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JOHN J. FINNIGAN, JR.
Senior Counsel

VIA OVERNIGHT MAIL

October 18, 2004

CINERGY.

Ms. Elizabeth O'Donnell
Executive Director,
Kentucky Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

RECEIVED

OCT 19 2004

PUBLIC SERVICE
COMMISSION

Re: Case No. 2004-00363

Dear Ms. O'Donnell:

Enclosed please find an original and five (5) copies of ULH&P's Response to Commission Staff's First Data Request, for filing in the above-referenced case. Please return to me one (1) file-stamped copy in the enclosed overnight mail envelope. Should you have any questions, please do not hesitate to contact me at (513) 287-3601.

Sincerely,



John J. Finnigan, Jr.

JJF/mak

Enclosures

RECEIVED

OCT 19 2004

PUBLIC SERVICE
COMMISSION

KyPSC Staff First Set Data Requests
ULH&P Case No. 2004-00363
Date Received: October 14, 2004
Response Due Date: October 19, 2004

KyPSC-DR-01-001

REQUEST:

1. Refer to Paragraph 1, Page 5 of the application. ULH&P states that the terms of the 2004 Asset Management Agreement will be essentially identical to the terms of the 2003 Asset Management Agreement, except for any operational items that ULH&P and Cinergy Marketing & Trading, LP ("CM&T") might identify that need to be changed. Identify all operational items which ULH&P and CM&T plan to change and state the reason for each change.

RESPONSE:

Attached is a clean version of the 2004 Asset Management Agreement and another document that shows the changes from the 2004 Asset Management Agreement as compared to the 2003 Asset Management Agreement, in redline format. There were only on two material changes from the prior year's Agreement:

Article IX. (C). Under both the 2003 and the 2004 Asset Management Agreements, the Asset Manager bears responsibility for any variance between the physical storage balance and ULH&P's virtual storage balance (both long and short positions). Article IX (C) was changed to provide that, in the event CMT does not continue as Asset Manager beyond October 31, 2006, and if actual inventory exceeds ULH&P's virtual storage inventory, ULH&P shall have the option of purchasing volumes of gas above the virtual storage inventory amount from CMT upon mutually agreed terms and conditions. Also, paragraph A within Article IX was modified to be consistent with this new language in paragraph C.

Article X. CMT requested clarifying language that in its role as Asset Manager, it should not bear the loss of any volumes of gas under a pipeline *force majeure* condition, when such volumes are for gas covered by the transportation and storage contracts assigned to CM&T under the Asset Management Agreement and the loss of gas occurs in connection with gas that has been virtually nominated by ULH&P for delivery to the city gate. ULH&P agreed to this change, but also requested additional clarifying language that, if the loss of gas occurs under any other circumstances, then CM&T bears the risk of such loss of gas.

WITNESS RESPONSIBLE: James P. Henning

AGREEMENT BETWEEN

CINERGY MARKETING & TRADING, LP

AND

THE UNION LIGHT, HEAT AND POWER COMPANY

FOR

PORTFOLIO MANAGEMENT SERVICE AND
THE PURCHASE OF NATURAL GAS

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**AGREEMENT BETWEEN
CINERGY MARKETING & TRADING, LP
AND
THE UNION LIGHT, HEAT AND POWER COMPANY
FOR
PORTFOLIO MANAGEMENT SERVICE AND
THE PURCHASE OF NATURAL GAS
Hereinafter referred to as the (“Agreement”)**

This Agreement is executed and entered into effective as of the _____ day of _____, 2004 (the “Effective Date”), by and between **CINERGY MARKETING & TRADING, LP** (“CM&T” or “Asset Manager”), a Delaware limited partnership, with its principal place of business being 1100 Louisiana Street, Suite 4900, Houston, Texas 77002 and **THE UNION LIGHT, HEAT AND POWER COMPANY** (“ULH&P”), a Kentucky Corporation, with its principal place of business being, 139 East Fourth Street, Cincinnati, Ohio 45201. CM&T and ULH&P are also referred to herein individually as a “Party” and jointly as the “Parties.”

WITNESSETH

WHEREAS, ULH&P has certain Firm Natural Gas transportation and storage rights, and Gas Supplier Contracts (hereinafter referred to collectively as the “Asset Portfolio”) and Gas supply inventories to provide a secure and reliable source of Natural Gas supply for delivery to ULH&P; and

WHEREAS, ULH&P desires to retain CM&T to manage its Asset Portfolio under the terms and conditions of this Agreement in order to optimize the use of such Asset Portfolio; and

WHEREAS, in order to accomplish the results described above, CM&T is prepared to provide to ULH&P services substantially the same as those embedded in such Asset Portfolio;

NOW, THEREFORE, in consideration of the mutual covenants and benefits to be derived hereunder, ULH&P and CM&T agree as follows:

**ARTICLE I
Definitions**

Agreement shall mean this document and all attachments and all executed exhibits and confirmations hereto, as each of the same may be amended from time to time.

Asset Portfolio shall mean ULH&P's Firm Natural Gas transportation and storage rights and Gas Supplier Contracts as set forth in Exhibit C.

Baseload Gas shall mean the minimum daily volume of Gas, which ULH&P commits to purchase each Day of a given Month.

Basis shall mean the physical delivery price difference between Henry Hub and the reference Delivery Point(s).

British Thermal Unit or **Btu** shall mean the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Business Day shall mean any day Monday through Friday, exclusive of any federal banking holidays.

Capacity Release(s) and or **Release(s)** shall jointly mean those contract rights released to CM&T directly as specifically set forth in Article VII of this Agreement.

CGT shall mean Columbia Gulf Transmission Company.

ULH&P's City Gate shall mean any interconnection between the facilities of a Transport Provider and the facilities of ULH&P.

Day shall mean a period of twenty-four (24) consecutive hours commencing at 10:00 a.m. Eastern Clock Time and ending at 10:00 a.m. Eastern Clock Time on the following day.

Dekatherm or **Dth** shall mean one million Btus.

Delivery Point(s) shall mean the specific point(s) on a Transport Provider's pipeline system at which ULH&P has the right to take delivery of Gas and transfer title pursuant to the nomination process.

Eastern Clock Time or ECT shall mean Eastern Standard Time adjusted for Daylight Savings Time.

Event of Default shall mean any occurrence or nonoccurrence specified in this Agreement that allows either Party to terminate this Agreement or require the defaulting Party to cure, or any material breach of this Agreement.

FERC shall mean the Federal Energy Regulatory Commission.

Firm, as applied to a service, shall mean that either Party may interrupt its performance only to the extent caused by an applicable *Force Majeure* event.

Gas and/or Natural Gas shall mean natural gas that meets the quality specifications set forth in each Transport Provider's FERC Gas Tariff.

Gas Supplier Contracts shall mean those contracts listed on Exhibit C.

KOT shall mean KO Transmission Company.

MDQ shall mean Maximum Daily Quantity.

MMBtu shall mean one million (1,000,000) British Thermal Units.

Month shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

Pipeline Reservation Charges shall mean the fixed charges as set forth in the applicable Service Agreement between ULH&P and the Transport and/or Storage Provider.

Receipt Point(s) shall mean any point or points on a Transport Provider's pipeline system at which ULH&P has the right to receive Gas, such point(s) to be designated by ULH&P from time to time.

SCQ shall mean seasonal contract quantity.

Storage Accounts shall mean the accountings performed by CM&T for each of the Storage Facilities in which Gas transferred to CM&T by ULH&P is stored, into which ULH&P designates Gas to be injected or out of which ULH&P designates Gas to be withdrawn. Such accountings shall reflect both ULH&P's initial storage inventory as of October 31, 2004 and all subsequent injections and withdrawals requested by ULH&P whether or not such injections or withdrawals actually occur, and the actual storage inventory.

Storage Agreements shall mean those Agreements for Storage Services as defined in the Asset Portfolio and listed on Exhibit C.

Storage Facilities shall mean, collectively, the storage facilities covered by the Storage Agreements.

Storage Provider means any provider of storage services, including, but not limited to, a provider of storage services under the Storage Agreements.

Storage Services shall mean, collectively, the pipeline storage services provided according to a Tariff, covered by the Storage Agreements listed in Exhibit C.

Tariff shall mean the applicable FERC approved Tariff of any Transport or Storage Provider or the applicable Public Utilities Commission of Ohio approved Tariff of ULH&P.

TCO shall mean Columbia Gas Transmission Corporation.

TGP shall mean Tennessee Gas Pipeline Company.

TGT shall mean Texas Gas Transmission Corporation.

Title Transfer Point shall mean ULH&P's City Gate.

Total Termination Payment will be the sum of the Termination Payments for all transactions terminated pursuant to Article XIX. The Total Termination Payment is a reasonable pre-estimate of the loss suffered and is not intended as a penalty.

Transport Provider shall mean any pipeline transporter of Gas listed in Exhibit C.

Variable Costs shall mean the fuel and commodity charges as set in the forth in the applicable Service Agreement between ULH&P and the Transport and/or Storage Provider.

ARTICLE II Term

The Agreement shall be in effect beginning on November 1, 2004 and ending on October 31, 2006, unless terminated sooner pursuant to the provisions of this Agreement.

ARTICLE III Management Fee

A. CM&T agrees to pay ULH&P, in the form of a Management Fee, Twenty Thousand Four Hundred Eighty Three dollars (\$20,483.00) per Month starting November 1, 2004 and continuing through October 31, 2006. The Management Fee shall be applied as a credit on CM&T's monthly invoice, as described in Article XI.

B. It is understood that ULH&P's Asset Portfolio may change during the Term of this Agreement due to ULH&P's customer choice program and due to certain assets within the Asset Portfolio expiring on or prior to November 1, 2006, and ULH&P's bona fide system operational requirements.

C. If, during the Term of this Agreement, ULH&P has any addition or reduction to the Asset Portfolio as currently listed in Exhibit C, ULH&P and CM&T shall make good

faith efforts to mutually agree on the amount of increase or reduction to the monthly Management Fee payable to ULH&P by CM&T. If the Parties are unable to agree, they shall resolve the matter by following the arbitration procedure in Article XXIII of this Agreement.

ARTICLE IV Firm Sales Delivery Services

CM&T shall provide Gas deliveries to ULH&P's City Gate to meet ULH&P's Gas sales customers hourly and daily Natural Gas requirements, up to the maximum hourly and daily quantity level of the interstate pipeline transportation and storage capacity and withdrawal rights released to CM&T hereunder and Firm Gas Supplier Contract entitlements assigned to CM&T hereunder. CM&T shall comply with ULH&P's operational requirements regarding Natural Gas deliveries to ULH&P's City Gate as stated in Exhibit B. It is the intention of the Parties that CM&T shall plan for and make physical deliveries of Gas as set forth in this Article IV with the same degree of reliability of service that ULH&P provided to its Gas sales customers prior to the Effective Date of this Agreement. Any quantities of Natural Gas required by ULH&P in excess of ULH&P's contract entitlements with the interstate pipelines and, if applicable, Firm Gas Suppliers may be provided on a commercially reasonable basis to ULH&P's City Gate by CM&T at mutually agreed upon prices as described in Article V.

ARTICLE V Gas Supply Purchases

A. ULH&P will identify the daily quantity of Gas that it will purchase, and the interstate pipeline transportation, storage rights, Gas Supply inventory and Gas supplies to determine the delivered cost of Gas at ULH&P's City Gate. This determination of Gas quantities and costs by ULH&P will be referred to as "Virtual Dispatching" and may differ substantially from the actual dispatching determined by CM&T. ULH&P will pay CM&T for all Gas purchased for ULH&P's City Gate delivery and/or for interstate pipeline storage injection based on the Virtual Dispatching. ULH&P's Virtual Dispatch of Gas will be based on the optimal mix of operational and cost considerations and the contractual and Tariff limits of ULH&P's interstate pipeline contracts and Gas Supplier Contracts.

B. ULH&P will notify CM&T, on or before 1:00 p.m. ECT, one (1) Business Day prior to the New York Mercantile Exchange (NYMEX) futures gas contract settlement (hereinafter the "NYMEX Settlement") for each applicable Month during the Term of this Agreement, the Baseload Gas supply that ULH&P commits to purchase throughout the next Month from CM&T and/or from the Gas Supplier Contracts assigned to CM&T. It is understood that ULH&P will be invoiced according to ULH&P's Virtual Dispatching. However, CM&T will decide, in its sole discretion, the actual dispatching of Gas to serve ULH&P's City Gate operational requirements.

C. ULH&P will determine and notify CM&T, on or before 1:00 p.m. ECT, one (1) Business Day prior to the NYMEX Settlement for each applicable Month during the term of this Agreement, of the volume of Baseload Gas, not to exceed the Baseload Gas included in existing Gas Supplier Contracts, that will be purchased and the corresponding price of such Baseload Gas, as provided for in the Gas Supplier Contracts.

D. ULH&P will notify CM&T, on or before 1:00 p.m. ECT, one (1) Business Day prior to the NYMEX Settlement for each applicable Month during the Term of this Agreement, of which price option it will pay under the Gas Supplier Contract(s) (either the appropriate *Inside FERC* First of the Month Index price or *Gas Daily* Index Midpoint price), for all Natural Gas purchases above Baseload Gas, hereinafter referred to as "Swing Gas." The Virtual Dispatching of Swing Gas will be determined daily. ULH&P will notify CM&T before 8:30 a.m. ECT of the Virtual Dispatch of Swing Gas for the following Gas Day.

E. ULH&P will keep CM&T "financially whole" for any Swing Gas that ULH&P has designated to be purchased utilizing the *Inside FERC* First of the Month Index price or, if applicable, Fixed Price, but that is not Virtually Dispatched by ULH&P. Keeping CM&T whole, requires ULH&P to pay the difference between *Inside FERC* First of the Month Index price (or Fixed Price) and the applicable *Gas Daily* Index Price for the Gas Day to the extent that ULH&P did not Virtually Dispatch the Swing Gas, when the *Gas Daily* Index price is less than the First of the Month Index or Fixed Price.

F. Gas supply purchases made by ULH&P for the 2004-2005 Winter Season (November, 2004 through March, 2005) are identified in the Firm Gas Supplier Contracts that will be assigned to CM&T under this Agreement. ULH&P will identify any price-hedging that has been previously contracted for and is included within the Firm Gas Supplier Contracts assigned to CM&T. Any additional Gas supply purchases required by ULH&P during the 2004-05 Winter Season shall be acquired through CM&T based upon mutually agreed upon terms and conditions. If ULH&P and CM&T cannot agree on the terms and conditions for the required additional Gas supply purchases, then ULH&P shall have the right to purchase the additional Gas from another party besides CM&T but shall be included in the Gas Supplier Contracts.

G. Gas supply purchases made by ULH&P for the period April, 2005 through October, 2006 may be acquired under the Gas Supplier Contract(s) or through CM&T, or any other Gas suppliers, based on agreed upon prices for *Inside FERC* First of the Month Index price and/or *Gas Daily* Index price, or another Natural Gas pricing mechanism that is agreed to. ULH&P will advise CM&T prior to the beginning of each winter and summer season on the amount of Gas agreed to be purchased, from whom such Gas will be purchased and the pricing terms.

H. If ULH&P chooses to purchase Gas from other suppliers, ULH&P will have the option to hedge prices through those suppliers.

I. ULH&P will reimburse CM&T for all, then effective, charges applicable to the purchase and transportation of Gas supply volumes to ULH&P's City Gate and/or to interstate pipeline storage that ULH&P "Virtually Dispatched" as described above. Such charges shall include any amounts to be paid to ULH&P's Gas Suppliers under contract, including but not limited to Gas Supplier Reservation Charges, commodity charges, any price-hedging costs and charges where such hedging was pre-authorized by ULH&P, interstate pipeline variable charges, including but not limited to fuel, and any other charges which would be incurred by CM&T as ULH&P's assignee pursuant to the Gas Supplier Contracts, transportation agreements, storage agreements and any other agreements to which ULH&P is a party required to deliver Gas based on ULH&P's "Virtual Dispatching" of Baseload Gas and Swing Gas supply.

ARTICLE VI

Applicable Indices

In the event the indices applicable to pricing for this Agreement are no longer published, the Parties will negotiate in good faith to agree upon a mutually satisfactory replacement Index that is still in publication. Should the Parties not reach a mutually acceptable decision on a replacement publication, then this matter shall be arbitrated according to the provisions in Article XXIII. The effective date of such replacement Index shall be the first Day of the Month for which the original Index was no longer published.

ARTICLE VII

Release of Capacity and Assignment of Contracts

A. ULH&P shall release its firm interstate pipeline transportation and storage capacity and assign its Gas Supplier Contracts to CM&T over the Term of this Agreement in exchange for the Management Fee paid by CM&T to ULH&P. ULH&P will assign all Gas Supplier Contracts commencing on, or after, November 1, 2004 to CM&T until the end of this Agreement. ULH&P will Virtually Dispatch these assigned Gas Supplier Contracts. As security for the performance of CM&T's obligations under this Agreement, CM&T hereby grants to ULH&P a first priority security interest in and to any and all rights CM&T has (i) in the Gas Supplier Contracts at such time as they are assigned to CM&T and (ii) the physical Natural Gas inventory stored by CM&T under such Gas Supplier Contracts at any time during the Term of this Agreement (the "Collateral"). CM&T hereby authorizes ULH&P, pursuant to Article 9 of the Uniform Commercial Code as it is currently in effect (the "UCC") and any applicable statutes, to take any such action and to make any and all filings necessary for ULH&P to perfect its first priority security interest in the Collateral. In addition to any other rights it may have under this Agreement, ULH&P shall have all the rights and remedies afforded to it under the UCC for the realization of the security granted herein.

