

# SCHIFF HARDIN & WAITE

A Partnership Including Professional Corporations

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Washington  
New York  
Merrillville  
Dublin

Gearold L. Knowles

February 25, 2002

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FEB 25 2002

DOE/OFE/NGR

02-06-M6

Mr. Clifford Tomaszewski  
Manager, Natural Gas Regulation  
Office of Natural Gas and Petroleum 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

Re: Application of Bay State Gas Company for Long-term  
Authorization to Import Natural Gas from Canada

Dear Mr. Tomaszewski:

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

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

Very truly yours,



Gearold L. Knowles  
*Attorney for Bay State Gas Company*

**UNITED STATES OF AMERICA  
Before the  
U.S. DEPARTMENT OF ENERGY  
OFFICE OF NATURAL GAS AND PETROLEUM  
IMPORT AND EXPORT ACTIVITIES  
FOSSIL ENERGY**

**BAY STATE GAS COMPANY**

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**Docket No. FE02-6-NG**

**APPLICATION OF  
BAY STATE GAS COMPANY  
FOR LONG-TERM AUTHORIZATION  
TO IMPORT NATURAL GAS  
FROM CANADA**

Communications with respect to this Application  
should be addressed to:

James Keshian  
Bay State Gas Company  
300 Friberg Parkway  
Westborough, MA 01581-5039  
Tel. (508) 836-7363

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

Date: February 22, 2002

**UNITED STATES OF AMERICA**  
**Before the**  
**U.S. DEPARTMENT OF ENERGY**  
**OFFICE OF NATURAL GAS AND PETROLEUM**  
**IMPORT AND EXPORT ACTIVITIES**  
**FOSSIL ENERGY**

**BAY STATE GAS COMPANY**

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**Docket No. FE02-\_\_-NG**

**APPLICATION OF**  
**BAY STATE GAS COMPANY**  
**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, Part 590 of the Regulations of the U.S. Department of Energy ("DOE"), Office of Natural Gas and Petroleum Import and Export Activities, Office of Fossil Energy ("FE"), and Section 201 of the Energy Policy Act of 1992 ("Energy Policy Act"), Bay State Gas Company ("Bay State") hereby submits its application for long-term authorization to import natural gas from Canada. In support of this application, Bay State respectfully shows as follows:

I. GENERAL

Correspondence and Communication with regard to this application should be addressed to the following:

James Keshian  
Bay State Gas Company  
300 Friberg Parkway  
Westborough, MA 01581-5039  
Tel. (508) 836-7363

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

## II. BACKGROUND

Bay State is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business located at 300 Friberg Parkway, Westborough, Massachusetts 01581. The parent company of Bay State is NiSource Inc. Bay State is engaged in the distribution and retail sale of natural gas in the Commonwealth of Massachusetts. Bay State intends to use the imported natural gas to meet market requirements in its service areas.

## III. AUTHORIZATION REQUESTED

By this Application, Bay State respectfully requests long-term authorization to import natural gas from Canada for a period ending on March 31, 2008. Bay State has an Exchange Agreement with CoEnergy Trading Company ("CoEnergy"). The term of the Exchange Agreement terminates on March 31, 2008. Under the Exchange Agreement, Bay State may deliver natural gas to CoEnergy at points generally in the Midwestern United States during the period April 1 through October 31 ("Delivery Period"). The natural gas is then transported by pipeline through Canada and redelivered to Bay State during the period November 1 through March 31 ("Redelivery Period"). The redeliveries to Bay State are made into the facilities of Portland Natural Gas System at the international border near Pittsburgh, New Hampshire. During the period of November 1, 1998 through approximately March 31, 1999, the redeliveries to Bay State were made at the international border near North Troy, New York. When the facilities of Portland Natural Gas System were completed, the redeliveries to Bay State were changed to Pittsburgh, New Hampshire commencing on about March, 1999. Under the Exchange Agreement, as amended, Bay State pays CoEnergy Exchange Fee and Transportation Fee.

Under the Exchange Agreement, as amended, Bay State may deliver to CoEnergy during the Delivery Period up to 12,160 MMBtu of natural gas per day for a total of up to 2,416,000 MMBtu of natural during the Delivery Period. CoEnergy is obligated to make all reasonable efforts to accept delivery of volumes greater than 12,160 MMBtu per day when requested by Bay State. CoEnergy is obligated to redeliver up to 16,000 MMBtu per day during the Redelivery Period, as requested by Bay State, up to the volume of natural gas previously delivered to CoEnergy by Bay State. CoEnergy is also obligated to make all reasonable efforts to accommodate redeliveries of natural gas to Bay State during the Redelivery Period in excess of 16,000 MMBtu per day, and to accommodate redeliveries to Bay State outside the Redelivery Period.

Until it recently came to the attention of Bay State, Bay State had been operating with the understanding that no import authorization was required with respect to the redelivery of natural gas under the Exchange Agreement, because the natural gas being redelivered, in effect, originated from the United States. After learning that authorization is required for the redelivery of natural gas, Bay State has moved promptly to prepare this Application and file it with the Office of Natural Gas and Petroleum Import and Export Activities, U.S. Department of Energy.

