

G A S S E R V I C E C O N T R A C T

LIBERTY CHERRY AND FRUIT COMPANY, INC.

227 W. SOUTHERN AVENUE,

COVINGTON, KENTUCKY

FILED

MAY 17 1960

PUBLIC SERVICE
COMMISSION

THIS AGREEMENT, made and entered into this 15TH day of APRIL, 1960, by and between THE UNION LIGHT, HEAT AND POWER COMPANY, a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "Company", and the LIBERTY CHERRY AND FRUIT COMPANY, INCORPORATED, a corporation organized and existing under the laws of the Commonwealth of Kentucky, hereinafter called "CUSTOMER", WITNESSETH:

WHEREAS: Customer desires to use gas in its plant in Covington, Kentucky and Company is willing to supply such gas; and

WHEREAS: Customer represents to Company that it anticipates it will make use of gas in its manufacturing operations at its plant to the extent of approximately 200 MCF per day and 70,000 MCF per year, subject to normal fluctuations;

NOW, THEREFORE, in consideration of their mutual promises, Customer agrees to purchase and pay for and Company agrees to supply Customer's gas requirements of Customer's plant located at 227 West Southern Avenue, Covington, Kentucky, on the following terms and conditions:

(1) DEFINITIONS:

- (a) "Contract Demand" shall mean that number of thousand cubic feet of gas (MCF) which Customer may use daily, pay for under the filed rate, and which shall not be subject to termination or curtailment, except as in paragraph 2 (a) below. It is mutually agreed that the Contract Demand of Customer shall be 30 MCF, subject, however, to be increased as provided in paragraph 2 (c) below.
- (b) "Base Use" shall mean the Contract Demand, as defined above, multiplied by thirty (30).
- (c) "Excess Gas" and "Off-Peak Gas". These terms may be used interchangeably and both shall mean the total number of thousand cubic feet of gas used in excess of the Contract Demand and/or Base Use of Customer.
- (d) "Point of Delivery" shall be the outlet on Company's meter or measuring device.

(2) TERMINATION AND CURTAILMENT:

- (a) Termination - The entire amount of gas supplied hereunder may be curtailed or terminated by Company (1) whenever emergency conditions endanger gas service to Company's residential customers, or (2) whenever Company is ordered to do so by any regulatory authority having jurisdiction.

- (b) Curtailment - Company may request Customer to discontinue its use of Off-Peak gas until further notice whenever in the opinion of Company it can no longer supply Customer with Off-Peak gas without increasing Company's Billing Demand under the tariff of its supplier. Customer shall curtail its usage, as requested by Company, within three (3) hours from the time Customer receives notification of such request.
- (c) Failure to Curtail - Customer agrees that the representatives of Company may enter the premises of Customer at any time for the purpose of reading meters and inspection to ascertain if Customer is complying with the request of curtailment. If Customer should fail to comply with such curtailment request, Company may, at its option, increase the then current Contract Demand by the amount of Off-Peak gas used during any 24 hour period that Customer refuses or fails to curtail its use of Off-Peak gas. Such increase in Contract Demand shall be effective for the next billing period and shall remain in effect for the balance of the term of the contract, or until said Contract Demand is again exceeded. If a request for partial curtailment of Off-Peak gas is made, the Contract Demand shall not be increased by the amount of Off-Peak gas which Customer is permitted to use.

(3) RATE:

The following three part rate applies:

- (a) Base Rate - The base rate applicable to Customer's Base Use is Company's standard rate for industrial gas service currently in force and effect and contained in the schedule "G-1, effective September 8, 1959, by refund" on file with the Public Service Commission, copy of which is attached hereto and made part hereof.

If during the life of this contract, the regulatory body having jurisdiction shall authorize changes in the filed rate attached to this Agreement, Customer hereby agrees to pay for such base gas service at the higher or lower rates from and after the date when such superseding rates are made effective.

- (b) Winter Off-Peak - The winter off-peak rate applicable to Customer's Excess Use in any billing month, during the winter period from November 1 to March 31, inclusive, is:

First 50,000 MCF at 47¢ per MCF
Additional MCF at 45¢ per MCF

Plus or minus an adjustment of 1/4 cent per MCF for each 1/4 cent per MCF by which the commodity portion of the average cost of the natural gas purchased by Company in the preceding month is more or less than the commodity portion of the average cost of such gas calculated at suppliers' rates in effect January 1, 1950.

