

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



Energía Chihuahua, S.A de C.V. )

DOCKET NO. FE08-<sup>138</sup>\_\_-NG

**APPLICATION OF ENERGÍA CHIHUAHUA, S.A DE C.V.  
TO VACATE EXISTING EXPORT AUTHORIZATION  
AND OBTAIN NEW LONG-TERM AUTHORIZATION  
TO EXPORT NATURAL GAS TO MEXICO**

Pursuant to Section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. Section 717b, Part 590 of the Regulations of the Department of Energy, Office of Fossil Energy (“DOE/FE”), and Section 201 of the Energy Policy Act of 1992 (“Energy Policy Act”), Energía Chihuahua, S.A de C.V. (“Energía Chihuahua”) hereby submits the instant application for long-term authorization to export natural gas to Mexico under the terms of the “Amended and Restated Fuel Supply Agreement” between Transalta Chihuahua S.A. de C.V. (“TAC”), now Energía Chihuahua, and Fortis Energy Marketing & Trading GP (“Fortis”) dated May 1, 2007 (the “Fuel Supply Agreement”). On June 20, 2008, the DOE issued an order authorizing TAC to export natural gas under the terms of the Fuel Supply Agreement (“TAC Authorization”). On November 10, 2008, TAC changed its name to Energía Chihuahua. As a result of this name change, Energía Chihuahua hereby requests authorization to vacate the TAC Authorization and obtain new authorization to export natural gas under the Fuel Supply Agreement. In support of this application, Energía Chihuahua respectfully states as follows:

## I. GENERAL

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

Patricia Hipolito  
c/o InterGen  
Avenida de las Palmas # 735, 5o Piso  
Col. Lomas de Barrilaco  
Mexico, D.F.  
Mexico  
[phipolito@intergen.com](mailto:phipolito@intergen.com)  
(T) 011.525.55.202.70.60, ext. 210

James F. Daily III  
Corporate Counsel  
InterGen  
15 Wayside Road  
Burlington, MA 01803  
[jdaily@intergen.com](mailto:jdaily@intergen.com)  
(T) 781.993.3116

## II. BACKGROUND

The exact legal name of Energía Chihuahua is Energía Chihuahua, S.A de C.V., a Mexican Corporation with its principal place of business in Mexico City, Mexico. Prior to November 10, 2008, Energía Chihuahua was known as Transalta Chihuahua S.A. de C.V. (“TAC”) and was owned by TransAlta Corporation. On October 8, 2008, TAC was indirectly acquired by InterGen LAN I B.V. and InterGen LAN II B.V., both wholly-owned subsidiaries of InterGen N.V. (“InterGen”), a global power generation firm whose principal place of business is in Rotterdam, The Netherlands. On November 10, 2008, TAC changed its name to Energía Chihuahua. From July 15, 2003, until TAC changed its name to Energía Chihuahua, TAC exported natural gas under the Fuel Supply Agreement to be used as fuel for TAC’s natural gas-fired power facility near Ciudad Juárez, Chihuahua, Mexico. TAC’s exportation of natural gas was authorized under DOE/FE orders issued on July 15, 2003,<sup>1</sup> and June 20, 2008,<sup>2</sup> and is effective until July 15, 2013. As explained in this Application, other than InterGen’s acquisition of TAC and TAC’s subsequent name change to Energía Chihuahua, the material commercial

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<sup>1</sup> DOE/FE Order No. 1877, 2 FE ¶ 70,860.

provisions of the Fuel Supply Agreement have not been altered since the DOE/FE issued the TAC Authorization.

### **III. REQUEST TO VACATE**

As a result of the name change described above, the legal entity known as Transalta Chihuahua S.A. de C.V. no longer exists. Accordingly, Energía Chihuahua requests that the DOE/FE vacate the TAC Authorization, effective November 10, 2008, which is the date on which TAC changed its name to Energía Chihuahua.

### **IV. AUTHORIZATION REQUESTED**

Energía Chihuahua requests long-term export authorization so that it may continue to export natural gas to Mexico under the same terms and conditions of the Fuel Supply Agreement pursuant to which TAC exported natural gas to Mexico from July 15, 2003, to November 9, 2008. Energía Chihuahua requests that such long-term export authorization be effective as of November 10, 2008, the date on which TAC changed its name to Energía Chihuahua. Other than the name of the applicant, the long-term export authorization sought herein is no different than the long-term export authorization that the DOE/FE issued TAC on June 20, 2008. Consistent with the terms of the TAC Authorization, Energía Chihuahua seeks authorization to export natural gas to be used as fuel for Energía Chihuahua's natural gas-fired power facility near Ciudad Juárez, Chihuahua, Mexico. The exported natural gas will continue to be delivered from Fortis's Keystone Permian Basin Pool to Energía Chihuahua's Keystone Permian Basin Pool on El Paso Natural Gas Pipeline Company's pipeline near Clint Texas. Since the issuance of the TAC Authorization, the material commercial terms and conditions of the Fuel Supply Agreement

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(...continued)

<sup>2</sup> Order No. 2506 (cite pending).



pursuant to which Energía Chihuahua will export natural gas have remained unchanged. The principal terms of the Fuel Supply Agreement remain as follows:

Contract Term: The Fuel Supply Agreement has been effective as of May 1, 2007, and the contract term continues through October 31, 2013.

Delivery Point: The exported natural gas continues to be delivered from Fortis's Keystone Permian Basin Pool to Energía Chihuahua's Keystone Permian Basin Pool on El Paso Natural Gas Pipeline Company's pipeline near Clint Texas. The Mexican point of entry continues to be Ciudad Juárez, Chihuahua, Mexico.

Price: The price paid under the Fuel Supply Agreement continues to consist of the daily price index, in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as published in the *Natural Gas Daily*, under the Daily Price Survey, for the corresponding natural gas day, plus \$0.015 per MMBtu. In addition, the Fuel Supply Agreement stipulates that Energía Chihuahua shall pay Fortis a reservation fee of \$0.016 per MMBtu on 18,000 MMBtu per day on swing natural gas. If, however, Energía Chihuahua nominates swing natural gas in increments of 1,000 MMBtu, up to the 18,000 MMBtu per day at least four business days before closing day of trading for the NYMEX Contract, the reservation fee is waived.

Contract Quantity: the minimum daily quantity under the Fuel Service Agreement continues to be 30,000 MMBtu. The maximum daily quantity continues to be 48,000 MMBtu.

A copy of the Fuel Supply Agreement is attached as Exhibit 1 to this Application.<sup>3</sup> As stated in the opinion of counsel that is attached as Exhibit 2 to this Application, Energía

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<sup>3</sup> Energía Chihuahua attaches to the original and copies of this Application a redacted version of the Fuel Supply Agreement. Energía Chihuahua has provided one copy of the Fuel Supply Agreement in complete and unredacted form. Energía Chihuahua requests that DOE/FE return the complete and unredacted Fuel Supply Agreement after its review is completed.



Chihuahua's exportation of natural gas under the Fuel Supply Agreement is within the corporate powers of Energía Chihuahua.

## **V. ENVIRONMENTAL IMPACT**

No new facilities will be constructed in the United States for the proposed exportation of natural gas under the Fuel Supply Agreement. As described above, Energía Chihuahua will transport natural gas for export in the United States on existing facilities of El Paso Natural Gas Pipeline Company. 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**

Energía Chihuahua will comply with all reporting requirements deemed necessary by DOE/FE, including filing quarterly reports.

## **VII. PUBLIC INTEREST**

Section 3 of the NGA provides that an import or export of natural gas must be authorized unless there is a finding that it "will not be consistent with the public interest." 15 U.S.C. § 717b(a). As amended by Section 201 of the Energy Policy Act of 1992, P.L. 102-486, 106 Stat. 2866 (1992), 15 U.S.C. § 717b(c), the importation and exportation of natural gas from and to "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 authorization for such must be granted without modification or delay. The authorization sought by Energía Chihuahua is to export natural gas to Mexico, a nation with which a free trade agreement is in effect. It therefore meets the Section 3(c) criterion and should be approved as consistent with the public interest.

