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RECEIVED

MAY 01 2018

PUBLIC SERVICE  
COMMISSION

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May 1, 2018

Gwen Pinson  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, Kentucky

Re: Natural Energy Utility Corporation:  
Special Contract; Ordinary extension

Dear Ms. Pinson:

Natural Energy Utility Corporation (NEUC) has entered into a special contract for gas service with a new customer, which is being submitted for approval with a petition for confidentiality.

The purpose of the contract is to provide the customer with its total natural gas supply. The business is located on property formerly occupied by a customer of NEUC. All NEUC pipelines and facilities necessary to serve the facility are currently in place on the property. However, due to the volume of gas potentially required by the customer and the relocation of the delivery point, NEUC will need to install and upgrade some facilities to accommodate the increased volumes. The total cost of the upgrades and the financing is described in the contract.

Based on the circumstances of this contract, NEUC believes a Certificate of Convenience and Necessity is not required to fulfil the upgrade of facilities to supply the contract. The improvements fall within the definition of an extension in the ordinary course of business, pursuant to 807 KAR 5001(9)(3):

Extensions in the ordinary course of business. No certificate of public convenience and necessity will be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general area in which the utility

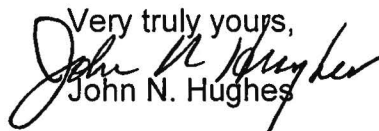
renders service or contiguous thereto, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved or will not result in increased charges to its customers.

Based on the contract's terms, there is no financial impact on NEUC rate-payers or the current operations of the company. See section 2, page 1 of the contract, which describes the financing of the construction. This project will have no impact on the company's debt or operating costs. It will not result in the wasteful duplication of utility plant, which has been defined as "excess of capacity over need" and "an excessive investment in relation to productivity or efficiency." *Kentucky Utilities Co. v. Pub. Serv. Comm'n*, 252 S.W.2d. 885, 890 (Ky. 1952). The company's current plant in service is approximately \$6.9M. Because this project is being sized to meet the customer's demand and is less than 1% of NEUC's current plant in service, the investment relative to the positive revenue from the contract is not excessive.

The project will not compete with the facilities of existing public utilities and does not involve a sufficient capital outlay to materially affect NEUC's financial condition or to require an increase in rates. The capacity of the upgraded facilities is necessary to meet the contractual demand of the customer. There is no existing facility that is available to meet the volumetric demand of the contract. There is no other regulated utility with service adjacent to or near the property.

NEUC proposes to construct 2,600 feet of six (6) inch plastic pipeline consisting of SDR11.5, Driscoplex 6500, PE 2406/2708CE and ASTM D 2513 WT006K plastic line. The MOP of the line will be 60 PSI and the normal daily operating pressure will be 30 PSI. The maximum daily rate will be 1,100 mcf's and the average daily rate will be 300 mcf's. Construction will be performed by Opell Construction and supervised by NEUC personnel and will take six to eight weeks to complete. Regulation upgrades will take place at the connection currently serving the existing six (6) inch main. NEUC will also install a GE 16 M175 B Sr. 3 CD meter. Construction will begin in May 2018.

Based on these facts, NEUC believes that the project does not need a certificate of convenience and necessity and requests approval of the special contract as filed. If additional information is needed or if the construction requires an application for a certificate of convenience and necessity, please let me know.

Very truly yours,  
  
John N. Hughes  
Attorney for NEUC

COMMONWEALTH OF KENTUCKY  
BEFORE THE  
KENTUCKY PUBLIC SERVICE COMMISSION

RECEIVED

IN THE MATTER OF:

APPLICATION OF NATURAL ENERGY UTILITY )  
CORPORATION FOR CONFIDENTIAL TREATMENT OF A )  
SPECIAL CONTRACT )

MAY 01 2018

PUBLIC SERVICE  
COMMISSION

**PETITION FOR CONFIDENTIALITY**

Natural Energy Utility Corporation (NEUC), by counsel, pursuant to KRS 278.160(3) and 807 KAR 5:001(13) petitions the Commission for approval of the attached special contract and for confidential protection of the matters redacted therein. Consistent with prior filings of these special contracts, one non-redacted and eleven redacted copies of the special contract are attached.

