

**CASE**

**NUMBER:**

99-032

HISTORY INDEX FOR CASE: 1999-032  
WESTERN KENTUCKY GAS COMPANY  
Confidentiality

IN THE MATTER OF THE PETITION OF WESTERN KENTUCKY GAS  
COMPANY FOR APPROVAL AND CONFIDENTIAL TREATMENT OF A SPECIAL  
CONTRACT SUBMITTED TO THE KENTUCKY PUBLIC SERVICE COMMISSION

SEQ NBR	ENTRY DATE	REMARKS
0001	01/27/1999	Application.
0002	01/29/1999	Acknowledgement letter.
0003	03/08/1999	Agreed Stipulation between PSC staff and WKG.
0004	03/15/1999	Final Order granting in part and denying in part request for confidentiality.
0005	02/02/2001	Final order granting petitions for confidential treatment.



**Paul E. Patton, Governor**  
**Ronald B. McCloud, Secretary**  
**Public Protection and**  
**Regulation Cabinet**  
  
**Thomas M. Dorman**  
**Executive Director**  
**Public Service Commission**

COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
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**Martin J. Huelsmann**  
**Chairman**  
  
**Edward J. Holmes**  
**Vice Chairman**  
  
**Gary W. Gillis**  
**Commissioner**

CERTIFICATE OF SERVICE

Re: Case Nos. 96-096, 96-113, 96-185, 96-278, 96-295, 96-424, 98-373, 99-032

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above cases was service upon the following by U.S. Mail on February 2, 2001.

See attached service lists.

*Stephanie J. Bell*

Secretary of the Commission

SB/sgb

Enclosure



Mr. Willam J. Senter  
Vice President, Rates & Regulatory  
Western Kentucky Gas Company  
2401 New Hartford Road  
Owensboro, KY. 42303 1312

Doug Walther  
Atmos Energy Corporation  
P. O. Box 650205  
Dallas, TX. 75265

Honorable Mark R. Hutchinson  
Attorney at Law  
Sheffer Hutchinson Kinney  
115 East Second Street  
Owensboro, KY. 42303

Honorable John N. Hughes  
Attorney at Law  
124 W. Todd Street  
Frankfort, KY. 40601

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR	)	CASE NOS. 96-096
CONFIDENTIAL TREATMENT	)	96-113
OF INFORMATION FILED	)	96-185
WITH WESTERN KENTUCKY	)	96-278
GAS COMPANY'S PROPOSED	)	96-295
SPECIAL CONTRACTS	)	96-424
	)	98-373
	)	99-032

O R D E R

Western Kentucky Gas Company ("WKG"), a division of Atmos Energy Corporation, has filed with the Commission special contracts containing rates and conditions of service that affected certain large commercial and industrial customers.

WKG contends that each contract contained terms that were of a proprietary nature and thus exempted from public disclosure. WKG asserted that these contracts were exempted from public inspection and petitioned the Commission for confidential treatment of those terms. On July 17, 1997, the Commission issued an Order finding that KRS 278.160 required public disclosure of those terms. The Commission denied those provisions of WKG's petitions that sought confidential treatment of rates and the terms under which service was to be provided.<sup>1</sup> Likewise, the Commission found, in an

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<sup>1</sup> The Order of July 17, 1997 in effect consolidated all of the then pending petitions of WKG into one Order which found certain provisions of the contracts to be entitled to confidential treatment, but found the provisions as to rates and services not entitled to confidential treatment.

Order dated March 15, 1999, that Commission Staff and WKG had entered a stipulation and that the stipulated facts required the rates and terms of service of those petitions be denied confidential treatment based upon KRS 278.160(1).<sup>2</sup>

WKG then sought judicial review of these decisions. In Western Kentucky Gas Company v. Public Service Commission, No. 98-CI-00411 (Franklin Cir. Ct. Ky. Dec. 20, 2000), the Franklin Circuit Court directed the Commission to determine whether, based upon the current state of the law, the contracts in question must be available for public inspection in their entirety.

KRS 61.878(1)(c)(1) provides that "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records" are excluded from the public inspection requirement of the Open Records Act and shall be "subject to inspection only upon an order of a court of competent jurisdiction."

In rendering its decision upon WKG's original request, the Commission specifically found that the information in question met "the criteria of competitive injury and/or trade secret, and therefore, would typically be protected under KRS 61.878(1)." The Commission further concluded that KRS 278.160(1) required public disclosure of

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<sup>2</sup> Case No. 99-032 and Case No. 98-373, Western Kentucky Gas Company's Request For Confidential Treatment of Information Contained In Its Contract With An Industrial Customer.

the information and that as KRS 278.160(1)<sup>3</sup> required such disclosure, KRS 61.878(1)(c)(3) rendered KRS 61.878(1)(c)(1) inapplicable.<sup>4</sup>

Since the Commission rendered its decision, the General Assembly has amended KRS 278.160 to provide:

(3) The provisions of this section do not require disclosure or publication of a provision of a special contract that contains rates and conditions of service not filed in a utility's general schedule if such provision would otherwise be entitled to be excluded from the application of KRS 61.870 to 61.884 under the provisions of KRS 61.878(1)(c) 1.

The General Assembly's action effectively reverses the Commission's decision, restoring the applicability of KRS 61.878(1)(c)(1) to the current facts.

We conclude that the actions of the General Assembly in enacting KRS 278.160(3) render the confidentially issues herein moot. As the information in question involves proprietary and confidential information whose disclosure would permit an unfair commercial advantage to WKG's competitors, we conclude that it is exempted from disclosure under KRS 61.878(1)(c)(1) and that WKG's petitions for confidential treatment should be granted.

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3

Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

4

The exemptions provided for in subparagraphs 1. and 2. of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute.