### VIII. CONCLUSION

WHEREFORE, for the foregoing reasons Energía Chihuahua respectfully requests authorizations, effective November 10, 2008, to vacate the TAC Authorization and to export natural gas under the terms and conditions of the Fuel Supply Agreement.



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James F. Daily III  
Corporate Counsel  
InterGen  
15 Wayside Road  
Burlington, MA 01803  
(T) 781.993.3116  
(F) 781.564.8955  
jdaily@intergen.com

Dated: November 19, 2008



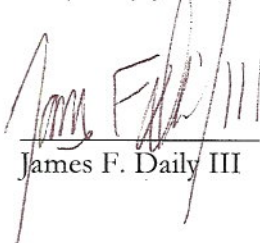
November 19, 2008

Office of Natural Gas & Petroleum  
Import & Export Activities  
Fossil Energy, U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Dear Sirs and Madams:

This opinion is furnished to you pursuant to Section 590.202(c) of the Department of Energy Regulations, 10 C.F.R. § 590.202(c) and the Application of Energía Chihuahua, S.A de C.V. ("Energía Chihuahua") for Long-Term Authorization to Export Natural Gas to Mexico. I am counsel to Energía Chihuahua, a Mexican Corporation with its principal place of business in Lomas de Chapultepec Mexico City, Mexico. As such I am familiar with its Certificate of Incorporation and By-laws. Based on the foregoing and for the purposes of the Application to the Office of Fossil Energy, I am of the opinion that the proposed exports as described in the Application will not contravene any of the terms, conditions or provisions of Energía Chihuahua's Certification of Incorporation or By-laws.

Very truly yours,



James F. Daily III



REDACTED  
COPY

**AMENDED AND RESTATED  
FUEL SUPPLY AGREEMENT**

**BETWEEN**

**TRANSALTA CHIHUAHUA, S.A. de C.V.  
As Buyer**

**AND**

**FORTIS ENERGY MARKETING & TRADING GP  
As Seller**

**Amended and restated as of May 1, 2007**

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**FIRST AMENDED AND RESTATED  
FUEL SUPPLY AGREEMENT**

This First Amended and Restated Fuel Supply Agreement (this "Agreement") is entered into by and between Fortis Energy Marketing & Trading GP, a Delaware general partnership ("Seller"), and TransAlta Chihuahua, S.A. de C.V., a Mexican business organization, a wholly owned subsidiary of TransAlta Corporation ("Buyer"). Seller and Buyer shall each be referred to herein as a "Party" and, together, as the "Parties".

**RECITALS:**

WHEREAS, on April 10, 2001, Buyer entered into a power purchase agreement (the "PPA") number PIF-003/2001 with the Mexican Comisión Federal de Electricidad ("CFE") pursuant to which it will be obligated, inter alia, to construct Chihuahua III power plant, which will be located at kilometer 166 of the Panamerican highway Sueco-Juarez on highway 45 Chihuahua-Jimenez, in the Samalayuca town, Ciudad Juarez, Chihuahua, Mexico with an electric power generation capacity comprised between 191 MW and 317.9 MW at summer design conditions (the "Facility") and to sell the electrical power associated with such capacity to the CFE for a projected period of 25 years from the COD.

WHEREAS, the fuel for the Facility is to be natural gas and Seller is willing and able to sell and deliver to Buyer at the Delivery Point(s) natural gas of such quality and in such quantities as more fully described herein which will allow Buyer to supply the Facility.

WHEREAS, Parties entered into that certain Fuel Supply Agreement dated April 15, 2003 (the "FSA") in order to allow Buyer to supply the Facility.

WHEREAS, the Parties now wish to amend and restate the FSA in its entirety as set forth herein with such amendments and restatements effective as of May 1, 2007

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties mutually agree as follows:

**ARTICLE I**

**DEFINITIONS**

**1.1 Definitions** Whenever the following capitalized terms appear in this Agreement, whether in the singular or in the plural, or in the present, future, or past tense, they shall have the meanings stated below:



"Affiliate" shall mean any entity that directly or indirectly controls, or is under common control with, or is controlled by, a Party. As used in this definition "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of securities having more than fifty percent (50%) of the voting power for the election of directors or other governing body of a corporation or more than fifty percent (50%) of the partnership or other ownership interests of any other entity (other than as a limited partner of such other entity).

"Baseload Gas" shall have the meaning ascribed to such term in Section 2.6.

"Baseload Monthly Option" shall have the meaning ascribed to such term in Section 3.3.

"Baseload Sales Price" shall have the meaning ascribed to such term in Section 3.1.

"Btu" shall mean British Thermal Units, meaning the amount of energy needed to raise the temperature of one pound of water one degree Fahrenheit (1°F) at a standard pressure of fourteen point seventy three dry pounds per square inch absolute (14.73 dry psia) at sixty degrees Fahrenheit (60°F). Any conversion from Btus to decatherms under this Agreement shall be calculated such that one (1) MMBtu equals one (1) decatherm.

"Business Day" shall mean any Day, except Saturday, Sunday, or a Day that is an official holiday in the State of Texas, U.S.

"Buyer" shall mean TransAlta Chihuahua, S.A. de C.V., together with its successors or permitted assigns.

"Cap" shall mean :

"CFE" shall have the meaning ascribed to such term in the first Recital.

"Contract Value" shall have the meaning ascribed to such term in Section 4.2.3.

"Central Clock Time" or "CCT" shall mean the time zone in the State of Texas, U.S., known as "Central Time".

"Commercial Operation Date" or "COD" shall mean the Day following the date on which CFE issues its certification that Plant Owner has satisfied the requirements set forth in the PPA for achieving commercial operation of the Facility.

"CSA" shall mean the Credit Support Annex attached hereto.

"Day" shall mean a period of twenty-four (24) consecutive hours.

"Deficient Delivery Gas" shall have the meaning ascribed to such term in Section 2.7.

"Deficient Receipt Gas" shall have the meaning ascribed to such term in Section 2.6.

"Delivery Point" shall mean the point where the Gas is delivered from Seller to Buyer (or from Buyer to Seller in the case of Repurchase Gas), and shall include the Primary Delivery Point and any applicable Secondary Delivery Point.

"Dollar" or "US\$" shall mean the lawful currency of the U.S. of America.

"Early Termination Date" shall have the meaning ascribed to such term in Section 4.2.2.

"Effective Date" shall mean April 15, 2003 as it relates to the FSA and the date on the cover page of this Agreement as it relates to the First amendment and restatement of the FSA.

"EPNG" shall mean El Paso Natural Gas Pipeline Company.

"Facility" shall have the meaning ascribed to such term in the Recitals.

"Facility Event" shall mean the full or partial destruction of the Facility that restricts the output of the Facility by more than 50% for at least one hundred eighty (180) consecutive days.

"FERC" shall mean the U.S. Federal Energy Regulatory Commission (or its successor).

"Force Majeure" shall have the meaning ascribed to such term in Section 8.1.

"Gas" shall mean Baseload Gas, Swing Gas, or Repurchase Gas, as applicable.

"Gas Day" shall mean a day for the supply and purchase of Gas, beginning and ending at the times specified by EPNG for a gas day in its tariff.

"Independent Expert" shall have the meaning ascribed in Section 12.2.

"Law" shall mean (i) any constitution, law, secondary law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, executive order, judgment, or other similar legal requirement or (ii) any legally binding announcement, directive, or published practice or interpretation thereof, enacted, issued, or promulgated by any governmental authority.

"Market Value" shall have the meaning ascribed to such term in Section 4.2.3.

