

NATURAL GAS PURCHASE CONTRACT

Between

ORBIT GAS COMPANY,

SELLER

and

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
COLUMBIA, KY

SEP 21 1999

PUBLIC SERVICE COMMISSION  
BY: [Signature]  
PUBLIC SERVICE COMMISSION MANAGER

WESTERN KENTUCKY GAS COMPANY,

a division of

ENERGAS COMPANY,

BUYER

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PUBLIC SERVICE COMMISSION  
 OF MISSISSIPPI  
 SEP 21 1968  
 BY *[Signature]*  
 PUBLIC SERVICE COMMISSION MANAGER

NATURAL GAS PURCHASE CONTRACT

THIS NATURAL GAS PURCHASE CONTRACT, hereinafter "Contract", is hereby made and entered into this the 25<sup>th</sup> day of May, 1988, by and between ORBIT GAS COMPANY, hereinafter referred to as "Orbit" or "Seller", and WESTERN KENTUCKY GAS COMPANY, a division of ENERGAS COMPANY, a PUBLIC SERVICE COMMISSION Texas corporation, hereinafter referred to as "Western" or "Buyer".

SEP 21 1988

WITNESSETH:

WHEREAS, Orbit owns certain valid natural gas interests by virtue of deeds, leases or other forms of conveyance PUBLIC SERVICE COMMISSION BY underlying certain lands which are productive of natural gas and located entirely within the Commonwealth of Kentucky, hereinafter "Commonwealth"; and,

WHEREAS, Western desires to acquire a supply of natural gas for resale through its natural gas transmission and distribution system located in the Commonwealth; and,

WHEREAS, Orbit desires to sell natural gas to Western in those amounts and upon the terms and conditions herein set forth, and represents that it can and will so deliver, or cause to be delivered, said natural gas to Western;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do covenant and agree as follows:

**ARTICLE I**

Definitions

Section 1.1. The following terms shall respectively have the meanings as set forth below:

(a) The term "Seller" and the term "Orbit" shall have the meanings set forth above.

(b) The term "Buyer" and the term "Western" shall have the meanings set forth above.

(c) The term "day" shall mean a period of twenty-four (24) consecutive hours, beginning at 8:00 a.m. and ending at 8:00 a.m. local time of the next succeeding day.

(d) The term "month" shall mean a period beginning at 8:00 a.m. on the first day of a calendar month and ending at 8:00 a.m. on the first day of the next succeeding calendar month.

(e) The term "dedicated area" shall mean the lands and/or leasehold estates covered and affected by this Contract as set out in Article II hereof.

(f) The term "committed gas reserves" shall mean the gas reserves committed and dedicated to the performance of this Contract as set out in Article II hereof, presently owned or as hereinafter may be acquired by Seller.

(g) The term "gas" shall mean all natural gas, including gas well gas, oil well gas and residue gas resulting from processing either gas well gas or oil well gas which conforms to the standards of quality set out in Article IV hereof.

(h) The term "cubic foot of gas", when used in relation to a volume of gas, shall mean that volume of gas as determined in accordance with the provisions set out in Article V hereof; the term "Mcf" shall mean one thousand (1,000) cubic feet of gas.

(i) The term "British Thermal Unit", hereinafter "Btu", shall mean the quantity of heat that must be added to one pound of pure water to raise its temperature from fifty-eight and five-tenths (58.5) degrees

Fahrenheit to fifty-nine and five-tenths (59.5) degrees Fahrenheit under standard pressure conditions as set forth at Page 158 of the 1963 edition of the American Gas Association publication, "AGA Gas Measurement Manual", and the term "MMBtu" shall mean one million (1,000,000) Btu's expressed on a 'dry' basis unless otherwise stated herein as being expressed on a 'saturated' basis.

(j) The term "Point of Delivery" shall mean the point(s) specified in Article VIII hereof.

(k) The term "Applicable Area Commodity Rate" shall mean the commodity rate for gas then being paid by Western to its principal interstate supplier in the area wherein the gas herein is delivered, but shall not include any past or future 'take-or-pay', gas inventory, contract reformation or similar charge or surcharge which may be included in said interstate supplier's current commodity rate for gas.

## ARTICLE II

### Committed Gas Reserves

Section 2.1. (a) Subject to Section 2.2 hereof, Seller hereby commits and dedicates to the performance of this Contract all of Seller's interest in and to the gas reserves which Seller presently owns or as hereinafter may be acquired by Seller, as provided in those deeds, leases and/or agreements described in Exhibit "A" hereto, and being located in Rectangles 12 and 19 of Quadrangle J-21 of the Carter System of Coordinates, Hopkins County, Kentucky.

(b) Subject to the provisions of Section 18.3 hereof, Seller agrees to proceed with due diligence to construct or cause to be constructed, or arrange for the use of, such gas gathering and/or transportation facilities as may be required to enable it to deliver, at the Point of Delivery, the gas covered by this Contract.

Section 2.2. In addition to any and all other rights and obligations

conferred upon Seller by this Contract, Seller hereby expressly reserves unto itself and its successors and assigns, the following:

(a) That quantity of gas as Seller may need or require to meet the requirements of its obligations under (i) the deeds, leases and/or agreements in the dedicated area as described in Subsection 2.1(a) above and (ii) any pipeline right-of-way agreements;

(b) That quantity of gas as Seller may need or require for the development of its properties situated within the dedicated area, including but not limited to, the use of gas for fuel, drilling, developing and operating said properties, for the production of oil, gas or other minerals, but Seller shall otherwise endeavor to preserve and save the gas dedicated hereunder for sale to Western;

(c) The sole and exclusive right to operate the properties covered by this Contract free from any and all control by Western in such manner as Seller, in its sole discretion, deems advisable including without limitation the right to drill new wells, to repair or rework old wells, to renew in whole or in part the leasehold estates, if any, covered by this Contract and to abandon any well not deemed by Seller capable under normal methods of operation of producing gas in commercial quantities;

(d) The sole and exclusive right to unitize any of the lands and/or leases covered by this Contract with other properties owned and/or controlled by it or others in which event this Contract shall extend and apply to the interest of Seller in the newly formed property to the extent that such interest is derived from the existing property described in this Article II. Seller shall give notice in writing to Western of any change contemplated under this Subsection (d) and Article II hereof shall be considered as having been amended accordingly upon receipt by Western of said notice.

