

(Multicurrency — Cross Border)



International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of October 1, 2005

...DTE Energy Trading, Inc... and ...Louisville Gas and Electric Company/Kentucky Utilities Company... have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

(i) in the same currency; and

(ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If: —

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(c) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of an payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that: —

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)). proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

- (i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;
- (ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

- (iii) **Credit Support Default.**

- (1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

- (2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

- (3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

- (iv) **Misrepresentation.** A representation (other than a representation under Section 3(c) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

- (v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

- (vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:-

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): —

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party’s policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(c).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default: —

(1) ***First Method and Market Quotation.*** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) ***First Method and Loss.*** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) ***Second Method and Market Quotation.*** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss*. If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events**. If the Early Termination Date results from a Termination Event: —

(1) *One Affected Party*. If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties*. If there are two Affected Parties: —

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy**. In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate**. The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) **Separate Indemnities.** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12 Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in a inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iv).

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Illegality” has the meaning specified in Section 5(b).

“Indemnifiable Tax” means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

“law” includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **“lawful”** and **“unlawful”** will be construed accordingly.

“Local Business Day” means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of: ---

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(c), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

C.S.
DTE ENERGY TRADING, INC.

LOUISVILLE GAS AND ELECTRIC COMPANY/
KENTUCKY UTILITIES COMPANY

SOP

By: _____

Name: Steven C. Mabry

Title: President

Date: 10-24-02

By: _____

Name:

Title:

Date:

MARTYN GALLUS
SR. VICE PRESIDENT
LOUISVILLE GAS & ELECTRIC COMPANY
KENTUCKY UTILITIES

10/3/05

**SCHEDULE
to the ISDA Master Agreement
(1992 Multi-Currency- Cross Border)**

dated as of
October 1, 2005
Between

**DTE Energy Trading, Inc.
a Michigan corporation
("Party A"),
and**

**Louisville Gas and Electric Company, a Kentucky corporation /
Kentucky Utilities Company, a Kentucky and Virginia corporation
("Party B"),**

**Part 1
Termination Provisions**

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:

Section 5(a)(v)	(Default under Specified Transaction):	Not Applicable
Section 5(a)(vi)	(Cross Default):	Not Applicable
Section 5(a)(vii)	(Bankruptcy):	Not Applicable
Section 5(b)(iv)	(Credit Event Upon Merger):	Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v)	(Default under Specified Transaction):	Not Applicable
Section 5(a)(vi)	(Cross Default):	Not Applicable
Section 5(a)(vii)	(Bankruptcy):	Not Applicable
Section 5(b)(iv)	(Credit Event Upon Merger):	Not Applicable

- (b) **"Specified Transaction"** has the meaning specified in Section 14 of this Agreement, except that such term is amended by adding on the eighth line after currency option the words “, agreement for the purchase, sale or transfer of any Commodity or any other commodity trading transaction, in each case provided that such purchase, sale, or transfer is transacted under this Agreement.” For this purpose, the term “Commodity” means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, emission allowances, petroleum, crude oil, coal, natural gas, and byproducts thereof)..
- (c) The **"Cross Default"** provisions of Section 5(a)(vi), as amended, will apply to Party A and to Party B, in each case.
- (i) Section 5(a)(vi) is hereby amended by (i) deleting in the seventh line thereof the words “, or becoming capable at such time of being declared,” and (ii) adding the following

before the “;” at the end of the paragraph “, provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if the default, Event of Default or other similar condition or event referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature and funds were available to such party to enable it to make the relevant payment when due, provided that such error or omission is remedied within 5 Local Business Days of the non-paying party’s receipt of a notice, in writing, from the other party, specifying any such non-payment.”

"Specified Indebtedness" means any obligation (whether present or future, actual or contingent, secured or unsecured, as principal or surety or otherwise) in respect of borrowed money, but shall exclude (a) any obligation owed to trade creditors in respect of the purchase of goods in the ordinary course of business and (b) any obligation, liability for payment of which is being contested in good faith by the obligated party, provided that the obligated party demonstrates its clear ability to pay such amount within two (2) Local Business Days following any request from the other party and that such demonstration is satisfactory to the other party in its reasonable opinion. .”

"Threshold Amount" means with respect to Party A or Party A’s Credit Support Provider, \$50,000,000; and with respect to Louisville Gas and Electric Company, \$25,000,000 and with respect to Kentucky Utilities Company, \$25,000,000; provided, that such Threshold Amount shall apply individually and not collectively with respect to each entity set forth above notwithstanding anything to the contrary set forth in Section 5(a)(vi) of the Agreement.

- (d) Section 5(a)(viii) is hereby amended by deleting the introductory paragraph in its entirety and replacing it with the following:

"The party, or any Credit Support Provider as specified hereunder of such party, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes or incorporates, into or as, another entity and at the time of such consolidation, amalgamation, merger, transfer, reorganization or incorporation:-"

Section 5(a)(viii) is hereby further amended in the first line of subparagraph (1) thereof and in the second line of subparagraph (2) thereof by replacing the word "or" with a comma (",") and after the word "transferee" adding the words ", reorganized or incorporated,".

- (e) The **"Credit Event Upon Merger"** provision of Section 5(b)(iv) will apply both to Party A and to Party B; *provided, however*, that “materially weaker” means (i) the Credit Rating of the resulting, surviving or transferee entity is less than BBB- by Standard & Poor’s, a division of The McGraw-Hill Companies, Inc. (“S&P”) or Baa3 by Moody’s Investors Service, Inc. (“Moody’s”), or (ii) in the event the resulting, surviving or transferee entity is not rated by at least one of the foregoing rating agencies, the Internal Policies (as defined below) in effect at the time of the party which is not the Affected Party, would lead such non-Affected Party, solely as a result of a change in the nature, character, identity or condition of the Affected Party from its state (as a party to the Agreement) prior to such consolidation, amalgamation, merger or transfer, to decline to make an extension of credit to, or enter into a Transaction with, the resulting, surviving or transferee entity. “Internal Policies” shall mean a party’s (1) internal credit limits applicable to individual entities, (2) other limits on doing business with entities domiciled in certain jurisdictions or engaging in certain activities, or (3) internal restrictions on doing business with entities with

whom such party has had prior adverse business relations.

"Credit Rating" means, with respect to an entity, the rating then assigned to such entity's senior long-term unsecured debt unsupported by third party credit enhancement or if such entity does not have a rating for its senior long-term unsecured debt then the rating then assigned to such entity as an issuer credit rating (corporate credit rating) by S&P or issuer rating by Moody's.

- (f) The "**Automatic Early Termination**" provision of Section 6(a) will not apply to Party A and will not apply to Party B.
- (g) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
 - (i) Market Quotation will apply.
 - (ii) The Second Method will apply.
- (h) "**Termination Currency**" means United States Dollars (USD\$). "**Contractual Currency**" means United States Dollars (USD\$) unless otherwise specified in a Confirmation.
- (i) **Additional Termination Event.** The following will constitute an additional termination event for purposes of Section 5(b):

"(ix) "**Material Adverse Change**". If at any time there shall occur a Material Adverse Change in respect of a party ("Affected Party"), then the other party ("Demanding Party") may require the Affected Party to provide Adequate Assurance in an amount determined by the Demanding Party in a commercially reasonable manner. The Affected Party shall be required to provide such Adequate Assurance by the end of the second Business Day following receipt of notice. If the Affected Party fails to provide such Adequate Assurance as required hereunder then a Termination Event may be declared by the Demanding Party. A "Material Adverse Change" means: (i) a party or the Credit Support Provider (if any) of a party, as applicable, shall have a Credit Rating that is rated either by S&P below BBB-, or its equivalent, or by Moody's below Baa3 or its equivalent, or (ii) if at any time a party ceases to be rated by either S&P nor Moody's. "Adequate Assurance" shall mean security in the form of cash or standby irrevocable letter of credit, in an amount (which may be up to the amount equal to the Settlement Amount that would be owed) and term reasonably specified by the Demanding Party.

Part 2

Tax Representations

- (a) **Payer Representation.** For the purpose of Section 3(e) of this Agreement each of Party A and Party B make the following representations:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction to withholding for or on account of any Tax from any payment (other than interest under Sections 2(e), 6(d)(ii), or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representation made by the other party pursuant to Section 3(f) of this Agreement;

- (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement; and
 - (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.
- (b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the following representations specified below:

The following representation will apply in relation to Party A:

Party A is a corporation created or organized under the laws of the State of Michigan. Party A is a U.S. person within the meaning of Section 7701 of the Internal Revenue Code and its U.S. taxpayer identification number is 38-3323-526.

The following representation will apply in relation to Party B:

Louisville Gas and Electric Company ("LGE") is a corporation created or organized under the laws of the Commonwealth of Kentucky and Kentucky Utilities ("KU") is a corporation created or organized under the laws of the Commonwealths of Kentucky and Virginia. Party B is a U.S. person within the meaning of Section 7701 of the Internal Revenue Code and its U.S. taxpayer identification number for LGE is 61-264150 and for KU is 61-0247570.

Part 3 Agreement to Deliver Documents

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

- (a) Tax forms, documents or certificates to be delivered are: As soon as practicable after a demand by the other party, Party A and Party B each agree to complete (accurately and in a manner reasonably satisfactory to the other), execute and deliver such form or forms as are deemed necessary to permit a party to make payments free and clear of, or at a reduced rate of, any deduction or withholding for or on account of any present or future Tax.
- (b) Other documents to be delivered are:

Party Required to Deliver Document	Form/Document/Certificate	Date by Which to be Delivered	Covered by Section 3(d) Representation
Party A and Party B	Certified copies of resolutions of authorized body authorizing execution, delivery, and performance of this Agreement	Execution of Agreement	Yes

Party A and Party B	Annual Report of the Party or its Credit Support Provider, if any, containing consolidated financial statements for the relevant year prepared in accordance with generally accepted accounting principles and certified by independent certified public accountants	If requested, and as soon as available and in any event within 75 days after the end of each fiscal year of the delivering party, if such statements are not available on "EDGAR" or such party's internet home page	Yes
Party A	Guarantee of Credit Support Provider	Excution of Agreement	Yes
Party A and Party B	Evidence of authority of signatories [see sample form attached as Exhibit A]	Execution of Agreement	Yes

Part 4
Miscellaneous

(a) Address for Notices. For the purpose of Section 12(a) of this Agreement

Address for notices or communications (other than with respect to payments) to Party A:

Attention: Contract Administration

Address: **DTE Energy Trading, Inc.**
414 S. Main Street, Suite 200
Ann Arbor, MI 48104

Facsimile No: (734) 887-2235 Telephone: (734) 887-2042

With Additional Notice of Event of Default or Termination Event to:

Attention: General Counsel

Address: **DTE Energy Trading, Inc.**
414 S. Main Street, Suite 200
Ann Arbor, MI 48104

Facsimile No.: (734) 887-2235 Telephone (734) 887-4097

Address for notices or communications (other than with respect to payments) to Party B:

Attention: Contract Administration

Address: **Louisville Gas and Electric Company**
220 West Main Street, 7th Floor
Louisville, KY 40202

Facsimile No.: (502) 627-4222 Telephone: (502) 627-4251

With Additional Notice of Event of Default or Termination Event to:

Attention: General Counsel

Address: **Louisville Gas and Electric Company**
220 West Main Street
Louisville, KY 40202

Facsimile No.: (502) 627-4622

(b) Process Agent. For the purpose of Section 13(c) of this Agreement:

Party A appoints as its Process Agent: None

Party B appoints as its Process Agent: None

- (c) **Accounts.** If a Confirmation does not state the account to which United States Dollar payments are to be made, they shall be made by either Automated Clearing House ("ACH") or wire transfer as follows:

Party A

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- (d) **Offices.** The provisions of Section 10(a) of this Agreement will apply to this Agreement.
- (e) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:
- Party A is not a Multibranch Party.
- Party B is not a Multibranch Party.
- (f) **Credit Support Document.** Details of any Credit Support Document:
- (i) With respect to Party A and Party B, the Credit Support Annex, attached hereto as Annex A, which constitutes a Credit Support Document, is incorporated by reference in, and made part of, the Agreement and each Confirmation (unless provided otherwise in a Confirmation) as if set forth in full in the Agreement or such Confirmation.
- (ii) With respect to Party A, a Guaranty, in the form acceptable to Party B, executed by Party A's Credit Support Provider in favor of Party B.
- (g) **Credit Support Provider.**
- Credit Support Provider means in relation to Party A: DTE Energy Company.
Credit Support Provider means in relation to Party B: Not Applicable.
- (h) **GOVERNING LAW. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAWS. THE PARTIES AGREE THAT THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT IN ANY WAY APPLY TO, OR GOVERN, THIS AGREEMENT OR ANY TRANSACTION.**
- (i) **Netting of Payments.** The limitation set forth in Section 2(c)(ii) will not apply to Transactions

thus allowing the netting of Transactions. For avoidance of doubt, the parties hereby acknowledge and agree that the provisions of Section 2(c) shall not apply to any transaction or agreement not covered by this Agreement.

- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement, except that with respect to Party A, The Detroit Edison Company and Michigan Consolidated Gas Company are hereby excluded for all purposes other than Confidentiality in Section 5(i) hereof. For the purposes of Section 3(c), with respect to Party A, the term "Affiliate" applies only to DTE Energy Company, Party A's Credit Support Provider and Party B will be deemed to have no Affiliates.

Part 5 Other Provisions

- (a) **Confirmations and Procedures for Entering into Transactions.** No more than two (2) Local Business Days following the date on which the parties reach agreement on the terms of a Transaction as contemplated by Section 9(e)(i), Party A will send to Party B a Confirmation. Party B will promptly thereafter confirm the accuracy of (in the manner required by Section 9(e)(ii)), or request the correction of, such Confirmation (in the latter case, indicating how it believes the terms of such Confirmation should be correctly stated and such other terms which should be added to or deleted from such Confirmation to make it correct). If Party B has not accepted or disputed the Confirmation in the manner set forth above within two (2) Local Business Days after it was sent to Party B, the Confirmation shall be deemed binding as sent absent manifest error. If Party A fails to send a Confirmation within two (2) Local Business Days following the date on which the parties reach agreement on the terms of a Transaction, then Party A will promptly thereafter confirm the accuracy of (in the manner required by Section 9(e)(ii)), or request the correction of, any such Confirmation sent by Party B (in the latter case, indicating how it believed terms of such Confirmation should be correctly stated and such other terms which should be added or deleted from such Confirmation to make it correct). If Party A has not accepted or disputed such Confirmation in the manner set forth above within two (2) Local Business Days after it was sent by Party B, the Confirmation shall be deemed binding as sent absent manifest error. If any dispute shall arise as to whether an error exists in a Confirmation, the parties shall in good faith make reasonable efforts to resolve the dispute. When a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price, quantity), which modify or supplement the general terms and conditions of this Agreement (including without limitation Events of Default or Termination Events, or calculation of damages, settlement, netting, set-off or termination payments), any material changes to such terms shall not be deemed accepted as set forth above unless made in a writing that is signed by duly authorized representatives of both parties.
- (b) **Absence of Litigation.** Section 3(c) is hereby amended by (i) adding in the second line thereof after the word "governmental" the words "or regulatory" and (ii) adding the words "in any material respect" immediately prior to the end of the section.
- (c) **Accuracy of Specified Information.** Section 3(d) is hereby amended by adding in the third line thereof after the word "respect" and before the period the words "or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of the relevant party in accordance with generally accepted accounting principles, consistently applied."

- (d) **Section 3 Representations.** Section 3 is hereby amended by adding at the end thereof the following Subparagraphs (g), (h) and (i):
- (g) **Eligible Contract Participant.** It is an "eligible contract participant" within the meaning of Commodity Futures Modernization Act of 2000.
- (h) **Standardization, Creditworthiness, and Transferability.** The economic terms of the Agreement, any Credit Support Document to which it is a party, and each Transaction have been individually tailored and negotiated by it; it has received and reviewed financial information concerning the other party and has had a reasonable opportunity to ask questions of and receive answers and information from the other party concerning such other party, this Agreement, such Credit Support Document, and such Transaction; the creditworthiness of the other party was a material consideration in its entering into or determining the terms of this Agreement, such Credit Support document, and such Transaction; and the transferability of this Agreement, such Credit Support Document, and such Transaction is restricted as provided herein and therein.
- (i) **Non-Reliance.** In connection with this Agreement, any Credit Support Document to which it is a party, and each Transaction: (A) It is acting for its own account (and not as agent or in any other capacity, fiduciary or otherwise), and has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary, and not upon any view expressed by the other party; (B) It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction; (C) No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected result of the Transaction; (D) It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks (economic or otherwise) of that Transaction; (E) The other party is not acting as a fiduciary for or an adviser to it in respect of the Transaction; and (F) all trading decisions have been the result of arm's length negotiations between the parties.
- (e) **Set-off.** Any Early Termination Amount payable to one party by the other party, in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or an Additional Termination Event in respect of which all outstanding transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or Affected Party, as the case may be ("Y")) be reduced by X's set-off against any other amounts ("Other Amounts") due and owing by X or any Affiliate of X to Y (whether or not arising under this Agreement or any other agreement between the parties) and whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or place of booking of the obligation. If any obligation has not been ascertained, X may, in good faith estimate that obligation and setoff in respect the estimate, subject to X or Y, as the case may be, accounting to the other party when the obligation is ascertained. To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f), provided that failure to give such notice shall not affect the validity of the setoff. Nothing in this paragraph shall be deemed to create

a charge or other security interest.

- (f) **Settlement Amount.** The definition of "**Settlement Amount**" in Section 14 is hereby amended by deleting in the third and fourth lines of Subparagraph (b) thereof the words "or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result)".
- (g) **LIMITATION OF LIABILITY. WITH RESPECT TO CLAIMS UNDER THIS AGREEMENT, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR EXEMPLARY, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT ARE DEEMED TO BE SUCH DAMAGES; PROVIDED, HOWEVER, THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTION 6(e) OF THIS AGREEMENT. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.**
- (h) **Confidentiality.** The contents of this Agreement and all other instruments and documents relating to this Agreement (including but not limited to any Credit Support Documents and any Confirmations), and any information made available by one party or its Credit Support Provider (if any) to the other party or its Credit Support Provider (if any) with respect to the Agreement or any Transaction hereunder is confidential and shall not be discussed with or disclosed to any third party (nor shall any public announcement or press release be made by either party, except with the prior written consent of the other party hereto), except for such information (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, or ruling; provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the other party or its Credit Support Provider (if any) if making such disclosure, or (iv) as may be furnished to any person or entity who has a need to know such information (including, without limitation, that party's Affiliates, auditors, attorneys, advisors, or financial institutions) and with which the party has a written agreement or which are otherwise required to keep the information that is disclosed in confidence. With respect to information provided with respect to a Transaction, this obligation shall survive for a period of three (3) years following the expiration or termination of such Transaction. With respect to information provided with respect to this Agreement, this obligation shall survive for a period of three (3) years following the expiration or termination of this Agreement.
- (i) **Jurisdiction.** Section 13(b) of this Agreement is hereby deleted in its entirety and replaced with the following:

With respect to any suit, action, claim or proceedings relating to this Agreement ("Proceedings"), neither party waives any objection which it may have at any time to the laying of venue of any

Proceedings brought in any court, waives any claim that such Proceedings have been brought in an inconvenient forum, nor waives the right to object, with respect to such Proceedings, that a court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any jurisdiction, nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

The above provisions shall be subject to the following:

WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, ANY TRANSACTION, OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENTS, AS APPLICABLE, BY AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

- (j) **Consent to Recording.** Each party consents, to the extent allowed by law, to the monitoring or recording of its trading and marketing personnel at any time and from time to time, by the other party of its traders and/or marketers regarding any and all communications concerning Transactions entered into hereunder.

The Parties agree to amend Section 9(e) by adding thereto the following subparagraph (iii) and (iv):

- (iii) Should the parties come to an understanding regarding a particular Transaction, the Transaction may be formed and effectuated by a recorded telephone conversation between the parties occurring on any Business Day whereby a bid or offer and acceptance shall constitute the agreement of the parties to a Transaction as evidenced by a tape recording of the conversation effectuated in accordance with this subparagraph ("Transaction Tape"). The parties shall be legally bound by each Transaction from the time they agree to its terms in accordance with this subparagraph and acknowledge that each party will rely thereon in doing business related to the Transaction. The Transaction Tape is adopted by the parties as a means by which a Transaction is reduced to tangible form, and the parties to a Transaction are identified and authenticate a Transaction. Any Transaction formed and effectuated pursuant to the foregoing shall be considered "writing" or "in writing" and to have been "signed" and any Transaction Tape shall be considered to constitute an "original" document evidencing the Transaction.
- (iv) The parties agree not to contest or assert a defense to the validity or enforceability of telephonic Transactions entered into in accordance with this Schedule under laws relating to (a) whether certain agreements are to be in writing or signed by the party to be

thereby bound or (b) the authority of any employee of the party if the employee name is stated in the Transaction Tape. The Transaction Tape, and the terms and conditions described therein, if admissible, shall be controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed correct) by both Parties. Upon full execution (or deemed correctness) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Transaction Tape, or in the event of any conflict with this Agreement.