#### IV. PUBLIC INTEREST

Under Section 3 of the NGA, as amended by Section 201 of the Energy Policy Act, the importation of natural gas from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas is deemed to be consistent with the public interest and must be granted without modification or delay. Because the present Application is for the importation of natural gas from Canada, a nation with which the United

States has a free trade agreement, Bay State submits that its Application is within the public interest.

V. ENVIRONMENTAL IMPACT

No new facilities will be constructed in the United States for the proposed importation of natural gas. 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.

VI. REPORTING REQUIREMENTS

Bay State will comply with the reporting requirements established in the order issued by DOE/FE in this proceeding.

VII. EXHIBITS

Attached hereto, as Exhibit A, is an opinion of counsel stating that the importation of natural gas is within the corporate powers of Bay State, and that Bay State has complied with all applicable laws of the Commonwealth of Massachusetts and regulatory authorities.


Attached hereto, as Exhibit A, are the following documents: (i) Exchange Agreement, date June 25, 1996; (ii) Amendment of Agreement, dated August 27, 1996; and (iii) Second Amendment to Agreement, dated July 21, 1999.

VIII. CONCLUSION

WHEREFORE, for the foregoing reasons, Bay State respectfully requests that DOE/FE expeditiously consider the present Application, and pursuant to Section 3 of the NGA and Section 201 of the Energy Policy Act, grant its request for long-term authorization to import natural gas from Canada. Bay State submits that a grant of such authorization would not be inconsistent with the public interest.

Respectfully submitted,

Bay State Gas Company

By:   
Kenneth M. Margossian  
Executive Vice President & COO  
300 Friberg Parkway  
Westborough, MA 01581  
508.836.7000

**EXHIBIT A**





**A NiSource Company**

300 Friberg Parkway  
Westborough, MA 01581-5039  
(508) 836.7000  
Fax: (508) 836.7070

February 22, 2002

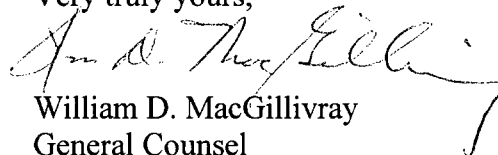
Kenneth M. Margossian  
Executive Vice President  
Bay State Gas Company  
300 Friberg Parkway  
Westborough, MA 01581

Dear Mr. Margossian:

You have informed me that the company proposes to file an Application with the Office of Natural Gas and Petroleum Import and Export Activities, Fossil Energy, U.S. Department of Energy, pursuant to Section 3 of the Natural Gas Act for long-term authorization to import natural gas from Canada. For purposes of Exhibit A to the Application, my opinion is as follows:

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

Very truly yours,



William D. MacGillivray  
General Counsel

WDM/dsm

**EXHIBIT B**

## EXCHANGE AGREEMENT

This Agreement, made and entered into as of the 25th day of June, 1996 by and between CoEnergy Trading Company, a Michigan corporation ("CTC"), and Bay State Gas Company, a Massachusetts corporation ("BSG"), individually a "party" and collectively the "parties."

### INTRODUCTION

BSG desires to deliver certain volumes of natural gas to CTC during the months of April through October of each year, and have equal volumes of natural gas redelivered by CTC during the following months of November through March.

Subject to the terms and conditions hereinafter set forth, the parties are willing to engage in this exchange of natural gas.

Therefore, in consideration of the mutual benefits to be derived from this arrangement, the parties agree as follows:

### ARTICLE I

#### DELIVERIES AND REDELIVERIES

1.1 During the period from April 1 through October 31 of each year during the term of this Agreement (the "Delivery Period"), BSG shall deliver for the account of CTC, and CTC shall cause to be received from BSG, up to 12,160 MMBtu of natural gas per day, for a total of up to 2,416,000 MMBtu during the Delivery Period. CTC shall make all reasonable efforts to accommodate deliveries of natural gas from BSG during

the Delivery Period in excess of 12,160 MMBtu per day, and make all reasonable efforts to accommodate deliveries from BSG outside of the Delivery Period.

1.2 During each of the periods from November 1 through March 31 during the term of this Agreement (the "Redelivery Period"), CTC shall cause to be redelivered to BSG, and BSG shall receive, a quantity of natural gas equal to that delivered to CTC pursuant to Section 1.1 of this Agreement. BSG shall nominate the daily redelivery quantity up to 16,000 MMBtu. CTC shall make all reasonable efforts to accommodate redeliveries of natural gas to BSG during the Redelivery Period in excess of 16,000 MMBtu per day, and to accommodate redeliveries to BSG outside of the Redelivery Period.