ARTICLE III

Quantity of Gas

Section 3.1. Seller agrees, after completion of any facilities to be constructed hereunder by it or others, to sell and deliver to Western, and Western agrees to purchase and receive, such quantities of gas as Seller shall nominate on any day up to a quantity which, when stated on a monthly basis, equates to a maximum of 500 MMBtu per day, subject, however, to the limitations of Western's market and pipeline operating conditions. However, if Western, at its sole discretion, should find it necessary to restrict or curtail deliveries of gas from other producers, transporters and/or gatherers of native natural gas production originating entirely from within the Commonwealth, deliveries hereunder shall be reduced on a pro rata basis with such other deliveries in the affected market area or zone. Both parties agree to endeavor to give the other at least eight (8) hours verbal notification prior to scheduled or planned changes in or interruption of gas deliveries hereunder, to be followed with a written notice within seven (7) days after such verbal notification.

Section 3.2. Seller dedicates to the performance of this Contract and agrees to sell and deliver to Western all quantities of gas from the committed gas reserves as provided in Article II hereof. For deliverable quantities of gas dedicated to this Contract by Seller in excess of 500 MMBtu per day, Western shall have a right of first refusal to meet the price and other terms and conditions of any bona fide offer that is received by Seller from a third-party purchaser. Seller shall immediately notify Western in writing of the bona fide offer and the terms and conditions thereof. Western shall have fifteen (15) days after the date of Western having received such notice from Seller in which to elect in writing to purchase such excess quantities of gas from Seller in accordance with the price and terms and conditions of the bona

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fide offer or to release such excess quantities of gas from commitment hereunder.

Section 3.3. If at any time during the term of this Contract, the delivery of gas by Seller to Western averages less than twenty-five (25) MMBtu per day during any period of ninety (90) or more consecutive days for any reason other than force majeure as described in Article XII hereof, Western, at its sole option, may terminate and cancel this Contract by giving Seller thirty (30) days prior written notice of such termination and cancellation.

#### ARTICLE IV

##### Quality of Gas

SEP 21 1968

Section 4.1. The gas to be delivered hereunder by Seller at the Point of Delivery shall comply at all times with the following quality specifications:

- (a) Heating Value: The gas shall have a total (gross) heating value of not less than nine hundred fifty (950) Btu's per cubic foot and not more than one thousand fifty (1,050) Btu's per cubic foot, each being expressed on a 'dry basis'.
- (b) Hydrogen Sulfide: The hydrogen sulfide content shall not exceed one-quarter (1/4) grain per one hundred (100) cubic feet of gas.
- (c) Mercaptans: The mercaptan content shall not exceed one (1) grain per one hundred (100) cubic feet of gas.
- (d) Total Sulphur: The total sulphur content, including hydrogen sulfide and mercaptans, shall not exceed ten (10) grains per one hundred (100) cubic feet of gas.
- (e) Carbon Dioxide: The carbon dioxide content shall not exceed two percent (2%) by volume.
- (f) Oxygen: The oxygen content shall not exceed two-tenths of one percent (0.2 of 1%) by volume, and Seller shall make every reasonable effort to maintain the gas totally free from oxygen.



(g) Nitrogen: The nitrogen content shall not exceed three percent (3%) by volume.

(h) Other: The gas shall contain no carbon monoxide, halogens or unsaturated hydrocarbons and no more than four hundred parts per million (400 ppm) of hydrogen.

(i) Liquids: The gas shall be free from water and hydrocarbons in liquid form at the temperature and pressure at which the gas is delivered and, further provided, the gas shall not contain any hydrocarbons which may condense to the liquid state under normal pipeline operating conditions and shall in no event contain water vapor in excess of seven (7) pounds per one million (1,000,000) cubic feet of gas.

(j) Freedom From Objectionable Matter: The gas shall be commercially free from objectionable odors, sand, dust, gums or other solid, liquid or gaseous matters including any additives or diluents which may be injurious to conventional pipeline materials or which may otherwise interfere with the transmission, distribution or commercial utilization of said gas.

(k) Temperature: The gas shall not be at a temperature of less than forty (40) degrees Fahrenheit nor more than one hundred twenty (120) degrees Fahrenheit.

(l) Negative Pressure: The gas shall not be produced at or encounter before delivery a pressure of less than atmospheric pressure.

Section 4.2. If any of the gas delivered by Seller hereunder shall fail to conform to the quality specifications set forth in Section 4.1 above, Western, at its sole option, may take one or more of the following actions:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Seller under this Article IV or to recover from Seller any and all damages or expenses which Western incurred by reason of Seller's delivery of nonconforming gas to Western or on account of Western's

enforcement of its remedies hereunder; (b) immediately terminate this Contract; (c) refuse to accept further delivery of any gas hereunder until Seller shall remedy such quality nonconformity to Western's satisfaction; or (d) make or cause to be made, at Seller's expense, such changes to the gas as may be necessary to bring such gas into conformity with the quality specifications set forth herein, the costs and expenses of making such changes to be deducted from the subsequent payment or payments to be made by Western under this Contract, or, if no further payments are to be made by Western, Seller shall tender reimbursement to Western of such costs and expenses within fifteen (15) days after notice from Western of the amount to be reimbursed.

## ARTICLE V

### Measurement and Tests

Section 5.1. The sales unit of the gas delivered hereunder shall be one million British Thermal Units (1,000,000 Btu or 1 MMBtu). An MMBtu of gas shall be determined by multiplying the measured volume of gas expressed in Mcf times the total (gross) heating value and then dividing this product by one thousand (1,000). An Mcf of gas shall be determined by dividing the measured volume of gas by one-thousand (1,000).

Section 5.2. The volume of the gas delivered hereunder shall be measured at Western's meter at the Point of Delivery. Each Orifice Meter shall be installed, operated, maintained and have the volume computed in accordance with the most recent edition of the American Gas Association publication, "Orifice Metering of Natural Gas: A.G.A. Report No. 3". Each Diaphragm or Rotary Displacement Meter shall be installed, operated, maintained and have the volume computed in accordance with the most recent edition of the American Gas Association publication, "A.G.A. Gas Measurement Manual, Part 2: Displacement Measurement".