- (c) Summer Off-Peak Rate - The summer off-peak rate applicable to gas used in any billing month during the summer period from April 1 to October 31, inclusive, in excess of Base Use is:

First 50,000 MCF at 40¢ per MCF
Additional MCF at 35¢ per MCF

Plus or minus an adjustment of 1/4 cent per MCF for each 1/4 cent per MCF by which the commodity portion of the average cost of the natural gas purchased by Company in the preceding month is more or less than the commodity portion of the average cost of such gas calculated at suppliers' rates in effect January 1, 1950.

- (d) Minimum Bill - The minimum monthly bill which customer agrees to pay shall be 25% of the cost of Customer's Base Use gas or \$1,500.00, whichever amount is larger. The minimum bill shall be waived by Company for that month in which Customer complies with a request for curtailment of Customer's Contract Demand as provided in paragraph 2 (a).

(4) QUALITY OF GAS:

The gas to be delivered hereunder shall be natural gas of the quality and characteristics as received by Company from the natural gas transmission companies from which it receives its supply for delivery to its customers in this territory with such odorants added as Company may deem necessary, provided, however, that during periods of peak demand or emergencies said natural gas may be augmented and mixed with "High Heating Value" manufactured gas and/or "Liquified Petroleum" gas, as produced in Company's plant or plants.

(5) MEASUREMENT:

The unit of measurement for all gas delivered hereunder shall be that quantity of gas which will occupy one cubic foot at an absolute pressure of 14.73 pounds per square inch (30" Hg) and at a temperature base of 520 degrees absolute (60 F.). In all computations in which atmospheric pressure is a factor, the atmospheric pressure shall be assumed to be 14.4 pounds per square inch.

Where the installation of a recording thermometer is provided, the arithmetic average of the temperature of the gas flowing through the meters, as recorded, shall be used in computing gas volumes.

In computing gas volumes, adjustment factors for the deviation from Boyle's law shall be calculated from standard tables.

6. MEASURING EQUIPMENT:

- (a) Location - All measuring and metering equipment shall be installed by Company, and shall be and remain the property of Company. Such equipment shall be located at Thirty Eighth St., West of Tibbatts Street or at such other locations as may be mutually agreed upon.
- (b) Access to Meters - Both Company and Customer shall have the right of access to meters and measuring equipment at all times.
- (c) Calibration and Test of Meters - The accuracy of Company's equipment shall be verified by Company at reasonable intervals and if requested, in the presence of representative of Customer, but Company shall not be required to verify the accuracy of such equipment more frequently than twice per year. Should Customer desire tests more frequently than twice per year, tests will be made at Customer's expense if the gas meters prove accurate within 2%.
- (d) Correction of Metering Errors - If, upon any test, any measuring equipment is found to be in error not more than 2%, previous recordings of such equipment shall be considered accurate in computing deliveries hereunder; but such equipment shall be adjusted at once to record accurately. If upon any test, measuring equipment shall be found to be inaccurate by an amount exceeding 2%, at a flow rate corresponding to the average hourly rate of gas flow for the period since the last previous test, recordings of such equipment shall be corrected to zero for any period which is known or definitely agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for the current billing period only.
- (e) Failure of Measuring Equipment - In the event any measuring equipment is out of service, and the volume delivered cannot be determined by meter readings, deliveries through such equipment shall be estimated from such data as may be available, including Customer's records.

DELIVERY PRESSURE:

Company will use reasonable effort to delivery gas to the Point of Delivery at a pressure of five (5) pounds per square inch. It is understood that in times of emergency and/or high demand delivery, pressure may fall below the abovementioned pressure, therefore, nothing herein shall be construed as implying a warranty by Company as to gas pressure.

BILLING AND PAYMENT:

Company shall render a bill to Customer each month in accordance with normal meter reading schedules and billing dates showing the total amount of gas delivered during said month and amount due.

Payment shall be made within fourteen (14) days after the rendition of above bill. If any bill is not paid within fourteen (14) days following the date of rendition, five per cent (5%) will be added to the charges; provided further, should said bill remain unpaid for a period of thirty (30) days after notice from Company, Company may at its option and without liability therefor suspend service to Customer after having given notice in writing of its intention so to do, but such suspension of supply of gas for such case shall not discharge or acquit Customer from its obligation to pay such bill or any obligation under this Agreement, nor shall such suspension exclude Company from any other rights or remedies it may have at law or in equity to enforce any of the provisions of this Agreement.

