

Case No. 2005-00319

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PUBLIC SERVICE
COMMISSION**GAS SUPPLY GUARANTEE AGREEMENT**

This Gas Supply Guarantee Agreement ("Agreement") dated this 1st day of July, 2005 by and between Citigas, L.L.C., a Delaware limited liability company ("Seller"), and Citipower, LLC, a Delaware limited liability company ("BUYER"). Buyer and Seller are referred to herein separately as a "Party" and collectively as the "Parties".

RECITALS

- A. Seller owns pipelines and gathering lines, has access to local (McCreary County) gas production, and access to a gas storage field, giving Seller the unique capability of supplying natural gas to Buyer for the foreseeable future;
- B. Seller agrees to provide all natural gas supply required by Buyer, on demand, from whatever source necessary to provide the volumes needed by Buyer
- C. Buyer desires to purchase gas from Seller, and Seller desires to sell to gas to Buyer, in the quantities and upon the other terms and conditions hereinafter set forth

AGREEMENT

In consideration of the mutual promises contained herein, the benefits to be derived by each Party hereunder and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement agree as follows:

**Article 1
Definitions**

The following terms, when used in this Agreement, shall have the following meanings assigned to them:

"Btu" means British thermal units.

"Btu Factor" the number multiplied by the actual Mcf of gas delivered to account for the heating value in excess of 1000 Btu per Mcf of the produced wet gas. For example, the Btu Factor for one Mcf of wet gas containing 1200 Btu's is 1.2. The Btu Factor shall be tested from time to time.

"Contract Price" is defined in Section 7.1

"Delivery Points" shall be at various meters designated as purchase meters by Buyer, the location of which has been approved by the Seller.

"Gas" means natural gas.

"Index Price" means the NYMEX or other agreed-upon index price

"Month" means a period beginning at 7:00 a.m. (Eastern Time) on the first day of a calendar month and ending at 7:00 a.m. (Eastern Time) on the first day of the next succeeding calendar month.

"Seller's Gas" means all Gas delivered to Buyers Pipeline.

"Transportation/Supply Guarantee Fee" means the fee charged by Citigas to transport and guarantee a supply of gas, on demand, to the Buyer. The Transportation/Supply Guarantee Fee shall be \$3.00 per MMBTU of Gas, to be adjusted each year based on the average general CPI index.

"Utility" is defined in Recital A.

Article 3 Quantity

3.1 Gas Supply. Seller shall supply all gas volume requirements of Buyer on demand.

3.2 Notice of Gas Supply Requirements. Buyer shall give such notice to Seller, no later than 10 days prior to the first day of the Month estimating the volume of gas needed for the following month. Such notice shall be provided the seller in writing.

Article 4 Delivery

4.1 Delivery Point. Seller's Gas shall be delivered to various meters designated as purchase meters by Buyer, at locations to be agreed to by Seller.

4.2 Passage of Title and Risk of Loss. Title and risk of loss to Seller's Gas shall pass to and vest in Buyer at the Delivery Point.

Article 5 Term of Agreement

5.1 Term. The term of this Agreement shall be until September 1, 2025.

Article 6 Price

6.1 "Contract Price". The price paid by Buyer to Seller as determined by the published NYMEX on the last day of the month or other agreed-upon index price, plus a Transportation/Supply Guarantee Fee, taking into consideration the BTU value of the gas delivered (i.e., including an adjustment for the BTU Factor).

Article 7
Delivery Pressure

8.3 Delivery Pressure. Seller's Gas shall be delivered by Seller to the Delivery Point at sufficient pressure to meet Buyer's needs.

Article 8
Metering, Maintenance and Measurement

9.1 Measurement. The measurement of Seller's Gas shall be performed in accordance with and governed by customary oil and gas industry procedures.

9.2 Additional Lines. Buyer and Seller shall purchase and install the meter, all regulators, valves, safety relief valves, and check valves as Buyer and Seller deem necessary to comply with the utility regulations. Buyer shall have the sole and exclusive right to control any and all regulators, valves, safety relief valves, and check valves at the Delivery Point. Seller shall take all reasonable steps necessary to ensure a safe delivery pressure. Costs of such jointly funded Additional Lines shall be shared 50% by Buyer, and 50% by Seller.

9.3 Meter Site. Buyer hereby grants and guarantees to Seller, so far as Buyer has the right to do so, a meter location with full right of ingress and egress to and from said site and the further right to do thereon, acts necessary or convenient for the carrying out of the terms of this Agreement. All pipelines and equipment placed, or caused to be placed, on such sites by Seller shall be and remains the Seller's property and may be removed by Seller at any time. This paragraph shall not be construed as creating an obligation on the part of the Buyer to install compression or to locate its meter station at any particular location other than where Buyer deems necessary in its sole and absolute discretion.