Section 5.3. The unit of volume of the gas delivered hereunder for the

purpose of measurement shall be one (1) cubic foot of gas at a temperature base of sixty degrees (60°) Fahrenheit and at an absolute base pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch, atmospheric pressure being assumed at fourteen and four-tenths (14.4) pounds per square inch absolute. The gas delivered hereunder shall be measured according to Boyle's Law for the measurement of gas under varying pressures, with corrections for deviations therefrom, determined by use of the tables and formulae in accordance with the most recent edition of the American Gas Association publication, "Par Research Project NX-19".

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Section 5.4. The temperature of the gas delivered hereunder shall be determined once each month by a mercurial thermometer of standard manufacture or by the use of a recording type thermometer of standard manufacture to be installed, operated and maintained by Western at the Point of Delivery. If monthly determinations are made, the most recent determination shall be used for the ensuing month to make the proper correction in volume computations. If a recording thermometer is installed, then the arithmetic average of the daily temperature readings from said thermometer for the entire period that gas was flowing through the meter shall be deemed to be the gas temperature for that period and shall be used to make the proper correction in volume computations.

Section 5.5. The specific gravity of the gas delivered hereunder shall be determined once each quarter by a gravitometer of standard manufacture or by the use of a recording type gravitometer of standard manufacture to be installed, operated and maintained by Western at the Point of Delivery. If quarterly determinations are made, the most recent determination shall be used for the ensuing quarter to make the proper correction in volume computations. If a recording gravitometer is installed, then the arithmetic average of the daily specific gravity readings from said gravitometer for the entire period that gas was flowing through the meter shall be deemed to be the specific

gravity for that period and shall be used to make the proper correction in volume computations.

Section 5.6. The total or gross heating value of the gas delivered hereunder is the total caloric value, expressed in British Thermal Units, obtained by the complete combustion, at constant pressure, of that amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees Fahrenheit, free from water vapor ('dry' basis) and at an absolute pressure equivalent to that of fourteen and seventy-three hundredths (14.73) pounds per square inch and under standard gravitational force (980.665 centimeters per second squared), with air of the same temperature and pressure as the gas, when the products of combustion are cooled to the initial temperature of the gas and air and when the water formed by combustion is condensed to the free liquid state. The heating value shall be determined from time to time by Western or, at the request of Seller, by submitting a sample of the gas to a competent testing laboratory of Seller's choice or by using the heating value as determined by a Cutler-Hammer or any equally efficient recording calorimeter of Western or calculated using the results determined by gas chromatograph of Western.

Section 5.7. Seller may install, operate, maintain and remove such check measuring equipment as it desires, provided that such check measuring equipment shall be installed so as not to interfere with the operation of Western's equipment through which Western receives gas at the Point of Delivery.

Section 5.8. In the event any of Western's measuring equipment is out of service or registering inaccurately, the volume of gas delivered hereunder shall be estimated by (i) using the registration of any check measuring equipment if installed and accurately registering, (ii) correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation or (iii) estimating the quantity of gas delivered by comparison

with deliveries during a period under similar conditions when the measuring equipment was known to be registering accurately. The choice as to which of the above estimated methods shall be used shall be made by Western.

Section 5.9. The accuracy of Western's measuring equipment shall be verified by Western at reasonable intervals, but Western shall not be required to routinely verify the accuracy of such equipment more frequently than once in any thirty (30) day period. In the event either party shall notify the other that it desires a special test of any measuring equipment, the parties shall cooperate to secure a prompt verification of the accuracy of such equipment. The expense of any such special test called for by Seller shall be borne by the Seller if inaccuracy found is less than a two percent (2%) error. If inaccuracy is found to be two percent (2%) or more in favor of Western, then Western shall bear the expense.

Section 5.10. If upon any test any measuring equipment is found to be more than two percent (2%) slow or fast, previous readings of such equipment shall be considered correct in computing deliveries of gas hereunder, but such equipment shall be adjusted at once to read accurately. If upon any test any measuring equipment is found to be inaccurate by an amount exceeding two percent (2%) at a reading corresponding to the average rate of flow for the period since the last preceding test, such equipment shall be adjusted at once to read accurately and any previous reading of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon. But in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half (1/2) of the time elapsed since the date of the last test but not to exceed a correction period of more than sixteen (16) days.

Section 5.11. Seller shall have the right to be represented at and to participate in all tests of the gas delivered hereunder or of any equipment

used in measuring or determining the nature or quality of such gas and to inspect at any time during normal business hours any and all equipment of Western used for the measurement or determination of the nature or quality of the gas hereunder.

Section 5.12. It is the expectation of the parties hereto that all test data, gas analyses, meter readings, charts and similar records shall be preserved by Western for a period of at least one (1) year and shall on the request of Seller be available for inspection during normal business hours at Western's place of business.

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OF CALIFORNIA  
SAN FRANCISCO

#### ARTICLE VI

SEP 21 1988

#### Pressure

PUBLIC SERVICE COMMISSION

Section 6.1. The gas sold under the terms of this Contract shall be delivered or caused to be delivered by Seller into Western's pipeline system at the Point of Delivery at a pressure sufficient to effect delivery against the pressures prevailing therein from time to time. If the operating pressure of Seller's pipeline shall become insufficient to deliver the gas at the Point of Delivery at a pressure sufficient to enter Western's pipeline, then Seller shall have the right, but shall be under no obligation, to compress such gas to the pressure referred to above upon receiving prior written consent of Western, which consent shall not be unreasonably withheld, provided, however, if initial deliveries of gas hereunder are known to require compression, such consent shall not be required. If Seller elects not to compress the gas to meet the pressure conditions called for herein and cannot otherwise provide the pressure herein specified, Western has the right to compress the gas at Western's expense or to terminate this Contract. Elections under this paragraph shall be by prior written notice as provided in Section 18.1 hereof.

ARTICLE VII

Term of Contract

Section 7.1. Subject to the provisions set out in Section 18.3 hereof, this Contract shall be effective from the day of first delivery under this Contract and shall continue and remain in full force and effect for an initial term of five (5) years from the first day of the month following the day of first delivery and from year to year thereafter until the earlier of: January 1, 2000, or any other termination date as otherwise herein provided. Either party may terminate this Contract after the expiration of the initial term by giving the other party at least six (6) months prior written notice.

PUBLIC SERVICE COMMISSION

ARTICLE VIII

Point of Delivery

SEP 21 1993

Section 8.1. The Point of Delivery of the gas delivered by Seller to Western hereunder shall be at Western's meter and regulator station located at the Kirkwood Springs Storage Field north of and adjacent to Kentucky Highway No. 70 approximately three (3) miles west of the small town of Beulah, Hopkins County, Kentucky.