1.3 Should BSG decide, from time to time, to sell the exchange gas rather than have it redelivered by CTC, CTC shall use all reasonable efforts to assist BSG in finding a buyer, and/or facilitate any such transaction entered into by BSG

1.4 CTC shall be obligated to accept deliveries of gas from BSG for the account of CTC at the following primary points of delivery:

(a) any interconnection between the pipeline facilities of Michigan Consolidated Gas Company ("MichCon") and those of ANR Pipeline Company, Great Lakes Gas Transmission Company ("Great Lakes"), Panhandle Eastern Pipeline Company or St. Clair Pipelines Ltd.;

(b) the interconnection of the pipeline facilities of TransCanada PipeLines Ltd. ("TCPL") and Tennessee Gas Pipeline Company at Niagara Falls, New York;

(c) the interconnection of the pipeline facilities of TCPL and Iroquois Gas Transmission System at Waddington, New York;

1.5 CTC may, but shall not be obligated to, accept deliveries of gas from BSG for the account of CTC at the following **secondary points of delivery**:

(a) any interconnection on the pipeline systems of Tennessee Gas Pipeline Company, Texas Eastern Transmission Corporation, Algonquin Gas Transmission System, Iroquois Gas transmission System or Transcontinental Gas Pipeline Company;

(b) any other mutually agreed upon points.

1.6 The points of delivery set forth in Sections 1.4 and 1.5 shall hereafter be referred to as the "Points of Delivery."

1.7 CTC shall be obligated to redeliver gas to BSG at the following primary point of redelivery: the interconnection between the pipeline facilities of TCPL and Great Lakes near St. Clair, Michigan.

1.8 CTC may, but shall not be obligated to, redeliver gas to BSG at **secondary redelivery points** agreed to by the parties.

1.9 The points of redelivery set forth in Sections 1.7, and agreed upon pursuant to **Section 1.8**, shall hereafter be referred to as the "Points of Redelivery."

1.10 BSG shall be responsible for making all arrangements for, and paying for, and obtaining all regulatory authorizations necessary for, the transportation of the gas to the Points of Delivery and from the Points of Redelivery.

1.11 In making the arrangements provided for in Section 1.10, BSG will contract for capacity on TCPL from St. Clair, Michigan to Jay, Vermont. BSG may, at its sole option, from time to time, release all or part of this pipeline capacity to CTC, and CTC shall accept the released capacity, under the following terms and conditions:

- (a) at least 14 days prior written notice from BSG to CTC;
- (b) a demand charge of \$0.05 per MMBtu, plus the applicable commodity charge and surcharges, payable by CTC to BSG or as otherwise directed by BSG;
- (c) a term for such release of no less than one calendar month.

The parties may agree upon a different price or term for any given capacity release.

1.12 CTC shall be responsible for making all arrangements for, and paying for, and obtaining all regulatory authorizations necessary for, the transportation of the gas from the Points of Delivery and to the Points of Redelivery.

1.13 Should either party incur an imbalance penalty charge from a transporter, both parties shall use their reasonable efforts to determine the validity as well as the cause of such imbalance penalty charge. If the parties determine that the imbalance penalty charge was imposed solely as a result of BSG's actions or omissions, then BSG shall pay for such imbalance penalty charge. If the parties determine that the imbalance penalty

charge was imposed solely as a result of CTC's actions or omissions, then CTC shall pay such imbalance penalty charge. If the parties determine that the imbalance penalty charge was imposed as a result of the actions or omissions of both parties, then each party shall pay that portion of the imbalance penalty charge caused by its actions or omissions.

## ARTICLE II

### PRICE

2.1 BSG shall pay CTC a monthly Exchange Fee for each of the five calendar months during the Redelivery Period equal to the sum of the following:

- (a) \$227,104 in the first year, escalated by \$3,968 in each of the second through sixth years and \$5,632 in each of the seventh through tenth years; and
- (b) \$800 multiplied by the number of days in the month; plus
- (c) 0.05 per MMBtu multiplied by the quantity of gas redelivered in that month.

2.2 To the extent that gas is delivered to a secondary Point of Delivery, or redelivered to a secondary Point of Redelivery, CTC shall adjust the Exchange Fee to reflect additional transportation costs or savings realized by CTC as a result of the use of the secondary point rather than the nearest primary point.

2.3 The Exchange Fee set forth in Section 2.1 does not include taxes, if any, arising out of the transaction. BSG shall pay all taxes imposed on, or with respect to, the gas prior to its delivery at the Point of Delivery, and on and after its redelivery at the Point of Redelivery. CTC shall pay all taxes imposed on, or with respect to, the gas at

and after its delivery at the Point of Delivery, and prior to its redelivery at the Point of Redelivery. Each party shall furnish the other with any applicable exemption or resale certificates prior to initial deliveries.

2.4 Each party shall have the right during the term of this Agreement, and for a period of one year thereafter, at its sole expense and during normal working hours, to audit the other party's accounts and records to verify the accuracy of any amounts due under this Article II.

### ARTICLE III

#### BILLING AND PAYMENT

3.1 Each month following a month during the Redelivery Period CTC shall render a statement to BSG for the Exchange Fee provided for in Article II . In addition, BSG may render statements to CTC from time to time for moneys due for released capacity pursuant to Section 1.11. The invoiced party shall pay the invoicing party the amount billed in a statement within ten business days of its receipt of that statement. Unless notified otherwise, all payments shall be made by electronic transfer to a bank account specified by the invoicing party on the statement.