"MDQ" shall mean the Maximum Daily Quantity and shall equal 48,000 MMBtu's per Gas Day.

"Mexican Business Day" shall mean any Day, except Saturday, Sunday, or a Day that is an official holiday in Mexico.

"MinDQ" shall mean the Minimum Daily Quantity and shall equal 30,000 MMBtu's per Gas Day, plus any additional amount of Gas for which the Swing Gas Reservation Fee is waived for a month in accordance with Section 3.3., plus any increase in the MinDQ pursuant to Section 2.4.

"MMBtu" shall mean one million (1,000,000) Btu's.

"Month" shall mean a month for the supply and purchase of Gas, beginning and ending at the times specified by EPNG for a month in its tariff (generally beginning on the first Gas Day of the Month).

"Nationalization Event" shall mean the nationalization and assumption of control of the Facility by the Mexican government in a process that includes the nationalization and assumption of control of similar privately owned power plants in Mexico.

"Net Settlement Amount" shall have the meaning ascribed to such term in Section 4.2.4

"New Price Period" shall have the meaning ascribed to such term in Section 3.4

"Nomination Deadline" shall have the meaning ascribed to such term in Section 2.2.

"NYMEX Contract" shall mean the natural gas futures contract traded on the New York Mercantile Exchange.

"Party" and "Parties" shall have the meaning ascribed to such terms in the Preamble.

"Permits" shall have the meaning ascribed to such terms in Section 16.1.

"Pipeline Event" shall mean the failure of EPNG or its successor to allocate any portion of the nominated Gas to the account of Seller or Buyer for delivery at the Delivery Point(s) on a Gas Day due to a pipeline capacity constraint or other pipeline operational issue to the extent such constraint or issue affects firm pipeline capacity being utilized by Buyer, provided such failure to allocate does not arise directly as a result of the actions or inactions of Seller or Buyer.

"PPA" shall have the meaning ascribed to such term in the Recitals.

"Price" shall mean the Baseload Sales Price, Swing Sales Price, or Repurchase Price, as applicable.

"Pricing Criteria" shall have the meaning ascribed to such term in Section 3.4.



"Primary Delivery Point" shall have the meaning ascribed to such term in Section 5.1.

"Reimbursement Fee" shall have the meaning ascribed to such term in Section 2.6(a).

"Replacement Fee" shall have the meaning ascribed to such term in Section 2.7(a).

"Repurchase Price" shall have the meaning ascribed to such term in Section 2.6(b).

"Repurchase Gas" shall have the meaning ascribed to such term in Section 2.6(b).

"Requested Quantity" shall have the meaning ascribed to such term in Section 2.2.

"Secondary Delivery Point(s)" shall have the meaning ascribed to such term in Section 5.1.

"Seller" shall mean Fortis Energy Marketing & Trading GP, together with its successors or permitted assigns.

"Specific Event of Default" shall have the meaning ascribed to such term in Section 4.2.1.

"Swing Gas" shall have the meaning ascribed to such term in Section 2.6(a).

"Swing Gas Reservation Fee" shall have the meaning specified in Section 3.3.

"Swing Sales Price" shall have the meaning ascribed to such term in Section 3.1.

"Term" means the period from the Effective Date to the Term End Date.

"Term End Date" shall have the meaning ascribed to such term in Section 2.3.

"Termination Event" shall have the meaning ascribed to such term in Section 4.2.2(b).

"Texas Business Day" shall mean any Day, except Saturday, Sunday, or a Day that is an official holiday in the State of Texas.

"U.S." shall mean the United States of America.

**1.2 Interpretation.** Unless otherwise provided, all references to "Articles," "Sections," "Exhibits," and the like are to the corresponding portions of this Agreement, each of which is made a part of this Agreement for all purposes. All references to the words "hereof," "herein," "hereinafter," "hereunder," "hereby," "hereto," and similar words refer to this entire Agreement and not to any particular Article, Section, or Exhibit. "Includes" or "including" shall mean "including, but not limited to."

## ARTICLE II

### SALE AND PURCHASE OBLIGATION

**2.1 Service Description.** During each Gas Day of the Term, Seller will make available and sell to Buyer and Buyer will purchase from Seller the Facility's Gas requirements for each Gas Day, of at least the MinDQ and up to the MDQ, based on Buyer's Requested Quantity for the Gas Day.

**2.2 Gas Nomination Procedures.** On each Gas Day during the Term, Seller will sell and Buyer will purchase the Gas (Baseload Gas or Swing Gas, as applicable), based on Buyer's final request for Gas (Baseload Gas or Swing Gas, as applicable), up to the MDQ, to be received by Seller not later than 7:45 a.m., C.C.T. on the calendar Day before each Gas Day on which Buyer requires delivery of Gas to the Delivery Point(s), except that if the request is for Baseload Gas or Swing Gas to be delivered on a Gas Day that begins on a Saturday, Sunday, Monday, and holiday in the U.S., and any Gas Day that follows a holiday in the U.S. Buyer's final request must be received by Seller no later than 7:45 a.m., C.C.T., on the immediately preceding Business Day (the quantity of Gas (including Baseload Gas or Swing Gas, as applicable) requested by Buyer by such times for a Gas Day will be referred to herein as the "Requested Quantity" and each deadline described above for a Gas Day is referred to as the "Nomination Deadline"). Any such nomination may be given by any means from which a written record shall be created, including electronic e-mail or facsimile. The Gas to be delivered at the Delivery Point(s) on a Gas Day will be delivered and taken rateably over the Gas Day in accordance with EPNG's FERC tariff standards. The Gas (Baseload Gas, Swing Gas, or Repurchase Gas, as applicable) quantities shall be ratable for deliveries on weekends and holidays, unless the parties mutually agree otherwise. Example: On each Friday, Buyer shall nominate for Saturday, Sunday, and Monday, and the quantity of Gas shall be the same for each such Gas Day. Should Friday be a holiday, then Buyer shall nominate on Thursday the quantity of Gas needed for Friday, Saturday, Sunday, and Monday, and the quantity of Gas shall be the same for each such Gas Day, unless the parties mutually agree otherwise.

**2.3 Term.** This Agreement shall be effective as of the Effective Date and the Term End Date shall be October 31, 2013.

**2.4 Buyer's Option to Increase the MinDQ.** At its option from time to time upon giving Seller at least 30 days' advance written notice, and effective upon any November 1 during the term of this Agreement, Buyer may request that the MinDQ be increased, but not by more than the difference between the MDQ and the then effective MinDQ, in which case (i) the MinDQ shall be increased by the daily quantity specified in Buyer's notice, and (ii) the Swing Gas Reservation Fee shall no longer be due and payable on the daily quantity by which the MinDQ is increased.



