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98-98-NG

Chicago
Washington
New York
Peoria
Merrillville

December 8, 1998

Mr. John W. Glynn
Manager, Natural Gas Regulation
Office of Natural Gas and Pipeline Import
and Export Activities
Fossil Energy
U.S. Department of Energy
Forrestal Building, Room 3E-042 FE-34
1000 Independence Avenue, S.W.
Washington, D.C. 20585

REC'D DOE/FE
1998 DEC -8 P 3:20


Re: Application of Boston Gas Company for Authorization to Import
Natural Gas from Canada

Dear Mr. Glynn:

Please find enclosed an original and 15 copies of the Application of Boston Gas Company for Authorization to Import Natural Gas from Canada. Also, please find enclosed a check in the amount of \$50.00 payable to Treasurer of the United States in payment of the filing fee.

Please contact me in the event that you have any questions regarding the enclosed Application.

Very truly yours,


Gearold L. Knowles

Enclosures

SSDC:1:18302 1 12.08.98 13.20

UNITED STATES OF AMERICA
Before the
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Boston Gas Company

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Docket No. FE98-98-NG

1998 DEC 9 P 3:20
REC'D OGE/FE

APPLICATION OF BOSTON GAS COMPANY
FOR AUTHORIZATION TO IMPORT NATURAL GAS
FROM CANADA

Communications with respect to this Application should be addressed to:

Mr. William R. Luthern
Vice President, Gas Resources
Boston Gas Company
One Beacon Street
Boston, MA 02108
(617) 723-5512, Ext. 2248

Gearold L. Knowles
Schiff Hardin & Waite
1101 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20036
(202) 778-6400

December 8, 1998

UNITED STATES OF AMERICA
Before the
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Boston Gas Company

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Docket No. FE98-98.NG

APPLICATION OF BOSTON GAS COMPANY
FOR AUTHORIZATION TO IMPORT NATURAL GAS
FROM CANADA

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. § 717b, Part 590 of the Regulations of the Department of Energy ("DOE"), Office of Fossil Energy ("FE"), and Section 201 of the Energy Policy Act of 1992 ("Energy Policy Act"), Boston Gas Company ("Boston Gas") hereby submits the instant application for blanket authorization to import natural gas from Canada. In support of this Application, Boston Gas respectfully shows as follows:

I.

GENERAL

Correspondence and communications regarding this application should be addressed to the following:

Mr. William R. Luthern
Vice President, Gas Resources
Boston Gas Company
One Beacon Street
Boston, MA 02108
(617) 723-5512, Ext. 2248

Gearold L. Knowles
Schiff Hardin & Waite
1101 Connecticut Avenue, N.W.
Suite 600
Washington, DC 20036
(202) 778-6400

II.

BACKGROUND

Boston Gas is a corporation organized under the laws of the Commonwealth of Massachusetts, with its principal place at One Beacon Street, Boston, Massachusetts 02108. The parent company of Boston Gas is Eastern Enterprises, an unincorporated voluntary association (commonly referred to as a Massachusetts business trust). Boston Gas is engaged in the distribution and sale of natural gas to approximately 540,000 residential, commercial and industrial customers in the city of Boston and 73 other cities and towns in eastern Massachusetts.

III.

AUTHORIZATION REQUESTED

By the present Application, Boston Gas requests long-term authorization to import natural gas from Canada. Boston Gas intends to purchase up to 43,200 Mcf/day of Sable Island gas supplies for eight years beginning November 1, 1999. Boston Gas plans to use the imported natural gas as part of its gas supply portfolio. This purchase is the result of a restructured agreement, Natural Gas Sales - Amending Agreement, between Imperial Oil Resources Limited ("Imperial") and Boston Gas, replacing a previous agreement scheduled to expire March 31, 2007, under which Boston Gas purchased from Imperial 35,000 Mcf/day of Alberta Gas supplies transported to the United States/Canadian border. Exhibit B to this Application is a copy of the Natural Gas Sales - Amending Agreement ("Amending Agreement").

As indicated above, the supplier of the natural gas to be imported is Imperial, an Alberta limited partnership with its principal place of business in Calgary, Alberta. The pipeline transporter in the United States will be Maritimes & Northeast Pipeline. The point of entry will be the interconnection between Maritimes & Northeast-Canada and Maritimes & Northeast-U.S. near Baileyville, Maine.

The natural gas will be delivered to Boston Gas in Canada, at the outlet of the Sable Offshore Energy Project ("SOEP") plant gate near Goldboro, Nova Scotia and delivered to Dracut, Massachusetts via Maritimes & Northeast-Canada and Maritimes & Northeast-U.S. Boston Gas and Imperial are jointly petitioning the National Energy Board in Canada for export authorization with respect to the natural gas supply.

Under the Amending Agreement, Boston Gas is obligated to purchase Imperial's share of SOEP production, not to exceed 43,200 Mcf on any day. The base price for all volumes is the higher of the Henry Hub first of the month index as reported in *Inside FERC's Gas Market Report*, minus \$0.15, or the SOEP Market Price, if such an index develops.

IV.

SUPPORTING DOCUMENTS

The following supporting documents are attached to this Application:

1. Exhibit A: Opinion of Counsel;
2. Exhibit B: Natural Gas Sales - Amending Agreement, dated November 12, 1997;

3. Exhibit C: Natural Gas Sales Agreement, dated May 1, 1998, including Natural Gas Sales Amending Agreement, dated October 30, 1992;
4. Exhibit D: Precedent Agreement for Firm Transportation of Natural Gas with Maritimes & Northeast Pipeline, including a letter dated June 24, 1998 adjusting the MDQ to 43,200 Dekatherms; and
5. Exhibit E: Order of the Massachusetts Department of Telecommunications and Energy approving the November 12, 1997 Amending Agreement, issued December 19, 1997, in D.P.U./D.E.97-104.

V.

PUBLIC INTEREST

The Energy Policy Act provides that the importation of natural gas from a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest, and applications for such importation shall be granted without modification or delay. Because Boston Gas' application is for the importation of natural gas from Canada, a nation with which the United States has a free trade agreement, Boston Gas submits that its Application is within the public interest.

VI.

ENVIRONMENTAL IMPACT

No new facilities will be constructed by Boston Gas in the United States for the proposed importation of natural gas. As indicated above, the natural gas will be transported in the United

States by Maritimes & Northeast Pipeline. Boston Gas has been informed that Maritimes & Northeast Pipeline is presently constructing pipeline facilities in the United States. Consequently, granting this Application will not be a federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* Therefore, an environmental impact statement or environmental assessment is not required.

VII.

REPORTING REQUIREMENTS

With respect to all imports of natural gas made pursuant to the authorization requested herein, Boston Gas will undertake to file with the DOE/FE such reports as may be required. Boston Gas will notify the DOE/FE in writing of the date of the first delivery of natural gas imported under the requested authorization within two weeks of such delivery.

VIII.

CONCLUSION

WHEREFORE, for the foregoing reasons, Boston Gas respectfully request that the DOE/FE expeditiously consider this Application and, pursuant to Section 3 of the NGA and Section 201 of the Energy Policy Act, grant the requested long-term authorization for the importation of natural gas.

Boston Gas submits that granting the requested authorization would not be inconsistent with the public interest.

Respectfully submitted,



Gearold L. Knowles
Schiff Hardin & Waite
1101 Connecticut Avenue, N.W.
Suite 600
Washington, D.C. 20036
(202) 778-6446

Attorney for Boston Gas Company

Dated: December 8, 1998

SSDC1:18301.1 12.08.98 13.45

EXHIBIT A



Boston Gas Company
One Beacon Street
Boston, Massachusetts 02108
Tel. 617-723-5512 Ext. 2374
Fax 617-742-8564

Catherine L. Nesser
Associate General Counsel

September 2, 1998

William R. Luthern
Vice President Gas Resources
Boston Gas Company
One Beacon Street
Boston, Massachusetts 02108

Dear Mr. Luthern:

You have informed me that the Company proposes to apply to the Department of Energy Office of Fossil Energy, pursuant to Section 3 of the Natural Gas Act for blanket authorization to import from Canada up to 43,200 Mmbtu/day of natural gas during an eight year period from November 1, 1999 through March 31, 2007. For purposes of Exhibit A to the Application of Boston Gas Company for Blanket Authorization to Import Natural Gas from Canada, as prescribed by 10 C.F.R. 590.202, my opinion is as follows:

- (1) Boston Gas Company is a corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Massachusetts;
- (2) Boston Gas Company is in compliance in all material respects with applicable rules and regulations of state regulatory authorities in the state in which it operates; and
- (3) The proposed importation and exportation of natural gas as set forth in said Application is within the corporate powers of the Company.

Very truly yours,

A handwritten signature in black ink, appearing to read "Catherine L. Nesser".

Catherine L. Nesser
Associate General Counsel
Boston Gas Company



EXHIBIT B

NATURAL GAS SALES - AMENDING AGREEMENT

PROPRIETARY
MATERIAL
PROTECTED FROM
PUBLIC DISCLOSURE

THIS AGREEMENT, made as of the Effective Date,

BETWEEN:

IMPERIAL OIL RESOURCES, an Alberta limited partnership,
with its principal place of business in Calgary, Alberta ("Seller")

and

BOSTON GAS COMPANY, a Massachusetts Corporation with
its principal place of business in Boston, Massachusetts ("Buyer").

WHEREAS the parties desire to amend the Gas Contract to reflect the new supply, transportation, and pricing arrangements set forth in this Agreement;

WHEREAS the Western Canada gas supply and the transportation on the NOVA, TCPL, Iroquois and Tennessee pipeline systems associated with the Gas Contract shall be replaced by SOEP gas supply and related transportation;

WHEREAS the timing and details of these restructured supply and transportation arrangements are as set out herein and will apply prior to and following the commercial start-up of SOEP gas production and the operation of a pipeline system(s) allowing deliveries from the SOEP gas plant located at or near Goldboro, Nova Scotia to Dracut, Massachusetts;

AND WHEREAS it is the intention of the parties that, upon MDPU Approval, the Amended Gas Contract will be given full force and effect thereby providing certainty and predictability of the commercial arrangements provided for therein for its full term.

NOW, THEREFORE in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

1. Definitions

- 1.1 Capitalized terms used in this Agreement which are not defined herein shall have the meanings given to them in the Gas Contract.
- 1.2 The following definitions, contained in the Gas Contract, are deleted: Section 1.1(c)(i), (ii) and (iii) "Base Gas"; Section 1.1(j) "Commodity Charge"; Section 1.1(k) "Consumption

Market"; Section 1.1(m) "Contract Year"; Section 1.1(p) "Daily Underdelivery"; Section 1.1(r) "Demand Charge" or "Demand Charge Components" or "Canadian Monthly Demand Charge"; Section 1.1(u) "Excused Performance"; Section 1.1(v) "Firm Consumption Market"; Section 1.1(w) "Firm Direct Sale"; Section 1.1(ff) "Maximum Daily Quantity" or "MDQ"; Section 1.1(gg) "Minimum Quarterly Quantity"; Section 1.1(hh) "Minimum Take Deficiency"; Section 1.1(mm) "Non-Excused Performance"; Section 1.1(kk) "New Base Price"; Section 1.1(oo)(i), (ii) and (iii) "Offset Demand Charges"; Section 1.1(pp) "Performance Calculation"; Section 1.1(uu) "Replacement Gas Supply"; Section 1.1(yy) "Spare Capacity"; Section 1.1(ddd) "Total Usage"; Section 1.1(eee) "Transportation Charge"; Section 1.1(fff) "Unit Cost Difference"; and Section 1.1(ggg)(i), (ii), (iii), (iv) and (v) "Unpurchased Gas".

- 1.3 Section 1.1(g) "Canadian Transporter(s)" of the Gas Contract is amended by adding "or M&NP" to the end of the section.
- 1.4 The definition of "Commencement of Firm Deliveries" in Section 1.1(i) of the Gas Contract is deleted and replaced with "Commencement of Firm Deliveries means the first date on which commercial deliveries of Seller's Gas from SOEP are received at Dracut, Massachusetts".
- 1.5 Section 1.1(l) "Contract Amount" is amended by deleting the phrase "and shall be comprised of the Transportation Charge and the Commodity Charge".
- 1.6 The definition of "Point of Delivery" in Section 1.1(qq) of the Gas Contract is deleted and replaced with the following:
 - (i) Until the Commencement of Firm Deliveries there is no point of delivery as Seller will have no natural gas supply obligations prior to this date.
 - (ii) Following the Commencement of Firm Deliveries point of delivery will be the point of interconnection between the outlet of the SOEP process plant located at or near Goldboro, Nova Scotia and the inlet to the M&NP pipeline system, through which Gas will be transported to Dracut, Massachusetts.
- 1.7 Section 1.1(hhh) "United States Transporter(s)" of the Gas Contract is amended by deleting the phrase "on the pipeline system of Champlain or other pipelines".
- 1.8 The following defined terms are added:
 - (i) "Agreement" means this amending agreement.
 - (ii) "Amended Gas Contract" means the Gas Contract as amended by this Agreement.
 - (iii) "Billing Month" has the meaning set forth in Section 8.4 below.

- (iv) "Daily Contract Quantity" or "DCQ" means the daily volume of Gas, from any source, delivered to Buyer by Seller at the Point of Delivery following the Commencement of Firm Deliveries. The DCQ shall not be less than Seller's share as it exists from time to time of Seller's daily SOEP Gas production, but in no circumstances shall the DCQ be greater than the Max DCQ. To the extent there is a Shortfall on any Day, Buyer has the right to purchase the Shortfall from a third party.
- (v) "Daily Undispatched Quantity" has the meaning set forth in Section 5.4 below.
- (vi) "Deficiency Quantity" has the meaning set forth in Section 5.5 below.
- (vii) "Effective Date" means the later of November 1, 1997, or, the first Day of the month following MDPU Approval.
- (viii) "Force Majeure" has the meaning set forth in Section 6.2 below.
- (ix) "Gas Contract" means the existing natural gas sales agreement between the parties, or their predecessors, entered into on May 1, 1989, as amended on October 30, 1992 and by amendment dated October 28, 1997.
- (x) "Max DCQ" means the maximum level of the DCQ, corresponding to the SOEP Interest, as determined in accordance with Schedule "B", attached hereto and forming part of this Agreement.
- (xi) "M&NP" means Maritimes and Northeast Pipeline, L.L.C., a limited liability company formed under the laws of the state of Delaware, or Maritimes & Northeast Pipeline Limited Partnership, a limited partnership formed under the laws of the province of New Brunswick, or both of them.
- (xii) "MDPU" means the Massachusetts Department of Public Utilities.
- (xiii) "MDPU Approval" means approval of this Agreement by the MDPU in form and substance acceptable to both parties, such acceptability to be communicated by each party to the other within five (5) business days following receipt of such approval.
- (xiv) "Price Difference" means the difference between CP2 and the volume weighted average price received by Seller for the Daily Undispatched Quantity or the Deficiency Quantity, as applicable.
- (xv) "SOEP" means the Sable Offshore Energy Project comprising the project lands set out in Schedule A, attached hereto and forming part of this Agreement.

- (xvi) "Shortfall" means the positive difference, if any, resulting from subtracting the DCQ from the Max DCQ, on any Day.
- (xvii) "SOEP Interest" means Seller's, or its Affiliates', actual working interest in SOEP, as provided for, upon the execution of the ownership and operating agreements currently being negotiated among the SOEP Owners.
- (xviii) "SOEP Market Price" has the meaning set forth in Section 7.6(ii) below.
- (xix) "SOEP Owners" means the owners of SOEP as they may exist from time to time, including assigns and successors. As of the date of execution of this Agreement the SOEP Owners are Seller, or its Affiliate, Mobil Oil Canada Properties, Shell Canada Limited, and Nova Scotia Resources (Ventures) Limited, and if applicable, Mosbacher Operating Ltd.
- (xx) "Straddle Plant" has the meaning set forth in subsection 11.3.1 below.
- (xxi) "Third Party" has the meaning set forth in Section 11.3 below.

2. Intentions of the Parties

- 2.1 Article II of the Gas Contract is deleted and replaced with Articles 2 and 3 of this Agreement.
- 2.2 Except for matters concerning the enforcement of the Amended Gas Contract, Buyer and Seller agree to not initiate, support or voluntarily participate, directly or indirectly, in any processes or activities which could reasonably be anticipated to threaten, obstruct or otherwise interfere with the performance of the Amended Gas Contract, throughout its term.

3. Regulatory

- 3.1 Buyer will, in good faith, proceed diligently and expeditiously in taking all steps as are reasonably necessary to obtain MDPU Approval of this Agreement.
- 3.2 Notwithstanding anything in the Gas Contract or this Agreement, except Sections 3.1 and 3.4 herein, this Agreement is subject to MDPU Approval. If MDPU Approval is not received, the Gas Contract will continue to remain in full force and effect for the duration of its term, unaltered by this Agreement. Buyer and Seller further agree that if MDPU Approval is not received, such non-approval shall not be, or be deemed to be, an Order, as defined in Section 16.2(a) of the Gas Contract, for the purposes of Section 6.7(b) of the Gas Contract.

- 3.3 Following MDPU Approval, Buyer and Seller agree:
- (i) to proceed in good faith in performing their respective obligations as set out or contemplated in the Amended Gas Contract, throughout its term;
 - (ii) that Seller will take all steps as are reasonably necessary to amend or rescind, as appropriate, the existing export license and removal permit; and,
 - (iii) subsequently to jointly apply for and hold any new NEB export license and removal permit, as may be required.
- 3.4 Buyer and Seller agree that each of them shall diligently and expeditiously take all steps and do such things as are reasonably necessary in applying for and obtaining any and all license and/or regulatory amendments, revisions, permits, approvals or authorizations as may be required to give effect to the provisions of this Article 3, and the parties agree to cooperate with, and support, each other in this regard.

4. Term of Agreement

- 4.1 Article III of the Gas Contract is deleted and replaced by this Article 4.
- 4.2 The Amended Gas Contract becomes effective on the Effective Date.
- 4.3 The Amended Gas Contract expires on March 31, 2007.

5. Quantity

- 5.1 Articles IV and V of the Gas Contract are deleted and replaced by the provisions of this Article 5.
- 5.2 During the term of the Amended Gas Contract prior to the Commencement of Firm Deliveries, Seller shall have no natural gas supply or transportation obligations under the Amended Gas Contract. Notwithstanding the above, during this period Buyer shall pay Seller on deemed delivered volumes in accordance with the terms of Section 7.2 below.
- 5.3 Subject to the provisions of this Article 5, effective with the Commencement of Firm Deliveries, Seller shall deliver and sell and Buyer shall receive and purchase the DCQ at the Point of Delivery.
- 5.3.1 If Seller cannot deliver any portion of the DCQ due to an event of Force Majeure, Seller shall so notify Buyer in accordance with the provisions of Section 6.3 below.

- 5.3.2 Subject to the provisions of subsection 5.3.3 below, to the extent Seller is aware that the DCQ will be less than the Max DCQ, Seller shall notify Buyer of expected Shortfall as soon as is reasonably practicable.
- 5.3.3 On those Days when third party purchases by Seller constitute a portion of the DCQ, and to the extent the DCQ is still expected to be below the Max DCQ, Seller shall notify Buyer of the expected Shortfall no less than five (5) business days prior to the Day in which the Shortfall is expected to occur.
- 5.4 To accommodate Buyer's least cost economic dispatch requirements, Buyer has the right on any Day to purchase quantities of Gas below the DCQ subject to the conditions outlined in subsection 5.4.1 through 5.4.3 below. The difference between the DCQ and the volume actually taken by Buyer each Day is the "Daily Undispatched Quantity".
- 5.4.1 On each and every day that a Daily Undispatched Quantity occurs, Buyer shall make available to Seller, Buyer's transportation from the Point of Delivery to Buyer's distribution system at no cost to Seller for the purpose of disposing of the Daily Undispatched Quantity. Seller shall use reasonable efforts to sell the Daily Undispatched Quantity at the most favourable price available to Seller using the Buyer's transportation as required.
- 5.4.2 In the event the volume weighted average price realized by the Seller at the Point of Delivery in selling the Daily Undispatched Quantity is less than CP2, as defined in Section 7.6 below, during a month, Buyer shall pay Seller for that month an amount equal to the sum of the products of:
- (a) the Daily Undispatched Quantity in each Day of the month; and,
 - (b) the Price Difference.
- 5.4.3 In the event the volume weighted average price realized by the Seller at the Point of Delivery in selling the Daily Undispatched Quantity is greater than CP2, as defined in Section 7.6 below, during a month, Seller shall pay Buyer for that month an amount equal to the sum of the products of:
- (a) the Daily Undispatched Quantity in each Day of the month; and,
 - (b) the Price Difference.
- 5.5 If Buyer purchases on any Day a daily quantity of Gas less than the DCQ pursuant to Section 5.3 above for any reasons other than Force Majeure, as defined in Section 6.2 below, or Buyer's economic dispatch requirements pursuant to Section 5.4 above, then Buyer shall pay Seller for that month an amount equal to the sum of the products of:
- (i) the difference between the DCQ, and the volume actually taken ("Deficiency Quantity") in each Day of the month; and,
 - (ii) the Price Difference.

5.6 For the purposes of Sections 5.4 and 5.5:

- (i) Seller shall use all reasonable efforts to mitigate the Price Difference; and,
- (ii) Buyer shall pay Seller for any incremental expenses reasonably incurred by Seller in selling the Daily Undispatched Quantity or the Deficiency Quantity, as applicable.

6. **Force Majeure**

6.1 Article XV of the Gas Contract is deleted and replaced with the following provisions.

6.2 Force Majeure means, except for and subject to the exclusions outlined below, acts of God, strikes, lockouts, or industrial disputes or disturbances, riots, civil disturbances, interruptions by government, compliance with any court order, law, statute, ordinance or regulation promulgated by a governmental authority having jurisdiction, the Nova Scotia government taking its royalty share of natural gas in kind, failure of transportation pipeline, failure of gas processing plant, failure of gas gathering system, failure of gas production facilities, required plant shut-downs for maintenance, or any other cause not reasonably within the control of the party claiming Force Majeure and which by the reasonable exercise of due diligence of such party could not have been prevented or is unable to be overcome. Force Majeure specifically excludes:

- (i) loss of markets;
- (ii) increases or decreases in the market price of natural gas;
- (iii) the loss, interruption, or curtailment of interruptible transportation;
- (iv) actions of Canadian or U.S. Regulatory Authorities of the types contemplated under Article XVI of the Gas Contract; or,
- (v) lack of funds.

6.3 In the event either party hereto is rendered unable by reason of Force Majeure to carry out its obligations, upon such claiming party giving notice to the other party with full particulars of such Force Majeure as promptly as is reasonably practicable after the occurrence of the event, the obligations of the claiming party occasioned by, or in connection with, or in consequence of the Force Majeure shall be suspended for the duration of the Force Majeure event. A party claiming Force Majeure shall attempt to remedy the Force Majeure as soon as is reasonably possible. Nothing in this Article 6 shall relieve a party of the obligation to make any outstanding payments due under the Amended Gas Contract. As soon as possible after the Force Majeure has been remedied, the party claiming suspension shall give notice that the Force Majeure has been remedied and the party has resumed or will resume the performance of its obligations.

7. Commodity Price

7.1 Sections 6.1 and 6.3 of the Gas Contract are deleted. In addition, the pricing provisions of subsections 6.4(a) and 6.4(b) of the Gas Contract are deleted and replaced by the following provisions.

7.2 During the term of the Amended Gas Contract from the Effective Date and continuing until the Commencement of Firm Deliveries, Buyer shall pay Seller the difference between CP1 and P2 based on a deemed natural gas volume of 38000 MMBtu/day, where

$CP1 = [0.75 \times P1] + [0.25 \times P2]$, where P1 and P2 are defined as follows:

P1 = the Henry Hub first of month index as reported in Inside F.E.R.C.'s Gas Market Report in units of US\$/MMBtu less \$0.26 US/MMBtu.

P2 = the Monthly Alberta Spot Price where the Monthly Alberta Spot Price is the price index for firm one month intra-Alberta gas deliveries as published in the Canadian Gas Price Reporter under the heading "AECO & N.I.T. One Month Spot" in units of C\$/G. This price shall be converted to US\$/MMBtu using the average monthly noon-day exchange rates as published by the Royal Bank of Canada and an energy conversion factor of 1.054615 GJ/MMBtu.

7.3 Notwithstanding anything in the Amended Gas Contract except Section 3.2 of this Agreement, the pricing and payment obligations of Buyer outlined in Section 7.2 above shall endure and continue in force and effect notwithstanding Seller being unable to deliver the DCQ for any one or more of the following, or similar, reasons:

- (i) project schedule delays to the commercial start-up of SOEP facilities or the M&NP pipeline system to Dracut, Massachusetts, for any reason;
- (ii) failure of any governmental or regulatory body, having jurisdiction, to approve any required amendments to existing export or import licenses or authorizations held pursuant to the Gas Contract;
- (iii) cancellation of any export or import license or authorization, held pursuant to the Gas Contract or the Amended Gas Contract, by any governmental or regulatory body having jurisdiction;
- (iv) failure of any governmental or regulatory body, having jurisdiction, to approve the export or import of SOEP Gas;
- (v) failure to obtain any governmental or regulatory approvals for SOEP on terms acceptable to the SOEP Owners;

- (vi) failure to obtain any governmental or regulatory approvals of the M&NP pipeline system(s) necessary to enable commercial delivery of Gas from the SOEP plant gate to Dracut, Massachusetts;
 - (vii) the SOEP Owners determine that SOEP natural gas reserves are no longer commercially economic to recover or produce;
 - (viii) failure to obtain Seller's, or its Affiliates', final management approval to proceed with SOEP; or
 - (ix) subject to Sections 7.4 and 7.5 below, the divestment or transfer of the SOEP Interest.
- 7.4 Subject to Section 7.5 below, if the SOEP Interest is divested or transferred to a third party, Buyer shall have the right to elect to have the remaining term of the Amended Gas Contract assigned to the said third party, provided Seller is notified by Buyer of its election within fifteen (15) days following notification by Seller to Buyer of the planned divestment or transfer, as applicable.
- 7.5 If any or all of the SOEP Interest is divested or transferred, for any reason, to one or more of the other SOEP Owners, and Buyer elects to have the remaining term of the Amended Gas Contract assigned to the applicable SOEP Owner(s) pursuant to Section 7.4 above, and if as a result of such divestment or transfer Seller does not obtain sufficient consideration from the said SOEP Owner(s) to fully compensate Seller for the full value of the remaining term of the Amended Gas Contract, Buyer agrees to indemnify and keep Seller whole to the full extent of the deficiency. For purposes of this Section 7.5, full value of the remaining term of the Amended Gas Contract shall mean the net present value, using a discount rate of six (6) percent, of any remaining payments due from Buyer to Seller assuming full performance under the Amended Gas Contract by both parties.
- 7.6 Subject to Article 10 below, from the Commencement of Firm Deliveries until the expiration of the Amended Gas Contract, the commodity price ("CP2") of volumes of Gas sold and purchased under the Amended Gas Contract, including fuel gas consumed in the pipeline compressors downstream of the Point of Delivery, shall be, in units of US\$/MMBtu, the higher of:
- (i) HH - BD, where HH and BD are defined as follows:
 - HH = Henry Hub first of month index as reported in Inside F.E.R.C.'s Gas Market Report,
 - BD = as set out in Schedule B, attached hereto and forming part of this Agreement; or,

- (ii) the "SOEP Market Price", defined as the prevailing market price at the SOEP plant gate as represented by the average of all first of month price indices published for this location. In the event that no first of month price index develops for the SOEP plant gate location then CP2 is defined by item (i) in this Section 7.6.

7.7 In the event any one of the published price indices referenced in this Article 7 is not available or ceases to exist, Buyer and Seller agree to act in good faith to select a reasonable replacement price index as required. Should the parties fail to agree on a replacement price index, either party may, by giving written notice to the other, submit the matter to arbitration in accordance with the arbitration provisions of Sections 6.6(b) and 6.6(c) and Article XVII of the Gas Contract and Article 10 of this Agreement, as applicable.

8. Payments

8.1 Any and all amounts payable arising out of the Amended Gas Contract shall be made in accordance with the provisions of Article VII of the Gas Contract as amended by this Article 8.

8.2 Sections 7.1 through 7.3 of the Gas Contract are deleted and replaced with the following provisions.

8.3 Section 7.4 of the Gas Contract is amended by deleting the reference to "Subsection 20.2" in the tenth line and replacing it with "Section 5.3 of the Agreement".

8.4 As of the Effective Date, Seller shall, on or before the 15th Day of each Month (a "Billing Month"), render to Buyer a statement showing the deemed quantity of natural gas pursuant to Section 7.2 above, or the actual quantity of Gas delivered during the preceding Month at the Point of Delivery, pursuant to Section 5.3 above, as applicable, and the amounts payable based on the applicable commodity prices pursuant to Article 7 herein. The statement shall also include and describe all other applicable charges or credits, as applicable, pursuant to the Amended Gas Contract.

8.5 Buyer shall make payment within ten (10) Days following receipt of the statement described in Section 8.4 above, or by the 25th Day of the Billing Month, whichever is later. Any adjustments necessary to reflect actual deliveries or otherwise shall be made in the following Monthly statement, if possible, or within the period provided in Section 7.5 of the Gas Contract in any event.

9. Waiver of Financial Keep Whole Provisions and Indemnification

9.1 Articles XIV and XX of the Gas Contract are deleted.

- 9.2 As of the Effective Date, all supply assurances and associated commodity keep whole obligations contained in the Gas Contract will terminate. For greater certainty, under the Amended Gas Contract Seller's only natural gas supply obligation will be to deliver the DCQ, subject to Sections 5.3 and 7.3 above.
- 9.3 As of the Effective Date and prior to the Commencement of Firm Deliveries, Seller shall have no obligations to pay transportation demand charges, or transportation charges of any kind, in conjunction with the Amended Gas Contract, except that from and after the Commencement of Firm Deliveries Seller shall be responsible for all transportation charges necessary to deliver the DCQ to the Point of Delivery.
- 9.4 Buyer shall indemnify and save Seller harmless against all third party actions, proceedings, claims (including claims of third parties for consequential damages), debts, demands, losses, costs, damages, expenses and liabilities which may be brought against or suffered by Seller or which it may sustain, pay or incur by reason of Seller not delivering Gas, so long as Seller is in compliance with its obligations under the Amended Gas Contract, or any reason whatsoever or by reason of personal injury or property damage sustained after Gas is delivered to the Point of Delivery.
- 9.5 Damages and costs resulting from Buyer purchasing on any day a daily quantity of gas less than the DCQ are limited to those set forth in the Amended Gas Contract. Damages and costs for other actions or non-actions are as specified or contemplated in the Amended Gas Contract. In no event shall either party be liable to the other for consequential, special, or punitive damages of the other party regardless of breach of the Amended Gas Contract.

10. Price Reopener

- 10.1 Section 6.6(a) of the Gas Contract is deleted and replaced by this Article 10.
- 10.2 In order to initiate the next and only other price renegotiation for CP1 and CP2, as applicable, Buyer shall provide notice to Seller during the period between June 1, 2002, and June 30, 2002, with any changes pursuant to the renegotiation to become effective on November 1, 2002. The price renegotiation shall be completed within 60 days of receipt of such notice. Notwithstanding the above, in no event shall this price renegotiation cause a decrease in BD. If the parties do not agree upon a renegotiated price within the said 60 day period, either party may, by giving written notice to the other, prior to November 1, 2002, submit the matter to arbitration in accordance with the provisions of the Amended Gas Contract.
- 10.3 Throughout Sections 6.6(b) and 6.6(c) of the Gas Contract the phrase "Gas being purchased on a competitive basis in Massachusetts under long term firm contracts" shall be amended to read "Gas being purchased from the U.S. Gulf Coast supply region on a competitive basis in Massachusetts under firm contracts of term length of one year and

greater". In the absence of a threshold volume of 100,000 MMBtu/day of such firm contracts of term length of one year or greater available in a form reasonably suitable for use in the arbitration process as envisioned by Section 6.6 of the Amended Gas Contract, the commodity price of Gulf Coast gas supplies in Massachusetts for the purposes of the arbitration process as envisioned by Section 6.6 of the Amended Gas Contract shall be equal to the sum of:

- (i) the arithmetic average variable transportation costs, including the cost of fuel gas, incurred in delivering Gulf Coast gas to Boston by way of the following routes:
 - (a) Tennessee Gas Pipeline Company; and, (b) Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company; and,
- (ii) the arithmetic average of the first of Month indices as published in Inside F.E.R.C.'s Gas Market Report for the following six locations: Tennessee Gas Pipeline Company Zones 0 and 1; and the Texas Eastern Transmission Corporation's Zones STX, ETX, WLA and ELA.

10.4 In establishing the average variable transportation costs pursuant to subsection 10.3(i) above, the arbitrator shall take into account the effects of differing rate designs on the SOEP and Gulf Coast pipelines. Modified fixed variable rate designs, wherein fixed pipeline costs become included in the commodity component of the transportation toll, should not be compared with straight fixed variable designs, wherein fixed pipeline charges are not included in the commodity component of the transportation toll. This is to ensure that neither SOEP, nor Gulf Coast supply, are unfairly disadvantaged by such rate design characteristics in the competitive comparison contemplated under Section 6.6 of the Gas Contract.

10.5 Throughout Sections 6.6(b) and 6.6(c) of the Gas Contract, the term "New Base Price" is amended to read "CP1 or CP2, as applicable".

11. Transportation

11.1 Articles IX, X and XI of the Gas Contract are amended substituting "M&NP" in place of "Nova" or "TCPL", as applicable, as required in the context of those provisions.

11.2 Buyer is responsible for arranging and paying all costs associated with holding capacity on the M&NP pipeline system to take delivery of the DCQ at the Point of Delivery. The terms of such transportation arrangements are left to the Buyer's discretion recognizing that Buyer remains liable for the amounts pursuant to Sections 5.4, 5.5 and 5.6 above, should Buyer be unable to take delivery of the DCQ, including as a result of Buyer not holding the proper amount or type of transportation capacity.

11.3 Seller shall be free to release or assign the Canadian pipeline transportation currently held by Seller in association with the Gas Contract, and Buyer shall be free to release or assign

the U.S. pipeline transportation currently held by Buyer in association with the Gas Contract, with an effective release or assignment date being as of the Effective Date, subject to the provisions of Section 11.4 below. Seller agrees to assign the Canadian pipeline transportation currently held by Seller in association with the Gas Contract to Buyer, or a third party designated by Buyer ("Third Party"), at Buyer's option, subject to the provisions of subsections 11.3.1 and 11.3.2 below.

11.3.1 Assignment of the transportation currently held by Seller, pursuant to Section 11.3 above, is conditional on Seller retaining title to the natural gas associated with the NOVA delivery capacity, as it moves through the straddle plant facilities at Empress, or McNeill (the "Straddle Plant"), and Seller capturing all economic benefits thereby accruing. This condition will be satisfied in accordance with the provisions of subsection 11.3.2 below. The arrangements contemplated in subsection 11.3.2 shall be documented by Seller and Buyer in a separate agreement to take effect on the Effective Date. To the extent it is necessary for the Third Party to be party to such separate agreement, the Buyer shall obtain the agreement of the Third Party.

11.3.2 Seller shall retain the said Empress NOVA delivery capacity and the parties agree to implement the following purchase and re-sale arrangement. The Third Party or Buyer, as applicable, shall sell natural gas to Seller at an intra-Alberta delivery point for a price equal to P2 and Seller shall re-sell said natural gas to Third Party or Buyer, as applicable, at Empress, or McNeill, into the TCPL system, for a price equal to P2 plus full NOVA tolls as may be in effect from time to time for transportation between intra-Alberta and Empress, or McNeill, delivery points, respectively.

11.4 In the event the NOVA delivery capacity at Empress, or McNeill, and the TCPL capacity between Empress, or McNeill, and Iroquois currently held by Seller in association with the Gas Contract is released at a discounted rate from the rate payable by Seller under Seller's associated NOVA and TCPL pipeline transportation agreements, Buyer agrees to indemnify and save Seller harmless to the full extent of such difference for the full term of the Amended Gas Contract. These indemnification payments shall be made monthly in accordance with the provisions of Article VII of the Amended Gas Contract.

12. Goods and Services Tax

12.1 "GST" means the goods and services tax pursuant to the Excise Tax Act (Canada), as amended (the "Excise Tax Act").

12.2 If Buyer intends to export from Canada any of the Gas purchased under the Amended Gas Contract and wishes to have that Gas zero-rated for GST purposes pursuant to the Excise Tax Act at least ten (10) Days prior to the day when Seller is obligated to deliver an

invoice, Buyer shall advise Seller of the amount of Gas which Buyer intends to export and represent and warrant in writing that it has complied with all of the provisions of the Excise Tax Act required to permit Seller to zero-rate that Gas.

12.3 Buyer shall indemnify Seller for any GST related liability incurred by Seller which results from any breach of any of the provisions, representations or warranties required under Section 12.2.

12.4 Notwithstanding any other provision of the Amended Gas Contract, in the event that any amount becomes payable by a party to the Amended Gas Contract as a result of a breach, modification or termination of the Amended Gas Contract and Section 182 of the Excise Tax Act applies to that amount, the amount payable shall be increased such that following the deduction of any applicable GST, the payee shall be left with an amount equal to the original amount payable.

13. Miscellaneous

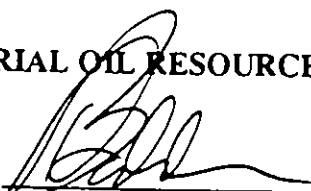
13.1 To the extent that any provisions in this Agreement conflict with those in the Gas Contract, the provisions of this Agreement will prevail.

13.2 Each of the parties shall do all acts, including making appropriate regulatory filings, and execute and deliver all deeds and documents as are reasonably required in order to fully perform and carry out the terms of this Agreement or the Amended Gas Agreement, as applicable.

13.3 Buyer and Seller agree to provide each other with any information that may be necessary to comply with any regulatory filing requirements hereunder. Such information shall be kept strictly confidential by the other party and used or disclosed only to comply with said requirements or as is otherwise required by law.

In witness whereof this Agreement is executed effective as of the day and year first written.


IMPERIAL OIL RESOURCES

Per: 

Name: D.D. Baldwin

Title: Senior Vice President

BOSTON GAS COMPANY

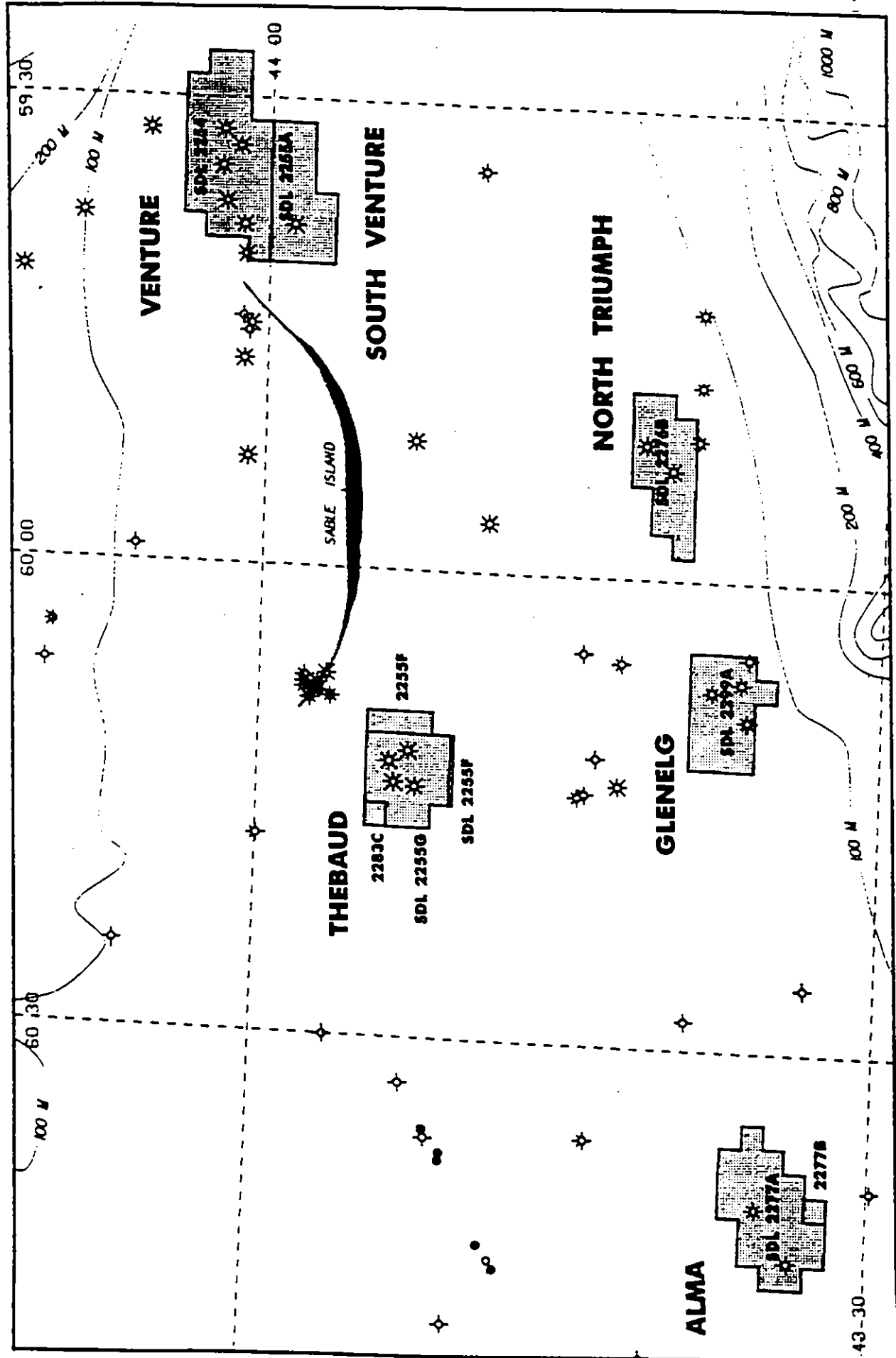
Per: 

Name: WILLIAM R LUTHERN

Title: VICE PRESIDENT
12.NOV97

SCHEDULE "A"

to the Natural Gas Sales - Amending Agreement
between Imperial Oil Resources and Boston Gas Company

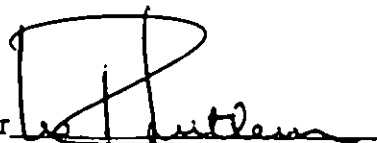


SCHEDULE "B"
to the Natural Gas Sales - Amending Agreement
between Imperial Oil Resources and Boston Gas Company

<u>SOEP Interest</u>	<u>Max DCQ MMBtu/d</u>	<u>BD US\$/MMBtu</u>
9.8% or greater	47,040	0.185
9.701 - 9.799%	SOEP Interest x 480,000	0.1775
9.7%	46,560	0.175
9.601 - 9.699%	SOEP Interest x 480,000	0.1725
9.6%	46,080	0.170
9.501 - 9.599%	SOEP Interest x 480,000	0.1675
9.5%	45,600	0.165
9.401 - 9.499%	SOEP Interest x 480,000	0.1625
9.4%	45,120	0.160
9.201 - 9.399%	SOEP Interest x 480,000	0.1575
9.2%	44,160	0.155
9.001 - 9.199%	SOEP Interest x 480,000	0.1525
9.0% or less	43,200	0.150

Per: 

IMPERIAL OIL RESOURCES

Per: 

BOSTON GAS COMPANY

EXHIBIT C

Final

EXHIBIT C

ESSO RESOURCES CANADA LIMITED

"SELLER"

AND

BOSTON GAS COMPANY

"BUYER"

DATED MAY 1, 1989

NATURAL GAS SALES AGREEMENT

RETURN TO
GAS SUPPLY DEPT.
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BOSTON GAS COMPANY

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APPENDIX "A" - COMMODITY CHARGE CALCULATION

NATURAL GAS SALES AGREEMENT

THIS AGREEMENT, made as of May 1st, 1989 is entered into by and between BOSTON GAS COMPANY, ("Buyer"), a Massachusetts Corporation, with its principal place of business in Boston, Massachusetts, and ESSO RESOURCES CANADA LIMITED ("Seller"), a Canadian corporation with its principal place of business in Calgary, Alberta;

WITNESSETH:

WHEREAS Buyer desires to secure a long-term natural gas supply;

and

WHEREAS Seller is in the business of exploration for and production of natural gas;

and

WHEREAS Seller desires to sell and deliver natural gas to Buyer and Buyer desires to purchase and receive such natural gas from Seller;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

ARTICLE I DEFINITIONS

1.1 The following terms, when used in this Agreement, shall have the following meanings:

- (a) "Affiliate" means with respect to the relationship between corporations or partnerships, that one of them is a partner of the other or is controlled by the other or both of them are a partner of or controlled by the same person, corporation or body politic; and for this purpose a corporation shall be deemed to be controlled by those persons, corporations or bodies politic who own or effectively control sufficient voting share of a corporation (whether directly through the ownership of shares of a corporation or indirectly through the ownership of shares of another corporation which owns shares of the corporation) to elect the majority of its board of directors;
- (b) "Algonquin" means Algonquin Gas Transmission Company;
- (c) "Base Gas" means an account for a volume amount of Gas, remaining from time to time equal to:
 - (i)- the sum of the MDQ's for the period commencing with the date of Commencement of Firm Deliveries and ending on the Day immediately before the Day the United States Transporters are capable of transporting the MDQ from the Point of Delivery to Buyer's System on a firm basis, minus

- (ii) - the sum of the daily amounts of Gas (such daily amount not to exceed the MDQ) and calculated for the same period identified in Subsection 1.1(c)(i) above, that the United States Transporters on each such Day in this period were capable of delivering to Buyer's System on either a firm or an interruptible basis, minus
- (iii) - quantities of Gas purchased by Buyer from time to time pursuant to Subsection 4.5(b) which represented an amount of Base Gas for the purpose of such a purchase for any Day or Days at that time or times;

however, for any Day or Days during the period described in (i) above that Buyer's nomination, up to the level of the MDQ, is less than the amount that United States Transporters are capable of transporting to Buyer's System, up to the level of the MDQ, then it shall be deemed that no Gas shall accumulate as Base Gas for that Day.

- (d) "Btu" means the amount of heat required to raise the temperature of one (1) pound of distilled water from a temperature of fifty-nine point five degrees Fahrenheit (59.5°F) to sixty point five degrees Fahrenheit (60.5°F) at a constant pressure of fourteen and seventy-three hundredths pounds per square inch absolute (14.73 psia);
- (e) "Buyer's System" means the territorial franchise area for which Buyer has the right to provide Gas service and which is primarily located in eastern Massachusetts;
- (f) "Canadian Regulatory Authorities" means each governmental agency or other authority in Canada which has jurisdiction over the sale, export, transportation or other matter in question, including, without limitation, the National Energy Board of Canada (the "NEB"), the Energy Resources Conservation Board of Alberta (the "ERCB"), the Alberta Petroleum Marketing Commission (the "APMC"), and the Federal and Provincial Governors-in-Council;
- (g) "Canadian Transporter(s)" means those transporters or their successors in interest operating pipeline facilities used to transport the Gas covered by this Agreement within Canada including without limitation TCPL, NCVA or Northwestern Utilities Limited (NUL);
- (h) "Champlain" means Champlain Pipeline Company;
- (i) "Commencement of Firm Deliveries" means the first date on which firm transportation service under Seller's Transportation Contract is made available to Seller to transport Gas to the Point of Delivery at the level of the MDQ regardless of whether or not Buyer can accept any delivery of Gas on such date;
- (j) "Commodity Charge" means the Gas cost component, so identified of the Contract Amount, as more particularly determined in Subsection 6.4;
- 4/19
3/2/10

- (k) "Consumption Market" means any use of Gas whatsoever by Seller, or an Affiliate of Seller, from Seller's Gas Supply Pool, other than for a Direct Sale or a sale to a third party;
- (l) "Contract Amount" means the Monthly amount to be paid by Buyer to Seller hereunder and shall be comprised of the Transportation Charge and the Commodity Charge;
- (m) "Contract Year", with respect to the first "Contract Year", means the period commencing on the Commencement of Firm Deliveries and ending at 8:00 A.M. standard time or Daylight Saving Time as the case may be, in the time zone at the Point of Delivery, on the following November 1; and with respect to any succeeding "Contract Year" shall mean the period of twelve (12) consecutive months from the end of the preceding Contract Year to 8:00 A.M. standard time or Daylight Saving Time as the case may be (in the time zone at the Point of Delivery) on the next succeeding November 1;
- (n) "Cubic Foot" means the volume of Gas which at a pressure of fourteen and seventy-three hundredths (14.73) psia, and at a temperature of sixty degrees Fahrenheit (60°F) occupies one (1) cubic foot;
- (o) "Cubic Metre" or "m³" means that volume of Gas which at a temperature of fifteen (15) degrees Celsius and at a pressure of one hundred and one, and three hundred and twenty-five thousandths (101.325) kilopascals absolute occupies one (1) cubic meter;
- (p) "Daily Underdelivery" means for any Day, the amount of Gas remaining after subtracting from Buyer's actual nomination for that Day, the total of:
- (i) the actual amount of Gas delivered by Seller at the Point of Delivery for that Day; less,
 - (ii) any amount of Gas delivered by Seller to the Point of Delivery that Buyer refuses to accept because it fails to meet or have met the quality specifications for Gas as required in Article X hereunder;
- (q) "Day" or "Daily", means a period of twenty-four (24) consecutive hours, beginning and ending at 8:00 A.M. standard time or Daylight Saving Time as the case may be, in the time zone at the Point of Delivery, or at such other place as may be mutually agreed upon by Buyer and Seller. The reference date for any Day shall be the calendar date upon which the twenty-four (24) hour period shall commence;
- (r) "Demand Charge" or "Demand Charge Components" or "Canadian Monthly Demand Charge" means all the components of the Transportation Charge identified, in Subsections 6.3(a)(i), 6.3(a)(iv)(A), 6.3(a)(iv)(B), and 6.3(a)(v);

- (s) "Direct Sale" means a sale of Gas by Seller from Seller's Gas Supply Pool, to a third party or an Affiliate;
- (t) "Distillate Fuel Oil" or "#2 Distillate" or "#2 Fuel Oil" or "No. 2 Fuel Oil" means No.2 Fuel Oil used as energy, as defined from time to time in ASTM-D-396 specifications and to the extent such product shall meet any and all environmental or other regulatory limitations or specifications for such product for which normal use of such product as an energy source in Massachusetts is approved;
- (u) "Excused Performance" means for a Day in which a Daily Underdelivery occurs, that when a Performance Calculation is made for such Day, a negative number or zero result is obtained;
- (v) "Firm Consumption Market" means a Consumption Market that is serviced in whole or in part with supply required to be delivered using firm transportation service or otherwise a Consumption Market that if interrupted would cause an economic loss to Seller or an Affiliate of Seller;
- (w) "Firm Direct Sale" means a Direct Sale that is serviced in whole or in part with firm transportation service;
- (x) "Fossil Fuel Energy Sources" - means Gas purchased on a competitive long term firm basis for use in Massachusetts by local distribution companies located in Massachusetts; #2 Distillate; and #6 Fuel Oil;
- (y) "Gas" means natural gas of the quality specified in Article X hereof;
- (z) "GJ" means (1) gigajoule and is equal to one billion (1,000,000,000) joules;
- (aa) "Heating Value", "total heating value", "gross heating value" and "MJ content", or any of them, means the total joules expressed in megajoules per Cubic Metre (MJ/m³) produced by the complete combustion at constant pressure of one (1) Cubic Metre of Gas with air, with the Gas free of water vapor and the temperature of the Gas, air and products of combustion to be at standard temperature and all water formed by combustion reaction to be condensed to the liquid state;
- (bb) "joule" or "J" means the amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force;
- (cc) "Mcf" means one thousand (1,000) Cubic Feet of Gas;
- (dd) "MMBtu" means one million (1,000,000) Btu;
- (ee) "MMcf" means one million (1,000,000) Cubic Feet of Gas;

MDQ

- (ff) "Maximum Daily Quantity" or "MDQ" means, at the Point of Delivery a volume of 991.5 10⁶ m³ (35 MMcf) per day of Gas for the term of this Agreement; except that if such volume is reduced pursuant to the provisions of this Agreement it shall mean such lesser quantity of Gas as may be effective from time to time as determined herein;
- (gg) "Minimum Quarterly Quantity", means for each Quarter:
 - (i) 75% of the sum of the Maximum Daily Quantities in effect in the subject Quarter; minus
 - (ii) the sum of the quantity of Gas which Buyer was prevented from taking during such Quarter by reason of force majeure as determined pursuant to Article XV, plus a quantity of Gas equivalent to the sum of the positive number results determined for any Non-Excused Performances during such Quarter;
- (hh) "Minimum Take Deficiency" means, with respect to any Quarter, unless otherwise provided, such positive number difference, if any, representing a Gas volume, that results after subtracting the actual quantity of Gas taken by Buyer (based on amounts taken up to the level of the MDQ on a Daily basis during such Quarter) from the Minimum Quarterly Quantity;
- (ii) "MJ" means one (1) megajoule and is equal to one million (1,000,000) joules;
- (jj) "Month" or "Monthly" means a calendar month except that the commencement and termination thereof shall be determined consistent with the definition of "Day" above;
- (kk) "New Base Price" means that component of the Commodity Charge that at the time of any applicable "Arbitration Effective Date" (as that term is defined in Subsection 6.6(a)) is intended to reflect the then current gas cost component of commodity prices for Gas purchased on a competitive basis in Massachusetts under long term firm contracts;
- (ll) "Non-Business Day" means Saturday, Sunday or any statutory holiday in the jurisdiction of either Buyer or Seller;
- (mm) "Non-Excused Performance" means for a Day in which a Daily Underdelivery occurs that when a Performance Calculation is made for such Day, a positive number result is obtained;
- (nn) "NOVA" means NOVA Corporation of Alberta;
- (oo) "Offset Demand Charges" means a payment owed Buyer by Seller for any given Month for any Spare Capacity utilized by Seller in such Month and calculated on the basis of the following:

- (i) to the extent Seller disposes of Unpurchased Gas, a Daily charge calculated utilizing those portions of the Daily equivalent per unit rate to the components of the Transportation Charge described in Subsections 6.3(a)(iv)(A) and 6.3(a)(iv)(B), each multiplied by the level of Spare Capacity utilized by Seller to move such Unpurchased Gas on such Day, plus the Daily equivalent per unit rate to the NEB approved charge for TCPL Firm Service for the zone toll which would be applicable in the area in which deliveries were made, as if Seller held a firm service contract on TCPL to deliver to such point from Empress, Alberta, then multiplied by the level of Spare Capacity utilized by Seller to move such Unpurchased Gas on such Day; plus
 - (ii) to the extent Seller assigns rights to Seller's Transportation Contract and does not transport Unpurchased Gas thereon, a Daily charge calculated using the Daily equivalent per unit rate to the zone toll which would be applicable in the area in which deliveries were made as if Seller held a firm service contract on TCPL to deliver to such point from Empress, Alberta, then multiplied by the level of Spare Capacity utilized by the party assigned such transportation rights on such Day; plus
 - (iii) to the extent Seller recovers any portion of the component of the Demand Charge specified in Subsection 6.3(a)(v), in any use or assignment of Seller's Transportation Contract, the amount of such component so recovered.
- (pp) "Performance Calculation" means, for any Day in which a Daily Underdelivery occurs, an amount (either negative, zero or positive) determined by subtracting from the Daily Underdelivery amount the following amounts:
- (i) any amount of Buyer's nomination for the same Day, in excess of the MDQ;
 - (ii) an amount equal to 2% of the MDQ in effect for the same Day;
 - (iii) any amount of Gas for that same Day that Seller cannot deliver to the Point of Delivery, or Buyer cannot accept delivery of at the Point of Delivery, because of a situation or situations of force majeure as determined pursuant to Article XV of this Agreement;
 - (iv) any amount of Buyer's nomination that Buyer or a United States Transporter does not accept at the Point of Delivery on the Day in question and that is not included in "(iii)" above or which does not represent Gas which Buyer has refused to accept because such Gas does not meet the quality specifications required for Gas deliveries hereunder by Article X of this Agreement;

- (qq) "Point of Delivery" means the point on the international boundary of Canada and the United States of America near Philipsburg, Quebec and near where the pipeline facilities of TCPL and Champlain are interconnected, or such other point as may otherwise be agreed upon in writing by Buyer and Seller;
- (rr) "Prime Rate" means the annual rate of interest announced from time to time by the Royal Bank of Canada, as a reference rate of interest then in effect for determining interest on Canadian Dollar commercial loans in Canada;
- (ss) "psia" means pound per square inch absolute;
- (tt) "Quarter" or "Quarterly" means one of the following periods in any Contract Year:
- (i) November 1 to January 31 inclusive;
 - (ii) February 1 to April 30 inclusive;
 - (iii) May 1 to July 31 inclusive;
 - (iv) August 1 to October 31 inclusive;
- (uu) "Replacement Gas Supply" means all replacement supplies of Gas either arranged or available to be purchased by the Buyer from a third party at the time, or within two weeks subsequent to the Day, there is a Non-Excused Performance. Such arranged or available replacement supply shall be at volumes up to but not to exceed the positive number amount calculated with respect to such a Non-Excused Performance.
- (vv) "Residual Fuel Oil" or "#6 Fuel Oil" or "No. 6 Fuel Oil" means No. 6 Fuel Oil used as energy, as defined from time to time in ASTM-D-396 specifications, and to the extent such product shall be low pour with a sulphur weight not to exceed 1%, and to the extent such product shall also meet any and all environmental or other regulatory limitations or specifications for such product for which normal use of such product as an energy source in Buyer's System is approved;
- (ww) "Seller's Gas Supply Pool" means at any given time only gas reserves that are owned or controlled by Seller and located in the Province of Alberta and that are not dedicated or committed under the terms of any other existing contracts or contracts hereafter entered into;
- (xx) "Seller's Transportation Contract" means the firm service transportation contract between Seller and TCPL entered into to enable Seller to deliver to Buyer hereunder a daily volume of Gas equal to $991.5 \times 10^3 \text{ m}^3$ (35 MMCF);

(yy) "Spare Capacity" means the portion of transportation capacity under Seller's Transportation Contract not utilized from time to time by Seller to move Gas to Buyer including, but not limited to, those instances where Buyer is not nominating for Gas at full MDQ or is unable to accept deliveries of Gas at full MDQ;

(zz) "TCPL" means TransCanada PipeLines Limited;

(aaa) "TCPL Firm Service" means firm non-interruptible transportation service provided by TCPL and identified as "FS" or "Firm Service" pursuant to TCPL's NEB approved toll schedule.

(bbb) The symbol "10³m³" means one thousand (1000) Cubic Metres;

(ccc) "Tennessee" means Tennessee Gas Pipeline Company;

(ddd) "Total Usage" means, with respect to accounting for any disposition of Unpurchased Gas by Seller, an amount equal to:

- i) the daily maximum Gas deliveries permissible under any Unpurchased Gas disposition arranged by Seller multiplied by the maximum potential time period over which the disposition is expected to occur in such disposition contract; or,
- ii) in case of a disposition whereby that Unpurchased Gas is used by Seller or delivered to an Affiliate of Seller, the daily disposition amount multiplied by a time period for the disposition all as specified by Seller in Seller's sole discretion;

such that the resulting total amount of Unpurchased Gas shall be deemed to have been disposed of by Seller for all purposes under this Agreement at the time the arrangements for the disposition were first made;

(eee) "Transportation Charge" means the component, so identified, of the Contract Amount as more particularly set forth in Article VI hereof;

(fff) "Unit Cost Difference" means an amount calculated by subtracting amount "B" below from amount "A" below where:

"A" represents the per unit equivalent cost of a Replacement Gas Supply, expressed on a dollar per GJ basis as the amount Buyer pays for such Replacement Gas Supply. Such per unit equivalent cost shall only include the commodity price for such supply, the incremental transportation costs incurred for delivery of such supply to Buyer's System and any other reasonable costs incurred in arranging for such supply. For purposes of this definition, "incremental transportation costs" shall mean only those reasonable

costs incurred for and paid for by Buyer in arranging for transportation of the Replacement Gas Supply to Buyer's System but shall not include any portion of any costs, charges, expenses, fees or payments that would have been paid for or incurred by Buyer had the Replacement Gas Supply not been purchased. It is understood incremental transportation costs shall exclude costs of demand charges, reservation fees, gas inventory charges or other fixed charges whatsoever, to the extent such charges, fees or costs would have been paid for or incurred by Buyer irrespective of the acquisition of the Replacement Gas Supply; and where,

"B" represents the amount Buyer would have had to pay Seller on a dollar per GJ basis, as the per unit Commodity Charge in the month in which a Non-Excused Performance occurs,

with any negative amounts so determined to be considered as equal to zero;

(ggg) "Unpurchased Gas" means an amount for a volume of Gas remaining from time to time equal to the amount determined after performing the seriatim calculation in the manner and order described below:

(1) firstly tabulate the sum of the totals of an amount of Gas for each Quarter of the term of this Agreement including any expired portion of any current Quarter, determined for a Quarter, as that amount of Gas representing the difference after subtracting "(B)" from "(A)" below where:

(A) represents the sum of the MDQ for each expired Day in such Quarter, and

(B) represents the Gas nominated by Buyer on a daily basis up to the MDQ during the same period of expired Days less quantities not delivered to Buyer or received by Buyer due to an event or events of force majeure (as force majeure is determined pursuant to Article XV) less quantities equivalent to the sum of the positive number amounts of Non-Excused Performance during the same period of expired Days;

provided that the amount of such difference calculated for a Quarter or at any point in a Quarter shall not be allowed to exceed that volume of Gas equal to the sum of "(C)", "(D)" and "(E)" below where:

(C) represents quantities to that point in time measured in the Quarter that were not delivered or received by Buyer in such Quarter due to an event or events of force majeure as such would be determined pursuant to Article XV; and where,

(D) represents quantities of Gas equivalent to the sum of the positive number amount of Non-Excused Performances measured for the number of expired Days in the Quarter; and where,

(E) represents an amount equal to the sum of the MDQ for each Day for the full Quarter in question, multiplied by 25%,

and to the amount determined after performing step (i) above, subtract the amount determined for step (ii) below,

(ii) the initial total volume of Base Gas (if any), prior to any repurchase of Base Gas by Buyer under this Agreement;

and from the amount determined after performing steps (i) and (ii) above add the amount determined in step (iii) below,

(iii) all such quantities of Minimum Take Deficiency volumes (if any) that were not repurchased by Buyer pursuant to Subsection 4.7 within one Year following the Quarter for which the tabulation of such Minimum Take Deficiency volumes applies;

and from the amount determined after performing steps (i), (ii), and (iii) above; subtract the amount determined for step (iv) below,

(iv) quantities of Gas disposed of by Seller from time to time pursuant to Subsection 4.5 and which represented accumulations of Unpurchased Gas for the purposes of such dispositions at that time or times;

(hhh) "United States Transporter(s)" means the transporter(s) that is operating pipeline facilities used to transport gas on the pipeline system of Champlain or other pipelines in the United States and located at or between the Point of Delivery and the Buyer's System;

(iii) "U.S. Regulatory Authorities" means each Federal, state or local governmental agency or other authority in the United States of America which has jurisdiction over the purchase, import, transportation or other matter in question, including, without limitation, the Office of Fossil Energy of the United States Department of Energy (OFE), the Federal Energy Regulatory Commission (FERC) and the Massachusetts Department of Public Utilities (DPU);

(jjj) "Year" means a period of 365 consecutive Days; provided however, that any year which contains the date of February 29 shall consist of 366 consecutive Days.

ARTICLE II
CONDITIONS

2.1 This Agreement is subject to satisfaction of all of the following conditions in accordance with Subsection 2.2(a):

- (a) Seller and Canadian Transporters obtaining all necessary certificates, permits, licenses and authorizations from Canadian Regulatory Authorities for the transactions contemplated by this Agreement, on terms satisfactory to Buyer and Seller, for the full fifteen (15) Year term of this Agreement, including, without limitation, the sale and removal of the Gas from the Province of Alberta at the level of the MDQ plus TCPL fuel gas; the export of the Gas at the level of the MDQ from Canada; and the firm transportation of the Gas in Canada at the level of the MDQ plus firm transportation for fuel gas required for Canadian Transporters;
 - (b) Seller entering into agreements required to transport the MDQ to the Point of Delivery on a firm basis for the full fifteen (15) Year term of this Agreement, including, without limitation, transportation agreements with Canadian Transporters;
 - (c) Buyer and United States Transporters obtaining all necessary certificates, permits, licenses and authorizations from U.S. Regulatory Authorities for the transactions contemplated by this Agreement, on terms satisfactory to Buyer and Seller, for the full fifteen (15) Year term of this Agreement, including, without limitation, the purchase and importation of Gas, at the level of the MDQ, from Canada and for the firm transportation of Gas, at the level of the MDQ, in the United States;
 - (d) Buyer entering into agreements required to transport on a firm basis the MDQ from the Point of Delivery to the point of entry into Buyer's System for the full fifteen (15) Year term of this Agreement;
 - (e) Buyer obtaining the approval of its Board of Directors to the execution of this Agreement, and Seller obtaining the approval of its Management Committee to the execution of this Agreement, each within 120 Days after execution by their respective signing authorities; and
 - (f) Receipt of a final and non-appealable certificate from the FERC by November 1, 1990, relative to the Champlain Project (as currently represented in FERC Docket Nos. CP89-646 and CP89-654) or an alternative project mutually satisfactory to the parties hereto that would enable Buyer access to Canadian supplies including the supply hereunder.
- 2.2 (a) Without limitation, if the certificates, permits, licenses, approvals and authorizations outlined in Subsection 2.1 are not obtained by November 1, 1990, or such other date or dates specified, on terms satisfactory to the parties hereto, then the parties shall meet to discuss an extension of such date or dates. If the parties cannot agree on an extension, then either party shall have the right to terminate this Agreement on ninety (90) Days notice to the other party and unless such authorizations are obtained and

accepted prior to the date posted in such notice, this Agreement will terminate effective upon expiration of said ninety (90) Day period and shall thereafter be of no further force and effect.

- (b) After applying for or amending any certificate, permit, license or authorization necessary for the transactions contemplated by this Agreement, at, upstream, or downstream of the Point of Delivery, and after entering into or amending any contract for the transportation of Gas to be sold hereunder, at, upstream, or downstream of the Point of Delivery, each party shall keep the other party apprised.
- (c) (i) Each party is aware that the transportation agreements with their respective transporters contain provisions which would allow a party hereto or its respective transporter to terminate or avoid such agreement prior to commencement of gas transportation service.
- (ii) Each party hereto shall advise the other of any and all conditions or conditions precedent under any transportation agreement or otherwise that would allow a party hereto or its respective transporters to terminate or avoid such transportation agreement.

Seller will not exercise any right to terminate or avoid any such transportation agreements with Canadian Transporters, and hence its obligations hereunder, unless the construction of the transportation facilities for Buyer has not commenced and Buyer can therefore similarly terminate or avoid its transportation agreements without cost or damage. If Buyer exercises any rights under its transportation agreements with United States Transporters to terminate or avoid such transportation agreements or if Buyer's United States Transporters exercise any right under such transportation agreements to terminate or avoid such transportation agreements subsequent to the commencement of construction of the transportation facilities for Seller by TCPL, then Buyer will protect, indemnify and save harmless Seller from present, future and existing, direct or indirect, losses, costs, damages, claims, financial liabilities or any other charges whatsoever that Seller may suffer or be exposed to under Seller's Transportation Contract or the precedent agreement dated May 1st, 1989 between Seller and TCPL and relating to transportation of volumes anticipated under this Agreement.

- (iii) In the event either United States Transporters and/or Canadian Transporters take any action pursuant to the

respective transportation agreement with Buyer or Seller which would terminate or avoid such transportation agreements prior to November 1, 1992, Buyer or Seller, as applicable, may likewise terminate this Agreement upon ten (10) Days' notice to the other party; whereupon, after such ten (10) Day period, this Agreement, except for accrued obligations, shall be of no further force and effect. It is expressly understood that Buyer's indemnity in Subsection 2.2(c)(ii) shall be considered an accrued obligation and shall survive any termination of this Agreement instituted by Buyer pursuant to this Subsection 2.2(c)(iii).

2.3 Upon receipt by either party (herein called the "receiving party"), on terms and conditions acceptable to that party, of any of its respective certificates, permits, licenses, authorizations or proposed contracts referred to in this Article II, (herein called an "authorization"), the receiving party shall notify the other party and shall within five (5) Days promptly transmit to the other party a copy of such authorization, whereupon, the other party shall, within ten (10) Days of receipt thereof, give notice to the receiving party advising of its acceptance or rejection of such authorization. Thereafter, immediately following the other party's acceptance or rejection of such authorization, the receiving party shall give notice to the other party advising of its acceptance or rejection as aforesaid. Each party's acceptance or rejection of such authorization(s) shall be in its sole discretion.

In the event that any authorization described in this Article II is rejected by either party, the parties agree that they shall negotiate in good faith as to what actions, if any, should be undertaken to remedy the situation.

2.4 If an application made by either party for a certificate, permit, license or other authorization or contract referred to in this Article II is denied, that party shall promptly so notify the other party.

2.5 Seller and Buyer will use diligent efforts to satisfy those conditions for which each is responsible and shall keep each other advised as to progress in satisfying such conditions.

2.6 Provided that this Agreement shall not have terminated as provided above, if by December 31, 1992 (or such earlier date is indicated herein) any condition referred to in this Article II has not been satisfied on terms and conditions acceptable by both parties, or if Gas has not been capable of flowing on a firm basis to Buyer from the Point of Delivery because the requisite facilities are not in place and it reasonably appears such facilities will not be constructed and operational at a satisfactory time thereafter, then either party may provide written notice to the other party of its election to terminate this Agreement and unless all unsatisfied and unaccepted conditions are either satisfied or accepted by each of the parties or waived within ninety (90) Days after the receipt of such notice, this Agreement at the end of such ninety (90) Day period shall terminate.

ARTICLE III
TERM OF AGREEMENT

3.1 This Agreement shall, subject to the other terms of this Agreement, become effective on the date hereof and shall, except as otherwise specifically provided, continue in full force and effect until fifteen (15) Years after Commencement of Firm Deliveries.

3.2 At any time within ten (10) Years prior to the end of the term of this Agreement, either party may notify the other party of its desire to extend the then effective term of this Agreement by a term of up to ten (10) Years.

If both parties agree in writing to extend the term of this Agreement, then, subject to receipt of regulatory approvals and the availability of firm transportation for the duration of the proposed extended term, the proposed extension shall for all purposes be in effect. In the event the parties hereto agree to extend the term of this Agreement but Seller does not wish to continue as shipper under Seller's Transportation Contract, Buyer shall be given the first and exclusive one time opportunity to accept an assignment of Seller's rights under such Transportation Contract subject to the condition that Seller and Buyer receive all necessary, or required regulatory approvals, the consent of TCPL and the complete release by TCPL to the assignment of Seller from any obligations thereunder. If Buyer fails to accept any such offer by Seller to assign Seller's Transportation Contract within sixty (60) Days of such offer, any further right of Buyer to an entitlement to, or an assignment of, Seller's Transportation Contract, under this Subsection, shall terminate.

3.3 If at the end of the term of this Agreement, as such term would be determined by Subsection 3.1 or 3.2, there are remaining volumes of Unpurchased Gas or Base Gas, then the term of this Agreement and all provisions hereof, shall, with the written mutual consent of both parties (not to be unreasonably withheld) be extended for a term of Days equal to the amount calculated by taking the sum of the then remaining volumes of Unpurchased Gas and Base Gas and dividing this sum by the MDQ in effect on what would have been the last Day of the term of this Agreement except for an extension pursuant to this Subsection 3.3.

Any such extension of the term as hereby contemplated will be subject to any and all required regulatory approvals and to the availability of firm transportation contracts on Canadian Transporters and United States Transporters, at volumes equal only to the MDQ then in effect with a contract term coincident with the length of any extended term as hereby contemplated. Any regulatory approvals and transportation contracts must be acceptable to each party and the acceptance of each party of such approvals shall be in their sole discretion. It shall be deemed to be reasonable for Seller to withhold its consent to extend the term hereby if Seller determines in its sole discretion that Seller's Gas Supply Pool, after taking into account then existing commitments for Gas from such pool, would be insufficient on the basis of then existing deliverability and a reserves/production calculation, to satisfy any such contemplated extension.

ARTICLE IV
QUANTITY

- 4.1 (a) On Commencement of Firm Deliveries and continuing during the entire term of this Agreement, Seller agrees that it shall sell and deliver, and Buyer agrees that it will receive and purchase, the quantity of Gas, up to the MDQ, which Buyer requests Seller to deliver during each Day.
- 4.1 (b) The parties agree that, prior to the date of Commencement of Firm Deliveries, they shall keep each other informed on a reasonable efforts basis as to the construction progress of their respective transporters and as to the availability of any interruptible or reduced firm transportation service on such transporters that might allow for early Gas deliveries to occur. If transportation service can be effected amongst the various transporters which would permit such interruptible or reduced firm early Gas deliveries to occur, the parties hereto agree to negotiate in good faith to attempt to effectuate a sale and purchase of Gas under such circumstances. Unless otherwise agreed, any such sale or purchase of such early Gas deliveries will be at prices calculated in accordance with the terms of this Agreement and will be subject to all required regulatory approvals by Canadian Regulatory Authorities and U.S. Regulatory Authorities.
- 4.1 (c) If full delivery of the MDQ to Buyer cannot occur on Commencement of Firm Deliveries because United States Transporters are experiencing delays in construction of the necessary pipeline or related facilities which are necessary to permit Buyer to accept the Gas at the Point of Delivery, then it is the intention of the parties that deliveries commence at a reduced level if possible.

In circumstances of partial or no deliveries, to the extent that Seller may be relieved of any financial obligations by Canadian Transporters with respect to any components affecting the Demand Charge, Seller shall credit Buyer on an equivalent basis.

- 4.1 (d) In the event that due to construction of pipelines or related facilities on Canadian Transporters, Commencement of Firm Deliveries is delayed to a date subsequent to the dates:
- (i) on which the necessary license to export Gas from Canada commences; or
 - (ii) on which the necessary permit to allow removal from the Province of Alberta commences;

then Seller agrees, within one Month after Commencement of Firm Deliveries, to proceed to make application to the NEB or the ERCB, or both as the case may be, to extend the date on which the necessary export license or removal permit expires, to a date fifteen (15) Years after the Commencement of Firm Deliveries. If the Seller is not successful in obtaining such an extension of its export license or removal permit, then the term of this Agreement, as referred to in Article III, shall conclusively be deemed to be amended to expire the earlier of the expiry of the then existing NEB export license or the ERCB removal authorization, as such were originally obtained in respect of the sale of Gas as covered by this Agreement.

4.2 In the event that a Minimum Take Deficiency occurs with respect to any Quarter, Buyer agrees to pay Seller in accordance with Subsection 7.3 a "Deficiency Payment", which shall mean and be equal to the product obtained when the Heating Value equivalent of the Minimum Take Deficiency is multiplied by twenty percent (20%) of the "Arithmetic Average Monthly Commodity Charge" applicable to the Quarter in which the Minimum Take Deficiency was incurred. The Heating Value equivalent of the Minimum Take Deficiency shall be calculated by converting the Minimum Take Deficiency to GJ's based on the weighted average Heating Value of the gas delivered at the Point of Delivery in the final Month of the Quarter in which the Minimum Take Deficiency was incurred; however, if no gas was delivered in the final Month, the last Month in which deliveries were made shall be utilized. For the purposes of this Subsection, the "Arithmetic Average Monthly Commodity Charge" applicable for a Quarter shall be calculated by adding the Commodity Charges that would be calculated for each Month in the Quarter in question, and dividing this sum by three (3).

4.3 If at any time for any reason whatsoever, Buyer is not able to accept full deliveries of the MDQ at the Point of Delivery, or if pursuant to Subsection 4.4 the MDQ has been reduced, Seller will have the right, for the time or times and to the extent any Spare Capacity exists, to use the Spare Capacity for its own purposes, assign its rights to such Spare Capacity to a third party, or, to sell Gas to a third party which would otherwise be sold to Buyer and use the Spare Capacity to transport such volumes to the third party. To the extent of the volume level that Seller utilizes Spare Capacity, it will credit Buyer with Offset Demand Charges. It is understood, however, that Seller shall be under no obligation whatsoever to seek to obtain supplementary markets to enable it to utilize all or a portion of any Spare Capacity. Any credit from Seller due to Buyer, as provided in this Agreement, including, without limitation, a credit to Buyer for Demand Charges which credit will be provided to the extent Seller is itself relieved of such charges by the Canadian Transporter,

shall be handled separately. Seller agrees not to use interruptible transportation to deliver Unpurchased Gas on Canadian Transporters to third parties to the extent that on any given Day Spare Capacity exists to move such volumes.

4.4 If for any period or periods of 730 consecutive Days, Buyer takes a volume of Gas less than the amount resulting after subtracting (ii) from (i) below where,

(i) equals 75% of the sum of the MDQ in effect for each Day in a 730 Day period, and,

(ii) equals the total of volumes not delivered or received during the 730 consecutive Day period due to force majeure as determined pursuant to Article XV,

then Seller, at any time within forty five (45) Days after the end of the 730 consecutive Day period in question, shall have the right to serve Buyer with a notice, to be effective sixty (60) Days after receipt by Buyer, (during the sixty Day period the parties shall meet to discuss matters), to permanently reduce the Maximum Daily Quantity to a volume equal to the aggregate quantities delivered during the subject 730 Day period (which aggregate amount shall be deemed to include quantities, up to the MDQ nominated for but not delivered or received for reasons of force majeure, as determined pursuant to Subsection 15.4(b)) divided by 730. Seller shall continue to credit Buyer with any Offset Demand Charges as may be required, but calculated with respect to a reduced MDQ. Upon any reduction to the MDQ taking effect the Demand Charge otherwise payable by Buyer shall thereafter be correspondingly reduced for all purposes under this Agreement.

4.5 (a) The parties hereto agree that Seller shall have the right and complete authority at its sole discretion to dispose of Unpurchased Gas, without compensation to Buyer or without any obligation to deliver equivalent amounts to Buyer. Seller's right and discretion to dispose of Unpurchased Gas shall include without limitation the right to use directly or by way of displacement this Gas for: (1) sales of such Gas to third parties, (2) any of Seller's purposes or projects, whatsoever whether external or internal, or then existing or existing in the future, or (3) sales or delivery to an Affiliate of Seller. Any such disposal of Unpurchased Gas by Seller shall be accounted for on a Total Usage basis, whereby the first such units of Gas designated as Unpurchased Gas will be deemed to be the first units of Unpurchased Gas subsequently disposed of. Seller will, on a reasonable efforts basis, inform Buyer of any proposed dispositions of Unpurchased Gas and as to the availability of such Gas for purchase by Buyer at future times. Within ninety (90) Days of the end of each Contract Year, Seller will tabulate for Buyer the then remaining quantities of Unpurchased Gas and Base Gas at the end of such Contract Year.

(b) Subject to the other qualifications herein provided, any volumes of Gas representing Base Gas or volumes of Unpurchased Gas not otherwise disposed of by Seller under the terms or authority of this Agreement, will upon request of Buyer be made available by Seller for disposition to Buyer at the Point of Delivery at volumes above MDQ on a reasonable efforts basis at any time full delivery of the MDQ also occurs. Seller's obligation to provide deliveries of any such Gas to Buyer at the Point of Delivery will be subject to other existing firm commitments drawing supply from Seller's Gas Supply Pool, the ability of Seller to provide necessary economic and physical deliverability from Seller's Gas Supply Pool, (both as determined in Seller's sole discretion), and to the concurrent availability of interruptible transportation on Canadian Transporters and United States Transporters for the quantities of such Gas requested, as well as to any further required regulatory approvals by Canadian Regulatory Authorities or U.S. Regulatory Authorities. Buyer will pay for such Gas volumes at the higher of:

- (i) the Commodity Charge rate in effect at the time of delivery to Buyer applicable to the MDQ volumes, or
- (ii) the highest per unit commodity price Seller could receive or was offered from a third party (other than a third party that is an Affiliate of Seller), for Gas during the requested delivery period, or
- (iii) such other price as Buyer and Seller may mutually agree upon,

and shall also pay any and all transportation charges of any nature whatsoever incurred by Seller in connection with deliveries of such Gas and pay for any fuel gas requirements at the rate set forth in Subsection 4.5(b)(i) above.

(c) Unless otherwise agreed, any volumes of Gas delivered to Buyer pursuant to Subsections 4.5(b) or 4.7 hereunder shall be firstly applied in reducing any accumulation of volumes attributable to a Minimum Take Deficiency and then available to Buyer until it is reduced to zero, and then to apply in reducing existing volumes of Unpurchased Gas until it is reduced to zero, after which it shall then be applied to reduce the volume of Base Gas.

4.6 Buyer, and not Seller, shall be responsible for all Gas charges or Gas requirements of the United States Transporters unless otherwise agreed to in writing by the parties hereto.

4.7 (a) Subject to the other provisions of this Subsection 4.7, Seller shall only have the obligation make available for disposition to Buyer, and Buyer shall only have the right to nominate such volumes attributable to a Minimum Take Deficiency that may have accumulated in a Quarter, in the 365 Day period immediately following the Quarter for which such tabulation of that Minimum Take Deficiency applies.

Any volume attributable to a Minimum Take Deficiency that has not been repurchased within the 365 Day period following the Quarter for which it was tabulated shall be deemed to become Unpurchased Gas for all purposes under this Agreement effective immediately following the end of such 365 Day period.

- (b) Seller's obligations to make available to Buyer volumes of Gas attributable to a Minimum Take Deficiency, shall be subject to the following:
- (i) that Buyer's nominations for volumes of Gas attributable to a Minimum Take Deficiency shall not be considered as part of the MDQ and shall only occur with respect to a Day when the full MDQ is being accepted at the Point of Delivery by Buyer and when interruptible transportation on Canadian Transporters is available to Seller, at the nomination amount of such volume attributable to a Minimum Take Deficiency, to the Point of Delivery (or such other delivery point agreed to by Seller and Buyer);
 - (ii) that interruptible transportation service is available to Buyer from the Point of Delivery (or such other delivery point agreed to by Seller and Buyer) for the amount of such nominations attributable to a Minimum Take Deficiency;
 - (iii) that the parties must have received and accepted any and all necessary regulatory authorizations to enable Seller to deliver and Buyer to receive such volumes attributable to a Minimum Take Deficiency nomination at the Point of Delivery; and
 - (iv) that Seller desires to make Gas supply available to service a nomination attributable to a Minimum Take Deficiency volume at the price determined in Subsection 4.7(c) and that Seller has the necessary physical and economic deliverability from Seller's Gas Supply Pool after taking into account other commitments serviced therefrom, to service the volumes attributable to a Minimum Take Deficiency nomination of Buyer, with the determination as to whether Seller desires to make such Gas available to Buyer and whether Seller has such deliverability to supply such Gas, to be in Seller's sole discretion;
- (c) Buyer shall pay for any such delivered volumes attributable to a Minimum Take Deficiency at the higher of:
- (i) the Commodity Charge rate in effect in the Month in which delivery of the volumes attributable to the Minimum Take Deficiency occurs; or,
 - (ii) the highest per unit commodity price Seller could receive or was offered from a third party (other than a third party that is an Affiliate of Seller) for Gas during the requested delivery period, or
 - (iii) such other price as Buyer and Seller may mutually agree upon,

and shall also pay any and all transportation charges whatsoever incurred by Seller in connection with deliveries of such volumes attributable to a Minimum Take Deficiency to Buyer and pay for any fuel gas requirements at the rate set forth in Subsection 4.7(c)(i) above.

- 4.9 (a) Seller is not obligated to provide Gas under this Agreement from any source other than from Seller's Gas Supply Pool.
- (b) Subject to all the provisions of this Agreement, the parties acknowledge that the maximum total quantity of Gas that may be delivered at the Point of Delivery under this Agreement shall not exceed 5,432,181 10³m³ (192 BCF).

ARTICLE V

COMMENCEMENT AND NOMINATION OF DELIVERIES

- 5.1 (a) Based on the best advice of Canadian Transporters as to completion of the necessary Canadian transportation facilities, Seller will, on a reasonable efforts basis attempt to forecast for Buyer a date sixty (60) Days in advance of the date for Commencement of Firm Deliveries. At the time of the execution of this Agreement, the expected date of the Commencement of Firm Deliveries is November 1, 1991. Based on the best advice of United States Transporters as to completion of the necessary United States transportation facilities, Buyer will on a reasonable efforts basis attempt to forecast for Seller, the date forty-five (45) Days in advance of the date it expects to place its first nomination for Gas delivery hereunder and shall provide written notice of at least ten (10) Days in advance of the date it expects to place its first nomination for Gas delivery hereunder.
- 5.1 (b) The parties hereto agree to work with their respective transporters and use reasonable efforts to have these transporters coordinate construction of transportation facilities to attempt to ensure Seller can deliver the MDQ and Buyer can begin to accept delivery of the MDQ at the same time.
- 5.2 Seller will commence its delivery of Gas in accordance with Buyer's nomination provided for in Subsection 5.1. Seller will adjust its delivery of Gas in accordance with Buyer's nomination; provided that such nomination conforms to the requirements of this Agreement and those of the Canadian Transporters and is received no less than twenty-four (24) hours in advance of any desired change to decrease a nomination and forty-eight (48) hours in advance of any change to increase a nomination.

If a Non-Business Day (or Days) occurs within a time for which a nomination change is to occur, a further twenty-four (24) hour period for each such Non-Business Day shall be added to the base twenty-four (24) hour or forty-eight (48) hour notification requirement. If no nomination is received by Seller for any Day, the last nomination shall remain in effect.

- 5.3 Notwithstanding that nominations are made on a Daily basis, Buyer shall, when possible, provide Seller with a Monthly forecast of its Gas requirements, one Month in advance of the first Day of each Month.

ARTICLE VI
PRICE

- 6.1 The Contract Amount to be paid by Buyer to Seller for the demand service to be rendered and/or commodity supplied by Seller under this Agreement shall consist of the following components:
- (a) A Transportation Charge, determined Monthly in accordance with Subsection 6.3 and payable beginning with the Commencement of Firm Deliveries, but regardless of whether Gas is delivered in any Month; and,
 - (b) A Commodity Charge for Gas actually delivered by Seller to Buyer determined Monthly in accordance with Subsection 6.4.
- 6.2 All charges billed to Buyer or Seller shall be expressed in United States dollars. Any necessary conversions from either United States or Canadian currency with respect to any charges for any Month shall be calculated at the rate of exchange for such Month, which rate of exchange shall be the average of the noon spot exchange rates for the United States dollar in terms of Canadian dollars for such Month, as published by the Bank of Canada; unless the rate of exchange is required to be calculated in a manner that may be prescribed from time to time by Canadian governmental or Canadian Regulatory Authorities.
- 6.3 (a) The Transportation Charge for each Month, shall be the sum of the following amounts:
- (i) a monthly demand charge being the amount billed Seller by TCPL based on the approved demand toll per 10^3m^3 as determined by the NEB and in effect from time to time and applicable to the transportation of $991.5 \times 10^3 \text{m}^3/\text{day}$ (25 MMcf/d) from Empress, Alberta, to the Point of Delivery and to include any other fixed toll or charge levied by TCPL and affecting the delivery of the Gas hereunder as approved by the NEB; plus,
 - (ii) a charge for actual fuel gas (priced at the Commodity Charge) supplied to TCPL by Seller in accordance with the TCPL notice of requirements for fuel gas as approved by the NEB and relating to the transportation of volumes of Gas hereunder to Buyer; plus,
 - (iii) the commodity transportation costs as charged by TCPL (as approved by the NEB) for the volumes delivered by Seller to Buyer at the Point of Delivery and any other variable tolls, other charges or other costs whatsoever, approved by the NEB and charged by TCPL for service by TCPL affecting the delivery of any Gas under this Agreement including, without limitation, any additional charge or cost, whether lump sum or incremental, involved in providing linepack to or on TCPL; plus,

- (iv) a charge for cost of service for firm transportation service on NOVA each Month, charged to Seller as a sum of the following factors:
- (A) a demand charge for NOVA T-5 receipt point service (or equivalent) based on a fixed quantity of Gas deemed to be delivered and equal to 120% of a deemed delivery of $991.5 \times 10^3 \text{ m}^3$ (35 MMcf) for each Day of each Month; plus, for each Month, an amount equal to a deemed Demand Charge payable to NOVA as if additional sufficient firm capacity on NOVA existed for T-5 receipt point service for 120% of amounts of fuel gas notified to be supplied each Month to TCPL pursuant to Subsection 6.3(a)(ii); plus,
 - (B) a demand charge for NOVA T-5 delivery point service (or equivalent) based on a fixed quantity of Gas deemed to be delivered and equal to 100% of a deemed delivery of $991.5 \times 10^3 \text{ m}^3$ (35 MMcf) for each Day of each Month; plus, for each Month, an amount equal to a deemed demand charge payable to NOVA as if additional sufficient firm capacity on NOVA existed for T-5 delivery point service for amounts of fuel gas to be supplied each Month to TCPL pursuant to Subsection 6.3(a)(ii); plus,
 - (C) a charge for actual fuel gas (priced at the Commodity Charge) consumed by NOVA for transportation of Gas volumes equal to the volumes delivered to Buyer at the Point of Delivery hereunder plus TCPL's fuel gas requirements; plus,
 - (D) a charge at the NOVA firm transportation, unit charge commodity rate, therein in effect, multiplied by the actual volumes of Gas transported on behalf of Buyer by Seller on NOVA during the Month, to include additional volumes for fuel gas provided to TCPL for such deliveries and any other tolls, charges, or costs levied by NOVA affecting the delivery of Gas hereunder, plus;
- (v) any amount of any single or multi-stage sales tax, business transfer tax or value added tax, leviable by any Canadian Provincial or Federal Governmental authority on Seller for any transportation services provided by Canadian Transporters or leviable on fuel gas supplied to Canadian Transporters and referable to the volumes of Gas for which such transportation service is available to make deliveries to Buyer under this Agreement, including any amounts in increased costs or charges incurred and payable directly or indirectly by Seller as a result of the imposition of any such tax on Canadian Transporters.

6.3 (b) It is understood and agreed that the Buyer shall at all times and in all circumstances during the term or any extended term of this Agreement remain liable for the Demand Charge components of the Transportation Charge regardless of Gas deliveries, and except to the specific extent provided in Subsections 4.4 and 14.2(b), the same shall not be subject to revocation mitigation or reduction for any cause whatsoever including without limitation, any Non-Excused Performance, any Excused Performance, any Daily Underdelivery, or any other failure by Seller to deliver for any reason whatsoever, or any incident or incidents of force majeure whatsoever whether directly or indirectly affecting Buyer, Seller or a third party. Although Seller may be liable from time to time to pay Buyer certain credits under this Agreement, to include without limitation Offset Demand Charges, or credits for Demand Charges to the extent Seller is itself entitled to such a credit from a Canadian Transporter, such credits shall be calculated separately and payable separately and shall not automatically reduce Buyer's obligation to pay the full Demand Charge. To the extent and only to the extent that Seller may not have settled a specific financial liability to Buyer under this Agreement that has been agreed to by Buyer and is not the subject of a bona fide dispute for which a final non-appealable judgement of a competent court has been rendered, Buyer may set off the amount and only the amount of such determined financial liability against an equivalent amount of obligation to pay the Demand Charge.

6.3 (c) Any conversion from volume units to heating units required for the purpose of this Subsection 6.3 shall be based on the Heating Value of the Gas transported on TCPL's system in the Month of delivery and as detailed in its invoice to Seller.

6.4 (a) In this Subsection 6.4, the variables used in the equations are more fully defined in Appendix A. The following terms used in Subsection 6.4 and Appendix A shall have the following meanings:

(i) "Base Period" means the six Month time interval beginning on July 1, 1988 and ending on December 31, 1988;

(ii) "Commodity Gas Charge" refers to the Gas cost component of the Representative Pipelines' commodity charges determined in accordance with:

Tennessee - Rate Schedule CD-6 Gas Charge
Texas Eastern - Rate Schedule DCQ Zone D Commodity Gas;

- (iii) "Initial Base Price" means U.S. \$1.45/MMBtu;
- (iv) "Period" means any Month during the term hereof;
- (v) "Representative Pipelines" means Tennessee and Texas Eastern;
- (vi) the symbol "*" means to multiply by;
- (vii) the symbol "/" means to divide by;
- (viii) "BBL" means barrel, equal to 42 U.S. Gallons;
- (ix) "Texas Eastern" means Texas Eastern Transmission Corporation

6.4 (b) Subject to Appendix A, the Commodity Charge shall be calculated in accordance with this Subsection 6.4 and shall be payable in respect to all gas delivered at the Point of Delivery. If any discrepancies or conflicts arise between this Subsection 6.4 and Appendix A, Appendix A shall prevail. This Subsection 6.4 is intended to give a general review of the Commodity Charge calculation. Appendix A has all the detailed definitions and formulas for the Commodity Charge calculation.

(c) The Commodity Charge shall be calculated in respect of each Month by escalating the Initial Base Price. The escalation factor used to escalate the Initial Base Price shall be the Massachusetts Market Weighted Average Price Index as set forth in Subsection 6.4(d). The Commodity Charge for a Period shall be determined in accordance with the formula:

$$CS_i = [(U.S. \$ 1.45/MMBtu)/(1.054678 GJ/MMBtu)] * (IDX_i)$$

where:

CS = the Commodity Charge in U.S. \$/GJ calculated on or before the 10th Day of the Month following the Period;

IDX = the Massachusetts Market Weighted Average Price Index of the Period;

i = represents the Period for which the Commodity Charge is being determined.

(d) The Massachusetts Market Weighted Average Price Index shall equal the weighted average of the individual percent changes of the prices of Gas, Residual Fuel Oil, and Distillate Fuel Oil for the Period relative to the Base Period. The weighting shall be based on the percent energy consumption of Gas, Residual Fuel Oil, and Distillate Fuel Oil in Massachusetts.

The Massachusetts Market Weighted Average Price Index for a Period shall be determined in accordance with the formula:

$$IDX_i = \left[\frac{(NGS_i * NG\%_i)}{(2.0838)} + \frac{(\#6S_i * \#6\%_i)}{(2.2344)} + \frac{(\#2S_i * \#2\%_i)}{(3.4330)} \right] / 100$$

where:

NGS = represents the arithmetic average of the Representative Pipelines' Commodity Gas Charges;

NG% = represents the percent energy consumption of Gas in respect of the sum of the energy consumption of Gas, Residual Fuel Oil, and Distillate Fuel Oil in Massachusetts;

#6S = represents the spot barge price of Residual Fuel Oil in New York;

#6% = represents the percent energy consumption of Residual Fuel Oil in respect of the sum of the energy consumption of Gas, Residual Fuel Oil, and Distillate Fuel Oil in Massachusetts;

#2S = represents the U.S. tank car truck transport lot price of Distillate Fuel Oil in Boston;

#2% = represents the percent energy consumption of Distillate Fuel Oil in respect of the sum of the energy consumption of Gas, Residual Fuel Oil, and Distillate Fuel Oil in Massachusetts;

i = represents the Period for which the Commodity Charge is being determined.

(e) If during the term of this Agreement, any published data included in or necessary for the computations or indexing specified in this Subsection 6.4 or Appendix A (herein referred to as a "Reference Indicator") should undergo restructuring, cease to be published, or become unavailable to the parties hereto, the parties shall agree on a substitute indicator that is effectively equivalent to the Reference Indicator which is no longer available. Careful consideration should be given to the base price as affected by the Reference Indicator, to ensure that it can still be used to accurately represent the price trend with the substitute indicator. A new base price may have to be created for the substitute indicator. Should the parties not be able to agree on a substitute indicator, the matter of selection of a substitute indicator may be submitted to arbitration in accordance with the provisions of Article XVII. The arbitrators shall not utilize data from a publication where the point of delivery for Residual Fuel Oil or Distillate Fuel Oil is such that consumption by one or more buyers, for example delivered to Boston Harbour,

could unreasonably influence the relative consumption or price of Residual Fuel Oil or Distillate Fuel Oil. Prior to the determination of the arbitrators, the Commodity Charge per unit for Gas during this period shall be the arithmetic average of the per unit Commodity Charge over the prior twelve (12) Month period, with such Monthly prices not to be weighted by volumes taken in those Months.

6.5 The Seller shall be responsible for calculating the Monthly Contract Amount in accordance with this Agreement.

6.6 (a) Either party may, by giving written notice to the other of not less than one hundred twenty (120) Days, or more than one hundred fifty (150) Days, prior to June 1, 1991 and the last Day of each of the 3rd, 6th, 9th or 12th Contract Years, and any third Year thereafter, require renegotiation of the provisions of Subsection 6.4 of this Agreement (herein in this Subsection 6.6 referred to as the "Commodity Charge Pricing Reopener"). If pursuant to any such renegotiation, the parties mutually agree, by written amendment to this Agreement, to modify the provisions of Subsection 6.4, such modifications, unless otherwise mandated, shall become effective as of the first Day of November following the date on which written notice of renegotiation was given (herein called the "Arbitration Effective Date"). If the parties have not agreed to modify the provisions of Subsection 6.4, as aforesaid, within sixty (60) Days after the date that written notice of the renegotiation was given, either party may, by giving written notice to the other prior to the first Day of November following the date on which written notice of renegotiation was given, submit the matter to arbitration in accordance with the following provision of this Subsection 6.6. and Article XVII.

(b) (i) The only matter to be referred to arbitration pursuant to this Subsection 6.6 and the only matters upon which the arbitrators shall render a final determination pursuant to this Subsection 6.6 shall be the issue of determining a fair and equitable market sensitive Commodity Charge, in accordance with the following overall objectives:

(A) as of the Arbitration Effective Date, establish a then current competitive fair and equitable New Base Price, if necessary, based upon evidence of the current Gas cost component of commodity prices (not including transportation costs) of Gas being purchased on a competitive basis in Massachusetts under long term firm contracts; and,

(B) establish a new methodology, if necessary, utilizing such variables, reference indicators and equations in conjunction with the New Base Price as are necessary to adjust the Commodity Charge upwards or downwards on a Monthly basis for a period of three Years from the Arbitration

Effective Date so as to track Monthly fluctuations in the Gas cost component of commodity prices (not including transportation costs) of Gas being purchased on a competitive basis in Massachusetts under long term firm contracts. The arbitrators may amend, delete or substitute such variables, equations and Reference Indicators utilized in Subsections 6.4(a) - (e) and Appendix A (as may be amended) as are necessary to satisfy the overall objectives.

It is expressly understood that, in rendering a final determination regarding a fair and equitable market sensitive commodity charge, the arbitrators may change or modify, either individually or in total, the then current (1) Base Price, (2) indices or (3) methodology.

(ii) In fulfilling the objective set forth in Subsection 6.6(b), the arbitrators are directed to:

(A) determine or estimate the Commodity Charge for Gas for the Month immediately preceding the Arbitration Effective Date in accordance with the terms of this Agreement and compare it with evidence of the current Gas cost component of commodity prices of Gas being purchased on a competitive basis in Massachusetts under long term firm contracts, in order to establish a New Base Price;

(B) with regard to the comparison made in "A" above and based on the New Base Price so established, determine a methodology to index this New Base Price so that the future Monthly Commodity Charges for Gas will, on a Month to Month basis, track and be competitive with the Gas cost component of commodity prices (not including transportation costs) of Gas being purchased on a competitive basis in Massachusetts under long term firm Contracts, and;

(C) provide that future Monthly Commodity Charges so determined will be greater than the price established by the Province of Alberta from time to time for purposes of setting a minimum per unit royalty charge and allow Seller to meet or satisfy any tests required by the NEB for export sales of Gas;

(iii) The arbitrators shall consider the following evidence and factors in rendering their determination:

(A) The availability of alternate energy sources in Massachusetts and the effect such alternate energy sources could have on the use and value of Gas purchased on a competitive basis in Massachusetts under long term firm contracts;

- (B) The relative growth and decline projections in consumption of Gas and alternate energy sources in Massachusetts. Relative growth and decline projections shall be based on historical data as well as forecasted changes in the factors, including regulatory, that influence the relative consumption of Gas and such alternate energy sources in Massachusetts;
- (C) Any and all data, confidential, proprietary or otherwise possessed by Buyer or Seller indicating purchasing practice, and commodity prices and consumption percentages of Gas and alternate energy sources anywhere in the State of Massachusetts;
- (D) The inclusion and value of any provisions and mechanisms advantageous to either the Buyer or Seller in this Agreement;
- (E) The relative corporate size and financial stability of the parties hereto and any other provision or factor in this Agreement influencing supply security and price;
- (F) The effect of any tax imposed on Buyer or Seller;
- (G) Similarities and dissimilarities between the provisions of this Agreement and the provisions of other competitive contracts for the purchase of long term firm Gas in Massachusetts;
- (H) The long term nature of this Agreement;
- (I) The current Gas cost component of commodity prices of Gas being paid by Buyer and other local distribution companies in Massachusetts for Gas purchased on a competitive basis in Massachusetts under long term firm contracts.
- (J) The time at which the price for Gas was agreed to by respective buyers and sellers under any Gas contracts for which evidence is adduced by a party hereto;
- (K) The historical performance or reasonableness of any methodology agreed to by the parties or any arbitrated methodology in arriving at any Commodity Charge previously paid Seller by Buyer pursuant to this Agreement; however, in looking at a previous methodology or historical performance the arbitrators shall not attempt to seek to adjust the Commodity Charge for any new period to mitigate the effect of any real or perceived unfairness in the Commodity Charge for a previous period;
- (L) The arbitrators in their consideration shall neither give effect to nor recognize consumption practices of one or more buyers of alternate fuels (excluding Gas)

if such buyers unreasonably influence the relative consumption, or lower the price of such alternate fuels in Massachusetts; and

- (M) Evidence of available, existing, alternate and/or new reference indicators or variables and evidence as to any other indicators or sources which track fluctuations in the prices of Gas;

6.6 (c) Pending the outcome of any such arbitration, the terms in effect immediately prior to such arbitration shall remain in effect to govern the relationship of the parties until the Arbitration Effective Date. If the decision of the Arbitrators is rendered subsequent to the Arbitration Effective Date such decision shall be made effective retroactive to the Arbitration Effective Date as contemplated by this Agreement, and the parties shall adjust all billings as necessary and settle any differences or amounts owing within thirty (30) Days of the date the decision is rendered. Any modification approved by the arbitrators shall be effective prospectively from the Arbitration Effective Date only for a term not to extend beyond the time when the next Commodity Charge Pricing Reopener under this section which could occur has been concluded by negotiation or arbitration.

6.7 (a) Modifications to the provisions of Subsection 6.4 pursuant to Subsection 6.6, including determinations of the arbitrators, shall, if required, be subject to obtaining the receipt of all governmental and regulatory approvals necessary to make such actions effective without modification. The parties shall promptly apply for such approvals.

(b) If any such governmental or regulatory approval is denied, the party receiving such denial, shall give notice thereof to the other party within five (5) Days of receipt thereof. Such a notice, unless the parties otherwise agree, shall be deemed to be notice of an "Order" by a Governmental Authority as contemplated by the provisions of Subsection 16.2(a)(i), and the provisions of Subsections 16.2(a) and 16.2(b) shall apply to govern the rights and obligations of the parties hereto. The Commodity Charge in effect if approval has been denied shall be that Commodity Charge as determined by the methodology for which the last regulatory approval was received. Such methodology shall remain in effect to determine the Commodity Charge until a successful nonappealable reversal of the regulatory denial occurs or at the time at which a Commodity Charge determined under the next scheduled Commodity Charge Pricing Reopener takes effect, whichever first occurs. If the regulatory Order has been successfully and finally reversed the methodology to determine the Commodity Charge as was agreed to or which was determined by arbitration and for which approval was initially denied, shall then become effective until the time a Commodity Charge determined under the next scheduled Commodity Charge Pricing Reopener is to take effect.

ARTICLE VII
PAYMENTS

- 7.1 In any Month in which Buyer purchases Replacement Gas Supply, Buyer shall present to Seller, on or before the 15th Day of each billing Month, a statement and bill for the immediately preceding Month showing the Unit Cost Difference and the quantity of any Replacement Gas Supply purchased by Buyer (if any) pursuant to Subsection 20.2. Upon request of Seller, Buyer will also present evidence that the Unit Cost Difference was incurred and paid for by Buyer and that such Replacement Gas Supply was obtained in accordance with Subsection 20.2. Payment shall be made to Buyer by Seller, subject to any reasonable objection by Seller, within twenty (20) Days of the receipt of such bill. If Seller objects to a bill by Buyer for the Unit Cost Difference of such Replacement Gas Supply, it shall furnish security bearing interest equal to the Prime Rate for the amount in dispute which interest shall follow distribution of the principal upon final resolution and determination as to payment.
- 7.2 Commencing with the Month immediately following the Month in which Gas is first delivered hereunder, or following the Month in which Commencement of Firm Deliveries occurs, whichever first occurs, Seller shall, on or before the 10th Day of such Month (herein referred to as a "Billing Month"), render to Buyer a statement showing the quantity of Gas delivered at the Point of Delivery during the preceding Month under this Agreement and the applicable Commodity Charge and Transportation Charge components of the Contract Amount. Seller shall describe in the statement and deduct from the total amount payable by Buyer any credits payable to Buyer by Seller under this Agreement. Buyer shall make payment within ten (10) Days following receipt of such statement from Seller or the 25th Day of the Billing Month, whichever is later. Any adjustments necessary to reflect actual deliveries or otherwise shall be made in the following Monthly invoice if possible or within the period provided in Subsection 7.5 in any event.
- 7.3 Within thirty (30) Days following the end of each Quarter in each Contract Year, Seller shall render to Buyer a statement showing the Minimum Take Deficiency, if any, and the Deficiency Payment, if any, owed, in respect of the Quarter. A Deficiency Payment when owed shall be paid by Buyer within ten (10) Days of receipt of such statement from Seller.
- 7.4 Should Buyer or Seller fail to pay all of the amount of any bill, as herein provided, when such amount is due, then, to the extent appropriate interest bearing security has not otherwise been furnished by a party hereto, monthly compound interest shall accrue on the unpaid part of such bill at a rate of interest equal to the Prime Rate, to commence on the date such payment is due. All such interest shall be payable by Buyer or Seller, as applicable, on demand. If any such failure by Buyer to pay

continues for a period of thirty (30) Days after payment is due, Seller shall have no obligation pursuant to Subsection 20.2 and may, without penalty or liability, in addition to any other remedies that it may have, suspend further delivery of Gas hereunder until such amount is paid. Notwithstanding the foregoing, Buyer may make reasonable objection to a bill submitted by Seller. If Buyer in good faith disputes the amount of any such bill or any part thereof, and shall have paid Seller such amounts as Buyer concedes to be correct and if Buyer at any time within twenty (20) Days after a demand made upon Buyer by Seller for security with respect to the amount in dispute, shall have furnished interest bearing security in a form satisfactory to Seller, acting reasonably, assuring payment to Seller of the amount ultimately found to be due to Seller upon such bill by agreement or by a decision of a court of competent jurisdiction, then Seller shall not be entitled to suspend further delivery of Gas because of any nonpayment unless and until Buyer defaults under the terms and conditions of such security. Interest on such furnished security shall be payable at the Prime Rate with such interest to follow the distribution of the principal.