**BACKGROUND**

NEUC has entered into a special contract with one of its customers, a copy of which is attached. Pursuant to 807 KAR 5:011, NEUC submits the special contract for approval by the Commission.

The Company requests the Commission to accept and approve the attached special contract and grant confidential protection to the matters redacted therein, pursuant to 807 KAR 5:001(13).

**CONFIDENTIAL PROTECTION**

The Commission has consistently granted confidential protection to the terms of special contracts filed under the provisions of 807 KAR 5:001, Section 13 and KRS 61.878. The information contained in the special contract is commercial information that if disclosed could cause substantial competitive harm to NEUC. This information is not publicly available. It would be difficult or impossible for someone to discover this information from other sources. If

this information was available to competitors in this form, they could use it to the competitive detriment of NEUC. This information is not generally disclosed to non-management employees of NEUC and is protected internally by the Company as proprietary information. The disclosure of this proprietary information would result in significant or irreparable competitive harm to NEUC by providing its competitors with non-reciprocal competitive advantage. No public purpose is served by the disclosure of such information.

KRS 61.878 (1)(c) provides that “records confidentially disclosed to an agency or required by any agency to be disclosed to it, generally recognized as confidential or proprietary, which is openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records “shall remain confidential unless otherwise ordered by a court of competent jurisdiction.” The natural gas industry is very competitive. NEUC has active competitors, who could use this information to their advantage and to the direct disadvantage of Atmos. NEUC would be at a competitive threat of loss of business due to the ability of its competitors to leverage the information to their advantage. The public disclosure of the customer name, customer identifiable information, monetary terms negotiated with the customer and critical monetary terms would permit an unfair advantage to those competitors. With the identity of the customer and the knowledge of the contract terms, competitors would have inside information to target the customer. For these reasons, the customer name, customer identifiable information, and monetary terms in the contracts are exempt from public disclosure pursuant to KRS 61.878(c)(1). The Commission has also previously ruled that the similar special contracts are entitled to confidential protection. See, e.g. In Re: Application of Atmos Energy Corporation for Adjustment of Rate Case No. 2013-00148.

The contract also includes a map of the proposed pipeline. Under the Kentucky Open Records Act, the Commission is entitled to withhold from public disclosure information disclosed to it to the extent that open disclosure would:

“have a reasonable likelihood of threatening the public safety by exposing a vulnerability in preventing, protecting against, mitigating, or responding to a terrorist act and limited to: . . . ,

(f) infrastructure records that expose a vulnerability referred to in this subparagraph through the disclosure of the location, configuration, or security of critical systems, including public utility critical systems. These critical systems shall include but not be limited to information technology, communications, electrical, fire suppression, ventilation, water, wastewater, sewage, and gas systems and;

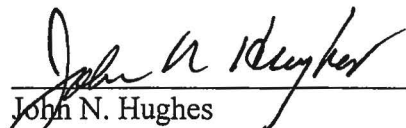
(g) The following records when their disclosure will expose a vulnerability referred to in this subparagraph: **detailed drawings, schematics, maps**, or specifications of structural elements, floor plans, and operating, utility, or security systems of any building or facility owned, occupied, leased, or maintained by a public agency.”

This Commission has recognized that similar diagrams and maps "are infrastructure records that disclose the location, configuration, or security of public utility systems" and therefore, should be treated as confidential. See Case No. 2014-00166 *In the Matter of 2104 Integrated Resource Plan of Big Rivers Electric Corporation*, KY PSC Order, p. 7 (August 26, 2014).

NEUC requests that the attached non-redacted special contract and supporting information be held confidentially indefinitely. The statutes cited above do not allow for disclosure at any time. Given the competitive nature of the natural gas business and the efforts of non-regulated competitors to encroach upon traditional markets, it is imperative that regulated information remain protected and that the integrity of the information remain secure.

For those reasons, NEUC requests that the attached non-redacted copy of the special contract and cost analysis be treated as confidential.