3.2 Should an invoiced party fail to pay the amount of any statement when such amount is due, it shall pay the invoicing party interest on the unpaid balance at an annual rate equal to the lesser of (1) the prime rate as reported in the Wall Street Journal plus two percent, or (2) the maximum rate allowed by law. In addition, the invoicing party may, upon prior written notice giving the invoiced party ten days to cure such



failure and upon the invoiced party's failure to so cure, suspend its performance until such amount is paid, and, if such amount is not paid, terminate this Agreement. This shall be in addition to any other remedies the invoicing party may have.

3.3 If the invoiced party shall in good faith either dispute the amount of any statement, or present a counterclaim or offset against the same, and at any time thereafter, within 30 days after demand by the invoicing party, shall furnish a good and sufficient surety bond, in an amount and with sureties satisfactory to the invoicing party, conditioned upon the payment of any amounts ultimately found due upon such statement after a final determination, which may be reached either by agreement, pursuant to arbitration agreed upon, or by judgment of the courts, then the disputed amount of the statement shall not be deemed to be due within the meaning of this Article III unless or until the invoiced party defaults on the conditions for such bond. If the invoicing party requires the invoiced party to furnish such a bond, the invoicing party shall institute appropriate proceedings to resolve the dispute within one year after the date of the statement in dispute. The foregoing shall be in addition to any other remedies the invoicing party may have.

#### ARTICLE IV

##### FURTHER ASSURANCES

4.1 Upon execution of this Agreement, or at anytime during the term hereof, should either party become insecure with regard to the other party's ability to meet its obligations under this Agreement, the insecure party may, upon a showing of a

reasonable and objective basis for such insecurity, and upon the other party's failure within five days thereafter to satisfy the insecure party of its ability to meet its obligations under this Agreement, require the other party to:

- (a) in the case of CTC, provide a guarantee from its corporate parent of its performance under this Agreement; or
- (b) provide an irrevocable stand-by letter of credit in an amount not to exceed its annual financial obligation under this Agreement, in a form, and with a bank, reasonably acceptable to the insecure party, with the cost thereof shared equally by both parties.

Should the other party fail to provide the corporate guarantee or letter of credit requested within five days after receiving a request to do so from the insecure party, the insecure party may refuse to commence, suspend and/or terminate performance under this Agreement.

4.2 Each party, at its expense, shall maintain in full force and effect at all times that this Agreement is in effect, and for a period of one year thereafter, with appropriate deductibles or self-retentions consistent with sound business practice, a comprehensive general liability policy with no less than a \$10 million limit per occurrence and an aggregate limit of no less than \$20 million. Each party's policy shall contain the following or equivalent clause: "No reduction, cancellation or expiration of the policy shall be effective until 30 days from the date written notice thereof is actually received by [the additional insured]." Each party shall be named as an additional insured

on the other party's policy, and each shall provide the other with a certificate of insurance evidencing the general liability coverage within 30 days after this Agreement becomes effective, and annually during the term thereof.

## ARTICLE V

### TERM

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

5.2 The delivery, redelivery and payment obligations of the parties under this Agreement shall not become effective until the first day of the Delivery Period preceding the actual in service date of the Portland Natural Gas Transmission System (the "Commencement Date"). The Commencement Date shall be confirmed in writing by the parties.

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

5.4 Upon the occurrence of any one of the following events, a party may suspend or terminate this Agreement as provided below:

(a) where a party files for or becomes subject to a proceeding under bankruptcy or insolvency law seeking liquidation or reorganization or the readjustment of indebtedness; makes an assignment for the benefit of creditors, becomes insolvent, or is unable to pay its debts generally as they become due; consents to the appointment of any receiver, administrator, liquidator or trustee of its property, or has one appointed; or takes

any action for the purpose of effecting any of the foregoing, the other party may suspend or terminate this Agreement upon prior written notice .

(b) where a party is unable to remedy a force majeure event within 30 days of its claim of force majeure, the other party may suspend or terminate this Agreement upon prior written notice.

(c) except as otherwise provided in this Agreement, where a party fails to perform a material obligation of this Agreement, and fails to cure such failure within ten business days after notice from the other party, the other party may suspend or terminate this Agreement.

A party's right to suspend or terminate this Agreement under this Section 5.4 shall be in addition to any other rights it may have at law or in equity.

5.5 Upon the suspension or termination of this Agreement during the term hereof, CTC shall redeliver gas to the extent necessary to make total volumes redelivered by CTC equal to total volumes delivered by BSG, or pay BSG for the replacement cost of the gas but not less than the original cost of the gas to BSG. Such redeliveries or payments shall be in accordance with BSG's reasonable instructions, but CTC shall only be obligated to redeliver to a primary Point of Redelivery.

## ARTICLE VI

### MEASUREMENT AND QUALITY

6.1 All gas delivered hereunder shall be measured at the Point of Delivery by the transporter operating the measurement equipment at the Point of Delivery, and shall

conform to the measurement and quality specifications contained in the receiving transporter's gas tariff.