- (k) **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction in respect of any Transaction shall, as to such Transaction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision as to any other jurisdiction or Transaction unless such severance shall substantially impair the benefits of the remaining portions of this Agreement or changes the reciprocal obligations of the parties. The parties hereto shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.
- (l) **Reference Market Makers.** The definition of "Reference Market-makers" in Section 14 of this Agreement is hereby amended by: (i) deleting "(a)" from the second line thereof, (ii) deleting in the fourth line thereof after the word "credit" the words "and (b) to the extent practicable, from among such dealers having an office in the same city" and (iii) replacing such words with the words "or to enter into transactions similar in nature to Transactions."
- (m) **Limitation of Rate.** Notwithstanding any provision to the contrary contained in this Agreement, in no event shall the Default Rate, Non-default Rate, or Termination Rate exceed the Highest Lawful Rate. For purposes hereof, "Highest Lawful Rate" shall mean, with respect to each party, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the subject indebtedness under the law applicable to such party which is presently in effect or, to the extent allowed by law, may hereafter be in effect and which allows a higher maximum non-usurious interest rate than applicable law presently allows.
- (n) **Default Rate.** The Default Rate means a rate of interest equal to the one-month London Interbank Interest Rate (LIBOR) determined daily as provided for under the heading "Money Rates" in the Wall Street Journal *plus [three] percent (3%)*. Interest at the Default Rate shall accrue and compound daily based on a 360-day year.
- (o) **Party B Liability.** Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU") shall be severally but not jointly liable for liabilities and obligations under this Agreement. Particularly, each of LG&E and KU shall be liable for such liabilities and obligations only to the following extents: LG&E – 50% of all liabilities and obligations under this Agreement and KU – 50% of all liabilities and obligations under this Agreement

Part 6

Additional Terms for Commodity Derivative Transactions

- (a) **ISDA Definitions.** Unless otherwise specified in a Confirmation, this Agreement, each Confirmation, and each Transaction are subject to and governed by the 2000 ISDA Definitions

("2000 Definitions") and the 1993 ISDA Commodity Derivatives Definitions and the 2000 Supplement thereto ("Commodity Definitions"), in each case published by the International Swaps and Derivatives Association, Inc. ("ISDA") as each has been or may be amended, supplemented updated, or restated. The provisions of the 2000 Definitions and the Commodity Definitions are incorporated by reference in and made part of this Agreement and each Confirmation as if set forth in full in this Agreement and each Confirmation. In the event of any inconsistency between the 2000 Definitions and the Commodity Definitions and any provisions of this Agreement, the provisions of this Agreement shall prevail. In the event of any conflict between the various sets of definitions named above, the Commodity Definitions shall apply. The definitions incorporated into a Confirmation with respect to that particular Confirmation shall prevail over the provisions of this Agreement, the 2000 Definitions and the Commodity Derivative Definitions. For purposes of this Agreement, all references in the Definitions to "Swap Transaction" shall be deemed references to any Transaction under the Agreement.

(b) **Calculation Agent.** The Calculation Agent as defined in the Commodity Definitions is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction; provided, however, if an Event of Default has occurred and is continuing with respect to Party A, the Calculation Agent shall be Party B until such time as Party A is no longer a Defaulting Party.

(c) **Commodity Definition Amendments.** Unless otherwise specified in a Confirmation, the Commodity Definitions are amended as follows:

(i) Section 7.5(e) is hereby deleted.

(ii) "Additional Market Disruption Events" shall apply only if so specified in the relevant Confirmation.

(ii) The following "Disruption Fallbacks" specified in Section 7.5(c) of the Commodity Definitions shall apply, in the following order, except as otherwise specified in the relevant Confirmation:

- (1) "Fallback Reference Price" (if the relevant parties have specified an alternate Commodity Reference Price in the Confirmation);
- (2) "Postponement", with five (5) Commodity Business Days as the Maximum Days of disruption;
- (3) "Negotiated Fallback" (provided that the reference in Section 7.5(c)(ii) to "fifth Business Day" shall be amended to be "twelfth Business Day"); and
- (4) "Commodity-Reference Dealers" will determine and calculate the Relevant Price as set forth in Section 7.1(c)(i), with each party selecting in good faith two Reference Dealers in the relevant market.

(d) **Trading Suspension.** Clause (ii) of Section 7.4(c) of the Commodity Definitions is hereby amended by the addition of the following:


For these purposes, a suspension of trading on any Commodity Business Day shall be deemed material in the event that: (i) as of each suspension, all trading in such contract on

such day is suspended for the entire day; or (ii) (A) as a result of such suspension, all trading in such contract opens, but ceases prior to, and does not recommence from the regularly scheduled close of trading in such contract, and (B) such suspension is announced less than one (1) hour preceding its commencement.

- (e) **Trading Limitation.** Clause (viii) of Section 7.4(c) of the Commodity definitions is hereby amended by the addition of the following:

For these purposes, a limitation of trading on any Commodity Business Day shall be deemed to be material in the event the relevant Exchange establishes, or has established, limits on the range within which the price of the relevant Futures Contract may fluctuate and the closing or settlement price of such Futures Contract on such day is at the upper or lower limit of that range.

IN WITNESS WHEREOF, the parties have executed this SCHEDULE to the ISDA MASTER AGREEMENT by their duly authorized officers as of the date specified on the first page of this document.

C. B.
DTE ENERGY TRADING, INC. 

By: 

Name: Steven C. Mabry

Title: President

LOUISVILLE GAS AND ELECTRIC COMPANY /
KENTUCKY UTILITIES COMPANY *SOP*

By: 

Name: MARTYN GALLUS

SR. VICE PRESIDENT

Title: LOUISVILLE GAS & ELECTRIC COMPANY
KENTUCKY UTILITIES

EXHIBIT A**SAMPLE****INCUMBENCY AND SIGNATURE CERTIFICATE**

The undersigned, the [Assistant] Secretary of _____ (the "Counterparty"), a corporation [LLC, LP, GP, etc.] organized under the laws of the State of _____, hereby certifies that:

1. The ISDA Master Agreement dated as of _____, 2004, including the Schedule, Confirmation, and other exhibits, supplements, attachments and annexes thereto and documents incorporated by reference therein (collectively the "Agreement Documentation"), between DTE Energy Trading, Inc. and the Counterparty have been duly executed and delivered for, in the name of, and on behalf of the Counterparty by the following officer, whose title and signature appear below:

NAME**TITLE****SIGNATURE**

2. The foregoing officer who, on behalf of the Counterparty, executed and delivered the Agreement Documentation was at the date thereof and is now duly authorized as a signatory of the Counterparty and the signature of such person appearing on the Agreement Documentation is his/her genuine signature.

IN WITNESS WHEREOF, the undersigned has executed this certificate the ____ day of _____, 2004.

[NAME OF COUNTERPARTY]**By:** _____**Name:** _____**Title:** [Assistant] Secretary

(Bilateral Form)

(ISDA Agreements subject to New York Law Only)

ISDA.

International Swaps and Derivatives Association, Inc.

CREDIT SUPPORT ANNEXto the Schedule to the
ISDA Master Agreement

dated as of: October 1, 2005

	between	Louisville Gas and Electric
DTE Energy Trading, Inc.	and	Company / Kentucky Utilities
("Party A")		("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:—

Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

Paragraph 3. Credit Support Obligations

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Delivery Amount**" applicable to the Pledgor for any Valuation Date will equal the amount by which:

- (i) the Credit Support Amount
exceeds
- (ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds the Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Return Amount**" applicable to the Secured Party for any Valuation Date will equal the amount by which:

- (i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party
exceeds
- (ii) the Credit Support Amount.

"**Credit Support Amount**" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

- (i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and
- (ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) *Substitutions.*

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); provided that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

Paragraph 5. Dispute Resolution

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; provided that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

Paragraph 6. Holding and Using Posted Collateral

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral, Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) *Interest Amount.* Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

Paragraph 7. Events of Default

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

Paragraph 8. Certain Rights and Remedies

(a) *Secured Party's Rights and Remedies.* If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) **Pledgor's Rights and Remedies.** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

Paragraph 9. Representations

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

Paragraph 10. Expenses

- (a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.
- (b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).
- (c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

Paragraph 11. Miscellaneous

- (a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obligated to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.
- (b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.
- (c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).
- (d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.
- (e) **Demands and Notices.** All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.
- (f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

Paragraph 12. Definitions

As used in this Annex:-

"*Cash*" means the lawful currency of the United States of America.

"*Credit Support Amount*" has the meaning specified in Paragraph 3.

"*Custodian*" has the meaning specified in Paragraphs 6(b)(i) and 13.

"*Delivery Amount*" has the meaning specified in Paragraph 3(a).

"*Disputing Party*" has the meaning specified in Paragraph 5.

"*Distributions*" means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

"*Eligible Collateral*" means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

"*Eligible Credit Support*" means Eligible Collateral and Other Eligible Support.

"*Exposure*" means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; provided that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of "Market Quotation").

"*Independent Amount*" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"*Interest Amount*" means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of that Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

"*Interest Period*" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"*Interest Rate*" means the rate specified in Paragraph 13.

"*Local Business Day*", unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

"Minimum Transfer Amount" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Notification Time" has the meaning specified in Paragraph 13.

"Obligations" means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

"Other Eligible Support" means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

"Other Posted Support" means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

"Pledgor" means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

"Posted Collateral" means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

"Posted Credit Support" means Posted Collateral and Other Posted Support.

"Recalculation Date" means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

"Resolution Time" has the meaning specified in Paragraph 13.

"Return Amount" has the meaning specified in Paragraph 3(b).

"Secured Party" means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

"Specified Condition" means, with respect to a party, any event specified as such for that party in Paragraph 13.

"Substitute Credit Support" has the meaning specified in Paragraph 4(d)(i).

"Substitution Date" has the meaning specified in Paragraph 4(d)(ii).

"Threshold" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Transfer" means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

(i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;

(ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

"Minimum Transfer Amount" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Notification Time" has the meaning specified in Paragraph 13.

"Obligations" means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

"Other Eligible Support" means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

"Other Posted Support" means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

"Pledgor" means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

"Posted Collateral" means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

"Posted Credit Support" means Posted Collateral and Other Posted Support.

"Recalculation Date" means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

"Resolution Time" has the meaning specified in Paragraph 13.

"Return Amount" has the meaning specified in Paragraph 3(b).

"Secured Party" means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

"Specified Condition" means, with respect to a party, any event specified as such for that party in Paragraph 13.

"Substitute Credit Support" has the meaning specified in Paragraph 4(d)(i).

"Substitution Date" has the meaning specified in Paragraph 4(d)(ii).

"Threshold" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Transfer" means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

- (i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;
- (iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and
- (iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

"Valuation Agent" has the meaning specified in Paragraph 13.

"Valuation Date" means each date specified in or otherwise determined pursuant to Paragraph 13.

"Valuation Percentage" means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

"Valuation Time" has the meaning specified in Paragraph 13.

"Value" means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
 - (A) Cash, the amount thereof; and
 - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

PARAGRAPH 13
to the
ISDA CREDIT SUPPORT ANNEX
dated as of October 1, 2005
between
DTE Energy Trading, Inc. ("Party A")
and
Louisville Gas and Electric Company /
Kentucky Utilities Company
("Party B")

Paragraph 13. Elections and Variables

- (a) ***Security Interest for "Obligations"***. The term "*Obligations*" as used in this Annex includes the following additional obligations:

With respect to Party A: <None>

With respect to Party B: <None>

- (b) ***Credit Support Obligations.***

- (i) ***Delivery Amount, Return Amount and Credit Support Amount.***

(A) "***Delivery Amount***" has the meaning specified in Paragraph 3(a).

(B) "***Return Amount***" has the meaning specified in Paragraph 3(b).

(C) "***Credit Support Amount***" has the meaning specified in Paragraph 3.

- (ii) ***Eligible Collateral.*** The following items will qualify as "*Eligible Collateral*" for the party specified:

	Party A	Party B	Valuation Percentage
(A) Cash	[X]	[X]	100%

- (iii) ***Other Eligible Support.*** The following items will qualify as "*Other Eligible Support*" for the party specified:

	Party A	Party B	Valuation Percentage
(A) Letters of Credit	[X]	[X]	[*]

* 100% of the Value of the Other Eligible Support unless a default has occurred under the Letter of Credit in which case the Valuation Percentage shall be 0.

(iv) **Thresholds.**(A) **"Independent Amount"** means with respect to A: <None>**"Independent Amount"** means with respect to B: <None>

(B) **"Threshold"** means with respect to Party A: The lesser of: (1) the then current amount of the Guaranty provided by Party A's Credit Support Provider in favor of Party B with respect to this Agreement, provided, however, that Party A's Credit Support Provider shall be entitled to increase the amount of the Guaranty up to an amount not to exceed the amount specified below opposite the Credit Rating of Party A's Credit Support Provider at that time and (2) the amount specified below opposite the Credit Rating of Party A's Credit Support Provider at that time; provided, however, if an Event of Default, Credit Event Upon Merger or Additional Termination Event (where all Transactions are Affected Transactions) has occurred and is continuing with respect to Party A, the Threshold with respect to Party A shall be zero:

S&P Credit Rating	Moody's Credit Rating	Margin Threshold
AAA through AA-	Aaa through Aa3	\$15,000,000
A+ through A-	A1 through A3	\$12,000,000
BBB+ through BBB-	Baa1 through Baa3	\$ 8,000,000
BB+, lower or unrated	Ba1, lower or unrated	\$ 0

(B) **"Threshold"** means with respect to Party B: The amount specified below opposite the Credit Rating of Party B at that time; provided, however, if an Event of Default, Credit Event Upon Merger or Additional Termination Event (where all Transactions are Affected Transactions) has occurred and is continuing with respect to Party B, the Threshold with respect to Party B shall be zero:

S&P Credit Rating	Moody's Credit Rating	Margin Threshold
AAA through AA-	Aaa through Aa3	\$15,000,000
A+ through A-	A1 through A3	\$12,000,000
BBB+ through BBB-	Baa1 through Baa3	\$ 8,000,000
BB+, lower or unrated	Ba1, lower or unrated	\$ 0

(C) **"Minimum Transfer Amount"** means with respect to Party A: \$10,000, provided, however, that if an Event of Default has occurred and is continuing with respect to Party A, the Minimum Transfer Amount shall be zero 0.

"Minimum Transfer Amount" means with respect to Party B: \$10,000, provided, however, that if an Event of Default has occurred and is continuing with respect to Party A, the Minimum Transfer Amount shall be zero 0.

(D) **Rounding.** The Delivery Amount and the Return Amount will be rounded up and down to the nearest integral multiple of \$100,000, respectively.

(c) **Valuation and Timing.**

- (i) **“Valuation Agent”** means, for purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3, and, for purposes of Paragraph 6(d), the Secured Party receiving or deemed to receive the Distributions or the Interest Amount, as applicable; provided, however, that in all cases, if an Event of Default has occurred and is continuing with respect to the party designated as the Valuation Agent, then, in such case, and for so long as the Event of Default continues, the other party will be the Valuation Agent.
- (ii) **“Valuation Date”** means at the request of either party, any Local Business Day which, if treated as a Valuation Date, would result in a Delivery Amount or Return Amount.
- (iii) **“Valuation Time”** means the close of business on the Local Business Day before the Valuation Date or date of calculation; *provided* that the calculation of Value and Exposure will be made as of approximately the same time on the same date.
- (iv) **“Notification Time”** means 1:00 p.m., New York time, on a Local Business Day.

(d) **Conditions Precedent and Secured Party’s Rights and Remedies.** The following Termination Events(s) will be a **“Specified Condition”** for the party specified (that party being the Affected Party if the Termination Event occurs with respect to that party):

	<u>Party A</u>	<u>Party B</u>
Illegality	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Tax Event	<input type="checkbox"/>	<input type="checkbox"/>
Tax Event Upon Merger	<input type="checkbox"/>	<input type="checkbox"/>
Credit Event Upon Merger	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Additional Termination Event(s):		
Material Adverse Change	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

- (i) **“Conditions Precedent”** Paragraph 4(a)(i) shall be amended to delete the phrase “, Potential Event of Default”.

(e) **Substitution.**

- (i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).
- (ii) **Consent.** If specified here as applicable, then the Pledgor must obtain the Secured Party’s consent for any substitution pursuant to paragraph 4(d): Not applicable.

(f) **Dispute Resolution.**

- (i) **“Resolution Time”** means 1:00 p.m., New York time, on the Local Business day following the date on which the notice is given that gives rise to a dispute under Paragraph 5.
- (ii) **Value.** For the purposes of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support will be calculated as follows:

- (A) **Cash and Letters of Credit.** For purposes of Paragraph 5, (i) for cash collateral, the face value of cash collateral and (ii) for Letters of Credit, an amount equal to the value as calculated in Paragraph 13(j)(i).
- (iii) **Alternative.** The provisions of Paragraph 5 will apply, except to the following extent: pending the resolution of a dispute, Transfer of the undisputed Value of Eligible Credit Support or Posted Credit Support involved in the relevant demand will be due as provided in Paragraph 5 if the demand is made at or before the Notification Time but will be due on the second Local Business Day after the demand if the demand is made after the Notification Time.
- (iv) **Dispute Resolution.** Paragraph 5(i)(B) of the Annex is amended by replacing the words: “then the Valuation Agent’s original calculations will be used for that Transaction (or Swap Transaction); and,” with the words: “then the parties will appoint a mutually acceptable leading dealer in the relevant market to make such determination as substitute valuation agent and such determination will be used for that Transaction (or Swap Transaction). The cost of the substitute valuation agent shall be borne equally by the parties; provided that if the parties are unable to agree on a mutually acceptable leading dealer in the relevant market, then each party will appoint a leading dealer in the relevant market to make such determination, each a substitute valuation agent, and the arithmetic average of the two obtained determinations will be used for that Transaction (or Swap Transaction), with each party bearing the cost of its own appointed substitute valuation agent; and”.
- (g) **Holding and Using Posted Collateral.**
- (i) **Eligibility to Hold Posted Collateral; Custodians.** Party A will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that Party A is not a Defaulting Party and the Credit Ratings for Party A’s Credit Support Provider are at least BBB- from S&P and Baa3 from Moody’s. Posted Collateral may be held in the following jurisdictions: United States.
- Initially, the **Custodian** for Party A is: <None>
- Party B will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that Party B is not a Defaulting Party and the Credit Ratings for Party B are at least BBB- from S&P and Baa3 from Moody’s. Posted Collateral may be held only in the following jurisdictions: United States.
- Initially the **Custodian** for Party B is: <None>
- (ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will apply to Party A and will apply to Party B.
- (h) **Distributions and Interest Amount.**
- (i) **Interest Rate.** Unless otherwise specified in this Agreement or the Schedule, the “**Interest Rate**” for any day (i) with respect to Cash held by a party will be, (a) the “Federal Funds Effective” rate in effect for such day as published by The Wall Street Journal (or any successor publication) under “Money Rates” for such day (or if such day is not a Business Day, then the preceding Business Day), or if such rate is not published

then (b) the Federal Funds Effective Rate, which is the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System, and (ii) with respect to Cash held by a Custodian of a party, "Interest Rate" shall not apply but rather the provisions of Paragraph 13(h)(iii) shall apply.

- (ii) ***Transfer of Interest Amount.*** The Transfer of the Interest Amount will be made by the third Local Business Day following the end of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is transferred to the Pledgor pursuant to Paragraph 3(b).
 - (iii) ***Alternative to Interest Rate.*** The provision of Paragraph 6(d)(ii) will apply; provided, however, that with respect to Cash held by the Custodian of a party, the "Interest Amount" means the earnings, from time to time, of the investment and reinvestment of Eligible Collateral constituting Cash by the Custodian of the party in an interest-bearing account selected by the Secured Party and consented to by the Pledgor, such consent not to be unreasonably withheld, conditioned, or delayed.
- (i) **Additional Representation(s).** Not applicable
 - (j) **Other Eligible Support and Other Posted Support.**
 - (i) ***"Value"*** with respect to any Letter of Credit, the amount then available to be drawn by the Secured Party under the Letter of Credit; provided, that the Value of the Letter of Credit shall be zero from and after the occurrence of a Letter of Credit Devaluation Event as defined below or an Event of Default as specified under Paragraph 7(iv) or (v).
 - (ii) ***"Transfer"*** with respect to Letters of Credit, (a) for purposes of Paragraph 3(a), (i) delivery of the duly executed Letter of Credit to the Secured Party, at the address specified in the Notice Section of this Agreement, or (ii) delivery to the Secured Party of an amendment to such Letter of Credit, in form and substance satisfactory to the Secured Party, extending the term or increasing the amount available to the Secured Party thereunder, but only if the issuer of the Letter of Credit is an Qualified Institution at the time of the amendment, and (b) for purposes of Paragraph 3(b), return of the Letter of Credit by the Secured Party to the Pledgor, at the address specified in the Notice Section of this Agreement, or agreement by the Secured Party to an amendment of the Letter of Credit, in form and substance satisfactory to the Secured Party, reducing the amount available to the Secured Party thereunder. If a Transfer is to be effected by a reduction in the amount of an Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall not unreasonably withhold, condition or delay its consent to commensurate reduction in the amount of such Letter of Credit and shall take such action as is reasonably necessary to effectuate such reduction.
 - (iii) ***Letter of Credit Provisions.*** Other Eligible Support and Other Posted Support provided in the form of a Letter of Credit (as defined in Paragraph 13(k) hereof) shall be subject to the following provisions:
 - (1) A Letter of Credit shall provide that a drawing may be made on the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Pledgor but have not

been paid to the Secured Party within the time allowed for such payments under this Agreement (including any related notice or grace period or both). A drawing may be made on the Letter of Credit in this instance upon submission to the bank issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit. The Pledgor shall remain liable for any amounts due and owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(2) A Letter of Credit shall also provide that a drawing may be made of the entire, undrawn portion of such Letter of Credit if the Pledgor shall fail to renew or cause the renewal of each outstanding Letter of Credit at least twenty (20) Business Days prior to the expiration of the relevant Letter of Credit. A drawing may be made on the Letter of Credit in this instance upon submission to the bank issuing such Letter of Credit of one or more certificates that such failure has occurred in accordance with the specific requirements of the Letter of Credit. The cash proceeds from any such draw on a Letter of Credit shall be held by the Secured Party as Eligible Collateral under this Annex. Notwithstanding the foregoing, the Secured Party shall not be entitled to make such a drawing unless the Delivery Amount applicable to the Pledgor at such time equals or exceeds the Pledgor's Minimum Transfer Amount.