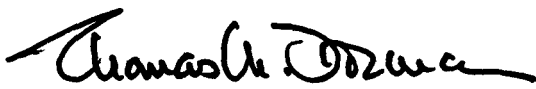
IT IS THEREFORE ORDERED that:

1. WKG's petitions for confidential treatment are granted.
2. The rates and conditions of service for which WKG has sought confidential protection are exempted from public disclosure and shall be afforded confidential treatment in accordance with Administrative Regulation 807 KAR 5:001, Section 7.

Done at Frankfort, Kentucky, this 2nd day of February, 2001.

By the Commission

ATTEST:



Executive Director





COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-032  
WESTERN KENTUCKY GAS COMPANY

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on March 15, 1999.

See attached parties of record.

*Stephanie Bell*

Secretary of the Commission

SB/hv  
Enclosure

Mr. William J. Senter  
Vice President, Rates & Regulatory  
Western Kentucky Gas Company  
2401 New Hartford Road  
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Doug Walther  
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Honorable Mark R. Hutchinson  
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124 W. Todd Street  
Frankfort, KY. 40601

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

WESTERN KENTUCKY GAS COMPANY'S )  
REQUEST FOR CONFIDENTIAL TREATMENT )  
OF INFORMATION CONTAINED IN ITS CONTRACT ) CASE NO. 99-032  
WITH AN INDUSTRIAL CUSTOMER )

O R D E R

On January 27, 1999, Western Kentucky Gas Company ("WKG") filed, pursuant to 807 KAR 5:001, Section 7, its Full Requirements Interruptible Natural Gas Transportation Contract with an industrial customer, together with a request for confidential protection of information therein, upon the grounds that such information is proprietary under KRS 61.878(1)(c).

On February 10, 1999, Commission Staff and WKG stipulated that the facts pertaining to the instant request for confidential treatment are similar to those of Case Nos. 96-096, 96-113, 96-185, 96-278, 96-295, 96-424, and 98-373,<sup>1</sup> which were previously before the Commission and are now on appeal to the Franklin Circuit Court. WKG waived its right to a hearing in this case in the stipulation. In addition, it has been stipulated that this case is to be submitted to the Commission upon the same testimony, evidence, and affidavits that were presented in the hearings of those cases, and said testimony, evidence, and affidavits are incorporated in this case by reference.

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<sup>1</sup> Case Nos. 96-096, 96-113, 96-185, 96-278, 96-295, 96-424, 98-373, *In the Matter of Petition of Western Kentucky Gas Company for Approval and Confidential Treatment of a Special Contract Submitted to the Kentucky Public Service Commission.*

The Commission, having reviewed the record herein, finds the Legislature has expressed its intent in KRS 278.010(10) as to rates:

"Rate" means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental or other compensation, and schedule or tariff or part of a schedule or tariff thereof.

The Commission agrees with WKG that KRS 61.878(1)(c)(1) applies in this case, and that the information would be entitled to protection, absent any statutory provision to the contrary. However, KRS 61.878(3) states: "The exceptions provided for in subparagraphs 1 and 2 of this paragraph shall not apply to records the disclosure or publication of which is directed by another statute." The statute requiring publication here is KRS 278.160. The Commission finds that KRS 278.160 requires and directs all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection.

The contract provision setting forth the rates and terms under which service is to be provided is not entitled to protection even though WKG's competitors may derive substantial benefit from the information. The public disclosure of that information is mandated by KRS 278.160. That section requires all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection. The prices to be charged under the contracts and the services to be rendered are "rates and conditions of service" within the meaning of KRS 278.160 and are subject to its requirements. In cases where public disclosure is directed by another statute, KRS 61.878(1)(c)(3) provides that the exemption provisions do not apply.

Therefore, while the information pertaining to the identity of each customer is entitled to protection, the remaining items sought to be protected are not.

The Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. The identity of the customer with whom WKG has entered into a special contract, the description and location of that customer's facilities to be served, the receipt and delivery points for the service, which WKG has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. The petition to protect as confidential the price of gas and term of the contract is hereby denied.

Done at Frankfort, Kentucky, this 15th day of March, 1999.

By the Commission

ATTEST:

  
Executive Director

INTRA-AGENCY MEMORANDUM

KENTUCKY PUBLIC SERVICE COMMISSION

FILED

MAR - 8 1999

PUBLIC SERVICE  
COMMISSION

TO: Stephanie Bell  
Secretary

FROM: J. R. Goff  
Staff Attorney *J.R.*

DATE: March 8, 1999

RE: Case No. 99-032  
Petition of WKG for Approval of  
Confidential Treatment of Special Contract

On January 27, 1999, WKG filed an application for approval of a special tariff for a large-volume customer. WKG also filed for confidential treatment of the rates and terms of the contract. This case is no different in substance and form from other contracts and requests for confidential treatment filed by WKG. The Commission has consistently denied WKG's requests for confidential treatment of rates and conditions of service. It has been the Commission's belief that these items are required to be made public under KRS 278.160.

This case is different only in the fact that WKG initially asked for a hearing. Staff and WKG have entered into a stipulation that no hearing will be held and that the Commission will enter an Order consistent with its decision in previous cases of this type. The stipulation should be filed in the main case file.

The stipulation is attached.

Attachment

cc: B.J. Helton  
Ed Holmes  
Gary Gillis

*bcc: Parties of Record (H.V.)*

FILED

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

MAR - 8 1999

PUBLIC SERVICE  
COMMISSION

In the Matter of:

PETITION OF WESTERN KENTUCKY	)
GAS COMPANY FOR APPROVAL OF	) CASE NO. 99-032
AND CONFIDENTIAL TREATMENT OF A	)
SPECIAL CONTRACT	)

AGREED STIPULATION

This Agreement is made and entered into this 10 day of FEBRUARY, 1999  
by and between the Staff of the Public Service Commission (Staff), and Western Kentucky  
Gas Company (Western).