Submitted by:

  
\_\_\_\_\_  
John N. Hughes  
124 West Todd Street  
Frankfort, KY 40601  
(502) 227-7270  
Fax: None  
[inhughes@johnnhughespsc.com](mailto:inhughes@johnnhughespsc.com)

Attorney for NEUC Corporation

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AERIAL PHOTOGRAPH

REDACTED

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PROJECT COST

REDACTED

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**GAS SERVICE AGREEMENT**

THIS GAS SERVICE AGREEMENT (this "Agreement") is entered into this 19<sup>th</sup> day of April, 2018, by and between Natural Energy Utility Corporation ("NEUC"), a Kentucky corporation, 2560 Hoods Creek Pike, Ashland, KY 41102, and [REDACTED] limited liability company, doing business at [REDACTED] 41102. NEUC and [REDACTED] are sometimes hereinafter referred to as, individually, the "Party" and, collectively, the "Parties".

RECITALS

WHEREAS, NEUC is a natural gas utility regulated by the Kentucky Public Service Commission;

WHEREAS, [REDACTED] company located within the service territory of NEUC; and

WHEREAS, [REDACTED], Inc. for construction of facilities [REDACTED] located in Boyd County, Kentucky, known as [REDACTED]

WHEREAS, [REDACTED] desires to procure from NEUC, and NEUC desires to provide to [REDACTED] natural gas sales and service, subject to the terms and conditions of this Agreement; and

WHEREAS, upon execution of this Agreement, NEUC intends to commence construction of a pipeline ("Pipeline") that will provide natural gas to the [REDACTED].

NOW, THEREFORE, for and in consideration of the covenants, agreements, terms, provisions and conditions hereinafter set forth and other good and valuable consideration, the receipt, sufficiency and adequacy of which the Parties hereby acknowledge, intending to be legally bound, the Parties agree as follows:

1. Gas Service. Subject to the terms and conditions of this Agreement, NEUC hereby agrees to deliver and sell, on an as-available basis above a minimum firm availability of [REDACTED] MCF per day, up to a maximum of [REDACTED] MCF per day, and [REDACTED] agrees to receive and purchase all of the natural gas required by [REDACTED] during the term of this Agreement [REDACTED]). The quantities of natural gas delivered and sold by NEUC, and received and purchased by [REDACTED], pursuant to this Agreement shall be those quantities of natural gas delivered to NEUC by third-party suppliers ("Local Production or Interstate-Intrastate Gas").

2. Construction of Pipeline. Upon execution of this Agreement, [REDACTED] shall pay NEUC the fixed sum of [REDACTED] for the cost of constructing the Pipeline. NEUC shall have sixty (60) days after receipt of this sum to complete the Pipeline project. An aerial photograph of the

proposed location of the Pipeline is attached hereto as Exhibit A. The proposed location is subject to change depending on terrain conditions.

3. Delivery Point. The "Delivery Point" for natural gas delivered and sold by NEUC pursuant to this Agreement shall be at the outlet side of the natural gas meter to be owned by NEUC at the [REDACTED]. See also Exhibit A.

4. Quality. The natural gas delivered or sold by NEUC pursuant to this Agreement shall be blended production and/or Interstate-Intrastate Gas. The natural gas delivered hereunder shall be of commercial quality containing no more than one (1) grain of hydrogen sulfide nor more than ten (10) grains of total sulfur per one hundred (100) cubic feet. The natural gas so delivered shall contain an average total heating value for the time period hereof not less than one thousand forty (1,040) British Thermal Units (BTU) per cubic foot.

5. Measurement. The natural gas delivered or sold by NEUC pursuant to this Agreement shall be measured by NEUC's meter located just upstream of the Delivery Point.

6. Price.

A. For the natural gas service provided by NEUC to [REDACTED] pursuant to this Agreement, the following charges shall be due from [REDACTED] each month for [REDACTED] requirements, based upon NYMEX last day settlement price plus the following:

[REDACTED]

B. [REDACTED] shall pay any sales and use and other taxes which may be applicable to the natural gas service provided by NEUC pursuant to this Agreement.