(3) As one method of providing Eligible Credit Support, the Pledgor may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(4) If a party's Credit Support Provider shall furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such Credit Support Provider be reduced by the amount of any Letter of Credit established by such party (but only for such time as such party's Letter of Credit shall be in effect). In the event a party shall be required to furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such party be reduced by the amount of any Letter of Credit established by such party's Credit Support Provider (but only for such time as such Credit Support Provider's Letter of Credit shall be in effect).

(5) Upon the occurrence of a Letter of Credit Devaluation Event, the Pledgor agrees to deliver a substitute Letter of Credit or other Eligible Credit Support to the Secured Party in an amount at least equal to that of the Letter of Credit to be replaced on or before the first (1st) Business Day after written demand by the Secured Party (or the fifth (5th) Business Day if only clause (i) under the definition of Letter of Credit Devaluation Event applies).

(iv) ***Certain Rights and Remedies.***

(A) ***"Secured Party's Rights and Remedies"*** For purposes of Paragraph 8(a)(ii), the Secured Party may draw on any outstanding Letter of Credit in an amount equal to any amounts payable by the Pledgor with respect to any Obligations.

(B) ***"Pledgor's Rights and Remedies"*** For purposes of Paragraph 8(b)(ii), (i) the Secured Party will be obligated immediately to Transfer any Letter of Credit to the Pledgor and (ii) the Pledgor may do any one or more of the following: (x) to

the extent that the Letter of Credit is not Transferred to the Pledgor as required pursuant to (a) above, Set-off any amounts payable by the Pledgor with respect to any Obligations against any such Letter of Credit held by the Secured Party and to the extent its rights to Set-off are not exercised, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral and the Value of any Letter of Credit held by the Secured Party, until any such Posted Collateral and such Letter of Credit is Transferred to the Pledgor, and (y) exercise rights and remedies available to the Pledgor under the terms of the Letter of Credit.

(k) ***Demands and Notices.***

All demands, specifications and notices under this Annex will be made pursuant to the Notices Section of this Agreement, with additional notice specified here:

Party A None

Party B	220 West Main, 7 th Floor Louisville, KY 40202 Attn: Credit Manager	Telephone Facsimile	502-627-4253 502-627-3950
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With Additional copy of demands
to:

Attn: General Counsel	Facsimile	502-627-4622
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(l) ***Addresses for Transfers.*** Same as (k) above.

(m) ***Other Provisions.***

- (i) **Events of Default.** Paragraph 7(i) is amended by deleting the words “Eligible Collateral” and replacing with the words “Eligible Credit Support.” The word, “or” at the end of subsection (ii) of Paragraph 7 shall be deleted. The period at the end of subsection (iii) shall be deleted and replaced by the following “; or” and the following subsections (iv) and (v) shall be added at the end of Paragraph 7:

“(iv) the issuer of a Letter of Credit provided by such party fails to honor a drawing under the Letter of Credit in accordance with its terms; or

“(v) the issuer of the Letter of Credit provided by such party fails to comply with or perform its obligations under such Letter of Credit and such failure continues after the lapse of any applicable grace period;

“provided, however, that (iv) and (v) shall not be Events of Default with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the party providing such Letter of Credit in accordance with the terms of this Annex or other Eligible Credit Support meeting the requirements of this Agreement is provided to the other party.”

- (ii) Notwithstanding Paragraph 10, in all cases, the costs and expenses incurred by the Pledgor in establishing, renewing, substituting, canceling, increasing, and reducing the

amount of (as the case may be) one or more Letters of Credit shall be borne by the Pledgor. The Pledgor shall be responsible for, and shall reimburse the Secured Party for, all transfer taxes and other costs involved in the transfer of Eligible Collateral from the Pledgor to the Secured Party or any agent for safekeeping of the Secured Party. If the Secured Party shall incur any loss by reason of the Pledgor's failure to pay any such taxes and costs, the Secured Party has the right, in accordance with Paragraph 8(a) hereof, to draw under any Letter of Credit or liquidate any Posted Collateral and apply the proceeds thereof to satisfy its claim against the Pledgor for such taxes and costs.

- (iii) **Certain Rights and Remedies.** Paragraph 8(b) is hereby amended by deleting subsections (iii) and (iv) thereunder and replacing them with the following:

"and (iii) the Secured Party will be obligated immediately to reduce the amount of the Posted Collateral in its possession to an amount equal to the Exposure of the Secured Party (notwithstanding the Rounding provisions hereof), whether by Transfer of Cash or a reduction in the amount of a Letter of Credit or otherwise.

On the Early Termination Date, the Pledgor shall be obligated to pay the amounts due as determined pursuant to Section 6(e) of the Agreement, which amounts may be deemed paid to the Secured Party by liquidation of the Posted Collateral held by the Secured Party."

- (iv) This Credit Support Annex is a Security Agreement under the provisions of the Uniform Commercial Code of the State of New York.

(n) ***Additional Definitions.***

"Credit Rating" shall mean with respect to Party A, the lowest of the respective ratings then assigned to Party A's Credit Support Provider's unsecured, long-term, senior indebtedness not supported by third party credit enhancement by S&P or by Moody's or if Party A's Credit Support Provider does not have a rating for its senior long-term unsecured debt then the rating then assigned to such entity as an issuer credit rating (corporate credit rating) by S&P or issuer rating by Moody's.

"Credit Rating" shall mean with respect to Party B, the lowest of the respective ratings then assigned to either Louisville Gas and Electric Company or Kentucky Utilities Company for its unsecured, long-term, senior indebtedness not supported by third party credit enhancement by S&P or by Moody's or if such entities do not have a rating for its senior long-term unsecured debt then the rating then assigned to such entities as an issuer credit rating (corporate credit rating) by S&P or issuer rating by Moody's.

"Letter of Credit" shall mean an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution substantially in the form set forth in Exhibit A attached hereto or in such form as may be required by the Qualified Institution, with such changes to the terms in that form as the Qualified Institution may require and as may be acceptable to the party in whose favor the letter of credit is issued.

"Letter of Credit Devaluation Event" shall mean the occurrence of any of the following events:

- (1) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of "A-" or higher by S&P or "A3" or higher by Moody's;

- (2) the issuer of such Letter of Credit disaffirms, disclaims, repudiates, or rejects in whole or in part, or challenges the validity of, such Letter of Credit;
- (3) the Letter of Credit expires or terminates or ceases to be in full force and effect at any time during the term of any outstanding Transaction;
- (4) any event analogous to an event specified in Section 5(a)(vii) of this Agreement occurs with respect to the issuer of such Letter of Credit;
- (5) twenty (20) Local Business Days prior to the expiration or termination date of a Letter of Credit, such Letter of Credit is not extended or replaced with a Letter of Credit for an amount at least equal to that of the Letter of Credit being replaced;
- (6) the issuer of a Letter of Credit provided by such party fails to honor a drawing under the Letter of Credit in accordance with its terms; or
- (7) the issuer of the Letter of Credit provided by such party fails to comply with or perform its obligations under such Letter of Credit and such failure continues after the lapse of any applicable grace period.

"Moody's" means Moody's Investors Service, Inc. or a successor (if any).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P and Moody's, but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc. or a successor (if any).

IN WITNESS WHEREOF, the parties have executed this PARAGRAPH 13 to the ISDA CREDIT SUPPORT ANNEX by their duly authorized officers as of the date specified on the first page of this document.

C.B.
DTE Energy Trading, Inc.

By: 

Name: Steven C. Mabry

Title: President

Louisville Gas and Electric Company /
Kentucky Utilities Company

By: 

Name: MARTYN GALLUS
SR. VICE PRESIDENT
LOUISVILLE GAS AND ELECTRIC COMPANY
KENTUCKY UTILITIES

EXHIBIT A**LETTER OF CREDIT REQUIREMENTS AND FORM**

1. Type if Letter of Credit (L/C): Irrevocable Standby L/C
2. Issuing Bank: *U.S.-domiciled institution approved by*
DTE Energy Trading, Inc.
Credit Risk Management
414 South Main St., Suite 200
Ann Arbor, Michigan 48104
3. Documents required for drawing:
 - a. Copy of invoice
 - b. Statement of delinquencies
4. All L/Cs are to be advised through <name of bank, city, State, to the attention of Letter of Credit Specialist - Telex No. ***** or Swift Code *****. All banking charges should be for the account of applicant. L/Cs to be substantially in the following form:

IRREVOCABLE STANDBY LETTER OF CREDIT

TO: _____ DATE: _____

ATTENTION: _____

RE: Our Irrevocable Standby Letter of Credit No. _____
In the approximate amount of U.S. \$ _____

Gentlemen:

We here issue our Irrevocable Standby Letter of Credit LC# _____ in the amount of USDLRS \$ _____ (U.S. DOLLARS _____ No/100) in favor of _____, <insert bank address> for the account of <Customer Name>. Available by draft(s) at sight drawn on <Bank Name>, bearing the clause "Drawn under <Bank Name>, <Bank Address>, standby Letter of Credit LC# _____" accompanied by a statement signed by a purported officer of _____ stating that:

_____ hereby certifies that the monies hereby drawn are due and payable.

This credit expires MO/DAY/YEAR/PLACE.

Special instructions:

- A. Partial drawings permitted.
- B. Invoices in excess of drawing are permitted.
- C. All Bank Advisory and amendment charges are for the account of applicant.
- D. This Letter of Credit should be advised through:

<we need to insert the appropriate Bank Name here>
<insert the correct Department>
<insert the Bank's Address>
<insert the Bank's City, State, Zipcode>
Attention: Letter of Credit Specialist, (***) ***-****

We hereby engage with beneficiary that drafts drawn in conformity with the terms of this credit will be duly honored on presentation at our office.

This credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 revision), International Chamber of Commerce, Publication Number 500.

Authorized Signature(s)

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "MACQUARIE COOK ENERGY, LLC", CHANGING ITS NAME FROM "MACQUARIE COOK ENERGY, LLC" TO "MACQUARIE ENERGY LLC", FILED IN THIS OFFICE ON THE THIRTIETH DAY OF NOVEMBER, A.D. 2009, AT 5:54 O'CLOCK P.M.


AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE FIRST DAY OF FEBRUARY, A.D. 2010.

2468860 8100

091054302

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7667277

DATE: 11-30-09

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:52 PM 11/30/2009
FILED 05:54 PM 11/30/2009
SRV 091054302 - 2468860 FILE

CERTIFICATE OF AMENDMENT
OF THE
CERTIFICATE OF FORMATION
OF
MACQUARIE COOK ENERGY, LLC

MACQUARIE COOK ENERGY, LLC, a Delaware limited liability company (the "Company"), desiring to amend its Certificate of Formation to change the name of the Company, hereby certifies as follows:

FIRST: The name of the Company is MACQUARIE COOK ENERGY, LLC.
SECOND: Article FIRST of the Company's Certificate of Formation is hereby amended to read in its entirety as follows:

FIRST: The name of the Company is MACQUARIE ENERGY LLC.

THIRD: The foregoing amendment of the Company's Certificate of Formation has been duly adopted in accordance with Section 18-202 of the Limited Liability Company Act of the State of Delaware.

FOURTH: The Amendment to the Certificate of Formation shall become effective February 1, 2010.

IN WITNESS WHEREOF, the Company has caused this Certificate of Amendment to be executed by its duly authorized officer and certifies under penalties of perjury that the statements in this Certificate of Amendment are true.

Date: November 30, 2009

MACQUARIE COOK ENERGY, LLC

By /s/ Gavin Case
Gavin Case, Authorized Person

500 Dallas Street
Suite 3100
Houston, TX 77002

Telephone 1 (713) 275 6100
Facsimile 1 (713) 369 3918

PLEASE DISTRIBUTE TO APPROPRIATE PERSONNEL

January 11, 2010



MACQUARIE

RE: Notice of Merger and Name Change

We are pleased to advise that effective February 1, 2010, we will have merged the operations of Macquarie Cook Energy, LLC, our natural gas marketing and trading business, with Macquarie Cook Power Inc., our electric marketing and trading business.

The most noticeable result of the merger will be that Macquarie will have a single offering and brand in the marketplace as "Macquarie Energy." The new legal entity – Macquarie Energy LLC – will have the combined resources of both the gas and power teams. Together, these teams form a compelling energy platform offering a wide spectrum of energy products and services to better serve your needs.

While our name has changed, our commitment to customer service and innovative energy solutions has not. Our goal is to make this transition period seamless and expect no impact to our business. Enclosed is a legal notice of the merger and name change, supporting documentation for the merger and name changes, updated settlement instructions, and a copy of the press release that provides more information on the merger as well as a factsheet on Macquarie Energy.

Should you have any questions or would like to discuss future opportunities with Macquarie Energy, please do not hesitate to contact us.

We look forward to the opportunity to grow our business relationship with you.

Yours sincerely,

Nicholas O'Kane
Global Head, Energy Markets Division
Fixed Income, Currencies and Commodities

500 Dallas Street
Suite 3100
Houston, TX 77002

Telephone 1 (713) 275 6100
Facsimile 1 (713) 369 3918

January 11, 2010

Re: Legal Notice of Reorganization of Macquarie Cook Entities



We are pleased to announce that, effective February 1, 2010, the following will occur:

- Macquarie Cook Power Inc. will merge into Macquarie Cook Energy, LLC, with **Macquarie Cook Energy, LLC as the surviving entity;**
- Macquarie Cook Energy, LLC will change its name to **Macquarie Energy LLC;** and
- Macquarie Cook Energy Canada Ltd. will change its name to **Macquarie Energy Canada Ltd.**

We are making these changes to combine the resources of our gas and power teams in order to better provide a wide spectrum of energy offerings.

Contracts and transactions with Macquarie Cook Energy, LLC, Macquarie Cook Energy Canada Ltd. and Macquarie Cook Power Inc. will all remain in full force and effect. However, effective February 1, 2010, contracts and transactions with Macquarie Cook Energy, LLC and Macquarie Cook Power Inc. will automatically be in the name of Macquarie Energy LLC and contracts and transactions with Macquarie Cook Energy Canada Ltd. will automatically be in the name of Macquarie Energy Canada Ltd.

Macquarie Energy LLC's DUNS number will be 79-884-6036, which is Macquarie Cook Energy, LLC's current DUNS number.

Macquarie Energy Canada Ltd.'s DUNS number will be 79-999-9419, which is Macquarie Cook Energy Canada Ltd.'s current DUNS number.

Updated settlement instructions are attached, along with supporting documentation for the merger and name changes.

Further information about Macquarie, the merger and the name changes is available at www.macquarie.com/energymerger.

If you have any questions, please contact the following:

Credit:	ficcemdmcecredit@macquarie.com
Legal:	ficcemdmcelegal@macquarie.com
Settlements:	CAGSettlementsHouston@macquarie.com
Customer Due Diligence:	ficccomphs@macquarie.com

We value your continued business and remain committed to providing you with exceptional customer service.

Kind regards,

Nicholas O'Kane
Global Head, Energy Markets Division
Fixed Income, Currencies and Commodities

Macquarie Cook Power Inc., Macquarie Cook Energy Canada Ltd., Macquarie Cook Energy, LLC and, effective February 1, 2010, Macquarie Energy LLC and Macquarie Energy Canada Ltd. (collectively, "Macquarie Energy") are members of the Macquarie Group of Companies. However, Macquarie Energy is not an authorized deposit-taking institution for the purposes of the Australian Banking Act 1959 and Macquarie Energy's obligations do not represent deposits or other liabilities of Macquarie Bank Limited. Unless agreed in writing between Macquarie Bank Limited and a party, Macquarie Bank Limited does not guarantee or otherwise provide assurance in respect of the obligations of Macquarie Energy.

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"MACQUARIE COOK POWER INC.", A DELAWARE CORPORATION,
WITH AND INTO "MACQUARIE COOK ENERGY, LLC" UNDER THE NAME OF
"MACQUARIE COOK ENERGY, LLC", A LIMITED LIABILITY COMPANY
ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE,
AS RECEIVED AND FILED IN THIS OFFICE THE THIRTIETH DAY OF
NOVEMBER, A.D. 2009, AT 5:52 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF MERGER IS THE FIRST DAY OF
FEBRUARY, A.D. 2010.


A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE
NEW CASTLE COUNTY RECORDER OF DEEDS.

2468860 8100M

091054292

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 7667093

DATE: 11-30-09

State of Delaware
Secretary of State
Division of Corporations
Delivered 05:52 PM 11/30/2009
FILED 05:52 PM 11/30/2009
SRV 091054292 - 2468860 FILE

CERTIFICATE OF MERGER

OF

MACQUARIE COOK POWER INC.,
a Delaware corporation

WITH AND INTO

MACQUARIE COOK ENERGY, LLC,
a Delaware limited liability company

November 30, 2009

Pursuant to Title 8, Sections 264(c) of the General Corporation Law (the "GCL") and 18-209 of the Limited Liability Company Act of the State of Delaware, MACQUARIE COOK ENERGY, LLC, a Delaware limited liability company ("Merger Sub"), hereby certifies the following information relating to the merger (the "Merger") of MACQUARIE COOK POWER INC., a Delaware corporation ("MCP"), with and into Merger Sub, pursuant to the Agreement and Plan of Merger, dated November 30, 2009, between Merger Sub and MCP (the "Merger Agreement"):

1. The names of the constituent entities to be merged are "MACQUARIE COOK POWER INC." and "MACQUARIE COOK ENERGY, LLC". Both constituent entities were organized and are existing under the laws of the State of Delaware.
2. The Merger Agreement has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with the requirements of Section 264 of the GCL.
3. The name of the surviving limited liability company with respect to the Merger is MACQUARIE COOK ENERGY, LLC (the "Surviving Company").
4. The Merger shall become effective February 1, 2010.
5. The executed Merger Agreement is on file at 125 West 55th Street, New York, New York 10019, the place of business of the Surviving Company.
6. A copy of the Merger Agreement will be furnished by the Surviving Company on request, without cost, to any member of the constituent limited liability company or stockholder of the constituent corporation.

[Signature page follows]

IN WITNESS WHEREOF, this Certificate of Merger has been executed on the date first written above.

MACQUARIE COOK ENERGY, LLC

By:

Name: /s/ Gavin Case

Title: Gavin Case, Authorised Signatory



Industry Canada

Industrie Canada

**Certificate
of Amendment**
**Certificat
de modification**
**Canada Business
Corporations Act**
**Loi canadienne sur
les sociétés par actions**

MACQUARIE ENERGY CANADA LTD.

664379-5

Name of corporation-Dénomination de la société

Corporation number-Numéro de la société

I hereby certify that the articles of the
above-named corporation were amended:

Je certifie que les statuts de la société
susmentionnée ont été modifiés:

- a) under section 13 of the *Canada Business Corporations Act* in accordance with the attached notice;
- b) under section 27 of the *Canada Business Corporations Act* as set out in the attached articles of amendment designating a series of shares;
- c) under section 179 of the *Canada Business Corporations Act* as set out in the attached articles of amendment;
- d) under section 191 of the *Canada Business Corporations Act* as set out in the attached articles of reorganization;

- ☐ a) en vertu de l'article 13 de la *Loi canadienne sur les sociétés par actions*, conformément à l'avis ci-joint;
- ☐ b) en vertu de l'article 27 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes désignant une série d'actions;
- ☒ c) en vertu de l'article 179 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses modificatrices ci-jointes;
- ☐ d) en vertu de l'article 191 de la *Loi canadienne sur les sociétés par actions*, tel qu'il est indiqué dans les clauses de réorganisation ci-jointes;

Richard G. Shaw
Director - Directeur

February 1, 2010 / le 1 février 2010

Date of Amendment - Date de modification

**Macquarie Cook Energy, LLC**10100 Santa Monica Blvd.
Los Angeles, CA 90067Telephone 1 (310) 789 3900
Facsimile 1 (310) 789 3901

March 27, 2009

To our Clients, Customers, and Counterparties:

On February 3, 2009, Macquarie Cook Energy, LLC entered into an agreement with Constellation Energy Commodities Group to purchase its downstream natural gas trading operations. Please note that the effective date of the novation and/or assignment, as applicable, will be **12:01 AM CT on April 1, 2009**.