WITNESSETH:

That on January 27, 1999, Western Kentucky Gas Company (Western)  
submitted a special gas contract with supporting affidavits and related financial  
information to the Public Service Commission (Commission) for approval and requested  
that the contract and supporting information be afforded confidential protection pursuant  
to 807 KAR 5:001(7).

That no other action has been taken by either party since that application was filed;

That the type of contract and the issue of confidentiality in this case are the same  
issues that Western presented to the Commission in Case Nos. 96-096; 96-113; 96-185;  
96-278; 96-424 and Case No. 98-373;

That the Commission previously issued a final order in Case Nos. 96-096; 96-113;

96-185; 96-278; 96-295; and 96-424 on March 12, 1998, and a final order in Case No. 98-373 on February 5, 1999, denying confidential treatment to the same contract terms as are in issue in this pending case;

That on March 27, 1998, Western filed a Complaint in Franklin Circuit Court seeking review of the Commission's final order dated March 12, 1998, which is Civil Action 98-00041;

That on March 27, 1998, Western designated as the record on appeal "the entire record of the Public Service Commission in Case Nos. 96-096; 96-113; 96-185; 96-278; 96-295; and 96-424, including all petitions for confidentiality for the special contracts in issue, all orders, responses, pleadings, hearing transcripts, and any and all other matters filed with the Public Service Commission in any of these cases".

That the issues related to the approval of and confidential treatment of the pending contract are identical to the issues raised and addressed in the cases that are the subject of the pending appeal before the Franklin Circuit Court in Civil Action 98-00041;

Therefore, in an effort to resolve the issues raised in this case and to avoid duplication of the review of the same factual and legal issues previously involved in Case Nos. 96-096; 96-113; 96-185; 96-278; 96-295; and 96-424, the parties agree to the following:

1. That no hearing shall be held in this matter;
2. That the facts and legal issues in this case are identical to the facts and legal issues in Case Nos. 96-096; 96-113; 96-185; 96-278; 96-295; 96-424 and 98-373;
3. That the entire record designated as the record on appeal to Franklin Circuit



Court in Civil Action No. 98-00041 shall be incorporated into the record of this case and shall be the record on which the Commission formulates its decision;

4. That the facts, pleadings, testimony, exhibits, affidavits, legal memoranda and all other evidence submitted as part of the designation of record in Franklin Circuit Court Civil Action 98-00041 are applicable to the issues, facts and contract matters at issue in this case pending before the Commission;

5. That the parties agree to submit this case on the record and to the issuance of a final order by the Commission in this matter consistent with the final order dated March 12, 1998 in Case Nos. 96-096; 96-113; 96-185; 96-278; 96-295 and 96-424 and the final order of February 5, 1999 in Case No. 98-373;

6. That upon issuance of such a final order by the Commission, Western may file an appeal of that order with the Franklin Circuit Court;

7. That upon filing of any appeal pursuant to KRS 278.410, the parties will jointly petition the Court to consolidate this appeal into Civil Action 98-00041 to avoid duplication of effort by the parties and the Court;

8. That as part of the agreed consolidation of the appeals, the designated record of Civil Action 98-00041 shall be incorporated into and become the record on appeal of the consolidated appeal;

9. That this Agreement is subject to the approval of the Commission;

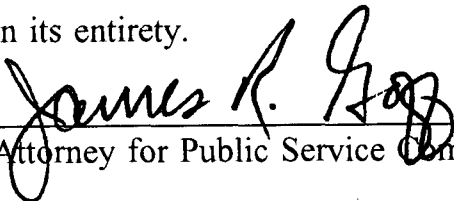
10. That if the Commission fails to accept and approve this Agreement in its entirety, this matter will proceed and neither the terms of this Agreement nor any other matters raised during discussions shall be admissible in any subsequent judicial or

regulatory proceeding and shall not be binding on any signatory;

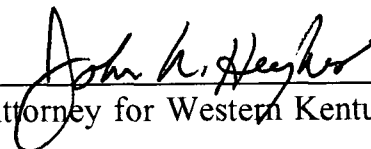
11. That if the Commission accepts and adopts this Agreement in its entirety, Commission Staff and Western shall make a good faith effort to implement its terms;

12. That this Agreement is submitted for purposes of this case only and shall not be deemed binding on the signatories in any other proceeding or is it to be offered or relied upon in any other proceeding involving the signatories;

13. That the signatories agree that the foregoing Agreement is reasonable, in the best interest of all concerned and resolves the issues presented in this case to the satisfaction of the Staff and Western, who urge the Commission to adopt the Agreement in its entirety.

  
\_\_\_\_\_  
Attorney for Public Service Commission

2-10-99  
Date

  
\_\_\_\_\_  
Attorney for Western Kentucky Gas Company

2/10/99  
Date



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

January 29, 1999

To: All parties of record

RE: Case No. 99-032  
WESTERN KENTUCKY GAS COMPANY  
(Confidentiality)

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received January 27, 1999 and has been assigned Case No. 99-032. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/jc

K. Earl Fischer  
President  
Western Kentucky Gas Company  
2401 New Hartford Road  
Owensboro, KY. 42303 1312

Doug Walther  
Atmos Energy Corporation  
P. O. Box 650205  
Dallas, TX. 75265

Honorable Mark R. Hutchinson  
Attorney at Law  
Sheffer Hutchinson Kinney  
115 East Second Street  
Owensboro, KY. 42303

Honorable John N. Hughes  
Attorney at Law  
124 W. Todd Street  
Frankfort, KY. 40601

99-00064  
RECEIVED

JAN 27 1999

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

PUBLIC SERVICE  
COMMISSION

In the Matter of:

PETITION OF WESTERN KENTUCKY GAS )  
COMPANY FOR APPROVAL AND CONFIDENTIAL )  
TREATMENT OF A SPECIAL CONTRACT SUB- )  
MITTED TO THE KENTUCKY PUBLIC SERVICE )  
COMMISSION )

CASE NO.