- 7.5 Each party hereto shall have the right at all times with reasonable prior notice (no less than 3 business Days) to examine the books and records of the other party during normal business hours, to the extent necessary to verify the accuracy of any statement, charge, computation or demand under or pursuant to this Agreement. Any error or discrepancy in charts or statements furnished pursuant hereto shall be promptly reported to Seller or Buyer, as applicable, and proper adjustment thereof shall be made within thirty (30) Days after a final determination of the correct volumes or amounts involved; provided, however, that if no such errors or discrepancies are reported to Seller or Buyer, as applicable, within two (2) Years from the end of the Contract Year in which such errors or discrepancies occurred, the same shall be conclusively deemed to be correct.
- 7.6 All payments to Buyer or Seller shall be made in U.S. dollars. Payments shall be forwarded to the payee at payor's sole cost and expense by electronic transfer or certified cheque to the account of payee at a Canadian or U.S. financial institution to be designated by payee from time to time for receipt of such payment.

ARTICLE VIII

DELIVERY POINT: TITLE

- 8.1 Delivery of Gas by Seller to Buyer shall be at the Point of Delivery. Title and risk to Gas delivered hereunder shall pass to Buyer after Gas is delivered to Buyer at the Point of Delivery. All costs and expenses of transporting the Gas from and including the Point of Delivery shall be borne by Buyer.

- 8.2 As between the parties hereto, Seller shall be, or shall be deemed to be, in exclusive control and possession of the Gas sold hereunder and shall be responsible for any loss of Gas or damage or injury caused by or to the Gas until same has been delivered to Buyer at the Point of Delivery, at which time and after which point Buyer shall be deemed to be in exclusive control and possession of such Gas and be responsible for any loss of Gas, or damage or injury to, or caused by the Gas.

ARTICLE IX
DELIVERY PRESSURE

- 9.1 Seller will only be required to deliver Gas into NOVA at the delivery pressure required by NOVA.

ARTICLE X
QUALITY OF GAS

- 10.1 The Gas to be delivered hereunder shall at all times comply with the quality specifications of NOVA. Buyer acknowledges Gas delivered by Seller to NOVA shall be commingled into NOVA's common stream and TCPL's common stream and Buyer agrees for the purposes of this Agreement to accept such Gas and the measurements of the common stream as determined by TCPL and NOVA, as being Seller's Gas.
- 10.2 If the Gas offered for delivery at the Point of Delivery shall fail at any time to conform to the quality requirements of NOVA, then Buyer may refuse to purchase such Gas pending correction by Seller. If Buyer purchases Gas that does not conform to the above stated quality requirements, Buyer may notify Seller to take any reasonable action necessary to correct the quality deficiency.

ARTICLE XI
MEASUREMENT AND TESTS OF GAS

- 11.1 The parties agree that TCPL will be responsible for measurement of Gas quantity and Heating Value at the Point of Delivery, in accordance with its approved tariffs, tolls, and general conditions. The unit of measurement of Gas for purposes of billing the Commodity Charge component shall be one (1) GJ measured as hereinafter specified. The unit of measurement of gas for all other purposes under this Agreement shall be one (1) GJ of gas for Heating Value and one Cubic Metre (m³) for volume. The parties hereto accept measurements provided by TCPL as final and correct for all purposes hereunder subject only to any adjustment as may be agreed to by TCPL.

11.2 (a) The quantity and Heating Value of Gas delivered to a United States Transporter for Buyer's account at the Point of Delivery shall be determined by the Canadian Transporter transporting Gas to the Point of Delivery in accordance with the then current standard terms and conditions applicable to such Canadian Transporter's Gas transportation contracts.

(b) Should it be necessary to make a conversion from Systems International (S.I.) units to Imperial units, the following table shall apply:

- (i) One GJ of Gas measured at a standard condition of 101.325 kilopascals and 15 degrees Celsius shall be considered equivalent to 0.9481567 MMBtu of Gas at a standard condition of 14.73 psia and 60 degrees Fahrenheit;
- (ii) One MMBtu of Gas at a standard condition of 14.73 psia and 60 degrees Fahrenheit shall be considered equivalent to 1.054678 GJ's of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius;
- (iii) One Mcf of Gas at a standard condition of 14.73 psia and 60 degrees Fahrenheit shall be considered equivalent to 28.32784 m³ of Gas at a standard condition of 101.325 kilopascals and 15 degrees Celsius; and
- (iv) One m³ of Gas at a standard condition of 15 degrees Celsius and 101.325 kilopascals shall be considered equivalent to 0.03530096 Mcf of Gas at a standard condition of 14.73 psia and 60 degrees Fahrenheit.

11.3 Check Measuring Equipment: To the extent permitted by TCPL or Champlain, or such other United States Transporters, Buyer may install, maintain and operate at its own expense, such check measuring equipment as desired, provided that such equipment shall be so installed as not to interfere with the operation of TCPL's measuring equipment. Any pressure or volume control regulators installed by Buyer shall be operated so as not to interfere with TCPL's measuring facilities.

11.4 Rights of Parties: The measuring equipment so installed by either party together with any building erected by it for such equipment, shall be and remain its property. However, Seller and Buyer shall have the right to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done in connection with the other's or TCPL's measuring equipment (to the extent permitted by TCPL) used in measuring or checking the measurement of delivery of Gas under this Agreement.

11.5 Calibration and Test of Measuring Equipment: The policies and procedures in Seller's Transportation Contract, shall govern verification of measurement and correction of errors.

11.6 Preservation of Metering Records: To the extent the same are made available by their respective transporters, Seller and Buyer shall each preserve for a period of at least six (6) Years all test data, charts and other similar records. Microfilms of the original documents shall be considered true records.

ARTICLE XII
WARRANTY OF TITLE

12.1 Seller hereby warrants that at the time of delivery:

- (i) that it will have good title or the right to sell to Buyer the Gas delivered hereunder;
- (ii) that all such Gas shall be free from any and all liens, encumbrances and adverse claims of any nature; and
- (iii) that it shall have obtained all approvals or findings of producer support that may be required by Canadian Regulatory Authorities.

12.2 Except for specified charges for which Buyer is responsible, or for taxes hereunder for which Buyer has agreed to assume any direct or indirect burden, Seller will indemnify and save Buyer harmless from all suits, claims, liens, damages, costs, losses, expenses and encumbrances of whatsoever nature arising from and out of claims of any or all persons to said Gas or title thereto, or to royalties, taxes, license fees, payments or other charges thereon applicable before the title to the Gas passes to Buyer.

12.3 Except for specified charges hereunder for which Seller is responsible, Buyer will indemnify and save Seller harmless from all suits, claims, liens, costs, losses, expenses and encumbrances of whatsoever nature arising from and out of claims of any or all persons to said Gas or title thereto, or to royalties, taxes, license fees, payments or other charges thereon applicable after the title to the Gas passes to Buyer.

ARTICLE XIII
TAXES

13.1 Except to the extent Buyer is or may be required to pay a specified charge to Seller as a tax relating to a part of the Transportation Charge or must specifically reimburse Seller under this Agreement for a payment relating to a tax as part of the Transportation Charge, Seller shall pay or cause to be paid all taxes, royalties and other assessments and levies imposed on Seller with respect to Gas delivered hereunder prior to or on a concurrent basis with its delivery to Buyer at the Point of Delivery (including, but without limitation, all severance and sales taxes and any levy imposed pursuant to the Take-or-Pay Cost Sharing Act, as amended, or any similar legislation), and Buyer shall pay or cause to be paid all taxes and assessments imposed upon Buyer with respect to Gas delivered hereunder after its receipt by Buyer at the Point of Delivery. Neither party shall be responsible or liable for any taxes or other statutory charges levied or assessed against any of the facilities of the other party used for the purpose of carrying out the provisions of this Agreement.

ARTICLE XIV
SUPPLY SECURITY

14.1 Seller need only provide Gas hereunder from Seller's Gas Supply Pool Buyer and Seller will meet annually to review Sellers' supply/demand balance.

The parties agree that Buyer shall have the right, such right not to occur more frequently than every fifth Contract Year, to retain at Buyer's expense, an industry recognized independent engineering firm to conduct an audit and review of Seller's Gas Supply Pool, gas purchase agreements contributing to such pool, and Seller's gas sale agreements serviced from Seller's Gas Supply Pool, to ensure that Seller is able to meet its obligations hereunder. The independent engineering firm will conduct its audit solely on the basis as to whether or not Seller would have been reasonably considered able to have demonstrated to the ERCB, using as a basis the ERCB tests that would have been required on January 1, 1989, that it possessed sufficient reserves in Seller's Gas Supply Pool, after examining all commitments from such pool, to have obtained a Removal Permit from the Government of the Province of Alberta for the balance of the term of this Agreement (such term to be calculated without regard to any possible extension of this Agreement pursuant to Subsections 3.2 or 3.3) utilizing the lowest MDQ in effect at the time of the review by such firm multiplied by the number of Days unexpired in the term, to compute the required reserve number. Seller agrees to cooperate with such audit. Buyer and Seller agree to enter into a confidentiality agreement with such independent engineering firm. No specific information regarding Seller's other contractual arrangements will be provided to Buyer and no information regarding pricing terms need be provided to the independent engineering firm.

If after such audit Seller's Gas Supply Pool is found to be inadequate to meet the obligations hereunder, and Seller agrees, Seller shall attempt to remedy such inadequacy within twenty-four (24) Months. If Seller disagrees with the independent engineering firm, then Seller will refer the matter to arbitration within thirty days of the audit decision.

Arbitration shall then be used to determine if Seller's Gas Supply Pool, after taking into account other existing commitments on such pool, would be adequate to meet the obligations of Seller hereunder. The arbitrators shall determine the matter solely on the basis of the audit and review set forth above.

Seller and Buyer shall have the right to submit agreements and documents to the arbitrators but may keep confidential and blank out any terms of any agreements or documents that Seller or Buyer, as applicable, in their sole discretion, considers proprietary or competitive.

14.2 (a) If the decision of the arbitrators pursuant to Subsection 14.1 indicates that Seller's Gas Supply Pool, after taking into account other commitments on such pool, would be inadequate to meet Seller's obligations hereunder then Seller agrees to attempt to remedy such situation within twenty-four (24) Months of the date of the decision of the arbitrators. Until Seller remedies such inadequacy Seller further agrees not to dedicate any new reserves to any new sale contracts or make additional firm sales from Seller's Gas Supply Pool for terms in excess of one year. At the end of this twenty-four (24) Month period, either as a result of arbitration or otherwise, Seller at its sole cost and expense must demonstrate to Buyer the adequacy of reserves in Seller's Gas Supply Pool to meet its obligations hereunder. If after such demonstration, the Buyer is not yet satisfied, the matter will again be referred to arbitration in accordance with the parameters for arbitration previously set forth in Subsection 14.1. If the arbitrators again determine that reserves in Seller's Gas Supply Pool, after taking into account other commitments on such pool, are still inadequate to meet Seller's obligations hereunder, Buyer, within forty-five (45) Days of the decision of the arbitrators, shall have the right to serve written notice to the Seller (to be effective at the end of sixty (60) Days unless otherwise agreed) to permanently reduce the MDQ under this Agreement to a volume equal to the level of the volume of the reasonable Gas supply determined to be available by the arbitrators in Seller's Gas Supply Pool, divided by the remaining Days in the term of this Agreement (such term to be calculated without regard to any possible extension of the term pursuant to Subsections 3.2 or 3.3).

If Buyer should serve a notice to reduce the MDQ, Buyer may, provided Buyer notifies Seller in the same notice, indicate that Buyer desires to accept a partial assignment of Seller's Transportation Contract from Seller at the level of the amount by which the MDQ was reduced by Buyer. Any such assignment shall be effected pursuant to Subsection 21.3.

(b) If a reduction to the MDQ occurs pursuant to this Subsection 14.2 the Demand Charge otherwise payable by Buyer shall be correspondingly reduced for all purposes under this Agreement.

14.3 Seller reserves all rights to conduct its business free from any interference of Buyer and, without limitation, to operate its wells, conduct drilling and otherwise conduct operations entirely at its own discretion. Seller shall have the right to commingle Gas to be delivered hereunder on the Canadian Transporters and to deliver such Gas to Buyer and further extract constituents other than methane from such Gas prior to delivery to Buyer.

ARTICLE XV
FORCE MAJEURE

- 15.1 In the event either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, except for the obligations to make payments hereunder, it is agreed that, upon such party giving written notice and reasonably full particulars of such force majeure, to the other party within a reasonable time after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as such obligations are affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period. The term "force majeure", as employed herein and for all purposes relating hereto, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, explosions, fires, arrests and restraints of governments and people, civil disturbance, repairs to remedy breakage, mechanical breakdowns, or accident affecting facilities in Buyer's System or Seller's facilities or facilities associated with Seller's supply located in the Province of Alberta or pipeline facilities of Canadian Transporters or United States Transporters used to transport Gas to Buyer, inability of any party hereto to obtain necessary materials or permits due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities (federal, provincial, state or local), including both civil and military, the binding order of any court or governmental authority which affects delivery of Gas hereunder or materially modifies the provisions of this Agreement, and any other causes whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.
- 15.2 Notwithstanding Subsection 15.1, the following shall not be events of force majeure: (a) a party's lack of funds, (b) insufficiency of Seller's Gas Supply Pool due to lack of development or contracting of reserves, (c) events directly or indirectly caused by the negligence or the contributory negligence of the party claiming suspension to which the failure to perform is directly or indirectly related, (d) a lack of market for the Gas in Buyer's System.
- 15.3 The party claiming suspension of its obligations as aforesaid shall promptly remedy the cause and effect of the force majeure insofar as it is reasonably able to do so; provided that the terms of the settlement of any strike, lockout or other industrial disturbance shall be wholly in the discretion of the party claiming suspension of its obligations hereunder by reason thereof and no reasonable delay in making a settlement with respect to any strike, lockout or other industrial disturbance shall deprive the party of the benefit of force majeure.

15.4 (a) Subject to Subsection 15.5:

- (i) "Buyer's Force Majeure" means an event of force majeure which has rendered Buyer unable to take or utilize all or any of the Gas which it is entitled to purchase hereunder and, as a result of which, Buyer claims suspension of its obligations hereunder in accordance with Subsection 15.3;
 - (ii) "Third Party Force Majeure" means an event of force majeure, other than a Buyer's Force Majeure or a Seller's Force Majeure, which, without limitation, renders Seller unable to transport all or any of the gas on the facilities of any of the Canadian Transporters or which renders Buyer unable to transport all or any of the gas to Buyer's System;
 - (iii) "Seller's Force Majeure" means an event of force majeure which has rendered Seller unable to deliver all or any of the gas required to be delivered hereunder to NOVA and, as a result of which, Seller claims suspension of its obligations hereunder in accordance with Subsection 15.3;
- (b) For the purpose of calculating Buyer's nomination on any Day in which there is a Seller's Force Majeure, Third Party Force Majeure or Buyer's Force Majeure, Buyer's nomination shall be deemed to be the lesser of:
- 1) the average daily quantity of Gas (not to exceed on any Day the MDQ) actually nominated for the last week immediately previous to the incident which gave rise to the claim for force majeure;
 - 2) the average daily quantity of Gas (not to exceed on any Day the MDQ) actually nominated for the past 90 Days immediately previous to the incident which gave rise to the claim for force majeure; and
 - 3) Buyer's actual nomination.
- (c) The quantity of Gas which Buyer was prevented from taking by reason of force majeure on any Day shall be the difference between the amount of Buyer's nomination on a Day as determined pursuant to Subsection 15.4(b) and the actual delivery on such Day,

15.5 In the event that a party's obligations hereunder are fully and completely suspended pursuant to this Article XV for a period of 365 Days or more as a result of any single event of force majeure other than a force majeure caused directly or indirectly by a Canadian Regulatory Authority or U.S. Regulatory Authority, the other party may, by sixty (60) Days written notice, terminate this Agreement, such termination to be effective sixty (60) Days after the giving of notice; provided that if within this sixty (60) Day period the event of force majeure has ended, the Agreement shall not be allowed to terminate. If this Agreement is

terminated hereby, all obligations between the parties, including Buyer's obligations to pay the Demand Charge, will, except for accrued obligations, likewise terminate.

- 15.6 If as a result of any event of force majeure, Seller has only a portion of its Gas supply available from Seller's Gas Supply Pool to be delivered to all of its Direct Sales or Consumption Markets, then Seller will firstly curtail supply under any interruptible gas sales contracts or markets it may hold and then will allocate remaining available deliverable supply for all its Firm Direct Sales or Firm Consumption Markets on a prorata basis. The portion of Seller's supply affected by force majeure shall be deemed to be the difference between Buyer's nomination (as such nomination is placed by Buyer unless a nomination for Buyer is otherwise deemed or determined by this Agreement) and the share made available to Buyer under the equitable prorationing hereunder contemplated.

ARTICLE XVI
GOVERNMENTAL RULES AND REGULATIONS

- 16.1 This Agreement shall, with regard to Subsections 16.2(a) and 16.2(b), be subject to all valid laws, orders, directives, rules and regulations of any governmental body or official having jurisdiction over either party or over this Agreement and the sale or purchase of Gas hereunder. This Agreement shall promptly be filed with the ERCB, the NEB and the DPU and shall become effective at the time herein specified or such later time as those Canadian Regulatory Authorities or U.S. Regulatory Authorities having jurisdiction may so require. For purpose of clarity, this Agreement shall be subject to review and approval by the DPU in any proceeding brought under Chapter 164 of the Massachusetts General Laws.
- 16.2 (a) Subject to Article II, but notwithstanding any other provisions of this Agreement to the contrary, the parties agree that in the event on or after the date of Commencement of Firm Deliveries, any Canadian Regulatory Authority or U.S. Regulatory Authority issues any determination, enacts valid and applicable legislation, issues a valid and applicable rule or order, or takes any other action which either prevents this sale or would materially alter the rights or obligations of either party under this Agreement or effects a significant adverse change in any substantive provision of this Agreement, or imposes any tax that causes either or both parties hereto economic hardship, (in this Subsection any of such occurrences to be hereafter referred to as an "Order"), then the following procedure shall apply:
- (i) Within fifteen (15) Days of the issuance of the Order, each party hereto shall notify and specify in writing to the other party the particular respect or respects in which such Order may be unacceptable to such party.

- (ii) If either party gives notice to the other that the Order is not acceptable in whole or in part, then both parties agree to use their good faith reasonable efforts to cure or modify this Agreement in accordance with such Order.
 - (iii) Provided two Years have passed after Commencement of Firm Deliveries, within ninety (90) Days of the issuance of an Order, a party who has notified the other party pursuant to Subsection 16.2(a)(i) that the subject Order is unacceptable, may give notice to terminate this Agreement effective two Years after the Day in which notice to so terminate is received; whereupon, after such two Year period, this Agreement shall be of no further force and effect except for accrued obligations, and unless within this two Year period the subject Order has been reversed by the issuing regulatory body or finally and successfully appealed and overturned by a Court with proper jurisdiction, or the parties have otherwise agreed to modify the Agreement to conform to the Order.
 - (iv) If no such notice to terminate this Agreement is served by a Party within ninety (90) Days of the issuance of the subject Order, there shall be no further right to serve notice to terminate this Agreement as a result of the issuance of the subject Order and both parties shall be deemed to have irrevocably accepted and submitted to the terms of the subject Order.
 - (v) Notwithstanding the good faith reasonable efforts undertaken pursuant to Subsection 16.2(a)(ii), if the Order remains in a form and substance unacceptable to Buyer or to Seller, in each party's sole discretion, to be exercised reasonably and in good faith, Buyer and Seller shall each file petitions for rehearing of the Order under any applicable provision of law as may be appropriate or required; however subject to Subsection 16.2(a)(iii) any appeal or petition for rehearing shall not vacate any such termination notice pursuant to Subsection 16.2(a)(iii).
 - (vi) If unsuccessful on appeal or rehearing and if the Order becomes final, Buyer and Seller shall file petitions for review of the Order under any applicable provision of law before any court with proper jurisdiction; however, subject to Subsection 16.2(a)(iii), any such petition for review shall not vacate any such termination notice pursuant to Subsection 16.2(a)(iii).
- 16.2 (b) If a termination notice is given pursuant to Subsection 16.2(a)(iii) that would be effective to terminate this Agreement on a Day other than the last Day of a Quarter, then, for purposes of Subsection 4.2, a Minimum Take Deficiency shall be calculated for the last partial Quarter and shall be that amount of Gas representing the difference after subtracting (B) and (C) from (A) below,

and this calculation shall take precedence over the manner otherwise available to calculate a Minimum Take Deficiency:

- (A) shall equal the sum of the MDQ for each expired Day in such Quarter, less quantities equivalent to the sum of the positive number amount of Non-Excused Performances measured for the number of Days in the expired Quarter less quantities not delivered to Buyer due to an event or events of force majeure as determined pursuant to Article XV; and
- (B) shall equal the sum of the Gas nominated by Buyer on a daily basis up to the MDQ during the same period of expired Days,
- (C) shall equal the sum of the MDQ for the full Quarter, multiplied by 25%,

In the event there is a positive number result after calculating Minimum Take Deficiency as aforesaid for the last partial Quarter, Buyer shall pay Seller a Deficiency Payment as contemplated in Subsection 4.2 based on the Minimum Take Deficiency (if any) as determined above and as if it was applicable to the complete Quarter in question.

- 16.2 (c) The parties shall on a reasonable efforts basis give each other notice of any regulatory proceeding in their respective jurisdictions that could affect this Agreement or the rights or obligations of the parties hereunder.

ARTICLE XVII
ARBITRATION

17.1 Disputes

To the extent it is specifically directed in this Agreement that disputes or matters arising out of or in connection with this Agreement are to be submitted to arbitration in accordance with this Agreement, subject to the specific qualifications regarding arbitration that may be directed in the referring provision, the same shall be referred to and finally resolved by arbitration pursuant to the provisions of this Article XVII. The arbitrators shall decide only factual issues submitted by the parties and shall not decide questions of law unless otherwise agreed by the parties. In the event the parties cannot agree which issues are issues of fact or law, then either party may submit the question to a court in accordance with Article XXIII.

17.2 Optional Arbitration

In any dispute where arbitration is not expressly required pursuant to this Agreement, either party may give notice of its intention to submit the issue to arbitration and shall provide reasonable details of the issue. If the other party does not deliver written notice of objection to such arbitration notice within thirty (30) calendar Days after receipt of the notice, that party shall be deemed to agree to submission of the issue to

arbitration. If written notice of objection by the other party is delivered within the said thirty (30) Day period, arbitration shall not be available and either party may pursue such dispute in accordance with Article XXIII.

17.3 Submission to Arbitration

The party initiating an arbitration (the "Initiating Party") shall provide written notice to the other (the "Receiving Party") of its intent to submit a dispute to arbitration. Such notice shall contain a description of the dispute and shall separately state each issue involved in the dispute together with supporting exhibits and affidavits. The Receiving Party shall respond to such notice within ten (10) Days separately stating each issue it believes is involved in the dispute together with supporting exhibits and affidavits. Each issue submitted by a party for arbitration shall include an opinion of counsel that such issue is properly and adequately framed for resolution by the arbitrators and are proper subjects for consideration under this Agreement.

17.4 Appointment of Arbitrators

The Initiating Party shall appoint one (1) arbitrator in its notice to the Receiving Party. The Receiving Party shall within ten (10) Days of receipt of such notice appoint one (1) arbitrator. If the Receiving Party should fail to appoint an arbitrator in the manner set forth above, then the arbitrator shall be appointed in accordance with the Arbitration Rules set forth in Subsection 17.9. The two arbitrators so appointed shall name a third arbitrator, or, if they fail to do so within ten (10) Days of the second arbitrator's appointment, and upon the application of either party, such third arbitrator shall be appointed in accordance with the Arbitration Rules set forth in Subsection 17.9, with the qualification that the third arbitrator so appointed shall be qualified by education, training and experience to pass upon the matters in the arbitration.

17.5 Place of Arbitration

The place of arbitration shall be Toronto, Ontario, Canada.

17.6 Arbitration Proceedings

The arbitrators shall make the necessary arrangements for the taking of a stenographic record of the proceedings, the expense of which shall be borne by the parties on an equal basis. The arbitrators may require the parties to deposit in advance such sums of money deemed necessary to defray the expenses of arbitration. The arbitration proceedings shall commence within twenty (20) Days after the appointment of the three arbitrators and shall be concluded and a final award made within forty-five (45) Days after such appointment of the three arbitrators, subject to any reasonable delay due to unforeseen circumstances.

17.7 Arbitration Award

The determination of the arbitrators shall be in writing and signed by the arbitrators, or a majority of them, and shall be final, conclusive and binding on the parties and the parties shall abide by the award and perform the terms and conditions thereof.

17.8 Operations Continued

Whenever there is an arbitration proceeding, operations under this Agreement shall continue in the same fashion as they were conducted before the arbitration proceeding was commenced, without prejudice to either party, pending a decision in the arbitration proceeding.

17.9 Arbitration Rules

The Uncitral Model Law on International Arbitration and its rules as adopted by the United Nations Commission on International Trade Law as amended from time to time (herein referred to as the "Uncitral Rules") including its rules of evidence, if any, shall, except to the extent they may be inconsistent with or conflict with the terms of this Agreement relating to any arbitration of any matter under this Agreement, be applicable in dealing with procedural and substantive issues in any arbitration. The Uncitral Rules shall not allow the arbitrators to expand the parameters of any arbitration conducted pursuant to this Agreement where this Agreement specifically defines or limits the parameters and matters for consideration by the arbitrators.

17.10 Language

The language of the arbitration shall be in English.

17.11 Governing Law

This Agreement shall be interpreted and construed according to the laws of the State of New York, notwithstanding any reference in such laws to the laws of another jurisdiction; and arbitrators appointed hereunder shall apply said laws to the merits of the dispute before them.

ARTICLE XVIII ASSIGNMENT

18.1 The terms, covenants and conditions hereof shall be binding on the parties hereto and on their successors and assigns.

