have obtained all regulatory approvals necessary to remove 3,470.0 Mcf's per Day from Alberta, and Buyer shall have obtained all regulatory approvals necessary to export 3,470.0 Mcf's per Day from Canada; and (iii) import 3,470.0 Mcf's per Day to the United States.

Buyer and Seller warrant that it will use all reasonable efforts to fulfill the Conditions Precedent for Package #1 and Package #2. Buyer and Seller shall inform each other forthwith in writing upon each Condition Precedent for Package #1 and Package #2 having been met. Buyer and Seller shall cooperate with each other in fulfilling the Conditions Precedent for Package #1 and Package #2.

(i) If by October 1, 1998, the Conditions Precedent for Package #1 have not been satisfied, after Buyer and Seller have used all reasonable efforts and diligence, then Seller may elect to permanently reduce the DCQ by 5,581.0 Mcf's per Day by giving written notice thereof to Buyer prior to October 5, 1998.

(ii) If by October 1, 1998, the Conditions Precedent for Package #2 have not been satisfied, after Buyer and Seller have used all reasonable efforts and diligence, then Seller may elect to permanently reduce the DCQ by 3,470.0 Mcf's per Day by giving written notice thereof to Buyer prior to October 5, 1998.

(iii) If pursuant to subsections (i) and (ii) of Section I, above, the DCQ has been reduced to zero Mcf's per Day, this Transaction shall automatically terminate and neither Party shall have any further obligation to the other in connection with this Confirmation Letter.

II. DCQ: 9,051.0 Mcf's per Day; provided, however, if Seller makes its election pursuant to Section I(i) above, or Section VI(b) below, the DCQ shall be 3,470.0 Mcf's per Day, or if Buyer makes its election pursuant to Section I(ii) above, or Section VI(c) below, the DCQ shall be 5,581.0 Mcf's per Day.

III. DELIVERY POINT: Niagara, Ontario, at the interconnect between TCPL and National Fuel.

IV. CONTRACT PRICE: The Contract Price, for each delivery Month, shall be a price in U.S. dollars per Mcf equal to: the Belle River Mills Index (defined below), where:

"Belle River Mills Index" means the price for the applicable delivery Month in U.S. dollars per Mcf published in the Gas Daily Price Guide by Gas Daily, in the section entitled "Monthly Contract Index", in the column for "Index" in the row for "Michigan MichCon, large in mcf". The Contract Price shall be payable in U.S. dollars.

V. CURRENCY CONVERSIONS: All dollar amounts in this Confirmation Letter are stated in U.S. dollars and must be paid in U.S. dollars. For currency conversions required under this Confirmation Letter, to convert Canadian currency to the currency of the United States, and vice versa, the Parties shall use the Bank of Canada posted noon spot exchange rate as quoted for the twentieth Day of each Month following each delivery Month.

VI. PERIOD OF DELIVERY: (a) Subject to parts (b) and (c) below, the Period of Delivery shall commence at 08:00h November 1, 1998, and terminate at 08:00h November 1, 2008.

(b) Package #1: If the commencement of firm service for 5,581.0 Mcf's per Day ("Package #1") (i) by TCPL, pursuant to TCPL's 1998 expansion to Niagara, or (ii) by National Fuel, pursuant to National Fuel's 1997 expansion to Leidy is delayed beyond November 1, 1998, then the Period of Delivery shall commence on the date that such service by TCPL and National Fuel commences, and, in that event, the Period of Delivery shall terminate at 08:00h on the date that is ten years thereafter; provided, however, if the Period of Delivery for Package #1 has not commenced by 08:00h on November 1, 2000, then Seller may elect to permanently reduce the DCQ by 5,581.0 Mcf's per Day by giving written notice thereof to Buyer prior to November 11, 2000.