Section 8.2. Seller shall have title to the gas deliverable hereunder until the same shall have been delivered to Western at the Point of Delivery, after which delivery, title to such gas shall pass to Western and, as between the parties hereto solely, Western shall be deemed to be in exclusive control and possession thereof and responsible therefor. During the time the gas deliverable hereunder is in Seller's possession, as between the parties hereto solely, Seller shall be deemed to be in exclusive control and possession thereof and responsible therefor and Western shall not be responsible for any damage or injury caused by such gas. Nothing herein is intended to create any rights in any person or entity who is not a party to this Contract.

## ARTICLE IX

### Price

Section 9.1. The price to be paid for the gas delivered to Western hereunder shall be determined as follows:

(a) With respect to the gas which Seller produces and sells to Western at the Point of Delivery in a "first sale" transaction as defined in Section 2(21) of the Natural Gas Policy Act of 1978, hereinafter "NGPA", and the Regulations of the Federal Energy Regulatory Commission, hereinafter "FERC", Western shall pay a price which shall be the lower of (i) the Applicable Area Commodity Rate multiplied by a factor equal to 0.90 or (ii) the maximum lawful price per MMBtu ('saturated' basis) for such gas as prescribed in the NGPA, as amended.

(b) With respect to the gas which Seller purchases under gas purchase contracts for resale and subsequently resells to Western at the Point of Delivery, Western shall pay a price which shall be equal to the Applicable Area Commodity Rate multiplied by a factor equal to 0.90.

(c) In the event of any change in the Applicable Area Commodity Rate due to an amendment or modification of the tariffs of Western's principal interstate supplier, the price payable hereunder by Western (if calculated on the basis of the Applicable Area Commodity Rate) shall also be changed as of the date that the tariff amendment or modification became effective, except that if said supplier collects an increase prior to final approval by the FERC of any tariff, the increase of the price will be placed in escrow, and within thirty (30) days after the date of such final approval the amount attributable to the finally approved tariff will be paid to Seller for all gas purchased during the escrow period. If the FERC gives final approval to any tariff that decreases the Applicable Area Commodity Rate and Western has paid Seller a price for gas in excess of the amount finally approved, then



Western shall be entitled to a prompt refund from Seller of any excess payments made theretofore equal to the difference between the price actually paid by Western and the price that should have been paid as a result of the decrease in the Applicable Area Commodity Rate resulting from the final approval of such tariff.

Section 9.2. With respect to the gas referred to in Subsection 9.1(a) above, Seller will file with the appropriate jurisdictional agency and with all other regulatory bodies having jurisdiction any required application for price determination which may be necessary in order to implement the terms herein. Pending final approval of any required application, Western will pay Seller for such gas delivered prior to the effective date of such final determination the lower of (i) the then current Applicable Area Commodity Rate multiplied by a factor equal to 0.90 or (ii) the maximum lawful price per MMBtu ('saturated' basis) as prescribed in Section 109 of the NGPA, as amended. Upon final approval, Western will pay Seller an amount equal to the difference, if any, calculated by subtracting the price actually approved by the appropriate jurisdictional agency less the price actually paid for the gas up to the date said approval is received by Western.

Section 9.3. With respect to the gas referred to in Subsection 9.1 (a) above, or any portion thereof, which the Congress of the United States, the President of the United States, the FERC or any other governmental authority having jurisdiction ceases to have jurisdiction or exercise control over the rates which may be lawfully charged and collected thereon, the price shall be the Applicable Area Commodity Rate multiplied by a factor equal to 0.90.

Section 9.4. The price payable from time to time pursuant to this Contract shall prevail so long as such price is allowed by the Kentucky Public Service Commission, hereinafter "Commission", to be included in Western's jurisdictional cost of service, hereinafter "rates". If the Commission should

at any time disallow the inclusion in Western's rates of any portion of the price paid hereunder, then Seller agrees that such price will be reduced to the maximum price which the Commission allows Western to include in its rates, effective as of the effective date of such disallowance, and Seller shall make prompt refund of any excess payments theretofore made by Western from and after the effective date of such disallowance. In the event of such disallowance by the Commission, Seller shall have the right to terminate this Contract at any time either as to all gas subject to such disallowance or as to all gas subject to this Contract, by giving thirty (30) days prior written notice to Western if Seller has obtained and accepted an offer for such gas from a third-party purchaser providing for a price greater than the highest price allowed to be included in Western's rates. Thereafter, such gas shall be released from commitment hereunder. Western shall endeavor to give Seller as much notice as is commercially possible regarding any such disallowance of said price referred to above.

ARTICLE X

Special Redetermination of Price

Section 10.1. (a) Either Seller or Western may request a Special Redetermination of Price to be paid for the gas sold and delivered hereunder, in which case the party making such request must demonstrate in good faith, by prior written notice, that the price being paid hereunder does not reflect the price currently being paid in the area for gas of similar quality and quantity and under the same or similar terms and conditions as herein contained.

(b) This Special Redetermination of Price may be exercised only after the first anniversary date of this Contract and no more frequently than yearly thereafter.

Section 10.2. (a) In the event either party hereto shall request a Special Redetermination of Price in accordance with Section 10.1 above, the

parties hereto will attempt by negotiation to arrive at pricing and other terms and conditions which reflect the market conditions then prevailing in the natural gas industry in the area.

(b) In the event the parties cannot arrive at mutually satisfactory pricing and other terms and conditions by negotiation, then the party making such request hereunder must notify the other in writing of its intention to either continue to sell or purchase gas under the current pricing and terms and conditions of this Contract or to terminate this Contract as to all gas subject to this request by giving thirty (30) days prior written notice within sixty (60) days of the notice required under Subsection 10.1(a) above, whereupon such gas shall be released from commitment hereunder. The failure of the requesting party to give such notice shall be deemed to constitute the requesting party's acceptance of the current pricing and terms and conditions of this Contract for at least the next succeeding year.

## ARTICLE XI

### Payment and Statements

Section 11.1. Payment shall be made by check payable to the order of Seller, on or before the 30th day of each month for all gas sold and delivered during the preceding calendar month.