(c) If Buyer notifies Seller of its desire to not take and consume the Deficient Receipt Gas on a Gas Day after the Nomination Deadline for a Gas Day, then Buyer may either, at Buyer's option, (i) resell all or a portion of the Deficient Receipt Gas to Seller if Buyer and Seller are able to mutually agree on a price for such Deficient Receipt Gas to be resold to Seller and Buyer's notice of the need to resell the Gas was received prior to the last intraday nomination deadline for the applicable Gas Day on Seller's or its supplier's transporter transporting the gas to the Delivery Point(s) (if no such transporter, then prior to the last nomination deadline for the applicable Gas Day on EPNG's pipeline), (ii) request and have Seller resell the Deficient Receipt Gas to third parties on behalf of Buyer for delivery on the same Gas Day subject to the disclaimer set forth in Section 2.6(d) below, or (iii) resell the Deficient Receipt Gas to a third party for delivery at the Delivery Point(s) on the same Gas Day. If Buyer has not elected any of the foregoing options timely so as to allow the Deficient Receipt Gas or any portion thereof to be disposed of in an orderly fashion on the same Gas Day, Buyer shall pay Seller, in lieu of the Price for such Deficient Receipt Gas, the Reimbursement Fee; provided however, that in no event shall the Reimbursement Fee exceed the Cap and the Deficient Receipt Gas will remain the property of Seller. Seller's commercially reasonable efforts to resell any quantity of Deficient Receipt Gas shall be consistent with: the amount of notice provided by the Buyer; the immediacy of the Seller's Gas sales requirements; the quantities involved; and the anticipated length of failure by Buyer. In the event Seller has used commercially reasonable efforts to resell the Deficient Receipt Gas, and no such sale is available for all or any portion of the Deficient Receipt Gas, then the Deficient Receipt Gas Price shall be the fair market price as mutually determined by the Seller and Buyer, acting in a commercially reasonable manner, for the quantity of Gas Seller was unable to resell. Such Reimbursement Fee shall be invoiced by Seller in a reasonably timely manner, taking into account the timing of receipt of any third party invoices and statements related to the calculation of such Reimbursement Fee, and such Reimbursement Fee as invoiced by Seller shall not be subject to further adjustments or correction by Seller after ninety (90) days following the date of the original invoice which listed such Reimbursement Fee. In no event shall Seller be obligated to arrange for any storage of the Deficient Receipt Gas or any delayed or deferred delivery of any of the Deficient Receipt Gas on another Gas Day.

(d) If, pursuant to Section 2.6(c)(ii) above, Buyer timely requests that Seller resell the Deficient Receipt Gas to a third party for Buyer, then, Seller shall, upon Buyer's request received by Seller on or before the last intraday nomination deadline for the applicable Gas Day on Seller's or its supplier's transporter transporting the gas to the Delivery Point(s) (if no such transporter, then prior to the last nomination deadline for the applicable Gas Day on EPNG's pipeline) (which request must specify the exact quantity that Buyer wants Seller to resell), resell the specified quantity of such Deficient Receipt Gas for Buyer on the same Gas Day at the highest reasonable price under the circumstances. Seller hereby advises Buyer and Buyer hereby acknowledges, (i) that the Deficient Receipt Gas that Buyer asks Seller to resell will be more difficult to resell and



may obtain a lesser price or no price at all the later in time that Buyer waits before requesting Seller to make the resale and especially if the request is made after the start of the Gas Day for which the Deficient Receipt Gas had been originally requested, (ii) that Seller is not guaranteeing Buyer any minimum price, but Seller will use the same degree of care to resell the Deficient Receipt Gas as it would for its own gas if Seller were trying to sell like quantities of its own gas at the same time and under the same, potentially distressed, circumstances, and (iii) Seller will not be expected to allocate the Deficient Receipt Gas to any of Seller's existing markets. With respect to any resale of the Gas by Seller for Buyer to a third party, Buyer shall bear all credit risk and risk that the third party does not actually take the Gas. To the extent that Buyer has paid or will pay Seller for the Deficient Receipt Gas not taken and Seller has resold the Deficient Receipt Gas for Buyer pursuant to a timely request of Buyer as described above, Seller will retain the resale proceeds and credit to Buyer on its next invoice to Buyer the resale proceeds, less an Administrative Fee (as defined in the table below) for Seller's services in reselling the Deficient Receipt Gas for Buyer determined in accordance with the table set forth below. If the resell price per MMBtu that Seller receives for reselling the Deficient Receipt Gas at the Delivery Point(s) for delivery on the same Gas Day is equal to or greater than the specified percentage of the price that Buyer pays Seller for such Deficient Receipt Gas, then the Administrative Fee per MMBtu of Gas resold by Seller to a third party shall equal the amount in US\$ set forth opposite such percentage in the following table:

TABLE OF ADMINISTRATIVE FEES	
If the resell price is the following percentage of the price to be paid by Buyer for the Deficient Receipt Gas,	Then the Administrative Fee shall be:
More than 125%	
More than 100% but equal to or less than 125%:	
More than 80% but equal to or less than 100%	
More than 70% but equal to or less than 80%	
More than 60% but equal to or less than 70%	
More than 50% but equal to or less than 60%	
50% or less	

(e) Buyer and Seller have reached resolution, of all issues related to Buyer's Deficient Receipt Gas and Reimbursement Fees concerning Gas deliveries scheduled for delivery on March 31, April 1 and April 2, 2007 (the "Dispute"). Furthermore, the parties wish to address any and all potential disputes in respect of previously invoiced amounts related solely to Deficient Receipt Gas and Reimbursement Fees. This provision shall not serve as precedent in the future regarding any Deficient Receipt Gas or Reimbursement Fee. Nonetheless, resolution in this manner shall reflect a broad, full and final release and waiver between Buyer and Seller of any other charges or claims or potential charges or claims between them under this Agreement related to the

**3.3 Reservation Fee on Swing Gas.** Subject to clause (ii) of Section 2.4, for each Gas Day of the Term, Buyer shall pay to Seller a reservation fee

per Gas Day of Swing Gas (the "Swing Gas Reservation Fee") irrespective of whether Buyer purchases any Swing Gas. However, if Buyer nominates in increments of 1,000 MMBtu's per Gas Day, up to 18,000 MMBtu's per Gas Day, of Swing Gas at least four Business Days before the closing day of trading for the NYMEX Contract for the respective month of Gas flow (the "Baseload Monthly Option"), then Seller will waive the Swing Gas Reservation Fee on the quantities of Swing Gas nominated under this option, and such additional quantities shall become part of the MinDQ and Baseload Gas for each Gas Day during the respective month. Such amounts shall be due and payable on the same due date for Gas deliveries for a month. Notwithstanding anything herein to the contrary, Seller will waive the Swing Gas Reservation Fee associated with quantities of Swing Gas that are either (i) Deficient Delivery Gas, or (ii) not delivered or taken due to an event of Force Majeure.

**3.4 Cessation of Publication of Indices.** The Price specified herein shall be subject to adjustment to the extent that the applicable indices comprising the Price cease to be published, in which case a new price or pricing formula shall be selected by mutual agreement of Buyer and Seller. If the Parties are unable to agree on a replacement price or pricing formula by the end of the first month following the month in which the applicable indices comprising the Price ceased to be published, either party may request for an independent expert to be appointed to determine a replacement price or pricing formula that reflects (a) the fair market value of the Gas at the Delivery Point(s) plus Seller's average net margin on the Gas for the most recent twelve (12) month period, (b) the relevant market conditions at the Delivery Point(s), and (c) the economic value of this transaction to each Party (the factors in clauses (a), (b), and (c) are referred to herein as the "Pricing Criteria"). The independent expert shall be selected, and the process shall be conducted, as provided for under Section 12.2 (without the right to appeal the decision to arbitration). If either Party is not satisfied with the expert's determination with respect to the new price or pricing formula, then it may terminate this Agreement upon giving forty-five (45) Days' prior written notice to the other Party which must be given within thirty (30) days of the decision by the expert. During the period between the time the original pricing information ceased to be published and the date of termination (the "New Price Period"), the Gas shall be priced based on the substitute index or pricing formula determined by the expert, with Seller having the right during the New Price Period to bill Buyer based on a reasonable and justified estimate of a new price which shall be adjusted retroactively to the beginning of the New Price Period when the substitute index or pricing formula is finally determined. Notwithstanding anything herein to the contrary and for purposes of clarification, the original Prices set forth herein shall apply at all times prior to the first Day of the New Price Period.



## ARTICLE IV

### TERM

**4.1 Term of Agreement.** This Agreement shall become effective on the Effective Date and shall remain in full force and effect through the Term End Date, unless terminated earlier in accordance with the provisions hereof.