(c) Package #2: If the commencement of firm service for 3,470.0 Mcf's per Day ("Package #2") (i) by TCPL, pursuant to TCPL's 1998 expansion to Niagara, or (ii) by National Fuel, pursuant to National Fuel's 1998 expansion to Leidy is delayed beyond November 1, 1998, then the Period of Delivery shall commence on the date that such service by TCPL and National Fuel commences, and the Period of Delivery shall terminate at 08:00h on the date that is ten years thereafter; provided, however, if the Period of Delivery for Package #2 has not commenced by 08:00h on November 1, 2000, then Seller may elect to permanently reduce the DCQ by 3,470.0 Mcf's per Day by giving written notice thereof to Buyer prior to November 11, 2000.

(d) If pursuant to subsection (b) and (c) of Section VI above, the DCQ has been reduced to zero Mcf's per Day, this Transaction shall automatically terminate and neither Party shall have any further obligation to the other in connection with this Confirmation Letter.

VI. AMENDMENTS TO  
THE MASTER  
AGREEMENT:

For the purpose of this Transaction only, amend the Master Agreement by deleting Article 5 and replacing it with the following:

"This Article 5 is the sole and exclusive excuse for non-performance permitted under this Confirmation Letter, and all other excuses at law or in equity are waived. Except with regard to payment obligations which accrue before and after any event of Force Majeure, in the event either Party is rendered unable, wholly or in part, by Force Majeure (defined below) to carry out its obligations under this Agreement, it is agreed that upon such Party's giving notice and full particulars of such Force Majeure to the other Party as soon as reasonably possible, such notice to be confirmed in writing, then the obligations of the Party giving such notice, to the extent that they are affected by such Force Majeure, shall be suspended, from its inception during the continuance of the Force Majeure."

For the purpose of this Transaction only, amend the Master Agreement by deleting the definition of "Force Majeure" in Appendix "1" and replacing it with the following:

"Force Majeure" shall mean only include the following: (1) curtailments of firm service and interruptions of firm service occurring with respect to the facilities of TCPL or National Fuel at Niagara; and (2) in addition, Seller shall have the right to declare Force Majeure if there is a curtailment of firm service or an interruption of firm service occurring (i) with respect to the facilities of NOVA or TCPL at Empress, or (ii) with respect to the facilities of TCPL at any point between Empress or Niagara; and (iii) with respect to the facilities of Great Lakes Gas Transmission ("Great Lakes") or Michigan Consolidated where the two interconnect at Belle River Mills, Michigan; and (3) in addition, Buyer shall have the right to declare Force Majeure if there is a curtailment of firm service or an interruption of firm service occurring with respect to the facilities of National Fuel at Leidy, or any point between Niagara and Leidy. On any Day that Force Majeure applies, both Parties' obligations to deliver and receive Gas shall be reduced by the same percentage that the applicable transporter interrupts or curtails firm service at a points mentioned in the previous sentence on such Day."

VIII. NATIONAL FUEL  
TOLLING METHOD:

If the FERC-approved tariff for National Fuel's 1997 expansion of facilities is based on any tolling methodology other than rolled-in tolling, then Seller may elect to permanent reduce the DCQ under this Transaction by 5,581.0 Mcf's per Day by giving written notice thereof to Buyer prior to October 5, 1997.

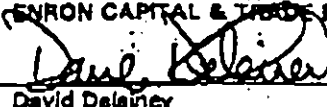
IX. OTHER:

1. For purposes of energy conversions, one MMBtu shall be equal to 1.054615 GJ's.
2. If for purposes of this Transaction it is necessary to convert Mcf to MMBtu, or vice versa, the Parties shall use the Monthly Btu factor posted by Great Lakes for the applicable delivery Month for deliveries at Belle River Mills, Michigan at the interconnect of Michigan Consolidated and Great Lakes.
3. Seller may elect, by giving written notice thereof to Buyer on or before June 30, 1997, to terminate this Transaction if Seller fails to receive management approval of this Transaction by June 1, 1997.

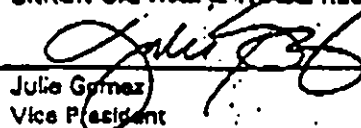
This Confirmation Letter is being provided pursuant to the Enfolio Master Firm Purchase/Sale Agreement dated June 1, 1994 (the "Master Agreement"), between ECTR and ECT Canada, and constitutes part of and is subject to all of the terms and provisions of the Master Agreement.