B. ULH&P shall continue to evaluate its firm customer load profile and associated peak hour, peak day and seasonal design, and shall secure and release to CM&T interstate

pipeline transportation and storage capacity that is necessary to serve the design criteria valued as provided in Article III.

C. In regard to ULH&P releasing to CM&T ULH&P's firm interstate pipeline transportation and storage capacity and assigning to CM&T its Gas Supplier Contracts, ULH&P and CM&T agree to the following procedure:

1. ULH&P will release all Firm interstate pipeline transportation and storage capacity to CM&T for the Term of this Agreement with provisions that allow ULH&P to recall the interstate pipeline capacity on twenty-four (24) hours notice with no reput rights to CM&T in the event of a default by CM&T as described in Article XIX, CM&T not providing ULH&P a satisfactory Gas Supply and Transportation Plan as described in Article IX, or termination of this Agreement before the end of the Term.
2. For those Firm interstate pipeline contracts under which ULH&P pays maximum Tariff rates, ULH&P will enter into a pre-arranged release with CM&T at the pipeline's maximum rate(s). Because the pre-arranged release will be at maximum rate, the release will be posted on the interstate pipeline's Electronic Bulletin Board (EBB) for notice purposes only.
3. For those Firm interstate pipeline contracts under which ULH&P pays less than maximum Tariff rate(s), ULH&P will do a pre-arranged release with CM&T and post on the interstate pipeline's EBB at the discounted rate for competitive bidding, with the condition that CM&T has the right to match the best bid. When applicable, CM&T will match the best bid received by the interstate pipeline for ULH&P released capacity.
4. ULH&P shall fully reimburse CM&T for matching the best bids as set forth in the preceding paragraph. ULH&P shall also fully reimburse CM&T for all costs and charges associated with ULH&P's Firm Supply Contracts, as listed on Exhibit C attributable to Virtual Dispatching by ULH&P as described in Article V.
5. Subject to the cooperation of third parties in which CM&T shall use its best efforts to secure the cooperation of such parties, CM&T agrees to return to ULH&P all released firm interstate pipeline transportation, storage capacity, storage account balances and assigned Firm Gas Supplier Contracts immediately upon receiving notice from ULH&P that it is terminating this Agreement early due to an event of a default by CM&T as described in Article XIX, CM&T not providing ULH&P a satisfactory Gas Supply and Transportation Plan as described in Article IX or termination of this Agreement before the end of the Term.

6. Unless mutually agreed to by the Parties, CM&T will not change the “primary” receipt and delivery points specified in ULH&P’s Firm interstate pipeline transportation and storage contracts.

D. ULH&P shall be entitled to interstate pipeline refunds or credits, if any, that accrued prior to the Effective Date of this Agreement or in connection with the release of capacity to CM&T under this Agreement. For any other refunds or credits that accrue after the Effective Date of this Agreement, ULH&P shall be entitled to that portion of such refunds or credits attributable to the Virtual Dispatching of transportation and storage withdrawals and injections by ULH&P. ULH&P shall pay to CM&T, if refunds or credits are paid to ULH&P, or CM&T shall retain, if refunds or credits are paid to it, all other refunds or credits paid by a pipeline pursuant to CM&T’s use of the assets under this Agreement. ULH&P will be entitled to 100% of interstate pipeline refunds that are attributed to the Pipeline Reservation Charges. The Parties shall make reasonable efforts to make all refunds and credits payable or reflected in the next Month’s invoice, as provided for in Article XI.

E. The release to CM&T is intended to represent, as operationally feasible, all of ULH&P’s transportation and storage assets, except for those services that, under current Tariffs, may not be released or as described in Article III.B. ULH&P hereby represents and warrants that it owns or controls all such releasable transportation and storage assets, as listed on Exhibit C. Provided that CM&T is in compliance with this Agreement, ULH&P shall not terminate or materially modify or amend any contract or agreement listed on Exhibit C such that CM&T’s ability to render Firm service or realize value hereunder is reduced in any way without prior consultation with CM&T. The Parties shall negotiate appropriate and comparable adjustments if CM&T’s ability to render service or realize value is reduced as the result of an action taken by ULH&P that modifies or amends any contract or agreement listed on Exhibit C, and if unable to reach agreement, the appropriate adjustments shall be submitted to arbitration pursuant to Article XXIII.

ARTICLE VIII

Daily Nominations

A. ULH&P shall provide CM&T daily load forecasts and dispatching priorities by 8:30 a.m. (ECT). This shall include the load requirements for ULH&P’s north and south systems, as well as the minimum/maximum flow constraints for said north and south systems. CM&T will transmit the nominations and scheduling to the interstate pipelines on which ULH&P has released transportation and storage capacity to CM&T. In addition, ULH&P shall notify CM&T of all known intra-day changes to firm requirements at ULH&P’s City Gate. CM&T shall provide ULH&P as many intra-day nomination changes as are allowed by Transport Provider’s Tariff on which CM&T is the managing authority for ULH&P.

B. The price for intra-day nomination changes shall be as agreed upon by the Parties, or as specified in ULH&P's Gas Supplier Contracts.

C. CM&T will make all appropriate upstream pipeline/storage nominations to insure Firm deliveries to the ULH&P City Gate.

ARTICLE IX

Storage Inventory, Utilization and Refill

A. In connection with ULH&P's release to CM&T of its Storage Agreements, as defined in the Asset Portfolio, in accordance with Article VII of this Agreement, the actual Gas balances shown in ULH&P's Storage Account as of October 31, 2004 (subject to later adjustment by the operator) shall become the initial actual ULH&P Storage Account Balances for the beginning of this Agreement, and in accordance with Article IX of the October 2003 asset management agreement, the virtual account balances shown as of October 31, 2004 shall become the initial virtual balance for the beginning of this Agreement. It is the intention of the Parties that CM&T shall be required to make and plan for physical deliveries of Gas as set forth in Article IV with the same degree of reliability of service that ULH&P provided to its Gas sales customers prior to the Effective Date of this Agreement. ULH&P will maintain an inventory ledger of the interstate pipeline storage inventory reflecting ULH&P's Virtual Dispatching of storage withdrawals and injections that were designated by ULH&P or were the result of no notice service to balance ULH&P's City Gate deliveries. CM&T has the obligation to meet ULH&P's daily physical load requirements that are currently met with interstate pipeline storage up to the level of the contractual rights released to CM&T.

B. ULH&P shall have the right to designate quantities of Gas to be injected into, or withdrawn from, storage as part of its Virtual Dispatch. ULH&P will create a storage injection and withdrawal plan that is within pipeline Tariff constraints and will share this plan with CM&T. It is understood that actual storage injections and withdrawals could differ from the plan, due to no notice injections and withdrawals. Because of these actions, ULH&P's plan will be re-evaluated monthly. Subject to ULH&P's right to receive storage withdrawals and limitations contained in the Tariffs, CM&T has the right to actually inject, withdraw and sell Gas from the released storage capacity as it sees fit. CM&T shall have the option at all times to deliver Firm Gas to ULH&P's City Gates in lieu of Gas withdrawn directly from pipeline storage. CM&T shall not charge ULH&P a gas commodity charge for the gas that ULH&P designates to be withdrawn from storage as specified in its daily virtual dispatch, regardless of whether CM&T supplies the gas by using storage withdrawals or supplies Firm Gas in lieu of storage withdrawals. ULH&P will be charged only variable costs associated with the transportation of Gas from storage to ULH&P's City Gate, when withdrawing Gas from the virtual storage inventory. CM&T will provide to ULH&P on a daily basis, if requested by ULH&P, a report of the actual quantities (according to operator figures) held in storage at that specific point in time. CM&T will report to ULH&P monthly, by Storage Service, the ULH&P Storage Account levels, and the ratchets applicable to such inventories. CM&T will also report

monthly, CM&T's Storage Accounts which shall show the actual physical status of the assets, including actual storage inventory levels, injection and withdrawal rights and applicable ratchets. The format for such reports will be agreed upon by both Parties and may be changed, if agreed to in writing by both Parties, from time to time. If the actual Firm deliverability to ULH&P's City Gate at any point in time is less than the Firm deliverability based on ULH&P's virtual balance in storage, then CM&T shall provide, within two (2) Business Days from the request, ULH&P with a Gas supply and transportation plan that maintains deliverability to the ULH&P City Gate within Transport and/or Storage Provider's then current tariffs based on ULH&P's virtual balance in storage. If CM&T fails to provide a plan that maintains the Firm deliverability to ULH&P's City Gate, then ULH&P shall have the right to recall the necessary interstate transportation and storage in Exhibit C until CM&T provides a plan that maintains the Firm deliverability to ULH&P's City Gate. CM&T agrees that if ULH&P recalls storage capacity, title to ULH&P's Natural Gas stored in that capacity shall also immediately revert to ULH&P. CM&T shall provide such virtual plan, in writing, to ULH&P upon request.

C. CM&T shall attempt to manage the actual Natural Gas storage inventories in the Storage Facilities such that the actual Storage Accounts equal the virtual Storage Accounts at the end of the Day on October 31, 2006. CM&T shall transfer such actual inventories back to ULH&P effective the beginning of the Gas day on November 1, 2006. If CM&T continues as the Asset Manager under a new asset management agreement for a new term that commences on November 1, 2006, then the initial virtual Storage Account for the beginning of the new agreement shall be the virtual storage inventory in the Storage Account as of October 31, 2006, and CM&T shall not utilize the following cash-out procedure. If CM&T does not continue as the asset manager for a new term commencing November 1, 2006 and if the actual inventory exceeds the virtual storage inventory, then ULH&P may purchase the additional gas from CM&T based upon mutually agreed upon terms and conditions. If ULH&P and CM&T cannot agree on the terms and conditions for the additional gas in storage, then CM&T shall have the right to sell the additional Gas to another party besides ULH&P, and ULH&P shall cooperate with CM&T so that such gas may be delivered pursuant to the terms of CM&T's third-party sale. If the actual inventory level in any Storage Facility is less than the virtual storage inventory level in such Storage Facility at the end of the Day on October 31, 2006, then CM&T shall pay ULH&P for the volume shortfall as follows:

1. Shortfall less than 5 percent of virtual storage inventory level: first of the month index published in Inside FERC Natural Gas Report, "Prices of Spot Gas Delivered to Pipelines", Columbia Gulf Transmission Co., Onshore Louisiana Index, for November, 2006, plus Columbia Gulf and Columbia Gas Transmission pipelines' commodity transportation costs, plus fuel, to ULH&P's city gate; multiplied by the volume shortfall.
2. Any increment beyond the 5 percent volume shortfall, CM&T shall deliver the volume shortfall, in kind, on the applicable Transport/Storage Provider

pipeline as follows: (a) for TGT, CM&T will deliver to ULH&P's City Gate and (b) for TCO, CM&T will deliver to either the TCO Appalachia (Pool) or the TCO interconnect with CGT at Leach, Kentucky. CM&T shall deliver such volume shortfall during December, 2006 and January, 2007 for twenty (20) Days in each month as specified by ULH&P.

3. Payment for any shortage as described in Article IX, C.1 above will be credited to ULH&P's October 2006 Gas invoice from CM&T.

D. In the event of a default by CM&T as described in Article XIX or termination of this Agreement before the end of the Term, CM&T shall, upon 24 hours notice by ULH&P, transfer to ULH&P the actual Gas inventories in the Storage Facilities. If, at the time of such transfer, the actual inventory in any Storage Facility does not equal the virtual storage inventory in such Storage Facility, then the Parties shall compensate for the difference(s) as follows:

1. If the actual inventory exceeds the virtual storage inventory, then, within thirty (30) Days after the transfer, ULH&P shall, at its option, exercisable within five (5) Business Days after such transfer, either:
 - a. Deliver to CM&T, an amount of Gas equal to the excess inventory, at a mutually agreeable location; or
 - b. Compensate CM&T for the excess inventory at the lesser of ULH&P's weighted average purchase price for the virtual inventory storage, as shown in the applicable virtual Storage Account, or the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the *Gas Daily* "Dominion (delivered)" daily index price (i.e., the *Gas Daily* price applicable at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* "Columbia APP" daily index price; or
 - c. ULH&P and CM&T mutually agree no compensation is necessary.
2. If the virtual storage inventory exceeds the actual storage inventory, then, within thirty (30) Days after the transfer, CM&T shall, at ULH&P's option, exercisable within five (5) Business Days after such transfer, either:
 - a. Deliver to ULH&P an amount of Gas equal to the inventory shortfall at a time and location mutually agreed upon by the Parties; or
 - b. Compensate ULH&P for the shortfall in inventory at the greater of ULH&P's weighted average purchase price for the virtual storage inventory, as shown in the applicable virtual Storage Account, or the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the *Gas Daily* "Dominion (delivered)" index price (i.e., the *Gas Daily* price applicable

at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* “Columbia APP” daily index price.

Any amount owed by CM&T shall be credited to ULH&P’s Gas invoice from CM&T for the period in which the transfer of inventories occurs.

E. In the event of a default by ULH&P as described in Article XIX or termination of this Agreement before the end of the Term, CM&T shall, upon 24 hours notice by ULH&P, transfer to ULH&P the actual Gas inventories in the Storage Facilities. If, at the time of such transfer, the actual inventory in any Storage Facility does not equal the virtual storage inventory in such Storage Facility, then the Parties shall compensate for the difference(s) as follows:

1. If the actual inventory exceeds the virtual storage inventory, then, within thirty (30) Days after the transfer, ULH&P shall, at CM&T’s option, exercisable within five (5) Business Days after such transfer, either:
 - a. Deliver to CM&T, an amount of Gas equal to the excess inventory, at a mutually agreeable location; or
 - b. Compensate CM&T for the excess inventory at the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the *Gas Daily* “Dominion (delivered)” daily index price (i.e., the *Gas Daily* price applicable at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* “Columbia APP” daily index price.
2. If the virtual storage inventory exceeds the actual inventory, then, within thirty (30) Days after the transfer, CM&T shall, at its option, exercisable within five (5) Business Days after such transfer, either:
 - a. Deliver to ULH&P an amount of Gas equal to the inventory shortfall at a time and location mutually agreed upon by the Parties; or
 - b. Compensate ULH&P for the shortfall in inventory at the greater of ULH&P’s purchase price for the virtual storage inventory as shown in the applicable virtual Storage Account, or the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the *Gas Daily* “Dominion (delivered)” index price (i.e., the *Gas Daily* price applicable at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* “Columbia APP” daily index price.

Any amount owed by CM&T shall be credited to ULH&P’s Gas invoice from CM&T for the period in which the transfer of inventories occurs. Any amount owed by ULH&P shall be included in ULH&P’s Gas invoice from CM&T for the period in which the transfer of inventory occurs.

ARTICLE X
Passage of Title

Title to the Gas covered by the ULH&P Storage Agreements released to CM&T shall pass from ULH&P to CM&T on the Day on which the Capacity Release(s) is effective. Title to Gas delivered to ULH&P under the provisions of Article IV shall pass from CM&T to ULH&P when delivered to the Delivery Point(s). The Party who has title to the Gas at any time shall be deemed to be in control and possession of the Gas, and shall be responsible for (i) any damage or injury caused thereby, and (ii) all charges, expenses, fees, taxes, damages, injuries, and other costs incurred in connection with or attributable to the purchase and handling of Gas, except that ULH&P shall fully reimburse CM&T for (i) any ad valorem or similar taxes that would be levied on the volume of the Gas in the ULH&P Storage Agreements, if that volume of Gas were actually in storage (i.e., based on the virtual Storage Accounts) and (ii) any sales tax assessed in connection with the release of the ULH&P Storage Agreements to CM&T. Each Party shall indemnify, defend, and hold the other harmless from all such charges, expenses, fees, taxes, damages, injuries, and other costs. Notwithstanding the above, if ULH&P virtually nominates gas pursuant to the terms of this Agreement and a loss of some or all of the nominated volume occurs during shipment or storage pursuant to a firm transportation agreement or storage contract assigned by ULH&P to the Asset Manager under the terms of this Agreement, and the pipeline or storage operator claims, or its tariff provides, that the Shipper must bear the loss, then (1) ULH&P shall bear the loss of such Gas as virtually nominated and shall not be entitled to reimbursement from the Asset Manager; and (2) CGE shall have the right to any reimbursement Asset Manager receives from the pipeline or storage operator related to such lost Gas virtually nominated but Asset Manager retains all claims associated with any other Gas beyond ULH&P's Virtual Dispatch. The Asset Manager shall use commercially reasonable efforts to obtain reimbursement from the pipeline or storage operator. In all other cases, the Asset Manager shall bear the risk of loss of Gas.