#### **4.2 Termination for Specific Events of Default.**

**4.2.1** In the event (each a "Specific Event of Default") either Party (the "Defaulting Party") or its credit support provider (i.e., a guarantor or issuer of a letter of credit) shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent; (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee, or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any payment obligation under a guarantee or a letter of credit issued under Section 13.1 which is not remedied within five (5) Days of receiving a notice thereof; (vii) shall not have paid any undisputed amount due the other Party hereunder on or before the fifth (5<sup>th</sup>) Business Day following written notice that such payment is due, (viii) be the Affected Party with respect to a Credit Support Default under the CSA, or (ix) in the case of Seller and provided the failure to deliver is not excused pursuant to Section 2.8.3, fail to deliver the Requested Quantity for five (5) consecutive Gas Days or fail to deliver fifteen (15) percent of the aggregated Requested Quantity in a calendar month; then the other Party (the "Non-Defaulting Party") shall have the right, at its sole election, to withhold immediately and/or suspend payments and/or to terminate and liquidate this Agreement, in the manner provided hereinbelow. In addition, in the event a payment owed by Buyer to Seller in consideration for Gas deliveries is not made within two (2) Business Days after Buyer's receipt of Seller's notice of non-payment (the notice may be sent by fax) or a Credit Support Default has occurred under the CSA with respect to Buyer and such has not been cured within two (2) Business Days after Buyer's receipt of Seller's notice of such event (the notice may be sent by fax), then Seller may immediately suspend deliveries.

**4.2.2 (a)** If a Specific Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by notice to the Defaulting Party, to designate a Day, no earlier than five (5) Days and no later than thirty (30) Days after such notice is given, as an early termination date (the "Early Termination Date"), provided the Specific Event of Default is continuing, for the liquidation and termination of this Agreement pursuant to Section 4.2.3 below.

(b) If a Nationalization Event or a Facility Event (in either case a "Termination Event") has occurred and is continuing, then either Party, in the case of a Nationalization Event, or Buyer only, in the case of a Facility Event, shall have the right, by notice to the other Party, to designate an Early Termination Date and liquidate and terminate this Agreement pursuant to Section 4.2.3 below. For purposes of calculating the Final Settlement Amount, the terminating Party shall be deemed to be the "Non-Defaulting Party". If an event or circumstance that would otherwise constitute or give rise to a Specific Event of Default also constitutes a Termination Event, it will be treated as a Termination Event and will not constitute a Specific Event of Default.

4.2.3 As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each Party under this Agreement with respect to the period on and before the Early Termination Date (including without limitation any liquidated damages owed), for which payment has not yet been made, and (ii) the Market Value, as defined below, of this Agreement. The Non-Defaulting Party shall (x) liquidate and accelerate this Agreement at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of this Agreement shall be due to the Buyer if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) discount the amount then due under subclause (x) above to present value using a discount rate of six percent (6%) as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to this Agreement). "Contract Value" means the amount of Gas remaining to be delivered or purchased under this Agreement (assumed to be an amount equal for each remaining Gas Day to the higher of (1) the average actual daily deliveries and consumption for the last 12 Months, or (2) the MinDQ), multiplied by the contract price for Baseload Gas, and "Market Value" means the amount of Gas remaining to be delivered or purchased under this Agreement (calculated based on the same assumption set forth above in this sentence) multiplied by the market price for a similar transaction at the Delivery Point(s) determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases, and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A Party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term to which Parties are not bound as of the Early Termination Date (including but not limited to "evergreen" provisions and options to extend) shall not be considered in determining the Contract Value and the Market Value.

4.2.4 The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the Parties under Section 4.2.3 above, so that all such amounts are netted or aggregated to a single liquidated amount payable by one Party to the other (the "Net Settlement Amount"). At its sole option, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any cash margin or other collateral held by it in connection with any credit support obligation (as per Article XIII) relating to this Agreement



or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the Parties, with the net amount calculated being referred as the "Final Settlement Amount." If the Defaulting Party disagrees with the Final Settlement Amount or any elements thereof, it may dispute the amount and seek a resolution in accordance with the provisions of Article XII.

4.2.5 As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Final Settlement Amount, and whether the Final Settlement Amount is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Final Settlement Amount shall be paid by the close of business on the thirtieth (30<sup>th</sup>) Business Day following such notice, which date shall not be earlier than the Early Termination Date. In case any portion of any Final Settlement Amount is in dispute, the entire amount shall be paid when due. The owing Party upon determination of the correct amount shall return any excess amount that, through inadvertent errors or as a result of a dispute, may have been overpaid, with interest calculated in the manner set forth in Section 7.1.

4.2.6 The Parties agree that this Agreement as terminated and liquidated under the above section shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

4.2.7 The Non-Defaulting Party's remedies under this section are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each Party reserves to itself all other rights, setoffs, counterclaims, and other defenses that it is or may be entitled to arising from this Agreement.

**4.3 Cooperation Upon Termination.** Upon the termination or expiration of this Agreement, each party shall return all documents and data belonging to the other party and shall cooperate fully to ensure that the termination of this Agreement and the transition is accomplished in an efficient and businesslike manner.

## ARTICLE V

### DELIVERY POINTS

5.1 **Delivery Points.** The Gas to be sold and purchased hereunder shall be delivered to the paper delivery point where Gas is delivered from Seller's Keystone Permian Basin Pool to Buyer's Keystone Permian Basin Pool on EPNG's pipeline (the "Primary Delivery Point"), unless both parties agree to delivery at another point or points (each a "Secondary Delivery Point" for a period and appropriate price adjustments, if any. Each Party shall use reasonable

efforts to accommodate a request from the other Party for a Secondary Delivery Point provided the requestee does not incur any additional costs or the loss of flexibility. Buyer acknowledges that Seller may wish to request the paper delivery point where Gas is delivered from Seller's Waha Permian Basin Pool to Buyer's Waha Permian Basin Pool on EPNG's pipeline as a Secondary Delivery Point from time to time. In the event of such a request Buyer shall use reasonable efforts to accommodate such a request, including arranging for the capability of receiving Gas at such Secondary Delivery Point, provided that Buyer will not incur any additional cost in accommodating such request. Unless the Parties agree otherwise at the time, Gas to be resold by Buyer to Seller hereunder shall be deemed to have been delivered from Buyer's pool to Seller's pool at the same Delivery Point(s) as for the corresponding deliveries from Seller to Buyer.

**5.2 Title and Risk of Loss.** Except as provided to the contrary in Sections 2.5 and 2.6 with respect to Gas for which Buyer does not take delivery, title to the Baseload Gas and Swing Gas, and risk of loss and responsibility therefore, shall pass from Seller to Buyer at the Delivery Point(s). Title to the Repurchase Gas and any other Gas to be sold by Buyer to Seller hereunder, and the risk of loss and responsibility therefore, shall pass from Buyer to Seller at the Delivery Point(s) or other delivery location agreed to by the Parties at the time.

**5.3 Transportation Upstream and Downstream of Delivery Point(s).** Seller shall contract for, pay for, and manage all transportation and transportation capacity needed by Seller to deliver gas to the Delivery Point(s). Seller will be responsible for securing and maintaining any permits required in order to deliver gas to the Delivery Point(s). Buyer or its designee shall contract for, pay for, and manage all transportation and transportation capacity needed by Buyer to receive gas at the Delivery Point(s) and have same transported to the Facility. Buyer shall be solely responsible for all permits (including any required export or import permits needed to export the Gas from the U.S. or import the Gas into Mexico) necessary to transport or sell gas to the Facility.

**5.4 Imbalance Penalties.** As between the parties, Seller shall bear, pay, and be responsible for (or reimburse Buyer if Buyer has already paid) all imbalance, overrun, scheduling, cash-out (but only the portion constituting a loss to a party), or other penalties and charges assessed by a pipeline transporting the Gas to or from the Delivery Point(s) ("Imbalance Penalties") as a result of Seller's actions or inactions including, but not limited to, Seller's delivery of more or less than the scheduled quantities at the Delivery Point(s), and Buyer shall bear, pay, and be responsible for (or reimburse Seller if Seller has already paid) all such Imbalance Penalties that are assessed as a result of Buyer's actions or inactions including, but not limited to, Buyer taking more or less than the scheduled quantities at the Delivery Point(s). The parties will cooperate and use their reasonable efforts to determine the cause and validity of, and to mitigate, any such imbalances or Imbalance Penalties. To the extent that Reimbursement Fees or Replacement Fees which have been invoiced and paid include Imbalance Penalties, the parties agree that such Imbalance Penalty amounts may not be charged pursuant to this Section 5.4.



## ARTICLE VI

### TAXES

**6.1 Responsibility for Taxes.** (a) With respect to sales by Seller to Buyer hereunder, the Prices specified herein are inclusive of all costs, taxes, and fees upstream of the Delivery Point(s). Buyer shall be responsible for and pay any and all costs, taxes, and fees due on such Gas or the sale hereunder at or after the Delivery Point(s) including Texas sales and use taxes. If Buyer claims an exemption from any such taxes, Buyer will provide Seller with an appropriate exemption certificate or valid exportation documentation evidencing exemption from taxation under applicable statute or regulation.

(b) With respect to sales by Buyer to Seller hereunder, the Prices specified herein are inclusive of all costs, taxes, and fees upstream of the Delivery Point(s). Seller shall be responsible for and pay any and all costs, taxes, and fees due on such Gas or the sale hereunder at or after the Delivery Point(s) including Texas sales and use taxes. If Seller claims an exemption from any such taxes, Seller will provide Buyer with an appropriate exemption certificate.

(c) If a Party is required to remit or pay taxes that are the other Party's responsibility hereunder, the Party responsible for such taxes shall indemnify and promptly reimburse the other Party for such taxes and associated fines and penalties.

## ARTICLE VII

### PAYMENTS

**7.1 General Payment Terms and Interest.** Amounts due under this Agreement shall be invoiced on any day of the month following the month of service and shall be payable by automated clearinghouse or wire transfer on the later of ten (10) days from the date of receipt of the invoice or the 25<sup>th</sup> day of the month following the month of service; provided, however, any invoice submitted pursuant to Section 2.6 or Section 2.7 shall be payable on the later of a) ten (10) days from the receipt of such invoice or b) on the 25<sup>th</sup> of the month during the month that such invoice is received. Should the due date fall on a day that is not a business day in the United States, such payment shall be due on the next business day. Invoices may be based on estimates if actual quantities for the preceding month are not available by the time Seller desires to issue an invoice, and corrections to actual quantities shall be made on the next Month's invoice. Except as expressly provided to the contrary herein, if either Party shall fail to make any required payment hereunder when due, or if any refund to Buyer shall become due hereunder, or the subsequent payment of a disputed invoice is made, such outstanding amount shall bear interest,



from the due date thereof to the date of payment, at an annual rate equal to overnight USD Libor plus two hundred (200) basis points.

**7.2 Netting and Setoff.** Where amounts are due to one party from the other party, the creditor shall have the right to net or setoff such amounts against any amounts which are due and payable hereunder by it to the other party.

## ARTICLE VIII

### FORCE MAJEURE

**8.1 Definition of Force Majeure.** "Force Majeure" will mean any act or event that (a) renders the affected Party unable to perform its obligations under this Agreement, (b) is beyond such Party's reasonable control, (c) is not due to such Party's fault or negligence, and (d) cannot be avoided by the exercise of due diligence, including, but not limited to, the expenditure of any reasonable sum of money in light of the circumstances and taking into account the economic value of this Agreement to the Parties and all insurance proceeds available to the Parties. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include, without limitation: (i) natural phenomena, such as storms, floods, lightning, freezes, hurricanes, and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, sabotage, and commercial embargoes; (iii) transportation disasters, whether by pipeline, ocean, rail, land, or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a U.S. or Mexican (excluding the CFE) governmental authority (including any denial or revocation of a permit to operate a pipeline relevant to this Agreement) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any laws, but excluding a Nationalization Event; (vii) a Party's inability, despite best efforts, to secure in an appropriate manner any permits (including without limitation any export permits or authorizations) required to perform its obligations hereunder; and (viii) the interruption or curtailment of firm transportation of the Gas by a transporter transporting the Gas at the Delivery Point(s) or from the Delivery Point(s) to the Facility when due to an event of force majeure complying with the transporter's definition of force majeure in its tariff regardless of whether the transporter issues formal notice of force majeure. Force Majeure shall not include any of the following events: (A) economic hardship, or (B) changes in market conditions.

**8.2 Exemption from Liability.** Neither Party shall be liable for the failure to comply, in all or part, with any of its obligations to the extent, and for the period, that the affected Party is prevented from complying as a result of Force Majeure. The Party claiming Force Majeure shall use commercially reasonable efforts to cure, mitigate, or remedy the effects of Force Majeure; provided, that neither Party shall have any obligation hereunder to settle a strike or labor dispute.

**8.3 Notification Obligations.** The Party alleging Force Majeure shall notify the other Party of (a) the occurrence of the event of Force Majeure and (b) the moment when the event of Force Majeure no longer renders it impossible for such Party to perform hereunder. In both cases the notification shall be made verbally as quickly as reasonably possible and in writing no later than ten (10) Business Days after the date on which such Party learned of the occurrence of the events described in (a) or (b) above. In the event that either Party fails to notify the other Party of the occurrence of the event of Force Majeure in writing within the specified period set forth in this Section 8.3, such Party shall forfeit its right to claim such event of Force Majeure as a reason for failing to comply with its obligations under this Agreement. The Party alleging Force Majeure shall have the burden of proving its existence.

**8.4 Non-exempt Payments.** Nothing set forth in this Article 8 shall release the Parties from the obligations that by their nature are not affected by Force Majeure, including the payment obligations owed (i) by Buyer to Seller for Gas delivered or to be paid for whether taken prior to the event of Force Majeure, or (ii) by Seller to Buyer for failure to supply Gas prior to the event of Force Majeure.

**8.5 Extension of the Agreement.** The occurrence of an event of Force Majeure shall not act to extend the term of this Agreement.

## ARTICLE IX

### LIABILITY AND INDEMNIFICATION

**9.1 Indemnification by Seller.** Seller shall indemnify, hold harmless, and defend Buyer and its employees, officers, directors, affiliates, and agents from and against any and all claims, liabilities, actions, suits, judgments, and losses including, without limitation, third party claims arising in connection with deaths, personal injury, or property damages caused by any acts or omissions of Seller or by the Gas while it is upstream of the Delivery Point(s).

**9.2 Indemnification by Buyer.** Buyer shall indemnify, hold harmless, and defend Seller and its employees, officers, partners, directors, affiliates, and agents from and against any and all claims, liabilities, actions, suits, judgments, and losses including, without limitation, third party claims arising in connection with deaths, personal injury, or property damages caused by any acts or omissions of Buyer or by the Gas while it is downstream of the Delivery Point(s).

## ARTICLE X

### QUALITY, PRESSURE, AND MEASUREMENT



**10.1 Specifications for Quality and Pressure.** All Gas delivered at the Delivery Point by Seller or Buyer shall meet the pipeline quality standards of EPNG, as such quality standards exist on the date this Agreement is executed or may be modified after that date. Seller and Buyer will deliver all Gas at the Delivery Point(s) at the prevailing pressure as in effect from time to time for deliveries into the system of EPNG.

**10.2 Measurement.** Measurement and testing of metering facilities and quality testing for Gas delivered hereunder shall be determined at the Delivery Point(s) in accordance with the provisions of EPNG's FERC tariff. The unit of measurement for purposes of this Agreement shall be one (1) MMBtu, which shall equal one (1) decatherm.

## ARTICLE XI

### MAINTENANCE

**11.1 Maintenance.** The Parties agree to work together to minimize any curtailment or interruption of either Party's ability to deliver or take delivery of Gas due to maintenance on facilities that affect the Parties' ability to deliver and receive Gas hereunder.