99-032

PETITION FOR CONFIDENTIALITY OF  
SUPPLEMENTAL INFORMATION BEING FILED WITH  
KENTUCKY PUBLIC SERVICE COMMISSION

Western Kentucky Gas Company ("Western"), a division of Atmos Energy Corporation, respectfully petitions the Kentucky Public Service Commission ("Commission"), pursuant to 807 KAR 5:001, Section 7, and all other applicable law, for confidential treatment of the information which is described below and which is attached hereto. In support of this petition, Western states as follows:

1) In each of the last several proceedings for approval of a special contract and for confidential treatment of the special contract that have been filed by Western with the Commission, the Commission directed Western to file a cost analysis showing Western's variable costs in serving the customer involved in the special contract proceeding, together with an analysis showing that the proposed rate covers the variable cost of serving that customer and makes a contribution to Western's fixed costs. Western has just recently filed a petition for approval of the special contract in this proceeding and accordingly has not yet received an Order from the Commission directing Western to file the cost analysis.

2) It is imperative that this special contract be approved as soon as possible. Accordingly, in anticipation that the Commission will want the same cost analysis information in this proceeding as it has required in previous proceedings. Western is filing the information at this time.

3) The information being filed herewith, if publicly disclosed, would have serious, adverse consequences to Western and its tariff customers. In negotiating with industrial customers, the issue of Western's variable costs in serving a particular customer is virtually always raised by that customer. Western consistently responds that it determines its cost of service on a class basis, not on a customer specific basis. In fact, Western has not historically determined its variable costs on a customer specific basis. Although Western has now done so in accordance with prior Orders of the Commission, if it is compelled to publicly disclose that information, it will be very difficult for Western to successfully negotiate fair and just rates for those customers who have viable alternative energy sources. Thus, Western's ability to negotiate rates which will produce revenue levels sufficient to make a reasonable contribution to Western's fixed costs, would be irreparably impaired. Additionally, public disclosure of such information would permit an unfair commercial advantage to Western's competitors. By knowing Western's variable cost of service for a specific customer, marketers and other alternative energy suppliers would have an unfair advantage in negotiating with the potential customer.

4) Western would not, as a matter of company policy, disclose information

like that attached to this Petition to any person or entity except as required by law or pursuant to a court order or subpoena. Western's internal practices and policies are directed toward non-disclosure of the attached information. In fact, the information will not be disclosed to any personnel of Western except those who need to know in order to discharge their responsibilities. Western has never disclosed such information publicly to any of its customers. The information sought by the Commission is not information customarily disclosed to the public and is generally recognized as confidential and proprietary.

5) There is no significant interest in public disclosure of the attached information. Any public interest in favor of disclosure of the information is outweighed by the competitive interest in keeping the information confidential, thereby enabling Western to successfully negotiate fair and just rates with its customers. Disclosure of the information sought to be protected would unquestionably put Western at a disadvantage in negotiating with its current and prospective industrial customers.

6) The information being submitted herewith is being confidentially disclosed and is generally recognized as confidential or proprietary, which if openly disclosed, would permit unfair commercial advantage to Western's competitors, all as more particularly set forth above.

7) The information sought to be afforded confidential treatment also constitutes a trade secret under the two prong test of KRS 265.880: (a) the economic value of the information is derived by not being readily ascertainable by

other persons who might obtain economic value by its disclosure; and, (b) the information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Clearly, both of these tests are met in this case. Only Western is in a position to determine the variable costs incurred in serving a particular customer. The economic value of this information is derived by Western maintaining the secrecy of the information since its current customers, industrial prospects and competitors could obtain economic value by its disclosures.

8) Pursuant to 807 KAR 5:001, Section 7(3), temporary confidentiality for the enclosed information should be maintained until the Commission enters an order as to this Petition. Once the order regarding confidentiality has been issued, Western would have twenty (20) days to seek alternative remedies pursuant to 807 KAR 5:001, Section 7(4).

WHEREFORE, Western petitions the Commission to treat as confidential all of the material and information which is included in the one volume marked "confidential".

This 27 day of January, 1999.



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Mark R. Hutchinson  
SHEFFER-HOFFMAN  
115 East Second Street  
Owensboro, Kentucky 42303  
(502) 684-3700

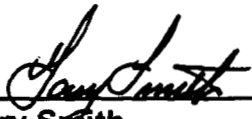
John N. Hughes  
Attorney at Law  
124 W. Todd Street  
Frankfort, Kentucky 40601



Douglas Walther  
Atmos Energy Corporation  
P.O. Box 650205  
Dallas, Texas 75265-0205

**VERIFICATION**

I, Gary Smith, being duly sworn on oath state that I am Vice President of Marketing for Western Kentucky Gas Company, a Division of Atmos Energy Company, and that the statements contained in the foregoing petition are true as I verily believe.

  
\_\_\_\_\_  
Gary Smith

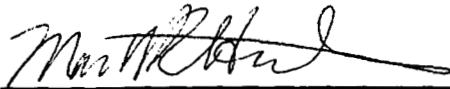
**STATE OF KENTUCKY  
COUNTY OF DAVIESS**

Subscribed and sworn to before me by Gary Smith on this the 27 day of January, 1999.

