

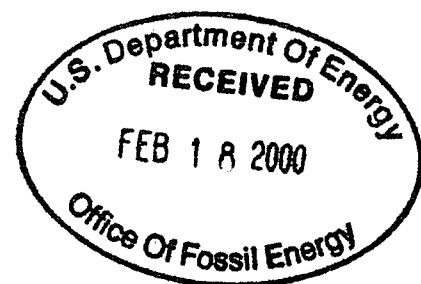
ProGas

ProGas U.S.A., Inc.

3300, 400 Third Avenue S.W.
Calgary, Alberta
Canada T2P 4H2
Telephone: (403) 296-0600
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February 15, 2000

Mr. John Glynn
U.S. Department of Energy
Office of Natural Gas and Petroleum Importing
1000 Independence Avenue S.W.
Room 3F056
Washington, DC 20001
U.S.A.



ORIGINAL

Dear Mr. Glynn:

Re: Application of ProGas U.S.A., Inc., as agent for RDO Foods Co. for Long-term
Authorization to Import Natural Gas from Canada
FE Docket No. - 00-10 - NG

As counsel for ProGas U.S.A. Inc., (the "Company"), in the above-referenced proceeding, I have reviewed the Certificate of Incorporation and Bylaws of the Company, and such other documents as I have deemed necessary in order to advise you that:

1. The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware, and has all requisite corporate power and authority to own and operate its properties and to carry on its business;
2. The Company has the requisite corporate authority to import natural gas from Canada; and
3. The Company has the requisite corporate authority to act as agent for a party in the procurement and administration of Long-term Authorizations to Import Natural Gas from Canada.

Yours truly,

ProGas U.S.A., Inc.

A handwritten signature in cursive script that reads "Michelle Voinorosky".

Michelle L. Voinorosky
Legal Counsel

R.D. OFFUTT COMPANY

Executive Offices
1600 Radisson Tower
P.O. Box 7160
Fargo, North Dakota 58106-7160
(701) 476-2450

February 9, 2000

John Glynn
Manager, Natural Gas Regulations
U.S. Department of Energy
Office of Natural Gas and Petroleum Importing
1000 Independence Avenue SW
Room 3F056
Washington, DC 2001

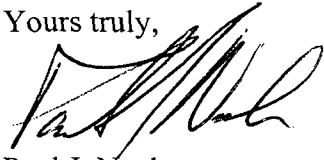
Dear Mr. Glynn:

RE: Applicatoin of ProGas U.S.A., Inc. as agent for RDO Foods Co. for Long-term
Authorization to Import Natural Gas from Canada
FE Docket No. ___ - _____ - NG

As counsel for RDO Foods Co., (the "Company"), in the above-referenced proceeding, I have reviewed the Certificate of Incorporation and Bylaws of the Company (or other appropriate documents, and such other documents as I have deemed necessary in order to advise you that:

1. The Company is a corporation duly incorporated and validly existing in good standing under the laws of the State of North Dakota, and as such has all requisite power and authority to own and operate its properties and carry on its business, and;
2. The Company has the requisite corporate authority, both under its bylaws and under the statuts of the State of North Dakota to import natural gas from Canada.

Yours truly,



Paul J. Noah
Corporate Counsel

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

PROGAS U.S.A., INC., AS AGENT)
FOR RDO FOODS CO.)

F.E Docket No. _____-NG

APPLICATION OF PROGAS U.S.A., INC.,
AS AGENT FOR RDO FOODS CO., FOR LONG-TERM
AUTHORIZATION TO IMPORT NATURAL GAS FROM CANADA

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. Section 717b, as amended by section 201 of the Energy Policy Act of 1992 ("Energy Policy Act")(P.L. 102-486), ProGas U.S.A., Inc. ("ProGas") submits this application, as agent for RDO Foods Co. ("RDO"), for long-term authorization to import natural gas from Canada. In support of this application, ProGas, as agent for RDO, respectfully shows as follows:

I.

GENERAL

The exact legal name of ProGas is ProGas U.S.A., Inc. and the exact legal name of RDO is RDO Foods Co.. Correspondence and communications concerning this application should be directed to:

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Bracewell & Patterson, L.L.P.
Attorneys at Law
2000 K Street NW Ste 500
Washington, DC 20006-1872
U.S.A
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Calgary, Alberta
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T2P 4H2
Phone: (403) 296-0606

Richard Bogaard
RDO Foods Co.
Box 13117
2500 Mill Road
Grand Forks, ND 58203
U.S.A
Phone: (701) 775-3154
Phone: (218) 732-7252 (Park Rapids, MN)
Fax: (218) 732-2192 (Park Rapids, MN)

II.

BACKGROUND

RDO is a company incorporated under the laws of the State of North Dakota with its principal place of business at 2500 Mill Road, Grand Forks, North Dakota. RDO is the owner and operator of a food processing plant in North Dakota. ProGas is a corporation incorporated under the laws of Delaware, with its principal place of business at 400, Third Avenue S.W., Suite 3300, Calgary, Alberta, Canada. ProGas is actively engaged in the business of purchasing and reselling natural gas throughout the United States.

III.

AUTHORIZATION REQUESTED

ProGas, as agent for RDO, requests authorization to import up to $40.3 \times 10^3 \text{ m}^3$ (1423 Mcf/d) per day of natural gas, plus fuel, shrinkage and line loss, on a long term basis from April 1, 2000 through October 31, 2008. As confirmed in the attached Exhibit "A", importation of natural gas from Canada is within both ProGas' and RDO's corporate powers.

RDO entered into a firm natural gas supply agreement dated October 22, 1996 with ProGas Limited, ProGas's parent company (the "Agreement"). A copy of this agreement is attached as Exhibit "B" to this application. Under the Agreement, ProGas Limited, will ship the gas through Alberta on the NOVA Gas Transmission Ltd. pipeline to its interconnection with TransCanada PipeLines Ltd. ("TCPL") at Empress, Alberta. RDO will purchase the gas from ProGas Limited at Empress, Alberta and ship it on its capacity on the TCPL system to the U.S./Canadian International boundary at Noyes, Minnesota. At

Noyes, RDO will import the gas into the United States. RDO will ship the gas from Noyes using its capacity on the Viking Gas Transmission Company ("Viking") to its food processing plant in Grand Forks, North Dakota.