**11.2 Maintenance Affecting Buyer.** Buyer shall inform Seller thirty (30) Days in advance of scheduled maintenance activities at the Facility. Buyer shall be exempt from its MinDQ take or pay obligation during a maximum of twenty-one (21) Gas Days per calendar year of scheduled maintenance at the Facility provided the prior notice referred to above has been given.

## ARTICLE XII

### GOVERNING LAW AND DISPUTE RESOLUTION

**12.1 Governing Law.** THIS AGREEMENT AND ALL DISPUTES ARISING HEREUNDER SHALL BE SUBJECT TO, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS IF EXECUTED AND TO BE PERFORMED WHOLLY WITHIN THE STATE OF TEXAS.

**12.2. Independent Expert.** All disputes under this Agreement relating to technical, operational, or payment matters shall be finally resolved by PIRA Energy Group ("PIRA" or the "Independent Expert"), subject to appeal to the arbitration panel provided under Section 12.3 below in case of manifest error, fraud, or bad faith in connection with the Independent Expert determination. If the Defending Party (as defined below) considers that the issue is not one to be decided by the Independent Expert, then it will so notify the other Party within ten (10) Days of receiving the notice of the commencement of the expertise procedure, in which case the issue in dispute will be determined by arbitration in accordance with the provisions under Section 12.3



below in lieu of being determined by an Independent Expert. If PIRA is out of business or cannot serve as Independent Expert for any reason, either temporarily or indefinitely at any time, and unless the Parties can agree within fifteen (15) Days on either one individual or firm to act as a replacement Independent Expert, the selection of the Independent Expert shall be made in accordance with the provisions of Article 4 of the International Chamber of Commerce's ("ICC") Rules for Expertise and the Parties shall be obligated to accept the Independent Expert so proposed by the ICC. Each Party shall pay its own costs in connection with this procedure, and the services of the Independent Expert shall be covered by the Parties in equal parts. Within thirty (30) Days following the selection or designation of the Independent Expert, each Party shall provide such expert with the information in its possession regarding the disputed matter. The Independent Expert may convene one or more meetings of the Parties, whether jointly or separately, in order to establish the specific points in controversy and may request necessary supplementary information. The Independent Expert shall issue its decision within thirty (30) Days following the conclusion of the proceeding, which proceeding may not exceed sixty (60) Days from the date of its initiation, unless otherwise agreed by the Parties. The decision of the Independent Expert shall be final and binding on the Parties (except in the case of fraud, bad faith, or manifest error) provided that it refers only and exclusively to the matter posed to the Independent Expert.

**12.3 Arbitration.** All disputes relating to (i) matters under this Agreement other than those described in Section 12.2, (ii) an appeal of the Independent Expert's decision as provided above, or (iii) a referral to arbitration pursuant to the last sentence of the of Section 12.2 above, shall be finally resolved by binding arbitration conducted in Houston, Texas, pursuant to the Federal Arbitration Act. The arbitration may be initiated by either party by providing to the other a written notice of arbitration specifying the dispute(s) to be arbitrated. If a party refuses to honor its obligations to arbitrate, the other party may seek to compel arbitration in either federal or state court. The arbitration proceeding shall be conducted in Houston, Texas or other location mutually agreed upon by the parties. Within thirty (30) days of the notice initiating the arbitration procedure, each party shall designate one arbitrator, who need not be impartial. If a party fails to designate an arbitrator, the other party may have an arbitrator appointed by applying to the senior, active United States District Judge for the Southern District of Texas. The two arbitrators shall select a third arbitrator. If the two arbitrators chosen by the parties fail to agree upon the third arbitrator, both or either of the parties may apply to the senior, active United States District Judge for the Southern District of Texas for the appointment of a third arbitrator. The third arbitrator shall take an oath of neutrality. The three arbitrators shall make all of their decisions by majority vote. The enforcement of this agreement to arbitrate, the validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the proceeding pursuant to this agreement to arbitrate, including, without limitation, the issues subject to arbitration, the scope of the arbitrable issues, allegations of "fraud in the inducement" to enter into this Agreement or to enter into this agreement to arbitrate, allegations of waiver, delay or defenses to arbitrability, and the rules governing the conduct of the arbitration, shall be governed by and construed pursuant to the Federal Arbitration Act. In deciding the substance of the parties' disputes, the arbitrators shall apply the substantive laws of the state specified herein



under the choice-of-law provision of this Agreement. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"), except as modified in this Agreement; provided, however, the arbitration proceeding will be self-administered by the parties so that no fees will be paid to the AAA unless the parties mutually agree otherwise. In determining the extent of discovery, the number and length of depositions, and all other pre-hearing matters, the arbitrators shall endeavor to the extent possible to streamline the proceedings and minimize the time and cost of the proceedings. There shall be no transcript of the hearing. The final hearing shall be conducted within sixty (60) days of the selection of the third arbitrator. The final hearing shall not exceed ten (10) Business Days, with each Party to be granted one-half of the allocated time to present its case to the arbitrators. All proceedings conducted hereunder and the decision of the arbitrators shall be kept confidential by the parties. Only damages allowed pursuant to this Agreement may be awarded. It is expressly agreed that the arbitrators shall have no authority to award treble, indirect, exemplary, consequential, special, or punitive damages of any type under any circumstances regardless of whether such damages may be available under applicable law, the parties hereby waiving their right, if any, to recover such damages in connection with any dispute. The arbitrators shall render their final decision within twenty (20) days of the completion of the final hearing fully resolving all of the disputes that are the subject of the arbitration proceeding. The arbitrators' decision shall be in writing and shall be final and non-appealable to the maximum extent permitted by law. Any and all of the arbitrators' orders and decisions may be enforceable in, and judgment upon any award rendered in the arbitration proceeding may be confirmed and entered by, any federal or state court having jurisdiction. Each party shall pay its own attorneys fees, all of the fees and expenses of the arbitrator selected by (or for) it, one-half of the fees and expenses of the third arbitrator, and all of its other costs and expenses related to the arbitration. However, the arbitrators may award the prevailing party its attorneys' fees and other costs of the arbitration.

## ARTICLE XIII

### SECURITY

**13.1 Guaranty.** During the Term, Buyer shall cause Buyer's parent, TransAlta Corporation, to issue a guaranty in the amount of US\$20,000,000 for the benefit of Buyer. Buyer shall have the right to replace this guaranty at any time with a guaranty or letter of credit, in a form reasonably acceptable to Seller and issued by any financial institution that Buyer engages to provide financing for the Facility provided such institution meets the definition of "Qualified Institution" set forth in the CSA. During the Term, Seller shall cause Seller's parent, Fortis Bank, SA/NV., to issue a guaranty in the amount of US\$6,000,000 for the benefit of Buyer.

**13.2 Provision of Credit Support.** The Credit Support Annex attached hereto as Exhibit "A" is incorporated herein and is binding on the Parties.

**13.3 Financial Statements.** Unless publicly available on SEDAR or EDGAR, upon request, each party shall furnish the other party with audited annual financial statements of its Credit Support Provider within 90 days after each calendar year and unaudited quarterly financial statements within 60 days after each calendar quarter, but in each case no earlier than the date that the financial statements are made public.

#### ARTICLE XIV

#### COOPERATION WITH LENDERS

**14.1 Cooperation.** Seller shall cooperate with the financial institution that Buyer engages to provide financing for the Facility (i) to supply such information and documentation, (ii) to grant such written consents to the assignment of this Agreement, as may be reasonably required in connection with the execution and delivery of the agreements and documents executed and delivered in connection with such financing and the performance by the obligors of their obligations thereunder, and (iii) to agree to amendments to this Agreement requested by the Buyer's lenders to the extent such amendments do not materially increase Seller's obligations under this Agreement in Seller's reasonable opinion.