  
\_\_\_\_\_  
Notary Public

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27 day of January, 1999, the original of this petition, with the confidential information for which confidential treatment is sought, and ten (10) copies of this petition, with out the confidential information for which the confidential treatment is sought, were filed with the Kentucky Public Service Commission, 730 Schenkel Lane, Frankfort, Kentucky 40602.

  
\_\_\_\_\_  
Mark R. Hutchinson

~~CONFIDENTIAL~~

## Analysis of Contribution to Fixed Cost

Annual Mcf {1}

Annual Revenue {1}:

Monthly Base Charges, @ Tariff	12 mo. X \$150/mo. =	\$	1,800
Transportation Adm. Fee, @ Tariff	12 mo. X \$45/mo. =		540
Commodity Gas Cost, @ Tariff	Mcf x /Mcf =		
Non-Commodity Charges, @ Tariff	Mcf x /Mcf =		
Simple Margin, special contract rates applied to annual deliveries:			
Service-			
Mcf @ /Mcf			
		TOTAL	<hr/>

\* - Excluding non-commodity charges and gas costs as noted.

Less Variable/Avoidable Costs:

Lost &amp; Unaccounted For {2}

Odorant {3}

KPSC Assessment {3}

Measurement/Regulation Station {3}

Meter Reading, Maintenance and Billing {4}

Contribution to Fixed Cost: 

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Notes: {1} - Annual Volume for 12 months ending November 1998. Annual Revenue applying rate structures and service mix in pending special contract.

{2} -

{3} - Calculations shown on Page 2 of this Exhibit.

{4} - Costs not expected to exceed \$      per month.

Analysis of Contribution to Fixed Cost

Odorant:

Odorant injection rate, lb./MMcf		0.75
Annual MMcf - /1000	x	
Odorant Cost per lb., current	x	<u>3.94</u>

KPSC Assessment:

Annual Revenue Percentage	<u>0.1599%</u>
---------------------------	----------------

Measurement/Regulation Station:

Standard Measurement/Regulation Station Cost-	
Materials: Regulators, valves, piping, etc.	
Labor: Fabrication and installation	<u>          </u>
Total	
Annual Depreciation Rate -	x <u>4.55%</u>
Annual Depreciation Expense	
Capital Cost {1}	
Income Tax {2}	<u>          </u>

TOTAL

- Notes: {1} - Investment in Measurement/Regulation Station times 11.16% rate of return on investment.  
 {2} - Composite State and Federal income tax rate (40.3626%) times equity portion of return on investment (6.83% times investment in Measurement/Regulation Station).

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:


PETITION OF )  
WESTERN KENTUCKY GAS COMPANY )  
FOR APPROVAL AND CONFIDENTIAL )  
TREATMENT OF )  
A SPECIAL CONTRACT SUBMITTED TO THE )  
KENTUCKY PUBLIC SERVICE COMMISSION )

99-032  
RECEIVED  
JAN 27 1999  
PUBLIC SERVICE  
COMMISSION

MOTION

Comes the Petitioner, Western Kentucky Gas Company ("WKG") and pursuant to prior written directives of the Kentucky Public Service Commission respectfully request a hearing on the Petition of Western Kentucky Gas Company for Approval and Confidential Treatment of a Special Contract which accompanies this Motion.

Submitted this 27 day of January, 1999.

  
\_\_\_\_\_  
Mark R. Hutchinson  
SHEFFER HUTCHINSON KINNEY  
115 East Second Street  
Owensboro, Kentucky 42303

Doug Walther  
ATMOS ENERGY CORPORATION  
P.O. Box 650205  
Dallas, Texas 75265

**John N. Hughes  
Attorney at Law  
124 W. Todd Street  
Frankfort, Kentucky 40601**

**COUNSEL FOR WESTERN  
KENTUCKY GAS COMPANY**

**COMMONWEALTH OF KENTUCKY  
BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION**

In the Matter of:

**PETITION OF )  
WESTERN KENTUCKY GAS COMPANY )  
FOR APPROVAL AND CONFIDENTIAL )  
TREATMENT OF )  
A SPECIAL CONTRACT SUBMITTED TO THE )  
KENTUCKY PUBLIC SERVICE COMMISSION )**

99-032

RECEIVED

JAN 27 1999

PUBLIC SERVICE  
COMMISSION

Comes the Petitioner, Western Kentucky Gas Company (WKG) and submits the attached contract for approval by the Commission pursuant to 807 KAR 5:011, Section 13. Pursuant to 807 KAR 5:001, Section 7, WKG also submits this Petition for Confidential Treatment of the attached contract based on the facts and legal arguments set forth below. However, because prompt approval of this contract is important to WKG at this juncture, WKG requests that approval of this contract not be delayed by the request for confidential treatment.

**GROUND FOR CONFIDENTIALITY PETITION**

Pursuant to KRS 61.878(1)(c), the following type of documents are eligible for confidential treatment:

Upon and after July 15, 1992, records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records...

This is the standard adopted by the Commission pursuant to 807 KAR 5:001, Section 7.

Company-specific energy purchase contracts with private enterprises engaged in highly competitive commercial activities are generally recognized as confidential and proprietary. Disclosure of these special contract terms is likely to cause substantial competitive harm to the party from whom the information was obtained.

Pursuant to the standard set out above, the attached contract should receive confidential treatment because disclosure of its terms will result in competitive injury to WKG. In its Order in Case No. 95-247, entered on September 12, 1995, the Commission stated as follows:

The Commission has found that disclosure could cause competitive injury in instances where the petitioner alleged that disclosure of retail rates would lead to the threat of customers physically bypassing its system.

In the Petition at hand, there is a substantial risk that physical bypass will result from disclosure of the terms of the documents submitted herewith. This customer has easy access to an alternative gas supply source such as an interstate pipeline located less than seven (7) miles from the customer's property. Disclosure of the special contract rates will cause competitive injury because knowledge of these rates and terms will provide other parties with a substantial advantage in future negotiations.

The attached special contract between WKG and its industrial customer sets forth the prices and terms for sale of natural gas and natural gas services. This contract is designated a "special" contract because the terms and prices are specific to the parties to the contract and are not applicable to other customers. This contract has not previously been disclosed to the public. Pursuant to the definition provided in KRS 365.880, this information would be deemed a trade secret for two reasons (a) the economic value of the information is derived by not being readily ascertainable by other persons who might obtain economic value from its disclosure, and (b) the



information is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The value of these special terms lies in the fact that they proved sufficient to out-bid competitors and win over customers. Once the information becomes public, competitors will have a clear advantage in competing for these customers. Therefore, the value of the information is derived by not being readily ascertainable by other parties and other parties will have economic advantage upon disclosure. Negotiation of the terms of this special contract occurred in a confidential setting. These terms are not posted or otherwise made generally available within the company or without. These terms have been the subject of efforts by the company and the customer to maintain their secrecy. WKG's assurance that it would seek confidential treatment of the terms of a special contract was an essential prerequisite to the customer before it would enter into serious negotiation with WKG. Disclosure of these terms will negate all of these efforts. Both prongs of the two-part trade secret definition above have been met and trade secrets are generally recognized as confidential and proprietary.

There is an additional disadvantage to WKG which may result from disclosure of these special terms. In negotiating future special contracts with other industrial customers, WKG will be at a clear disadvantage if the potential customer has access to this special contract between WKG and another industrial customer. There is little room for bargaining when a potential customer knows exactly what WKG has offered to other industrial customers.

It is important to note the interest of the other party to this contract in maintaining its confidentiality. The parties have entered into a confidentiality agreement concerning this contract. The customer may even be discouraged from renewing or renegotiating this contract


with WKG at the end of the contract term because of the risk that the terms of the agreement may be exposed for public review.

807 KAR 5:001 Section 7(3) states that "pending Commission action on the petition the material specifically identified shall be temporarily accorded confidential treatment". This temporary confidentiality would be of no benefit if the documents are placed in the public record at any point prior to a Commission order. Therefore, the temporary confidentiality should be maintained until an order is issued. Once the order regarding confidentiality is issued, WKG will have twenty days to seek another remedy pursuant to 807 KAR 5:001 Section 7(4).

WHEREFORE, WKG respectfully requests that the attached special contract be accepted for filing and approved and that these documents be given confidential treatment. In the event that a decision is delayed, WKG respectfully requests that the contract be treated as confidential until the Commission issues its order.

One copy of the contract at issue has been submitted with the confidential portions highlighted for review and consideration by the commission. Ten redacted copies of the documents are also submitted herewith.

Respectfully submitted this 27 day of January, 1999.

  
\_\_\_\_\_  
Mark R. Hutchinson  
**SHEFFER HUTCHINSON KINNEY**  
115 East Second Street  
Owensboro, Kentucky 42303

Douglas Walther  
**ATMOS ENERGY CORPORATION**  
P.O. Box 650205  
Dallas, Texas 75265

John N. Hughes  
Attorney at Law  
124 W. Todd Street  
Frankfort, Kentucky 40601

**Counsel for Western Kentucky Gas Company**


**VERIFICATION**

I, Gary L. Smith, being duly sworn on oath state that I am Vice President of Marketing, of Western Kentucky Gas Company, a division of Atmos Energy Corporation, and that the foregoing statements are true of my own knowledge except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.

  
\_\_\_\_\_  
Gary Smith

STATE OF KENTUCKY  
COUNTY OF DAVIESS

SUBSCRIBED AND SWORN to before me by Gary L. Smith on this the 27 day of January, 1999.

  
\_\_\_\_\_  
Notary Public  
My Commission: 7-30-2000

~~CONFIDENTIAL~~

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:

REQUEST FOR CONFIDENTIAL )  
TREATMENT OF INFORMATION )  
FILED WITH WESTERN KENTUCKY )  
GAS COMPANY'S PROPOSED )  
SPECIAL CONTRACT )

**AFFIDAVIT**

The Affiant, \_\_\_\_\_ after being first duly sworn and having personal knowledge of the matters discussed hereafter states and affirms as follows:

1. My name is \_\_\_\_\_ and I am \_\_\_\_\_ a customer of Western Kentucky Gas Company;
2. In this capacity, my responsibilities include managing the Company's gas supply arrangements, including the associated contractual relationships;
3. I have participated in the negotiation of gas supply contracts and special rates for the Company for 15 years;
4. Based on my experience, I am familiar with my Company's position on the confidentiality of supplier prices, including those related to gas supply contracts and gas rates;
5. The method of rate determination, that is the tariff or special contract, charged by Western to the Company is maintained as confidential by the parties. This confidential treatment is consistent with the Company's policies concerning the confidential treatment of gas supply contract and rates;
6. The rate and terms of this service to the Company are maintained as confidential by the parties and are not voluntarily released to the public, which is consistent with the Company's policies.
7. The existence of a tariff rate or special contract rate is disclosed only to the agents of the parties and only on a need to know basis;

8. The information contained in the special contracts including the rates, is not generally available or known and reflects and quantifies internal actions, negotiations and agreements of the Company.
9. The disclosure of the method of service, rate and conditions of service would have an adverse effect on the Company's business;
  - a) The cost of energy is a significant portion of the Company's operations;
  - b) The knowledge of this information by the Company's competitors would provide an undue and unfair competitive advantage to the competitor and would give valuable information concerning production costs;
  - c) Comparable information is not available to the Company from its competitors;
  - d) Only because of the requirement that Western Kentucky Gas Company submit these special contract rates to the Public Service Commission will the confidential information contained in them be disclosed publicly;
  - e) The information about rates and service contained in gas supply contracts would not otherwise become available to the public or to competitors except for the action of the Public Service Commission and competitors have no means of learning the terms of, or otherwise determining the contents of, contracts or rates;
10. The disclosure of these rates and contract terms is so potentially beneficial to competitors of the Company that under no circumstances should this information be publicly disclosed;
11. The Public Service Commission's prior determination that the name of the customer, description and location of facilities of the customer, receipt and delivery points for the service and the identity of the stock exchange on which the customer's securities are traded should be maintained as confidential is inadequate to protect the identity of the customer and other proprietary information;

12. Disclosure of the dates of the special contracts with the customer, the terms of the contract, the rates to be charged and the services to be provided, the method of calculation of price adjustments, the maximum deliverable volumes to be delivered to the customer, and other service specific terms (e.g. the customer's option rights, the quantities of banked gas a customer can accrue,) are all sensitive, propriety matters, which would not be publicly disclosed and which if disclosed would provide sufficient information to allow a competitor to determine the identity of the customer and related proprietary information;
13. The disclosure of this information would provide to competitors the Company's competitive strategies, energy alternatives, pricing methods and production costs;
14. The effect of disclosure of this confidential information cannot be mitigated.

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COMMONWEALTH OF KENTUCKY

SUBSCRIBED AND SOWRN to before me by

14 day of January 1999

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Notary Public

My Commission Expires: 1/13/2001

CONTRACT NO.

LARGE VOLUME NATURAL GAS SERVICE AGREEMENT

BETWEEN

AND

WESTERN KENTUCKY GAS COMPANY,  
A Division of  
ATMOS ENERGY CORPORATION



## LARGE VOLUME NATURAL GAS SERVICE AGREEMENT

THIS NATURAL GAS SERVICE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between WESTERN KENTUCKY GAS COMPANY, a division of Atmos Energy Corporation, a Texas and Virginia corporation, ("WKG"), and ("Customer"), also referred to as the "parties".

### WITNESSETH:

WHEREAS, WKG desires to provide to Customer, and Customer desires to obtain natural gas service from WKG, in accordance with the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. Natural Gas Service Type and Volume Levels. Customer agrees to purchase from WKG or deliver to WKG for transportation all of Customer's natural gas service requirements for Customer's facility located

WKG agrees to provide service to Customer of the type specified below, subject to the provisions of the referenced tariffs, the related rules and regulations governing natural gas service and this Service Agreement, including its attached exhibits and general terms and conditions; provided, however, that WKG shall have no obligation to provide natural gas sales or transportation service to Customer in excess of the maximum volumes hereinafter specified:

Tariffs

Maximum  
Mcf/Day

In the event Customer's actual requirements exceed the above total daily volume, WKG will allow a nomination equal to Customer's requirements and, if capacity is available, shall authorize and provide an increase in the maximum daily contractual volumes equal to the excess daily requirement, provided Customer demonstrates that the increased requirements are representative of Customer's future use. Authorized volumes delivered to WKG in excess of WKG's contractual pipeline capacity will be redelivered to Customer, if operationally possible.

2. Price. Except as provided below, the price to be paid by Customer shall be in accordance with the rate schedule under which the service is rendered. Such rates, excluding the simple margin set forth herein, shall be subject to change as permitted by law. Any Federal, State or other taxes (other than those based upon or measured by WKG's income) which apply and are charged to Customer now or may hereafter be imposed upon Customer or upon the services performed herein by WKG shall be paid by the Customer in addition to the rates as specified, provided that where any such taxes are reduced or eliminated, the charges to Customer shall be adjusted downward to reflect that fact.

The Simple Margin for all volumes delivered under  
shall be as follows:

To the extent any charge is imposed upon WKG by virtue of proceedings before the Federal Energy Regulatory Commission (or successor authority), WKG shall impose such charge on Customer only to the extent approved or accepted by the Kentucky Public Service Commission. Customer retains the right to contest the applicability or amount of any such charge.

3. Term. This Agreement shall become effective on \_\_\_\_\_, 1998, (or the first day of the month during which it is accepted by the Kentucky Public Service Commission, if later), and shall continue in full force and effect until \_\_\_\_\_ ("Initial Term"), and year-to-year thereafter unless and until terminated by either party upon written notice no more than 270 days nor less than 180 days prior to the end of the Initial Term or any subsequent renewal term. Such termination shall become effective at the end of the then current term.

Customer agrees that while this Agreement is in effect, all natural gas consumed by Customer under this Agreement shall be delivered by WKG. In the event customer makes a filing with the Federal Energy Regulatory Commission, or directs another party to make a filing on the Customer's behalf to receive direct gas service, Customer shall notify WKG of such filing contemporaneously with the filing. In any event, Customer shall not commence construction of bypass facilities prior to submitting notice of termination of this Agreement under the terms and conditions herein.

4. Notices. Any notice required to be given under this Agreement or any notice which either party hereto may desire to give the other party shall be in writing and shall be considered duly delivered when hand-delivered or when deposited in the United States mail, postage prepaid, registered or certified, and addressed as follows:

If to WKG:

WESTERN KENTUCKY GAS COMPANY  
A Division Of  
Atmos Energy Corporation  
2401 New Hartford Road  
Owensboro, Kentucky 42303  
Attention: Marketing Department

If to Customer:

or such other address as WKG, Customer, or their respective successors or permitted assigns shall designate by written notice given in the matter described above. Routine communications, including monthly invoices, may be mailed by

ordinary mail, postage prepaid, and addressed to the above-designated name and address, or to any person designated in writing by the either party.

5. Attachments. General Terms and Conditions and Exhibit "A," Receipt Point(s) and Delivery Point(s), attached hereto are expressly incorporated herein and made a part of this Agreement for all purposes, and all references herein and therein to "this Agreement" include all such exhibits and the terms and provisions contained therein.

IN WITNESS WHEREOF, the parties hereto have executed this Large Volume Natural Gas Service Agreement to be effective as of the date first above written.

WESTERN KENTUCKY GAS COMPANY  
A Division of  
Atmos Energy Corporation

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

Title: \_\_\_\_\_

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

Title: \_\_\_\_\_

**GENERAL TERMS AND CONDITIONS  
TO  
LARGE VOLUME NATURAL GAS SERVICE AGREEMENT**

1. This Service Agreement is subject to all applicable and valid statutes, ordinances, and the rules, regulations and orders of the Kentucky Public Service Commission ("KPSC"). This Agreement shall not be effective until accepted by the KPSC upon additional conditions, if any, acceptable to each of the parties. Except for specific deviations noted in this Agreement, all terms and conditions of WKG's specified herein and such tariff shall be included herein by reference.

2. If not presently installed, the necessary regulating and metering equipment constructed to WKG's specifications shall be installed for delivery of the gas as specified here, and the Customer shall install additional regulating equipment to provide suitable pressure and operation at the various points of utilization. A suitable location for the regulating and metering equipment shall be provided by the Customer without charge, and WKG shall have the right to operate, maintain and alter this equipment as is necessary or desirable. Each party hereto agrees to maintain any equipment owned by it and used in the performance of its obligations herein in good, safe, and efficient operating condition and repair.

3. Title to sales gas shall pass from WKG to Customer, upon the delivery thereof, at the Customer's service address. The title to all gas transported hereunder shall remain with the Customer. The Receipt Point(s) at which the Customer will deliver transportation gas to WKG is designated on Exhibit "A," attached hereto.

4. As between the parties hereto solely, WKG shall be deemed in exclusive control and possession of the gas after the delivery thereof at the Receipt Point(s) and prior to the redelivery thereof, to or for the account of Customer at the Customer's service address. At all other times, as between the parties hereto solely, Customer shall be deemed in exclusive control and possession of the gas and responsible for any damages, losses, or injuries caused by Customer's handling, delivery, or receipt thereof. Each party agrees to indemnify, defend, and hold the other party harmless from and against any and all claims, liabilities, damages, losses, costs, and expenses (including attorneys' fees) incurred by the indemnified party arising from or relating to any damages, losses, or injuries for which the indemnifying party is responsible pursuant to the provisions of this Agreement, except to the extent such damages, losses, or injuries are caused by the negligence of the indemnified party.

5. In the event that either WKG or Customer is rendered unable, wholly or in part, by reason of an event of force majeure, to perform its obligations under this Agreement, other than to make payment due thereunder, and such party has given notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the parties, insofar as they are affected by such force majeure, shall be suspended during the continuance of such inability, but for no longer period, and such cause shall, insofar as possible, be remedied with all reasonable dispatch; provided, however, that the settlement of strikes or lock-outs shall be entirely within the discretion of the party having such difficulty, and the above requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes or lock-outs by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

The term "force majeure" as used herein shall mean any cause not reasonably within the control of the party claiming suspension and includes, but is not limited to, acts of God; strikes; lock-outs; wars; riots; orders or decrees of any lawfully constituted federal, state, or local body; fires; storms; floods; wash-outs; explosions; breakage or accident to machinery, or lines of pipe; or any other cause of a similar nature not reasonably within the control of the party whether of the kind herein enumerated or otherwise.

6. During each billing period involving transportation services, Customer agrees to maintain its deliveries of gas to WKG and its receipt of gas from WKG in continuous balance or as near thereto as practicable on a Mcf or MMBtu basis, as designated by WKG. WKG is authorized to require an adjustment to Customer's transportation nominations as WKG, in its sole discretion, deems appropriate to avoid or eliminate an imbalance on the transporting interstate pipeline system. Further, the Customer agrees to be liable to WKG for all cost, expense and liability incurred by WKG and caused by Customer's transportation related activity on the transporting interstate pipeline system.

When the volume of gas taken by Customer during a billing period exceeds the aggregate of its transportation nominations and its available "banked" volumes, Customer shall pay WKG for such overrun volumes at the applicable tariff rate. The customer agrees to notify the Company in advance of Customer attempting to take any overrun volumes. Such notification does not, however, entitle Customer to any overrun volumes.

When the volume of gas taken by Customer during a billing period is less than the aggregate of its transportation nominations and its available "banked" volumes, if any, , such excess volumes shall be subject to the "cash-out" provisions of WKG's tariff

7. In the event of default hereunder by either party, in addition to all rights and remedies at law or in equity to which the non-defaulting party may be entitled, the defaulting party agrees to reimburse the non-defaulting party for all attorneys' fees, court costs, and other expenses incurred. Further, each party agrees to indemnify and hold the other party harmless with regard to any and all fees, costs, and expenses (including attorneys' fees) incurred by the non-defaulting party in relations to all claims, disputes, and suits which arise under or are related to the defaulting party's default under this Agreement, except to the extent the non-defaulting party was negligent in the performance of its duties as expressly defined in this Agreement.

8. Neither party may assign any of its rights or obligations hereunder to any person or entity without the prior written consent of the other, such consent not to be unreasonably withheld. This Agreement shall be binding upon the parties hereto and their successors and permitted assigns.

9. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof. No amendment or other modification hereto shall be binding upon any party unless executed in writing by both parties.

**EXHIBIT "A"  
RECEIPT POINT(S)  
AND  
DELIVERY POINT(S)**

**RECEIPT POINT:**

**DELIVERY POINT:**