Section 11.2. (a) With respect to the gas referred to in Subsections 9.1(a) and (b) hereof, Western shall not be liable for any royalties or taxes, including the Kentucky Severance Tax; any sums due on production, gathering, handling, extracting, dehydrating, compressing or transporting, hereinafter "production costs"; or any similar charges for such gas delivered by Seller to Western at the Point of Delivery.

(b) With respect to the gas referred to in Subsection 9.1(a) hereof, Seller will pay or cause to be paid any or all royalties, taxes with the exception of the Kentucky Severance Tax, production costs or similar

charges for such gas delivered by Seller to Western at the Point of Delivery. Western will collect or cause to be collected the Kentucky Severance Tax levied by the Commonwealth and remit or cause to be remitted to the Kentucky Department of Revenue, said tax being deductible from the amount due Seller during each payment period.

(c) With respect to the gas referred to in Subsection 9.1(c) hereof, Seller will pay or cause to be paid any or all royalties, taxes including the Kentucky Severance Tax, production costs or similar charges for such gas delivered by Seller to Western at the Point of Delivery.

Section 11.3. With respect to all gas delivered hereunder, Seller agrees to indemnify and hold Western harmless from and against any and all loss, damage and expense of every character on account of any claim arising out of, resulting from, or relating to the nonpayment or mistaken payment of any and all royalties, taxes, production costs or similar charges applicable thereon or relating to the gas sold and delivered to Western pursuant to this Contract.

## ARTICLE XII

### Force Majeure

Section 12.1. In the event of any party being rendered unable, in whole or in part, by force majeure or other causes herein specified, to carry out its obligations under this Contract, it is agreed that on such party's giving notice and reasonably detailed particulars of such force majeure event in writing or by telecopy to the other party within a reasonable time after the occurrence of the cause relied on, then the obligations of the party giving notice, so far as and to the extent that they are affected by such force majeure or other causes herein specified, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch.

Section 12.2. The term "force majeure" as used herein shall mean any

cause not reasonably within the control of the party claiming suspension, including, but not limited to, acts of God, strikes, lockouts or other industrial disturbances; acts of the public enemy, wars, blockades, insurrections, riots, civil disturbances, epidemics, landslides, lightning, earthquakes, fires, storms, floods and washouts; arrests and restraints of governmental authorities, either federal or state, including civil or military; explosions, breakage or accidents of machinery or lines of pipe and freezing of wells or lines of pipe; inability of any party hereto to obtain necessary materials, supplies, permits or approvals; loss of market due to existing or future rules, regulations, orders, laws or proclamations of governmental authorities, either federal or state, including civil or military; any act or omission on the part of any purchaser or purchasers of gas from Western by reason of force majeure affecting such purchaser or purchasers; and interruption of transportation service by third party transporters. It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any force majeure event shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of the opposing party when such course is inadvisable in the discretion of the party having the difficulty.

ARTICLE XIII

Waiver

Section 13.1. No waiver by either party of one or more defaults in the performance of any provision of this Contract shall operate or be construed as a waiver of any future default, whether of a like or different character.

ARTICLE XIV

Warranty Under the Natural Gas Act

Section 14.1. Seller represents and warrants that the gas to be sold

hereunder shall be produced wholly from within the Commonwealth and Section 1(b) of the Natural Gas Act does not apply to said gas as provided by Section 601 (a)(1)(B) of the NGPA, as amended.

#### ARTICLE XV

##### Warranty of Title

Section 15.1. Seller hereby warrants that it has good and clear title to the gas sold hereunder and that it has the exclusive right to sell the same and that all such gas is free from all liens and adverse claims including liens to secure payment of production taxes, severance taxes and other taxes. Seller agrees to indemnify Western and save it harmless from any and all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all entities to said gas or to royalties, taxes, license fees or charges thereon which are applicable to the gas sold to Western hereunder or which may be levied and assessed upon or as a result of the sale thereof to Western. In the event any adverse claim of any character whatsoever is asserted with respect to any of such gas, Western may retain as security for the performance of Seller's obligations with respect to such claim under this section monies then or thereafter payable to Seller under this Contract until such claim has been finally determined or until Seller shall have furnished bond to Western in an amount satisfactory to Western.

#### ARTICLE XVI

##### Arbitration

Section 16.1. In case the parties hereto shall be unable to agree on any question or dispute arising under this Contract, such question or dispute shall be referred for settlement to three arbitrators, one appointed by Seller, one appointed by Western and the third appointed by the two (2) individuals chosen by the parties hereto. The party desiring such arbitration shall notify the other in writing and in such notice shall name an arbitrator. The arbitrator

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to be appointed by the other party shall be named within ten (10) days after receipt of such written notice of arbitration and an additional arbitrator shall, within ten (10) days of the appointment of the second arbitrator, be selected by the two (2) arbitrators heretofore appointed.

Section 16.2. The matter in question or dispute shall be submitted in writing to the arbitrators immediately upon the completion of their appointments and the parties shall do all things necessary to make proper submission thereof according to the character of the question or dispute involved or as required by the arbitrators. It is the intent of the parties hereto that only those persons qualified as specialists in their field arbitrate questions or disputes within their field. The decision in writing signed by a majority of the arbitrators shall be final and conclusive with respect to the matter submitted and the parties hereto agree to accept and abide by same. The cost of any arbitration hereunder will be paid as determined by the arbitration proceeding.

#### ARTICLE XVII

##### Regulatory Bodies

Section 17.1. This Contract shall be subject to all valid applicable federal, state and local laws, rules and regulations and the approval, if necessary, of the Commission. All such laws, rules and regulations shall be presumed by both parties to be valid unless and until a court of competent jurisdiction shall hold otherwise with respect thereto.

#### ARTICLE XVIII

##### Contract Interpretations and Miscellaneous

Section 18.1. Any notice, request, demand, payment, statement or bill provided for in this Contract shall be in writing and shall be addressed to the post office address of each of the parties hereto as the case may be, as follows:

Buyer: Western Kentucky Gas Company  
Attn: Mr. Robert R. Depp  
Post Office Box 866  
Owensboro, Kentucky 42302

Seller: Orbit Gas Company  
Attn: Mr. Frank I. Lindsey  
711 Leitchfield Road  
Owensboro, Kentucky 42301

or to such other address as either party shall from time to time designate for that purpose by certified letter addressed to the other party. The date of service of such notice, request, demand, payment, statement or bill shall be the date the same is delivered by registered or certified mail by the party giving same.

Section 18.2. All the terms, covenants, agreements and obligations contained in this Contract shall run in favor of and be binding upon the parties hereto, and Western and Seller agree that Seller may not sell or assign either the properties which are the subject of this Contract or this Contract without the prior written consent of Western, such consent not to be unreasonably withheld. If for any reason said consent should not be given, Western shall have the right to terminate this Contract upon thirty (30) days prior written notice.

Section 18.3. Western and Seller shall with due diligence proceed in an expeditious manner to obtain all necessary federal, state and local authorizations, permits, consents, licenses and approvals and to complete construction of facilities as may be required for the sale and delivery and the purchase and receipt of gas delivered under the terms of this Contract and this Contract shall be subject to such approvals and completion of facilities. If Western and Seller are unable to obtain such requisite authorizations on terms satisfactory to the party applying therefor not later than six (6) months from the date hereof, Western or Seller may, after thirty (30) days prior written



notice, terminate this Contract unless, before the expiration of such thirty (30) day period, Western and Seller have received and accepted such requisite authorizations and have completed construction of facilities, in which event the notice of cancellation shall be declared null and void and of no force and effect. Notwithstanding the foregoing, and after completion of construction of facilities, if any, in the event Seller is unable to sell and/or deliver to Western that quantity of gas as set out in Article III hereof within thirty (30) days of the date of receipt of the requisite authorizations as herein set out, Western may, upon ten (10) days prior written notice, terminate this Contract.

Section 18.4. This Contract may be executed in a number of counterparts each of which shall be considered an original.

Section 18.5. This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant in determining the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

Section 18.6. This Contract may be modified, amended, rescinded or terminated only by a writing signed by Western and Seller or their duly authorized agents.

Section 18.7. The parties agree that the place of execution of this Contract is Daviess County, Kentucky. WESTERN AND SELLER AGREE THAT THIS CONTRACT SHALL BE CONSTRUED ACCORDING TO THE LAWS OF THE COMMONWEALTH OF KENTUCKY.

IN WITNESS WHEREOF, this instrument is executed as of the date first hereinabove written.

SELLER: ORBIT GAS COMPANY

Witness:

TAXPAYER I.D. NUMBER: 61-064-7827

Kathryn F. Estes

By: Frank D. Lindsay

Title: President

AGREED TO AND ACCEPTED THIS 5<sup>th</sup> day of May, 1988.

Witness:

BUYER: WESTERN KENTUCKY GAS COMPANY,  
a division of ENERGAS COMPANY

L. E. Van Meter

By: T. C. G. Fuels L.E.D.  
J.W.R.  
(6)

Title: Vice President

AGREED TO AND ACCEPTED THIS 25<sup>th</sup> day of May, 1988.

PUBLIC SERVICE COMMISSION  
OFFICE OF THE CLERK  
COLUMBUS, MISSISSIPPI

SEP 21 1988

DUNN, J. B. GULL, JR.

BY: [Signature]  
PUBLIC SERVICE COMMISSION MANAGER

Signature page to Natural Gas Purchase Contract No. DP- 5, dated the 25<sup>th</sup> day of May, 1988, between Orbit Gas Company, as Seller, and Western Kentucky Gas Company, as Buyer.

1. Lease dated the 17th day of September, 1983, of record in Lease Book 131, Page 165, Hopkins County Clerk's Office, from Beatrice Cook and Archie Cook to Nick Shiarella covering 138.5 acres more fully described as follows:

Bounded

On the North by Gene Wilcox and Billy Holmes  
On the East by Beatrice Cook and Beryl Hubbard  
On the South by Marvin Sutton  
On the West by Robert Tucker

2. Lease dated the 16th day of October, 1987, of record in Lease Book 141, Page 416, Hopkins County Clerk's Office, from Eunice O. Brown, widow to Orco, Inc. covering 106 acres more fully described as follows:

Bounded

On the North by Brown & Felker  
On the East by Brown & Brandon  
On the South by Brandon & Daves  
On the West by Martin & Cook

3. Lease dated the 16th day of October, 1987, of record in Lease Book 141, Page 430, Hopkins County Clerk's Office, from Rev. Bob B. Williams, et ux to Orco, Inc. covering 132 acres more fully described as follows:

Bounded

On the North by Homes, Brandon, Hubbard & Cook  
On the East by Martin  
On the South by Devers, Eli, Hubbard & Cook  
On the West by Cook

PUBLIC SERVICE COMMISSION  
SEP 21 1988

4. Lease dated the 16th day of October, 1987, of record in Lease Book 141, Page 420, Hopkins County Clerk's Office, from Ray Edward Polley, et ux to Orco, Inc. covering 112 acres more fully described as follows:

Bounded

On the North by Brown, Baker & Bell Heirs  
On the East by Devers  
On the South by Wilson  
On the West by Holmes & Cunningham

PUBLIC SERVICE COMMISSION  
SEP 21 1988  
COMMISSION MANAGER

Contract No. DP-  
Dated May 25  
1988

5. Lease dated the 16th day of October, 1987, of record in Lease Book 141, Page 424, Hopkins County Clerk's Office, from Reba H. Givens, a widow and Beth Givens, single to Orco, Inc. covering 112 acres more fully described as follows:

Bounded

On the North by Brown, Baker & Bell Heirs  
On the East by Devers  
On the South by Wilson  
On the West by Holmes & Cunningham

6. Lease dated the 16th day of October, 1987, of record in Lease Book 141, Page 422, Hopkins County Clerk's Office, from Cleora Givens, a widow to Orco, Inc. covering 112 acres more fully described as follows:

Bounded

On the North by Brown, Baker & Bell Heirs  
On the East by Devers  
On the South by Wilson  
On the West by Holmes & Cunningham

PUBLIC SERVICE COMMISSION  
OF MISSOURI  
ST. LOUIS, MISSOURI

SEP 21 1988

PUNDMAN, JAMES H. BOILL,

BY: [Signature]  
PUBLIC SERVICE COMMISSION MANAGER

WILLIAMS-COOK-BROWN-POLLEY COMMUNITIZED WELL # 1 POOLING DECLARATION

WHEREAS, Orco, Inc., is the lessee of the following described oil and gas leases covering properties located in Hopkins County, Kentucky:

(1) Lease dated October 16, 1986, from the Rev. Bob C. Williams and Jackie Williams, his wife, to Orco, Inc., of record in Lease Book 141, page 430, Hopkins County Court Clerk's Office, Hopkins County, Kentucky, hereinafter sometimes referred to as the "Williams Minerals";

(2) Lease dated October 16, 1986, from Eunice O. Brown, a widow, to Orco, Inc., of record in Lease Book 141, page 416, office aforesaid, hereinafter sometimes referred to as the "Brown Minerals";

(3) Leases dated October 16, 1986, from Reba H. Givens, a widow, et al, Roy Edward Polley, et al, and Cleora Givens, a widow, all to Orco, Inc., and of record in Lease Book 141, page 424, Lease Book 141, page 420, and Lease Book 141, page 422, respectively, office aforesaid, hereinafter sometimes referred to as the "Polley Minerals"; and,

WHEREAS, N.W. Shiarella, Jr., Tom Inklebarger, Evangeline Inklebarger, Patricia Harris, Paul D. Miles, Milton S. Yunker Estate, Warren Drilling Company, Grant Mullinex and J.L. Byrne are collectively the owners of the entire working interest in, and N.W. Shiarella, Jr. individually, is the present operator of, that certain oil and gas lease dated September 17, 1983, from Beatrice U. Cook and Archie W. Cook, her husband, of record in Lease Book 131, page 165, office aforesaid; and,

WHEREAS, under the provisions of the above-mentioned leases the right and power to pool or combine land covered by those leases or any portion thereof with other lands, lease or leases in the immediate vicinity thereof so as to create an operating oil and/or gas unit consisting of the combined portions of said leases is granted unto the lessees, all in accordance with the provisions of said leases; and,

WHEREAS, it is the judgment of all of the undersigned that it is necessary and advisable, in order to properly develop and operate the above leases, in compliance with the applicable spacing regulations to pool and combine the oil and gas in all horizons underlying those portions of the hereinabove referenced leases included within the unit

shown on the plat attached hereto and incorporated herein by reference and marked as Exhibit "A".

NOW THEREFORE, the undersigned, as the respective owners of the entire working interest in and to the above-referenced leases, and N.W. Shiarella, Jr. individually, as operator of the "Cook" lease, do hereby execute this instrument as a formal declaration that oil and gas in all horizons underlying those portions of the hereinabove referenced leases included within the unit shown on the plat attached hereto as Exhibit "A" are hereby pooled and combined so as to create one unit, as such term is used in said leases, for oil and gas recovery purposes and for all other purposes related to oil and gas and the percentage of the total royalty ownership of the oil or gas produced in this unit shall be allocated as follows:

<u>LESSOR</u>	<u>ACRES IN UNIT</u>	<u>ALLOCATION</u>
"Williams Minerals" portion	12.59	67.45%
"Archie Cook", et al portion	3.98	21.33%
"Brown Minerals" portion	2.06	11.02%
"Polley Minerals" portion	.04	.20%

It is expressly understood and agreed by and among the undersigned that although the "mineral owners" royalty interest for all oil or gas produced from the above-referenced unit shall be allocated to the respective royalty owners according to the percentage allocation set forth above, the working interest ownership shall be allocated and owned in accordance with that certain agreement between the parties hereto which is attached hereto and incorporated herein by reference as Exhibit "B" and the payment of all proceeds attributable to the working interest ownership shall be allocated and paid in accordance with the terms and provisions of said agreement. It is expressly understood and agreed that the communitized well contemplated by this pooling declaration is the additional well in the reservoir contemplated by the agreement attached as Exhibit "B" and all of the undersigned do hereby consent to this communitization of the above-referenced leases and to the drilling of the aforesaid well.

IN TESTIMONY WHEREOF, witness the signatures of the parties hereto on this the day and date first hereinabove written.

PUBLIC SERVICE COMMISSION  
OF PENNSYLVANIA

SEP 21 1988

PURSUANT TO THE PROVISIONS OF THE  
ACT OF JUNE 24, 1937 (P.S. 5401)  
BY [Signature]  
PUBLIC SERVICE COMMISSION MANAGER

N.W. Shiarella, Jr.  
N.W. Shiarella, Jr.

Tom Inklebarger  
Tom Inklebarger

Evangeline Inklebarger  
Evangeline Inklebarger

Patricia Harris  
Patricia Harris

Paul D. Miles  
Paul D. Miles

Milton S. Yunker Estate  
Milton S. Yunker Estate

Warren Drilling Co. Inc.  
Warren Drilling Company Inc.

Grant Millinex  
Grant Millinex

J.L. Byrne  
J.L. Byrne

ORCO, INC.

By: Frank D. Lindley, President

STATE OF Kentucky  
COUNTY OF Daviess

PUBLIC SERVICE COMMISSION  
OF KENTUCKY

SEP 21 1988

The foregoing instrument was acknowledged before me by N.W. Shiarella, Jr., on this the 14<sup>th</sup> day of January, 1987.

Paul D. Miles  
Notary Public  
My Commission Expires: Sept 27, 1988  
PUBLIC SERVICE COMMISSION MANAGER

STATE OF Kentucky  
COUNTY OF Daviess

The foregoing instrument was acknowledged before me by Tom Inklebarger and Evangeline Inklebarger, on this the 14<sup>th</sup> day of January 1987..

Tom Inklebarger  
Notary Public  
My Commission Expires: 12.31.87

STATE OF South Carolina )  
COUNTY OF Richland )

The foregoing instrument was acknowledged before me by Patricia Harris, on this the 26<sup>th</sup> day of January, 1987.

Brenda D. Webster  
Notary Public  
My Commission Expires: 12-9-95

STATE OF KENTUCKY )  
COUNTY OF DAWESS )

The foregoing instrument was acknowledged before me by Paul D. Miles, on this the 15<sup>th</sup> day of January, 1987.

Robert E. Hayden  
Notary Public  
My Commission Expires: 12-2-89

STATE OF Kentucky )  
COUNTY OF Dawess )

The foregoing instrument was acknowledged before me by B. S. Yunker D/M/T/Co as President of the 7<sup>th</sup> of the Milton S. Yunker Estate, on this the 14 day of January, 1987.

Anna M. Simpson  
Notary Public  
My Commission Expires: 7-2-88

STATE OF Kentucky )  
COUNTY OF Dawess )

The foregoing instrument was acknowledged before me by Warren Drilling Company as President of Warren Drilling Company, and on behalf of said company, on this the 22<sup>nd</sup> day of January, 1987.

PUBLIC SERVICE COMMISSION  
OF KENTUCKY

SEP 21 1988

James H. ...  
Notary Public  
My Commission Expires: ...  
COMMISSION MANAGER

STATE OF Florida )  
COUNTY OF Sarasota )

The foregoing instrument was acknowledged before me by Grant Millinex, on this the 19 day of January, 1987.

Marialynn Brewer  
Notary Public  
My Commission Expires: ...  
Notary Public, State of Florida  
My Commission Expires April 13, 1988  
Entered this day for the ...



STATE OF Kentucky )  
COUNTY OF Madison )

The foregoing instrument was acknowledged before me by J.L. Byrne,  
on this the 14<sup>th</sup> day of January, 1987.

Paula L. Horne  
Notary Public  
My Commission Expires: Sept. 21, 1988

STATE OF Kentucky )  
COUNTY OF Madison )

The foregoing instrument was acknowledged before me by  
Frank I. Lindsey as President of Orco, Inc., and on  
behalf of said corporation, on this the 13<sup>th</sup> day of January, 1987.

James O. Dent  
Notary Public  
My Commission Expires: 7/1/88

PREPARED BY:

Mark R. Hitchinson  
TAYLOR, BURLEW, MEYER & HUTCHINSON  
100 East First Street  
Owensboro, Kentucky 42301  
(502) 926-2621

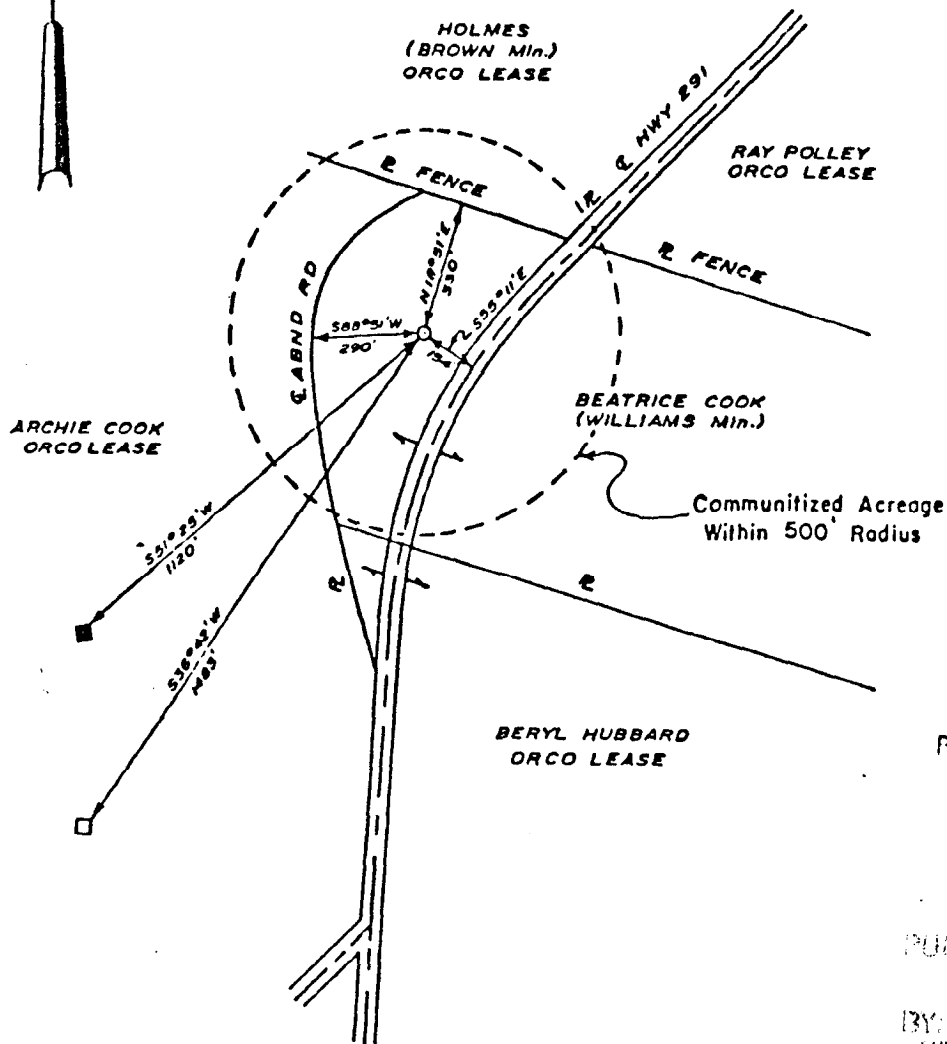
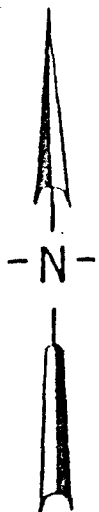
PUBLIC SERVICE COMMISSION  
OF KENTUCKY

SEP 21 1988

RECEIVED SEP 21 1988  
BY James O. Dent  
PUBLIC SERVICE COMMISSION MANAGER

# WELL LOCATION PLAT

EXHIBIT A  
 Page 8 of 8  
 To  
 Contract No. DP-5  
 Dated May 25  
 1988



PUBLIC SERVICE COMMISSION  
 OF KENTUCKY

SEP 21 1988

PURCHASED BY THE PUBLIC SERVICE COMMISSION  
 BY: *[Signature]*  
 PUBLIC SERVICE COMMISSION MANAGER

TOPO DALTON, KY  
 CARTER COORDINATE  
 12-J-21 Scale 1" = 2000'

Operator ORCO, INC.  
 Farm WILLIAMS, COOK, BROWN, POLLEY COMM.  
 Well No. 1 Elevation 462.4 (TRANSIT)  
 County HOPKINS Kentucky  
 Date OCTOBER 30, 1986 Scale 1" = 400'

Surveyor: Frank L Lindsey  
 Orbit Gas Company  
 711 Leitchfield Rd  
 Owensboro, Kentucky 42303

I hereby certify that the above plat is  
 correct and satisfies the requirements  
 of 805 KAR 1:030 to the best of  
 my knowledge and belief

Registered LS # 2311  
 Registered P.E. N 9688

425' FSL  
 © 1278 FWL