18.2 Either party may assign its interest under this Agreement, without the consent of the other party, to an Affiliate whose performance the assignor guarantees or to any company which shall succeed, by purchase, merger, consolidation or other transfer, to substantially all of the assignor's assets. In the event of any

such assignment, such successor shall be entitled to the rights and shall be subject to the obligations of its predecessor. Except as provided above, neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. In any event, the party assigning its interest shall not, without a specific written agreement, be released from any of its obligations by the other party. Nothing herein contained shall prevent or restrict either party from pledging, granting a security interest in, or assigning as collateral all or any portion of such party's interest in this Agreement to secure any debt or obligation of such party under any mortgage, deed of trust, security agreement or similar instrument, provided that the rights of the secured party shall be subject to the terms of this Agreement.

ARTICLE XIX
NOTICES

19.1 Except as otherwise herein specifically provided, any notice, request, demand or statement shall be given in writing. Written notice shall be deemed received on the earlier of: (i) the date actually received by the addressee; (ii) the Day following the date sent by telecommunications means to the numbers set forth below; or (iii) five (5) Days after mailing by prepaid double registered United States mail or Canadian mail, directed to the post office address of the parties as follows, provided that, at any time when there is a strike affecting delivery of either United States mail or Canadian mail, all such deliveries shall be made by hand or by telecommunications. Any notice, request, demand or statement if delivered by mail must also be delivered by hand or by telecommunications. Notices shall be given to the parties as follows:

To Seller:

1) For Financial/Invoicing or Payment Matters

Attention: Supervisor - Natural Gas & Sulphur
Sales Accounting

Esso Resources Canada Limited
Esso Plaza West Tower
237 - 4th Avenue S.W.,
Calgary, Alberta, Canada
T2P 0H6

2) For All Other Matters,

Attention: Manager, Natural Gas Sales

Esso Resources Canada Limited
Esso Plaza West Tower
237 - 4th Avenue S.W.,
Calgary, Alberta, Canada
T2P 0H6
Telecopy: 1-403-237-3354

To Buyer: All Matters

Attention: Vice-President Production & Supply

Boston Gas Company
One Beacon Street
Boston, Massachusetts, U.S.A.
02108
Telecopy: 1-617-742-8400

or at such address as either party may from time to time specify as its address for such purposes by written notice given pursuant to this Article.

ARTICLE XX
INDEMNIFICATION AND MITIGATION

- 20.1 If at any time a Daily Underdelivery occurs, Buyer shall use all reasonable and prudent efforts to mitigate the effect of same. Seller will advise Buyer of any expected or known situations of a Daily Underdelivery or durations of same.
- 20.2 (a) Notwithstanding any other provision of this Agreement, Seller shall be excused from and bear no responsibility to Buyer, nor shall Seller be liable to Buyer, for any failure to deliver any Gas quantity over and above MDQ.
- (b) Notwithstanding any provision of this Agreement, Seller shall bear no responsibility or liability to Buyer for any Daily Underdelivery, or Non-Excused Performance or Excused Performance, except to the specific extent provided for in this Article XX.
- (c) Seller shall be excused from any liability or responsibility whatsoever to Buyer for an Excused Performance.
- (d) To the extent that for any Day a Non-Excused Performance is indicated then Seller will have the following and only the following liability or obligations to Buyer:
- (i) Seller will reimburse Buyer for the Unit Cost Difference of a Replacement Gas Supply purchased by Buyer for which the costs to purchase such Gas have been incurred and paid for by Buyer and which the purchase of such Replacement Gas Supply is directly attributable to the Non-Excused Performance. Before becoming entitled to reimbursement for a Unit Cost Difference by Seller, Buyer must be able to reasonably demonstrate that Buyer has canvassed all available Gas supplies and accessed that Gas supply alternative from such supplies that provides the lowest incremental cost Replacement Gas Supply alternative available for the period or periods of Non-Excused Performance. It is

expressly understood that Buyer must demonstrate in any claim for a Unit Cost Difference as herein before provided, that the Replacement Gas Supply was actually attributable to the period in which Non-Excused Performance occurred and that the Replacement Gas Supply does not exceed the positive difference calculated for the Non-Excused Performance. In acting reasonably, consideration must be given, among other things, to Buyer's needs and efforts to maintain its system integrity.

- (ii) Seller, subject to any necessary regulatory approvals and restrictions under its transportation contract with TCPL, will, in situations of Seller's Force Majeure or where Seller is otherwise unable to deliver Gas to TCPL sufficient to satisfy Buyer's nomination up to the MDQ, on a priority basis, transport for Buyer, using Seller's Transportation Contract, alternate supplies of Gas arranged for purchase by Buyer up to the quantity of any daily underdelivery of Buyer's nomination, up to the MDQ.
- (e) Seller shall neither be liable nor responsible to Buyer for any third party damages whatsoever, third party claims whatsoever or consequential damages whatsoever suffered by a third party, and claimed by or through Buyer.
- (f) Buyer shall indemnify and save Seller completely harmless against all third party actions, proceedings, claims (including claims for consequential damages), debts, demands, losses, costs, damages, expenses and liabilities which may be brought against or suffered by Seller or which it may sustain, pay or incur by reason of any Daily Underdelivery, any Non-Excused Performance, any Excused Performance, or for any other failure by Seller to deliver Gas to the Point of Delivery for any reason whatsoever or by reason of personal injury or property damage sustained after the Gas is delivered to the Point of Delivery.

ARTICLE XXI
TRANSPORTATION ASSIGNMENT

- 21.1 Subject to the other provisions in this Article and Subsection 3.2, unless otherwise agreed to or Seller intends to surrender its rights to Seller's Transportation Contract, Seller shall have the exclusive rights to retain all rights to Seller's Transportation Contract at the end of the expiration of the term of this Agreement or such earlier date should this Agreement be terminated prior to a normal expiration of the term.
- 21.2 (a) Within ninety (90) Days of the expiration of the twelfth Contract Year of this Agreement, or at any other time prior to expiration of Seller's Transportation Contract or a termination or expiration of this Agreement determined pursuant to Subsections 16.2, 4.1(d), or Article III, if no extension of this Agreement pursuant to Subsection 3.2 has been agreed to, Seller will advise Buyer whether or not

Seller reasonably expects to renew and maintain Seller's Transportation Contract after the termination or expiration of the term of this Agreement. After Seller notifies Buyer, either within ninety (90) Days of the expiration of the twelfth Contract Year or after such other time that Seller advises that it does not reasonably expect to renew and maintain Seller's Transportation Contract. Buyer may, within ninety (90) Days after receipt of Seller's notice as aforesaid, elect to accept an assignment from the Seller of Seller's Transportation Contract, such assignment to be effective at the later of the end of the term of this Agreement or the end of the term of Seller's Transportation Contract. Seller shall only be obligated to assign Seller's Transportation Contract as aforesaid to the extent that any and all necessary regulatory approvals for both parties to such an assignment can be effected and TCPL agrees or will agree to a full and complete release of Seller from any and all obligations under Seller's Transportation Contract or the applicable tolls and tariffs connected therewith. Such a release by TCPL must be effective on the earlier of the termination or expiry date of this Agreement or the expiration or termination of the initial term of Seller's Transportation Contract. If Seller is or may be required to undertake any commitment whether financial or otherwise with regard to Seller's Transportation Contract on behalf of Buyer but before the assignment of such contract to Buyer can be made effective, Buyer, if it desires to accept a transportation assignment shall instruct Seller in writing to make such commitment on behalf of Buyer and Buyer agrees to indemnify Seller and save Seller completely harmless from any costs, charges, obligations or financial liabilities of any nature whatsoever that Seller could be exposed to as a result of making such commitment. Seller may require Buyer to post security or a performance bond in a manner and an amount satisfactory to Seller to ensure Buyer's obligations as aforesaid will be performed. The failure of Buyer to post such security or a performance bond as aforesaid shall completely absolve Seller of any obligation or liability to proceed to assign to Buyer, Seller's Transportation Contract.

- (b) If Buyer should fail to elect or to notify Seller within the ninety (90) Day period stipulated in Subsection 21.2(a) of Buyer's election to accept an assignment of Seller's Transportation Contract, any further right of Buyer to request or obtain an assignment of Seller's Transportation Contract shall be at an end unless both parties specifically agree in writing otherwise.

21.3 If Buyer notifies Seller pursuant to Subsection 14.2(a) of its desire to accept a partial assignment of Seller's Transportation Contract, Seller shall, subject to any required regulatory approvals, proceed to assign to Buyer that portion of Seller's Transportation Contract as is permitted to be assigned pursuant to Subsection 14.2(a) such assignment to be effected by splitting

Seller's Transportation Contract, as soon as is reasonably possible thereafter, except that if such an assignment cannot be effected at a reasonable time thereafter because TCPL will not split the Transportation Contract or otherwise will not agree to recognize Buyer and completely release Seller, then Seller agrees to hold such portion of Seller's Transportation Contract for the balance of the term of such transportation contract in trust for Buyer, and Buyer agrees to indemnify and save harmless Seller from any and all charges, liabilities, costs, legal costs or expenses, or any other costs or liabilities of any nature whatsoever, whether direct or indirect, and which Seller is or would be exposed to as a result of holding such portion of such transportation contract in trust for Buyer. Subject to the applicable tolls and tariffs and the terms of the transportation contract and to reimbursement by Buyer for any management costs, expenses and disbursement relating to such management, Seller agrees to manage such portion of such transportation contract in accordance with the terms of such transportation contract and the reasonable instructions of Buyer. Buyer shall be responsible, on terms satisfactory to either TCPL, Seller or both of them, for payment of any performance bonds that may be required by TCPL or by Seller to ensure obligations can be met in full. Buyer shall lose all rights to receive an assignment hereunder if Buyer fails to make available such a performance bond or bonds within sixty (60) Days of its request for an assignment of transportation rights. If an assignment can be effected to Buyer the parties shall seek a complete release of Seller by TCPL of any remaining liabilities or obligations pertaining to the term of the contract after the assignment. To the extent TCPL will not relieve Seller from liabilities or obligations assigned under Seller's Transportation Contract, Buyer agrees to fully and completely indemnify Seller from any charges, expenses, legal costs, or any other financial responsibilities or liabilities of any nature whatsoever arising directly or indirectly out of Seller's Transportation Contract to the extent of the interest assigned. Buyer also agrees in such circumstances, to post security or a performance bond on terms satisfactory to Seller guaranteeing payment to Seller of any amounts due and owing under Seller's Transportation Contract to the extent of any interest to be held in trust by Seller for Buyer. The failure of Buyer to post such security or a performance bond upon request of Seller shall terminate any obligation of Seller to effect an assignment to Buyer of the transportation rights under Seller's Transportation Contract or otherwise hold such rights in trust for Buyer.

- 21.4 Any obligations of the Buyer under this Article XXI or commitments made by Buyer with respect to any matter under this Article XXI shall be considered accrued obligations or obligations accruing at the time the commitment was made and shall survive any termination or expiry of this Agreement.

ARTICLE XXII

ETHICS

- 22.1 In the performance of this Agreement, the parties shall comply with and observe all applicable laws, regulations and orders of any proper authority applicable to the observance or performance of their obligations under this Agreement.

22.2 Each party agrees that all financial settlements, reports and billings rendered to the other party under this Agreement shall properly reflect the facts of all activities and transactions handled for that party's account, and may be relied upon as being complete and accurate in any further recording or reporting made by that party for any purpose.

22.3 A party shall notify the other party in writing promptly upon discovery of any failure to comply with this Article XXII.

ARTICLE XXIII
GOVERNING LAW & FORUM

23.1 This Agreement shall be governed by, interpreted and construed according to the laws of the State of New York notwithstanding any reference in such laws to the laws of another jurisdiction.

23.2 The parties agree that the Courts of the Province of Ontario shall be utilized in any matter or dispute or contemplated litigation between the parties arising under this Agreement that is not directed to be settled by arbitration by the provisions of this Agreement. The parties shall be restricted to prosecuting any such matters or disputes or actions against each other, only in the Courts of the Province of Ontario and the parties do hereby irrevocably attorn to the jurisdiction of the Courts in the Province of Ontario. The rules and procedures for the Courts in the Province of Ontario shall exclusively govern any such actions brought before them; however, in no event shall the substantive laws of a jurisdiction other than the State of New York apply to this Agreement. The parties agree that no actions under this Agreement may be prosecuted and decided in any forum using a jury and that no actions for punitive damages, penalty damages, multiple damages or any other damages over and above actual damages, may be brought by, claimed by or be awarded either party in any dispute or action.

ARTICLE XXIV
MISCELLANEOUS

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

24.2 The numbering and descriptive headings of particular provisions of this Agreement are for the purpose of facilitating administration and shall not be construed as having any substantive effect on the terms of this Agreement. Any reference to a particular Subsection, or Article is a reference to a portion of this Agreement unless otherwise specified.

24.3 This Agreement may be amended only by a written instrument executed by the parties hereto. This Agreement contains the entire understanding of the parties with respect to the matter contained herein. There are no promises, covenants or undertakings other than those expressly set forth herein.

- 24.4 Except as required by law, by the necessity to arrange for transportation, or due to regulatory reporting requirements (including all disclosures by Buyer necessary for purposes of engaging in proceedings before any U.S. Regulatory Authorities), this Agreement shall remain confidential between Buyer and Seller.
- 24.5 This Agreement shall supersede all previous written Agreements and oral understandings of the parties, including but not limited to that Precedent Agreement dated January 15, 1989 executed by Buyer and Seller.
- 24.6 If anywhere in this Agreement a number expressed in S.I. units is followed by a number in brackets in Imperial Units, the unbracketed S.I. number shall in each and every instance prevail. The bracketed numbers are intended to represent close equivalents of S.I. amounts for convenience purposes only and shall not be used to denote or determine any of the respective rights or obligations of the parties.
- 24.7 All provisions of this Agreement and all rights of the parties shall terminate upon expiry of this Agreement or on the effective date of any termination rights provided hereunder; except accrued obligations and audit rights will continue beyond such expiry date or termination date provided that prosecution by the other party or written communications relating to any accrued obligation or obligations, occurs within six Years of the effective termination or expiry date of this Agreement.
- 24.8 This Agreement may be executed in counterpart.

IN WITNESS WHEREOF this Agreement is executed in multiple originals effective as of the Day and Year first herein above written.

BOSTON GAS COMPANY (BUYER)
 BY: *William R. Luthern*
 NAME: William R. Luthern
 TITLE: Vice President Gas Supply and Production

ESSO RESOURCES	
PROD'N	FORM LAW <i>LM</i>
FINANCIAL <i>LM</i>	TERMS GAS <i>LM</i>
AUDIT <i>LM</i>	TAX <i>LM</i>

ESSO RESOURCES CANADA LIMITED (SELLER)
 BY: *R.G. Wilson*
 NAME: R.G. Wilson
 TITLE: Vice President Business Services



EXHIBIT 12

IMPERIAL OIL RESOURCES
FILE COPY

NATURAL GAS SALES - AMENDING AGREEMENT

between

BOSTON GAS COMPANY

and

IMPERIAL OIL RESOURCES

dated October 30, 1992

CHS/mca/278a

RETURN TO
GAS SUPPLY DEPT.
LIBRARY

NATURAL GAS SALES - AMENDING AGREEMENT

THIS AGREEMENT, made as of the 30th day of October, 1992

BETWEEN:

Boston Gas Company ("Buyer"), a Massachusetts Corporation with its principal place of business in Boston, Massachusetts

- and -

Imperial Oil Resources, an Alberta Limited Partnership, with its principal place of business in Calgary, Alberta ("Seller")

WHEREAS Esso Resources Canada Limited, as Seller, entered into a long term Natural Gas Sales Agreement dated May 1, 1989 (the "Gas Contract") with Buyer, and as Esso Resources Canada Limited has effected certain reorganizations since the date of the Gas Contract, which the parties wish to recognize in this Amending Agreement;

AND WHEREAS the parties entered into an Interim Gas Pricing Agreement dated April 28, 1992 which expires October 31, 1992;

AND WHEREAS the parties desire to further amend the Gas Contract upon terms and conditions set forth in this Agreement (the "Amending Agreement");

NOW, THEREFORE in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

1. Seller's Reorganization

Effective January 31, 1991, Esso Resources Canada Limited transferred all of its interest as Seller in the Gas Contract to Esso Resources Canada, an Alberta limited partnership of which Esso Resources Canada Limited is a general partner. Effective July 2, 1992, Esso Resources Canada Limited and Esso Resources Canada effected certain further organizational changes, including changing their respective names to Imperial Oil Resources Limited and Imperial Oil Resources. Effective January 1, 1993, Imperial Oil Resources Limited amalgamated with affiliated companies and was continued as Imperial Oil Resources Limited. Imperial Oil Resources agrees that it is fully bound by and will perform the obligations of Esso Resources Canada Limited under the Gas Contract, and Boston Gas Company agrees to accept Imperial Oil Resources as Seller under the Contract in the place of Esso Resources Canada Limited, on the understanding that the corporate entity formerly known as "Esso Resources Canada Limited" and now known as "Imperial Oil Resources Limited" remains liable under the Contract as a general partner of Imperial Oil Resources. Seller and Buyer agree to cooperate to secure any required regulatory consents or approvals in respect of Seller's reorganization.

2. Subsection 1.1(hh)

Subsection 1.1(hh) of the Gas Contract is deleted and replaced by the following:

"Minimum Take Deficiency" is incurred for a Quarter when Buyer fails to take the Minimum Quarterly Quantity for that Quarter, and is the volume expressed in 10^3m^3 calculated as follows: i) Minimum Quarterly Quantity for the Quarter; less ii) the actual Quantity of Gas taken by Buyer in that Quarter (but not including Gas taken in excess of the MDC on any Day in the Quarter). There is no Minimum Take Deficiency for a Quarter if the result of this calculation is zero or a negative number. The Minimum Take Deficiency for a quarter will be reduced in accordance with Subsection 4.2(b).

3. Subsection 4.2

Subsection 4.2 of the Gas Contract is changed to 4.2(a) and a new Subsection 4.2(b) is added as follows:

Any Minimum Take Deficiency calculated for a Quarter shall be reduced or eliminated by available Deficiency Volume Credits, with the reduction or elimination of the Minimum Take Deficiency to be calculated before converting the Minimum Take Deficiency to GJs as set out in Subsection 4.2(a) and prior to calculating the Deficiency Payment to be made under Subsection 4.2(a) in respect of that Quarter. The following rules apply:

- i) "Deficiency Volume Credit" means the volume of gas, not including any gas purchased in excess of the MDQ on any day, expressed in 10^3m^3 , actually purchased by Buyer in a Quarter from Seller under this agreement which is in excess of 87.5% of the MDQ multiplied by the number of Days in the Quarter.
- ii) The Minimum Take Deficiency for a Quarter in a Contract Year will be reduced by any outstanding Deficiency Volume Credits in that Contract Year.
- iii) A Deficiency Volume Credit for a Quarter may not be applied to a previous Quarter in the Contract Year (to recover a Deficiency Payment made under Subsection 4.2(a) for a previous Quarter), and any outstanding Deficiency Volume Credits at the end of a Contract Year are deemed to be zero and may not be used in any subsequent Contract Year.
- iv) Deficiency Volume Credits for Quarters in a Contract Year will be cumulative, and will be reduced to the extent they are used to reduce a Minimum Take Deficiency under this Subsection.

4. Subsection 5.2

Subsection 5.2 of the Gas Contract is deleted and replaced with the following:

Seller will commence its delivery of Gas in accordance with the Buyer's nomination provided for in Subsection 5.1. Seller will adjust its delivery of Gas in accordance with Buyer's nomination provided that such nomination conforms to the requirements of this Agreement and those of the Canadian Transporters and is received no less than seven (7) days in advance of any delivery month. Buyer's nomination shall be binding for the delivery month. Notwithstanding the foregoing, Seller shall have no obligation to, but will at its sole discretion, accommodate changes in Buyer's nomination after this date. If no nomination is received by Seller for any Month, the last nomination shall remain in effect.

5. Subsection 5.3

Subsection 5.3 of the Gas Contract is deleted and replaced by the following:

Buyer shall, when possible, provide Seller with a Monthly forecast of its Gas requirements, one Month in advance of the first day of each Month.

6. Subsection 5.4(a), (b), (c), (d)

Subsection 5.4 (a), (b), (c) and (d) of the Gas Contract is deleted and replaced by the following Subsection 6.4(a):

The Commodity Charge shall be calculated in accordance with this Subsection 6.4(a) and shall be payable in respect of all Gas delivered at the Point of Delivery.

The Commodity Charge will be calculated for each Month or part Month as follows:

(i) $CC = IBP$ multiplied by $PIDX$ divided by 1.054678 GJ / MMBtu

where:

(ii) "CC" means the Commodity Charge in that Month, in U.S. \$ / GJ

(iii) "IBP" means the Initial Base Price of

a) U.S. 1.45 per MMBtu for the months of March, April, May, June, July, August, September, and October and,

b) U.S. 1.595 per MMBtu for the months of November, December, January and February.

(iv) "PIDX" means the Price Index for that Month, which is calculated as:

(v) $PIDX = RGP$ divided by $RGPS$.

where:

(vi) "RGPS" means the Regional Gas Price Base value, which value shall be U.S. \$1.46 per MMBtu as determined in accordance with the following formula:

(vii) $RGPS =$ (the sum of the RGPs calculated for the year 1991) divided by 12; and

(viii) "RGP" means the Regional Gas Price for a Month, in U.S. \$ / MMBtu calculated as:

(ix) $RGP = (.7$ multiplied by $USGP) + (.3$ multiplied by $CDNGP)$,

where:

(x) "USGP" means the U.S. Gas Price in that Month based on the arithmetic average of the following components:

a) The arithmetic average of U.S. spot prices, in U.S. \$ / MMBtu, into Tennessee Gas Pipeline as reported in the first issue of "Inside F.E.R.C.'s Gas Market Report", index value reported on the table titled "Prices of Spot Gas Delivered to Pipelines".

EXHIBIT D

**PRECEDENT AGREEMENT
FOR FIRM TRANSPORTATION OF NATURAL GAS
MARITIMES & NORTHEAST PIPELINE**

This PRECEDENT AGREEMENT FOR FIRM TRANSPORTATION OF NATURAL GAS ("Agreement") is dated and effective as of the 16th day of December, 1997, by and among Maritimes & Northeast Pipeline, L.L.C., a limited liability company formed under the laws of the state of Delaware (referred to hereinafter as "Maritimes & Northeast-U.S."), Maritimes & Northeast Pipeline Limited Partnership, a limited partnership formed under the laws of the province of New Brunswick (referred to hereinafter as "Maritimes & Northeast-Canada"), and Boston Gas Company, a Massachusetts corporation, (referred to hereinafter as "Customer"). From time to time herein, Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada may be referred to jointly and collectively as "Maritimes & Northeast." Notwithstanding such references, however, Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada are and shall remain separate legal entities for tax and other purposes; and to that end, each of said entities will enter into and maintain its own separate service agreements with Customer or its affiliate and other customers; and the fact that both entities are parties to this Precedent Agreement is solely for the purpose of facilitating and simplifying certain U.S. and Canadian regulatory filings described below. Maritimes & Northeast and Customer are sometimes collectively referred to herein as the "Parties" and singly as a "Party."

WITNESSETH:

WHEREAS, Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada are developing and propose to construct and operate a natural gas pipeline project ("Pipeline Project") extending from Country Harbour, Nova Scotia, Canada, to the Canadian-United States border and through the states of Maine and New Hampshire into Massachusetts for the delivery of natural gas from the Sable Offshore Energy Project for various customers which execute agreements with them; and

WHEREAS, the Pipeline Project is proposed to be constructed in two (2) primary phases: Phase I will extend from a point of interconnection with Tennessee Gas Pipeline Company near Dracut, Massachusetts, to a point of interconnection with Granite State Gas Transmission, Inc. ("Granite State") near Wells, Maine, with an anticipated in-service date of November 1, 1998; and Phase II will extend from Wells, Maine to an interconnection with the Sable Offshore Energy Project gas processing plant in Country Harbour, Nova Scotia, Canada, with an anticipated in-service date of November 1, 1999; and

WHEREAS, Customer desires to obtain firm transportation service from Maritimes & Northeast to be made available from Phase II of the Pipeline Project; and

WHEREAS, Maritimes & Northeast is willing to pursue all reasonable efforts to develop Phase II of the Pipeline Project and to proceed with obtaining all the necessary

governmental authorizations therefor, including authorization from the Federal Energy Regulatory Commission ("FERC") and from the National Energy Board of Canada ("NEB"), provided that Customer commits to obtain firm transportation service under the terms of this Agreement; and

WHEREAS, upon completion of the Phase II-U.S. Segment, Phase I of the Pipeline Project will be integrated into and become part of said Phase II-U.S. Segment; and

WHEREAS, subject to the terms and conditions set forth in this Agreement, Maritimes & Northeast is willing to endeavor to construct or cause to be constructed the necessary Phase II Pipeline Project pipeline facilities to render the requested firm transportation service as described in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements herein contained, and intending to be legally bound, Maritimes & Northeast and Customer agree to the following:

1. Customer intends by executing this Precedent Agreement, subject to the further terms and conditions hereof, to enter into Service Agreements with Maritimes & Northeast-U.S. and Maritimes and Northeast-Canada for firm transportation service on Phase II of the Pipeline Project for a term that begins with the date of commencement of Phase II service and continues through October 31, 2002 ("Primary Term"), which Service Agreements shall provide for a Maximum Daily Quantity ("MDQ") as set forth in Section 5(a) below; provided, however, Customer shall have the option, to be exercised in writing at least nine (9) months prior to the end of the Primary Term, to extend the terms of the Service Agreements with Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada through March 31, 2007.

2. Subject to the terms and conditions of this Agreement, Maritimes & Northeast shall proceed with due diligence to obtain from all governmental and regulatory authorities having valid jurisdiction over the premises such authorizations and/or exemptions, including without limitation authorizations from the FERC and from the NEB, which Maritimes & Northeast determines are necessary; (i) to construct, own, and operate (or cause to be constructed and operated) Phase II of the Pipeline Project pipeline facilities and to render the transportation services as contemplated in this Agreement commencing November 1, 1999; and (ii) to perform Maritimes & Northeast's obligations as contemplated in this Agreement for Phase II of the Pipeline Project and precedent agreements with other transportation customers for Phase II of the Pipeline Project. To that end, Maritimes & Northeast-U.S. has filed and has currently pending before the FERC applications in Docket Nos. CP96-809, CP96-810 and CP97-238 and with other governmental agencies and Maritimes & Northeast-Canada has filed and has

currently pending before the NEB under Hearing Order No. GH-6-96 and with other governmental agencies for the necessary authorizations for Phase II of the Pipeline Project. Maritimes & Northeast reserves the right to file and prosecute these and all other applications for such authorizations and/or exemptions, any supplements and amendments thereto, and, if necessary, any court review, in such manner as it deems to be in its best interest. Customer agrees to support and cooperate with, and to not oppose, the efforts of Maritimes & Northeast to obtain all authorizations and/or exemptions and supplements and amendments thereto necessary for Maritimes & Northeast to construct, own, and operate (or to cause the construction and operation of) Phase II of the Pipeline Project pipeline facilities as contemplated in this Agreement and to perform its obligations as contemplated by this Agreement.