7. Billing and Payment. For the charges set forth in Section 6 hereof, NEUC shall bill [REDACTED] each month and [REDACTED] shall make payment to NEUC no later than 15 days after receipt of NEUC's monthly invoice. Invoices shall be emailed to the billing address set forth in Section 14.10. In the event that payment of any invoiced amount is not received within 15 days of receipt of the invoice by [REDACTED]-, interest on the overdue amount shall accrue at the rate of 1.5% per month until the date payment is received by NEUC. In the event any invoice is not paid by [REDACTED] within thirty (30) days after receipt of the invoice by [REDACTED], NEUC may (reserving cumulatively all other remedies and rights under this Agreement and otherwise available at law and equity) at its sole option and discretion, and without prior notice to [REDACTED] terminate service and/or terminate this Agreement without any further obligation or liability to [REDACTED]. NEUC has the option to require payment by EFT.

8. Term. This Agreement shall be effective upon the date this Agreement is executed ("Effective Date"), This Agreement shall have a primary term of [REDACTED] years after the date gas is first delivered ("Initial Term"); [REDACTED] ("Renewal Term") thereafter, unless either Party delivers written notice of termination to the other Party at least [REDACTED] days prior to the end of the Initial Term or any Renewal Term. Gas service shall commence upon completion of the Pipeline and approval by the Kentucky Public Service Commission.

9. Termination. [REDACTED] shall have a right to terminate this agreement upon [REDACTED] days written notice to NEUC without further liability.

10. Warranty. NEUC warrants that it has and will have throughout the term of this Agreement good and merchantable title to natural gas delivered to [REDACTED] by NEUC and that the same is and shall be free and clear of all taxes, liens and encumbrances. NEUC shall indemnify and save [REDACTED] harmless from any and all claims in respect of the title to natural gas delivered and sold by NEUC pursuant to this Agreement.

11. Force Majeure. To the extent, if any, that either Party is prevented, in whole or in part, from performing any of its obligations hereunder due to reasons of Force Majeure, such obligations (other than the obligation to make monetary payments as required under this Agreement) shall be suspended during the pendency of such event of Force Majeure. For the purpose of this Agreement, "Force Majeure" shall mean an event not anticipated as of the execution of this Agreement which is not within the reasonable control of the Party claiming suspension (the "Claiming Party"), and which by the exercise of due diligence the Claiming Party is unable to overcome or to obtain, or cause to be obtained, a commercially reasonable substitute therefor, and may include, but is not restricted to acts of God; act of public enemy; war; lightning; fire; violent storm; explosion; civil disturbance; public riot; labor dispute; environmental catastrophe; inability to obtain government permits, materials or similar events or occurrences; breakages of machinery or lines of pipe; labor shortage; sabotage; and action or restraint by public or governmental authority including without limitation the Kentucky Public Service Commission; change of law; and other events, whether enumerated above or not, which wholly or partially prevent the delivery, storage or sale of natural gas.

12. Security Assurances.

A. NEUC may require [REDACTED] to provide a letter of credit ("LOC") if it is late with any invoice payment. In that event, the LOC shall be in the amount of the highest monthly invoice for gas deliveries over the previous twelve (12) months.

B. NEUC may require [REDACTED] to provide a LOC if the monthly invoice becomes greater than [REDACTED] for two (2) consecutive months ("Base Period"). The amount of the LOC in this event shall be the average of the Base Period billings.

C. NEUC may require reasonable and proportionate increases in the LOC should monthly invoices average greater than currently anticipated.

13. Delivery Pressure. NEUC shall ensure that the gas delivered to the [REDACTED] has a pressure of at least twenty (20) psi.

14. Miscellaneous.

14.1. Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof;

14.2. Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as to reasonably effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision of this Agreement with a valid and enforceable provision.

14.3. Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

14.4. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the parties hereto agrees that process may be served upon them in any manner authorized by the laws of the Commonwealth of Kentucky for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction and such process.

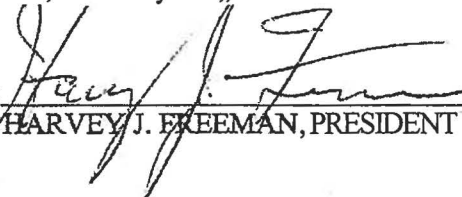
14.5. Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

14.6. Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.



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

NATURAL ENERGY UTILITY CORPORATION  
2560 Hoods Creek Pike  
Ashland, Kentucky 411,02

By:   
HARVEY J. FREEMAN, PRESIDENT



By:

