

INDUSTRIAL GAS CONTRACT

THIS AGREEMENT, made and entered into this 31 day of October 1955, by and between WESTERN KENTUCKY GAS COMPANY of Owensboro, Kentucky, a corporation of the State of Delaware, hereinafter referred to as "SELLER", Party of the First Part, and OWENSBORO SEWER PIPE COMPANY of 800 Moreland Street, Owensboro, Kentucky, a corporation of the State of Kentucky, hereinafter referred to as "BUYER", Party of the Second Part.

WITNESSETH

WHEREAS, the SELLER owns and operates a distribution system for the transportation and sale of natural gas, and the BUYER desires to purchase natural gas from SELLER for industrial purposes only, and

WHEREAS, the Parties hereto have heretofore entered into two contracts dated April 1st, 1952 and October 22nd, 1954, covering certain requirements of Buyer's plant for certain periods, and

WHEREAS, it is the intention of the Parties hereto that upon the commencement of the term of this contract as provided in Article 27 hereof, this contract shall supersede, cancel and replace the aforementioned contracts of April 1, 1952 and October 22, 1954.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereof, the Seller and Buyer have agreed and do hereby covenant and agree, each with the other, as follows:

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SCOPE OF CONTRACT

1. The Seller agrees to deliver and sell to the Buyer, and the Buyer agrees to receive and purchase from the Seller, the industrial gas requirements as hereinafter specified, subject to the terms and conditions hereinafter set forth.

2. All gas delivered under this contract shall be sold and purchased on a Daily Contracted Demand Basis under which the Buyer specifies in advance its estimated Maximum Daily Requirements, it being understood and agreed between the Buyer and Seller that this amount or quantity as specified shall constitute the basis for the daily billing under the rate schedule applicable to this contract.

The Buyer hereby establishes its Daily Contracted Demand as being 600 MCF, it being understood and agreed that when justified by operating conditions and requirements of both parties, this Daily Contracted Demand may be revised on an annual basis by mutual agreement between the Buyer and Seller.

PRICES

3 (a) The Buyer shall pay the Seller at the following rates for all gas received and purchased by it under this contract:

- |   |              |
|---|--------------|
| For the first 25% of the Daily Contracted Demand or of the actual daily delivery, whichever is the greater: | 40¢ per Mcf. |
| For the next 25% of the Daily Contracted Demand or of the actual daily delivery, whichever is the greater:  | 36¢ per Mcf. |
| For the next 50% of the Daily Contracted Demand or the remainder of the actual daily delivery:              | 32¢ per Mcf. |

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(b) Any applicable Federal, State or other legal taxes with respect to natural gas which apply now or may hereafter be imposed shall be paid by the Buyer to the Seller in addition to the rates as specified, and if, at any time, during the term hereof, any governmental agency imposes or levies a production, severance, gathering, sales, excise, or similar or related assessment or fee, with respect to the natural gas sold and delivered hereunder which Seller has to pay to its supplier or any governmental agency, the amount of such increase shall be added to the price or rate to be paid by Buyer to Seller hereunder.

(c) The rates or price of gas to the Buyer as specified herein are subject to an increase or decrease in the exact amount of the Seller's increase or decrease in the cost of gas in the charges from its supplier, and the rates or price to the Buyer shall be increased or decreased, effective the date of such change, by the actual amount of the difference in the cost of the gas to Seller over or under the cost thereof to the Seller from its supplier as of the date of this contract.

(d) In the event the amount of any increase in the cost of gas due to the provisions of Sections 3(b) and 3(c), in the judgment of the Buyer, shall operate to make the price of gas prohibitive, then the Buyer shall have the right and privilege of cancelling and terminating this contract by the giving of thirty (30) days advance written notice to Seller, and thereupon all obligations and liabilities of the parties hereunder shall cease, provided, further, that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

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(e) The Minimum Monthly Bill shall be the product of 25% of the Daily Contracted Demand multiplied by the price or rate for the gas in the first or highest bracket as specified herein, times the number of days in the billing month and Buyer shall pay same in the event the charge for gas used in any monthly billing period computed on the regular basis does not equal or exceed this minimum monthly bill as specified; however, if, for any reason, gas is curtailed to the extent that less than 25% of the Daily Contracted Demand is available to Buyer on any day or days and the total monthly billing is less than the Minimum Monthly Bill as provided for above, then the Minimum Monthly Bill shall be computed on a basis of the actual number of days in the billing month on which a minimum of 25% of the Daily Contracted Demand was available to Buyer.

(f) If, at any time, subsequent to the date of execution of this contract and prior to the expiration of same, Seller shall enter into a contract with others providing for the sale by it of gas in this same delivery or service area or Supplier's zone at a lower or more favorable price or rate than specified herein, then, in that event, the price or rate specified in this contract shall be immediately reduced so that it will not exceed the price or rate payable at the same time under such other contract. In determining whether the price or rate payable under such other contract is lower or more favorable than the price or rate payable for gas under this contract, due consideration shall be given to the Seller's required facilities, investment and operating conditions in each case and to the provisions of this contract as compared with such other contract as to utilization, availability, quantities, delivery conditions and all other pertinent factors.