Under the terms of the Agreement, the price of the gas sold by ProGas Limited to RDO is based on a published index which is adjusted each month to reflect current market conditions. The price of the gas sold also contains a premium to reflect the priority and security of long term firm gas supply (for reasons of commercial sensitivity the amount of this premium has been edited out of the contract attached as Exhibit "B").

ProGas Limited has agreed to act as agent for RDO in the operation and management of the TCPL transportation capacity held and paid for by RDO. In addition, ProGas has agreed to act as agent for RDO in the procurement and administration of necessary import authorizations. As such, ProGas, as agent for RDO, will be the primary point of contact with the Office of Fossil Energy (O.F.E.) with respect to matters that may arise in connection with the requested import authorization, including any reporting requirements. Notwithstanding ProGas' role as agent, RDO will be the importer of record.

IV.

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 interests, and that applications for such importation shall be granted without modification or delay¹. Because this application is for the importation of natural gas from Canada, a nation with which the United States has a free trade agreement, ProGas, as agent for RDO, submits that this application is within the public interest.

V.

REPORTING REQUIREMENTS

With respect to the imports made pursuant to the long-term authorization requested herein, within two weeks after deliveries begin under the long-term authorization, ProGas, as agent for RDO will notify

¹Energy Policy Act of 1992, Title II - Natural Gas, Pub. L. No. 102-486 (1992)

the Office of Fuels Programs ("OFP") in writing of the date that the first import of natural gas occurred. Additionally, ProGas, as agent for RDO, will file with the OFP within thirty (30) days following each calendar quarter, a quarterly report showing by month the total volume imported and the average purchase price per MMBtu of gas paid at the international border. The price information for a particular month will include such information as OFE may require to be filed.

VI.

CONCLUSION

WHEREFORE, for the foregoing reasons ProGas, as agent for RDO, respectfully requests that the OFE expeditiously consider the instant application and pursuant to section 3 of the NGA, as amended by section 201 of the Energy Policy Act, grant the requested long-term import authorization. ProGas, as agent for RDO, submits that a grant of such authorization would be consistent with the public interest.

Respectfully submitted:



Charles H. Shoneman, Esq.
Bracewell & Patterson, L.L.P.
Attorneys at Law
2000 K Street NW Ste 500
Washington, DC 20006-1872
Phone: (202) 828-5800

ATTORNEY FOR PROGAS U.S.A., INC.

GAS SALES AGREEMENT

between

PROGAS LIMITED

and

RDO FOODS CO.

dated

OCTOBER 22, 1996

**GAS SALES AGREEMENT
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THIS GAS SALES AGREEMENT made as of the 22nd day of October, 1996 between:

PROGAS LIMITED
("Seller")

- and -

RDO FOODS CO.
("Buyer")

BACKGROUND:

Buyer is the owner and operator of a food processing plant in Grand Forks, North Dakota and wishes to contract gas supply from Seller for the operation of this plant ("RDO Plant"); and

Seller has committed to it, a pool of gas supply in western Canada and Seller has agreed to sell a portion of this gas supply to Buyer;

In consideration of the following mutual covenants the parties agree as follows:

ARTICLE I - INTERPRETATION

1.1 Definitions

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

- (a) "Business Day" means any day except Saturdays, Sundays, statutory holidays and banking holidays under the laws of Alberta, or the laws applicable to the jurisdiction of Buyer;
- (b) "Canadian Regulatory Authorities" means each governmental agency or other authority in Canada which has jurisdiction over any matter relevant to Seller's rights and obligations hereunder, including without limitation the National Energy Board, the Alberta Energy and Utilities Board, the Alberta Petroleum Marketing Commission, the Federal Governor-in-Council, and any Provincial Lieutenant Governors-in-Council;
- (c) "Commencement Date" will have the meaning set forth in Section 3.2;
- (d) "Contract Year" means, with respect to the first "Contract Year" the period commencing on the Commencement Date and ending on the thirty first (31st) day of October following the Commencement Date and with respect to any succeeding "Contract Year" the period of twelve (12) consecutive months beginning on November 1 and ending on October 31 of the following calendar year;
- (e) "Daily Contract Quantity" or "DCQ" means the lesser of 1,400 GJ per day plus Fuel or the TCPL capacity being $40.3 \times 10^3 \text{m}^3$ contracted for by Buyer;
- (f) "Day" means day as defined in the TCPL tariff;
- (g) "Downstream Pipeline(s)" means TCPL and Viking or any other transporters designated to transport gas purchased by Buyer from the Point of Delivery to the RDO Plant;
- (h) "Fuel" means, subject to Section 4.2, the amount of fuel required pursuant to the TCPL tariff to transport the Scheduled Daily Delivery from the Point of Delivery to the interconnection of TCPL and Viking, at or near Emerson, Manitoba;

- (i) "gas" means natural gas of the quality specified in Article VIII;
- (j) "Heat Value" means the heat value as measured and calculated by TCPL at the Point of Delivery;
- (k) "Imbalance Charges" means any scheduling penalties, imbalance penalties, unauthorized overrun penalties, operational flow order penalties, banking charges or similar penalties, fees or charges assessed by TCPL or NOVA for failure to satisfy TCPL or NOVA's balance or nomination requirements;
- (l) "NOVA" means NOVA Corporation of Alberta;
- (m) "Point of Delivery" has the meaning set forth in Article VII;
- (n) "Price" has the meaning set forth in Article V;
- (o) "RDO Plant" means the food processing plant owned by Buyer and located in Grand Forks, North Dakota;
- (p) "Scheduled Daily Delivery" means the volume of gas, up to the DCQ, which Buyer requests Seller to cause to be delivered to the Point of Delivery for Buyer's account during any one (1) day;
- (q) "TCPL" means TransCanada PipeLines Limited;
- (r) "Upstream Pipeline(s)" means NOVA or any other transporters designated to transport Seller's gas to the Point of Delivery;
- (s) "U.S. Regulatory Authorities" means each state or federal governmental agency or other authority in the United States of America which has or may accept jurisdiction over the matter in question, including without limitation the United States Department of Energy (Fossil Energy), the Federal Energy Regulatory Commission, and other state or federal agencies; and
- (t) "Viking" means Viking Gas Transmission Company.