Should you have any questions in regard to the content of this notice, please feel free to contact us.

Regards,

Nicholas O'Kane
Chairman and CEO
Macquarie Cook Energy, LLC

The information contained in this communication is confidential. If you are not the intended recipient, you are not authorized to use the information in this communication in any way.

Macquarie Cook Energy, LLC ("MCE") is a member of the Macquarie Group of Companies. However, MCE is not an authorized deposit-taking institution for the purposes of the Australian Banking Act 1959 and MCE's obligations do not represent deposits or other liabilities of Macquarie Bank Limited. Macquarie Bank Limited does not guarantee or otherwise provide assurance in respect of the obligations of MCE.

One Allen Center
500 Dallas Street
Suite 3300
Houston, Texas 77002



February 13, 2009

LOUISVILLE GAS AND ELECTRIC CO/KENTUCKY UTILITIES COMPANY
220 WEST MAIN STREET
LOUISVILLE, KY 40232

Re: NAESB-BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS Dated 11/19/2007

To Whom It May Concern:

Please be advised that on February 3, 2009 Constellation Energy Commodities Group, Inc. ("CCG") entered into a purchase and sale agreement with Macquarie Cook Energy, LLC ("MCE") pursuant to which MCE has agreed to acquire certain contracts relating to physical and financial gas transactions from CCG, including any related storage and transportation contracts related thereto ("PSA Transaction"). The referenced agreement that CCG currently has with your company are among the contracts that CCG has agreed to transfer to MCE (the "Agreement"). The transfer and assignment of the Agreement to MCE is contingent upon a number of factors, including approval of the transfer of certain jurisdictional transport and storage capacity contracts by the Federal Energy Regulatory Commission. Accordingly, CCG and MCE are requesting that you execute this consent to the assignment of the Agreement prior to the closing of the PSA Transaction. Upon receipt of this consent to assign, receipt of other approvals and satisfaction of other conditions to the closing of the PSA Transaction, you will be notified of the effective date of the assignment of the Agreement ("the Effective Date").

By executing a copy of this letter, CCG, MCE, and Counterparty, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree as follows:

1. **Assignment and Acceptance.**

- (a) Effective as of the Effective Date, CCG hereby irrevocably assigns and transfers to MCE all of its right in, title to and obligations under the Agreement (the "Assignment").
- (b) Effective as of the Effective Date, MCE hereby accepts such Assignment, subject to the terms hereof.
- (c) Counterparty hereby consents to such Assignment, and accepts MCE as the party to perform the obligations formerly to be performed by CCG, and benefit from the rights formerly accruing to CCG, under the Agreement on and after the Effective Date. Upon the Effective Date, Counterparty hereby releases CCG from its performance and payment obligations under the Agreement (if any), except for all obligations arising or accruing under the Agreement that may have accrued but which have not been performed, satisfied or paid as of the Effective Date.

2. **Reconfirmation of Transactions.** If any transactions are outstanding under the Agreement on the Effective Date, the parties to this letter agreement will, promptly following the Effective Date, agree to a schedule, in a mutually agreeable form, of the outstanding transactions that have been assigned and transferred with the Agreement as of the Effective Date. The parties agree to act promptly and in good faith to resolve any dispute or discrepancy between their respective books and records concerning the details of the transactions assigned and transferred.
3. **Return of Collateral.** Counterparty agrees to release and return within one (1) business day of the Effective Date any collateral, guarantees, letters of credit, comfort letters, "keep whole" agreements, bonds or other financial security arrangements or other credit support arrangements (including for the provision and maintenance of cash collateral) of any type or kind whatsoever, whether or not accrued, absolute, contingent or otherwise, provided by CCG (or its credit support provider) in respect of the Agreement.
4. **Documents to Deliver.** Counterparty and MCE each agree to deliver, promptly following reasonable request from the other party, (a) annual audited, consolidated financial statements for it or its credit support provider (which may be provided subject to execution of a confidentiality agreement), (b) a duly completed multi-jurisdiction sales and use tax certificate or any other certificate reasonably requested to permit payment of amounts due under the Agreement free of any tax or charge or at a reduced rate of the tax, and (c) standard settlement instructions, on the party's letterhead and executed by an authorized signatory, detailing the party's bank account for payments under the Agreement.
5. **Mutual Representations and Warranties.** Each party to this letter agreement shall be deemed to repeat the representations and warranties set forth in the Agreement on the date the party signs this letter and on the Effective Date. Each party to this letter agreement represents and warrants, as of the date the party signs this letter and on the Effective Date, that: (a) it has full capacity, power and authority to enter into this letter agreement, and (b) no event has occurred or is continuing with respect to the party that would constitute an event of default or potential event of default (however described) under the Agreement, and no circumstances exist that would entitle the other party to terminate transactions under the Agreement early.
6. **Further Assurances.** CCG and Counterparty each agree that it shall, from time to time and at all times hereafter, execute such further assurances and do all such acts and things as may be reasonably required, including the transference or reissuance of any collateral held by CCG to MCE, for the purpose of vesting in MCE the rights and obligations of CCG in the Agreement.

As time is of the essence, we kindly request that you execute two (2) original copies of this letter and forward them in the enclosed envelopes no later than February 25, 2009.

McDermott Will & Emery LLP
600 Thirteenth Street, N.W.
Washington, DC 20005
Attn: Stephen S. Smith, Jr.
Facsimile No.: 202-756-8087


If you have any questions, please do not hesitate to contact Michele McLendon - CCG at (713) 369-3651 (or at michele.mclendon@constellation.com) or Angela Jones - MCE at (310) 789-3900 (or at angela.jones@macquarie.com) or TCGCMDMCE-LRM@macquarie.com. This letter agreement may be executed in counterparts and shall be governed by the laws of the State of New York, without regards to the conflicts of law provisions. Any judicial action arising out of, resulting from, or in any way relating to this Agreement shall be brought only in a state or federal court of competent jurisdiction located in the state,

county and city of New York, and all parties to this Agreement submit themselves to the jurisdiction of such court and waive any right to trial by jury in such action. In the event such judicial proceedings are instituted by any party hereto, the prevailing party or parties shall be entitled to award of costs and attorneys' fees incurred in connection with such proceedings.

Sincerely,

Constellation Energy Commodities Group, Inc.

By: 

Name: Douglas Mackey 

Title: Vice President

ACKNOWLEDGED AND AGREED:

LOUISVILLE GAS AND ELECTRIC CO/KENTUCKY UTILITIES COMPANY

By: 

Name: David S. Sinclair

Title: VP Energy Marketing

Date: 3-5-09

Macquarie Cook Energy, LLC

By: 

Name: Cindy Khok

Title: Division Director

Date: 2/27/09 

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: November 19, 2007. The parties to this Base Contract are the following:

Constellation Energy Commodities Group, Inc. ("Constellation") and
111 Market Place, Suite 500, Baltimore, MD 21202
 Duns Number: 01-563-5220
 Contract Number: Not Applicable

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU")
220 West Main St., 7th Floor, Louisville, KY 40202
 Duns Number: LGE 00-694-5505/ KU 00-694-4398
 Contract Number: Not Applicable

Notices:

500 Dallas Street, Suite 3300, Houston, TX 77002-4800
 Attn: Contracts Manager
 Phone: (713) 369-4600 Fax: (713) 344-2901

220 West Main St., 7th Floor, Louisville, KY 40202
 Attn: Contract Administration
 Phone: 502/627-4251 or 4197 Fax: 502/627-4222

Confirmations:

111 Market Place, Suite 500, Baltimore, MD 21202
 Attn: Operations
 Phone: (410) 468-3620 Fax: (410) 468-3540

220 West Main St., 7th Floor, Louisville, KY 40202
 Attn: Contract Administration
 Phone: 502/627-4197 or 2252 Fax: 502/627-4222

Invoices and Payments:

111 Market Place, Suite 500, Baltimore, MD 21202
 Attn: Operations
 Phone: (410) 468-3620 Fax: (410) 468-3540

220 West Main St., 7th Floor, Louisville, KY 40202
 Attn: Gas Accounting
 Phone: 502/627-4627 Fax: 502/627-3800

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. **Select only one box from each section:**

Section 1.2 <input checked="" type="checkbox"/> Oral (default) Transaction <input type="checkbox"/> Written Procedure	Section 7.2 <input checked="" type="checkbox"/> 25 th Day of Month following Month of Payment Date delivery (default) <input type="checkbox"/> _____ Day of Month following Month of delivery
Section 2.5 <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm <input type="checkbox"/> _____ Business Days after receipt Deadline	Section 7.2 <input checked="" type="checkbox"/> Wire transfer (default) Method of <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Payment <input type="checkbox"/> Check
Section 2.6 <input checked="" type="checkbox"/> Seller (default) Confirming <input type="checkbox"/> Buyer Party <input type="checkbox"/> Constellation	Section 7.7 <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply
Section 3.2 <input checked="" type="checkbox"/> Cover Standard (default) Performance <input type="checkbox"/> Spot Price Standard Obligation Note: The following Spot Price Publication applies to both of the immediately preceding. Section 2.26 <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price <input type="checkbox"/> _____ Publication	Section 10.3.1 <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination <input type="checkbox"/> Early Termination Damages Do Not Apply Damages Section 10.3.2 <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement <input type="checkbox"/> Other Agreement Setoffs Do Not Apply Setoffs
Section 6 <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point Taxes (default) <input type="checkbox"/> Seller Pays Before and At Delivery Point	Section 14.5 <input type="checkbox"/> New York Choice Of Law
Section 14.10 <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply	
<input checked="" type="checkbox"/> Special Provisions Number of sheets attached: Four (4) <input type="checkbox"/> Addendum(s): _____	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

Constellation Energy Commodities Group, Inc.

By: _____
 Name: _____
 Title: _____

Louisville Gas and Electric Co./Kentucky Utilities Co.

By: _____
 Name: _____
 Title: _____

MARTYN GALLUS
 SR. VICE PRESIDENT
 LOUISVILLE GAS & ELECTRIC COMPANY
 KENTUCKY UTILITIES

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.7.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

- 2.2. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- 2.8. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.11. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.16. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.17. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.20. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.24. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.

2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.

2.26. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.27. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.28. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.29. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due 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" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payments and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; or (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must

be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice 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. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due 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" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, 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. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. 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 to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make 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.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6 and Section 10, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

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. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY

INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MISCELLANEOUS

14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

14.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

14.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

14.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

14.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

14.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

14.7. There is no third party beneficiary to this Contract.

14.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

14.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

14.11 The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. **NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH**

PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.



NAESB

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$_____/MMBtu or _____				
Delivery Period: Begin: _____, _____ End: _____, _____				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day
Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
Special Conditions:				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS
TO THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS
BETWEEN CONSTELLATION ENERGY COMMODITIES GROUP, INC. ("Constellation") AND
LOUISVILLE GAS & ELECTRIC COMPANY/KENTUCKY UTILITIES ("LG&E/KU")
Dated November 19, 2007**

The following special provisions to the Base Contract shall supplement and form part of the Base Contract between the parties. In the event of any conflict or inconsistency between such special provisions and the Base Contract, the special provisions shall govern.

SECTION 2. DEFINITIONS

2.8 Section 2.8 "Contract Price" shall be amended by adding the following at the end of the section: "The Contract Price includes reimbursement to Seller for any production, severance, ad valorem or other Taxes owed with respect to Gas prior to delivery to Buyer, all of which Taxes shall be borne and paid exclusively by Seller, unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority."

The following sections shall be added to Section 2:

2.30 "Costs" means all costs and losses which the Non-Defaulting Party may reasonably incur in terminating and liquidating under Section 10 any Terminated Transactions, including, without limitation, attorneys' and brokers fees; costs and losses associated with transportation which cannot be avoided through the Non-Defaulting Party's reasonable efforts; and any costs and expenses reasonably incurred by the Non-Defaulting Party in entering into new arrangements which replace any Terminated Transaction, except for such amounts already included in the Net Settlement Amount.

2.31 "Cross Default" means a default, event of default or other similar event in respect of such party under either (i) one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than \$100,000,000, with respect to Constellation (or its guarantor, as applicable), and not less than \$ 50,000,000, with respect to Counterparty (or its guarantor, as applicable), which results in such indebtedness becoming immediately due and payable."

SECTION 5. QUALITY AND MEASUREMENT

Section 5 shall be deleted in its entirety and replace with the following:

"All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurements for purposes of this Contract shall be one MMBtu Dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline's then effective Federal Energy Regulatory Commission ("FERC") Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline."

SECTION 7. BILLING, PAYMENT AND AUDIT

7.3 Section 7.3 shall be amended by adding the phrase "including all supporting documentation acceptable in industry practice to support the amount charged" at the end of the first sentence after the phrase "amount was calculated".

7.4 Section 7.4 shall be amended by deleting the last sentence "In the event the parties are unable ... this Section." in its entirety and adding the following to end of this Section 7.4:

"Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at

the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived."

7.5 Section 7.5(i) shall be amended by inserting "U.S." between "then-effective" and "prime rate".

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

The following sections shall be amended as follows:

8.1 Section 8.1 shall be amended by inserting the word "assume" between "and" and "any liability"; and by inserting the words "at and" between "Gas" and "after" in the last sentence.

8.2 Section 8.2 shall be amended by inserting the phrase "SECTION 5," between "SECTION 8.2" and "AND IN SECTION 14.8" in the last sentence.

10.2 Section 10.2 shall be amended by (i) deleting the words "or its guarantor" in the first line of such Section; (ii) deleting the word "or" before "(viii)" in such Section; and (iii) adding the following immediately after the ";" in subclause (viii):

"(ix) make any representation or warranty herein which is false or misleading in any material respect when made or when deemed made or repeated; (x) fail to perform any material covenant or obligation set forth in this Contract (except to the extent such failure constitutes a separate Event of Default, and except for such party's obligations to deliver or receive Gas (the exclusive remedy for which is provided in Section 3)) if such failure is not remedied within seven (7) Business Days after receipt of written notice; (xi) consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such party under this Contract or any guaranty thereof, as applicable, by operation of law or pursuant to an agreement reasonably satisfactory to the other party; (xii) sustain the occurrence and continuation of a Cross Default; or (xiii) with respect to a party's guarantor (if any), (A) any event referenced in the above clauses (i) through (xii) shall have occurred with respect to such guarantor in connection with this Contract or its guaranty; (B) the failure of such guarantor's guaranty to be in full force and effect prior to the satisfaction of all obligations of such party under this Contract and each transaction; or (C) such guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its guaranty;"

Section 10.2 shall further be amended by adding the following immediately before the "." at the end of such Section:

"provided, that no suspension shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party given notice thereof in accordance with Section 10.3."

Section 10.3 shall be amended by deleting from the second (2nd) sentence the phrase "or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate"

The following sections shall be added to Section 10:

"10.8 In calculating early termination damages pursuant to Section 10.3.1, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions."

"10.9 Throughout the term of the Contract and if requested by the other party, each party will provide the other party with its or its guarantor's, as applicable, annual audited financial statements prepared in accordance with generally accepted accounting principles ("GAAP") and quarterly unaudited consolidated financial statements prepared in accordance with GAAP (subject to normal year-end adjustments and the omission of footnotes) within 120 days after the end of each fiscal year and 60 days after the end of each fiscal quarter, as applicable, in each case fairly presenting the financial condition of the applicable entity or entities; provided, however, in the event such

entity is required to make its annual audited and quarterly unaudited financial statements available to the public, then the other party shall use public sources to obtain such information."

Section 12 shall be deleted in its entirety and replaced with:

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 7.7, 8.3 (indemnity obligations for Claims that arise or accrue prior to termination), 8.4 (liability obligations for Claims that arise or accrue prior to termination), 10, 13, shall continue to apply."

SECTION 13. LIMITATIONS

Section 13 shall be amended by deleting the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6th) and seventh (7th) lines.

SECTION 14. MISCELLANEOUS

14.1 Section 14.1 shall be amended by inserting the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

The following sections shall be amended as follows:

14.8 The following shall be added to the end of Section 14.8:

"On the effective date and the date of entering into each transaction, each party represents and warrants that: (i) no Event of Default with respect to it has occurred and is continuing and no such event would occur as a result of its entering into or performing its obligations under this Contract and each transaction; (ii) it is acting for its own account, has made its own independent decision to enter into this Contract and each transaction and as to whether this Contract and each transaction is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Contract and each transaction; and (iii) it is an "eligible contract participant" as that term is defined in Section 1a(12) of the Commodity Exchange Act, as amended. The parties agree that this Contract constitutes a "qualified financial contract" as that term is defined in N.Y.G.O.L. §5-701(b) and a "master netting agreement" as defined in 11 U.S.C. 101(38A) or any successor provisions."

14.10 Section 14.10 is amended by adding the words "and such party's affiliates" after the word "party" in the third line of such Section and by adding the parenthetical "(excluding the name of the other party)" after the word "information" in the sub-section (iv).

14.11 Section 14.11 shall be deleted in its entirety and replaced with the following:

"14.11 This Contract, and the rights and duties of the parties arising therefrom, shall be governed by, and interpreted and construed in accordance with, the law of the State of New York (without reference to choice of law doctrine). With respect to any suit, action or proceeding relating to the foregoing ("Proceeding") each party irrevocably submits to the non-exclusive jurisdiction of the State and Federal Courts located in New York City, Borough of Manhattan, New York and any appellate court therefrom, and waives any objection to the laying of venue of any Proceeding brought in any such court, waives any claim that any Proceeding has been brought in an inconvenient forum and waives claim of sovereign immunity. **EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTRACT.**"

The following sections shall be added to Section 14:

"14.12 **Imaged Agreement.** Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement")."

The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

"14.13 **Market Disruption.** If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, no more than two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the obtained quotes. If either party fails to provide at least one quote then the average of the other party's quote(s) shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged."

14.15 ^{14.15} UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state New York shall be deemed to apply to all transactions. Each party further agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.

IN WITNESS WHEREOF, the parties hereto have executed these Special Provisions in duplicate.

Constellation Energy Commodities Group, Inc.

By: 
Name: Stu Rubenstein
Title: Chief Operating Officer

**Louisville Gas and Electric Company/
Kentucky Utilities Company**

By: 
Name: 
Title:

KAR
11/15/07
RPO
11/16/07

MARTYN GALLUS
SR. VICE PRESIDENT
LOUISVILLE GAS & ELECTRIC COMPANY
KENTUCKY UTILITIES

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "NEXTERA ENERGY POWER MARKETING, LLC", CHANGING ITS NAME FROM "NEXTERA ENERGY POWER MARKETING, LLC" TO "NEXTERA ENERGY MARKETING, LLC", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF DECEMBER, A.D. 2016, AT 4:13 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF AMENDMENT IS THE NINTH DAY OF JANUARY, A.D. 2017 AT 12 O'CLOCK A.M.



4636856 8100
SR# 20167058187

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature in black ink, appearing to read "JB", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 203513810
Date: 12-14-16

State of Delaware
Secretary of State
Division of Corporations
Delivered 04:13 PM 12/13/2016
FILED 04:13 PM 12/13/2016
SR 20167058187 - File Number 4636856

**STATE OF DELAWARE
CERTIFICATE OF AMENDMENT**

1. Name of Limited Liability Company: NextEra Energy Power Marketing, LLC
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

FIRST: The name of the limited liability company is
NextEra Energy Marketing, LLC

The name change shall become effective at 12:00 a.m.
(Eastern Standard Time) on January 9, 2017.

IN WITNESS WHEREOF, the undersigned have executed this Certificate on
the 13th day of December, A.D. 2016.

By: Amy Lowe
Authorized Person(s)

Name: Amy Lowe, Asst. Secretary
Print or Type

From: Shatto, Valerie [mailto:valerie.shatto@nexteraenergy.com]
Sent: Wednesday, October 21, 2015 11:40 AM
To: Prather, Carlesa <Carlesa.Prather@ie-ku.com>
Subject: RE: Assignment to NextEra Power Marketing, LLC

Yes, this closed on October 1st.

Valerie Shatto
Office: 713-800-1970
Cell: 281-300-3225
5847 San Felipe, Ste. 1910, Houston, TX 77057



From: Prather, Carlesa [mailto:Carlesa.Prather@ie-ku.com]
Sent: Wednesday, October 21, 2015 11:16 AM
To: Shatto, Valerie
Subject: RE: Assignment to NextEra Power Marketing, LLC

Hi Valerie -- yes, received your letter dated September 24, 2015 regarding assignment of NAESB contract between LGE/KU and NET Holdings Management to NextEra Energy Power Marketing. However, the letter reads 'Upon the NET Acquisition Closing, NET Holdings will assign various contracts to appropriate entity within NextEra structure.'