6.2 All gas redelivered hereunder shall be measured at the Point of Redelivery by the transporter operating the measurement equipment at the Point of Redelivery, and shall conform to the measurement and quality specifications contained in the receiving transporter's gas tariff.

## ARTICLE VII

### FORCE MAJEURE

7.1 Neither BSG nor CTC shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any event of force majeure, including but not limited to acts of God, natural disasters, explosions, breakage or accident to machinery or lines of pipe, line freezeups, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, or any other cause, 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.

7.2 Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve the party claiming force majeure of liability in the event and to the extent that its performance under this Agreement was delayed or prevented, in whole or in part, by its fault, negligence or its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable

dispatch, including its failure to redeliver gas within 30 days of its claim of force majeure; nor shall such causes or contingencies affecting the performance of this Agreement relieve either party from its obligation to make payment of amounts then due hereunder, nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by facsimile transmission to the other party as soon as practicable after the occurrence relied on.

## ARTICLE VIII

### REGULATION

8.1 This Agreement, and all rights, obligations, and performance of the parties hereunder, are subject to all **present and future applicable federal, state and local laws**, and to all present and future duly issued and promulgated orders, rules, and regulations of any governmental authority having jurisdiction over the subject matter hereof. Compliance by either party with any such law, order, rule, or regulation shall not be a breach of this Agreement.

8.2 Each party shall make every reasonable effort to comply with reasonable requests made by the other party with regard to, and cooperate with the other party in the satisfaction of, any regulatory requirements. Each party shall reimburse the other for all reasonable out-of-pocket expenses incurred in compliance with this Section 8.2.

8.3 Should either party, or both parties, be unable to perform this Agreement by virtue of Section 8.1, the parties shall exercise all reasonable efforts to restructure this transaction so that it may be legally performed.

## ARTICLE IX

### WARRANTY

9.1 Each party warrants that all gas delivered and redelivered hereunder shall be free and clear of all liens, encumbrances and claims whatsoever, and that it will indemnify the other party and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas or royalties, taxes, license fees or charges thereon to the extent that they arise or attach prior to delivery or redelivery, as the case may be.

9.2 Each party represents and warrants as follows:

(a) It, and its corporate parent, if any, are duly organized, validly existing and in good standing under the laws of the state of its incorporation and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder,

(b) The execution and delivery of this Agreement by it and the performance of its obligations hereunder will not violate any provision of any current order, judgment, award or decree of any court, arbitrator or governmental authority applicable to such party;

(c) There is no litigation, investigation, administrative proceeding or other action existing, pending or threatened that would materially adversely affect the ability of the party to perform its obligations under this Agreement; and

(d) The party's signatory possesses authority to execute this Agreement such that a legal, valid and binding obligation enforceable against it is created.

## ARTICLE X

### RISK OF LOSS, LIABILITY AND INDEMNIFICATION

10.1 BSG shall be deemed in exclusive control and possession of the gas, and responsible for any damages or injuries caused thereby, until it is delivered to CTC at the Points of Delivery. CTC shall be deemed in exclusive control and possession of said gas, and shall be responsible for any damages or injuries caused thereby, after the gas has been delivered by BSG to CTC at the Points of Delivery.

10.2 CTC shall be deemed in exclusive control and possession of the gas, and responsible for any damages or injuries caused thereby, until it is redelivered to BSG at the Points of Redelivery. BSG shall be deemed in exclusive control and possession of said gas, and shall be responsible for any damages or injuries caused thereby, after it is redelivered by CTC to BSG at the Points of Redelivery.

10.3 The parties agree that the party deemed to be in exclusive control and possession of the gas pursuant to Sections 10.1 and 10.2 above shall bear the full risk of loss with respect to such gas and shall indemnify, protect, defend, save and keep harmless the other party from and against any and all liabilities, costs, damages, injuries, obligations, claims, expenses which may at any time be imposed upon, incurred by, or asserted against such other party relating to an incident while the gas was in the exclusive



control and possession of the party deemed to be in exclusive possession and control of the gas.

10.4 Neither CTC nor BSG shall be liable to the other, or any party claiming through the other, for special, consequential, exemplary, indirect, incidental or punitive damages, nor lost profits.

## ARTICLE XI

### NOTICES AND COMMUNICATIONS

11.1 Unless otherwise provided for herein, all notices and communications from one party to the other shall be in writing and sent by certified mail, overnight courier or facsimile transmission, and shall be effective upon receipt or refusal to accept; notices sent by facsimile shall be deemed received upon confirmation of their receipt by either party. However, routine communications, including monthly statements, may be sent by ordinary mail. All notices and communications shall be addressed to:

CoEnergy Trading Company  
150 West Jefferson Street, Suite. 1800  
Detroit, MI 48226  
Attn: President  
Phone: (313) 256-6000  
Fax: (313) 256-5739

Bay State Gas Company  
300 Friberg Parkway  
Westborough, MA 01581  
Attn: Chico C. DaFonte  
Phone: (508) 836-7253  
Fax: (508) 836-7072

## ARTICLE XII

### NON-WAIVER OF FUTURE DEFAULTS

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

## ARTICLE XIII

### TRANSFER AND ASSIGNMENT

13.1 Any entity that shall succeed by purchase, merger or consolidation to either party hereto shall be entitled to the rights and shall be subject to the obligations of its predecessor under this Agreement. Either party may, without relieving itself of its obligations under this Agreement, assign any of its rights and obligations hereunder to a corporation with which it is affiliated at the time of such assignment. Otherwise, no assignment of this Agreement or of any rights or obligations hereunder shall be made by either party without the prior written consent of the other party. The provisions of this Article shall not prevent either party from pledging or mortgaging its rights hereunder as security for its indebtedness. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the parties hereto.