Please confirm that the terms stated herein accurately reflect the agreement between ECT Canada and ECTR by returning an executed copy of this Confirmation Letter by facsimile to ECT Canada. We would appreciate it if you would send your fax back to us within one hour after you receive this Confirmation Letter. Thank you for your timely cooperation.

ENRON CAPITAL & TRADE RESOURCES CANADA CORP.

Per:   
Name Printed: David Delaney  
Title: Vice President

ENRON CAPITAL & TRADE RESOURCES CORP.

Per:   
Name Printed: Julie Gomez  
Title: Vice President

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

\_\_\_\_\_  
ENRON CAPITAL & TRADE )  
RESOURCES CORP. )  
\_\_\_\_\_ )

FE DOCKET NO. 98-12-NG

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

DOE/FE ORDER NO. 1367

13700 DOE/FE  
MARCH 6 A 9 12

MARCH 6, 1998

I. DESCRIPTION OF REQUEST

On February 9, 1998, Enron Capital & Trade Resources Corp. (ECT) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA)<sup>1/</sup> and DOE Delegation Order Nos. 0204-111 and 0204-127, requesting authorization to import from Canada an aggregate volume of 33.1 billion cubic feet (Bcf) of natural gas (9,051 thousand cubic feet (Mcf) per day), over ten years from the date of initial deliveries. ECT plans to purchase the gas supplies from its parent corporation Enron Capital & Trade Resources Canada Corp. (ECT Canada) pursuant to an Enfolio Master Firm Purchase/Sale Agreement (Master Agreement) dated June 1, 1994. The import arrangement proposed by this application is subject to the Master Agreement and a Confirmation Letter between ECT and ECT Canada dated January 30, 1997. ECT Canada has entered into a purchase arrangement with Canadian Natural Resources for the volume and the term covered by this import application. Initial deliveries are expected to begin no earlier than November 1, 1998. ECT, a Delaware corporation with its principal place of business in Houston, Texas, is a wholly-owned subsidiary of Enron Corp.

ECT intends to use the requested volumes to enhance its overall corporate supply portfolio for delivery to markets in the northeastern United States. The natural gas to be imported will be produced in Alberta and will flow on NOVA Gas Transmission

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<sup>1/</sup> 15 U.S.C. § 717b.



Ltd. for firm delivery service to Empress, Alberta, at the interconnect of TransCanada PipeLines Limited (TCPL) and then across Canada on the facilities of TCPL to the interconnect of TCPL and National Fuel Gas Supply Corporation (National Fuel) near the Niagara Falls, New York import point. The gas will continue on the facilities of National Fuel to a delivery point near Leidy, Pennsylvania.

The January 30, 1997 Confirmation Letter filed with this application states that the contract price for each delivery month shall be a price in U.S. dollars per Mcf equal to the "Belle Mills River Index". The "Belle Mills River Index" means the price for the applicable delivery month as published in the Gas Daily Price Guide by Gas Daily, in the section entitled "Monthly Contract Index".

Under this import arrangement, ECT must take its daily contract quantity, otherwise, it constitutes a "Buyer's Deficiency Default". Under this situation, ECT would have to pay ECT Canada the sum of the following: (i) an amount equal to the product of ECT's Deficiency Quantity multiplied by the Replacement Price Differential, plus (ii) liquidated damages equal to \$0.15 multiplied by ECT's Deficiency Quantity to cover ECT Canada's administrative and operational costs.

## II. FINDING

The application filed by ECT has been evaluated to determine if the proposed import arrangement meets the public interest

requirements of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the importation of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. The authorization sought by ECT to import natural gas from Canada, a nation with which a free trade agreement is in effect, meets the section 3(c) criterion and, therefore, is consistent with the public interest.

ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Enron Capital & Trade Resources Corp. (ECT) is authorized to import up to 3.31 billion cubic feet (Bcf) of natural gas per year (9,051 thousand cubic feet (Mcf) per day) from Canada. The term of the authorization is for a period of 10 years commencing November 1, 1998, through October 31, 2008, 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 interconnection of TransCanada PipeLines Limited and National Fuel Gas Supply Corporation near Niagara Falls, New York, or other alternative points on the United States/Canada border. The gas shall be imported subject to the Enfolio Master Firm Purchase/Sale Agreement and Confirmation Letter entered into

with Enron Capital & Trade Resources Canada Corp. (ECT Canada), and signed June 1, 1994, and January 30, 1997, respectively.