09/24/2015 16:30 FAX 17135465401

LATHAM&WATKINS



LATHAM & WATKINS LLP

811 Main Street, Suite 3700
Houston, TX 77002
Tel: +1.713.546.5400 Fax: +1.713.546.5401
www.lw.com

FIRM / AFFILIATE OFFICES

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Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.

FACSIMILE TRANSMISSION
September 22, 2015

To: Louisville Gas & Electric Co. Fax: 502-627-4222
ATTN: Contract
Administration

Tel:

From: Brock Naeve

Re: Assignment

☐ Original(s) to follow

Number of pages, including cover: 5

Please see attached for your review. Thank you.

The information contained in this facsimile is confidential and may also contain privileged attorney-client information or work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received the facsimile in error, please immediately notify us by telephone, and return the original message to us at the address above via the U.S. Postal service. Thank you.

If there are any problems with this transmission, please call +1.713.546.5400.

09/24/2015 16:30 FAX 17135465401

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HOLDINGS MANAGEMENT, LLC

5847 San Felipe Street
Suite 1910
Houston, Texas 77057
Main 713.800.1900
Fax 713.871.0510
netmidstream.com

September 24, 2015

Louisville Gas and Electric Co.
Kentucky Utilities Co.
220 West Main St.
7th Floor
Louisville, KY 40202
Attn: Contract Administration
Fax: (502) 627-4222

RE: Assignment of Base Contract for Sale and Purchase of Natural Gas between Louisville Gas and Electric Co. and Kentucky Utilities Co. (collectively, "you") and NET Holdings Management, LLC ("NET Holdings" or "we") dated October 1, 2007 (the "Contract") to NextEra Energy Power Marketing, LLC.

Dear Ladies and Gentlemen,

As you may be aware, NextEra Energy Partners, LP has agreed to wholly acquire NET Holdings. The acquisition will close in early October ("NET Acquisition Closing"). NET Holdings believes this combined platform will further strengthen our ability to serve our customers and we look forward to continuing our business relationship with you.

Upon the NET Acquisition Closing, NET Holdings will assign various contracts to the appropriate legal entities within the NextEra combined structure. Therefore, effective as of the NET Acquisition Closing, NET Holdings is assigning (the "Assignment") the Contract, including all confirmations and transactions thereunder, if any, to its affiliate, NextEra Energy Power Marketing, LLC, a Delaware limited liability company ("NEPM").

NextEra Energy Power Marketing is one of the nation's leading electricity and natural gas marketers and a key player in energy markets in the United States and Canada. NextEra Energy Power Marketing provides a wide range of electricity and gas commodity products as well as marketing and trading services. The size and scope of NEPM's operations and high creditworthiness, among the strongest anywhere in the industry, allow NEPM to deliver the highest quality products and services that can be relied on day after day, and year after year.

There will be no interruption or change in services, price or term regarding your contracts. This letter is merely notification of the Assignment described above. Your relationship points of contact will remain the same, therefore, if, at any point, you would like to discuss the Assignment or any other matter regarding the purchase, please do not hesitate to contact David Marye directly at 713-800-1974 or by email at davidmarye@netmidstream.com.

09/24/2015 16:31 FAX I713546540I

LATHAM&WATKINS

Upon the NET Acquisition Closing, the terms and conditions of the above referenced Contract, including all confirmations and transactions thereunder, if any, will be honored by NEPM, which will be your new contractual partner. The contact information for NEPM is as follows:

General:

700 Universe Blvd.

Juno Beach, FL Zip: 33408

Attn: Contracts/Legal Department

Facsimile: (561) 625-7504

Duns: NEPM : 05-448-1341

*10-23-15
CTS updated -
cp***Invoices:**

Attn: Manager, NEPM Accounting

Phone: (561) 304-5820

Facsimile: (561) 625-7651

Confirmations:

Attn: Confirmation Desk

Phone: (561) 691-2488

Facsimile: (561) 625-7517

Email: NextEra.Confirmations@NextEraEnergy.com

Scheduling:

Attn: Scheduling Desk

Phone: (561) 625-7100

Facsimile: (561) 625-7604

Payments:

Attn: Manager, NEPM Accounting

Phone: (561) 304-5820

Facsimile: (561) 625-7663

Wire Transfer:

Pay: Bank of America

For the Account of: NextEra Energy Power Marketing, LLC

**ACH Transfer:**

Pay: Bank of America

For the Account of: NextEra Energy Power Marketing, LLC



We value our business relationship with you and look forward to working together with you in the future.

[Signature Page Follows]

09/24/2015 16:31 FAX 17135465401

LATHAM&WATKINS

005/005

Sincerely,

NET HOLDINGS MANAGEMENT, LLC

By: 

Name: Jerry C. Dearing

Title: Co-President

09/08/2015 15:30 FAX 17135465401

LATHAM&WATKINS



5847 San Felipe Street
Suite 1910
Houston, Texas 77057
Main 713.800.1900
Fax 713.871.0510
netmidstream.com

September 8, 2015

Louisville Gas and Electric Co.
Kentucky Utilities Co.
220 West Main St.
7th Floor
Louisville, KY 40202
Attn: Contract Administration
Fax: (502) 627-4222

RE: Assignment of Base Contract for Sale and Purchase of Natural Gas between Louisville Gas and Electric Co. and Kentucky Utilities Co. (collectively, "you") and National Energy & Trade, LP ("NET LP" or "we") dated October 1, 2007 (the "Contract").

Dear Ladies and Gentlemen,

NET LP is assigning (the "Assignment") the Contract, including all confirmations and transactions thereunder, if any, listed above to its affiliate, NET Holdings Management LLC ("NET Holdings"). NET Holdings is NET LP's parent entity. The Assignment will be effective as of September 1, 2015.

There will be no interruption or change in services, price or term regarding your contracts. This letter is merely notification of the Assignment described above.

If, at any point, you would like to discuss the Assignment or any other matter referenced herein, please do not hesitate to contact David Marye directly at (713) 800-1974 or by email at davidmarye@netmidstream.com. We value, and look forward to continuing, our business relationship with you.

[Signature Page Follows]

A large, stylized, and somewhat abstract graphic that resembles a signature or a large letter 'C' with a long tail. It is composed of a dense pattern of small dots or a halftone effect, giving it a textured appearance. It is positioned in the lower right quadrant of the page, partially overlapping the text area.

09/08/2015 15:30 FAX 17135465401

LATHAM&WATKINS

003/003

Schram

Sincerely,

NATIONAL ENERGY & TRADE, LP

By: NET General Partners, LLC, its general
partnerBy: 

Name: Jerry C. Dearing

Title: Vice President

NM

Form **W-9** (Rev. 12-2011)

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF FORMATION OF "NET HOLDINGS
MANAGEMENT, LLC", FILED IN THIS OFFICE ON THE SEVENTH DAY OF
MARCH, A.D. 2007, AT 1:05 O'CLOCK P.M.

4307915 8100

070290089

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 5486763

DATE: 03-07-07

State of Delaware
Secretary of State
Division of Corporations
Delivered 01:17 PM 03/07/2007
FILED 01:05 PM 03/07/2007
SRV 070290089 - 4307915 FILE

CERTIFICATE OF FORMATION**OF****NET HOLDINGS MANAGEMENT, LLC**

This Certificate of Formation, dated as of March 7, 2007, has been duly executed and is filed pursuant to Sections 18-201 and 18-204 of the Delaware Limited Liability Company Act (the "Act") to form a limited liability company (the "Company") under the Act.

1. *Name.* The name of the Company is "NET Holdings Management, LLC".
2. *Registered Office; Registered Agent.* The address of the registered office required to be maintained by Section 18-104 of the Act is:

Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

The name and address of the registered agent for service of process required to be maintained by Section 18-104 of the Act are:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

EXECUTED as of the date written first above.

By: 

Name: Manuel Vera

Title: Organizer

Base Contract for Sale and Purchase of Natural Gas

This Base Contract is entered into as of the following date: October 1, 2007. The parties to this Base Contract are the following:

Louisville Gas and Electric Co./Kentucky Utilities Co. ("LGE"/"KU") and
220 West Main St., 7th Floor, Louisville, KY 40202
Duns Number: LGE 00-694-5505/ KU 00-694-4398
Contract Number: Not Applicable

National Energy & Trade, LP
5847 San Felipe Street, Suite 1910 Houston TX 77057
Duns Number: 036411387
Contract Number: _____

Notices:

220 West Main St., 7th Floor, Louisville, KY 40202
Attn: Contract Administration
Phone: 502/627-4251 or 4251 Fax: 502/627-4222

5847 San Felipe Street, Suite 1910 Houston TX 77057
Attn: Contract Administration
Phone: (713) 800-1958 Fax: (713) 800-0510

Confirmations:

220 West Main St., 7th Floor, Louisville, KY 40202
Attn: Contract Administration
Phone: 502/627-4197 or 4251 Fax: 502/627-4222

5847 San Felipe Street, Suite 1910 Houston TX 77057
Attn: Contract Administration
Phone: (713) 800-1958 Fax: (713) 800-0510

Invoices and Payments:

220 West Main St., 7th Floor, Louisville, KY 40202
Attn: Gas Accounting
Phone: 502/627-4627 Fax: 502/627-3800

5847 San Felipe Street, Suite 1910 Houston TX 77057
Attn: Gas Accounting
Phone: (713) 800-1959 Fax: (713) 800-0510

Wire Transfer or ACH Numbers (if applicable):

 BNP Paribas NY
 Ref: National Energy & Trade, LP

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select only one box from each section:

Section 1.2 <input checked="" type="checkbox"/> Oral (default) Transaction <input type="checkbox"/> Written Procedure	Section 7.2 <input checked="" type="checkbox"/> 25 th Day of Month following Month of delivery (default) Payment Date <input type="checkbox"/> _____ Day of Month following Month of delivery
Section 2.5 <input checked="" type="checkbox"/> 2 Business Days after receipt (default) Confirm <input type="checkbox"/> _____ Business Days after receipt Deadline	Section 7.2 <input checked="" type="checkbox"/> Wire transfer (default) Method of <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) Payment <input type="checkbox"/> Check
Section 2.6 <input type="checkbox"/> Seller (default) Confirming <input type="checkbox"/> Buyer Party <input checked="" type="checkbox"/> LGE/KU	Section 7.7 <input checked="" type="checkbox"/> Netting applies (default) Netting <input type="checkbox"/> Netting does not apply
Section 3.2 <input checked="" type="checkbox"/> Cover Standard (default) Performance <input type="checkbox"/> Spot Price Standard Obligation Note: The following Spot Price Publication applies to both of the immediately preceding. Section 2.26 <input checked="" type="checkbox"/> Gas Daily Midpoint (default) Spot Price <input type="checkbox"/> _____ Publication	Section 10.3.1 <input checked="" type="checkbox"/> Early Termination Damages Apply (default) Early Termination <input type="checkbox"/> Early Termination Damages Do Not Apply Damages Section 10.3.2 <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) Other Agreement <input type="checkbox"/> Other Agreement Setoffs Do Not Apply Setoffs
Section 6 <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) Taxes <input type="checkbox"/> Seller Pays Before and At Delivery Point	Section 14.5 Choice Of Law New York Section 14.10 <input checked="" type="checkbox"/> Confidentiality applies (default) Confidentiality <input type="checkbox"/> Confidentiality does not apply
Special Provisions Number of sheets attached: Six (6) Addendum(s): _____	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

By _____

Name: _____

Title: _____

MARTYN GALLUS
SR. VICE PRESIDENT
LOUISVILLE GAS & ELECTRIC COMPANY
KENTUCKY UTILITIES

National Energy & Trade, LP

By _____

Name: Jerry C. Dearing

Title: VP NET General Partners LLC

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.7.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract. However, nothing herein shall be construed as a waiver of any objection to the admissibility of such evidence.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.

2.2. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.

2.3. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).

- 2.4. "Business Day" shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 2.5. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.6. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.7. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation.
- 2.8. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.9. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.10. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.11. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature.
- 2.12. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.13. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.14. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.15. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.16. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.17. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.18. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.19. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.20. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.21. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.22. "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.
- 2.23. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.24. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.25. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.26. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average

of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.

2.27. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.

2.28. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.

2.29. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s); or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s); or (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available, then the sole and exclusive remedy of the performing party shall be any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller and received by Buyer for such Day(s). Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due 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" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 14.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payments and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; or (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract; or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the parties.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount owed to the Non-Defaulting Party against any margin or other collateral held by it in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such Notice 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. The Net Settlement Amount shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount shall accrue from the date due 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" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, 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. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. 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 to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make 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.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Agreement; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6 and Section 10, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

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. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MISCELLANEOUS

14.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

14.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

14.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

14.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

14.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

14.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

14.7. There is no third party beneficiary to this Contract.

14.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

14.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

14.10. Unless the parties have elected on the Base Contract not to make this Section 14.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, or (iv) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure, and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

14.11 The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$ ____/MMBtu or _____				
Delivery Period: Begin: _____, _____ End: _____, _____				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day
Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
Special Conditions:				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

Special Provisions to the Base Contract**SPECIAL PROVISIONS – U.S. NAESB**

Special Provisions (“Special Provisions”) attached to and forming a part of that certain Base Contract for Short-Term Sale and Purchase of Natural Gas dated October 1, 2007 (the “Base Contract”) by and between: Louisville Gas and Electric Co./Kentucky Utilities Co. and National Energy & Trade, LP.

Capitalized terms used in these Special Provisions shall have the meanings ascribed to them in the Base Contract. Section references in these Special Provisions refer to a Section of the General Terms and Conditions of the Base Contract, unless stated otherwise.

SECTION 1. PURPOSES AND PROCEDURES

1. Section 1.2 “Oral Transaction Procedure” shall be amended by (a) inserting “a recorded” before “telephone” in the second line; and (b) inserting “recorded” before “telephonic” in the fifth line.

2. The following sections shall be added to Section 1:

“1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein.”

“1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation.”

SECTION 2. DEFINITIONS

3. Section 2.10 “Cover Standard” shall be amended by deleting “(or an alternate fuel if elected by Buyer and replacement Gas is not available)” from the definition.

4. The following Sections shall be added to the end of Section 2:

”2.30 “Costs” means (a) losses associated with transmission/transportation costs related to the terminated transactions pursuant to this Contract incurred by the Non-Defaulting Party which cannot be avoided through the Non-Defaulting Party’s reasonable efforts; (b) brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party entering into new arrangements which replace a terminated transaction; and (c) commercially reasonable attorneys’ fees and court costs, if any, incurred in connection with enforcing its rights in respect of the terminated transactions.

2.31 “Credit Support Document” shall mean, as to a party (the “First Party”), a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting

Special Provisions to the Base Contract

any obligations of the First Party under this Contract provided in each case that the issuer and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.32 “Eligible Collateral” shall mean either (a) (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.33 “Futures Contract” shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board’s regulations.

2.34 “Investment Grade Rating” shall mean a party’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody’s of “Baa3” or higher and a rating from S&P of “BBB-” or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its “corporate credit rating” assigned by S&P, or the “long-term issuer rating” assigned by Moody’s. Moody’s shall mean Moody’s Investor Services, Inc. or its successors. S&P shall mean the Standard & Poor’s Rating Group (a division of McGraw-Hill Inc.) or its successors.

2.35 “Letter of Credit” means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s.

2.36 “Material Adverse Change” shall mean a party’s rating falls below an Investment Grade Rating.

2.37 “NYMEX” shall mean the New York Mercantile Exchange.

2.38 “Option” means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.39 “Option Buyer” with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as “Buyer”) or deliver Gas (if the Option Buyer is identified as “Seller”).

2.40 “Option Seller” with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as “Buyer”) or receive Gas (if the Option Buyer is identified as “Seller”).

2.41 “Premium” means the amount identified as such in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.42 “Transaction Tape” shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes.”

Special Provisions to the Base Contract

SECTION 3. PERFORMANCE OBLIGATION

5. Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase “and no such replacement or sale is available” in (iii):

“or in the event that the non-breaching party elects, at its sole option not to replace undelivered Gas or re-sell unaccepted Gas”

SECTION 5. QUALITY AND MEASUREMENT

6. Delete the existing paragraph under Section 5 in its entirety and replace with the following:

“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the pipeline system and/or facilities which shall receive the Gas at the Delivery Point(s) set forth in the transaction. The unit of quantity measurement for purposes of this Contract shall be one MMBtu Dry. BTU and volume measurements shall be made at the pressure and temperature basis of the measuring pipeline in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such pipeline.”

SECTION 7. BILLING, PAYMENT AND AUDIT

7. Add the following language to the end of Section 7.3:

“including all supporting documentation acceptable in industry practice to support the amount charged.”

8. Section 7.4 shall be amended by deleting the last sentence “In the event the parties are unable ...” in its entirety and replaced with:

“Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived.”

9. Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).

10. Section 7.8 shall be added as follows:

“7.8 Upon either party’s request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month.”

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

Special Provisions to the Base Contract

11. **Section 8.2 shall be amended by inserting the phrase “SECTION 5,” between “SECTION 8.2” and “AND IN SECTION 14.8” in the last sentence.**

SECTION 10. FINANCIAL RESPONSIBILITY

12. **Delete the last sentence of Section 10.1 in its entirety and replace with the following:**
“Adequate Assurance of Performance” shall mean the provision of Eligible Collateral.”
13. **Amend Section 10.2 as follows:**
(a) insert “,if any,” after “guarantor” in the first (1st) line
(b) delete “or” before “(viii)”
(c) insert in the ninth line after the phrase “such payment is due” the phrase “or (ix) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides, within three (3) Business Days of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing, Eligible Collateral to the other party”
14. **Amend Section 10.3 by**
Delete from the second (2nd) sentence the phrase “or that are, in the reasonable opinion of the Non-Defaulting Party, commercially impracticable to liquidate and terminate”
15. **Section 10.3.1 “Early Termination Damages Apply” shall be amended by adding at the end of the last sentence of the second paragraph:**
“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”)”
16. **Add the following to the end of Section 10:**
“10.8 In calculating the Net Settlement Amount, the Non-Defaulting Party may take into account its Costs incurred as a result of terminating transactions.”
“10.9 No suspension pursuant to Section 10.2 shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party has been given notice thereof in accordance with Section 10.3.”

SECTION 11. FORCE MAJEURE

17. **The following shall be added to the end of Section II**
“11.7 Any party claiming Force Majeure (the “Claiming Party”) as an excuse for performance shall provide the other party (the Non-claiming Party”) a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days.”

SECTION 12. TERM

18. **Section 12 shall be deleted in its entirety and replaced with:**

Special Provisions to the Base Contract

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.7, 8.3, 8.4, 10, and 13 shall continue to apply."

SECTION 13. LIMITATIONS

19. Delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED," from the sixth (6th) and seventh (7th) lines.

SECTION 14. MISCELLANEOUS:

20. Insert in Section 14.1 the word ",conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.
21. Insert in Section 14.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).
22. The following Sections shall be added:
- 14.12 Each party agrees that the provisions of this Contract supersede and replace in their entirety any requirements of law relating to adequate assurance of future performance, including without limitation Article 2 of the Uniform Commercial Code, as enacted in New York.
- 14.13 UCC - Except as otherwise provided for herein, the provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Contract shall be deemed to apply to all transactions.
- 14.14 Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two (2) following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth

Special Provisions to the Base Contract

(4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1) and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

- 14.15 Louisville Gas and Electric Company and Kentucky Utilities Company shall be jointly and severally liable for their respective obligations under this Agreement; provided, however, that Louisville Gas and Electric Company and Kentucky Utilities Company together shall not be liable for more than 100% of the total obligation.

STATE OF MISSOURI



Jason Kander
Secretary of State

CERTIFICATE OF AMENDMENT

WHEREAS,

Spire Marketing Inc.
00231342

FORMERLY

LACLEDE ENERGY RESOURCES, INC.

A corporation organized under the General and Business Corporation Law has delivered to me a Certificate of Amendment of its Articles of Incorporation and has in all respects complied with the requirements of law governing the Amendment of Articles of Incorporation under General and Business Corporation Law, and that the Articles of Incorporation of said corporation are amended in accordance therewith.

IN TESTIMONY WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri. Done at the City of Jefferson, this 6th day of December, 2016.

Effective Date: December 12, 2016


Secretary of State





State of Missouri

Jason Kander, Secretary of State

Corporations Division
PO Box 778 / 600 W. Main St., Rm. 322
Jefferson City, MO 65102

00231342

Date Filed: 12/6/2016

Effective: 12/12/2016

Jason Kander

Missouri Secretary of State

Amendment of Articles of Incorporation for a General Business or Close Corporation

(Submit with \$25.00 filing fee; if increasing # of shares, please see fee schedule for appropriate fee.)

Pursuant to the provisions of the General and Business Corporation Law of Missouri, the undersigned Corporation certifies the following:

1. The present name of the Corporation is Laclede Energy Resources, Inc.

The name under which it was originally organized was Laclede Energy Resources, Inc.

2. An amendment to the Corporation's Articles of Incorporation was adopted by the shareholders on August 8, 2016

month/day/year

3. Article Number ONE is amended to read as follows:

The name of the Corporation is: Spire Marketing Inc.