ARTICLE XI
Invoicing Requirements

A. Each Month, ULH&P will prepare a worksheet that will reflect for the preceding Month, its deemed total cost of Gas based on ULH&P's hourly and daily dispatching of supply as if it had been done without CM&T managing ULH&P's Gas supply assets. This worksheet will be the basis for CM&T's charges for the Gas it delivers to ULH&P's City Gate. On or before the thirteenth (13th) day of each Month during the Term of this Agreement, ULH&P will provide this worksheet to CM&T for billing purposes. Each Month during the Term of this Agreement, CM&T shall submit to ULH&P an invoice no later than the twentieth (20th) day of the month for the preceding Month's activity reflecting the total Gas costs shown on the worksheet. CM&T will invoice ULH&P for

reimbursement of Pipeline Reservation Charges separately, according to the terms of each Transport or Storage Provider contract. Any charges billed by ULH&P's interstate pipelines or Firm Gas Suppliers that are not the result of ULH&P's daily dispatching (as reflected on the worksheet) or are not minimum billing or Reservation Charges will be the responsibility of CM&T. CM&T will be responsible for any imbalance or other penalty charges incurred as a result of CM&T's action or inaction (unless such was at the direction of ULH&P), and ULH&P will be responsible for any imbalance or other penalty charges incurred as a result of ULH&P's action or inaction.

B. Attached to its invoice, CM&T will provide ULH&P with the appropriate records and documentation for all costs billed by CM&T to ULH&P including, but not limited to, all charges as described in Article V.I., and any other costs associated with this Agreement so that ULH&P may fulfill its regulatory reporting requirements.

ARTICLE XII

Payment

A. ULH&P shall pay CM&T all undisputed amounts no later than thirty (30) days following the delivery Month via wire transfer at the address specified in Article XIII. If ULH&P disputes, in good faith, any portion of CM&T's invoice, ULH&P shall notify CM&T in writing, prior to the due date of the disputed invoice, the reasons therefore and the Parties shall negotiate in good faith to resolve such dispute. If it is determined that any disputed amount is owed to CM&T, then ULH&P shall pay such amount, plus interest, at the rate specified below from the date the payment was originally due.

B. Interest on late payments by either Party shall accrue from the due date until the date of payment at a rate equal to the lower of: (i) the then-effective prime rate of interest published under "Money Rates" in *The Wall Street Journal*, plus two percent (2%) per annum, compounded monthly or, (ii) the maximum applicable lawful interest rate allowed in Ohio.

C. In the event that each Party owes payment under this Agreement to the other in the same Month, the amounts due shall be netted against each other with the result that only the Party owing the greater amount shall make payment and only to the extent of the net amount due, plus any interest due as determined by this Article XII.

ARTICLE XIII

Wiring Instructions

CM&T's and ULH&P's designated addresses for all wire transfers related to this Agreement shall be:

CM&T:
Bank One, NE, Chicago, IL
Account Name: Cinergy Marketing & Trading, LP
ABA # 071000013

Account Number 55-59340

ULH&P:
PNC Bank, Ohio
Account Name: The Union Light, Heat and Power Company
ABA # 042000398
Account Number 4006510659

ARTICLE XIV
Contacts and Notices

CM&T's and ULH&P's designated contacts for all notices related to this Agreement shall be:

CM&T:

Notices: Attention : Chris Fischer, Director, Origination
1100 Louisiana St., Suite 4900
Houston, TX 77002
Phone (713) 393-6846
Fax (713) 890-3137

Account Manager: Chris Fischer, Director, Origination
Wk Phone: (713) 393-6846
Hm Phone: (281) 359-9130
Cell: (713) 817-0528
Fax: (713) 890-3137
E-mail: chris.fischer@cinergy.com

Operations Primary: Greg Trefz
Wk Phone: (713) 393-6962
Hm Phone: (713) 880-0515
Cellular: (713) 598-1157
Fax: (713) 393-6913
E-mail: greg.trefz@cinergy.com

Secondary: Noel Bartlo
Wk Phone: (713) 393-6966
Hm Phone: (713) 983-0651
Cellular: (713) 208-7574
Fax : (713) 393-6913
E-mail: noel.bartlo@cinergy.com

ULH&P:

Notices: Attention: Jim Henning, Manager, Gas Commercial Operations
139 East Fourth Street, EM025
Cincinnati, OH 45202
Phone: (513) 287-4078
Fax: (513) 287-2938

Operations: Primary: Doug Vaught
Wk Phone: (513) 287-2559
Cellular: (513) 639-3388
Hm Phone: (513) 367-6180
Fax: (513) 287-1223
E-mail: dvaught@cinergy.com

Secondary: Jeff Kern
Wk Phone: (513) 287-2837
Hm Phone: (859) 586-1603
Fax: (513) 287-2938
E-mail: jlkern@cinergy.com

ARTICLE XV

Representations and Warranties

A. As a material inducement to entering into this Agreement, CM&T represents and warrants to ULH&P as of the date of the execution and delivery of this Agreement as follows:

1. There are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority to which CM&T is a party that materially adversely affects (a) its ability to perform its obligations under this Agreement, or (b) the rights of ULH&P hereunder.
2. CM&T is duly organized, validly existing, and in good standing under the laws of the State of Delaware, and it has the legal right, power, authority, and is qualified to conduct its business, to execute and deliver this Agreement, and perform its obligations under the same, and all regulatory authorizations have been obtained and/or maintained, as required, for it to legally perform its obligations hereunder.
3. The making and performance by CM&T of this Agreement is within its powers, has been duly authorized by all necessary action on its part, and does not and will not violate any provisions of its incorporation or other formation, as applicable, or any other of its governing documents, nor will the making or

performance of this Agreement violate (a) any agreement or instrument to which CM&T is a party or is bound, (b) any material provisions of any judgment, decree, or judicial order applicable to CM&T, (c) any provision of law or any rule, regulation or administrative order presently in effect and applicable to CM&T or its governing documents. To the best of CM&T's knowledge and belief, no consents of third parties, whether private, judicial, or public are required under any agreement or instrument to which CM&T is a party or is bound, provided however, that if, after the execution hereof, any such third party consents are deemed to be necessary in order to effectuate the purposes and intent of this Agreement, then CM&T shall use commercially reasonable efforts to promptly obtain such consents.

4. This Agreement when entered into constitutes a legal, valid and binding act and obligation of CM&T, enforceable against it in accordance with its terms, subject to principles of equity and bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally.
5. There are no bankruptcy, insolvency, reorganization, receivership or other arrangements or proceedings pending or being contemplated by CM&T, or to its knowledge, threatened against CM&T.

B. As a material inducement to entering into this Agreement, ULH&P represents and warrants to CM&T as of the date of the execution and delivery of this Agreement as follows:

1. There are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority to which ULH&P is a party that materially adversely affects (a) its ability to perform its obligations under this Agreement, or (b) the rights of CM&T hereunder.
2. ULH&P is duly organized, validly existing, and in good standing under the laws of the State of Ohio, and it has the legal right, power, authority, and is qualified to conduct its business, to execute and deliver this Agreement, and perform its obligations under the same, and all regulatory authorizations have been obtained and/or maintained, as required, for it to legally perform its obligations hereunder.
3. The making and performance by ULH&P of this Agreement is within its powers, has been duly authorized by all necessary action on its part, and does not and will not violate any provisions of its incorporation or other formation, as applicable, or any other of its governing documents, nor will the making or performance of this Agreement violate (a) any agreement or instrument to which ULH&P is a party or is bound, (b) any material provisions of any judgment, decree, or judicial order applicable to ULH&P, (c) any provision of law or any rule, regulation or administrative order presently in effect and

applicable to ULH&P or its governing documents. To the best of ULH&P's knowledge and belief, no consents of third parties, whether private, judicial or public, are required under any agreement or instrument to which ULH&P is a party or is bound, provided however, that if, after the execution hereof, any such third party consents are deemed to be necessary in order to effectuate the purposes and intent of this Agreement, then ULH&P shall use commercially reasonable efforts to promptly obtain such consents.

4. This Agreement when entered into constitutes a legal, valid and binding act and obligation of ULH&P, enforceable against it in accordance with its terms, subject to principles of equity and bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally.
5. There are no bankruptcy, insolvency, reorganization, receivership or other arrangements or proceedings pending or being contemplated by ULH&P, or to its knowledge, threatened against ULH&P.

C. Each Party shall have an on-going obligation to supplement its respective representations and warranties if a material change occurs therein.

ARTICLE XVI **Government Action**

Either Party may terminate this Agreement in the event that the FERC, the Public Utilities Commission of Ohio or any administrative body or court of competent jurisdiction, or a legislative body changes pertinent statutes, regulations or orders so as: (i) to significantly restrict or reduce the value of this Agreement, such significant reduction in value to be determined in the sole judgment of the affected Party, (ii) to require ULH&P to assign to its customers portions of the assets included in the Asset Portfolio, or (iii) to significantly and materially modify the nature of the services provided by this Agreement, provided however, that the Parties will endeavor to mutually agree on revisions to the Agreement to comply with such regulatory changes. In the event either Party elects to terminate this Agreement pursuant to this Article XVI such termination shall be effected as set forth in Section C of Article XIX.

ARTICLE XVII ***Force Majeure***

A. This Article XVII is the sole and exclusive excuse for non-performance permitted under this Agreement and all other excuses at law or in equity are WAIVED to the extent permitted by law. Except with regard to a Party's obligation to make payment due under this Agreement, at the time of the Force Majeure event, neither Party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by *Force Majeure*.

B. *Force Majeure* shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party, or in the case of third party obligations or facilities, the third party claiming suspension, and which by the exercise of due diligence such Party, or third party, is unable to prevent or overcome or to obtain, or cause to be obtained a commercially reasonable substitute performance. Therefore, neither Party will be entitled to the benefit of *Force Majeure* under the following circumstances; (i) the *Force Majeure* event was caused by the acts, omissions, or negligence of each Party, in whole or in part, or to the extent that such *Force Majeure* is the direct result of acts, omissions or the negligence of such Party's affiliates; (ii) to the extent such Party failed to use due diligence, or failed to utilize all reasonable dispatch and reasonable efforts in removing or overcoming such *Force Majeure* to again put itself in a position to carry out all of the obligations that it has assumed; (iii) to the extent such Party's inability to perform was caused by that Party's lack of funds; or (iv) to the extent such Party's inability to perform was caused by a shortage of Gas supply not caused by a *Force Majeure* event. "*Force Majeure*" shall include an event of *Force Majeure* occurring with respect to the facilities or services of CM&T's or ULH&P's Transport or Storage Provider.

C. *Force Majeure* shall include, but not be limited to, the following; (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs (other than as a result of the negligence or other fault of the Party claiming *Force Majeure*) to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures that cause freezing or failure of wells or lines of pipe; (iii) interruption or curtailment of firm transportation and/or storage by Transport or Storage Providers; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, wars or terrorism that have a direct result upon obligation of the Party; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction. CM&T and ULH&P shall make commercially reasonable efforts to avoid the adverse impacts of a *Force Majeure* and to resolve the event or occurrence once it has occurred in order to resume performance.

D. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the Party experiencing such disturbances.

E. The Party for which performance is prevented by *Force Majeure* must provide notice to the other Party. Initial notice may be given orally, if given within twenty-four (24) hours; however, written notification with full particulars of the event or occurrence, including the cause of the event, the expected duration of the event, and the action being taken to eliminate it is required as soon as reasonably possible but in no event longer than two (2) Business Days following the event of the *Force Majeure*. Upon providing notification of *Force Majeure* to the other Party, the affected Party will be relieved of its

obligation to make or accept delivery of Gas as applicable to the extent and for the duration of the *Force Majeure*, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

ARTICLE XVIII Regulatory Compliance

This Agreement shall be subject to all valid and applicable laws of the United States and to the applicable valid rules, regulations or orders of any regulatory agency or governmental authority having jurisdiction over the Parties or this Agreement. The Parties shall be entitled to regard all applicable laws, rules and regulations (federal, state or local) as valid and may act in accordance therewith until such time as the same may be declared invalid by a final, non-appealable judgment of a court of competent jurisdiction. This Agreement and the actions of CM&T and ULH&P hereunder are subject to all present and future valid orders, rules, and regulations of any regulatory body having jurisdiction. Both CM&T and ULH&P agree to timely make all regulatory filings that may be needed to effectuate this Agreement and shall promptly provide copies of such filings to the other Party.

ARTICLE XIX Events of Default, Failure to Perform, Termination and Remedies

A. Unless such act or omission is the result of *Force Majeure* or the sole failure or negligence of ULH&P, each of the following acts or omissions shall be deemed an Event of Default by CM&T:

1. The failure of CM&T to comply with the material terms and conditions of the Tariffs or agreements governing use of the Asset Portfolio;
2. The failure of CM&T to pay any undisputed amounts due any Transport or Storage Provider under the Asset Portfolio and such failure continues for a period of five (5) Days;
3. CM&T engages in one or more of the following acts; (a) an assignment or any general arrangement for the benefit of its creditors, (b) the filing of a petition or other commencement, authorization or acquiescence in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or (c) the inability of CM&T to pay any debt when due (“CM&T Bankruptcy Default”);
4. Any material inaccuracy in any representation or warranty of CM&T set forth in this Agreement, and such inaccuracy is not remedied with-in fifteen (15) Days of CM&T’s receipt of a written notice from ULH&P describing the particulars of such inaccuracy in reasonable detail;

5. The failure of CM&T to perform any material covenant, term or condition or obligation in this Agreement, other than the material covenants or obligations addressed in the other subsections of Section A of Article XIX, and such failure is not remedied within ten (10) Days of CM&T's receipt of a written notice from ULH&P describing the particulars of such failure in reasonable detail;
6. The failure of CM&T to timely provide adequate assurance when required by Article XXVII;
7. The failure of CM&T to provide Firm sales service as provided in Article IV, provided however, that CM&T shall not be deemed in Default if, (i) CM&T timely pays to ULH&P any amount due in accordance with the terms of this Agreement, and (ii) CM&T's failure has not caused material prejudice to ULH&P's interest;
8. A material failure by CM&T to provide accurate and timely reports required by this Agreement and such failure is not remedied within five (5) Business Days of CM&T's receipt of a written notice from ULH&P describing the particulars of such failure in reasonable detail; and
9. The failure of CM&T to deliver Gas into ULH&P's Storage Accounts, provided however, that CM&T shall not be deemed in Default if, (i) CM&T timely pays to ULH&P any amount due in accordance with the terms of the Agreement, and (ii) CM&T's failure has not caused substantial prejudice to ULH&P's interests.

B. Unless such act or omission is the result of *Force Majeure* or the failure or negligence of CM&T, each of the following acts or omissions shall be deemed an Event of Default by ULH&P:

1. The failure of ULH&P to comply with the material terms and conditions of the contracts and agreements listed on Exhibit C;
2. The failure of ULH&P to pay undisputed amounts due CM&T herein, and such failure continues for a period of five (5) Days;
3. ULH&P engages in one or more of the following acts: (a) an assignment or any general arrangement for the benefit of its creditors, (b) the filing of a petition or other commencement, authorization or acquiescence in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or (c) the inability of ULH&P to pay any debt when due ("ULH&P Bankruptcy Default");

4. Any material inaccuracy in any representation or warranty of ULH&P set forth in this Agreement, and to the extent such inaccuracy is both intentional and capable of effective redemption, such inaccuracy is not remedied within fifteen (15) Days of ULH&P's receipt of a written notice from CM&T describing the particulars of such inaccuracy in reasonable detail.
5. The failure of ULH&P to perform any material covenant, term or condition or obligation in this Agreement other than the material covenants or obligations addressed in the other subsections of Section B of Article XIX, and such failure is not remedied within ten (10) Days of ULH&P's receipt of a written notice from CM&T describing the particulars of such failure in reasonable detail.
6. The failure of ULH&P to timely provide adequate assurance when required by Article XXVII.
7. A material failure by ULH&P to provide accurate and timely reports required by this Agreement and such failure is not remedied within five (5) Business Days of ULH&P's receipt of a written notice from CM&T describing the particulars of such failure in reasonable detail; and

C. In addition to the remedy for Events of Default by CM&T or ULH&P, as set forth in Articles VII and IX, the remedies for Events of Default by CM&T or ULH&P, as applicable, shall be as follows:

1. If an Event of Default occurs with respect to a Party (the "Defaulting Party"), then the other Party (the "Non-Defaulting Party") shall have the right, in addition to any other remedies available hereunder, to: (a) upon one (1) Business Day's written notice, suspend its performance under this Agreement; (b) withhold any amounts owed to the Defaulting Party, under this Agreement and/or (c) set off any amount owed to the Defaulting Party, under this Agreement or any other agreement between the Parties (whether or not yet due), or against any amounts owing by the Defaulting Party to the Non-Defaulting Party (whether or not yet due).
2. In addition to the provisions of this Article XIX, upon the occurrence of an Event of Default, the Non-Defaulting Party may, for so long as the Event of Default continues, terminate, accelerate, and liquidate all obligations then outstanding or not yet commenced in accordance with the provisions of this Agreement by: (a) providing notice to the Defaulting Party, and (b) establishing an early termination date, which date shall be between one (1) and twenty (20) Business Days following receipt of the notice of early termination, on which all such obligations shall terminate ("Early Termination Date"), provided however, if the Defaulting Party is the subject of a bankruptcy, insolvency, or similar proceeding, all outstanding obligations

shall automatically terminate, without notice or right to cure, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate the Total Termination Payment and notify the Defaulting Party of such amount including detailed support for the Total Termination Payment calculation. The failure to give such notice contemplated herein shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party.

3. The Non-Defaulting Party may net the Total Termination Payment against all other amounts owed (whether or not yet due) between the Parties under the Agreement and any other agreements between the Parties. This amount constitutes the "Liquidation Amount" payable by the Defaulting Party within three (3) Business Days or payable by the Non-Defaulting Party on the Payment Date following the Early Termination Date, as applicable. A disputed amount hereunder shall be paid by the Defaulting Party, subject to refund.
4. The failure of the Non-Defaulting Party to exercise any of its rights or remedies contained in this Article or in Articles VII or IX shall not constitute a waiver of the Event of Default, the requirement for payment, or any of the other rights or remedies of the Non-Defaulting Party in connection with the Event of Default.
5. The Non-Defaulting Party's rights under this Agreement are in addition to, and not in limitation or exclusion of, any other rights the Non-Defaulting Party may have (whether by contract, operation of law, or otherwise). Each Party reserves to itself all rights, set offs, counterclaims, and defenses which it is, or may be, entitled to arising from or out of this Agreement or other agreements between the Parties, at law or otherwise.

ARTICLE XX

Indemnification

A. CM&T shall indemnify ULH&P and hold ULH&P harmless from all liability engendered by CM&T's use of the released transportation or storage capacity or assigned Gas Supplier Contracts beyond ULH&P's Virtual Dispatch, except to the extent that the liability is the result of ULH&P's gross negligence or willful misconduct.

B. ULH&P shall indemnify CM&T and hold CM&T harmless from all liability engendered by transportation or storage capacity released to CMT, to the extent that such liability arises from transportation or storage capacity while being utilized in response to ULH&P's Virtual Dispatch, or retained by ULH&P, and ULH&P's pre-Agreement supply arrangements, except to the extent that the liability is the result of CM&T's gross negligence or willful misconduct.

ARTICLE XXI
Applicable Law

THE INTERPRETATION AND PERFORMANCE OF THE AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, EXCLUDING HOWEVER, ANY CONFLICT OF LAW RULE THAT WOULD APPLY THE LAW OF ANOTHER JURISDICTION.

ARTICLE XXII
Confidentiality

Unless mutually agreed, the terms of this Agreement, including but not limited to the price paid for Gas, will be kept confidential by CM&T and ULH&P, except to the extent that the Party is obligated to disclose such information to the pipeline or supplier affected by this Agreement, or to a regulatory authority for the purpose of effectuating the transportation, storage, and/or sale of the Gas pursuant to this Agreement, or is obligated by law, court or administrative agency of competent jurisdiction, or contract to make such disclosure. If required to be disclosed, the Party subject to the disclosure requirement shall (i) notify the other Party immediately, and (ii) cooperate to the fullest extent in seeking whatever confidential status may be available to protect any material to be disclosed; provided, however, the Party required to make the disclosure shall not be obligated to subject itself to sanctions to comply with this provision.

ARTICLE XXIII
Arbitration

A. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

1. A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
2. If, within thirty (30) Days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, any such dispute shall be resolved pursuant to binding arbitration administered by the American Arbitration Association (“AAA”) under its commercial arbitration rules, according to the procedures set forth in this Article XXIII and applying the governing law of this Agreement. Either Party may commence an arbitration proceeding hereunder by giving written notice to the other Party specifying the nature of the Dispute in detail and naming the arbitrator for the Party commencing the

arbitration. No later than five (5) Business Days after the receipt of the notice, commencing the arbitration proceeding, the other party shall select an arbitrator and notify the party commencing the arbitration. Within ten (10) Days following their selection, the arbitrators selected by CM&T and ULH&P shall jointly select a third arbitrator. In the event they are unable to agree upon the third arbitrator, the selection shall be made according to the rules of the AAA. The third arbitrator shall hear and decide all matters relating to the dispute that is subject to arbitration. All arbitrators selected under this Agreement shall have at least eight (8) years of professional experience in the commodity markets and in the business of marketing the applicable Commodity or Commodities, shall not previously have been employed by either Party, and shall not have a direct or indirect interest in either Party or the subject matter of the arbitration. The arbitration hearing shall commence as soon as is practical, but in no event later than thirty (30) Days after the selection of the third arbitrator. If any arbitrator selected should die, resign, or otherwise be unable to perform his or her duties hereunder, a successor arbitrator shall be selected pursuant to the procedures set forth in this Article XXIII. Such arbitration shall be held in neutral locations determined by the Parties prior to the selection of the third arbitrator.

B. The arbitration shall be conducted according to the following; (i) the hearing shall be conducted within ninety (90) Days of a Party's notice, (ii) the hearing shall be conducted on a confidential basis, (iii) at the conclusion of the hearing, each Party will present a suggested resolution to the arbitrator, (iv) the arbitrator may select either suggested resolution or may make his or her own decision, subject to the limitation that the decision must resolve the dispute in a manner consistent with the intent of the Parties as reflected in the terms of this Agreement, (v) the arbitrator shall be bound to follow the substantive state and Federal laws of jurisprudence as well as the applicable rules of evidence in arriving at a decision, (vi) the panel of arbitrators, in consultation with the Parties, shall provide for limited discovery, (vii) the arbitrator shall issue a confidential written opinion containing his or her decision within thirty (30) Days after the hearing, (viii) each Party shall divide equally the cost of the arbitrators and the hearing and each Party shall be responsible for its expenses and those of its counsel and representatives, and (ix) any offer made or the details of any negotiations regarding the dispute prior to arbitration and the cost to the Parties of their representatives and counsel shall not be admissible.

C. **Binding Nature of Proceedings.** EACH PARTY UNDERSTANDS THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE ANY DISPUTE OR NEED OF INTERPRETATION RELATED TO THIS AGREEMENT. EACH PARTY UNDERSTANDS IT CANNOT BRING A LAWSUIT CONCERNING ANY SUCH DISPUTE. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL PANEL OF ARBITRATORS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. ANY DECISION OF THE ARBITRATOR MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION BY THE PARTY IN WHOSE FAVOR SUCH DECISION IS MADE. NOTWITHSTANDING THE

FOREGOING, A PARTY MAY FILE A LAWSUIT TO OBTAIN INJUNCTIVE RELIEF RELATED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS ARTICLE.

ARTICLE XXIV
Limitation of Liability

A. Except as set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. If no measure of damages is expressly provided herein, a Party's liability shall be limited to direct actual damages only. The remedies set forth in this Agreement, shall be the exclusive remedies for the Parties.

B. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

ARTICLE XXV
Recording Language

Each of the Parties hereto (i) consent to the recording of telephone conversations of their respective trading and marketing personnel in connection with this Agreement, and (ii) agrees that any such electronic recordings may be submitted in evidence in any suit, action or other proceedings in relation to this Agreement by either Party.

ARTICLE XXVI
Assignment

This Agreement may not be assigned by either Party, in whole or in part, without the prior written consent of the other Party, and consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their representatives, successors, and assigns.

ARTICLE XXVII
Financial Responsibility

A. During the Term of this Agreement, CM&T shall provide to ULH&P a parental guaranty or other assurance of financial responsibility in the amount and form in the sole

discretion of ULH&P, guaranteeing the financial performance of CM&T pursuant to this Agreement. ULH&P shall identify the amount of the Asset Manager's financial responsibility by the monetary valuation of Storage Gas as calculated and updated by ULH&P from time to time during throughout the term of this Agreement. CM&T shall provide such financial assurance to ULH&P's satisfaction prior to ULH&P's transfer of its Natural Gas assets to CM&T.

ARTICLE XXVIII
Audit

Each Party shall have the right, during the Term of this Agreement and for a period of two (2) years after the termination of this Agreement, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other Party, only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made under the Agreement. This examination right shall not be available with respect to proprietary information not directly relevant to this Agreement. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. If the audit discloses an error the Party owing payment resulting from such audit shall pay all retroactive adjustments in full and with interest as specified under Article XII within thirty (30) Days of notice and substantiation of such inaccuracy.

ARTICLE XXIX
Offset

Each Party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Agreement.

ARTICLE XXX
Enforceability

All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

ARTICLE XXXI
Interpretation of Waivers

No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing, signed by the Party waiving the provision or the breach hereof. No waiver of a breach of this Agreement (whether expressed or implied) shall constitute a waiver of a subsequent breach hereof.

ARTICLE XXXII

Amendment

This Agreement sets forth all understandings between the Parties respecting each obligation subject hereto and any prior contracts, understandings and representations, whether oral or written, are merged into and superseded by this Agreement. This Agreement may be amended only by a written document executed by both Parties.

ARTICLE XXXIII Third Party Beneficiaries

There is not a third party beneficiary to this Agreement.

ARTICLE XXXIV Authority

Each Party, as well as the individuals signing this Agreement, represent and warrant that it, he, or she has the power to enter into this Agreement and the authority to bind its respective Party.

ARTICLE XXXV True Up

Within ninety (90) Days after the Term expiration, or termination for any reason, the Parties will finalize the amounts and prices paid under the Agreement and make any necessary adjustments to volume or amounts owed by one Party to the other Party that are necessary to reflect the actual amounts provided under the Agreement.

ARTICLE XXXVI Continuing Obligations

Termination of this Agreement does not end continuing obligations of either Party specified therein.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

CINERGY MARKETING & TRADING, LP

By: _____

Name: _____

Title: _____

THE UNION LIGHT, HEAT AND POWER COMPANY

By: _____

Name: _____

Title: _____

[execution page to Portfolio Management Agreement between Cinergy Marketing & Trading, LP and The Union Light, Heat and Power Company]

Exhibit A

**ULH&P
Estimated Storage Balance
Estimated As of October 31, 2004**

Replacement Cost			
	<u>Dth</u>	<u>Price *</u>	<u>Value</u>
Columbia Gas FSS	1,337,970	\$6.94	\$9,285,515.13
Total Replacement Cost			<u><u>\$9,285,515.13</u></u>

* Future prices based on Average NYMEX Closing Price on August 18, 2004
for November 2004 - March 2005 grossed up to the city gate.

Exhibit B

**ULH&P's Operational Requirements
Regarding Natural Gas Deliveries To The City Gate**

- 1) North/South System Flow Limitations
ASSET MANAGER's interstate pipeline scheduling (nominations) of Natural Gas deliveries to ULH&P's city gate must account for ULH&P's physical constraints on its distribution system which is dependent upon ULH&P's daily system load requirements. These constraints change hourly with ULH&P's load fluctuations.

- 2) Pipeline Storage Limitations
ULH&P has contracted for firm interstate pipeline storage with Columbia Gas Transmission. The daily and seasonal contract quantities are committed to serve ULH&P's firm sales customers throughout the entire heating season (October-April). ULH&P must have flexibility to utilize on a daily basis ULH&P's pipeline storage capacity and associated volumes to manage weather and load forecasting deviations and daily balancing for Gas sales and transportation customers behind the city gate. Pipeline storage has daily, monthly and seasonal operational limitations defined by tariff and contract (i.e., withdraw limits, injection limits, ratchets). Deliveries to and from storage may be altered with intra-day nomination changes to sync scheduled deliveries to the city gate. Except for extreme conditions, pipeline storage inventories should remain above 10% by the end of March in order to provide for system balancing during April. It will be the sole responsibility of ASSET MANAGER to provide the necessary Natural Gas deliveries to ULH&P each day on Columbia Gas Transmission for system balancing.

- 3) Pipeline Storage Refill
During the storage injection period (April through October) Natural Gas must be nominated on Columbia Gas Transmission on a daily basis to refill ULH&P's contracted seasonal storage capacity with each pipeline in order to reach design inventory levels of approximately 98% by Nov. 1, and to comply with Columbia Gas Transmission tariff limitations on daily and monthly injections into storage.

- 4) Pipeline Nominations
In order for ULH&P to confirm and allocate city gate deliveries on a daily basis, ASSET MANAGER must provide, by fax, to ULH&P's Gas Control and Gas Rates & Transportation Departments by 2:00 p.m. E.T. prior to the beginning of the Gas day, detailed information of all scheduled deliveries to ULH&P's city gate. This information will include the interstate pipelines utilized and their associated contract numbers and scheduled volumes along with a pre-determined allocation if required by the interstate pipeline. Any intra-day nominations for increased or

decreased deliveries to ULH&P must be reported by fax to ULH&P's Gas Control and Gas Rates & Transportation Departments one hour after intra-day nominations are due to the interstate pipeline.

5) Columbia Gas
Storage/Transportation Capacity
(SST)

ULH&P's Gas Control Department must be notified immediately by fax when ULH&P's SST capacity with Columbia Gas Transmission is released to third parties or used to deliver Gas by ASSET MANAGER to other markets. Any capacity releases to other markets reduce the amount of Gas that would be available to be injected into or withdrawn from storage to ULH&P's city gate.

6) Peak Hourly Rate

Because of interstate pipelines limiting daily volumes on standard FT and IT contracts to 1/24 hourly flow rates, ULH&P contracts on various interstate pipelines for transportation agreements that allow 1/16 hourly flow rates in order to meet peak hour load requirements. ULH&P must have available to its city gate those interstate pipeline contracts that allow for 1/16 hourly flow rates during peak winter periods.

7) Nominations for South End of
System

When nominating Gas for delivery to the south end of ULH&P's system three pipelines can be utilized, Tennessee Gas Pipeline, Columbia Gas Transmission and Columbia Gulf Transmission. On a daily basis, ULH&P's Gas Control Department will determine and include in its daily dispatching priorities the minimum volume of flowing Gas on Columbia Gas Transmission and/or Columbia Gulf Transmission to ULH&P's city gate.

Exhibit C

Gas Supplier Contracts (effective for 2004-2005 Winter Season)

Anadarko Energy Services Company
 ConocoPhillips
 Occidental Energy Marketing, Inc.
 CoEnergy Trading
 Cinergy Marketing & Trading
 OneOk Energy Marketing & Trading
 Sequent (City Gate Peaking Supply)
 Cinergy Marketing & Trading (City Gate Peaking Supply)

Firm Contracts with Interstate Pipelines

Columbia Gulf:

FTS-2 Agreement No. 42795	Nov-Mar	15,000 dth/day	expires 11/01/09
	Apr-Oct	15,000 dth/day	
FTS-1 Agreement No. 43878	Nov-Mar	22,782 dth/day	expires 11/01/09
	Apr-Oct	17,597 dth/day	

Columbia Gas:

SST Agreement No. 39323	Oct-Mar	39,656 dth/day	expires 04/01/10
	Apr-Sep	19,828 dth/day	
FSS Agreement No. 39328	MDWQ	39,656 dth/day	expires 04/01/10
	SCQ	1,365,276 dth/day	

Tennessee Gas Pipeline:

FT-A Agreement No. _____	Nov-Mar	47,500 dth/day	expires 05/01/06
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KO Transmission:

FTS Agreement No. 003	12 months	77,063 dth/day	expires 06/01/06
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AGREEMENT BETWEEN

CINERGY MARKETING & TRADING, LP

AND

THE UNION LIGHT, HEAT AND POWER COMPANY

FOR

**PORTFOLIO MANAGEMENT SERVICE AND
THE PURCHASE OF NATURAL GAS**

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**AGREEMENT BETWEEN
CINERGY MARKETING & TRADING, LP
AND
THE UNION LIGHT, HEAT AND POWER COMPANY
FOR
PORTFOLIO MANAGEMENT SERVICE AND
THE PURCHASE OF NATURAL GAS
Hereinafter referred to as the ("Agreement")**

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This Agreement is executed and entered into effective as of the _____ day of _____, 2004 (the "Effective Date"), by and between **CINERGY MARKETING & TRADING, LP** ("CM&T" or "Asset Manager"), a Delaware limited partnership, with its principal place of business being 1100 Louisiana Street, Suite 4900, Houston, Texas 77002 and **THE UNION LIGHT, HEAT AND POWER COMPANY** ("ULH&P"), a Kentucky Corporation, with its principal place of business being, 139 East Fourth Street, Cincinnati, Ohio 45201. CM&T and ULH&P are also referred to herein individually as a "Party" and jointly as the "Parties."

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WITNESSETH

WHEREAS, ULH&P has certain Firm Natural Gas transportation and storage rights, and Gas Supplier Contracts (hereinafter referred to collectively as the "Asset Portfolio") and Gas supply inventories to provide a secure and reliable source of Natural Gas supply for delivery to ULH&P; and

WHEREAS, ULH&P desires to retain CM&T to manage its Asset Portfolio under the terms and conditions of this Agreement in order to optimize the use of such Asset Portfolio; and

WHEREAS, in order to accomplish the results described above, CM&T is prepared to provide to ULH&P services substantially the same as those embedded in such Asset Portfolio;

NOW, THEREFORE, in consideration of the mutual covenants and benefits to be derived hereunder, ULH&P and CM&T agree as follows:

**ARTICLE I
Definitions**

Agreement shall mean this document and all attachments and all executed exhibits and confirmations hereto, as each of the same may be amended from time to time.

Asset Portfolio shall mean ULH&P's Firm Natural Gas transportation and storage rights and Gas Supplier Contracts as set forth in Exhibit C.

Baseload Gas shall mean the minimum daily volume of Gas, which ULH&P commits to purchase each Day of a given Month.

Basis shall mean the physical delivery price difference between Henry Hub and the reference Delivery Point(s).

British Thermal Unit or **Btu** shall mean the quantity of heat required to raise the temperature of one pound of water one degree Fahrenheit.