3. Customer will as soon as reasonably practicable after the execution of this Precedent Agreement, but in no event later than January 1, 1998, advise Maritimes & Northeast in writing of the facilities, by in-service date, necessary to be constructed by or on behalf of Customer to utilize the transportation services contemplated under this Agreement. Subject to the terms and conditions of this Agreement, Customer shall proceed in good faith and with due diligence to obtain from all governmental and regulatory authorities having competent jurisdiction over the premises all authorizations and/or exemptions necessary for Customer: (i) to construct and operate (or cause to be constructed and operated) any facilities necessary to enable Customer to utilize the transportation services as contemplated in this Agreement; and (ii) to perform its obligations as contemplated in this Agreement. Customer reserves the right to file and prosecute applications for such authorizations and/or exemptions, any supplements or amendments thereto, and, if necessary, any court review, in such manner as it deems to be in its best interest; provided, however, Customer shall pursue such authorizations and/or exemptions and any supplements and amendments thereto in a manner designed to implement Phase II of the Pipeline Project in a timely manner and in no event shall Customer take any action that would obstruct, interfere with or delay the receipt by Maritimes & Northeast of the authorizations and/or exemptions and supplements and amendments thereto contemplated hereunder or other jeopardize implementation of Phase II of the Pipeline Project. Maritimes & Northeast agrees to use reasonable efforts to assist Customer in obtaining all authorizations and/or exemptions and any supplements and amendments thereto necessary for Customer to effectuate the transportation services contemplated in this Agreement. Customer agrees to proceed with due diligence to construct, or cause to be constructed, any and all facilities included in Customer's written notice to Maritimes & Northeast pursuant to the first sentence of this Paragraph 3 of this Agreement, subject to the receipt of necessary authorizations and/or exemptions contemplated in this Paragraph 3 of this Agreement.

4. Customer and Maritimes & Northeast expressly agree that the rights and obligations of the respective parties, including but not limited to execution of binding US and Canadian Service Agreements are expressly contingent upon the execution by Customer of a final and binding gas supply agreement or agreements with Imperial Oil Resources Canada, LTD. (Imperial). Such agreements must include: an amount of natural gas in dekatherms equal to the MDQ; contemplated in paragraph 5(a) of this Agreement, and a term equal to the term contemplated in Paragraph 5(a) of this Agreement. Customer shall proceed in good faith to negotiate and enter into a binding gas supply agreement or agreements with Imperial on or before January 1, 1998, on terms and conditions satisfactory to Customer. In the event Customer is successful in contracting with Imperial in the manner aforesaid, Customer shall have the right, on a one-time basis, on or before January 1, 1998, to assign its rights under this Precedent Agreement and the related service agreement(s) to Imperial; provided, that following commencement of service, any subsequent assignment contemplated by Imperial shall be subject to the capacity release requirements and procedures set forth in the FERC Gas Tariff for the Maritimes & Northeast-U.S. and the Tariff established by Maritimes & Northeast Canada. In the event Customer is unsuccessful in contracting with Imperial in the manner aforesaid by January 1, 1998, either Party may terminate this Precedent Agreement in the manner provided in Paragraph 10 hereof; provided, however, if the Parties agree to extend the time for making such arrangements for gas supplies, either Party will have until ten (10) days after the end of such extension to terminate this Precedent Agreement.

5. (a) Customer and Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada, as appropriate, shall execute within thirty (30) days after the later of the dates that (i) the FERC issues an order authorizing the U.S. segment of Phase II of the Pipeline Project, and (ii) the NEB issues an order authorizing the Canadian segment of Phase II of the Pipeline Project:

(1) - a firm service agreement under Rate Schedule MN365, included in the Phase II FERC Gas Tariff of Maritimes & Northeast-U.S. ("U.S. Service Agreement") which shall provide for the transportation of up to a Maximum Daily Quantity ("MDQ") of 47,000 dekatherms of natural gas provided, however, Customer shall have the one time right, to be exercised by Customer no later than thirty (30) days after Imperial and the other Sable Offshore Energy Project producers have determined Imperial's final working interest in the Sable Offshore Energy Project, to adjust its applicable MDQ to a quantity not less than 42,000 dekatherms of natural gas and not greater than 47,000 dekatherms of natural gas; and

(2) a firm service agreement under the NEB Gas Tariff of Maritimes & Northeast-Canada ("Canadian Service Agreement") which shall provide for the transportation of an equivalent MDQ of natural gas for equivalent time periods

adjusted for final applicable fuel usage on the Canadian Segment of the Pipeline Project.

Service under the U.S. Service Agreement and under the Canadian Service Agreement will commence as provided under Paragraph 5(b) of this Agreement. After service commences under the respective Service Agreement(s), such service will continue for a term as determined in Paragraph 1 of this Agreement.

(b) Service under the U.S. Service Agreement and under the Canadian Service Agreement will commence on the date specified in the written notice to Customer pursuant to Paragraph 5(c) of this Agreement, which date will be the later of: (i) November 1, 1999; (ii) the date all necessary facilities comprising the Phase II of the Pipeline Project are completed and such facilities are placed in service; or (iii) the date by which all of the conditions precedent set forth in Paragraph 8 of this Agreement have been satisfied or waived by the Party for whose benefit the condition was imposed.

(c) Prior to commencement of service pursuant to the U.S. Service Agreement and pursuant to the Canadian Service Agreement, Maritimes & Northeast shall notify Customer in writing that all of the conditions precedent set forth in Paragraph 8 of this Agreement have been satisfied or waived, and that service under the U.S. Service Agreement and under the Canadian Service Agreement will commence on a date certain, which date will not be prior to November 1, 1999. As of the date for commencement of service under the U.S. Service Agreement and under the Canadian Service Agreement, Maritimes & Northeast-U.S. will stand ready to provide firm transportation service for Customer pursuant to the terms of the U.S. Service Agreement and Maritimes & Northeast-Canada will stand ready to provide firm service for Customer or its affiliate pursuant to the terms of the Canadian Service Agreement; and Customer or its affiliate will pay Maritimes & Northeast-U.S. for all applicable charges associated with the U.S. Service Agreement and will pay Maritimes & Northeast-Canada for all applicable charges associated with the Canadian Service Agreement.

6. Upon satisfaction of the conditions precedent set forth in Paragraphs 8(a)(i), 8(a)(ii), 8(a)(iii) and 8(a)(iv) of this Agreement, or waiver of the same by Maritimes & Northeast, Maritimes & Northeast shall proceed (subject to the continuing commitments of Customer and all other firm transportation customers committed to Phase II of the Pipeline Project) with due diligence in the necessary final design of facilities, acquisition of materials, supplies, rights-of-way and any other necessary preparations to implement the transportation service contemplated by the U.S. Service Agreement and the Canadian Service Agreement.

7. Upon satisfaction of the conditions precedent set forth in Paragraphs

8(a)(i), 8(a)(ii), 8(a)(iii), 8(a)(iv) and 8(a)(vi) of this Agreement or waiver of the same by Maritimes & Northeast, Maritimes & Northeast shall proceed (subject to the continuing commitment of Customer) with due diligence to construct the authorized Phase II Pipeline Project pipeline facilities necessary to implement the firm transportation service contemplated in this Agreement on or about November 1, 1999. Notwithstanding Maritimes & Northeast's due diligence, if Maritimes & Northeast is unable to commence service by November 1, 1999, Maritimes & Northeast will continue to proceed with due diligence to complete arrangements for such transportation service, and commence the transportation service for Customer at the earliest practicable date thereafter. Maritimes & Northeast will neither be liable nor will this Agreement or the U.S. Service Agreement or the Canadian Service Agreement be subject to cancellation if Maritimes & Northeast is unable to complete the construction of such authorized and necessary Phase II Pipeline Project pipeline facilities and commence the firm transportation service contemplated herein by November 1, 1999.

8. The commencement of service under the U.S. Service Agreement and the Canadian Service Agreement and Maritimes & Northeast's and Customer's rights and obligations under such service agreements are expressly made subject to satisfaction of the following conditions precedent; provided, however, that any such condition may be waived by the Party for whose benefit the condition is imposed:

(a) Conditions Precedent of Maritimes & Northeast:

(a)(i) Receipt and acceptance by Maritimes & Northeast-U.S. by May 1, 1998, of all necessary certificates and other authorizations, including without limitation authorizations from the FERC for the Phase II United States Segment of the Pipeline Project and receipt and acceptance by Maritimes & Northeast-Canada by July 1, 1998 of all necessary certificates and other authorizations, including without limitation authorization from the NEB for the Phase II Canadian Segment of the Pipeline Project, authorizations of initial rates as contemplated in Paragraph 9(b) of this Agreement, authorizations to construct and operate Phase II of the Pipeline Project pipeline facilities and to provide transportation for Customer under the U.S. Service Agreement and the Canadian Service Agreement as contemplated in this Agreement and for other customers under other service agreements; and

(a)(ii) Receipt and acceptance by Maritimes & Northeast by June 1, 1998 of a financial commitment or commitments from financial institutions acceptable to each of them to make the capital expenditures necessary to enable them to construct Phase II of the Pipeline Project to provide transportation for Customer under the U.S. Service Agreement and the Canadian Service Agreement as contemplated in this Agreement and for other customers under other service agreements; and

(a)(iii) Receipt by Maritimes & Northeast of all other necessary governmental authorizations, approvals, permits, and exemptions to construct Phase II of the Pipeline Project and perform the services as contemplated in this Agreement and the U.S. Service Agreement and the Canadian Service Agreement; and

(a)(iv) Receipt of an affirmative vote of the Management Committee of Maritimes & Northeast-U.S. and of Maritimes & Northeast-Canada to construct the authorized Phase II Pipeline Project pipeline facilities subsequent to receipt of the authorizations contemplated in Paragraph 8(a)(i) of this Agreement; and

(a)(v) Completion by Maritimes & Northeast of construction of the Phase II Pipeline Project pipeline facilities required to render firm transportation service for Customer pursuant to the U.S. Service Agreement and the Canadian Service Agreement with Customer and Maritimes & Northeast being ready and able to place such facilities into gas service; and

(a)(vi) Receipt and acceptance by the Sable Offshore Energy Project producers by December 31, 1997 of all governmental authorizations, approvals, permits, and exemptions necessary to construct the facilities required to deliver gas to the Phase II of the Pipeline Project facilities at Country Harbour, Nova Scotia, Canada.

(b) Conditions Precedent of the Customer:

(b)(i) Completion by Customer of construction of the facilities contained in Customer's Notice under Paragraph 3 of this Agreement.

(b)(ii) Completion by Customer on or before January 1, 1998 of necessary gas supply arrangements pursuant to Paragraph 4 of this Precedent Agreement on terms and conditions satisfactory to Customer.

9. (a) All governmental permits, certificates, exemptions, and other authorizations required in Paragraph 8 of this Agreement must be in form and substance satisfactory to the applicant, and with respect to the FERC and NEB authorizations, must be satisfactory to all Parties, including mutually satisfactory rate treatment and rate levels. A party shall notify the relevant applicant in writing not later than ten (10) days after the issuance of each of the respective FERC and NEB orders issuing the certificates, including any orders issued as a preliminary determination on non-environmental issues, contemplated in Paragraph 2 of this Agreement, if such certificate is not satisfactory to said Party. All governmental approvals and exemptions required by this Agreement must be duly granted respectively by the FERC and the NEB, and/or other governmental agency or authority having valid jurisdiction, and must be final and nonappealable; but with respect to the authorization from the FERC and

the NEB, the Parties may waive the condition that any such approval or exemption be final and nonappealable.

(b) In connection with the Phase II Pipeline Project initial rate design methodology, Customer expressly agrees: (i) not to oppose the initial rate design methodology and (ii) to pay Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada, as applicable, the initial rates as contemplated herein to the extent authorized by the FERC and the NEB.

(c) Customer expressly reserves any and all of its rights to take whatever positions it deems necessary, however, with respect to any filing or filings to be made by Maritimes & Northeast-U.S. and/or Maritimes & Northeast-Canada to the FERC and NEB, respectively, seeking increases in such initial rates provided that such increases were caused by reasons other than general inflation.

10. (a) If Customer has not made arrangements for gas supplies with one or more third party suppliers in the manner and by the date set forth in Paragraph 4 of this Agreement, or if the conditions precedent set forth in Paragraphs 8(a)(i) and 8(a)(ii) of this Agreement have not been fully satisfied, or waived by Maritimes & Northeast, by the applicable dates specified therein, then, any Party may thereafter terminate this Agreement by giving ninety (90) days prior written notice of its intention to terminate to the non-terminating Party; but if such gas supply arrangements are made or if the conditions precedent are satisfied or waived within said ninety (90) day notice period, then termination will not be effective.

(b) In addition, and notwithstanding other provisions hereof, Maritimes & Northeast may terminate this Agreement at any time upon fifteen (15) days prior written notice given to Customer if termination by customers, other than by reason of commencement of service, under other precedent agreements and service agreements for service from Maritimes & Northeast renders the Pipeline Project uneconomic, as determined by Maritimes & Northeast.

11. If this Agreement is not terminated pursuant to Paragraph 10 hereof, then as to each of the U.S. Service Agreement and the Canadian Service Agreement, respectively, referenced in Paragraph 5 of this Agreement, this Precedent Agreement will terminate by its express terms as to each respective agreement on the date of commencement of service under such agreement, and thereafter the Parties' rights and obligations related to the transportation transactions contemplated herein shall be determined pursuant to the terms and conditions of the respective U.S. Service Agreement and the Canadian Service Agreement and the terms and conditions of the FERC and NEB Rate Schedules specified in Paragraph 4 hereof, as effective from time to time, and the General Terms and Conditions of the FERC and NEB Gas Tariffs, as

effective from time to time.

12. This Agreement may not be modified or amended unless the Parties execute written agreements to that effect.

13. Any company which succeeds by purchase, merger, or consolidation of title to the properties, substantially as an entirety, of Maritimes & Northeast-U.S., Maritimes & Northeast-Canada, or the Customer, will be entitled to the rights and will be subject to the obligations of its predecessor in title under this Agreement. This Agreement may be assigned in whole or in part to an affiliate of the assigning Party, without the consent of the other Party, upon written notice to the other Party. Otherwise, as except as provided in Paragraph 4 hereof, assignment of this Agreement or any of the rights or obligations hereunder may not be made unless the written consent of the other Party is first obtained, such consent not to be unreasonably withheld. No Party will be relieved, by virtue of any such assignment to a non-affiliated entity, of its obligations and liabilities hereunder without the express written consent of the other Party. Maritimes & Northeast shall make all reasonable efforts to file promptly and to pursue diligently the approval of whatever regulatory filings and applications by Maritimes & Northeast are necessary or reasonably appropriate to carry out the provisions of this Paragraph 13 and Maritimes & Northeast shall cooperate with Customer and any assignee or transferee of the affected capacity in the preparation, filing and pursuit of any other regulatory filings or applications which are necessary or reasonably appropriate to carry out the provisions of this Paragraph 13.

14. (a) Any dispute arising out of or relating to this Agreement, whether in contract, tort, under statutory law, or otherwise, and including without limitation any dispute arising from an assertion of the rights of Maritimes & Northeast under Paragraph 8, which cannot be resolved after discussion between the Parties or by voluntary non-binding mediation in conformity with applicable procedures of the Texas Alternate Dispute Resolution Procedures Act, Texas Civil Practices and Remedies Code, Title 7, Ch. 154, shall be submitted to binding arbitration. Either Party may commence such arbitration proceedings by serving written notice on the other. The notice shall contain the name of one arbitrator and a statement of the matter in dispute. The Party receiving such notice shall have fifteen (15) days to respond in writing, naming a second arbitrator and designating any other matter for arbitration. The two named arbitrators shall select a third arbitrator. If the two named arbitrators fail to select a third arbitrator within fifteen (15) days after the second arbitrator was named, the third arbitrator shall be selected in accordance with the commercial arbitration rules of the American Arbitration Association. All arbitrators shall be qualified by education or experience to decide matters relating to the questions in dispute. In addition, the arbitrators shall have professional experience in the natural gas industry and shall not be evidently partial under the standards of section 10(b) of the Federal Arbitration Act, 9

U.S.C. § 10(b). The third arbitrator shall not have been previously employed by either Party. The arbitration shall be held at a location to be mutually agreed to, and failing agreement, in Boston, MA. At any time after the naming of the second arbitrator, the Parties may engage in discovery. Each Party shall be permitted to serve on the other Party requests for production of documents relevant to any dispute which is the subject of the arbitration and one set of interrogatories addressing any issues relevant to any dispute which is the subject of the arbitration, which requests and interrogatories shall be answered or otherwise responded to within twenty (20) days after service. Each Party shall also have the right to take four depositions. Additional discovery may be ordered by a majority of the arbitrators upon application by one or both of the Parties on a showing of good cause. Any discovery disputes shall be resolved by the decision of a majority of the arbitrators.

(b) After presentation of evidence has been concluded, each party shall submit to the arbitrators a final offer of its proposed resolution of the dispute. No responses to a final offer may be submitted. The arbitrators shall approve the final offer of one Party, without modification, and reject that of the other. In considering the evidence and deciding which final offer to approve, the arbitrators shall be guided by the criteria described in the appropriate section of this Agreement.

(c) The decision of the arbitrators shall be rendered on or before one hundred twenty (120) days following the notice of arbitration. The arbitrators' decision shall be deemed to be part of this Agreement and incorporated by reference herein.

(d) If at any time prior to rendition of the decision of the arbitrators, an arbitrator named by one of the Parties becomes unable or unwilling to serve, the Party that named that arbitrator shall select a replacement arbitrator within ten (10) days after receiving notice of the arbitrator's inability or unwillingness to serve. If any at time prior to rendition of the decision of the arbitrators the third arbitrator becomes unable or unwilling to serve, a replacement arbitrator shall be selected utilizing the same procedures for selection of the third arbitrator set forth above, except that the fifteen (15) day period for selection of the third arbitrator shall run from the date both named arbitrators receive notice of the third arbitrator's inability or unwillingness to serve. The naming or selection of a replacement arbitrator shall have no effect on the conduct of the proceedings unless the arbitration hearing has already commenced, in which case the hearing will be recommenced as if no portion of the hearing had been conducted.

(e) Each Party shall pay its own costs incurred in connection with the arbitration proceedings, except for the fees and expenses of the third arbitrator, which shall be equally divided between the Parties. The decision of the arbitrators shall be final, conclusive, and binding on both Parties. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event that

it is necessary to enforce such award, all costs of enforcement, including reasonable attorney's fees (for in-house or outside counsel) shall be payable by the Party against whom such award is enforced.

(f) The substantive law chosen in Paragraph 16, as well as applicable federal law, will apply to the proceedings in arbitration. The Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*, shall govern the enforceability of this Paragraph 14, and to the extent not inconsistent with the provisions hereof, it shall also govern the procedures to apply in arbitration and the enforcement, vacation, or modification of any award. The Parties stipulate that this Agreement evidences a transaction "involving commerce" as that phrase is used in 9 U.S.C. § 2.

15. The recitals and representations appearing above are hereby incorporated in and made a part of this Agreement.

16. The Agreement shall be governed by and construed, interpreted, and performed in accordance with the laws of the state of Texas, without recourse to any laws governing the conflict of laws.

17. Except as herein otherwise provided, any notice, request, demand, statement, or bill provided for in this Agreement, or any notice which either Party desires to give to the other, must be in writing and will be considered duly delivered when mailed by registered or certified mail to the other Party's Post Office address set forth below:

Maritimes & Northeast-U.S.: 5400 Westheimer Court
Houston, Texas 77056

Maritimes & Northeast-Canada: 50 Keil Drive North
Chatham, Ontario N7M 5M1

Boston Gas Company One Beacon Street
Boston, MA 02108

or at such other address as either party designates by written notice. Routine communications, including monthly statements will be considered duly delivered when mailed by either registered, certified, or ordinary mail. For purposes hereof, any notice required to be given by Customer to Maritimes & Northeast shall be delivered to each of Maritimes & Northeast-U.S. and Maritimes & Northeast-Canada.

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

MARITIMES & NORTHEAST PIPELINE, L.L.C.

BY: [Signature] JGR

TITLE: President

M&N Management Company
Managing Member

MARITIMES & NORTHEAST PIPELINE
LIMITED PARTNERSHIP

BY: [Signature]

TITLE: Partner

Maritimes & Northeast Pipeline
Management Ltd., General Partner

BOSTON GAS COMPANY

BY: [Signature]

TITLE: VICE PRESIDENT

Signature page for Agreement dated December 16, 1997 by and among Maritimes & Northeast Pipeline, L.L.C., Maritimes & Northeast Pipeline Limited Partnership and Boston Gas Company.

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FILE

Boston Gas Company
One Beacon Street
Boston, Massachusetts 02108
Tel: 617-723-5512 Ext. 2375
Fax: 617-742-8564

Thomas P. O'Neill
Course:

Certified Mail Z-115-746-406

June 24, 1998

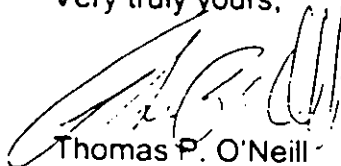
Maritimes and Northeast -Canada
50 Keil Drive
North Chatham, Ontario N7M 5M1

Dear Sir/Madam:

Pursuant to Section 5 (a)(1) of the Boston Gas Company Precedent Agreement for Firm Transportation of Natural Gas Maritimes and Northeast Pipeline dated December 16, 1997 (the "Agreement"), Boston Gas Company hereby exercises its right to adjust the Maximum Daily Quantity applicable to the Agreement from an amount of up to 47,000 dekatherms of natural gas to an amount of up to 43,200 dekatherms. This adjustment corresponds to Imperial Oil Resources Canada LTD's final working interest in the Sable Offshore Energy Project as determined by the Sable Offshore Energy Project producers.

Thank you for your cooperation.

Very truly yours,



Thomas P. O'Neill

TPO/dmo

cc: William R. Luthern
William T. Yardley
Leo Silvestrini
Theodore Poe



Is your RETURN ADDRESS completed on the reverse side?

2 115 746 406



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to MARITIMES + NORTHEAST	
Street and No. 50 Keil Drive CANADA	
P.O., State and ZIP Code NORTH CHATHAM, ONTARIO	
Postage CANADA \$17M5M1	
Certified fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date and Addressee's Address	
*C.M. Postage & Fees	\$
Postmark or Date	

PS Form 3800, March 1993

Fold at line over top of envelope to the right of the return address

CERTIFIED

2 115 746 406

MAIL

PS Form 3811, Apr. 1989 U.S.G.P.O. 1989-228-015 DOMESTIC RETURN RECEIPT	3. Article Addressed to: MARITIMES + NORTHEAST - CANADA 50 Keil Drive NORTH CHATHAM, ONTARIO CANADA N7M5M1	4. Article Number 2-115-746-406
	5. Signature - Addressee X	Type of Service: <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Certified <input type="checkbox"/> Express Mail <input type="checkbox"/> Insured <input type="checkbox"/> COD <input type="checkbox"/> Return Receipt for Merchandise
	6. Signature - Agent X	Always obtain signature of addressee or agent and DATE DELIVERED
	7. Date of Delivery X	8. Addressee's Address (ONLY if requested and fee paid)
	1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)	
	3 and 4. SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional service(s) requested.	
	1. <input type="checkbox"/> Show to whom delivered, date, and addressee's address. 2. <input type="checkbox"/> Restricted Delivery (Extra charge)	

Thank you for using Return Receipt Service.

FILE

Bostongas
Eastern Enterprises

Boston Gas Company
One Beacon Street
Boston, Massachusetts 02108
Tel: 617-723-5512 Ext. 2375
Fax: 617-742-8564

Thomas P. O'Neill
Course

Certified Mail Z-115-746-405

June 24, 1998

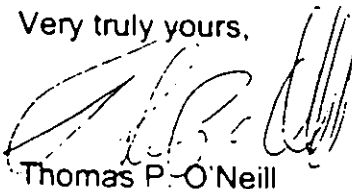
Maritimes & Northeast-U.S.
5400 Westheimer Court
Houston, Texas

Dear Sir/Madam:

Pursuant to Section 5 (a)(1) of the Boston Gas Company Precedent Agreement for Firm Transportation of Natural Gas Maritimes and Northeast Pipeline dated December 16, 1997 (the "Agreement"), Boston Gas Company hereby exercises its right to adjust the Maximum Daily Quantity applicable to the Agreement from an amount of up to 47,000 dekatherms of natural gas to an amount of up to 43,200 dekatherms. This adjustment corresponds to Imperial Oil Resources Canada LTD's final working interest in the Sable Offshore Energy Project as determined by the Sable Offshore Energy Project producers.

Thank you for your cooperation.

Very truly yours,



Thomas P. O'Neill

TPO/dmo

cc: William R. Luthern
William T. Yardley
Leo Silvestrini
Theodore Poe



Is your RETURN ADDRESS completed on the reverse side?

Z 115 746 405



Receipt for Certified Mail

No Insurance Coverage Provided
Do not use for International Mail
(See Reverse)

Sent to MARITIMES & NORTHEAST-US.	
Street and No. 5400 Westheimer Court	
P.O. State and ZIP Code HOUSTON, TEXAS	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to Whom & Date Delivered	
Return Receipt Showing to Whom, Date and Addressee's Address	
TOTAL Postage & Fees	\$
Postmark or Date	

PS Form 3800, March 1983

Fold at line over top of envelope to the right of the return address

CERTIFIED

Z 115 746 405

MAIL

PS Form 3811, Apr. 1983 *U.S.G.P.O. 1983-234-015

DOMESTIC RETURN RECEIPT

Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check boxes for additional services requested.

1. Show to whom delivered, date, and addressee's address. 2. Restricted Delivery (Extra charge)

3. Article Addressed to:
**MARITIMES & NORTHEAST - US.
5400 Westheimer Court
HOUSTON, TEXAS**

4. Article Number
2115-746-405

Type of Service:
 Registered
 Certified
 Express Mail
 Insured
 COD
 Return Receipt for Merchandise

Always obtain signature of addressee or agent and DATE DELIVERED

5. Signature - Addressee
X

6. Signature - Agent
X

7. Date of Delivery

8. Addressee's Address (ONLY if requested and fee paid)

Thank you for using Return Receipt Service.