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VOLUMES

4. This contract shall apply only to the utilization, <sup>quantities and</sup> location specified as follows:

- (a) Utilization: Manufacturing sewer pipe and related uses.
- (b) Maximum Hourly Demand: 35 Mcf
- (c) Maximum Daily Demand: 810 Mcf  
(Daily Contracted Demand: 600 Mcf)
- (d) Maximum Monthly Demand: 25,000 Mcf
- (e) Maximum Delivery Pressure: 30 Pounds
- (f) Location: 800 Moreland Street, Owensboro, Kentucky

5. This contract shall apply only to the present requirements of the Buyer as specified herein, however, the specified quantity or amount may be increased upon Buyer's written request and Seller's written approval provided the necessary facilities and/or gas supply are available or may be made available to adequately meet the Buyer's requirements without penalizing the Seller or affecting Seller's obligations or commitments to other customers.

BILLING AND PAYMENTS

6. Seller shall render bills on or before the tenth (10th) day of each calendar month for all gas delivered hereunder during the preceding month, and Buyer shall pay same on or before the twentieth (20th) of the month.

7. In the event Buyer shall fail to pay any bill for gas delivered hereunder, within the time herein provided, Seller, in addition to any other remedy it may have, may, at its option, cancel and terminate this contract, provided that such cancellation and termination shall not affect Buyer's obligation to pay for all gas theretofore delivered by Seller.

POINT OF DELIVERY

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8. The point of delivery of all gas is at the outlet of seller's meter and Seller shall be in control and possession of the gas delivered hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Buyer at the point of delivery, after which Buyer shall be deemed to be in control and possession thereof and responsible for any injury or damage caused thereby.

9. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the operation or maintenance of the property or equipment of the indemnifying party, the point of delivery as hereinbefore specified, to be the point of division of responsibility between the parties.

QUALITY

10. The gas delivered hereunder shall be commercially free from objectionable dust or other solid, liquid or gaseous matters which might interfere with its merchantability or utilization.

11. The average total heating value of the gas delivered hereunder shall be approximately One Thousand (1,000) British Thermal Units per cubic foot and shall vary only with Seller's supply. If, for any reason, the average total heating value falls below Nine Hundred and Fifty (950) British Thermal Units per cubic foot, Buyer shall have the right and privilege of refusing to accept delivery of the gas, without penalty, if it so desires and of cancelling and terminating the contract at its discretion.

12. The total heating value of the gas delivered hereunder shall be determined by a recording calorimeter located at Seller's supplier's compressor station at Slaughters, Kentucky, or at such other place as may be available

and more practicable in the circumstances.

### MEASUREMENT

13. The sales unit of the gas delivered hereunder shall be One Thousand (1,000) cubic feet (Mcf) measured according to Boyle's Law for the measurement of gas under pressure with deviations therefrom in accordance with standard or recognized practices or methods.

14. The deviation of the gas from Boyle's Law, at the pressures under which said gas is delivered hereunder, shall be determined by standard or approved methods which may be practicable in the circumstances at such times and places as may be expedient in practice.

15. The unit of volume for the purpose of measurement shall be One (1) cubic foot of gas at a temperature of sixty (60) degrees Fahrenheit and at a pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch absolute.

16. The average absolute atmospheric (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds per square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

17. The temperature of the gas flowing through the meters shall be assumed to be sixty (60) degrees Fahrenheit, provided, however, Seller may, at its option, install a recording thermometer to record the actual flowing temperature of the gas through the meter. Where such installation is provided, the arithmetic average of the temperature recorded shall be used in conducting measurements.

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18. The specific gravity and relative humidity of the gas delivered hereunder shall be determined by standard or approved methods which may be practicable in the circumstances at such times and places as may be expedient in practice.

MEASURING EQUIPMENT

19. The Seller agrees to install, operate and maintain the necessary regulating and metering equipment of suitable capacity and design to regulate and measure the gas deliveries as specified herein. Suitable site or location for the regulating and metering equipment is to be provided by the Buyer, and the title to this equipment shall remain in the Seller, with the right to install, operate, maintain and remove same, and no charge shall be made by Buyer for use of premises so occupied. The Buyer agrees to install such additional regulating equipment as may be necessary for satisfactory operation and utilization.

20. The accuracy of Seller's measuring equipment shall be verified by Seller at reasonable intervals, and whenever requested by Buyer, but Seller shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

21. Buyer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, calibrating or adjusting done in connection with Seller's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of the Seller, but, upon Buyer's request, Seller will submit such records and charts, together with calculations therefrom, for Buyer's inspection and verification, subject to return within ten (10) days after receipt thereof.