Business Day shall mean any day Monday through Friday, exclusive of any federal banking holidays.

Capacity Release(s) and or **Release(s)** shall jointly mean those contract rights released to CM&T directly as specifically set forth in Article VII of this Agreement.

CGT shall mean Columbia Gulf Transmission Company.

ULH&P's City Gate shall mean any interconnection between the facilities of a Transport Provider and the facilities of ULH&P.

Day shall mean a period of twenty-four (24) consecutive hours commencing at 10:00 a.m. Eastern Clock Time and ending at 10:00 a.m. Eastern Clock Time on the following day.

Dekatherm or **Dth** shall mean one million Btus.

Delivery Point(s) shall mean the specific point(s) on a Transport Provider's pipeline system at which ULH&P has the right to take delivery of Gas and transfer title pursuant to the nomination process.

Eastern Clock Time or ECT shall mean Eastern Standard Time adjusted for Daylight Savings Time.

Event of Default shall mean any occurrence or nonoccurrence specified in this Agreement that allows either Party to terminate this Agreement or require the defaulting Party to cure, or any material breach of this Agreement.

FERC shall mean the Federal Energy Regulatory Commission.

Firm, as applied to a service, shall mean that either Party may interrupt its performance only to the extent caused by an applicable *Force Majeure* event.

Gas and/or Natural Gas shall mean natural gas that meets the quality specifications set forth in each Transport Provider's FERC Gas Tariff.

Gas Supplier Contracts shall mean those contracts listed on Exhibit C.

KOT shall mean KO Transmission Company.

MDQ shall mean Maximum Daily Quantity.

MMBtu shall mean one million (1,000,000) British Thermal Units.

Month shall mean the period beginning on the first Day of the calendar month and ending immediately prior to the commencement of the first Day of the next calendar month.

Pipeline Reservation Charges shall mean the fixed charges as set forth in the applicable Service Agreement between ULH&P and the Transport and/or Storage Provider,

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Receipt Point(s) shall mean any point or points on a Transport Provider's pipeline system at which ULH&P has the right to receive Gas, such point(s) to be designated by ULH&P from time to time.

SCQ shall mean seasonal contract quantity.

Storage Accounts shall mean the accountings performed by CM&T for each of the Storage Facilities in which Gas transferred to CM&T by ULH&P is stored, into which ULH&P designates Gas to be injected or out of which ULH&P designates Gas to be withdrawn. Such accountings shall reflect both ULH&P's initial storage inventory as of October 31, 2004 and all subsequent injections and withdrawals requested by ULH&P whether or not such injections or withdrawals actually occur, and the actual storage inventory.

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Storage Agreements shall mean those Agreements for Storage Services as defined in the Asset Portfolio and listed on Exhibit C.

Storage Facilities shall mean, collectively, the storage facilities covered by the Storage Agreements.

Storage Provider means any provider of storage services, including, but not limited to, a provider of storage services under the Storage Agreements.

Storage Services shall mean, collectively, the pipeline storage services provided according to a Tariff, covered by the Storage Agreements listed in Exhibit C.

Tariff shall mean the applicable FERC approved Tariff of any Transport or Storage Provider or the applicable Public Utilities Commission of Ohio approved Tariff of ULH&P.

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TCO shall mean Columbia Gas Transmission Corporation.

TGP shall mean Tennessee Gas Pipeline Company.

TGT shall mean Texas Gas Transmission Corporation.

Title Transfer Point shall mean ULH&P's City Gate.

Total Termination Payment will be the sum of the Termination Payments for all transactions terminated pursuant to Article XIX. The Total Termination Payment is a reasonable pre-estimate of the loss suffered and is not intended as a penalty.

Transport Provider shall mean any pipeline transporter of Gas listed in Exhibit C.

Variable Costs shall mean the fuel and commodity charges as set in the forth in the applicable Service Agreement between ULH&P and the Transport and/or Storage Provider.

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ARTICLE II Term

The Agreement shall be in effect beginning on November 1, 2004 and ending on October 31, 2006, unless terminated sooner pursuant to the provisions of this Agreement.

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ARTICLE III Management Fee

A. CM&T agrees to pay ULH&P, in the form of a Management Fee, Twenty Thousand Four Hundred Eighty Three dollars (\$20,483.00) per Month starting November 1, 2004 and continuing through October 31, 2006. The Management Fee shall be applied as a credit on CM&T's monthly invoice, as described in Article XI.

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B. It is understood that ULH&P's Asset Portfolio may change during the Term of this Agreement due to ULH&P's customer choice program and due to certain assets within the Asset Portfolio expiring on or prior to November 1, 2006, and ULH&P's bona fide system operational requirements.

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C. If, during the Term of this Agreement, ULH&P has any addition or reduction to the Asset Portfolio as currently listed in Exhibit C, ULH&P and CM&T shall make good

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faith efforts to mutually agree on the amount of increase or reduction to the monthly Management Fee payable to ULH&P by CM&T. If the Parties are unable to agree, they shall resolve the matter by following the arbitration procedure in Article XXIII of this Agreement.

ARTICLE IV Firm Sales Delivery Services

CM&T shall provide Gas deliveries to ULH&P's City Gate to meet ULH&P's Gas sales customers hourly and daily Natural Gas requirements, up to the maximum hourly and daily quantity level of the interstate pipeline transportation and storage capacity and withdrawal rights released to CM&T hereunder and Firm Gas Supplier Contract entitlements assigned to CM&T hereunder. CM&T shall comply with ULH&P's operational requirements regarding Natural Gas deliveries to ULH&P's City Gate as stated in Exhibit B. It is the intention of the Parties that CM&T shall plan for and make physical deliveries of Gas as set forth in this Article IV with the same degree of reliability of service that ULH&P provided to its Gas sales customers prior to the Effective Date of this Agreement. Any quantities of Natural Gas required by ULH&P in excess of ULH&P's contract entitlements with the interstate pipelines and, if applicable, Firm Gas Suppliers may be provided on a commercially reasonable basis to ULH&P's City Gate by CM&T at mutually agreed upon prices as described in Article V.

ARTICLE V Gas Supply Purchases

A. ULH&P will identify the daily quantity of Gas that it will purchase, and the interstate pipeline transportation, storage rights, Gas Supply inventory and Gas supplies to determine the delivered cost of Gas at ULH&P's City Gate. This determination of Gas quantities and costs by ULH&P will be referred to as "Virtual Dispatching" and may differ substantially from the actual dispatching determined by CM&T. ULH&P will pay CM&T for all Gas purchased for ULH&P's City Gate delivery and/or for interstate pipeline storage injection based on the Virtual Dispatching. ULH&P's Virtual Dispatch of Gas will be based on the optimal mix of operational and cost considerations and the contractual and Tariff limits of ULH&P's interstate pipeline contracts and Gas Supplier Contracts.

B. ULH&P will notify CM&T, on or before 1:00 p.m. ECT, one (1) Business Day prior to the New York Mercantile Exchange (NYMEX) futures gas contract settlement (hereinafter the "NYMEX Settlement") for each applicable Month during the Term of this Agreement, the Baseload Gas supply that ULH&P commits to purchase throughout the next Month from CM&T and/or from the Gas Supplier Contracts assigned to CM&T. It is understood that ULH&P will be invoiced according to ULH&P's Virtual Dispatching. However, CM&T will decide, in its sole discretion, the actual dispatching of Gas to serve ULH&P's City Gate operational requirements.

C. ULH&P will determine and notify CM&T, on or before 1:00 p.m. ECT, one (1) Business Day prior to the NYMEX Settlement for each applicable Month during the term of this Agreement, of the volume of Baseload Gas, not to exceed the Baseload Gas included in existing Gas Supplier Contracts, that will be purchased and the corresponding price of such Baseload Gas, as provided for in the Gas Supplier Contracts.

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D. ULH&P will notify CM&T, on or before 1:00 p.m. ECT, one (1) Business Day prior to the NYMEX Settlement for each applicable Month during the Term of this Agreement, of which price option it will pay under the Gas Supplier Contract(s) (either the appropriate *Inside FERC* First of the Month Index price or *Gas Daily* Index Midpoint price), for all Natural Gas purchases above Baseload Gas, hereinafter referred to as "Swing Gas." The Virtual Dispatching of Swing Gas will be determined daily. ULH&P will notify CM&T before 8:30 a.m. ECT of the Virtual Dispatch of Swing Gas for the following Gas Day.

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E. ULH&P will keep CM&T "financially whole" for any Swing Gas that ULH&P has designated to be purchased utilizing the *Inside FERC* First of the Month Index price or, if applicable, Fixed Price, but that is not Virtually Dispatched by ULH&P. Keeping CM&T whole, requires ULH&P to pay the difference between *Inside FERC* First of the Month Index price (or Fixed Price) and the applicable *Gas Daily* Index Price for the Gas Day to the extent that ULH&P did not Virtually Dispatch the Swing Gas, when the *Gas Daily* Index price is less than the First of the Month Index or Fixed Price.

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F. Gas supply purchases made by ULH&P for the 2004-2005 Winter Season (November, 2004 through March, 2005) are identified in the Firm Gas Supplier Contracts that will be assigned to CM&T under this Agreement. ULH&P will identify any price-hedging that has been previously contracted for and is included within the Firm Gas Supplier Contracts assigned to CM&T. Any additional Gas supply purchases required by ULH&P during the 2004-05 Winter Season shall be acquired through CM&T based upon mutually agreed upon terms and conditions. If ULH&P and CM&T cannot agree on the terms and conditions for the required additional Gas supply purchases, then ULH&P shall have the right to purchase the additional Gas from another party besides CM&T, but shall be included in the Gas Supplier Contracts.

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G. Gas supply purchases made by ULH&P for the period April, 2005 through October, 2006 may be acquired under the Gas Supplier Contract(s) or through CM&T, or any other Gas suppliers, based on agreed upon prices for *Inside FERC* First of the Month Index price and/or *Gas Daily* Index price, or another Natural Gas pricing mechanism that is agreed to. ULH&P will advise CM&T prior to the beginning of each winter and summer season on the amount of Gas agreed to be purchased, from whom such Gas will be purchased and the pricing terms.

H. If ULH&P chooses to purchase Gas from other suppliers, ULH&P will have the option to hedge prices through those suppliers.

Deleted: ULH&P will assign all Gas Supplier Contracts commencing on, or after, November 1, 2003 to CM&T until the end of this Agreement. ULH&P will Virtually Dispatch these assigned Gas Supplier Contracts.

I. ULH&P will reimburse CM&T for all, then effective, charges applicable to the purchase and transportation of Gas supply volumes to ULH&P's City Gate and/or to interstate pipeline storage that ULH&P "Virtually Dispatched" as described above. Such charges shall include any amounts to be paid to ULH&P's Gas Suppliers under contract, including but not limited to Gas Supplier Reservation Charges, commodity charges, any price-hedging costs and charges where such hedging was pre-authorized by ULH&P, interstate pipeline variable charges, including but not limited to fuel, and any other charges which would be incurred by CM&T as ULH&P's assignee pursuant to the Gas Supplier Contracts, transportation agreements, storage agreements and any other agreements to which ULH&P is a party required to deliver Gas based on ULH&P's "Virtual Dispatching" of Baseload Gas and Swing Gas supply.

ARTICLE VI Applicable Indices

In the event the indices applicable to pricing for this Agreement are no longer published, the Parties will negotiate in good faith to agree upon a mutually satisfactory replacement Index that is still in publication. Should the Parties not reach a mutually acceptable decision on a replacement publication, then this matter shall be arbitrated according to the provisions in Article XXIII. The effective date of such replacement Index shall be the first Day of the Month for which the original Index was no longer published.

ARTICLE VII Release of Capacity and Assignment of Contracts

A. ULH&P shall release its firm interstate pipeline transportation and storage capacity and assign its Gas Supplier Contracts to CM&T over the Term of this Agreement in exchange for the Management Fee paid by CM&T to ULH&P. ULH&P will assign all Gas Supplier Contracts commencing on, or after, November 1, 2004 to CM&T until the end of this Agreement. ULH&P will Virtually Dispatch these assigned Gas Supplier Contracts. As security for the performance of CM&T's obligations under this Agreement, CM&T hereby grants to ULH&P a first priority security interest in and to any and all rights CM&T has (i) in the Gas Supplier Contracts at such time as they are assigned to CM&T and (ii) the physical Natural Gas inventory stored by CM&T under such Gas Supplier Contracts at any time during the Term of this Agreement (the "Collateral"). CM&T hereby authorizes ULH&P, pursuant to Article 9 of the Uniform Commercial Code as it is currently in effect (the "UCC") and any applicable statutes, to take any such action and to make any and all filings necessary for ULH&P to perfect its first priority security interest in the Collateral. In addition to any other rights it may have under this Agreement, ULH&P shall have all the rights and remedies afforded to it under the UCC for the realization of the security granted herein.

B. ULH&P shall continue to evaluate its firm customer load profile and associated peak hour, peak day and seasonal design, and shall secure and release to CM&T interstate

pipeline transportation and storage capacity that is necessary to serve the design criteria valued as provided in Article III.

C. In regard to ULH&P releasing to CM&T ULH&P's firm interstate pipeline transportation and storage capacity and assigning to CM&T its Gas Supplier Contracts, ULH&P and CM&T agree to the following procedure:

1. ULH&P will release all Firm interstate pipeline transportation and storage capacity to CM&T for the Term of this Agreement with provisions that allow ULH&P to recall the interstate pipeline capacity on twenty-four (24) hours notice with no reput rights to CM&T in the event of a default by CM&T as described in Article XIX, CM&T not providing ULH&P a satisfactory Gas Supply and Transportation Plan as described in Article IX, or termination of this Agreement before the end of the Term.
2. For those Firm interstate pipeline contracts under which ULH&P pays maximum Tariff rates, ULH&P will enter into a pre-arranged release with CM&T at the pipeline's maximum rate(s). Because the pre-arranged release will be at maximum rate, the release will be posted on the interstate pipeline's Electronic Bulletin Board (EBB) for notice purposes only.
3. For those Firm interstate pipeline contracts under which ULH&P pays less than maximum Tariff rate(s), ULH&P will do a pre-arranged release with CM&T and post on the interstate pipeline's EBB at the discounted rate for competitive bidding, with the condition that CM&T has the right to match the best bid. When applicable, CM&T will match the best bid received by the interstate pipeline for ULH&P released capacity.
4. ULH&P shall fully reimburse CM&T for matching the best bids as set forth in the preceding paragraph. ULH&P shall also fully reimburse CM&T for all costs and charges associated with ULH&P's Firm Supply Contracts, as listed on Exhibit C attributable to Virtual Dispatching by ULH&P as described in Article V.
5. Subject to the cooperation of third parties in which CM&T shall use its best efforts to secure the cooperation of such parties, CM&T agrees to return to ULH&P all released firm interstate pipeline transportation, storage capacity, storage account balances and assigned Firm Gas Supplier Contracts immediately upon receiving notice from ULH&P that it is terminating this Agreement early due to an event of a default by CM&T as described in Article XIX, CM&T not providing ULH&P a satisfactory Gas Supply and Transportation Plan as described in Article IX or termination of this Agreement before the end of the Term.

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6. Unless mutually agreed to by the Parties, CM&T will not change the “primary” receipt and delivery points specified in ULH&P’s Firm interstate pipeline transportation and storage contracts.

D. ULH&P shall be entitled to interstate pipeline refunds or credits, if any, that accrued prior to the Effective Date of this Agreement or in connection with the release of capacity to CM&T under this Agreement. For any other refunds or credits that accrue after the Effective Date of this Agreement, ULH&P shall be entitled to that portion of such refunds or credits attributable to the Virtual Dispatching of transportation and storage withdrawals and injections by ULH&P. ULH&P shall pay to CM&T, if refunds or credits are paid to ULH&P, or CM&T shall retain, if refunds or credits are paid to it, all other refunds or credits paid by a pipeline pursuant to CM&T’s use of the assets under this Agreement. ULH&P will be entitled to 100% of interstate pipeline refunds that are attributed to the Pipeline Reservation Charges. The Parties shall make reasonable efforts to make all refunds and credits payable or reflected in the next Month’s invoice, as provided for in Article XI.

E. The release to CM&T is intended to represent, as operationally feasible, all of ULH&P’s transportation and storage assets, except for those services that, under current Tariffs, may not be released or as described in Article III.B. ULH&P hereby represents and warrants that it owns or controls all such releasable transportation and storage assets, as listed on Exhibit C. Provided that CM&T is in compliance with this Agreement, ULH&P shall not terminate or materially modify or amend any contract or agreement listed on Exhibit C such that CM&T’s ability to render Firm service or realize value hereunder is reduced in any way without prior consultation with CM&T. The Parties shall negotiate appropriate and comparable adjustments if CM&T’s ability to render service or realize value is reduced as the result of an action taken by ULH&P that modifies or amends any contract or agreement listed on Exhibit C, and if unable to reach agreement, the appropriate adjustments shall be submitted to arbitration pursuant to Article XXIII.

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ARTICLE VIII Daily Nominations

A. ULH&P shall provide CM&T daily load forecasts and dispatching priorities by 8:30 a.m. (ECT). This shall include the load requirements for ULH&P’s north and south systems, as well as the minimum/maximum flow constraints for said north and south systems. CM&T will transmit the nominations and scheduling to the interstate pipelines on which ULH&P has released transportation and storage capacity to CM&T. In addition, ULH&P shall notify CM&T of all known intra-day changes to firm requirements at ULH&P’s City Gate. CM&T shall provide ULH&P as many intra-day nomination changes as are allowed by Transport Provider’s Tariff on which CM&T is the managing authority for ULH&P.

B. The price for intra-day nomination changes shall be as agreed upon by the Parties, or as specified in ULH&P's Gas Supplier Contracts.

C. CM&T will make all appropriate upstream pipeline/storage nominations to insure Firm deliveries to the ULH&P City Gate.

ARTICLE IX Storage Inventory, Utilization and Refill

A. In connection with ULH&P's release to CM&T of its Storage Agreements, as defined in the Asset Portfolio, in accordance with Article VII of this Agreement, the actual Gas balances shown in ULH&P's Storage Account as of October 31, 2004 (subject to later adjustment by the operator) shall become the initial actual ULH&P Storage Account Balances for the beginning of this Agreement, and in accordance with Article IX of the October 2003 asset management agreement, the virtual account balances shown as of October 31, 2004 shall become the initial virtual balance for the beginning of this Agreement. It is the intention of the Parties that CM&T shall be required to make and plan for physical deliveries of Gas as set forth in Article IV with the same degree of reliability of service that ULH&P provided to its Gas sales customers prior to the Effective Date of this Agreement. ULH&P will maintain an inventory ledger of the interstate pipeline storage inventory reflecting ULH&P's Virtual Dispatching of storage withdrawals and injections that were designated by ULH&P or were the result of no notice service to balance ULH&P's City Gate deliveries. CM&T has the obligation to meet ULH&P's daily physical load requirements that are currently met with interstate pipeline storage up to the level of the contractual rights released to CM&T.

B. ULH&P shall have the right to designate quantities of Gas to be injected into, or withdrawn from, storage as part of its Virtual Dispatch. ULH&P will create a storage injection and withdrawal plan that is within pipeline Tariff constraints and will share this plan with CM&T. It is understood that actual storage injections and withdrawals could differ from the plan, due to no notice injections and withdrawals. Because of these actions, ULH&P's plan will be re-evaluated monthly. Subject to ULH&P's right to receive storage withdrawals and limitations contained in the Tariffs, CM&T has the right to actually inject, withdraw and sell Gas from the released storage capacity as it sees fit. CM&T shall have the option at all times to deliver Firm Gas to ULH&P's City Gates in lieu of Gas withdrawn directly from pipeline storage. CM&T shall not charge ULH&P a gas commodity charge for the gas that ULH&P designates to be withdrawn from storage as specified in its daily virtual dispatch, regardless of whether CM&T supplies the gas by using storage withdrawals or supplies Firm Gas in lieu of storage withdrawals. ULH&P will be charged only variable costs associated with the transportation of Gas from storage to ULH&P's City Gate, when withdrawing Gas from the virtual storage inventory. CM&T will provide to ULH&P on a daily basis, if requested by ULH&P, a report of the actual quantities (according to operator figures) held in storage at that specific point in time. CM&T will report to ULH&P monthly, by Storage Service, the ULH&P Storage Account levels, and the ratchets applicable to such inventories. CM&T will also report

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monthly, CM&T's Storage Accounts which shall show the actual physical status of the assets, including actual storage inventory levels, injection and withdrawal rights and applicable ratchets. The format for such reports will be agreed upon by both Parties and may be changed, if agreed to in writing by both Parties, from time to time. If the actual Firm deliverability to ULH&P's City Gate at any point in time is less than the Firm deliverability based on ULH&P's virtual balance in storage, then CM&T shall provide, within two (2) Business Days from the request, ULH&P with a Gas supply and transportation plan that maintains deliverability to the ULH&P City Gate within Transport and/or Storage Provider's then current tariffs based on ULH&P's virtual balance in storage. If CM&T fails to provide a plan that maintains the Firm deliverability to ULH&P's City Gate, then ULH&P shall have the right to recall the necessary interstate transportation and storage in Exhibit C until CM&T provides a plan that maintains the Firm deliverability to ULH&P's City Gate. CM&T agrees that if ULH&P recalls storage capacity, title to ULH&P's Natural Gas stored in that capacity shall also immediately revert to ULH&P. CM&T shall provide such virtual plan, in writing, to ULH&P upon request.

C. CM&T shall attempt to manage the actual Natural Gas storage inventories in the Storage Facilities such that the actual Storage Accounts equal the virtual Storage Accounts at the end of the Day on October 31, 2006. CM&T shall transfer such actual inventories back to ULH&P effective the beginning of the Gas day on November 1, 2006. If CM&T continues as the Asset Manager under a new asset management agreement for a new term that commences on November 1, 2006, then the initial virtual Storage Account for the beginning of the new agreement shall be the virtual storage inventory in the Storage Account as of October 31, 2006, and CM&T shall not utilize the following cash-out procedure. If CM&T does not continue as the asset manager for a new term commencing November 1, 2006 and if the actual inventory exceeds the virtual storage inventory, then ULH&P may purchase the additional gas from CM&T based upon mutually agreed upon terms and conditions. If ULH&P and CM&T cannot agree on the terms and conditions for the additional gas in storage, then CM&T shall have the right to sell the additional Gas to another party besides ULH&P, and ULH&P shall cooperate with CM&T so that such gas may be delivered pursuant to the terms of CM&T's third-party sale. If the actual inventory level in any Storage Facility is less than the virtual storage inventory level in such Storage Facility at the end of the Day on October 31, 2006, then CM&T shall pay ULH&P for the volume shortfall as follows:

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1. Shortfall less than 5 percent of virtual storage inventory level: first of the month index published in Inside FERC Natural Gas Report, "Prices of Spot Gas Delivered to Pipelines", Columbia Gulf Transmission Co., Onshore Louisiana Index, for November, 2006, plus Columbia Gulf and Columbia Gas Transmission pipelines' commodity transportation costs, plus fuel, to ULH&P's city gate; multiplied by the volume shortfall.

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2. Any increment beyond the 5 percent volume shortfall, CM&T shall deliver the volume shortfall, in kind, on the applicable Transport/Storage Provider

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pipeline as follows: (a) for TGT, CM&T will deliver to ULH&P's City Gate and (b) for TCO, CM&T will deliver to either the TCO Appalachia (Pool) or the TCO interconnect with CGT at Leach, Kentucky. CM&T shall deliver such volume shortfall during December, 2006 and January, 2007 for twenty (20) Days in each month as specified by ULH&P.

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3. Payment for any shortage as described in Article IX, C.1 above will be credited to ULH&P's October 2006 Gas invoice from CM&T.

D. In the event of a default by CM&T as described in Article XIX or termination of this Agreement before the end of the Term, CM&T shall, upon 24 hours notice by ULH&P, transfer to ULH&P the actual Gas inventories in the Storage Facilities. If, at the time of such transfer, the actual inventory in any Storage Facility does not equal the virtual storage inventory in such Storage Facility, then the Parties shall compensate for the difference(s) as follows:

1. If the actual inventory exceeds the virtual storage inventory, then, within thirty (30) Days after the transfer, ULH&P shall, at its option, exercisable within five (5) Business Days after such transfer, either:

a. Deliver to CM&T, an amount of Gas equal to the excess inventory, at a mutually agreeable location; or

b. Compensate CM&T for the excess inventory at the lesser of ULH&P's weighted average purchase price for the virtual inventory storage, as shown in the applicable virtual Storage Account, or the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the Gas Daily "Dominion (delivered)" daily index price (i.e., the Gas Daily price applicable at Lebanon, Ohio); and (ii) for TCO storage, the Gas Daily "Columbia APP" daily index price; or,

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c. ULH&P and CM&T mutually agree no compensation is necessary.

2. If the virtual storage inventory exceeds the actual storage inventory, then, within thirty (30) Days after the transfer, CM&T shall, at ULH&P's option, exercisable within five (5) Business Days after such transfer, either:

a. Deliver to ULH&P an amount of Gas equal to the inventory shortfall at a time and location mutually agreed upon by the Parties; or

b. Compensate ULH&P for the shortfall in inventory at the greater of ULH&P's weighted average purchase price for the virtual storage inventory, as shown in the applicable virtual Storage Account, or the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the Gas Daily "Dominion (delivered)" index price (i.e., the Gas Daily price applicable

at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* "Columbia APP" daily index price.

Any amount owed by CM&T shall be credited to ULH&P's Gas invoice from CM&T for the period in which the transfer of inventories occurs.

E. In the event of a default by ULH&P as described in Article XIX or termination of this Agreement before the end of the Term, CM&T shall, upon 24 hours notice by ULH&P, transfer to ULH&P the actual Gas inventories in the Storage Facilities. If, at the time of such transfer, the actual inventory in any Storage Facility does not equal the virtual storage inventory in such Storage Facility, then the Parties shall compensate for the difference(s) as follows:

1. If the actual inventory exceeds the virtual storage inventory, then, within thirty (30) Days after the transfer, ULH&P shall, at CM&T's option, exercisable within five (5) Business Days after such transfer, either:
 - a. Deliver to CM&T, an amount of Gas equal to the excess inventory, at a mutually agreeable location; or
 - b. Compensate CM&T for the excess inventory at the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the *Gas Daily* "Dominion (delivered)" daily index price (i.e., the *Gas Daily* price applicable at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* "Columbia APP" daily index price.
2. If the virtual storage inventory exceeds the actual inventory, then, within thirty (30) Days after the transfer, CM&T shall, at its option, exercisable within five (5) Business Days after such transfer, either:
 - a. Deliver to ULH&P an amount of Gas equal to the inventory shortfall at a time and location mutually agreed upon by the Parties; or
 - b. Compensate ULH&P for the shortfall in inventory at the greater of ULH&P's purchase price for the virtual storage inventory as shown in the applicable virtual Storage Account, or the following price(s) as applicable on the date of inventory transfer: (i) for TGT storage, the *Gas Daily* "Dominion (delivered)" index price (i.e., the *Gas Daily* price applicable at Lebanon, Ohio); and (ii) for TCO storage, the *Gas Daily* "Columbia APP" daily index price.

Any amount owed by CM&T shall be credited to ULH&P's Gas invoice from CM&T for the period in which the transfer of inventories occurs. Any amount owed by ULH&P shall be included in ULH&P's Gas invoice from CM&T for the period in which the transfer of inventory occurs.

ARTICLE X
Passage of Title

Title to the Gas covered by the ULH&P Storage Agreements released to CM&T shall pass from ULH&P to CM&T on the Day on which the Capacity Release(s) is effective. Title to Gas delivered to ULH&P under the provisions of Article IV shall pass from CM&T to ULH&P when delivered to the Delivery Point(s). The Party who has title to the Gas at any time shall be deemed to be in control and possession of the Gas, and shall be responsible for (i) any damage or injury caused thereby, and (ii) all charges, expenses, fees, taxes, damages, injuries, and other costs incurred in connection with or attributable to the purchase and handling of Gas, except that ULH&P shall fully reimburse CM&T for (i) any ad valorem or similar taxes that would be levied on the volume of the Gas in the ULH&P Storage Agreements, if that volume of Gas were actually in storage (i.e., based on the virtual Storage Accounts) and (ii) any sales tax assessed in connection with the release of the ULH&P Storage Agreements to CM&T. Each Party shall indemnify, defend, and hold the other harmless from all such charges, expenses, fees, taxes, damages, injuries, and other costs. Notwithstanding the above, if ULH&P virtually nominates gas pursuant to the terms of this Agreement and a loss of some or all of the nominated volume occurs during shipment or storage pursuant to a firm transportation agreement or storage contract assigned by ULH&P to the Asset Manager under the terms of this Agreement, and the pipeline or storage operator claims, or its tariff provides, that the Shipper must bear the loss, then (1) ULH&P shall bear the loss of such Gas as virtually nominated and shall not be entitled to reimbursement from the Asset Manager; and (2) CGE shall have the right to any reimbursement Asset Manager receives from the pipeline or storage operator related to such lost Gas virtually nominated but Asset Manager retains all claims associated with any other Gas beyond ULH&P's Virtual Dispatch. The Asset Manager shall use commercially reasonable efforts to obtain reimbursement from the pipeline or storage operator. In all other cases, the Asset Manager shall bear the risk of loss of Gas.

ARTICLE XI
Invoicing Requirements

A. Each Month, ULH&P will prepare a worksheet that will reflect for the preceding Month, its deemed total cost of Gas based on ULH&P's hourly and daily dispatching of supply as if it had been done without CM&T managing ULH&P's Gas supply assets. This worksheet will be the basis for CM&T's charges for the Gas it delivers to ULH&P's City Gate. On or before the thirteenth (13th) day of each Month during the Term of this Agreement, ULH&P will provide this worksheet to CM&T for billing purposes. Each Month during the Term of this Agreement, CM&T shall submit to ULH&P an invoice no later than the twentieth (20th) day of the month for the preceding Month's activity reflecting the total Gas costs shown on the worksheet. CM&T will invoice ULH&P for

reimbursement of Pipeline Reservation Charges separately, according to the terms of each Transport or Storage Provider contract. Any charges billed by ULH&P's interstate pipelines or Firm Gas Suppliers that are not the result of ULH&P's daily dispatching (as reflected on the worksheet) or are not minimum billing or Reservation Charges will be the responsibility of CM&T. CM&T will be responsible for any imbalance or other penalty charges incurred as a result of CM&T's action or inaction (unless such was at the direction of ULH&P), and ULH&P will be responsible for any imbalance or other penalty charges incurred as a result of ULH&P's action or inaction.

B. Attached to its invoice, CM&T will provide ULH&P with the appropriate records and documentation for all costs billed by CM&T to ULH&P including, but not limited to, all charges as described in Article V.I., and any other costs associated with this Agreement so that ULH&P may fulfill its regulatory reporting requirements.

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**ARTICLE XII
Payment**

A. ULH&P shall pay CM&T all undisputed amounts no later than thirty (30) days following the delivery Month via wire transfer at the address specified in Article XIII. If ULH&P disputes, in good faith, any portion of CM&T's invoice, ULH&P shall notify CM&T in writing, prior to the due date of the disputed invoice, the reasons therefore and the Parties shall negotiate in good faith to resolve such dispute. If it is determined that any disputed amount is owed to CM&T, then ULH&P shall pay such amount, plus interest, at the rate specified below from the date the payment was originally due.

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B. Interest on late payments by either Party shall accrue from the due date until the date of payment at a rate equal to the lower of: (i) the then-effective prime rate of interest published under "Money Rates" in *The Wall Street Journal*, plus two percent (2%) per annum, compounded monthly or, (ii) the maximum applicable lawful interest rate allowed in Ohio.

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C. In the event that each Party owes payment under this Agreement to the other in the same Month, the amounts due shall be netted against each other with the result that only the Party owing the greater amount shall make payment and only to the extent of the net amount due, plus any interest due as determined by this Article XII.

**ARTICLE XIII
Wiring Instructions**

CM&T's and ULH&P's designated addresses for all wire transfers related to this Agreement shall be:

CM&T:
Bank One, NE, Chicago, IL
Account Name: Cinergy Marketing & Trading, LP
ABA # 071000013

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Account Number 55-59340

ULH&P:
PNC Bank, Ohio
Account Name: The Union Light, Heat and Power Company
ABA #: 042000398
Account Number: 4006510659

ARTICLE XIV
Contacts and Notices

CM&T's and ULH&P's designated contacts for all notices related to this Agreement shall be:

CM&T:

Notices: Attention : Chris Fischer, Director, Origination
1100 Louisiana St., Suite 4900
Houston, TX 77002
Phone (713) 393-6846
Fax (713) 890-3137

Account Manager: Chris Fischer, Director, Origination
Wk Phone: (713) 393-6846
Hm Phone: (281) 359-9130
Cell: (713) 817-0528
Fax: (713) 890-3137
E-mail: chris.fischer@cinergy.com

Operations Primary: Greg Trefz
Wk Phone: (713) 393-6962
Hm Phone: (713) 880-0515
Cellular: (713) 598-1157
Fax: (713) 393-6913
E-mail: greg.trefz@cinergy.com

Secondary: Noel Bartlo
Wk Phone: (713) 393-6966
Hm Phone: (713) 983-0651
Cellular: (713) 208-7574
Fax: (713) 393-6913
E-mail: noel.bartlo@cinergy.com

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Notices: Attention: Jim Henning, Manager, Gas Commercial Operations
139 East Fourth Street, EM025
Cincinnati, OH 45202
Phone: (513) 287-4078
Fax: (513) 287-2938

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Operations: Primary: Doug Vaught
Wk Phone: (513) 287-2559
Cellular: (513) 639-3388
Hm Phone: (513) 367-6180
Fax: (513) 287-1223
E-mail: dvaught@cinergy.com

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Secondary: Jeff Kern
Wk Phone: (513) 287-2837
Hm Phone: (859) 586-1603
Fax: (513) 287-2938
E-mail: jlkern@cinergy.com

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ARTICLE XV
Representations and Warranties

A. As a material inducement to entering into this Agreement, CM&T represents and warrants to ULH&P as of the date of the execution and delivery of this Agreement as follows:

1. There are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority to which CM&T is a party that materially adversely affects (a) its ability to perform its obligations under this Agreement, or (b) the rights of ULH&P hereunder.
2. CM&T is duly organized, validly existing, and in good standing under the laws of the State of Delaware, and it has the legal right, power, authority, and is qualified to conduct its business, to execute and deliver this Agreement, and perform its obligations under the same, and all regulatory authorizations have been obtained and/or maintained, as required, for it to legally perform its obligations hereunder.
3. The making and performance by CM&T of this Agreement is within its powers, has been duly authorized by all necessary action on its part, and does not and will not violate any provisions of its incorporation or other formation, as applicable, or any other of its governing documents, nor will the making or

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performance of this Agreement violate (a) any agreement or instrument to which CM&T is a party or is bound, (b) any material provisions of any judgment, decree, or judicial order applicable to CM&T, (c) any provision of law or any rule, regulation or administrative order presently in effect and applicable to CM&T or its governing documents. To the best of CM&T's knowledge and belief, no consents of third parties, whether private, judicial, or public are required under any agreement or instrument to which CM&T is a party or is bound, provided however, that if, after the execution hereof, any such third party consents are deemed to be necessary in order to effectuate the purposes and intent of this Agreement, then CM&T shall use commercially reasonable efforts to promptly obtain such consents.

4. This Agreement when entered into constitutes a legal, valid and binding act and obligation of CM&T, enforceable against it in accordance with its terms, subject to principles of equity and bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally.
5. There are no bankruptcy, insolvency, reorganization, receivership or other arrangements or proceedings pending or being contemplated by CM&T, or to its knowledge, threatened against CM&T.

B. As a material inducement to entering into this Agreement, ULH&P represents and warrants to CM&T as of the date of the execution and delivery of this Agreement as follows:

1. There are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority to which ULH&P is a party that materially adversely affects (a) its ability to perform its obligations under this Agreement, or (b) the rights of CM&T hereunder.
2. ULH&P is duly organized, validly existing, and in good standing under the laws of the State of Ohio, and it has the legal right, power, authority, and is qualified to conduct its business, to execute and deliver this Agreement, and perform its obligations under the same, and all regulatory authorizations have been obtained and/or maintained, as required, for it to legally perform its obligations hereunder.
3. The making and performance by ULH&P of this Agreement is within its powers, has been duly authorized by all necessary action on its part, and does not and will not violate any provisions of its incorporation or other formation, as applicable, or any other of its governing documents, nor will the making or performance of this Agreement violate (a) any agreement or instrument to which ULH&P is a party or is bound, (b) any material provisions of any judgment, decree, or judicial order applicable to ULH&P, (c) any provision of law or any rule, regulation or administrative order presently in effect and

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applicable to ULH&P or its governing documents. To the best of ULH&P's knowledge and belief, no consents of third parties, whether private, judicial or public, are required under any agreement or instrument to which ULH&P is a party or is bound, provided however, that if, after the execution hereof, any such third party consents are deemed to be necessary in order to effectuate the purposes and intent of this Agreement, then ULH&P shall use commercially reasonable efforts to promptly obtain such consents.

4. This Agreement when entered into constitutes a legal, valid and binding act and obligation of ULH&P, enforceable against it in accordance with its terms, subject to principles of equity and bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally.
5. There are no bankruptcy, insolvency, reorganization, receivership or other arrangements or proceedings pending or being contemplated by ULH&P, or to its knowledge, threatened against ULH&P.

C. Each Party shall have an on-going obligation to supplement its respective representations and warranties if a material change occurs therein.

ARTICLE XVI Government Action

Either Party may terminate this Agreement in the event that the FERC, the Public Utilities Commission of Ohio or any administrative body or court of competent jurisdiction, or a legislative body changes pertinent statutes, regulations or orders so as: (i) to significantly restrict or reduce the value of this Agreement, such significant reduction in value to be determined in the sole judgment of the affected Party, (ii) to require ULH&P to assign to its customers portions of the assets included in the Asset Portfolio, or (iii) to significantly and materially modify the nature of the services provided by this Agreement, provided however, that the Parties will endeavor to mutually agree on revisions to the Agreement to comply with such regulatory changes. In the event either Party elects to terminate this Agreement pursuant to this Article XVI such termination shall be effected as set forth in Section C of Article XIX.

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ARTICLE XVII Force Majeure

A. This Article XVII is the sole and exclusive excuse for non-performance permitted under this Agreement and all other excuses at law or in equity are WAIVED to the extent permitted by law. Except with regard to a Party's obligation to make payment due under this Agreement, at the time of the Force Majeure event, neither Party shall be liable to the other for failure to perform a Firm obligation, to the extent such failure was caused by *Force Majeure*.

B. *Force Majeure* shall mean an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party, or in the case of third party obligations or facilities, the third party claiming suspension, and which by the exercise of due diligence such Party, or third party, is unable to prevent or overcome or to obtain, or cause to be obtained a commercially reasonable substitute performance. Therefore, neither Party will be entitled to the benefit of *Force Majeure* under the following circumstances; (i) ~~the *Force Majeure* event was caused by the acts, omissions, or negligence of each Party, in whole or in part, or to the extent that such *Force Majeure* is the direct result of acts, omissions or the negligence of such Party's affiliates;~~ (ii) to the extent such Party failed to use due diligence, or failed to utilize all reasonable dispatch and reasonable efforts in removing or overcoming such *Force Majeure* to again put itself in a position to carry out all of the obligations that it has assumed; (iii) to the extent such Party's inability to perform was caused by that Party's lack of funds; or (iv) to the extent such Party's inability to perform was caused by a shortage of Gas supply not caused by a *Force Majeure* event. "*Force Majeure*" shall include an event of *Force Majeure* occurring with respect to the facilities or services of CM&T's or ULH&P's Transport or Storage Provider.

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C. *Force Majeure* shall include, but not be limited to, the following; (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs (other than as a result of the negligence or other fault of the Party claiming *Force Majeure*) to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures that cause freezing or failure of wells or lines of pipe; (iii) interruption or curtailment of firm transportation and/or storage by Transport or Storage Providers; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, wars or terrorism that have a direct result upon obligation of the Party; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulation promulgated by a governmental authority having jurisdiction. CM&T and ULH&P shall make commercially reasonable efforts to avoid the adverse impacts of a *Force Majeure* and to resolve the event or occurrence once it has occurred in order to resume performance.

D. Notwithstanding anything to the contrary herein, the Parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the Party experiencing such disturbances.

E. The Party for which performance is prevented by *Force Majeure* must provide notice to the other Party. Initial notice may be given orally, if given within twenty-four (24) hours; however, written notification with full particulars of the event or occurrence, including the cause of the event, the expected duration of the event, and the action being taken to eliminate it is required as soon as reasonably possible but in no event longer than two (2) Business Days following the event of the *Force Majeure*. Upon providing notification of *Force Majeure* to the other Party, the affected Party will be relieved of its

obligation to make or accept delivery of Gas as applicable to the extent and for the duration of the *Force Majeure*, and neither Party shall be deemed to have failed in such obligations to the other during such occurrence or event.

ARTICLE XVIII Regulatory Compliance

This Agreement shall be subject to all valid and applicable laws of the United States and to the applicable valid rules, regulations or orders of any regulatory agency or governmental authority having jurisdiction over the Parties or this Agreement. The Parties shall be entitled to regard all applicable laws, rules and regulations (federal, state or local) as valid and may act in accordance therewith until such time as the same may be declared invalid by a final, non-appealable judgment of a court of competent jurisdiction. This Agreement and the actions of CM&T and ULH&P hereunder are subject to all present and future valid orders, rules, and regulations of any regulatory body having jurisdiction. Both CM&T and ULH&P agree to timely make all regulatory filings that may be needed to effectuate this Agreement and shall promptly provide copies of such filings to the other Party.

ARTICLE XIX Events of Default, Failure to Perform, Termination and Remedies

A. Unless such act or omission is the result of *Force Majeure* or the sole failure or negligence of ULH&P, each of the following acts or omissions shall be deemed an Event of Default by CM&T:

1. The failure of CM&T to comply with the material terms and conditions of the Tariffs or agreements governing use of the Asset Portfolio;
2. The failure of CM&T to pay any undisputed amounts due any Transport or Storage Provider under the Asset Portfolio and such failure continues for a period of five (5) Days;
3. CM&T engages in one or more of the following acts; (a) an assignment or any general arrangement for the benefit of its creditors, (b) the filing of a petition or other commencement, authorization or acquiescence in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or (c) the inability of CM&T to pay any debt when due ("CM&T Bankruptcy Default");
4. Any material inaccuracy in any representation or warranty of CM&T set forth in this Agreement, and such inaccuracy is not remedied with-in fifteen (15) Days of CM&T's receipt of a written notice from ULH&P describing the particulars of such inaccuracy in reasonable detail;

5. The failure of CM&T to perform any material covenant, term or condition or obligation in this Agreement, other than the material covenants or obligations addressed in the other subsections of Section A of Article XIX, and such failure is not remedied within ten (10) Days of CM&T's receipt of a written notice from ULH&P describing the particulars of such failure in reasonable detail;
6. The failure of CM&T to timely provide adequate assurance when required by Article XXVII;
7. The failure of CM&T to provide Firm sales service as provided in Article IV, provided however, that CM&T shall not be deemed in Default if, (i) CM&T timely pays to ULH&P any amount due in accordance with the terms of this Agreement, and (ii) CM&T's failure has not caused material prejudice to ULH&P's interest;
8. A material failure by CM&T to provide accurate and timely reports required by this Agreement and such failure is not remedied within five (5) Business Days of CM&T's receipt of a written notice from ULH&P describing the particulars of such failure in reasonable detail; and
9. The failure of CM&T to deliver Gas into ULH&P's Storage Accounts, provided however, that CM&T shall not be deemed in Default if, (i) CM&T timely pays to ULH&P any amount due in accordance with the terms of the Agreement, and (ii) CM&T's failure has not caused substantial prejudice to ULH&P's interests.

B. Unless such act or omission is the result of *Force Majeure* or the failure or negligence of CM&T, each of the following acts or omissions shall be deemed an Event of Default by ULH&P:

1. The failure of ULH&P to comply with the material terms and conditions of the contracts and agreements listed on Exhibit C;
2. The failure of ULH&P to pay undisputed amounts due CM&T herein, and such failure continues for a period of five (5) Days;
3. ULH&P engages in one or more of the following acts: (a) an assignment or any general arrangement for the benefit of its creditors, (b) the filing of a petition or other commencement, authorization or acquiescence in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or (c) the inability of ULH&P to pay any debt when due ("ULH&P Bankruptcy Default");

4. Any material inaccuracy in any representation or warranty of ULH&P set forth in this Agreement, and to the extent such inaccuracy is both intentional and capable of effective redemption, such inaccuracy is not remedied within fifteen (15) Days of ULH&P's receipt of a written notice from CM&T describing the particulars of such inaccuracy in reasonable detail.
5. The failure of ULH&P to perform any material covenant, term or condition or obligation in this Agreement other than the material covenants or obligations addressed in the other subsections of Section B of Article XIX, and such failure is not remedied within ten (10) Days of ULH&P's receipt of a written notice from CM&T describing the particulars of such failure in reasonable detail.
6. The failure of ULH&P to timely provide adequate assurance when required by Article XXVII.
7. A material failure by ULH&P to provide accurate and timely reports required by this Agreement and such failure is not remedied within five (5) Business Days of ULH&P's receipt of a written notice from CM&T describing the particulars of such failure in reasonable detail; and

C. In addition to the remedy for Events of Default by CM&T or ULH&P, as set forth in Articles VII and IX, the remedies for Events of Default by CM&T or ULH&P, as applicable, shall be as follows:

1. If an Event of Default occurs with respect to a Party (the "Defaulting Party"), then the other Party (the "Non-Defaulting Party") shall have the right, in addition to any other remedies available hereunder, to: (a) upon one (1) Business Day's written notice, suspend its performance under this Agreement; (b) withhold any amounts owed to the Defaulting Party, under this Agreement and/or (c) set off any amount owed to the Defaulting Party, under this Agreement or any other agreement between the Parties (whether or not yet due), or against any amounts owing by the Defaulting Party to the Non-Defaulting Party (whether or not yet due).
2. In addition to the provisions of this Article XIX, upon the occurrence of an Event of Default, the Non-Defaulting Party may, for so long as the Event of Default continues, terminate, accelerate, and liquidate all obligations then outstanding or not yet commenced in accordance with the provisions of this Agreement by: (a) providing notice to the Defaulting Party, and (b) establishing an early termination date, which date shall be between one (1) and twenty (20) Business Days following receipt of the notice of early termination, on which all such obligations shall terminate ("Early Termination Date"), provided however, if the Defaulting Party is the subject of a bankruptcy, insolvency, or similar proceeding, all outstanding obligations

shall automatically terminate, without notice or right to cure, and without any other action by either Party as if an Early Termination Date had been declared immediately prior to such event. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate the Total Termination Payment and notify the Defaulting Party of such amount including detailed support for the Total Termination Payment calculation. The failure to give such notice contemplated herein shall not affect the validity or enforceability of the liquidation or give rise to any claim by the Defaulting Party against the Non-Defaulting Party.

3. The Non-Defaulting Party may net the Total Termination Payment against all other amounts owed (whether or not yet due) between the Parties under the Agreement and any other agreements between the Parties. This amount constitutes the "Liquidation Amount" payable by the Defaulting Party within three (3) Business Days or payable by the Non-Defaulting Party on the Payment Date following the Early Termination Date, as applicable. A disputed amount hereunder shall be paid by the Defaulting Party, subject to refund.
4. The failure of the Non-Defaulting Party to exercise any of its rights or remedies contained in this Article or in Articles VII or IX shall not constitute a waiver of the Event of Default, the requirement for payment, or any of the other rights or remedies of the Non-Defaulting Party in connection with the Event of Default.
5. The Non-Defaulting Party's rights under this Agreement are in addition to, and not in limitation or exclusion of, any other rights the Non-Defaulting Party may have (whether by contract, operation of law, or otherwise). Each Party reserves to itself all rights, set offs, counterclaims, and defenses which it is, or may be, entitled to arising from or out of this Agreement or other agreements between the Parties, at law or otherwise.

ARTICLE XX Indemnification

A. CM&T shall indemnify ULH&P and hold ULH&P harmless from all liability engendered by CM&T's use of the released transportation or storage capacity or assigned Gas Supplier Contracts beyond ULH&P's Virtual Dispatch, except to the extent that the liability is the result of ULH&P's gross negligence or willful misconduct.

B. ULH&P shall indemnify CM&T and hold CM&T harmless from all liability engendered by transportation or storage capacity released to CMT, to the extent that such liability arises from transportation or storage capacity while being utilized in response to ULH&P's Virtual Dispatch, or retained by ULH&P, and ULH&P's pre-Agreement supply arrangements, except to the extent that the liability is the result of CM&T's gross negligence or willful misconduct.

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ARTICLE XXI
Applicable Law

THE INTERPRETATION AND PERFORMANCE OF THE AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF KENTUCKY, EXCLUDING HOWEVER, ANY CONFLICT OF LAW RULE THAT WOULD APPLY THE LAW OF ANOTHER JURISDICTION.

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ARTICLE XXII
Confidentiality

Unless mutually agreed, the terms of this Agreement, including but not limited to the price paid for Gas, will be kept confidential by CM&T and ULH&P, except to the extent that the Party is obligated to disclose such information to the pipeline or supplier affected by this Agreement, or to a regulatory authority for the purpose of effectuating the transportation, storage, and/or sale of the Gas pursuant to this Agreement, or is obligated by law, court or administrative agency of competent jurisdiction, or contract to make such disclosure. If required to be disclosed, the Party subject to the disclosure requirement shall (i) notify the other Party immediately, and (ii) cooperate to the fullest extent in seeking whatever confidential status may be available to protect any material to be disclosed; provided, however, the Party required to make the disclosure shall not be obligated to subject itself to sanctions to comply with this provision.

ARTICLE XXIII
Arbitration

A. If a dispute arises between the Parties relating to this Agreement, the Parties agree to use the following procedure prior to either Party pursuing other available remedies:

1. A meeting shall be held promptly between the Parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
2. If, within thirty (30) Days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, any such dispute shall be resolved pursuant to binding arbitration administered by the American Arbitration Association ("AAA") under its commercial arbitration rules, according to the procedures set forth in this Article XXIII and applying the governing law of this Agreement. Either Party may commence an arbitration proceeding hereunder by giving written notice to the other Party specifying the nature of the Dispute in detail and naming the arbitrator for the Party commencing the

arbitration. No later than five (5) Business Days after the receipt of the notice, commencing the arbitration proceeding, the other party shall select an arbitrator and notify the party commencing the arbitration. Within ten (10) Days following their selection, the arbitrators selected by CM&T and ULH&P shall jointly select a third arbitrator. In the event they are unable to agree upon the third arbitrator, the selection shall be made according to the rules of the AAA. The third arbitrator shall hear and decide all matters relating to the dispute that is subject to arbitration. All arbitrators selected under this Agreement shall have at least eight (8) years of professional experience in the commodity markets and in the business of marketing the applicable Commodity or Commodities, shall not previously have been employed by either Party, and shall not have a direct or indirect interest in either Party or the subject matter of the arbitration. The arbitration hearing shall commence as soon as is practical, but in no event later than thirty (30) Days after the selection of the third arbitrator. If any arbitrator selected should die, resign, or otherwise be unable to perform his or her duties hereunder, a successor arbitrator shall be selected pursuant to the procedures set forth in this Article XXIII. Such arbitration shall be held in neutral locations determined by the Parties prior to the selection of the third arbitrator.

B. The arbitration shall be conducted according to the following; (i) the hearing shall be conducted within ninety (90) Days of a Party's notice, (ii) the hearing shall be conducted on a confidential basis, (iii) at the conclusion of the hearing, each Party will present a suggested resolution to the arbitrator, (iv) the arbitrator may select either suggested resolution or may make his or her own decision, subject to the limitation that the decision must resolve the dispute in a manner consistent with the intent of the Parties as reflected in the terms of this Agreement, (v) the arbitrator shall be bound to follow the substantive state and Federal laws of jurisprudence as well as the applicable rules of evidence in arriving at a decision, (vi) the panel of arbitrators, in consultation with the Parties, shall provide for limited discovery, (vii) the arbitrator shall issue a confidential written opinion containing his or her decision within thirty (30) Days after the hearing, (viii) each Party shall divide equally the cost of the arbitrators and the hearing and each Party shall be responsible for its expenses and those of its counsel and representatives, and (ix) any offer made or the details of any negotiations regarding the dispute prior to arbitration and the cost to the Parties of their representatives and counsel shall not be admissible.

C. **Binding Nature of Proceedings.** EACH PARTY UNDERSTANDS THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE ANY DISPUTE OR NEED OF INTERPRETATION RELATED TO THIS AGREEMENT. EACH PARTY UNDERSTANDS IT CANNOT BRING A LAWSUIT CONCERNING ANY SUCH DISPUTE. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO AN IMPARTIAL PANEL OF ARBITRATORS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT. ANY DECISION OF THE ARBITRATOR MAY BE ENFORCED IN ANY COURT OF COMPETENT JURISDICTION BY THE PARTY IN WHOSE FAVOR SUCH DECISION IS MADE. NOTWITHSTANDING THE

FOREGOING, A PARTY MAY FILE A LAWSUIT TO OBTAIN INJUNCTIVE RELIEF RELATED TO THE PERFORMANCE OF THE OBLIGATIONS UNDER THIS ARTICLE.

ARTICLE XXIV
Limitation of Liability

A. Except as set forth herein, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. If no measure of damages is expressly provided herein, a Party's liability shall be limited to direct actual damages only. The remedies set forth in this Agreement, shall be the exclusive remedies for the Parties.

B. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

ARTICLE XXV
Recording Language

Each of the Parties hereto (i) consent to the recording of telephone conversations of their respective trading and marketing personnel in connection with this Agreement, and (ii) agrees that any such electronic recordings may be submitted in evidence in any suit, action or other proceedings in relation to this Agreement by either Party.

ARTICLE XXVI
Assignment

This Agreement may not be assigned by either Party, in whole or in part, without the prior written consent of the other Party, and consent shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their representatives, successors, and assigns.

ARTICLE XXVII
Financial Responsibility

A. During the Term of this Agreement, CM&T shall provide to ULH&P a parental guaranty or other assurance of financial responsibility in the amount and form in the sole

discretion of ULH&P, guaranteeing the financial performance of CM&T pursuant to this Agreement. ULH&P shall identify the amount of the Asset Manager's financial responsibility by the monetary valuation of Storage Gas as calculated and updated by ULH&P from time to time during throughout the term of this Agreement. CM&T shall provide such financial assurance to ULH&P's satisfaction prior to ULH&P's transfer of its Natural Gas assets to CM&T.

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ARTICLE XXVIII
Audit

Each Party shall have the right, during the Term of this Agreement and for a period of two (2) years after the termination of this Agreement, at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other Party, only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made under the Agreement. This examination right shall not be available with respect to proprietary information not directly relevant to this Agreement. All invoices and billings shall be conclusively presumed final and accurate unless objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. If the audit discloses an error the Party owing payment resulting from such audit shall pay all retroactive adjustments in full and with interest as specified under Article XII within thirty (30) Days of notice and substantiation of such inaccuracy.

ARTICLE XXIX
Offset

Each Party reserves to itself all rights, set-offs, counterclaims, and other defenses which it is or may be entitled to arising from the Agreement.

ARTICLE XXX
Enforceability

All provisions of this Agreement are severable, and the unenforceability or invalidity of any of the provisions of this Agreement shall not affect the validity or enforceability of the remaining provisions of this Agreement.

ARTICLE XXXI
Interpretation of Waivers

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No waiver of any provision of this Agreement, or of a breach hereof, shall be effective unless it is in writing, signed by the Party waiving the provision or the breach hereof. No waiver of a breach of this Agreement (whether expressed or implied) shall constitute a waiver of a subsequent breach hereof.

ARTICLE XXXII

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Amendment

This Agreement sets forth all understandings between the Parties respecting each obligation subject hereto and any prior contracts, understandings and representations, whether oral or written, are merged into and superseded by this Agreement. This Agreement may be amended only by a written document executed by both Parties.

**ARTICLE XXXIII
Third Party Beneficiaries**

There is not a third party beneficiary to this Agreement.

**ARTICLE XXXIV
Authority**

Each Party, as well as the individuals signing this Agreement, represent and warrant that it, he, or she has the power to enter into this Agreement and the authority to bind its respective Party.

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**ARTICLE XXXV
True Up**

Within ninety (90) Days after the Term expiration, or termination for any reason, the Parties will finalize the amounts and prices paid under the Agreement and make any necessary adjustments to volume or amounts owed by one Party to the other Party that are necessary to reflect the actual amounts provided under the Agreement.

**ARTICLE XXXVI
Continuing Obligations**

Termination of this Agreement does not end continuing obligations of either Party specified therein.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the day and year first above written.

CINERGY MARKETING & TRADING, LP

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By: _____

Name: _____

Title: _____

THE UNION LIGHT, HEAT AND POWER COMPANY

By: _____

Name: _____

Title: _____

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. . . Title: Vice President, Gas Operations. ¶
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[execution page to Portfolio Management Agreement between Cinergy Marketing & Trading, LP and The Union Light, Heat and Power Company]

Exhibit A

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ULH&P
Estimated Storage Balance
Estimated As of October 31, 2004

Replacement Cost

	<u>Dth</u>	<u>Price *</u>	<u>Value</u>
Columbia Gas FSS	1,337,970	\$6.94	\$9,285,515.13

Total Replacement Cost

\$9,285,515.13

* Future prices based on Average NYMEX Closing Price on August 18, 2004
for November 2004 - March 2005 grossed up to the city gate.

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Exhibit B

ULH&P's Operational Requirements
Regarding Natural Gas Deliveries To The City Gate

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1) North/South System Flow
Limitations

ASSET MANAGER's interstate pipeline scheduling (nominations) of Natural Gas deliveries to ULH&P's city gate must account for ULH&P's physical constraints on its distribution system which is dependent upon ULH&P's daily system load requirements. These constraints change hourly with ULH&P's load fluctuations.

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2) Pipeline Storage Limitations

ULH&P has contracted for firm interstate pipeline storage with Columbia Gas Transmission. The daily and seasonal contract quantities are committed to serve ULH&P's firm sales customers throughout the entire heating season (October-April). ULH&P must have flexibility to utilize on a daily basis ULH&P's pipeline storage capacity and associated volumes to manage weather and load forecasting deviations and daily balancing for Gas sales and transportation customers behind the city gate. Pipeline storage has daily, monthly and seasonal operational limitations defined by tariff and contract (i.e., withdraw limits, injection limits, ratchets). Deliveries to and from storage may be altered with intra-day nomination changes to sync scheduled deliveries to the city gate. Except for extreme conditions, pipeline storage inventories should remain above 10% by the end of March in order to provide for system balancing during April. It will be the sole responsibility of ASSET MANAGER to provide the necessary Natural Gas deliveries to ULH&P each day on Columbia Gas Transmission for system balancing.

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3) Pipeline Storage Refill

During the storage injection period (April through October) Natural Gas must be nominated on Columbia Gas Transmission on a daily basis to refill ULH&P's contracted seasonal storage capacity with each pipeline in order to reach design inventory levels of approximately 98% by Nov. 1, and to comply with Columbia Gas Transmission tariff limitations on daily and monthly injections into storage.

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4) Pipeline Nominations

In order for ULH&P to confirm and allocate city gate deliveries on a daily basis, ASSET MANAGER must provide, by fax, to ULH&P's Gas Control and Gas Rates & Transportation Departments by 2:00 p.m. E.T. prior to the beginning of the Gas day, detailed information of all scheduled deliveries to ULH&P's city gate. This information will include the interstate pipelines utilized and their associated contract numbers and scheduled volumes along with a pre-determined allocation if required by the interstate pipeline. Any intra-day nominations for increased or

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decreased deliveries to ULH&P must be reported by fax to ULH&P's Gas Control and Gas Rates & Transportation Departments one hour after intra-day nominations are due to the interstate pipeline.

5) Columbia Gas Storage/Transportation Capacity (SST)

ULH&P's Gas Control Department must be notified immediately by fax when ULH&P's SST capacity with Columbia Gas Transmission is released to third parties or used to deliver Gas by ASSET MANAGER to other markets. Any capacity releases to other markets reduce the amount of Gas that would be available to be injected into or withdrawn from storage to ULH&P's city gate.

6) Peak Hourly Rate

Because of interstate pipelines limiting daily volumes on standard FT and IT contracts to 1/24 hourly flow rates, ULH&P contracts on various interstate pipelines for transportation agreements that allow 1/16 hourly flow rates in order to meet peak hour load requirements. ULH&P must have available to its city gate those interstate pipeline contracts that allow for 1/16 hourly flow rates during peak winter periods.

7) Nominations for South End of System

When nominating Gas for delivery to the south end of ULH&P's system three pipelines can be utilized, Tennessee Gas Pipeline, Columbia Gas Transmission and Columbia Gulf Transmission. On a daily basis, ULH&P's Gas Control Department will determine and include in its daily dispatching priorities the minimum volume of flowing Gas on Columbia Gas Transmission and/or Columbia Gulf Transmission to ULH&P's city gate.

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Exhibit C

Gas Supplier Contracts (effective for 2004-2005 Winter Season)

Anadarko Energy Services Company

ConocoPhillips

Occidental Energy Marketing, Inc.

CoEnergy Trading

Cinergy Marketing & Trading

OneOk Energy Marketing & Trading

Sequent (City Gate Peaking Supply)

Cinergy Marketing & Trading (City Gate Peaking Supply)

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Firm Contracts with Interstate Pipelines

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Columbia Gulf:

FTS-2 Agreement No. 42795	Nov-Mar	15,000 dth/day	expires 11/01/09
	Apr-Oct	15,000 dth/day	
FTS-1 Agreement No. 43878	Nov-Mar	22,782 dth/day	expires 11/01/09
	Apr-Oct	17,597 dth/day	

Columbia Gas:

SST Agreement No. 39323	Oct-Mar	39,656 dth/day	expires 04/01/10
	Apr-Sep	19,828 dth/day	
FSS Agreement No. 39328	MDWQ	39,656 dth/day	expires 04/01/10
	SCQ	1,365,276 dth/day	

Tennessee Gas Pipeline:

FT-A Agreement No. _____	Nov-Mar	47,500 dth/day	expires 05/01/06
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KO Transmission:

FTS Agreement No. 003	12 months	77,063 dth/day	expires 06/01/06
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Columbia Gas
Storage/Transportation Capacity
(SST)

ULH&P's Gas Control Department must be notified immediately by fax when ULH&P's SST capacity with Columbia Gas Transmission is released to third parties or used to deliver Gas by CM&T to other markets. Any capacity releases to other markets reduce the amount of Gas that would be available to be injected into or withdrawn from storage to ULH&P's city gate.

Peak Hourly Rate

Because of interstate pipelines limiting daily volumes on standard FT and IT contracts to 1/24 hourly flow rates, ULH&P contracts on various interstate pipelines for transportation agreements that allow 1/21 hourly flow rates in order to meet peak hour load requirements. ULH&P must have available to its city gate those interstate pipeline contracts that allow for 1/21 hourly flow rates during peak winter periods.

**KyPSC Staff First Set Data Requests
ULH&P Case No. 2004-00363
Date Received: October 14, 2004
Response Due Date: October 19, 2004**

KyPSC-DR-01-002

REQUEST:

2. Explain why ULH&P is seeking approval of an Asset Management Agreement for 2 years rather than 1 year.

RESPONSE:

When ULH&P entered into its first Asset Management Agreement with Mirant, ULH&P utilized a two-year term for the agreement because the potential bidders informed ULH&P that a one-year term was insufficient time for an asset manager to optimize the value of the transportation and storage contracts, and a two-year term would probably result in a higher asset management fee than a one-year agreement. The only reason that ULH&P utilized a one-year term for its 2003 Asset Management Agreement was because ULH&P's firm transportation and storage contracts were scheduled to expire after the 2003-2004 winter season, and ULH&P did not expect to have new firm transportation and storage contracts in place until after the time period for awarding the 2003 Asset Management Agreement. ULH&P believed that it was not practical to have a two-year term for the 2003 Asset Management Agreement because, at that point, ULH&P had no discounted firm transportation and storage contracts for the 2004-2005 winter season, and potential bidders therefore would not be able to value the Asset Management Agreement for the second year of a two-year term. ULH&P returned to a two-year term for the current Asset Management Agreement because it has negotiated new long-term firm transportation and storage contracts, and ULH&P believes that a two-year term will produce higher bids than a one-year term.

WITNESS RESPONSIBLE: James P. Henning

KyPSC Staff First Set Data Requests
ULH&P Case No. 2004-00363
Date Received: October 14, 2004
Response Due Date: October 19, 2004

KyPSC-DR-01-003

REQUEST:

3. Refer to Attachment B of the application. Section 1.17 states that the proposal is due August 17, 2004. Section 1.13 provides that all bids shall be valid for 30 days after the proposal due date. Are the bids provided in the application still valid bids?

RESPONSE:

CM&T's bid is still valid, since ULH&P accepted the bid subject to Commission approval. However, the bids from the other suppliers are no longer valid and would be subject to renegotiation in the event that ULH&P does not receive approval to enter the agreement with CM&T.

WITNESS RESPONSIBLE:

James P. Henning

KyPSC Staff First Set Data Requests
ULH&P Case No. 2004-00363
Date Received: October 14, 2004
Response Due Date: October 19, 2004

KyPSC-DR-01-004

REQUEST:

4. Refer to the Direct Testimony of James P. Henning at page 5.
 - a. Provide the number of potential bidders that Gas Commercial Operations presented to Cinergy's Global Risk Management Group for assessment of financial viability.
 - b. State whether the credit standards to which Cinergy's Global Risk Management Group holds potential bidders have changed since the bidding process for the 2003 Asset Management Agreement was conducted. If yes, describe all changes to these standards.
 - c. If known, explain why the five non-responding companies that received requests for proposals declined to participate in the bidding process.
 - d. Describe the circumstances that required ULH&P to seek clarification of the bids from CM&T and Occidental Energy Marketing, Inc.

RESPONSE:

- a. Gas Commercial Operations provided information to Cinergy's Global Risk Management Group for assessment of financial viability for all of the ten potential bidders for the Asset Management Agreement.
- b. No.
- c. One supplier cited a temporary shortage of personnel to evaluate ULH&P's pipeline and supply assets. Another non-responding company stated their unfamiliarity with Columbia system pipelines prohibited a bid. A third supplier dedicated six employees to review the RFP, but the team failed to deliver a recommendation to their management prior to ULH&P's deadline. The remaining two suppliers did not explain their lack of bidding.
- d. ULH&P sought clarification of the bids received from CMT and Occidental following the rules established under the RFP. Paragraph 1.7 of the "Instructions to Bidders" document within the RFP stated the following:

Bidders are requested to submit Proposals that are complete and unambiguous without the need for additional explanation or information. Cinergy may make a final determination as to whether a Proposal is acceptable or unacceptable solely on the basis of the

Proposal as submitted, and proceed with Proposal evaluation without requesting further information from any Bidder. If Cinergy deems it otherwise desirable and in its best interest, Cinergy may, in its sole discretion, request from Bidders additional information clarifying or supplementing, but not basically changing any Proposal as submitted.

CMT's bid to ULH&P was formula-based (See Page 5 of Attachment D in the application). Occidental did not state a bid; rather, they offered an alternate form of managing ULH&P's assets, suggesting a "gated molecule service" and offered to enter into negotiations with ULH&P for the cost of providing such service. (See pages 6 & 7 of Attachment D in the application.) ULH&P responded to both bidders by e-mail as follows: (See Attachment E of the application)

Your bid contained certain terms and conditions. Pursuant to these bidding instructions, we are seeking clarification of your bid. We request that you clarify your bid by providing the specific dollar amount that you would be willing to pay Cinergy as the Monthly Payment during the term of the Asset Management Agreement, as outlined by ...ULH&P during the RFP process. This dollar amount should not be expressed as a formula or range or subject to any qualifications, terms or conditions. We request that you provide this clarification by e-mail to the undersigned no later than 1:00 p.m. Eastern Standard Time on Thursday, August 19, 2004.

Both suppliers were given 24 hours to respond with a clarification. CMT responded (see Attachment F of the application) but Occidental did not.

WITNESS RESPONSIBLE: James P. Henning