ARTICLE II - CONDITIONS PRECEDENT

- 2.1 The obligations of Seller and Buyer to deliver and purchase the DCQ will not arise prior to the satisfaction of each of the following conditions (the "Conditions") unless such conditions are waived by written agreement by both Buyer and Seller:
- (a) the receipt by Seller from the appropriate Canadian Regulatory Authorities of all necessary permits, licences, certificates or authorizations for the removal of gas from Alberta, the export and sale of gas to Buyer, and the transportation of such gas from the area of production to the Point of Delivery, on terms and conditions acceptable to Seller and Buyer;
 - (b) the receipt by Buyer from the appropriate Canadian Regulatory Authorities and U.S. Regulatory Authorities, of all permits, licences, certificates, or authorizations required for the purchase of Seller's gas, and the transportation and delivery of such gas from the Point of Delivery to the RDO Plant on terms acceptable to Buyer and Seller;

- (c) the completion by Seller, or ProGas Limited, of all necessary non-proratable firm transportation arrangements to the Point of Delivery on the facilities of the Upstream Pipelines on terms acceptable to Seller and Buyer; and
- (d) the completion by Buyer of all necessary firm non-proratable transportation arrangements from the Point of Delivery to the RDO Plant on the facilities of the Downstream Pipelines on terms acceptable to Buyer and Seller.

- 2.2 Each of the parties will proceed with due diligence to apply for and attempt to obtain their respective authorizations and arrangements set forth above by or before November 1, 1998, and to keep the other party informed as to the status of their respective filings. Each of the parties will use due diligence to maintain and extend, if necessary, any such authorization which may expire during the Term. With respect to the authorizations outlined in Section 2.1(b) and (c), Buyer appoints Seller and Seller's wholly-owned U.S. subsidiary, ProGas U.S.A., Inc., to act as its agent with respect to matters relating to any necessary Canadian export and U.S. import authorizations and Seller and ProGas U.S.A., Inc. accept such agency and agree to use reasonable efforts to obtain or otherwise assist Buyer in obtaining and administering same. The parties agree that the term of authorizations required from Canadian Regulatory Authorities and U.S. Regulatory Authorities may be initially for terms shorter than the term of this Agreement and notwithstanding Section 2.1, Buyer and Seller will rely on such short term authorizations to sell and purchase gas under this Agreement until the long term authorizations covering the term of this Agreement have been obtained.
- 2.3 Buyer will reimburse Seller for any U.S. customs import merchandising fees or any other import taxes or levies which may be payable by Seller, or Seller's affiliate, if applicable, as importer, upon the import of the gas into the United States.

ARTICLE III - TERM OF AGREEMENT, COMMENCEMENT

3.1 Term

This Agreement will become effective from the date first above written and will continue in full force and effect until October 31, 2008 ("Initial Term"). Buyer will have the right to extend this Agreement for an additional five (5) years to October 31, 2013, provided that Buyer serves Seller with written notice of its exercise of this right prior to November 1, 2006.

3.2 Commencement Date

Subject to the fulfilment or waiver of the Conditions set forth in Article II, the obligation of the parties to sell and purchase the DCQ will commence November 1, 1998 ("Commencement Date").

ARTICLE IV - CONTRACT QUANTITIES; DELIVERIES

4.1 Delivery Obligation

(a) Scheduled Daily Delivery

Subject to the fulfilment of the Conditions set forth in Article II and the remaining provisions of this Agreement, on each day commencing on and after the Commencement Date and continuing until the end of the term of this Agreement, Seller will cause to be delivered and sell, and Buyer will purchase and cause to be received, the Scheduled Daily Delivery, up to the DCQ, at the Point of Delivery.

(b) Failure to Deliver

- (i) If, on any day, Seller does not deliver sufficient gas at the Point of Delivery to meet the Scheduled Daily Delivery, for reasons other than Force Majeure, Buyer will have the right to purchase such gas from alternate sources, or utilize on site-fuel oil as an alternate fuel source for the RDO Plant, provided that prior to utilizing on site-fuel, Buyer will have used its best efforts to purchase gas.
- (ii) In the event Buyer purchases replacement volumes or utilizes on-site fuel oil to operate the RDO Plant, as outlined in (i) above, and the failure of Seller to deliver was not excused by an event of Force Majeure, Seller will pay Buyer, the positive difference, if any, obtained by subtracting the Price from the Spot Price and the difference multiplied by the volume of gas that Seller failed to deliver to Buyer on such day or days. For the purposes of this paragraph, "Spot Price" means the "Daily Spot Gas Price at Empress" under the column "Price (\$/GJ) and sub-column "Avg." for the relevant day or weekend as reported in the Canadian Gas Price Reporter (published by Canadian Enerdata Ltd.).
- (iii) The remedies in this Section will be the sole remedies of Buyer in the event Seller fails to deliver, and in no event will Seller be responsible for incidental, special or punitive damages.

4.2 Fuel

In the event that the Fuel requirements in TCPL's tariff increase, any corresponding increase in the DCQ will be conditional on Seller obtaining additional firm transportation on the Upstream Pipelines.

4.3 Purchase Obligation

All gas required for the RDO Plant up to the DCQ will be acquired by Buyer from Seller and Buyer will not displace the supply available under this Agreement, or any other agreement which may be in place between Seller and Buyer and its affiliates, with supply from any other source.