ARTICLE XIV  
GOVERNING LAW

14.2 This Agreement shall be governed by the laws of the state of New York, without reference to its choice of law rules.

ARTICLE XV  
CONDITIONS PRECEDENT

15.1 The obligations of each party hereunder are subject to the following conditions precedent:

- (a) execution by the party of all agreements with third parties necessary to meet its obligations hereunder;
- (b) receipt by the party of all necessary regulatory authorizations on terms satisfactory to the party;
- (c) approval of this Agreement by each party's Board of Directors, if necessary.

If these conditions precedent have not been satisfied by October 1, 1997, either party may terminate this Agreement on or before May 1, 1998 upon five days prior written notice to the other party, provided that these conditions precedent have not been satisfied by the date of termination.

## ARTICLE XVI

### MISCELLANEOUS

16.1 Captions are for convenience only and are not to be construed as part of this Agreement, and shall not affect the interpretation hereof.

16.2 This Agreement may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

16.3 This Agreement shall not be interpreted either more or less favorably toward either party by virtue of the fact that such party or its counsel was responsible or principally responsible for the drafting of all or a portion hereof.

16.4 This Agreement is entered into solely for the benefit of the parties named in it and not for the benefit of any other persons or entities. No other persons or entities may enforce it for their benefit nor shall they have any claim or remedy for its breach. The parties do not intend to confer third party beneficiary status on anyone.

16.5 In the event any provision of this Agreement is deemed invalid or unenforceable by a court of law, this Agreement will be interpreted as though such provision does not appear, and this Agreement will be otherwise fully enforceable, unless such would lead to a manifestly unreasonable result.

16.6 For purposes of audit or similar inquiries, each party shall respond to reasonable requests for information from the other party, or its designee, regarding the scope and nature of the business arrangement existing under this Agreement.

ARTICLE XVII

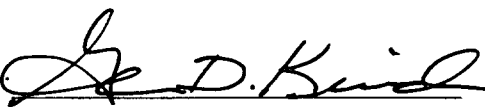
ENTIRE AGREEMENT

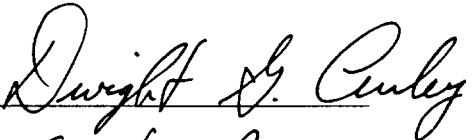
17.1 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. Any prior understandings, representations, promises, undertakings, agreements or inducements, whether written or oral, concerning the subject matter hereof not contained herein shall have no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

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

COENERGY TRADING COMPANY

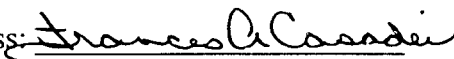
BAY STATE GAS COMPANY

By: 

By: 

Title: President

Title: SR. VICE PRESIDENT

Witness: 

Witness: 

## AMENDMENT OF AGREEMENT

THIS AMENDMENT made as of this 27<sup>th</sup> day of AUGUST, 1996 between Bay State Gas Company ("BSG"), a Massachusetts corporation having its principal place of business at 300 Friberg Parkway, Westborough, Massachusetts, and CoEnergy Trading Company ("CTC"), a Michigan Corporation having its principal place of business at 150 West Jefferson Street, Suite 1800, Detroit, Michigan 48226.

## INTRODUCTION

WHEREAS, the parties hereto entered into an exchange agreement dated June 25, 1996 ("the Agreement"); and

WHEREAS, said parties desire to amend the Agreement for their mutual benefit;

NOW, THEREFORE, in consideration of the mutual promises herein contained and the mutual benefit to be obtained, it is agreed that the Agreement is amended as follows:

1. Section 1.7 of the Agreement is revised to read as follows:

"1.7 CTC shall be obligated to redeliver gas to BSG at the following primary point of redelivery: the interconnection between the pipeline facilities of TCPL and the proposed Portland Natural Gas Transmission System near North Troy, Vermont."

2. Section 1.11 is renumbered to Section 1.12 and revised to read as follows:

“1.12 In making the arrangements provided for in Section 1.11, CTC will contract for capacity on TCPL from St. Clair, Michigan to North Troy, Vermont. BSG may, at its sole option, from time to time, obtain a release of all, or a portion, of this pipeline capacity from CTC, and CTC shall assign the released capacity, under the following terms and conditions:

- (a) at least 30 days prior written notice from BSG to CTC;
- (b) all charges applicable under TCPL’s tariff to the released capacity shall be paid by BSG to CTC, or as otherwise directed by CTC;
- (c) a term for such release of no less than one calendar month; and
- (d) during the term of the release, the Point of Redelivery under Section 1.7 shall be the interconnection between the pipeline facilities of TCPL and Great Lakes near St. Clair, Michigan.