EXHIBIT E

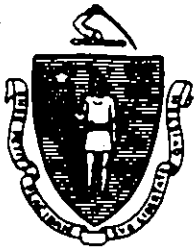


EXHIBIT E
The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

FILE

December 19, 1997

D.P.U./D.T.E 97-104

Petition of Boston Gas Company for approval by the Department of Telecommunications and Energy (formerly Department of Public Utilities) of (1) a **contract amendment** to restructure the existing gas supply contract between the Company and Imperial Oil Resources; (2) a supply contract with Enron Capital & Trade Resources Corp.; and (3) tariff amendments for transportation terms and conditions to reflect the new supply arrangements.

APPEARANCES: Robert J. Keegan, Esq.
Robert N. Werlin, Esq.
Cheryl M. Kimball, Esq.
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110

-and-

Thomas P. O'Neill, Esq.
Boston Gas Company
One Beacon Street
Boston, Massachusetts 02108
FOR: BOSTON GAS COMPANY
Petitioner

L. Scott Harshbarger, Attorney General
By: James W. Stetson
Assistant Attorney General
Regulated Industries Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, Massachusetts 02114
Intervenor

Robert F. Sydney, Esq.
Maribeth Ladd, Esq.
Division of Energy Resources
100 Cambridge Street
Boston, Massachusetts 02202
Intervenor

Randall S. Rich, Esq.
Bracewell & Patterson, L.L.P.
2000 K Street NW, Suite 500
Washington, DC 20006
FOR: ENRON CAPITAL & TRADE RESOURCES CORP.
Intervenor

William A. Williams, Esq.
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, DC 20004
FOR: IMPERIAL OIL RESOURCES
Intervenor

I. INTRODUCTION

On November 14, 1997, pursuant to G.L. c. 164, § 94A, Boston Gas Company ("Boston Gas" or "Company") filed with the Department of Telecommunications and Energy (formerly the Department of Public Utilities) ("Department") a request for approval of:

(1) an amendment to a gas supply contract between the Company and Imperial Oil Resources ("Imperial") and (2) a gas supply contract and capacity release contracts between the Company and Enron Capital & Trade Resources ("Enron"). The Company also filed for approval amendments to existing tariffs M.D.P.U. 995, Terms and Conditions for General Transportation Receipt Service, and M.D.P.U. 995, Terms and Conditions for Optional Transportation Receipt Service, to reflect the new supply arrangements [collectively, the "Proposal"]. The Proposal is to become effective January 1, 1998. This matter was docketed as D.P.U./D.T.E. 97-104.

Pursuant to notice duly issued, evidentiary hearings were held at the offices of the Department on December 5, and 10, 1997. The Department granted the petitions for leave to intervene filed by the Commonwealth of Massachusetts Division of Energy Resources ("DOER"), Imperial Oil Resources ("Imperial"), and Enron. The Attorney General of the Commonwealth ("Attorney General") intervened as of right pursuant to G.L. c. 12, § 11E.

In support of its Proposal, the Company sponsored the testimony of William Yardley, the Company's manager of gas acquisition and system control, and Theodore E. Poe, Jr., the Company's senior resource consultant.

The evidentiary record includes 40 exhibits and 11 responses to record requests. The Department received comments from the Company, the Attorney General, DOER and Imperial.

II. STANDARD OF REVIEW

In evaluating a gas utility's resource options for the acquisition of commodity resources as well as for the acquisition of capacity under Section 94A, the Department examines whether the acquisition of the resource is consistent with the public interest. Commonwealth Gas Company, D.P.U. 94-174-A at 27 (1996). In order to demonstrate that the proposed acquisition of a resource that provides commodity and/or incremental resources is consistent with the public interest, an LDC must show that the acquisition (1) is consistent with the company's portfolio objectives, and (2) compares favorably to the range of alternative options reasonably available to the company and its customers, including releasing capacity to customers migrating to transportation, at the time of the acquisition or contract renegotiation. Id.

In establishing that a resource is consistent with the company's portfolio objectives, the company may refer to portfolio objectives established in a recently approved resource plan or in a recent review of supply contracts under G.L. c. 164, § 94A, or may describe its objectives in the filing accompanying the proposed resource. Id. In comparing the proposed resource acquisition to current market offerings, the Department examines relevant price and non-price attributes of each contract to ensure a contribution to the strength of the overall supply portfolio. Id. at 28. As part of the review of relevant price and non-price attributes, the Department considers whether the pricing terms are competitive with those for the broad range

of capacity, storage and commodity options that were available to the LDC at the time of the acquisition, as well as with those opportunities that were available to other LDCs in the region.

Id. In addition, the Department determines whether the acquisition satisfies the LDC's non-price objectives including, but not limited to, flexibility of nominations and reliability and diversity of supplies. Id. at 29.

III. BACKGROUND

Currently, the Imperial contract provides the Company with a 365-day firm, year-round baseload gas supply with a city-gate delivery of 35,000 MMBtu/day, representing approximately 4.7 percent of the Company's peak sendout of 747,000 MMBtu/day. The contract terminates on March 31, 2007 (Exh. 14 at 1).

At the Department's directive,¹ the Company initiated contract re-negotiations with Imperial. Although three alternative courses of action were identified, the Company stated that its economic analyses identified restructuring the existing Imperial contract to reflect Imperial's marketing of its interest in the Sable Offshore Energy Project ("Sable") as yielding the highest savings for customers while maintaining the needed level of reliability (id. at 4). Also, as part of its proposal to amend the existing Imperial contract, the Company proposed to assign capacity to Enron and negotiate a supply contract with Enron (id.). The Company states that this proposal will yield substantial savings for customers, increase supply flexibility for the Company and be compatible with industry restructuring principles (id.).

² The Department directed the Company to explore alternative supply arrangements with respect to Canadian gas supply contracts. Boston Gas Company, D.P.U. 96-50 (Phase I) at 229-230 (1996).

IV. THE PROPOSAL

A. Amended Imperial Contract

Under the amended Imperial contract, daily supply deliveries of 35,000 MMBtu from Alberta to Boston would be suspended, and the Company would receive delivery of Imperial's production from Sable, Nova Scotia when that resource becomes available.² At that time, the Company proposes to purchase Imperial's full entitlement to Sable gas (estimated by the Company to be between 43,200 and 47,000 MMBtu/day) for a lower price than it receives currently (id.). To transport the gas, the Company proposes to contract for pipeline capacity on the Maritimes and Northeast Pipeline Project ("M&NE") and for additional rights on the Tennessee Gas Pipeline (id. at 7).

The Company contends that the incremental sales volume of the Sable arrangement may be used in any of the following ways: (1) to displace expiring long-haul, domestic capacity and associated commodity; (2) sale for re-sale transactions; (3) meeting incremental load requirements; and (4) future LNG displacement requirements (id.). Until Sable supplies become available³, the Company agrees to pay Imperial the difference between the commodity price under contract and the monthly Alberta spot price in an effort to keep "whole" the original Imperial contract (id. at 7).

2 Boston Gas projects that the earliest date that Sable supplies would be available is November 1, 1999 (id. at 6).

3 The period between January 1, 1998 and November 1, 1999, is referred to by the Company as the "Bridge Period" (id. at 6).

B. Assignment of Capacity to Enron

In an effort to mitigate its pipeline capacity costs associated with the Imperial contract during the Bridge Period and to procure reliable, least-cost gas supplies, the Company solicited bids from three companies: Enron, El Paso Energy, and Duke Energy (*id.*). The Company states that it chose Enron because it accepted the capacity associated with the Alberta deliveries at an attractive rate, and would provide firm city-gate sales service for the existing volumes at competitive market rates (*id.* at 6). In return, the Company agreed to terminate its supply purchases from Alberta and release its associated firm capacity rights on both the Canadian and United States pipeline to Enron at a discounted rate for the remaining term of the Imperial contract.

C. Enron Supply Contract

In conjunction with its capacity assignment agreement with Enron, Boston Gas also entered into a gas supply contract with Enron to provide 35,000 MMBtu/day of firm, year-round, base-load gas supplies to the Company until the conclusion of the Bridge Period (*id.* at 6-7). Pursuant to this Agreement, the Company retains the right to terminate or reduce the volumes taken from Enron after November 1, 1999, with ninety days notice (*id.* at 10).

D. Economic Analysis of Proposal

The Company conducted economic analyses under a variety of projected commodity price scenarios and production levels to project the savings associated with its proposal. Specifically, Boston Gas states that if it were to receive the maximum quantity of Sable production at a high commodity price, the amended contract would provide savings of \$28.7 million over the existing contract (*id.* at 8). The Company projects a \$33.1 million savings with a medium commodity

price, and a \$39.5 million savings with a low commodity price (*id.* at 8). Conversely, the Company states that in a high commodity price scenario, the termination/buy-out proposal represents a loss of \$21.6 million compared to the existing contract. Similarly, the Company projects a loss of \$20.8 million in a medium commodity price scenario and \$17.5 million loss in a low commodity price scenario (*id.* at 10).

E. Tariff Amendments

Currently, under the Company's transportation tariffs, customers purchasing gas supplies from third parties receive a pro-rata share of the Company's upstream resources. See tariffs M.D.P.U. No. 993 and 995. During the Bridge Period, the Company proposes to receive bundled and delivered replacement volumes from Enron either at Mendon, Massachusetts or at its city-gate, instead of the Canadian Border (*id.*). The Company submitted revised tariffs to reflect this change in receipt points.

V. POSITIONS OF THE PARTIES

A. Boston Gas

Boston Gas states that its Proposal is consistent with the Company's resource portfolio objectives and compares favorably to other market offerings (Boston Gas Comments at 5). Moreover, the Company claims that pursuant to the Proposal, customers should save between \$26.7 million and \$39.5 million over the existing contractual obligations (*id.* at 3).

The Company is confident that these savings will be realized although all details regarding the Sable project have not been completed and a full economic analysis could not be conducted (*id.* at 7-9). Boston Gas contends that because its economic analysis is based on conservative assumptions (*e.g.*, high/low production levels and a wide-array of construction/price scenarios),

customers will be protected in the event that Imperial's working interest in Sable, the transportation costs, or the price of Sable supplies change (id.).

Regarding the solicitation process for the Enron contracts, the Company claims that it contacted the three entities that: (1) had a strong interest or need for Canadian capacity; (2) were able to supply Boston Gas reliably with 35,000 MMBtu/day at its citygate; (3) had a well-established market presence in New England; (4) had knowledge of and/or experience in the western Canadian markets; (5) had financial integrity; and (6) had the ability to operationally and financially complete the transaction within a short time-frame (id. at 13).

The Company stated that to achieve the greatest savings for customers, the Company needed to finalize the arrangements before the heating season. Therefore, conducting a complex Request for Proposals was not practical (id. at 14). The Company notes that it would be too cumbersome to conduct negotiations and execute multiple contracts concerning Canadian and domestic gas, on four pipelines, within four months (id. at 14-16, 22-24). Also, the Company argues that the FERC requirements concerning the posting of available capacity on the electronic bulletin board are not relevant since the rules do not contemplate capacity released on multiple pipelines as a "package deal" (id. at 16-18).

Finally, the Company states that the Proposal is compatible with industry restructuring principles and is consistent with transactions in a competitive marketplace (id. at 19).

B. Attorney General

The Attorney General opposes the Enron contract and Bridge Agreement stating that the expedited process by which the Company entered into those Agreements did not provide a sufficient opportunity to assess the range of market options reasonably available to the Company when it

finalized those contracts (Attorney General Comments at 1, 3-4). Also, the Attorney General contends that the Sable contract should be denied until the terms, conditions and costs are known and measurable (*id.* at 1, 4-6).

Specifically, the Attorney General argues that because the Company failed to comply with the Department-required "process" of market-based solicitation, the Department cannot determine if the Enron Contract and Bridge Agreement are consistent with the highest and best offers available from the market (*id.* at 3). The Attorney General also states that because this is the first of many mitigation effort-style contract and assignment arrangements that likely will be filed by LDCs, the Department should use this opportunity to instruct all utilities to conduct open-market solicitations prior to submitting contracts for approval (*id.* 3).

The Attorney General also requests that the Department deny approval of the Sable contract until all details are finalized (*id.* at 4-5). These details include: (1) completion of the precedent agreement between M&NE and Boston Gas;⁴ (2) the amount of Imperial's working ownership interest in the Sable Island's production; (3) the amount of Sable Island's production; (4) M&NE's routing plan; (5) receipt by M&NE of environmental certificates and Canadian and FERC construction certificates; and (6) a firm M&NE transportation rate (*id.* at 5).

Alternatively, the Attorney General states that if the Department approves the Sable agreement, the Company's shareholders should bear the risk of any additional costs incurred due to construction overruns, lower than estimated production levels, higher than forecasted supply costs and any stranded costs that result from additional volumes of supply and capacity (*id.*).

⁴ The Company submitted a signed precedent agreement in response to a Record Request by the Attorney General (RR-AG-1).

B. DOER

DOER opposes Boston Gas' Proposal claiming that the Company failed to take all practicable measures to mitigate future stranded costs associated with the Imperial contract, and failed to comply with the Department's standard regarding resource selection concerning the Enron contracts (Comments of DOER at 1-4).

DOER contends that by increasing the Company's capacity commitments by 8,000 MMBtu/day and recovering less than 100% of the fixed demand costs associated with the Imperial agreement during the Bridge Period, measures to mitigate potential future stranded costs are not apparent (id. at 2). Also, DOER notes that the incremental volumes committed to by the Company under the Sable Island contract will become available after Boston Gas' proposed date to exit the merchant function (id.).

DOER agrees with the Attorney General that should the Department approve the restructured Imperial agreement, the Company's shareholders should bear the costs associated with the incremental capacity commitment (id.). DOER notes that this would be consistent with Department policy regarding electric utilities that obligations incurred after a date-certain may not qualify for stranded costs recovery, and would also protect ratepayers against any adverse impact from stranded costs (id., citing D.P.U. 95-30).

DOER also agrees with the Attorney General that the Enron contracts should be denied because the Company did not demonstrate that its efforts to maximize the value associated with the capacity release are consistent with the public interest (id. at 3).

C. Imperial

Imperial supports the contract between itself and Boston Gas as beneficial to Boston Gas' ratepayers, and in the event Boston Gas exits the merchant function, to the marketers and/or aggregators who will assume Boston Gas' responsibilities under the contract (Imperial Comments at 1). Imperial states that the Department must approve the Sable contracts promptly so that Imperial will not pursue alternative market arrangements for its Sable Island gas supply (*id.* at 2-3). Should that happen, Imperial claims that Boston Gas will remain responsible for payment of the upstream pipeline demand charges associated with the Alberta supply and would lose the benefit of lower cost transportation (*id.*).

VI. ANALYSIS AND FINDINGS

As an initial matter, the Department recognizes that in the rapidly evolving natural gas market, LDCs may have to make decisions that require faster processes and expedited review and approval by regulatory authorities.

In reviewing the Company's proposal, the Department finds that (a) it meets the standards set in Commonwealth Gas Company D.P.U. 94-174-A regarding the acquisition of both replacement and incremental resources; (b) the Company engaged in an adequate solicitation process; (c) the Bridge Period assignment to Enron provides benefits to the Company's core customers; and (d) the proposed tariff amendments are appropriate during the Bridge Period. The Company has shown that its agreements with Enron and Imperial compare favorably to the range of options reasonably available to the Company and its customers at the time the Agreements were executed. Further, the Company has indicated that as the period for renewal of domestic capacity contracts approaches, Boston Gas will

review these contracts, and terminate those unnecessary to serve customers' needs. The Department, below, will address the concerns raised by the Attorney General and DOER.

First, the Department disagrees with the Attorney General and DOER and finds that the Company's solicitation process generated an arrangement that will provide substantial economic benefits to the Company's ratepayers. The Department recognizes that the Company established criteria within a short time frame that ensured that Boston Gas would conduct business with marketers able to provide reliable gas volumes at a cheaper price. As noted above, in an exceedingly dynamic and fluid market, a fully developed RFP process may hinder an LDC's ability to engage in acquisition of commodity or capacity for the benefit of its core customers. Nevertheless, the Department needs sufficient information, on the date of a § 94A filing, to make a determination on whether to approve similar proposals in the future. Therefore, the Department directs Boston Gas and other LDCs to post the assignment of upstream capacity and commodity rights on pipeline electronic bulletin boards, and other similar mechanisms available to the industry at the time. The Department's goal in this directive is not to impose additional burdens on the jurisdictional LDCs but to ensure that interested parties receive adequate notice of the opportunities, and that LDCs maximize their potential benefits. The Department will also be better situated to evaluate such proposals in a timely and efficient manner.

The Attorney General also requests that the Department deny the proposal until the Company's contract with Imperial regarding the Sable supplies is finalized. Regarding the claimed uncertainty surrounding the amount of Imperial's working ownership interest in the Sable Island's production, we find that the record is clear in identifying Imperial's interest as a percentage of the total reserves, thus

establishing minimum and maximum take obligations for the Company.⁵ Regarding the amount of Sable Island's production, M&NE routing, environmental and construction certificates, and M&NE's firm transportation rate, the Department finds that the Company's economic analysis establishes that the proposal will generate substantial economic benefits to the Company's customers. Even if there are some increases in the final rates, the record indicates that the Company's proposal would provide significant savings over the existing Imperial contract. The Company has based its analysis on projected costs associated with pipeline rates, interstate pipeline routes, and projected production volumes. The Department finds that the Company has justified its use of the price forecast as well as its assumptions regarding pipeline transportation rates and routing plans. The Department notes that if we were to reject the Company's proposal as a whole or just with respect to the Sable contract, the opportunity for savings may not become available to the Company in the future. Thus, waiting for certainty may mean a lost opportunity forever. The prospect of the state's largest LDC being at the head, rather than the tail end, of an interstate pipeline with secure supplies should not be discounted. That prospect has been sought since the mid-1970s.

DOER argues that the Company's proposal fails to mitigate potential future stranded costs. However, the Department finds that the Company's analysis clearly indicates that its proposal will lead to reducing potential stranded costs. The Company's analysis conducted at the request of the Attorney General, indicates that the potential savings generated from the Company's proposal range from \$24 million to \$37.5 million.

The Attorney General and DOER argue that the Company's shareholders should bear the costs associated with the incremental capacity commitment. The Department directed Boston Gas to take

⁵ See Exh. BGC-1, Sch. B

" all practicable measures to mitigate potential future stranded costs associated with [the Canadian] contracts." D.P.U. 96-50 at 229. The fact that the Company is contracting for some incremental capacity beginning after the Bridge Period does not mean that the potential stranded costs are necessarily increased. That might be the case if no other circumstances changed. However, Boston Gas has indicated that the Company will reevaluate its capacity commitments for domestic capacity contracts as the termination date for these contracts approaches. Thus, the overall gas portfolio is not expected to increase. Additionally, the gas supply costs are more likely to be stranded if the total cost is significantly out-of-line with prevailing market prices. Boston Gas undertook this contract restructuring effort to reduce the overall cost of the total delivered supplies. The cost-savings projected by the Company demonstrate that the restructured volumes, including the incremental volumes, will be much less expensive than continuing under the existing Imperial contract. Consequently, the potential for stranded costs is significantly minimized under the restructured contracts. The record also shows that the Company's proposal will make the Imperial contract more desirable to its customers because of the simplicity of the transactions and the lower cost. The Department expects that this will reduce the possibility of potential stranded costs associated with this Canadian supply.

Moreover, the Company has shown that even with the increase in volumes of the Sable supplies, the proposal will generate significant savings. Also, the Company has indicated that it will not renew existing contracts that would be expiring by the time the Sable project comes on line further reducing the potential for stranded costs. Therefore, the Department finds that the Company's proposal will not lead to future stranded costs. Finally, interested parties will have the opportunity to review the Company's management of its supply portfolio in future proceedings and propose an appropriate ratemaking treatment.


VII. ORDER

Accordingly, after due notice, hearing and consideration, it is

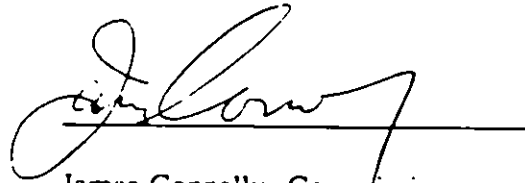
ORDERED: That the Proposal of Boston Gas Company to (1) amend and restructure its existing gas supply contract with Imperial Oil Resources; (2) enter into a supply contract with Enron Capital & Trade Resources; and (3) amend tariffs for transportation terms and conditions to reflect new supply arrangements, be and hereby is APPROVED; and it is

FURTHER ORDERED: That Boston Gas Company comply with all other directives herein.

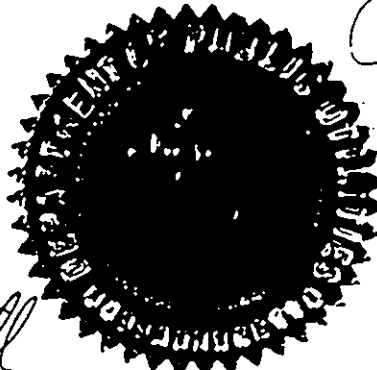
By Order of the Department.




John D. Patrone, Commissioner



James Connelly, Commissioner



A true copy
Attest:



MARY L. COTTRELL
Secretary

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

FROM DOE/FE
1998 DEC 17 P 3:34

BOSTON GAS COMPANY)
)
)

FE DOCKET NO. 98-98-NG

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

DOE/FE ORDER NO. 1445

DECEMBER 17, 1998

I. DESCRIPTION OF REQUEST

On December 8, 1998, Boston Gas Company (Boston Gas) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA)^{1/} and DOE Delegation Order Nos. 0204-111 and 0204-127, for authorization to import up to 43,200 Mcf per day of natural gas from Canada. The term of the import is for eight years beginning November 1, 1999, through March 31, 2007. Boston Gas is a Massachusetts corporation with its principal place of business in Boston, Massachusetts. The parent company of Boston Gas is Eastern Enterprises. Boston Gas is engaged in the distribution and sale of natural gas to approximately 540,000 residential, commercial, and industrial customers in the city of Boston and 73 other cities and towns in eastern Massachusetts. Boston Gas intends to use the imported gas to meet market requirements in its service area.

In DOE/FE Opinion and Order No. 552 (Order 552), issued November 27, 1991, Boston Gas was authorized to import from Imperial Oil Resources Limited (Imperial)^{2/} up to 35,000 Mcf of natural gas supplies originating in Western Canada over a period of 15 years.^{3/} Up to now, the gas supply has been transported in Canada using the pipeline system of TransCanada PipeLines Limited. Iroquois Gas Transmission System, L.P. and Tennessee Gas Pipeline Company delivered the gas to Boston Gas from the U.S./Canada border near Waddington, New York. The proposed import in this proceeding is the result of a restructured natural gas sales agreement between Boston Gas and Imperial, dated November 12, 1997, amending the previous agreement scheduled to expire March 31, 2007. The amending agreement reflects new supply, transportation, and

1/ 15 U.S.C. § 717b.

2/ Previously known as Esso Resources Canada Limited.

3/ 1 FE ¶ 70,503.

pricing arrangements. By letter dated December 8, 1998, Boston Gas requests Order 552 be terminated November 1, 1999, subject to the granting of the import authorization in this proceeding.

Under the amending agreement, the natural gas would be delivered by Imperial to Boston Gas in Canada, at the outlet of the Sable Offshore Energy Project (SEOP) gas plant near Goldboro, Nova Scotia. After receipt, Boston Gas would transport the gas to the U.S./Canada border near Bailyville, Maine, and then to Dracut, Massachusetts, using the proposed pipeline facilities of Maritimes & Northeast Pipeline Limited Partnership (Maritimes & Northeast-Canada) and Maritimes & Northeast Pipeline, L.L.C. (Maritimes & Northeast-U.S.).^{4/} Boston Gas is obligated to purchase Imperial's share of SOEP production, not to exceed 43,200 Mcf per day. The base price for all volumes is the higher of the Henry Hub first of the month index as reported in *Inside FERC's Gas Market Report*, minus \$0.15, or the SOEP Market Price, if such an index develops. Boston Gas has a one-time right to initiate price renegotiation by notifying Imperial during the period between June 1, 2002, and June 30, 2002. If renegotiation does not result in a new price, to be effective November 1, 2002, the contract provides for arbitration.

II. FINDING

The application filed by Boston Gas has been evaluated to determine if the proposed import arrangement meets the public interest requirements of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (P.L. 102-486). Under section 3(c), the importation of natural gas from a nation with which there is in effect a free trade agreement

^{4/} Maritimes & Northeast-Canada and Maritimes & Northeast-U.S. are constructing a natural gas pipeline project extending from County Harbour, Nova Scotia, Canada to the Canadian-U.S. border near Bailyville, Maine. The pipeline will continue through the States of Maine and New Hampshire into Massachusetts, where it will then connect with the existing U.S. pipeline grid

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 Boston Gas 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:

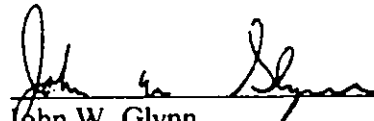
A. Boston Gas Company (Boston Gas) is authorized to import at Bailyville, Maine, up to 43,200 Mcf per day of natural gas from Canada for a period of eight years commencing November 1, 1999, through March 31, 2007. This gas shall be imported consistent with the terms and conditions of the Natural Gas Sales - Amending Agreement, dated November 12, 1997, between Boston Gas and Imperial Oil Resources on file in this docket.

B. With respect to the natural gas imports authorized by this Order, Boston Gas shall file with the Office of Natural Gas & Petroleum Import and Export Activities, within 30 days following each calendar quarter, quarterly reports indicating whether imports of natural gas have been made. Quarterly reports must be filed whether or not initial deliveries have begun. If no imports of natural gas have been made, a report of "no activity" for that calendar quarter must be filed. If imports have occurred, Boston Gas must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu delivered at the international border.

C. The reports described in Ordering Paragraph B of this Order shall be filed with the Office of Natural Gas & Petroleum Import and Export Activities, Fossil Energy, Room 3E-033, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

D. The first quarterly report required by Ordering Paragraph B of this Order is due not later than January 30, 2000, and should cover the period from November 1, 1999, until the end of the fourth calendar quarter, December 31, 1999.

Issued in Washington, D.C., on December 17, 1998.



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

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

REC'D DOE/FE

1998 DEC 22 A 9:35


BOSTON GAS COMPANY)
_____))

FE DOCKET NO. 98-98-NG

ERRATA NOTICE

On December 17, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued DOE/FE Order No. 1445 (Order 1445) which granted Boston Gas Company (Boston Gas) long-term authorization to import natural gas from Canada.^{1/} Order 1445 misstates the volumes of Canadian gas Boston Gas was previously authorized to import from Imperial Oil Resources Limited^{2/} under DOE/FE Opinion and Order No. 552 issued November 27, 1991.^{3/} Accordingly, the sentence starting on the second line, second paragraph, first page of DOE/FE Order 1445 is revised by adding "per day" after "35,000 Mcf."

Issued in Washington, D.C., on December 22, 1998.



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

1/ Not yet published.

2/ Previously known as Esso Resources Canada Limited

3/ 1 FE ¶ 70,503.