ARTICLE V - PRICE**5.1 Price**

- (a) The Price will be the Empress Index per GJ plus the Premium per MMBtu where:

"Empress Index" means the "Alberta Spot Price - Empress" for the relevant Month, in \$Cdn/GJ, as reported in the Canadian Gas Price Reporter (published by Canadian Enerdata Ltd.), under the table titled "Monthly Canadian and U.S. Natural Gas Price Summary" in the section titled "Canadian Domestic Gas Prices".

"Premium" means

- (b) Prior to adding the Premium, the Empress Index will be converted to an MMBtu equivalent and converted to a U.S. dollar equivalent using the average of the noon spot exchange rates for the U.S. dollar in terms of Canadian dollars for the relevant month as published by the Bank of Canada ("\$/Cdn/\$US Ex") as follows:

[Empress Index (\$Cdn/GJ) x 1.055056 ÷ \$Cdn/\$US Ex]

- (c) The Empress Index may be replaced with another index agreeable to both parties with the understanding that the Premium will remain and if an AECO or NIT index is used, then an agreed to NOVA delivery charge to Empress will be added to the price.

5.2 Taxes

- (a) Seller shall pay or cause to be paid, all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to its delivery at the Point of Delivery. Buyer shall pay or cause to be paid, all Taxes on or with respect to the Gas at or after its delivery at the Point of Delivery. If a party is required to remit or pay Taxes which are the other party's responsibility, such party shall promptly reimburse the other party for the Taxes. If either Party is entitled to an exemption from any Taxes or charges, that Party shall furnish the other party with any necessary exemption or resale certificate to benefit from the exemption.
- (b) If any Goods and Services Tax ("GST") imposed pursuant to the Excise Tax Act (Canada), as amended from time to time, is payable in connection with Gas purchased, the GST shall be paid by Buyer to Seller, as agent for the federal government of Canada, and Seller shall remit the GST as required by law. If Buyer is entitled to an exemption from GST, Seller will use reasonable efforts to assist Buyer in obtaining this exemption.

ARTICLE VI - BILLING AND PAYMENTS

6.1 Monthly Statements and Payments

- (a) On or before the tenth (10th) day of each month ("Invoice Date"), Seller will provide Buyer with a statement for the preceding month (the "Sale Month") showing the total quantity of gas delivered and the total amount payable by Buyer stated in U.S. dollars ("the U.S. Dollar Sum"). Buyer agrees to deposit the U.S. dollar sum by wire transfer in Seller's account at the Bank of Montreal, Calgary, Alberta, Canada, or such other bank as may be designated by Seller, on or before the twentieth (20th) day of each month ("Payment Date"). In the event that Buyer has not received Seller's statement on or before the Invoice Date, the Payment Date will be extended one (1) day for each day that Seller's statement is late. If the Payment Date is not a Business Day, then payment will be due on the Business Day closest and prior to the Payment Date.
- (b) If the actual daily and total quantity of gas delivered in the Sales Month is not available from the measuring pipeline before the Invoice Date, Seller may at its option, render a statement containing Seller's best estimate of the daily and total quantity of gas delivered in the Sales Month, and the total amount payable by Buyer ("Estimate"). Buyer will deposit in Seller's account the Estimate by the Payment Date. Seller will render the final statement for such Sales Month with Seller's statement for the next succeeding Sales Month. Seller's statement for such next succeeding month will reflect an adjustment for any difference between the Estimate and the final statement for the previous Sales Month.

6.2 Failure to Pay

- (a) If Buyer fails to deposit the U.S. Dollar Sum, or any portion thereof, in Seller's account by the Payment Date, interest thereon will accrue as provided in Section 6.3. If Buyer's failure to pay continues for two (2) days beyond the Payment Date, Seller may, in addition to all other remedies, thereafter suspend the sale of gas provided that Seller must first have notified Buyer in writing twenty-four (24) hours prior to exercising such right of its intent to do so. If after Buyer receives such notice:

- (i) Buyer pays the amount so due to Seller within such twenty-four (24) hour period; or
- (ii) Buyer in good faith disputes the amount of any such statement and pays to Seller such amounts as it concedes to be correct and within such twenty-four hour period either (1) furnishes a bond; or (2) deposits the disputed amount in escrow, in either case under terms reasonably satisfactory to Seller and sufficient to guarantee payment to Seller of the amount ultimately found due upon such bill after a final determination which may be reached either by agreement or judgement of the courts,

Seller will not be entitled to suspend further sales of gas provided that Seller will be entitled to immediately suspend sales of gas upon default of the terms of any bond or escrow established.

- (b) If the default of payment continues after the expiration of the ten (10) days after the commencement of a suspension or a bond or escrow is in default, Seller may thereafter, in addition to any other rights Seller may have, terminate this Agreement.

6.3 Interest

If either party fails to pay any amount when due and claimed, and such amount is not successfully disputed by such party or if refunds are due, interest on any amount finally determined to be due will accrue at the rate equal to the annual U.S. Base Lending Rate of interest plus two (2) percent announced from time to time by the bank used or designated by Seller.

6.4 Financial Security

If, at any time, Seller, in its sole judgement, reasonably determines that the ability of Buyer to make payments due to Seller has become impaired or unsatisfactory or, Buyer exceeds, or is about to exceed the credit limit then in effect, as from time to time established by Seller, then by notice, Seller may require Buyer to prepay or provide an irrevocable letter of credit in Seller's favour in a form and having such terms and conditions as Seller shall reasonably specify, issued by a major bank which is, and remains acceptable, to Seller. Such prepayment will be made to, or such letter of credit received by, Seller within two (2) Business Days after Seller's request. In the event that Buyer does not comply with the request within the stated time, Seller may suspend deliveries of gas until the request has been complied with.

6.5 Early Termination

- (a) If either party:
 - (i) fails to deliver or purchase and the failure extends over a period of thirty (30) consecutive days, and such failure is not excused under this Agreement;
 - (ii) or its assets, becomes the subject of any proceeding (whether initiated by it or another person) under bankruptcy or insolvency laws, including without limitation, proceedings under the *Companies' Creditors' Arrangement Act* (Canada),
 - (iii) becomes the subject of any proceeding for liquidation, reorganization or winding up (whether initiated by it or by another person),

- (iv) has a receiver or a receiver manager of all or any part of its assets appointed by a court of competent jurisdiction or by a creditor;
- (v) commits an act of bankruptcy as defined in the *Bankruptcy and Insolvency Act* (Canada),
- (vi) commits any other act or omission which would entitle any of its creditors to initiate a process or proceeding to take possession of any of its assets or to have any of its assets distributed among such creditors, or
- (vii) fails to make when due any payment to the other party required under this Agreement and such failure is not remedied within five (5) days after written notice of such failure is given to it by the non-defaulting party;
- (viii) or deliveries have been suspended for a period of ten (10) days under Section 6.4,

(each of the foregoing events will be considered an "Event of Default") then, in addition to any and all other remedies available, the other party ("Non -Defaulting Party") will have the right to terminate this Agreement with written notice to the other party ("Termination Notice").

6.6 Currencies

All references to currency, unless otherwise specified, are to lawful money of Canada. Any necessary conversions from either U.S. or Canadian currency with respect to any charges for any month will be calculated at the rate of exchange for such month being the average of the noon spot exchange rates for the U.S. dollar in terms of Canadian dollars or vice versa for such month as published by the Bank of Canada.

6.7 Inspection

Each party will have the right to inspect and examine, at reasonable times, the records and pipeline statements of the other party pertaining to the purchase and sale of gas. If any overcharge or undercharge is discovered, Seller will refund the amount of the overcharge paid by Buyer or Buyer will pay the amount of the undercharge, within thirty (30) days after the final determination. No retroactive adjustment is required for any discrepancy beyond a period of twelve (12) months from the date it occurred. Both parties agree to request any applicable transporter for records under their agreements with the transporting pipelines if required to settle a dispute.

ARTICLE VII - POINT OF DELIVERY

7.1 Point of Delivery

The Point of Delivery will be the point of interconnection between the facilities of NOVA and TCPL at or near Empress, Alberta, Canada.

7.2 Title and Possession

Possession of and title to gas sold by Seller to Buyer will pass from Seller to Buyer at the Point of Delivery. Until the gas reaches the Point of Delivery, as between Seller and Buyer, Seller will be deemed to be in control of, have possession of, and be responsible for such gas after which Buyer will be deemed to be in control of, have possession of, and be responsible for such gas. Seller warrants that it will at the time of delivery have good title to all gas sold to Buyer, free and clear of

all liens, encumbrances and claims whatsoever and that Seller will indemnify Buyer and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to the title of said gas, which arise prior to title passing to Buyer.

7.3 Delivery Pressure

The gas will be delivered to TCPL at TCPL's line pressure at the Point of Delivery.

7.4 Transportation

- (a) Seller will be responsible for payment of all transportation charges on the Upstream Pipelines. Subject to Section 7.4(e), Buyer will be responsible for payment of all transportation and related charges, such as Imbalance Charges, on the Downstream Pipelines.
- (b) Buyer will appoint Seller its agent to operate and administer the TCPL capacity for Buyer, and the parties will cooperate and use reasonable efforts to obtain cooperation from the pipelines to accomplish this objective.
- (c) If Buyer does not nominate the full DCQ, Seller will have access to the unutilized TCPL and Viking capacity for its own use. At such times, Seller will pay only the variable costs of transportation and fuel. The parties will cooperate and use reasonable efforts to obtain cooperation from the pipelines to accomplish this objective.

- (d) If Buyer nominates the full DCQ, and resells the gas purchased instead of using it for Buyer's plant, any Resale Premium will be shared equally between Buyer and Seller, where:

"Resale Premium" means the positive difference, if any, between (i) the price received by Buyer from the resale and (ii) the Price paid to Seller under this Agreement plus the 100% load factor rate, (including all variable costs of transportation and fuel), paid by Buyer for the TCPL and Viking capacity.

The amount owed to Seller, if any, in respect of such resale will be payable at the same time as payment for the gas purchased in the relevant month. Buyer will keep a record of all such resale transactions and will disclose the details of these transactions to Seller at the end of every month.

- (e) In the event that, in Seller's reasonable opinion, Buyer, or Buyer's agent, has not maximized the use of Viking capacity as contemplated in (d) or has not adequately facilitated Seller's use of the Viking capacity as contemplated in (c), Seller may by thirty (30) days written notice, request that Seller be appointed Buyer's agent to operate and administer the Viking capacity for Buyer, and the parties will cooperate and use reasonable efforts to obtain cooperation from the pipelines to accomplish this objective within the thirty (30) day period. The terms in Section 7.4(d) will continue to apply with Seller acting as Buyer's agent in respect of the Viking capacity.

ARTICLE VIII - QUALITY AND MEASUREMENT

8.1 Quality

The quality, pressure and temperature of the Gas to be delivered shall be in accordance with the quality, pressure and temperature specifications and remedies set by NOVA. The parties acknowledge that the quality standards and remedies set by NOVA may change from time to time

and agree to accept and incorporate such changes in this Agreement as such changes occur. In the event that quality, pressure and temperature standards of NOVA do not conform to those of TCPL, and TCPL refuses to transport Gas delivered under this Agreement, unless otherwise mutually agreed by Buyer and Seller, such event will be considered an event of Force Majeure.

8.2 Measurement

The volume and associated heating value of all Gas delivered shall be calculated from measurements taken at the facilities installed, operated and maintained by TCPL at the Point of Delivery. The volume and associated heating value of the Gas, reported by TCPL as received for Buyer's account, subject to verification by Seller, shall be used by Seller for billing purposes and Buyer shall cooperate with Seller by using best efforts to ensure that such information is available to Seller prior to the Invoice Date set forth in Section 6.1.