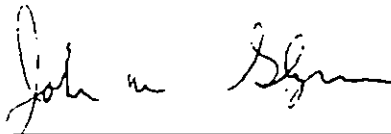
B. Within two weeks after deliveries begin, ECT shall provide written notification to the Office of Natural Gas & Petroleum Import and Export Activities of the date that the first import of natural gas authorized in Ordering Paragraph A above occurred.

C. With respect to the natural gas imports authorized by this Order, ECT shall file with the Office of Natural Gas & Petroleum Import and Export Activities, within 30 days following each calendar quarter, a quarterly report indicating by month the volumes and prices of natural gas imported pursuant to this Order. If no imports have been made, a report of "no activity" for that calendar quarter must be filed. If imports have occurred, ECT must report total monthly volumes in Mcf and the average purchase price of gas in U.S. dollars per MMBtu delivered at the international border, and paid to ECT Canada. Whenever imports have occurred at an entry point other than Niagara Falls, New York, these volumes and prices must be reported separately. The monthly price information shall itemize separately the monthly demand and commodity charges, and, if applicable, any gas inventory charges. In addition to the volume and pricing information, ECT shall identify and report, to the extent possible, the geographical area (by State) served by this gas supply.

D. The reporting requirements required by Ordering Paragraphs B and C of this Order shall be filed with the Office of Natural Gas & Petroleum Import and Export Activities, Fossil Energy, Room 3E-042, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585.

E. 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 of the fourth calendar quarter of 1998 (October 1, 1998, through December 31, 1998).

Issued in Washington, D.C. on March 6, 1998.



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John W. Glynn  
Manager, Natural Gas Regulations  
Office of Natural Gas & Petroleum  
Import and Export Activities  
Office of Fossil Energy

November 31, 1998

Department of Energy  
Office of Fuels Programs,  
Fossil Energy  
FE-34, Room 3F-042  
1000 Independence Avenue, S. W.  
Washington, D. C. 20585-0350

REC'D DOE/FE  
NOV 30 - 3 A 7:41

**Re. Quarterly Report, ENRON CAPITAL &  
TRADE RESOURCES CORP.  
Order No. 1367, FE Docket No 98-12-NG**

Gentlemen:

Enron Capital & Trade Resources Corp. hereby reports that gas began to flow on or about November 1, 1998 under Order No. 1367, FE Docket No. 98-12-NG.

Please contact Juanita Marchand at (713) 853-6253 if you have any questions concerning this matter.

Respectfully submitted,

By JUANITA MARCHAND  
Juanita Marchand  
Regulatory Analyst



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NOV 29 A 11:48

**Enron Capital & Trade  
Resources Corp.**

P. O. Box 4428  
Houston, TX 77210-4428

October 25, 1999

U. S. Department of Energy  
Office of Fuels Programs,  
Fossil Energy  
Attn.: John Glenn  
FE-53, Room 3H-087  
1000 Independence Avenue, S. W.  
Washington, D. C. 20585-0350

Gentlemen:

Enron Capital and Trade Resources and Enron Capital and Trade Canada Corp have changed their names effective September 1, 1999 to Enron North America Corp. and Enron Canada Corp. respectively.

Enclosed is a check covering the fee for the name change on the following docket numbers 97-76, 97-75, 98-12, 97-20, 95-109, 98-40, 99-19, and 93-30. The Certificate of Amendment for Enron North America and Enron Canada Corp are included documenting the name change.