(If more than one article is to be amended or more space is needed attach additional pages)

(Please see next page)

Name and address to return filed document:

Name: _____

Address: _____

City, State, and Zip Code: _____

ORI-12072016-1242 State of Missouri

No of Pages 2 Pages



Amend/Restate - For Profit

EXP. 12/12/2017

4. Of the 15 shares outstanding, 15 of such shares were entitled to vote on such amendment.

The number of outstanding shares of any class entitled to vote thereon as a class were as follows:

Class	Number of Outstanding Shares
<u>Common</u>	<u>15</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

5. The number of shares voted for and against the amendment was as follows:

Class	No. Voted For	No. Voted Against
<u>Common</u>	<u>15</u>	<u>0</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

6. If the amendment provides for an exchange, reclassification, or cancellation of issued shares, or a reduction of the number of authorized shares of any class below the number of issued shares of that class, the following is a statement of the manner in which such reduction shall be effected:

7. If the effective date of the amendment is to be a date other than the date of filing of the certificate of amendment with the Secretary of State, then the effective date, which shall be no more than 90 days following the filing date, shall be specified: 12/12/2016

In Affirmation thereof, the facts stated above are true and correct:

(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

<u>Ellen L. Theroff</u>	<u>Ellen L. Theroff, Corporate Secretary</u>	<u>12/6/2016</u>
Authorized Signature	Printed Name	Title

Base Contract for Sale and Purchase of Natural GasThis Base Contract is entered into as of the following date: October 1, 2010

The parties to this Base Contract are the following:

PARTY A LACLEDE ENERGY RESOURCES, INC	PARTY NAME	PARTY B Louisville Gas and Electric Company / Kentucky Utilities Company ("LGE/KU")
720 Olive Rd, Suite 750, St. Louis, MO 63101	ADDRESS	220 West Main Street, 7 th FL, Louisville, KY 40202
<u>www.thelacledegroup.com</u>	BUSINESS WEBSITE	<u>www.eon-us.com</u>
	CONTRACT NUMBER	N/A
<u>18-877-9862</u>	D-U-N-S® NUMBER	LGE 00-694-5505 / KU 00-694-4398
<input checked="" type="checkbox"/> US FEDERAL: [REDACTED] <input type="checkbox"/> OTHER:	TAX ID NUMBERS	<input checked="" type="checkbox"/> US FEDERAL: [REDACTED] <input type="checkbox"/> OTHER:
Missouri	JURISDICTION OF ORGANIZATION	
<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____	COMPANY TYPE	<input checked="" type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership <input type="checkbox"/> LLP <input type="checkbox"/> Other: _____
	GUARANTOR (IF APPLICABLE)	
CONTACT INFORMATION		
Wholesale Marketing Representative ATTN: <u>Andrea Beam</u> TEL#: <u>(314) 575-4821</u> FAX#: <u>(314) 516-8551</u> EMAIL: <u>abeam@lacledeenergy.com</u>	▪ COMMERCIAL	ATTN: <u>Trading Manager Gas</u> TEL#: <u>502-627-4578</u> FAX#: <u>502-627-4655</u> EMAIL: _____
Gas Supply Administrator ATTN: <u>Ashley Dixon</u> TEL#: <u>(314) 342-0522</u> FAX#: <u>(314) 516-8551</u>	▪ SCHEDULING	ATTN: <u>Gas Scheduling</u> TEL#: <u>502-627-3034</u> FAX#: <u>502-627-4655</u>
Contract Administration ATTN: <u>Contract Administration</u> TEL#: <u>(314) 342-3303</u> FAX#: <u>(314) 516-8551</u> EMAIL: <u>tqallaway@lacledeenergy.com</u>	▪ CONTRACT AND LEGAL NOTICES	LGE/KU ATTN: <u>Contract Administration</u> 220 W Main St, 7 th FL, Louisville KY 40202 With Add'l Notice of Default Attn: General Counsel, 11 th FL TEL#: <u>502-627-4197</u> or <u>4253</u> FAX#: <u>502-627-4222</u> Add'l Notice of Default Fax# <u>502-627-3950</u>
Credit ATTN: <u>Treasury Department</u> TEL#: <u>(314) 342-0544</u> FAX#: <u>(314) 516-8551</u> EMAIL: _____	▪ CREDIT	LGE/KU ATTN: <u>Manager Credit</u> TEL#: <u>502-627-4253</u> FAX#: <u>502-627-3950</u> EMAIL: <u>N/A</u>
Contract Administration ATTN: <u>Contract Administration</u> TEL#: <u>(314) 342-3303</u> FAX#: <u>(314) 516-8551</u> EMAIL: <u>tqallaway@lacledeenergy.com</u>	▪ TRANSACTION CONFIRMATIONS	LGE/KU ATTN: <u>Contract Administration</u> TEL#: <u>502-627-4197</u> or <u>2252</u> FAX#: <u>502-627-4222</u> EMAIL: <u>N/A</u>
ACCOUNTING INFORMATION		
INVOICES and PAYMENTS: 720 Olive, Rm 1409, St. Louis, MO 63101 ATTN: <u>Accounts Payable</u> TEL#: <u>(314) 342-3322</u> FAX#: <u>(314) 516-8551</u> EMAIL: _____	▪ INVOICES ▪ PAYMENTS ▪ SETTLEMENTS	LGE/KU ATTN: <u>Gas Accounting</u> TEL#: <u>502-627-4325</u> FAX#: <u>502-627-3800</u> EMAIL: <u>N/A</u>
[REDACTED] [REDACTED] [REDACTED]	WIRE TRANSFER NUMBERS (IF APPLICABLE)	[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] OTHER DETAILS: _____	ACH NUMBERS (IF APPLICABLE)	[REDACTED] [REDACTED] [REDACTED] OTHER DETAILS: <u>N/A</u>
ATTN: _____ ADDRESS: _____	CHECKS (IF APPLICABLE)	ATTN: _____ ADDRESS: _____

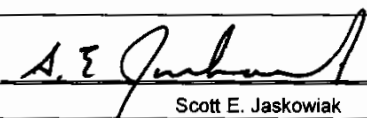
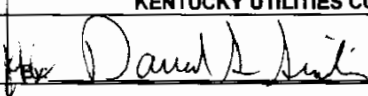
Base Contract for Sale and Purchase of Natural Gas

(Continued)

This Base Contract incorporates by reference for all purposes the General Terms and Conditions for Sale and Purchase of Natural Gas published by the North American Energy Standards Board. The parties hereby agree to the following provisions offered in said General Terms and Conditions. In the event the parties fail to check a box, the specified default provision shall apply. Select the appropriate box(es) from each section:

Section 1.2 Transaction Procedure <input checked="" type="checkbox"/> Oral (default) OR <input type="checkbox"/> Written	Section 10.2 Additional Events of Default <input checked="" type="checkbox"/> No Additional Events of Default (default) <input type="checkbox"/> Indebtedness Cross Default <input type="checkbox"/> Party A: _____ <input type="checkbox"/> Party B: _____ <input type="checkbox"/> Transactional Cross Default <u>Specified Transactions:</u> _____ _____ _____
Section 2.7 Confirm Deadline <input checked="" type="checkbox"/> 2 Business Days after receipt (default) OR <input type="checkbox"/> 5 Business Days after receipt	
Section 2.8 Confirming Party <input checked="" type="checkbox"/> Seller (default) OR <input type="checkbox"/> Buyer _____	
Section 3.2 Performance Obligation <input checked="" type="checkbox"/> Cover Standard (default) OR <input type="checkbox"/> Spot Price Standard	Section 10.3.1 Early Termination Damages <input checked="" type="checkbox"/> Early Termination Damages Apply (default) OR <input type="checkbox"/> Early Termination Damages Do Not Apply
Note: The following Spot Price Publication applies to both of the immediately preceding.	
Section 2.31 Spot Price Publication <input checked="" type="checkbox"/> Gas Daily Midpoint (default) OR <input type="checkbox"/> _____	Section 10.3.2 Other Agreement Setoffs <input checked="" type="checkbox"/> Other Agreement Setoffs Apply (default) <input checked="" type="checkbox"/> Bilateral (default) <input type="checkbox"/> Triangular OR <input type="checkbox"/> Other Agreement Setoffs Do Not Apply
Section 6 Taxes <input checked="" type="checkbox"/> Buyer Pays At and After Delivery Point (default) OR <input type="checkbox"/> Seller Pays Before and At Delivery Point	
Section 7.2 Payment Date <input checked="" type="checkbox"/> 25 th Day of Month following Month of delivery (default) OR <input type="checkbox"/> Day of Month following Month of delivery	Section 15.5 Choice Of Law _____ <u>New York</u> _____
Section 7.2 Method of Payment <input checked="" type="checkbox"/> Wire transfer (default) AND <input checked="" type="checkbox"/> Automated Clearinghouse Credit (ACH) <input type="checkbox"/> Check	Section 15.10 Confidentiality <input checked="" type="checkbox"/> Confidentiality applies (default) OR <input type="checkbox"/> Confidentiality does not apply
Section 7.7 Netting <input checked="" type="checkbox"/> Netting applies (default) OR <input type="checkbox"/> Netting does not apply	
<input checked="" type="checkbox"/> Special Provisions Six sheets attached: <input type="checkbox"/> Addendum(s): _____	

IN WITNESS WHEREOF, the parties hereto have executed this Base Contract in duplicate.

LACLEDE ENERGY RESOURCES, INC	PARTY NAME	LOUISVILLE GAS AND ELECTRIC COMPANY/ KENTUCKY UTILITIES COMPANY
By: 	SIGNATURE	
Scott E. Jaskowiak	PRINTED NAME	David S. Sinclair
Vice President and General Manager	TITLE	Vice President – Energy Marketing

General Terms and Conditions

Base Contract for Sale and Purchase of Natural Gas

SECTION 1. PURPOSE AND PROCEDURES

1.1. These General Terms and Conditions are intended to facilitate purchase and sale transactions of Gas on a Firm or Interruptible basis. "Buyer" refers to the party receiving Gas and "Seller" refers to the party delivering Gas. The entire agreement between the parties shall be the Contract as defined in Section 2.9.

The parties have selected either the "Oral Transaction Procedure" or the "Written Transaction Procedure" as indicated on the Base Contract.

Oral Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Any Gas purchase and sale transaction may be effectuated in an EDI transmission or telephone conversation with the offer and acceptance constituting the agreement of the parties. The parties shall be legally bound from the time they so agree to transaction terms and may each rely thereon. Any such transaction shall be considered a "writing" and to have been "signed". Notwithstanding the foregoing sentence, the parties agree that Confirming Party shall, and the other party may, confirm a telephonic transaction by sending the other party a Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means within three Business Days of a transaction covered by this Section 1.2 (Oral Transaction Procedure) provided that the failure to send a Transaction Confirmation shall not invalidate the oral agreement of the parties. Confirming Party adopts its confirming letterhead, or the like, as its signature on any Transaction Confirmation as the identification and authentication of Confirming Party. If the Transaction Confirmation contains any provisions other than those relating to the commercial terms of the transaction (i.e., price, quantity, performance obligation, delivery point, period of delivery and/or transportation conditions), which modify or supplement the Base Contract or General Terms and Conditions of this Contract (e.g., arbitration or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 1.3 but must be expressly agreed to by both parties; provided that the foregoing shall not invalidate any transaction agreed to by the parties.

Written Transaction Procedure:

1.2. The parties will use the following Transaction Confirmation procedure. Should the parties come to an agreement regarding a Gas purchase and sale transaction for a particular Delivery Period, the Confirming Party shall, and the other party may, record that agreement on a Transaction Confirmation and communicate such Transaction Confirmation by facsimile, EDI or mutually agreeable electronic means, to the other party by the close of the Business Day following the date of agreement. The parties acknowledge that their agreement will not be binding until the exchange of nonconflicting Transaction Confirmations or the passage of the Confirm Deadline without objection from the receiving party, as provided in Section 1.3.

1.3. If a sending party's Transaction Confirmation is materially different from the receiving party's understanding of the agreement referred to in Section 1.2, such receiving party shall notify the sending party via facsimile, EDI or mutually agreeable electronic means by the Confirm Deadline, unless such receiving party has previously sent a Transaction Confirmation to the sending party. The failure of the receiving party to so notify the sending party in writing by the Confirm Deadline constitutes the receiving party's agreement to the terms of the transaction described in the sending party's Transaction Confirmation. If there are any material differences between timely sent Transaction Confirmations governing the same transaction, then neither Transaction Confirmation shall be binding until or unless such differences are resolved including the use of any evidence that clearly resolves the differences in the Transaction Confirmations. In the event of a conflict among the terms of (i) a binding Transaction Confirmation pursuant to Section 1.2, (ii) the oral agreement of the parties which may be evidenced by a recorded conversation, where the parties have selected the Oral Transaction Procedure of the Base Contract, (iii) the Base Contract, and (iv) these General Terms and Conditions, the terms of the documents shall govern in the priority listed in this sentence.

1.4. The parties agree that each party may electronically record all telephone conversations with respect to this Contract between their respective employees, without any special or further notice to the other party. Each party shall obtain any necessary consent of its agents and employees to such recording. Where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, the parties agree not to contest the validity or enforceability of telephonic recordings entered into in accordance with the requirements of this Base Contract.

SECTION 2. DEFINITIONS

The terms set forth below shall have the meaning ascribed to them below. Other terms are also defined elsewhere in the Contract and shall have the meanings ascribed to them herein.

2.1. "Additional Event of Default" shall mean Transactional Cross Default or Indebtedness Cross Default, each as and if selected by the parties pursuant to the Base Contract.

2.2. "Affiliate" shall mean, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of at least 50 percent of the voting power of the entity or person.

- 2.3. "Alternative Damages" shall mean such damages, expressed in dollars or dollars per MMBtu, as the parties shall agree upon in the Transaction Confirmation, in the event either Seller or Buyer fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer.
- 2.4. "Base Contract" shall mean a contract executed by the parties that incorporates these General Terms and Conditions by reference; that specifies the agreed selections of provisions contained herein; and that sets forth other information required herein and any Special Provisions and addendum(s) as identified on page one.
- 2.5. "British thermal unit" or "Btu" shall mean the International BTU, which is also called the Btu (IT).
- 2.6. "Business Day(s)" shall mean Monday through Friday, excluding Federal Banking Holidays for transactions in the U.S.
- 2.7. "Confirm Deadline" shall mean 5:00 p.m. in the receiving party's time zone on the second Business Day following the Day a Transaction Confirmation is received or, if applicable, on the Business Day agreed to by the parties in the Base Contract; provided, if the Transaction Confirmation is time stamped after 5:00 p.m. in the receiving party's time zone, it shall be deemed received at the opening of the next Business Day.
- 2.8. "Confirming Party" shall mean the party designated in the Base Contract to prepare and forward Transaction Confirmations to the other party.
- 2.9. "Contract" shall mean the legally-binding relationship established by (i) the Base Contract, (ii) any and all binding Transaction Confirmations and (iii) where the parties have selected the Oral Transaction Procedure in Section 1.2 of the Base Contract, any and all transactions that the parties have entered into through an EDI transmission or by telephone, but that have not been confirmed in a binding Transaction Confirmation, all of which shall form a single integrated agreement between the parties.
- 2.10. "Contract Price" shall mean the amount expressed in U.S. Dollars per MMBtu to be paid by Buyer to Seller for the purchase of Gas as agreed to by the parties in a transaction.
- 2.11. "Contract Quantity" shall mean the quantity of Gas to be delivered and taken as agreed to by the parties in a transaction.
- 2.12. "Cover Standard", as referred to in Section 3.2, shall mean that if there is an unexcused failure to take or deliver any quantity of Gas pursuant to this Contract, then the performing party shall use commercially reasonable efforts to (i) if Buyer is the performing party, obtain Gas, (or an alternate fuel if elected by Buyer and replacement Gas is not available), or (ii) if Seller is the performing party, sell Gas, in either case, at a price reasonable for the delivery or production area, as applicable, consistent with: the amount of notice provided by the nonperforming party; the immediacy of the Buyer's Gas consumption needs or Seller's Gas sales requirements, as applicable; the quantities involved; and the anticipated length of failure by the nonperforming party.
- 2.13. "Credit Support Obligation(s)" shall mean any obligation(s) to provide or establish credit support for, or on behalf of, a party to this Contract such as cash, an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, guaranty, or other good and sufficient security of a continuing nature.
- 2.14. "Day" shall mean a period of 24 consecutive hours, coextensive with a "day" as defined by the Receiving Transporter in a particular transaction.
- 2.15. "Delivery Period" shall be the period during which deliveries are to be made as agreed to by the parties in a transaction.
- 2.16. "Delivery Point(s)" shall mean such point(s) as are agreed to by the parties in a transaction.
- 2.17. "EDI" shall mean an electronic data interchange pursuant to an agreement entered into by the parties, specifically relating to the communication of Transaction Confirmations under this Contract.
- 2.18. "EFP" shall mean the purchase, sale or exchange of natural Gas as the "physical" side of an exchange for physical transaction involving gas futures contracts. EFP shall incorporate the meaning and remedies of "Firm", provided that a party's excuse for nonperformance of its obligations to deliver or receive Gas will be governed by the rules of the relevant futures exchange regulated under the Commodity Exchange Act.
- 2.19. "Firm" shall mean that either party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of Force Majeure; provided, however, that during Force Majeure interruptions, the party invoking Force Majeure may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 2.20. "Gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.21. "Guarantor" shall mean any entity that has provided a guaranty of the obligations of a party hereunder.
- 2.22. "Imbalance Charges" shall mean any fees, penalties, costs or charges (in cash or in kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.
- 2.23. "Indebtedness Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it or its Guarantor, if any, experiences a default, or similar condition or event however therein defined, under one or more agreements or instruments, individually or collectively, relating to indebtedness (such indebtedness to include any obligation whether present or future, contingent or otherwise, as principal or surety or otherwise) for the payment or repayment of borrowed money in an aggregate amount greater than the threshold specified in the Base Contract with respect to such party or its Guarantor, if any, which results in such indebtedness becoming immediately due and payable.

- 2.24. "Interruptible" shall mean that either party may interrupt its performance at any time for any reason, whether or not caused by an event of Force Majeure, with no liability, except such interrupting party may be responsible for any Imbalance Charges as set forth in Section 4.3 related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by Transporter.
- 2.25. "MMBtu" shall mean one million British thermal units, which is equivalent to one dekatherm.
- 2.26. "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.
- 2.27. "Payment Date" shall mean a date, as indicated on the Base Contract, on or before which payment is due Seller for Gas received by Buyer in the previous Month.
- 2.28. "Receiving Transporter" shall mean the Transporter receiving Gas at a Delivery Point, or absent such receiving Transporter, the Transporter delivering Gas at a Delivery Point.
- 2.29. "Scheduled Gas" shall mean the quantity of Gas confirmed by Transporter(s) for movement, transportation or management.
- 2.30. "Specified Transaction(s)" shall mean any other transaction or agreement between the parties for the purchase, sale or exchange of physical Gas, and any other transaction or agreement identified as a Specified Transaction under the Base Contract.
- 2.31. "Spot Price" as referred to in Section 3.2 shall mean the price listed in the publication indicated on the Base Contract, under the listing applicable to the geographic location closest in proximity to the Delivery Point(s) for the relevant Day; provided, if there is no single price published for such location for such Day, but there is published a range of prices, then the Spot Price shall be the average of such high and low prices. If no price or range of prices is published for such Day, then the Spot Price shall be the average of the following: (i) the price (determined as stated above) for the first Day for which a price or range of prices is published that next precedes the relevant Day; and (ii) the price (determined as stated above) for the first Day for which a price or range of prices is published that next follows the relevant Day.
- 2.32. "Transaction Confirmation" shall mean a document, similar to the form of Exhibit A, setting forth the terms of a transaction formed pursuant to Section 1 for a particular Delivery Period.
- 2.33. "Transactional Cross Default" shall mean if selected on the Base Contract by the parties with respect to a party, that it shall be in default, however therein defined, under any Specified Transaction.
- 2.34. "Termination Option" shall mean the option of either party to terminate a transaction in the event that the other party fails to perform a Firm obligation to deliver Gas in the case of Seller or to receive Gas in the case of Buyer for a designated number of days during a period as specified on the applicable Transaction Confirmation.
- 2.35. "Transporter(s)" shall mean all Gas gathering or pipeline companies, or local distribution companies, acting in the capacity of a transporter, transporting Gas for Seller or Buyer upstream or downstream, respectively, of the Delivery Point pursuant to a particular transaction.

SECTION 3. PERFORMANCE OBLIGATION

- 3.1. Seller agrees to sell and deliver, and Buyer agrees to receive and purchase, the Contract Quantity for a particular transaction in accordance with the terms of the Contract. Sales and purchases will be on a Firm or Interruptible basis, as agreed to by the parties in a transaction.

The parties have selected either the "Cover Standard" or the "Spot Price Standard" as indicated on the Base Contract.