8.3 Conversions

Where required, standards of measurement will be converted to metric measures or to imperial measures. The conversion of any quantity or value referred to below will be done, where required, using the following equivalent factors as set by the Gas Industry Standards Board:

1 MMBtu (dry) x 1.055056 = 1GJ
1 MMBtu (dry) = 1 Dekatherm

1 MMcf x 28.32784 = 1 10³m³

ARTICLE IX - NOMINATIONS AND BALANCING

9.1 Nominations

By at least two (2) days prior to the commencement of each Month, Buyer will provide Seller with an estimate of the anticipated Scheduled Daily Delivery(s) for the following month. Buyer may advise Seller of any changes to the Scheduled Daily Delivery by providing sufficient advance notice to Seller to allow Seller to meet the nomination deadlines set by the Upstream and Downstream Pipelines. Seller will advise Buyer of Seller's nomination deadlines or changes to same. The parties agree to use best efforts to arrange nominations on non Business Days. If no nomination or change to the Scheduled Daily Delivery is received by Seller for any day, the last nomination, or Scheduled Daily Delivery, will remain in effect.

9.2 Imbalances

Buyer and Seller agree to use best efforts to minimize imbalances and circumstances that may give rise to Imbalance Charges. If Imbalance Charges are imposed on either party by pipelines transporting gas, as a result of the delivery, non-delivery, receipt or non-receipt of gas, Buyer and Seller will use best efforts and cooperate to expeditiously ascertain the cause of, mitigate and resolve, such Imbalance Charges. It is the intent of the parties that the party responsible for causing the Imbalance Charges will be responsible for paying same, but only to the extent that such party was directly responsible and the charges could not have been reasonably avoided by the party incurring them.

ARTICLE X - FORCE MAJEURE

- 10.1 Except with regard to a party's obligation to make payments due under this Agreement, in the event either party fails, wholly or in part, to carry out its obligations under this Agreement, including the obligation to deliver or take delivery of Gas, and such failure is caused by, or is a consequence of a Force Majeure condition, if such party gives notice and particulars of the Force Majeure condition to the other party as soon as reasonably possible, then the obligations of the

party giving such notice, insofar as they are affected by such a Force Majeure condition, will be suspended during the continuance of the Force Majeure condition.

- 10.2 Force Majeure conditions are those events or conditions not caused by, and beyond the reasonable control of, the affected party. Force Majeure conditions include, without limitation: acts of God, natural disaster, war, insurrection or other unlawful act against public order or authority; failure of any third party processor or transporter of Gas to receive, process, transport or deliver Gas, provided that the party affected has contracted or arranged for firm transportation service and the failure is not caused by the party affected; failure of processing and field production facilities of, or supply from, producers contracted to Seller, but only to the extent that such failure can be demonstrated to render Seller unable to obtain supply from its contracted supply sources in western Canada above the level of its then existing firm sales obligations; explosion, fire, freezing or other accidents or acts of sabotage causing breakage of, or damage to, machinery, lines of pipe or field and delivery facilities, or temporary failure of Gas supply due to similar causes; inability to obtain, or a revocation or adverse amendment of, licenses or other necessary regulatory authorizations or where continued performance would be in violation of an order, legislation, regulation or similar direction of a government, board, agency or court having jurisdiction, which has been resisted in good faith.
- 10.3 The term Force Majeure specifically excludes lack of finances, unprofitability, and the loss, interruption, or curtailment of interruptible transportation or loss, interruption, or curtailment of firm transportation not utilizing primary receipt and delivery points on any transporter necessary to effect receipt and/or delivery of Gas, unless the same event also curtails firm transportation between primary receipt and delivery points. A Force Majeure condition affecting either party's performance under this Agreement will not relieve the non-performing party of liability to the extent that the negligence of the non-performing party or its affiliates was the proximate cause of the event, and to the extent the non-performing party fails to remedy the situation and remove or overcome the cause of the event with due diligence and all reasonable dispatch.
- 10.4 Notwithstanding the foregoing, in the event that a Force Majeure condition affects only a portion of the pool supply available for delivery by Seller, Seller shall deliver to Buyer, Buyer's pro rata share of the available supply. Buyer's pro rata share will be the percentage resulting from the DCQ divided by the total quantity of Seller's firm sales obligations on each day during the period of the Force Majeure. During the period when deliveries of Gas from Seller's supply pool are affected by a Force Majeure event, provided Seller has met its obligations under this section, Seller may, but will not be obligated to, seek out any Gas supplies which may be available outside Seller's then current contracted supply pool.

ARTICLE XI - RENEGOTIATION AND ARBITRATION

11.1 Cessation of Publication of Index

- (a) In the event that the publication used to determine the Empress Index is no longer published, the parties will negotiate in good faith to agree upon a mutually satisfactory replacement publication that represents the market price for thirty (30) day firm supplies of Gas at Empress. The effective date of such replacement publication used to determine the Empress Index will be the first Day of the Month following cessation of publication of the index or indices being replaced.
- (b) If pursuant to good faith negotiations, Seller and Buyer are unable to agree on a replacement index or indices within thirty (30) days of the date that the index or indices that had been used is no longer published, then either Party may refer the matter to arbitration pursuant to Article XII of this Agreement.

11.2 Non-Representative Price

(a) Renegotiation

After November 1, 2000, either party may, by written notice to the other party prior to May 1 of any Contract Year, request renegotiation of the Empress Index and/or the Premium. Any changes will be effective no earlier than the commencement of the following Contract Year unless otherwise mutually agreed. The purpose of such renegotiation will be to reach agreement on a Price which will result in an overall Price for gas supplies purchased under this Agreement which is reasonably equivalent to prices for alternate firm gas supplies available to Buyer under similar terms and conditions, including an Empress, Alberta Point of Delivery and a term of at least five (5) years, with comparable reliability and flexibility of service as provided under this Agreement. Each party may initiate a renegotiation only twice during the Initial Term of the Agreement.