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2. If, upon test, any measuring equipment is found to be not more than two (2) percent fast or slow, previous recordings of such equipment shall be considered correct in computing the volume of gas delivered hereunder, but such equipment shall be adjusted properly at once to record accurately. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding two (2) percent, at a recording corresponding to the normal operating rate of flow for the period since the last preceding test, then any previous recordings shall be corrected to zero error, for any period which is known definitely or agreed upon, but, in no case shall any correction be made for a period exceeding one-half of the time elapsed since the date of the last test and not exceeding a correction period of thirty (30) days.

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CURTAILMENT OF DELIVERIES

3. The supply of gas provided for hereinafter shall be sold on an interruptible basis, and the Seller shall have the right at any time, without liability to the Buyer, to curtail or, if necessary, to discontinue the delivery of gas entirely to the Buyer for any period of time when such curtailment or discontinuance is necessary to protect the requirements of domestic and commercial customers, to avoid an increased maximum daily demand in Seller's gas purchases, to avoid excessive peak loads and demands on the gas distribution system, to comply with any restriction or curtailment as may be imposed by any governmental agency having jurisdiction or by Seller's pipe line supplier of gas, or for any necessary or expedient reason, at the discretion of the Seller. Notwithstanding the foregoing interruptible provisions, it is understood and agreed that the fifteen (15) percent of the Daily Contracted Demand shall be considered as High Priority Service or firm gas

and Seller shall not curtail or discontinue deliveries of this particular quantity of gas except when such curtailment or discontinuance is necessary, at the discretion of the Seller, to protect and supply the requirements of customers under classifications contemplating an uninterruptible and constant supply of gas; or due to diminution or inadequacy of the Seller's supply of gas from its supplier for all classes of customers or in compliance with any valid order of any governmental agency or authority having jurisdiction.

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In addition to the foregoing curtailment or interruption provisions, curtailment or complete interruption may be effective at any time, at the discretion of the Seller, to protect and assure the operation of Seller's underground storage for peak shaving purposes.

Whenever curtailment or interruption is required or necessary, at the discretion of the Seller, the Seller will give the Buyer as much advance notice as is practical under existing or anticipated causes or circumstances and Seller's operating conditions.

24. Buyer agrees to provide such adequate standby, auxiliary and/or additional fuel, and proper and adequate equipment to utilize same, as may be required or necessary, at Buyer's discretion, to protect its fuel requirements and best interests, and to assure continuous operations, with the interruptible terms and conditions of this contract considered.

25. Interruption of gas deliveries in whole or in part due to the inability of Seller to deliver or Buyer to receive gas shall not be the basis of claims for any damages sustained by either the Seller or Buyer when due to acts of God, acts of an alien enemy, the elements, labor troubles, riots and civil commotion, fires, accidents, breakage or repair of pipe lines, equipment or machinery,

requirements of domestic and commercial customers, excessive peak loads and demands on the gas distribution system, outside restriction or curtailment, or other causes or contingencies beyond the control of, and occurring without negligence, on the part of the Seller or Buyer, Seller shall resume delivering and Buyer shall resume receiving gas when such causes or contingencies cease to be operative.

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**SUBJECT TO REGULATION**

26. This contract shall be subject to the valid laws, orders, rules and regulations of all duly constituted authorities having jurisdiction over either or both the Seller and Buyer.

27. This contract shall be effective as of the date of the first or initial deliveries of gas hereunder, provided, however, in no event shall this contract become effective prior to November 16th, 1955.

If, for any reason, Buyer does not accept the first or initial deliveries of gas hereunder and begins utilizing same prior to March 16th, 1956, the Seller, at its discretion, may declare this contract null and void and cancel same in its entirety.

28. This contract shall apply to and be binding upon the successors and assigns of both the Seller and the Buyer and shall remain in full force and effect for a period of five (5) years from the date of first delivery of gas hereunder, as specified by Buyer in accordance with the provisions of Article 27 hereof, and thereafter until cancelled by either Seller or Buyer as herein-after provided. After the expiration of the term as specified, either the Buyer or Seller may cancel this contract by giving notice in writing to the other

Party of its intention so to do ninety (90) days in advance of the time that such cancellation shall become effective.

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NOTICES

29. Any notice, statement or bill provided for in this contract or any notice which either party may desire to give to the other party shall be in writing and shall be considered as being duly delivered when mailed, by either registered or ordinary mail, to the post office address of either of the parties hereto, as the case may be, as follows:

**Seller:** Western Kentucky Gas Company  
423 West Third Street  
Owensboro, Kentucky

**Buyer:** Owensboro Sewer Pipe Company  
800 Moreland Street,  
Owensboro, Kentucky

Either party may change its address under this provision by notice to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers, thereunto duly authorized, and attested by their respective Secretaries or Assistant Secretaries and their respective corporate seals to be hereto affixed, as of the day and year first above written.

WESTERN KENTUCKY GAS COMPANY

By J. L. Bugg  
Vice President "SELLER"

ATTEST:

Priscilla Head  
Secretary

SEAL

OWENSBORO SEWER PIPE COMPANY

By W. F. Groscurth  
President "BUYER"

ATTEST:

G. Wallace Thacker  
Secretary

SEAL

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