The parties may agree upon a different price or term for any given capacity release.”

3. Section 1.12 is renumbered Section 1.11.

4. A new Section 2.2 is added to read as follows:

“2.2. BSG shall also pay CTC a monthly Transportation Fee equal to all charges to CTC under its transportation contract with TCPL which charges are attributable to the transportation of gas from St. Clair, Michigan to North Troy, Vermont.

(a) The Transportation Fee for each month during the Delivery Period shall be reduced by an amount equal to \$0.05 per MMBtu multiplied by the firm capacity held by CTC on TCPL and not released to BSG pursuant to Section 1.12 .

(b) BSG's obligation to pay the Transportation Fee shall begin when TCPL commences invoicing CTC under their contract for the transportation of gas from St. Clair, Michigan to North Troy, Vermont.

(c) BSG shall not be obligated to pay CTC the Transportation Fee for any month during which TCPL capacity has been released by CTC to BSG pursuant to Section 1.12."

5. Sections 2.2, 2.3 and 2.4 are renumbered Sections 2.3, 2.4 and 2.5, respectively.

6. The first sentence of Section 3.1 is revised to read as follows:

"3.1 CTC shall render monthly statements to BSG as provided in Article II."

7. Section 5.2 is revised to read as follows:

"5.2 Except as provided in Section 2.2, the delivery, redelivery and payment obligations of the parties under this Agreement shall not become effective until the first day of the Delivery Period preceding the actual in service date of the Portland Natural Gas Transmission System (the "Commencement Date"). The Commencement Date shall be confirmed in writing by the parties."

8. A new Article XVIII is added to the Agreement, to read as follows:



“ARTICLE XVIII

CONVERSION ELECTION

18.1       BSG or CTC may, upon prior written notice, elect to convert this Agreement to a sale-and-resale agreement or a storage agreement with terms and conditions equivalent to those in this Agreement. Under such sale-and-resale agreement or storage agreement, each party shall realize the same economic benefit as it would under this Agreement (i.e., provide/receive comparable quantity and quality of services in exchange for fees not in excess of those set out in this Agreement) .

18.2       Promptly after an election to convert, the parties shall execute a sale-and-resale or storage agreement, as the case may be. Upon the effective date of such a sale-and-resale or storage agreement, this Agreement shall terminate.

18.3       Any sale-and-resale agreement shall become effective on the first day of the month following notice from the parties that the condition in Section 18.5 has been satisfied, and shall continue for a period equal to the remaining term of this Agreement at the time of the effective date of the sale-and-resale agreement.

18.4       Any storage agreement shall become effective on the first day of April following notice from the parties that the condition in Section 18.5 has been satisfied, but in no event later than the last April 1st during the term of this Agreement, and shall continue for

a period equal to the remaining term of this Agreement at the time of the effective date of the storage agreement.

18.5 Any election to convert this Agreement shall be subject to BSG and CTC obtaining all necessary regulatory approvals on terms satisfactory to them.

18.6 Neither party may elect to convert this Agreement to a storage agreement unless:

(a) the proposed Washington 10 Storage Field in Washington Township, Macomb County, Michigan (the "Washington 10 Storage Field") has been developed and has capacity available to provide the storage service; and

(b) the storage service can be provided in a manner consistent with the regulatory authorizations and tariffs applicable to the Washington 10 Storage Field."

It is further agreed that all other terms and conditions contained in the Agreement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be

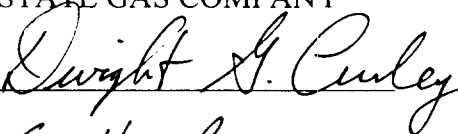
signed by their duly authorized officers, as of the day and year first above written.

COENERGY TRADING COMPANY

By: 

Title: PRESIDENT

BAY STATE GAS COMPANY

By: 

Title: SR. VICE PRESIDENT

SECOND AMENDMENT OF AGREEMENT

THIS SECOND AMENDMENT made as of this 21<sup>st</sup> day of July, 1999, between BAY STATE GAS COMPANY ("BSG"), a Massachusetts corporation having its principal place of business at 300 Friberg Parkway, Westborough, Massachusetts 01581, and COENERGY TRADING COMPANY ("CTC"), a Michigan corporation having its principal place of business at 150 West Jefferson Street, Suite 1800, Detroit, Michigan 48226.

WITNESSETH

WHEREAS, the parties hereto entered into an EXCHANGE AGREEMENT dated June 25, 1996 (the "Agreement") which the parties amended in their AMENDMENT OF AGREEMENT (the "Amendment") dated August 27, 1996; and

WHEREAS, the parties hereto desire to amend the Agreement and the Amendment with this Second Amendment for their mutual benefit;

NOW, THEREFORE, in consideration of the mutual promises herein contained and the mutual benefits to be obtained, it is agreed that the Agreement and Amendment are amended as follows:

1. Section 1.7 of the Agreement and the Amendment are revised to read as follows:

1.7 CTC shall be obligated to redeliver gas to BSG at the following primary Point of Redelivery: the interconnection of the pipeline facilities of the TransQuebec and Maritimes Pipeline and the Portland Natural Gas Transmission System on the U.S.-Canadian border at East Hereford, Quebec, and Pittsburg, New Hampshire.