Please call Juanita Marchand at (713) 853-6253 if you have any questions concerning this matter

Respectfully submitted,

**ENRON NORTH AMERICA**

By   
Juanita Marchand  
Logistics Specialist

Office of the Secretary of State

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I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "ENRON CAPITAL & TRADE RESOURCES CORP.", CHANGING ITS NAME FROM "ENRON CAPITAL & TRADE RESOURCES CORP." TO "ENRON NORTH AMERICA CORP.", FILED IN THIS OFFICE ON THE FIRST DAY OF SEPTEMBER, A.D. 1999, AT 11:15 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



*Edward J. Freel*

Edward J. Freel, Secretary of State

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991366280

AUTHENTICATION:

9950716

DATE:

09-01-99

## CERTIFICATE OF AMENDMENT

OF

## CERTIFICATE OF INCORPORATION

Enron Capital & Trade Resources Corp., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware,

DOES HEREBY CERTIFY:

FIRST: That the Board of Directors of said corporation, by the unanimous written consent of its members, filed with the minutes of the board, adopted a resolution proposing and declaring advisable the following amendment to the Certificate of Incorporation of said corporation:

RESOLVED, that in the judgment of the Board of Directors, it is deemed advisable to amend Article I of the Certificate of Incorporation of the Company so that it will be and read in its entirety as follows:

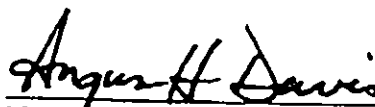
## ARTICLE I.

The name of this corporation is **Enron North America Corp.**

SECOND: That in lieu of a meeting and vote of stockholders, the stockholders have given unanimous written consent to said amendments in accordance with the provisions of Section 228 of the General Corporation Law of the State of Delaware.

THIRD: That the aforesaid amendment was duly adopted in accordance with the provisions of Sections 242 and 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, said Enron Capital & Trade Resources Corp. has caused this certificate to be signed by Angus H. Davis, its Vice President and Secretary, and attested by Elaine V. Overturf, its Deputy Corporate Secretary, this 1<sup>st</sup> day of September, 1999.



Name: Angus H. Davis

Title: Vice President and Secretary

ATTEST:



Name: Elaine V. Overturf

Title: Deputy Corporate Secretary



UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

REC'D DOE/FE

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ENRON NORTH AMERICA CORP. )

(Formerly Enron Capital & Trade Resources Corp.) )

) FE DOCKET NO. 98-12-NG  
)

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

DOE/FE ORDER NO. 1367-A

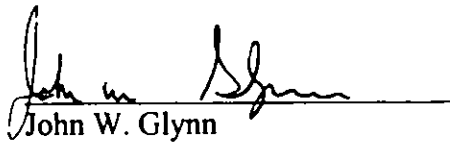
On March 6, 1998, the Department of Energy (DOE) granted long-term authorization to Enron Capital & Trade Resources Corp. in DOE/FE Order No. 1367 (Order 1367)<sup>1/</sup> to import from Canada an aggregate volume of 33.1 Bcf of natural gas over ten years commencing on November 1, 1998, and extending through October 31, 2008, or for 10 years after the commencement of deliveries if deliveries begin after November 1, 1998. Deliveries began on November 1, 1998.

On October 29, 1999, the Office of Fossil Energy of DOE was notified that Enron Capital & Trade Resources Corp.'s name had been changed to Enron North America Corp.

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1/ 1 FE ¶ 71,538.

Accordingly, pursuant to section 3 of the Natural Gas Act, Order 1367 is amended to substitute Enron North America Corp. as the importer of natural gas. All terms and conditions in Order 1367 remain in full force and effect.

Issued in Washington, D.C., on November 26, 1999.

A handwritten signature in black ink, appearing to read "John W. Glynn", is written over a horizontal line.

John W. Glynn  
Manager, Natural Gas Regulation  
Office of Natural Gas & Petroleum  
Import & Export Activities  
Office of Fossil Energy



**Enron Capital & Trade  
Resources Corp.**

P.O. Box 4428

Houston, TX 77210-4428

REC'D DOE/FE  
198 DEC -7 A 11:15

November 31, 1998

U. S. Department of Energy  
Office of Fuels Programs,  
Fossil Energy  
FE-34, Room 3F-042  
1000 Independence Avenue, S. W.  
Washington, D. C. 20585-0350

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Respectfully submitted,

By

Juanita Marchand  
Regulatory Analyst