(b) Referral to Arbitration

If the parties fail to reach agreement on a Price or any component of the Price following a notice for renegotiation, unless otherwise mutually agreed, the matter will be submitted to Arbitration pursuant to Article XII. The Arbitrator(s) will determine an overall Price for gas under this Agreement which is reasonably equivalent to prices for alternate firm gas supplies available to Buyer under similar terms and conditions, including an Empress, Alberta Point of Delivery and a term of at least five (5) years, with comparable reliability and flexibility of service as provided under this Agreement. In reaching such determination, the Arbitrators will have regard to the following:

- (i) the security of supply and indemnity obligations backing Seller's obligation to deliver, compared to alternate firm gas supply options available;
 - (ii) the period of time for which a firm commitment to supply is made;
 - (iii) the flexibility of the Buyer to adjust levels of take;
 - (iv) the transportation capacity management service provided by Seller for Buyer; and
 - (v) Seller's assistance to Buyer in obtaining regulatory authorization and ongoing regulatory support
- (c) Notwithstanding any other provision of this Section, unless otherwise agreed to by Seller, if an AECO Index or other in-Alberta index is agreed to or imposed by arbitration, at least the actual NOVA cost, as billed by NOVA, to transport gas to Empress, will be added to the AECO Index.

ARTICLE XII - ARBITRATION

12.1 Upon written notice from either party requiring arbitration under this Agreement as required herein or as agreed to by the parties, unless otherwise agreed to by the parties the following will apply:

- (a) the arbitration will be referred to the British Columbia International Commercial Arbitration Centre ("BCICAC") and finally resolved by arbitration under the rules of the BCICAC ("BCICAC Rules");
- (b) the place of arbitration will be Vancouver, British Columbia, Canada;

- (c) the case will be administered by the BCICAC in accordance with the "Procedures for cases under the BCICAC Rules";
- (d) each notice demanding arbitration will include a suggested arbitrator. Within fifteen (15) days following receipt of such notice, the party receiving notice will accept the arbitrator or propose an alternative arbitrator. If the parties are unable to select a single arbitrator within thirty (30) days from the date of notice, the arbitrators selected by each party will promptly select a third and the arbitration hearing will be held within sixty (60) days from the date of notice of arbitration. Unless otherwise mutually agreed, the Hearing will not exceed thirty (30) days. Each party will pay all costs for presenting its position and the costs of the arbitrator, elected by such party in the case of a three (3) arbitrator panel. All costs for the hearing facilities and for the single arbitrator or the third arbitrator, if applicable, will be divided equally between Buyer and Seller; and
- (e) the decision of the arbitrator(s) will be delivered within thirty (30) days from the date of the conclusion of the Hearing. The decision of the arbitrator (a majority vote if an arbitration panel is used) will be final and binding, subject only to such appeal as may be permitted for binding arbitration decisions under the International Commercial Arbitration Act of British Columbia, and any regulatory approvals which may be required. The parties agree to use due diligence in obtaining such regulatory approvals.

- 12.2 Pending the outcome of any such arbitration, the terms in effect immediately prior to such arbitration will remain in effect. Any modification approved by the arbitrator(s) will be effective prospectively only, and such modification will become effective on the later of the first day of the first month following the decision of the arbitrators, or the date that all required regulatory authorizations have been received, but in no event earlier than the first day of the Contract Year following the date on which notice of the renegotiation that resulted in such arbitration was given.

ARTICLE XIII - LAWS AND REGULATORY BODIES

- 13.1 This Agreement is governed and construed in accordance with the Laws of Alberta, without recourse to the rule of conflict of laws. The parties submit to the courts of Alberta for the interpretation and enforcement hereof.

ARTICLE XIV - TRANSFER AND ASSIGNMENT

- 14.1 Either party may, without relieving itself of its obligations under this Agreement, assign any of its rights and obligations hereunder to an entity with which it is affiliated at the time of such assignment. Otherwise no assignment of any of the rights and obligations under this Agreement will be made by a party without the prior written consent of the other party, which consent will not be withheld unreasonably.

ARTICLE XV - NOTICES

- 15.1 All nominations and changes to the recipient party nominations shall be forwarded to the recipient party by telecopy prior to the latest time that such party is able to effect the necessary change of flow with the applicable transporter, and will remain in effect until replaced by a new nomination. Except where verbal notice is provided for, other notices, statements or bills will be in writing and delivered by telecopier or similar type of telecommunication, or by hand to the recipient party at the applicable address for service. Any such notice, statement, bill or other document delivered by telecommunication or hand to the addressee will be deemed to have been received at the time of delivery or at the time of transmission in the case of telecommunication, during normal office hours of the recipient party. In the event that any notices, statements or bills cannot be delivered by telecommunication then they may be delivered by means of overnight mail or courier using the

fastest available form of delivery. The address for service and notices will be as follows, subject to change by written notice:

ProGas Limited
3300, 400 Third Avenue S.W.
Calgary, Alberta T2P 4H2

RDO Foods Co.
Hiway 71 South
Park Rapids, Minnesota U.S.A. 56470

General:

Attention: Vice Pres., Marketing
Telephone: (403) 296-0600
Facsimile: (403) 266-0354

Attention: R.L. Bogaard, Director of Operations
Telephone: (218) 732-7252
Facsimile: (218) 732-2192

Nominations:

Attention: Manager, Operations
Facsimile: (403) 266-0366

Nominations:

Attention: Joice Conner
Facsimile: 402 861 0461
Tele: 402 861 9495

ARTICLE XVI - MISCELLANEOUS PROVISIONS

- 16.1 This Agreement constitutes the entire agreement between the parties relating to the subject matter and supersedes any other prior agreements, written or oral, between the parties concerning such subject matter unless otherwise specifically stated. No amendment will be effective unless reduced to writing and signed by both parties.
- 16.2 The parties recognize the commercial sensitivity of the terms of this Agreement and agree to keep the terms confidential and not to divulge any of the contents to any other person, firm or corporation or other entity, except to the extent required by regulatory or judicial authorities.
- 16.3 No waiver by either party of any one or more defaults in performance of any of the provisions of this Agreement will operate or be construed as a waiver of any future default, whether of a like or difference character.
- 16.4 All references to legislation in this Agreement are intended to also apply to amendments, re-enactments, and any successor legislation which substantially adopts or duplicates such legislation.

IN WITNESS WHEREOF the parties have signed this Agreement on the dates indicated below their signatures.

PROGAS LIMITED

Per: [Signature]
Title: Vice President Marketing & Transportation
Per: [Signature]
Title: K.J. MacDONALD
PRESIDENT & CEO
Date: June 7, 1999

DEPT.	INIT.
Res	<input checked="" type="checkbox"/>
Upr	<input checked="" type="checkbox"/>
Mkt	<input checked="" type="checkbox"/>
Leg	<input checked="" type="checkbox"/>
Act	<input checked="" type="checkbox"/>

RDO FOODS CO.

Per: [Signature]
Title: General Manager
Date: 8/4/99

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

REC'D DOE/FE

2000 MAR -8 P 1:47

RDO FOODS CO.

)
)
)
FE DOCKET NO. 00-10-NG

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

DOE/FE ORDER NO. 1573

MARCH 8, 2000

I. DESCRIPTION OF REQUEST

On February 18, 2000, ProGas U.S.A., Inc. (ProGas) filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA),^{1/} and DOE Delegation Order Nos. 0204-111 and 0204-127, as agent for the RDO Foods Co. (RDO), requesting authorization for RDO to import natural gas from Canada. RDO will import up to 1,423 Mcf per day of natural gas, plus gas for fuel, shrinkage and line loss, from April 1, 2000, through October 31, 2008. RDO is incorporated under the laws of the State of North Dakota with its principal place of business in Grand Forks. RDO is the owner and operator of a food processing plant in North Dakota, and will be the importer of record and ultimately responsible for the import of this gas. ProGas, as agent for RDO, is responsible for the procurement and administration of the requested import authorization, including filing all reports required by the DOE authorization. ProGas, a Delaware corporation with its principal place of business in Calgary, Alberta, Canada, is beneficially owned by ProGas Limited, a private Canadian corporation. ProGas primarily purchases natural gas from ProGas Limited and resells the supplies directly to end-users and others throughout the United States.

RDO will import gas purchased from ProGas Limited under a sales agreement dated October 22, 1996.^{2/} RDO will take delivery of the gas from ProGas Limited at the Empress, Alberta, interconnection between the pipeline facilities of Nova Corporation of Alberta (NOVA) and TransCanada PipeLines Limited (TCPL). TCPL will then transport the gas to the

^{1/} 15 U.S.C. § 717b.

^{2/} ProGas is currently using its blanket import authority to acquire gas from ProGas Limited for RDO.

international border near Noyes, Minnesota, where Viking Gas Transmission Company will transport the gas to its food processing plant in Grand Forks, North Dakota. No new pipeline facilities would be constructed. The gas sales contract between RDO and ProGas Limited provides that RDO will pay a price that will be adjusted monthly based on an index quoted in Canadian Enerdata Ltd.'s *Canadian Gas Price Reporter* under the category "Alberta Spot Price" plus a fixed premium per MMBtu on the volumes taken.^{3/}

II. FINDING

The application filed by ProGas, on behalf of RDO has been evaluated to determine if the proposed import arrangement meets the public interest requirement of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the import of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. The authorization sought by RDO 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.

^{3/} The Empress index may be replaced with another index with the premium remaining and if an AECO index (means the Alberta Sport Price) or NIT index (means NOVA Inventory Transfer index) for the relevant month is used, then a NOVA delivery charge will be added to the price.

ORDER

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

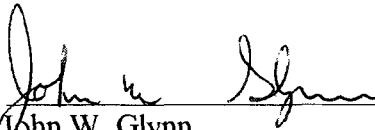
A. RDO Foods Co. (RDO) is authorized to import up to 1,423 Mcf per day of natural gas from Canada beginning April 1, 2000, through October 31, 2008. This gas will be imported at Noyes, Minnesota, consistent with the terms and conditions of the gas sales agreement between RDO and ProGas Limited dated October 22, 1996.

B. With respect to the natural gas imports authorized by this Order, ProGas U.S.A. Inc. (ProGas), as agent for RDO, will file with the Office of Natural Gas & Petroleum Import & Export Activities, within 30 days following each calendar quarter, reports indicating whether imports of natural gas have been made by RDO. 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, ProGas must report total monthly volumes in Mcf and the average purchase price of gas per MMBtu (in U.S. dollars) delivered at the international border. [OMB No.: 1901-0294]

C. The reports described in Ordering Paragraph B of this Order will be filed with the Office of Natural Gas & Petroleum Import & Export Activities, Fossil Energy, Room 3E-042, 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 July 30, 2000, and should cover the period from April 1, 2000, until the end of the second calendar quarter, June 30, 2000.

Issued in Washington, D.C., on March 8, 2000.



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

ProGas

ProGas U.S.A., Inc.

3300, 400 Third Avenue S.W.
Calgary, Alberta
Canada T2P 4H2
Telephone: (403) 296-0600
Telecopier: (403) 266-0354

FAXED

18-Apr-00

Department of Energy
Office of Fuels Programs
U.S. Department of Energy
FE-50, Room 3H-087
Forrestall Building
1000 Independence Avenue S.W.
Washington, D.C. 20585
U.S.A.

Via FACSIMILE
(202) 586-6050

Attention: Ms. Yvonne Caudillo

Dear Sirs:


Re: ProGas U.S.A., Inc. (as Agent for RDO Foods Co.)
U.S. Department of Energy
Order No. 1573 and FE Docket No.
00-10-NG

REC'D DOE/FE
200 APR 27 A 7:38

This letter is to confirm that deliveries started flowing under authorization
Order No. 1573 and FE Docket No. 00-10NG on
April 1, 2000.

We trust this satisfies your reporting requirements. Please feel free to contact me
if you have further questions or concerns at (403) 296-0617.

Yours truly,


Julie Tang

cc: M. Voinorosky