9.4 Maintenance. Seller shall maintain its pipeline and connections at the Delivery Point in a safe and suitable condition at all times and shall comply with all State and Federal rules and regulations. Seller agrees to maintain all of its pipelines, compressors, metering stations, and/or points of delivery free from trash and debris.

9.5 Easements, Rights-of-Way, etc. Buyer shall obtain and maintain all easements, rights-of-way, leases, and meter station agreements. The Buyer and Seller will each own the equipment and materials that they contribute to comply with this Contract.

9.6 Preservation of Charts. Buyer and/or Seller shall preserve, or cause to be preserved, for at least two (2) years all test data, charts, and other similar records pertaining to the measurement of Seller's Gas.

Calibration and Adjustments. The purchase meter will be tested and calibrated at regular intervals by a qualified testing firm selected by Buyer, the cost of which shall be divided equally between the Seller and Buyer.

Article 9 Billing and Payment

10.1 Statements. On or before the end of each Month, Seller shall render to Buyer a statement showing the actual quantity of Seller's Gas purchased during the prior Month (in MCF's) and the Contract Price for the month of sale. Within 30 days of delivery of such statement, Buyer shall make payment by check or wire transfer or check to an account designated by Seller.

10.2 Books and Records. Buyer shall have the right upon reasonable notice at reasonable hours to examine the books, records, and charts of Seller to the extent necessary to verify the accuracy of any statement, payment, calculation, or determination made pursuant to this Agreement. If any examination shall reveal, or if Seller shall otherwise discover, any error in such statements, payments, calculations, or determinations, then proper adjustment and correction thereof shall be made as promptly as practicable thereafter. All such statements, payments, calculations, or determinations shall be deemed for all purposes to be correct if not challenged and a written notice thereof delivered within two years after the date of such statement, payment, calculation, or determination.

Article 10 Responsibility and Title

11.1 Possession. As between the Parties, Seller shall be deemed to be in exclusive control and possession of Seller's Gas until Seller's Gas has been actually delivered to Buyer at the Delivery Points, after which point Buyer shall be deemed to be in exclusive control and possession of Seller's Gas.

11.2 Indemnification. The Party deemed to be in control and possession of Seller's Gas sold hereunder shall be responsible for and shall indemnify the other Party with respect to any losses, claims, liabilities, or damages arising in connection with or related to Seller's Gas when it is in the Party's control and possession; provided, that neither Party shall be responsible for any losses, claims, liabilities, or damages arising from the other Party's negligence, gross negligence, or willful misconduct.

11.3 Warranty of Title. Seller hereby warrants that it has title to or the right to sell Seller's Gas delivered and sold to Buyer hereunder and warrants against title claims arising by, through, or under Seller, but not otherwise. Seller further warrants that Seller's Gas is free and clear of all liens, adverse claims, any and all assessments, and any other encumbrances of every kind when delivered hereunder that arise by, through, or under Seller, but not otherwise.

Article 11
Assignments

12.1 Restrictions on Assignment. Seller may not assign or delegate any of its rights or obligations under this Agreement without the prior written consent of Buyer.

12.2 Assignments. Except as permitted by Section 12.1, any purported assignment or delegation (legal or beneficial) by Seller shall be void and ineffective.

12.3 Inurement. Subject to the foregoing provisions, this Agreement binds and inures to the benefit of the Parties and their respective successors and assigns.

Article 12
Force Majeure

13.1 Non-Performance. Neither Party shall be responsible for any loss or damage to the other Party resulting from any delay in performing or failure to perform any obligation under this Agreement (other than Buyer's obligation to make payments of dollar amounts due and owing under this Agreement) to the extent such failure or delay is caused by a Force Majeure Event.

13.2 Force Majeure Event. "Force Majeure Event" means any event that directly or indirectly renders a Party unable, wholly or in part, to perform or comply with any obligation, covenant, or condition in this Agreement, including the following events (to the extent they otherwise satisfy the foregoing definition):

(a) act of God, fire, lightning, landslide, earthquake, storm, hurricane, hurricane warning, flood, high water, washout, or explosion;

(b) strike, lockout, or other industrial disturbance, act of the public enemy, war, military operation, blockade, insurrection, riot, epidemic, arrest or restraint of government or people, civil disturbance, or national emergency;

(c) the inability of the affected Party to acquire, or the delay on the part of the affected Party in acquiring materials, supplies, machinery, equipment, servitudes, right-of-way grants, easements, permits, or licenses, approvals, or authorizations by regulatory bodies needed to enable such Party to perform hereunder;

(d) breakage of or accident to machinery, equipment, facilities, or lines of pipe, including the gathering systems, plants, and pipelines gathering, compressing, treating, and transporting gas downstream of the Delivery Point, the repair, maintenance, improvement, replacement, test, or alteration of or to such gathering systems, plants, or pipelines, the freezing of a well or line of pipe, well blowout, or the partial or entire failure of a gas well; or

(e) act, order, or requisition of any governmental agency or acting governmental authority, or any governmental proration, regulation, or priority.

13.3 Remedy of a Force Majeure Event. The affected Party will exercise diligence in good faith to remedy each Force Majeure Event and resume full performance under this Agreement as soon as reasonably practicable, except that the settlement of strikes, lockouts, or other labor disputes shall be entirely within the discretion of the affected Party

Article 13 Notice

14.1 Notices. All notices, consents, requests, demands, instructions, approvals, and other communications permitted or required to be given hereunder shall be validly given or made in writing if (a) personally delivered, (b) delivered and confirmed by telecopier or like facsimile transmission service, (c) delivered by Federal Express or other reputable overnight courier delivery service or (d) deposited in the United States mail, first class, postage prepaid, certified or registered, return receipt requested, addressed as follows:

If to Seller:

Citigas, L.L.C.
2122 Enterprise Road
Greensboro, NC 27408

Attention: Dan Forsberg
Fax: (336) 379-0881

If to Buyer:

Citipower, L.L.C.
37 Courthouse Street
Whitley City, KY 42653

Attention: Vernon Smith
Fax: (606) 376-8830

or to such other place within the United States of America as any Party may designate as to itself by written notice to the others. All notices given by personal delivery or mail shall be effective on the date of actual receipt at the appropriate address. Notice given by telecopier shall be effective upon actual receipt if received during recipient's normal business hours or at the beginning of the next business day after receipt if received after the recipient's normal business hours. All notices by telecopier shall be confirmed promptly after transmission, by certified mail or personal delivery.

Article 14
Other Provisions

15.1 APPLICABLE LAW. THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT BEAR A REASONABLE RELATIONSHIP TO, AND SHALL BE CONSTRUED AND ENFORCED UNDER, THE LAWS OF THE COMMONWEALTH OF KENTUCKY, EXCLUDING ANY CONFLICT OF LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION HEREOF TO ANOTHER JURISDICTION.

15.2 Venue. The parties hereby irrevocably submit to the jurisdiction of Whitley County, Kentucky, and to the jurisdiction of the United States District Court for the Eastern District of Kentucky, for the purposes of any suit, action or other proceeding arising out of or relating to this agreement and each party waives any right to change venue.

15.3 Integrated Agreement. This Agreement is the full, final, complete, and exclusive expression of the agreements of the Parties with respect to the matters covered by this Agreement.

15.4 Amendment. This Agreement may not be amended, altered, revised, renewed, extended, or otherwise changed, except by a writing that refers to this Agreement and is executed by the Parties.

15.5 Construction of Agreement. In construing this Agreement, the following principles shall be followed:

(I) no consideration shall be given to the captions of the articles, sections, subsections, or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction;

(ii) no consideration shall be given to the fact or presumption that one Party had a greater or lesser hand in drafting this Agreement;

(iii) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

(iv) the word "includes" and its syntactical variants mean "includes, but is not limited to" and corresponding syntactical variant expressions;

(v) a defined term has its defined meaning throughout this Agreement regardless of whether it appears before or after the place in this Agreement where it is defined;

(vi) the plural shall be deemed to include the singular, and vice versa,

(vii) each gender shall be deemed to include the other gender; and

(viii) each exhibit, attachment, and schedule to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any exhibit, attachment, or schedule, the provisions of the main body of this Agreement shall prevail.

15.6 No Waiver. Failure of either Party to require performance of any provision of this Agreement shall not affect either Party's right to require full performance thereof at any time thereafter, and the waiver by either Party of a breach of any provision hereof shall not constitute a waiver of a similar breach in the future or of any other breach or nullify the effectiveness of such provision.

15.7 No Partnerships. This Agreement is neither a partnership nor joint venture, and each party will own the equipment it has supplied.

15.8 Pledges. It is understood and agreed by the parties hereto that this Agreement shall be included as collateral pledged to various financial institutions to secure Seller's loans collateralized by the Subject Interests; or with respect to the Buyer, loans collateralized by the Utility and any related interests in real or personal property. This Agreement will inure to the benefit of the successors, assigns, and beneficiaries of Buyer and/or Seller including but not limited to, the said financial institutions.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures the day and year first above written.

SELLER:

CITIGAS, L.L.C.

By: 

Daniel R. Forsberg
President

BUYER:

CITIPower, L.L.C.

By: _____

R. Vernon Smith
Operations Manager