Cover Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the positive difference, if any, between the purchase price paid by Buyer utilizing the Cover Standard and the Contract Price, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually delivered by Seller for such Day(s) excluding any quantity for which no replacement is available; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in the amount equal to the positive difference, if any, between the Contract Price and the price received by Seller utilizing the Cover Standard for the resale of such Gas, adjusted for commercially reasonable differences in transportation costs to or from the Delivery Point(s), multiplied by the difference between the Contract Quantity and the quantity actually taken by Buyer for such Day(s) excluding any quantity for which no sale is available; and (iii) in the event that Buyer has used commercially reasonable efforts to replace the Gas or Seller has used commercially reasonable efforts to sell the Gas to a third party, and no such replacement or sale is available for all or any portion of the Contract Quantity of Gas, then in addition to (i) or (ii) above, as applicable, the sole and exclusive remedy of the performing party with respect to the Gas not replaced or sold shall be an amount equal to any unfavorable difference between the Contract Price and the Spot Price, adjusted for such transportation to the applicable Delivery Point, multiplied by the quantity of such Gas not replaced or sold. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

Spot Price Standard:

3.2. The sole and exclusive remedy of the parties in the event of a breach of a Firm obligation to deliver or receive Gas shall be recovery of the following: (i) in the event of a breach by Seller on any Day(s), payment by Seller to Buyer in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Spot Price; or (ii) in the event of a breach by Buyer on any Day(s), payment by Buyer to Seller in an amount equal to the difference between the Contract Quantity and the actual quantity delivered by Seller and received by Buyer for such Day(s), multiplied by the positive difference, if any, obtained by subtracting the applicable Spot Price from the Contract Price. Imbalance Charges shall not be recovered under this Section 3.2, but Seller and/or Buyer shall be responsible for Imbalance Charges, if any, as provided in Section 4.3. The amount of such unfavorable difference shall be payable five Business Days after presentation of the performing party's invoice, which shall set forth the basis upon which such amount was calculated.

3.3. Notwithstanding Section 3.2, the parties may agree to Alternative Damages in a Transaction Confirmation executed in writing by both parties.

3.4. In addition to Sections 3.2 and 3.3, the parties may provide for a Termination Option in a Transaction Confirmation executed in writing by both parties. The Transaction Confirmation containing the Termination Option will designate the length of nonperformance triggering the Termination Option and the procedures for exercise thereof, how damages for nonperformance will be compensated, and how liquidation costs will be calculated.

SECTION 4. TRANSPORTATION, NOMINATIONS, AND IMBALANCES

4.1. Seller shall have the sole responsibility for transporting the Gas to the Delivery Point(s). Buyer shall have the sole responsibility for transporting the Gas from the Delivery Point(s).

4.2. The parties shall coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each party shall give the other party timely prior Notice, sufficient to meet the requirements of all Transporter(s) involved in the transaction, of the quantities of Gas to be delivered and purchased each Day. Should either party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such party shall promptly notify the other party.

4.3. The parties shall use commercially reasonable efforts to avoid imposition of any Imbalance Charges. If Buyer or Seller receives an invoice from a Transporter that includes Imbalance Charges, the parties shall determine the validity as well as the cause of such Imbalance Charges. If the Imbalance Charges were incurred as a result of Buyer's receipt of quantities of Gas greater than or less than the Scheduled Gas, then Buyer shall pay for such Imbalance Charges or reimburse Seller for such Imbalance Charges paid by Seller. If the Imbalance Charges were incurred as a result of Seller's delivery of quantities of Gas greater than or less than the Scheduled Gas, then Seller shall pay for such Imbalance Charges or reimburse Buyer for such Imbalance Charges paid by Buyer.

SECTION 5. QUALITY AND MEASUREMENT

All Gas delivered by Seller shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

SECTION 6. TAXES

The parties have selected either "Buyer Pays At and After Delivery Point" or "Seller Pays Before and At Delivery Point" as indicated on the Base Contract.

Buyer Pays At and After Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

Seller Pays Before and At Delivery Point:

Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s) and all Taxes at the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas after the Delivery Point(s). If a party is required to remit or pay Taxes that are the other party's responsibility hereunder, the party responsible for such Taxes shall promptly reimburse the other party for such Taxes. Any party entitled to an exemption from any such Taxes or charges shall furnish the other party any necessary documentation thereof.

SECTION 7. BILLING, PAYMENT, AND AUDIT

7.1. Seller shall invoice Buyer for Gas delivered and received in the preceding Month and for any other applicable charges, providing supporting documentation acceptable in industry practice to support the amount charged. If the actual quantity delivered is not known by the billing date, billing will be prepared based on the quantity of Scheduled Gas. The invoiced quantity will then be adjusted to the actual quantity on the following Month's billing or as soon thereafter as actual delivery information is available.

7.2. Buyer shall remit the amount due under Section 7.1 in the manner specified in the Base Contract, in immediately available funds, on or before the later of the Payment Date or 10 Days after receipt of the invoice by Buyer; provided that if the Payment Date is not a Business Day, payment is due on the next Business Day following that date. In the event any payments are due Buyer hereunder, payment to Buyer shall be made in accordance with this Section 7.2.

7.3. In the event payments become due pursuant to Sections 3.2 or 3.3, the performing party may submit an invoice to the nonperforming party for an accelerated payment setting forth the basis upon which the invoiced amount was calculated. Payment from the nonperforming party will be due five Business Days after receipt of invoice.

7.4. If the invoiced party, in good faith, disputes the amount of any such invoice or any part thereof, such invoiced party will pay such amount as it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed without undue delay. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.

7.5. If the invoiced party fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due 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" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

7.6. A party shall have the right, at its own expense, upon reasonable Notice and at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Contract. This right to examine, audit, and to obtain copies shall not be available with respect to proprietary information not directly relevant to transactions under this Contract. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under- or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two years after the Month of Gas delivery. All retroactive adjustments under Section 7 shall be paid in full by the party owing payment within 30 Days of Notice and substantiation of such inaccuracy.

7.7. Unless the parties have elected on the Base Contract not to make this Section 7.7 applicable to this Contract, the parties shall net all undisputed amounts due and owing, and/or past due, arising under the Contract such that the party owing the greater amount shall make a single payment of the net amount to the other party in accordance with Section 7; provided that no payment required to be made pursuant to the terms of any Credit Support Obligation or pursuant to Section 7.3 shall be subject to netting under this Section. If the parties have executed a separate netting agreement, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

8.1. Unless otherwise specifically agreed, title to the Gas shall pass from Seller to Buyer at the Delivery Point(s). Seller shall have responsibility for and assume any liability with respect to the Gas prior to its delivery to Buyer at the specified Delivery Point(s). Buyer shall have responsibility for and assume any liability with respect to said Gas after its delivery to Buyer at the Delivery Point(s).

8.2. Seller warrants that it will have the right to convey and will transfer good and merchantable title to all Gas sold hereunder and delivered by it to Buyer, free and clear of all liens, encumbrances, and claims. EXCEPT AS PROVIDED IN THIS SECTION 8.2 AND IN SECTION 15.8, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

8.3. Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims"), from any and all persons, arising from or out of claims of title, personal injury (including death) or property damage from said Gas or other charges thereon which attach before title passes to Buyer. Buyer agrees to indemnify Seller and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding payment, personal injury (including death) or property damage from said Gas or other charges thereon which attach after title passes to Buyer.

8.4. The parties agree that the delivery of and the transfer of title to all Gas under this Contract shall take place within the Customs Territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedule of the United States 19 U.S.C. §1202, General Notes, page 3); provided, however, that in the event Seller took title to the Gas outside the Customs Territory of the United States, Seller represents and warrants that it is the importer of record for all Gas entered and delivered into the United States, and shall be responsible for entry and entry summary filings as well as the payment of duties, taxes and fees, if any, and all applicable record keeping requirements.

8.5. Notwithstanding the other provisions of this Section 8, as between Seller and Buyer, Seller will be liable for all Claims to the extent that such arise from the failure of Gas delivered by Seller to meet the quality requirements of Section 5.

SECTION 9. NOTICES

9.1. All Transaction Confirmations, invoices, payment instructions, and other communications made pursuant to the Base Contract ("Notices") shall be made to the addresses specified in writing by the respective parties from time to time.

9.2. All Notices required hereunder shall be in writing and may be sent by facsimile or mutually acceptable electronic means, a nationally recognized overnight courier service, first class mail or hand delivered.

9.3. Notice shall be given when received on a Business Day by the addressee. In the absence of proof of the actual receipt date, the following presumptions will apply. Notices sent by facsimile shall be deemed to have been received upon the sending party's receipt of its facsimile machine's confirmation of successful transmission. If the day on which such facsimile is received is

not a Business Day or is after five p.m. on a Business Day, then such facsimile shall be deemed to have been received on the next following Business Day. Notice by overnight mail or courier shall be deemed to have been received on the next Business Day after it was sent or such earlier time as is confirmed by the receiving party. Notice via first class mail shall be considered delivered five Business Days after mailing.

9.4. The party receiving a commercially acceptable Notice of change in payment instructions or other payment information shall not be obligated to implement such change until ten Business Days after receipt of such Notice.

SECTION 10. FINANCIAL RESPONSIBILITY

10.1. If either party ("X") has reasonable grounds for insecurity regarding the performance of any obligation under this Contract (whether or not then due) by the other party ("Y") (including, without limitation, the occurrence of a material change in the creditworthiness of Y or its Guarantor, if applicable), X may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" shall mean sufficient security in the form, amount, for a term, and from an issuer, all as reasonably acceptable to X, including, but not limited to cash, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or guaranty. Y hereby grants to X a continuing first priority security interest in, lien on, and right of setoff against all Adequate Assurance of Performance in the form of cash transferred by Y to X pursuant to this Section 10.1. Upon the return by X to Y of such Adequate Assurance of Performance, the security interest and lien granted hereunder on that Adequate Assurance of Performance shall be released automatically and, to the extent possible, without any further action by either party.

10.2. In the event (each an "Event of Default") either party (the "Defaulting Party") or its Guarantor shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any Credit Support Obligations relating to the Contract; (vii) fail to give Adequate Assurance of Performance under Section 10.1 within 48 hours but at least one Business Day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second Business Day following written Notice that such payment is due; or ix) be the affected party with respect to any Additional Event of Default; then the other party (the "Non-Defaulting Party") shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon Notice and/or to terminate and liquidate the transactions under the Contract, in the manner provided in Section 10.3, in addition to any and all other remedies available hereunder.

10.3. If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by Notice to the Defaulting Party, to designate a Day, no earlier than the Day such Notice is given and no later than 20 Days after such Notice is given, as an early termination date (the "Early Termination Date") for the liquidation and termination pursuant to Section 10.3.1 of all transactions under the Contract, each a "Terminated Transaction". On the Early Termination Date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law ("Excluded Transactions"), which Excluded Transactions must be liquidated and terminated as soon thereafter as is legally permissible, and upon termination shall be a Terminated Transaction and be valued consistent with Section 10.3.1 below. With respect to each Excluded Transaction, its actual termination date shall be the Early Termination Date for purposes of Section 10.3.1.

The parties have selected either "Early Termination Damages Apply" or "Early Termination Damages Do Not Apply" as indicated on the Base Contract.

Early Termination Damages Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract and (ii) the Market Value, as defined below, of each Terminated Transaction. The Non-Defaulting Party shall (x) liquidate and accelerate each Terminated Transaction at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of such Terminated Transaction(s) shall be due to the Buyer under the Terminated Transaction(s) if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant Terminated Transactions).

For purposes of this Section 10.3.1, "Contract Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the Contract Price, and "Market Value" means the amount of Gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the Delivery Point determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term of a transaction to which parties are not bound as of the Early Termination Date (including but not limited to "evergreen provisions") shall not be considered in determining Contract Values and

Market Values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining Contract Values and Market Values. The rate of interest used in calculating net present value shall be determined by the Non-Defaulting Party in a commercially reasonable manner.

Early Termination Damages Do Not Apply:

10.3.1. As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under Terminated Transactions and Excluded Transactions on and before the Early Termination Date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Section 3.2), for which payment has not yet been made by the party that owes such payment under this Contract.

The parties have selected either "Other Agreement Setoffs Apply" or "Other Agreement Setoffs Do Not Apply" as indicated on the Base Contract.

Other Agreement Setoffs Apply:

Bilateral Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff any Net Settlement Amount against (i) any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; and (ii) any amount(s) (including any excess cash margin or excess cash collateral) owed or held by the party that is entitled to the Net Settlement Amount under any other agreement or arrangement between the parties.

Triangular Setoff Option:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option, and without prior Notice to the Defaulting Party, the Non-Defaulting Party is hereby authorized to setoff (i) any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract; (ii) any Net Settlement Amount against any amount(s) (including any excess cash margin or excess cash collateral) owed by or to a party under any other agreement or arrangement between the parties; (iii) any Net Settlement Amount owed to the Non-Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Non-Defaulting Party or its Affiliates to the Defaulting Party under any other agreement or arrangement; (iv) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party to the Non-Defaulting Party or its Affiliates under any other agreement or arrangement; and/or (v) any Net Settlement Amount owed to the Defaulting Party against any amount(s) (including any excess cash margin or excess cash collateral) owed by the Defaulting Party or its Affiliates to the Non-Defaulting Party under any other agreement or arrangement.

Other Agreement Setoffs Do Not Apply:

10.3.2. The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 10.3.1, so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the "Net Settlement Amount"). At its sole option and without prior Notice to the Defaulting Party, the Non-Defaulting Party may setoff any Net Settlement Amount against any margin or other collateral held by a party in connection with any Credit Support Obligation relating to the Contract.

10.3.3. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 10.3.2 is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 10.3.2 shall be discounted to net present value in a commercially reasonable manner determined by the Non-Defaulting Party.

10.4. As soon as practicable after a liquidation, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Net Settlement Amount, and whether the Net Settlement Amount is due to or due from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of the Net Settlement Amount, provided that failure to give such Notice 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. The Net Settlement Amount as well as any setoffs applied against such amount pursuant to Section 10.3.2, shall be paid by the close of business on the second Business Day following such Notice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the Net Settlement Amount as adjusted by setoffs, shall accrue from the date due 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" by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

10.5. The parties agree that the transactions hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

10.6. The Non-Defaulting Party's remedies under this Section 10 are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each party reserves to itself all other rights, setoffs, counterclaims and other defenses that it is or may be entitled to arising from the Contract.

10.7. With respect to this Section 10, if the parties have executed a separate netting agreement with close-out netting provisions, the terms and conditions therein shall prevail to the extent inconsistent herewith.

SECTION 11. FORCE MAJEURE

11.1. Except with regard to a party's obligation to make payment(s) due under Section 7, Section 10.4, and Imbalance Charges under Section 4, 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. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined in Section 11.2.

11.2. 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 to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of wells or lines of pipe; (iii) interruption and/or curtailment of Firm transportation and/or storage by Transporters; (iv) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars, or acts of terror; and (v) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction. Seller and Buyer shall make 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.

11.3. Neither party shall be entitled to the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances: (i) the curtailment of interruptible or secondary Firm transportation unless primary, in-path, Firm transportation is also curtailed; (ii) the party claiming excuse failed to remedy the condition and to resume the performance of such covenants or obligations with reasonable dispatch; or (iii) economic hardship, to include, without limitation, Seller's ability to sell Gas at a higher or more advantageous price than the Contract Price, Buyer's ability to purchase Gas at a lower or more advantageous price than the Contract Price, or a regulatory agency disallowing, in whole or in part, the pass through of costs resulting from this Contract; (iv) the loss of Buyer's market(s) or Buyer's inability to use or resell Gas purchased hereunder, except, in either case, as provided in Section 11.2; or (v) the loss or failure of Seller's gas supply or depletion of reserves, except, in either case, as provided in Section 11.2. The party claiming Force Majeure shall not be excused from its responsibility for Imbalance Charges.

11.4. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be within the sole discretion of the party experiencing such disturbance.

11.5. The party whose performance is prevented by Force Majeure must provide Notice to the other party. Initial Notice may be given orally; however, written Notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written Notice of Force Majeure to the other party, the affected party will be relieved of its obligation, from the onset of the Force Majeure event, to make or accept delivery of Gas, as applicable, to the extent and for the duration of Force Majeure, and neither party shall be deemed to have failed in such obligations to the other during such occurrence or event.

11.6. Notwithstanding Sections 11.2 and 11.3, the parties may agree to alternative Force Majeure provisions in a Transaction Confirmation executed in writing by both parties.

SECTION 12. TERM

This Contract may be terminated on 30 Day's written Notice, but shall remain in effect until the expiration of the latest Delivery Period of any transaction(s). The rights of either party pursuant to Section 7.6, Section 10, Section 13, the obligations to make payment hereunder, and the obligation of either party to indemnify the other, pursuant hereto shall survive the termination of the Base Contract or any transaction.

SECTION 13. LIMITATIONS

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. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

SECTION 14. MARKET DISRUPTION

If a Market Disruption Event has occurred then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or on a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the second Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either party fails to provide two quotes then the average of the other party's two quotes shall determine the replacement price for the Floating Price. "Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index. "Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred. For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

SECTION 15. MISCELLANEOUS

15.1. This Contract shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, and heirs of the respective parties hereto, and the covenants, conditions, rights and obligations of this Contract shall run for the full term of this Contract. No assignment of this Contract, in whole or in part, will be made without the prior written consent of the non-assigning party (and shall not relieve the assigning party from liability hereunder), which consent will not be unreasonably withheld or delayed; provided, either party may (i) transfer, sell, pledge, encumber, or assign this Contract or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements, or (ii) transfer its interest to any parent or Affiliate by assignment, merger or otherwise without the prior approval of the other party. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder.

15.2. If any provision in this Contract is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Contract.

15.3. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach.

15.4. This Contract sets forth all understandings between the parties respecting each transaction subject hereto, and any prior contracts, understandings and representations, whether oral or written, relating to such transactions are merged into and superseded by this Contract and any effective transaction(s). This Contract may be amended only by a writing executed by both parties.

15.5. The interpretation and performance of this Contract shall be governed by the laws of the jurisdiction as indicated on the Base Contract, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.

15.6. This Contract and all provisions herein will be subject to all applicable and valid statutes, rules, orders and regulations of any governmental authority having jurisdiction over the parties, their facilities, or Gas supply, this Contract or transaction or any provisions thereof.

15.7. There is no third party beneficiary to this Contract.

15.8. Each party to this Contract represents and warrants that it has full and complete authority to enter into and perform this Contract. Each person who executes this Contract on behalf of either party represents and warrants that it has full and complete authority to do so and that such party will be bound thereby.

15.9. The headings and subheadings contained in this Contract are used solely for convenience and do not constitute a part of this Contract between the parties and shall not be used to construe or interpret the provisions of this Contract.

15.10. Unless the parties have elected on the Base Contract not to make this Section 15.10 applicable to this Contract, neither party shall disclose directly or indirectly without the prior written consent of the other party the terms of any transaction to a third party (other than the employees, lenders, royalty owners, counsel, accountants and other agents of the party, or prospective purchasers of all or substantially all of a party's assets or of any rights under this Contract, provided such persons shall have agreed to keep such terms confidential) except (i) in order to comply with any applicable law, order, regulation, or exchange rule, (ii) to the extent necessary for the enforcement of this Contract, (iii) to the extent necessary to implement any transaction, (iv) to the extent necessary to comply with a regulatory agency's reporting requirements including but not limited to gas cost recovery proceedings; or (v) to the extent such information is delivered to such third party for the sole purpose of calculating a published index. Each party shall notify the other party of any proceeding of which it is aware which may result in disclosure of the terms of any transaction (other than as permitted hereunder) and use reasonable efforts to prevent or limit the disclosure. The existence of this Contract is not subject to this confidentiality obligation. Subject to Section 13, the parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with this confidentiality obligation. The terms of any transaction hereunder shall be kept confidential by the parties hereto for one year from the expiration of the transaction.

In the event that disclosure is required by a governmental body or applicable law, the party subject to such requirement may disclose the material terms of this Contract to the extent so required, but shall promptly notify the other party, prior to disclosure,

and shall cooperate (consistent with the disclosing party's legal obligations) with the other party's efforts to obtain protective orders or similar restraints with respect to such disclosure at the expense of the other party.

15.11. The parties may agree to dispute resolution procedures in Special Provisions attached to the Base Contract or in a Transaction Confirmation executed in writing by both parties

15.12. Any original executed Base Contract, Transaction Confirmation or other related document may be digitally copied, photocopied, or stored on computer tapes and disks (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Transaction Confirmation, if introduced as evidence in automated facsimile form, the recording, if introduced as evidence in its original form, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings will be admissible as between the parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the recording, the Transaction Confirmation, or the Imaged Agreement on the basis that such were not originated or maintained in documentary form. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence.

DISCLAIMER: The purposes of this Contract are to facilitate trade, avoid misunderstandings and make more definite the terms of contracts of purchase and sale of natural gas. Further, NAESB does not mandate the use of this Contract by any party. NAESB DISCLAIMS AND EXCLUDES, AND ANY USER OF THIS CONTRACT ACKNOWLEDGES AND AGREES TO NAESB'S DISCLAIMER OF, ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THIS CONTRACT OR ANY PART THEREOF, INCLUDING ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS OR SUITABILITY FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT NAESB KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE), WHETHER ALLEGED TO ARISE BY LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, OR BY COURSE OF DEALING. EACH USER OF THIS CONTRACT ALSO AGREES THAT UNDER NO CIRCUMSTANCES WILL NAESB BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY USE OF THIS CONTRACT.