#### ARTICLE XV

#### NOTICES

**15.1 Addresses for Notices.** All notices, demands, and statements to be given hereunder shall be given in writing to the parties at the addresses appearing herein below and will be effective upon actual receipt:

To Buyer:  
TransAlta Chihuahua, S.A. de C.V.  
Montes Urales 505 PB  
Lomas de Chapultepec  
11000, Mexico D.F.  
Attention: Contract Administrator  
Phone: (011) 525-552-027060  
Fax: (011) 525-552-027043

To Seller:  
Fortis Energy Marketing & Trading GP  
1100 Louisiana Street, Suite 4900  
Houston, Texas 77002



Attn: Contract Administration  
Fax: 713-890-3129

Each Party shall have the right to change its address at any time and/or designate that copies of all such notices be directed to another person at another address, by giving written notice thereof to the other Party.

**15.2 Notices under CSA.** Notices to be given pursuant to the CSA shall be given as specified therein.

## ARTICLE XVI

### PERMITS

**16.1 Various Permits.** Each Party shall be responsible for obtaining, maintaining, and complying with the terms of all such permits, rights of way, and other governmental approvals (both in Mexico and the U.S.) as may be necessary or advisable in connection with their respective performance of their obligations hereunder (the "Permits"). Seller will be responsible for securing and maintaining any permits required in order to deliver Gas to the Delivery Point(s). Buyer will be responsible for all Permits to receive the Gas at and after the Point(s) of Sale and deliver the Gas to the Facility. Buyer shall also be solely responsible for securing and maintaining all export/import authorizations required to take the Gas out of the U.S. Each Party shall use its best efforts to assist reasonably the other Party in obtaining and maintaining such Permits.

## ARTICLE XVII

### REPRESENTATIONS AND WARRANTIES

**17.1 Representations.** Each Party represents and warrants to the other Party that (a) it possesses all power, authority, and applicable approvals (if any) necessary for it under its entity charter or by-laws to enter into this Agreement, (b) this Agreement constitutes the valid and binding obligation of such Party enforceable against it in accordance with the terms hereof, (c) the execution, delivery, and performance hereof will not cause such Party to be in violation of any other agreement or law, regulation, order, or court process or decision to which it is a Party or by which it or its properties are bound or affected, (d) it has, or will have when necessary for the performance of the Parties hereunder, and will maintain all regulatory authorizations, certificates, and documentation as may be necessary and legally required for it to transport, buy, sell, or make sales for resale of Gas sold or purchased under this Agreement, (e) it is a producer, processor, buyer, seller, or commercial user of, or a merchant handling, Gas and has entered into this Agreement solely for purposes related to its business as such, (f) it is not relying upon any

representations (whether written or oral) of the other Party other than the representations expressly set forth in this Agreement, and (g) it is acting as principal, and not as agent, fiduciary, or any other capacity.

**17.2 Specific Representations by Seller.** Seller represents and warrants that: (i) it is a general partnership organized under the laws of the State of Delaware, United States of America the partners of which are FB Energy Holdings LLC and Fortis Energy North America SARL; (ii) it is resident in the United States of America for tax purposes; (iii) it is a non-resident of Mexico for tax purposes; and (iv) the sale of the Gas and corresponding services hereunder will occur inside the United States of America and outside of Mexico, and (v) to the best of Seller's knowledge, no amounts paid to Seller or Buyer hereunder will constitute "royalties" under Mexican or United States tax law.

**17.3 Specific Representations by Buyer.** Buyer represents and warrants that: (i) it is a Sociedad Anonima de Capital Variable organized under the laws of Mexico; (ii) it is resident of Mexico for tax purposes; (iii) the sale of the Gas and corresponding services hereunder will occur inside the United States of America and outside of Mexico, (iv) it is qualified to do business in the State of Texas, United States of America, and (v) to the best of Buyer's knowledge, no amounts paid to Seller hereunder will constitute "royalties" under Mexican or United States tax law.

## ARTICLE XVIII

### MISCELLANEOUS

**18.1 Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, except that (a) Buyer may assign this Agreement without such consent to an Affiliate of Buyer or any Qualified Institution(s) (as defined in the CSA) that Buyer engages to provide financing for the Facility; provided the assignee posts security equivalent to that provided by Buyer in accordance with Article XIII and the CSA; (b) Buyer may assign this Agreement without such consent to a party that acquires the Facility or substantially all the assets of Buyer, provided the assignee either meets Seller's then credit standards or posts security from a Qualified Institution equivalent to that provided by Buyer in accordance with Article XIII and further provided that the assignee can post any security then required under the CSA, and (c) Seller may assign this Agreement without such consent to an Affiliate of Seller, provided the assignee posts security equivalent to that provided by Seller in accordance with Article XIII and the CSA.



**18.2 Entire Agreement; Amendments.** Except for additional agreements between the parties expressly referenced herein, this Agreement contains the entire understanding and agreement of the parties. This Agreement may be modified, altered, or amended only by an agreement in writing, signed by the party against whom enforcement of any modification, alteration, or amendment is sought.

**18.3 Waiver.** No waiver of any provision of this Agreement shall be valid or enforceable unless in writing and signed by the party against whom enforcement of the waiver is sought. The waiver of any provision of this Agreement, at any time, by either party, shall not constitute a waiver of future compliance with such provision or a waiver of compliance with any other provision of this Agreement.

**18.4 Severability.** In the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, all other provisions shall remain enforceable to the fullest extent permitted by law.

**18.5 Good Faith and Further Assurances.** The parties expressly accept their respective responsibility of good faith and for fair dealing with regard to their obligations under this Agreement and agree to take such further actions and execute such further documents as may be reasonably necessary or appropriate to complete the transactions contemplated hereunder.

**18.6 Survival.** The duties and obligations of the parties to pay money or perform any obligations hereunder relating to the payment of money to the other party or relating to any purchase or sale obligations entered into during the Term shall survive the termination or expiration of this Agreement.

**18.7 No Partnership.** This Agreement is not intended to create and shall not be construed to create any relationship of partnership, joint venture, or association for profit between the parties hereto. Neither of the parties hereto shall have any fiduciary obligations or duties to the other by virtue of this Agreement.

**18.8 No Third Party Beneficiary.** There is no third party beneficiary to this Agreement, and the provisions of this Agreement shall not impart rights enforceable by any person, firm, or organization not a party or not bound as a party, or not a successor or assignee of a party bound to this Agreement.

**18.9 LIMITATION ON DAMAGES.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING FROM ANY BREACH OR DEFAULT UNDER THIS AGREEMENT OR FROM ANY ACT OR OMISSION UNDER OR IN CONNECTION WITH THIS AGREEMENT.

**18.10 Joint Preparation.** This Agreement was prepared jointly by the parties hereto and not by



either party to the exclusion of the other.

**18.11 Confidentiality.** The terms and provisions of this agreement shall be confidential and shall not be disclosed by the parties to any third parties except CFE and the parties' affiliates, employees, agents, attorneys, accountants, and lenders.

**18.12 Prohibited Payments.** The Parties and their respective officers, directors, employees, or agents shall use only legitimate business and ethical practices in commercial operations and in promoting their positions on issues before governmental authorities. Neither the Parties nor their respective officers, directors, employees, or agents shall pay, offer, promise, or authorize the payment, directly or indirectly, of any monies or anything of value to any government official or employee or any political party or candidate for political office in contravention of applicable law.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals.

Fortis Energy Marketing & Trading GP

TransAlta Chihuahua, S.A. de C.V.

By: *W. Ad R.*  
Its: *Managing Director*

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: *Frank Velasco*  
Its: *Managing Director*

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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Fortis Energy Marketing & Trading GP

TransAlta Chihuahua, S.A. de C.V.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By:   
Its: Kenneth S. Stickland  
DIRECTOR

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By:   
Its: Celia Milte  
Country Manager, Director