2. Section 1.12 of the Amendment is revised to read as follows:

1.12 In making the arrangements provided for in Section 1.11, CTC will contract for pipeline capacity on TCPL from St. Clair, Michigan, to East Hereford, Quebec/Pittsburg, New Hampshire. BSG may, at its sole option, from time to time, obtain a release of all, or a portion of such pipeline capacity from CTC, and CTC shall assign the release capacity under the following terms and conditions:

(a) at least 30 days prior written notice from BSG to CTC;

(b) all charges under the TCPL tariff applicable to the release capacity shall be paid by BSG to CTC, or as otherwise directed by CTC;

(c) a term for such release of no less than one calendar month; and

(d) during the term of the release, the Point of Redelivery under Section 1.7 shall be the interconnection between the pipeline facilities of TCPL and Great Lakes Transmission near St. Clair, Michigan.

The parties may agree upon a different price or term for any given capacity release.

3. Section 2.2 of the Amendment is revised to read as follows:

2.2 BSG shall also pay CTC a monthly Transportation Fee equal to all charges to CTC under its transportation contract with TCPL which charges are attributable to the transportation of gas from St. Clair, Michigan, to East Hereford, Quebec/Pittsburg, New Hampshire.

(a) The Transportation Fee for each month during the Delivery Period shall be reduced by an amount equal to \$0.05 per MMBtu multiplied by the firm capacity held by CTC on TCPL and not released to BSG pursuant to Section 1.12;

(b) BSG's obligation to pay the Transportation Fee shall begin when TCPL commences invoicing CTC for the transportation of gas from St. Clair, Michigan, to East Hereford, Quebec/Pittsburg, New Hampshire; and

(c) BSG shall not be obligated to pay CTC the Transportation Fee for any month during which CTC's capacity on TCPL has been released by CTC to BSG pursuant to Section 1.12 of this Second Amendment.

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

COENERGY TRADING COMPANY

BAY STATE GAS COMPANY

By: [Signature]  
Title: Vice President

By: James Simpson  
Title: SR VP

REVIEWED  
O.G.C.  
BY [Signature]



## Department of Energy

Washington, DC 20585

March 12, 2002

Gearold L. Knowles  
Attorney  
Schiff Hardin & Waite  
1101 Connecticut Avenue, N.W.  
Washington, D.C. 20036

Re: Applications of Bay State Gas Company and Northern Utilities, Inc.  
DOE/FE Docket Nos. 02-06-NG and 02-07-NG

Dear Mr. Knowles:

This is in response to your filings on behalf of Bay State Gas Company (Bay State) and Northern Utilities, Inc. (Northern Utilities). Your filings requested import authority from Canada until March 31, 2008, under an Exchange Agreement dated June 25, 1996, with CoEnergy Trading Company (CoEnergy). Per our conversation last week, CoEnergy is the importer of record for this exchange and has been filing quarterly reports with this Office. Therefore, this letter requests Bay State and Northern Utilities withdraw their applications.

Please contact me if you have questions at (202) 586-9394.

Sincerely,

A handwritten signature in black ink, reading "Allyson C. Reilly". The signature is fluid and cursive, with the first name "Allyson" being more prominent.

Allyson C. Reilly  
Senior Natural Gas Analyst  
Office of Natural Gas & Petroleum  
Import & Export Activities  
Office of Fossil Energy



# SCHIFF HARDIN & WAITE

A Partnership Including Professional Corporations

1101 Connecticut Avenue, N.W., Washington, D.C. 20036  
Telephone (202) 778-6400 Facsimile (202) 778-6460

Gearold L. Knowles

RECEIVED

APR 05 2002

DOE/OFE/NGR

March 21, 2002

Chicago  
Washington  
New York  
Merrillville  
Dublin

Mr. Clifford Tomaszewski  
Manager, Natural Gas Regulation  
Office of Natural Gas and Petroleum 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

Re: Application of Bay State Gas Company for Long-term  
Authorization to Import Natural Gas from Canada,  
DOE/FE Docket No. 02-06-NG

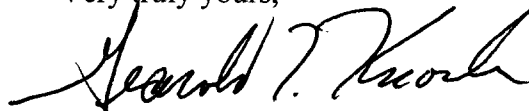
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2002 MAR 36 P 3:24  
OFFICE OF FOSSIL ENERGY  
U.S. DEPARTMENT OF ENERGY

Dear Mr. Tomaszewski:

Pursuant to the request made by Ms. Allyson C. Reilly by letter dated March 12, 2002, Bay State Gas Company hereby withdraws its Application in this proceeding. For your convenience, a copy of the letter from Ms. Reilly is attached.

Please contact me in the event you have any questions regarding this matter.

Very truly yours,



Gearold L. Knowles  
*Attorney for Bay State Gas Company*