TRANSACTION CONFIRMATION
FOR IMMEDIATE DELIVERY

EXHIBIT A

Letterhead/Logo	Date: _____, _____ Transaction Confirmation #: _____			
This Transaction Confirmation is subject to the Base Contract between Seller and Buyer dated _____. The terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt unless otherwise specified in the Base Contract.				
SELLER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____	BUYER: _____ _____ Attn: _____ Phone: _____ Fax: _____ Base Contract No. _____ Transporter: _____ Transporter Contract Number: _____			
Contract Price: \$ ____ /MMBtu or _____				
Delivery Period: Begin: _____, _____ End: _____, _____				
Performance Obligation and Contract Quantity: (Select One) <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP </td> <td style="width: 33%; vertical-align: top;"> Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller </td> <td style="width: 33%; vertical-align: top;"> Interruptible: Up to _____ MMBtus/day </td> </tr> </table>		Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day
Firm (Fixed Quantity): _____ MMBtus/day <input type="checkbox"/> EFP	Firm (Variable Quantity): _____ MMBtus/day Minimum _____ MMBtus/day Maximum subject to Section 4.2. at election of <input type="checkbox"/> Buyer or <input type="checkbox"/> Seller	Interruptible: Up to _____ MMBtus/day		
Delivery Point(s): _____ (If a pooling point is used, list a specific geographic and pipeline location):				
Special Conditions:				
Seller: _____ By: _____ Title: _____ Date: _____	Buyer: _____ By: _____ Title: _____ Date: _____			

**SPECIAL PROVISIONS ATTACHED TO AND FORMING PART OF
THE BASE CONTRACT FOR SALE AND PURCHASE OF NATURAL GAS**

Dated October 1, 2010

by and between

Laclede Energy Resources Inc. ("LACLEDE")

And

Louisville Gas and Electric Company and Kentucky Utilities Company ("LGE/KU")

SECTION 1. PURPOSES AND PROCEDURES

The following sections shall be added to Section 1:

"1.5 The parties agree and recognize that in some instances purchases and sales may be facilitated through brokers. The parties agree that all recordings between themselves, third parties and brokers may be introduced into evidence and used to prove a contract between the parties and the authority of the broker to effectuate the transaction. Both Parties waive objections based on the Statute of Frauds, the Parol Evidence Rule, or similar evidentiary rules, to the introduction of the recorded conversations into evidence to prove a contract contemplated herein."

"1.6 Each party shall, at its expense, maintain equipment necessary to regularly record transactions on Transaction Tapes and retain Transaction Tapes in such manner as to protect its business records from improper access; provided neither party shall be liable for any malfunction of equipment or the operation thereof in respect of any transaction without regard to the cause or causes related thereto, including, without limitation, the negligence be sole, joint, or concurrent, or active or passive. No transaction shall be invalidated should a malfunction occur in equipment regularly utilized for recording transactions or retaining Transaction Tapes or the operation thereof, and in such event, the transaction shall be evidenced by the Transaction Confirmation and if no Transaction Confirmation is available, by the written and computer records of the parties concerning the transaction made contemporaneously with the telephone conversation."

SECTION 2. DEFINITIONS

Section 2.12 "Cover Standard" shall be amended by deleting "(or an alternate fuel if elected by Buyer and replacement Gas is not available)" from the definition.

The following Sections shall be added to the end of Section 2:

2.36 "Credit Support Document" shall mean, as to a party (the "First Party"), a guaranty from a Guarantor, margin or security agreement or document, or any other document containing an obligation of a third party or of the First Party in favor of the other party supporting any obligations of the First Party under this Contract provided in each case that the issuer, amount and the format of such document are acceptable to the requesting party in its reasonable discretion.

2.37 "Eligible Collateral" shall mean either (i) cash, (ii) a Letter of Credit, or (iii) a Credit Support Document, in each case in an amount acceptable to the requesting party in its reasonable discretion (which may be up to the Net Settlement Amount that would be due if all transactions under the Contract were immediately liquidated).

2.38 "Futures Contract" shall mean the standardized contract for the purchase or sale of Gas that is traded for future delivery under the applicable trading board's regulations.

2.39 "Investment Grade Rating" shall mean a party's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) rating from Moody's of "Baa3" or higher and a rating from S&P of "BBB-" or higher; or, if such entity does not have a rating for its senior unsecured long-term debt, then such rating then assigned to such entity as its "corporate credit rating" assigned by S&P, or the "long-term issuer rating" assigned by Moody's. Moody's shall mean Moody's Investors Service, Inc. or its successors. S&P shall mean the Standard & Poor's Rating Group (a division of The McGraw-Hill Companies) or its successors.

2.40 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit in a form acceptable to the requesting party in its reasonable discretion from a major U.S. commercial bank or a foreign bank with a U.S. branch office, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's.

2.41 "Material Adverse Change" shall mean a party or its Guarantor's rating falls below an Investment Grade Rating.

2.42 "NYMEX" shall mean the New York Mercantile Exchange.

2.43 "Option" means a transaction in which, in exchange for the payment of the Premium by the Option Buyer, the Option Seller grants the Option Buyer the right to enter into a transaction on the agreed terms set forth in a Transaction Confirmation or the parties' oral or electronic agreement, as applicable, which terms shall include, among other terms, which of the Option Buyer and the Option Seller is the Buyer and which is the Seller under such transaction.

2.44 “Option Buyer” with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which is the party that has acquired the right, upon exercise of the Option to receive Gas (if the Option Buyer is identified as “Buyer”) or deliver Gas (if the Option Buyer is identified as “Seller”).

2.45 “Option Seller” with respect to a transaction that is an Option, means the party identified as such in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which is the party that has sold the Option. If the Option is exercised by the Option Buyer, the Option Seller will be obligated to deliver Gas (if the Option Buyer is identified as “Buyer”) or receive Gas (if the Option Buyer is identified as “Seller”).

2.46 “Premium” means the amount identified as such in a Transaction Confirmation or the parties’ oral or electronic agreement, as applicable, which is the amount payable by the Option Buyer to the Option Seller in exchange for an Option.

2.47 “Transaction Tape” shall be defined as electronic tape(s) of telephone recordings maintained by Seller and/or the Buyer for verification and/or evidentiary purposes.”

SECTION 3. PERFORMANCE OBLIGATION

Add the following language to the Cover Standard in line 10 of Section 3.2 after the phrase “and no such replacement or sale is available” in (iii):

“or in the event that the non-breaching party elects, at its sole option, not to replace or re-sell to a third party the Gas not delivered”

SECTION 5. QUALITY AND MEASUREMENT

Delete the existing paragraph under Section 5 in its entirety and replace with the following:

“All Gas delivered by Seller shall meet the pressure, quality and heat specification of the Receiving Transporter. BTU and volume measurements shall be made at the pressure and temperature basis of the Receiving Transporter in accordance with the provisions of such pipeline’s then effective Federal Energy Regulatory Commission (“FERC”) Gas Tariff, or in event such pipeline is not subject to FERC regulation, the applicable Gas transportation regulations or contract provisions of such Receiving Transporter.”

SECTION 6. TAXES

Add the following after the last sentence in Section 6 for “Buyer Pays At and After Delivery Point”:

All such Taxes shall be paid by Seller directly to the taxing authority unless Buyer is required by law to collect and remit such Taxes, in which event Buyer shall withhold from payments to Seller an amount required to be collected and remitted by Buyer and then remit such amounts to the taxing authority.”

Add as the last paragraph of Section 6:

“6.2 In the event an energy, BTU, consumption, or use tax shall be imposed on or with respect to the Gas, whether prior to, at, or after delivery at the Delivery Point (“Governmental Charge”), each party shall use reasonable efforts to implement the provision and administer the Contract in accordance with the intent of the parties to minimize any such Governmental Charge(s).”

SECTION 7. BILLING, PAYMENT AND AUDIT

Add the following language to the end of Section 7.3:

“including all supporting documentation acceptable in industry practice to support the amount charged”

Section 7.4 shall be amended by deleting the last sentence “In the event the parties are unable ...” in its entirety and replacing with:

“Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the rate of interest specified in Section 7.5 below from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate of interest specified in Section 7.5 below from and including the date of such overpayment to but excluding the date repaid or deducted by the party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other party is notified in accordance with this Section 7.4 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twenty-four (24) months after the close of the month during which performance of a transaction occurred, the right to payment for such performance is waived.”

Section 7.5 shall be amended by inserting “U.S.” between “then-effective” and “prime rate” in subsection (i).

Section 7.8 shall be added as follows:

“7.8 Upon either party’s request, Buyer and/or Seller shall provide support documentation including but not limited to copies of any and all pertinent portions of transporter statements related to any completed transaction between the parties in order to determine the final settlement amount due for each Month. Each party shall exercise reasonable efforts to provide support documentation that is inclusive of volume and price [by location] data for the applicable Month.”

SECTION 8. TITLE, WARRANTY, AND INDEMNITY

Section 8.2 shall be amended by inserting the phrase “SECTION 5,” between “SECTION 8.2” and “AND IN SECTION 15.8” in the last sentence.

Add the following to the end of Section 8:

“8.6 In the event of any claim or litigation, at any time, concerning Seller’s title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof, Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer’s satisfaction.”

SECTION 9. NOTICES

9.4 shall be amended by:

- (a) in the first sentence delete the words “commercially acceptable”;
- (b) after the words “payment information” and before the word “shall” add “identified on the cover page under Accounting Information”; and
- (c) delete “ten (10)” and replace with “two (2)”.

SECTION 10. FINANCIAL RESPONSIBILITY

Section 10.1 shall be amended by adding the following to the end of the first sentence after the phrase “Adequate Assurance of Performance” and before the “.”: “provided, further, that if the financial responsibility of either party becomes unsatisfactory because of a reasonably verifiable material adverse change in the financial condition or creditworthiness of either party (including, but not limited to a Material Adverse Change), Adequate Assurance of Performance shall be given by the party experiencing such material adverse changes to the other party upon written request.

Delete the second sentence of Section 10.1 in its entirety and replace with the following:
 “‘Adequate Assurance of Performance’ shall mean the provision of Eligible Collateral.”

Section 10.2 shall be amended by

- (a) deleting “or” before “(ix)”;
- (b) inserting in the tenth line after the phrase “Additional Event of Default;” the phrase “or (x) suffers a Material Adverse Change; provided that, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party provides within (3) Business Days of receipt of written notice from the other party and maintains for so long as the Material Adverse Change is continuing Eligible Collateral to the other party”; and
- (c) adding at the end before the “.” in the last sentence: “provided that no suspension of performance shall continue for more than ten (10) Business Days unless an Early Termination Date has been declared and the Defaulting Party given Notice thereof in accordance with Section 10.3.”

Amend Section 10.3 by deleting from the sixth line the phrase “legally permissible” and replace with “practicable and not prohibited by applicable law”

Section 10.3.1 “Early Termination Damages Apply” shall be amended by adding the following:

- (a) “The Non-Defaulting Party may also aggregate the costs that the Non-Defaulting Party reasonably incurs in liquidating and accelerating each Terminated Transaction, or otherwise settling obligations arising from the cancellation and termination of each Terminated Transaction, including, but not limited to, brokerage fees, commissions, and other similar transaction costs and expenses reasonably incurred by the Non-Defaulting Party including costs associated with hedging its obligations, transaction costs associated with obtaining replacement suppliers or markets (e.g. brokerage fees, or other similar transaction payments), additional transmission costs which cannot be avoided through the Non-Defaulting Party’s reasonable efforts, and commercially reasonable attorneys’ fees and other commercially reasonable litigation costs incurred in connection with enforcing its rights under this Contract (collectively “Costs”) and such Costs shall be due to the Non-Defaulting Party.”; and

- (b) adding at the end of the last sentence of the second paragraph:

“(including without limitation by using a commercially reasonable discount rate such as London Interbank Offered Rate or “LIBOR”);

Delete Section 10.5 in its entirety and replace with the following:

"The parties specifically agree that (i) this Contract and all transactions pursuant hereto are "forward contracts" as such term is defined in the United States Bankruptcy Code (the "Bankruptcy Code") or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one party to the other party pursuant to this Contract constitute "settlement payments" within the meaning of the Bankruptcy Code; (iii) all transfers of Eligible Collateral by one party to the other party under this contract constitute "margin payments" within the meaning of the Bankruptcy Code; and (iv) this Contract constitutes a "master netting agreement" within the meaning of the Bankruptcy Code; and (v) that Seller is a "forward contract merchant" as such term is defined in the United States Bankruptcy Code. Each party further agrees that the other party is not a "utility" as such term is used in 11 U.S.C. Section 366, and each party agrees to waive and not to assert against the other party the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding involving such party."

SECTION 11. FORCE MAJEURE

Add the following to the end of Section 11:

"11.7 Any party claiming Force Majeure (the "Claiming Party") as an excuse for performance shall provide the other party (the Non-claiming Party") a good faith estimate of the duration of the Force Majeure. Sales or purchases under a transaction pursuant to this Contract and affected by a claim of Force Majeure may be terminated by the Non-claiming Party without either party having further liability to the other for unaccrued performance obligations under such sales or purchases (including without limitation for any payments as described in Section 10.2) if such event continues for a period of thirty (30) continuous days."

11.8 During the event of Force Majeure, the Claiming Party, if it is Seller, must cease interruptible deliveries to other markets prior to suspending the performance obligations under the Firm Transaction affected by such Force Majeure event. The Claiming Party, if it is Seller, must treat the other party equitably with its other Firm customers on a proportionate basis with regard to the remaining supply available for market.

SECTION 12. TERM

Section 12 shall be deleted in its entirety and replaced with:

"The term of this Contract shall be month-to-month until terminated on thirty (30) days advance written Notice by either party; provided, however, that, to the extent necessary, the provisions hereof shall survive termination of this Contract and continue to apply to any transactions entered into between Seller and Buyer prior to the date of termination of this Contract until such time as any and all such transactions are completed or terminated. Notwithstanding any termination, the obligation to make payment and provisions of Sections 1.6, 7.6, 7.7, 8.3, 8.4, 10 and 13 shall continue to apply."

SECTION 14. MARKET DISRUPTION

Section 14 shall be deleted in its entirety and replaced with the following:

Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction.

(A) If a Market Disruption Event has occurred during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the parties shall negotiate in good faith to agree on a replacement price for the Floating Price (or a method for determining a replacement price for the Floating Price) for the affected Day, and if the parties have not so agreed on or before the fifth Business Day following the affected Day then the replacement price for the Floating Price shall be determined within the next two following Business Days with each party obtaining, in good faith and from non-Affiliate market participants in the relevant market, two quotes for prices of Gas for the affected Day of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point. Once the parties obtain the quotes, the following methodology shall be used to determine the replacement price for the Floating Price: (i) if each party obtains two quotes, the arithmetic mean of the quotations, excluding the highest and lowest values, shall be utilized; (ii) if one party obtains two quotes and the other party only obtains one quote, the highest and lowest values shall be excluded and the remaining quotation shall be utilized; (iii) if both parties each obtain one quote, the arithmetic mean of the quotations shall be utilized; or (iv) if only one party is able to obtain a quote, the obtained quotation shall be utilized. For purposes of the foregoing sentence, if more than one quotation is the same as another quotation, and such quotations are the highest and/or lowest values, only one of the quotations shall be excluded.

Notwithstanding the foregoing, If the Price Source retrospectively issues a Floating Price, in respect of a Determination Period (a "Delayed Floating Price"), then, if the Delayed Floating Price is issued by the Price Source in respect of a Determination Period (i) before the parties agree on a substitute Floating Price for such day, then the Delayed Floating Price shall be the Floating Price for such Determination Period or (ii) after the Parties agree on a substitute Floating Price for such day, the substitute Floating Price agreed upon by the Parties will remain the Floating Price without adjustment notwithstanding any subsequent publication unless the Parties expressly agree otherwise.

"Determination Period" means each calendar month a part or all of which is within the Delivery Period of a Transaction."

"Floating Price" means the price or a factor of the price agreed to in the transaction as being based upon a specified index.

"Market Disruption Event" means, with respect to an index specified for a transaction, any of the following events: (a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) both parties agree that a material change in the formula for or the method of determining the Floating Price has occurred.

"Price Source" means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the Floating Price.

For the purposes of the calculation of a replacement price for the Floating Price, all numbers shall be rounded to three decimal places. If the fourth decimal number is five or greater, then the third decimal number shall be increased by one, and if the fourth decimal number is less than five, then the third decimal number shall remain unchanged.

(B) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within two (2) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) calendar days after publication or announcement.

SECTION 15. MISCELLANEOUS

Insert in Section 15.1 the word "conditioned" after the phrase "unreasonably withheld," in the fourth (4th) line.

The following language shall be added to the end of Section 15.1 after the word "hereunder":

"and shall provide prompt written notice to the other party of any such assignment, transfer and assumption."

Section 15.8 shall be amended by adding the following to the end thereof:

"The parties represent that all information supplied to each other is correct and that they are validly existing, financially able to continue their business, and neither is aware of any situation which would alter its financial abilities and has not in the past filed, planned to file or have had filed against it any bankruptcy or reorganization plan or proceeding."

Insert in Section 15.10 the phrase "provided, however, each party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure" at the end of (i).

Section 15.12 shall be amended by:

deleting the third sentence in its entirety and replacing with the following:

"So long as the Imaged Agreement bears the signature of the party against whom enforcement is sought if there is a space or line for such signature on the agreement, in the absence of evidence of fraud or irregularity in the imaging or computer retention process relating to the agreement, and the original document(s) is/are unobtainable, neither party shall object to the introduction, acceptance and admissibility of the recording, the Transaction Confirmation or the Imaged Agreement as evidence in any proceeding between the Parties before any court, arbitration panel, regulatory commission or similar body on the basis that such recording, Transaction confirmation or Imaged Agreements were not original agreements, originated or maintained in documentary form or do not comply with the best evidence rule."

The following Sections shall be added:

15.13 On occasion, the Seller may be the producer of the Gas and the Buyer may be the First Purchaser of the Gas. When a transaction is entered into under such circumstances, the following additional terms and conditions shall apply:

(a) The Contract Price shall be inclusive of all royalties and production related costs. Seller shall be responsible for all payments to the owners of all working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to Gas delivered and sold hereunder and Seller hereby agrees to defend, indemnify and hold Buyer harmless from any and all liabilities to the owners of such working interests, royalties, overriding royalties, bonus payments, production payments and other similar payments with respect to said Gas. Notwithstanding anything in the Base Contract to the contrary, Seller shall be responsible for remitting severance taxes on Gas purchased and sold hereunder and agrees to defend, indemnify and hold Buyer harmless from any and all liabilities with respect to such severance taxes.

(b) Seller recognizes that Buyer may verify title to the Gas purchased and sold hereunder and agrees to provide all information requested by Buyer for such verification within thirty (30) days of such request. Subject to the other provisions of this Section, Buyer agrees to make payment to Seller while title is being verified. If Buyer requires a Division Order Title Opinion to verify Seller's title or right to receive payments due hereunder, Seller agrees to provide to Buyer upon written request, without cost to Buyer, a Division Order Title Opinion satisfactory to Buyer within three (3) months from Seller's receipt of Buyer's written request. In the event that Seller does not provide a Division Order Title Opinion to Buyer within this period, Buyer may withhold any payments due hereunder, without payment of interest, until Buyer has received a Division Order Title Opinion. Moreover, in the event of any claim or litigation, at any time, concerning Seller's title to the leases, wells, Gas produced or liquid hydrocarbons recovered from the Gas sold here under or the proceed from the sale thereof,

Buyer shall, without limiting any other remedies available to it, be entitled to suspend only those payments related to the subject of (or any product of the subject of) any dispute, claim or controversy to Seller until such claims or litigation of title is resolved to Buyer's satisfaction. Notwithstanding the foregoing, Seller acknowledges that Buyer may rely entirely on the information provided by Seller or as set out on any Transaction Confirmation in making payments due hereunder. Buyer assumes no responsibility to review or approve any title information provided by Seller or any title information reflected on any Transaction Confirmation or to audit, compare, or update any such information against any title opinion or other information furnished or acquired pursuant to incidental to this Contract.

(c) For purposes of this Section 15.15, First Purchaser means the first person that purchases Gas production from an operator or interest owner after the production is severed.

Section 15.16

Add the following as Section 15.16:

"This Contract shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the manner in which this Contract was negotiated, prepared, drafted or executed."

SECTION 16. OPTION

16.1 Notwithstanding anything in the Contract to the contrary, if the parties have agreed that a particular transaction under this Contract is an Option, then prior to the exercise of the Option by Option Buyer the sole obligation of Option Buyer under such transaction shall be to pay the Premium for such Option and Option Seller shall have no obligation under such transaction. Upon the exercise of an Option by Option Buyer, each of Option Buyer and Option Seller shall be obligated to perform and entitled to performance under the Contract in connection with such transaction as either Buyer or Seller as indicated in the Transaction Confirmation or the parties' oral or electronic agreement, as applicable."

LACLEDE ENERGY RESOURCES, INC

By: 

Name: Scott E. Jaskowiak

Title: Vice President and General Manager

**LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY**

By: 

Name: David S. Sinclair

Title: Vice President – Energy Marketing