TERM OF SERVICE AGREEMENT:

The term of this Agreement shall start as of April 14, 1960 and shall terminate on October 1st, 1961; it shall be self-renewing from year to year thereafter for one year periods, unless terminated by either party by the giving of written notice to the other party not less than thirty (30) days prior to the expiration of the Agreement, or not less than thirty (30) days prior to the expiration of any renewal period.

FORCE MAJEURE:

Neither Company nor Customer shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God; strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all

reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome. Such causes or contingencies affecting the performance under this Agreement by either Company or Customer, however, shall not relieve them or either of them of the use of due diligence to remedy the situation and remove the cause in an adequate manner with all reasonable dispatch, nor shall such causes or contingencies affecting such performance relieve Customer from his obligation to make payments of amounts then due hereunder in respect of gas heretofore delivered.

11. DIVISION OF RESPONSIBILITY:

Customer shall have no responsibility with respect to any gas before its delivery at the Point of Delivery or on account of anything which may be done, happen or arise with respect to said gas before such delivery, and Company shall have no responsibility with respect to said gas after its delivery to Customer or on account of anything which may be done, happen or arise with respect to said gas after such delivery.

12. HOLD HARMLESS CLAUSE:

Customer agrees to assume, indemnify and save harmless Company from and against any and all liability, loss, costs, attorney fees, or expense of whatever nature or character, arising out of or occasioned by any claim, demand, or suit for damages or other relief, on account of injury to or death of any person or damage to any property, caused by, growing out of, or in any manner attributable to the gas piping on Customer's premises or the use of the gas by Customer, its employees, agents, servants, contractors, invitees or licensees, unless such injury or damage shall be judicially found to be attributable to the sole negligence of Company. Company may require Customer to defend any suits concerning the foregoing, whether justified or not.

13. REGULATORY AUTHORITY:

This Agreement is made in all respects subject to the terms and provisions of The Public Service Commission Act of the Commonwealth of Kentucky and acts amendatory thereto, to the jurisdiction and authority of The Public Service Commission of the Commonwealth of Kentucky and any other regulatory body having jurisdiction and to the general service rules and regulations of Company currently in effect from time to time. Nothing herein contained shall be construed as divesting or attempting to divest said Commission of any of its right, jurisdiction, powers or authority conferred upon said Commission by law.

14. NOTICE:

Any notice required by this Agreement shall be deemed to have been given if given to any officer of the other party. However, specific individuals other than officers may, from time to time, be designated as authorized to receive notices. Notice of curtailment may be given orally, either in person or by telephone.

15. This Agreement shall be binding on, and inure to, the successors and assigns of the parties hereto and supersedes and cancels all previous gas service agreements except for obligations incurred by Customer to make payment of amounts due in respect to gas heretofore delivered.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

"COMPANY"

THE UNION LIGHT, HEAT AND POWER CO.

By: J. R. Delaney
J. R. Delaney, Manager

Date Executed 4-15-60

"CUSTOMER"

LIBERTY CHERRY AND FRUIT COMPANY,
INCORPORATED

By: Thomas H. Bell
Chairman
Executive Committee

Date Executed Apr 15-60
April 15, 1960

RATE G-1

AVAILABILITY

Available in communities indicated on Sheet 2 of this schedule where distribution mains are adjacent to the premises to be served.

APPLICABILITY

Applicable to gas service required for any purpose by an individual customer on one premises when supplied at one point of delivery.

NET MONTHLY BILL

Computed in accordance with the following charges:

First 1,000 cubic feet, or less	\$1.54
Next 2,000 cubic feet,	at 8.8c per 100 cubic feet
Next 7,000 cubic feet,	at 8.6c per 100 cubic feet
Next 40,000 cubic feet,	at 7.7c per 100 cubic feet
Additional cubic feet,	at 7.4c per 100 cubic feet
Minimum: \$1.54 per meter.	

When bills are rendered for more than one whole month the number of cubic feet in each block of the rate and the minimum charge shall be multiplied by the number of months in the billing period.

PURCHASED GAS ADJUSTMENT

The rates authorized herein are based upon the wholesale cost of gas to the Applicant as computed upon rates of its wholesale suppliers then currently in effect under Federal Power Commission tariffs for interstate business or under wholesale tariffs of this Commission. For the purpose of this purchased gas adjustment clause, these rates shall be considered as the base rate for purchased gas. In the event there is any change in this base rate, either increase or decrease, the Applicant shall within thirty days from the time it receives notice of the proposed change file with this Commission the following information:

- (1) A copy of the Federal Power Commission tariff effecting the change in the base rates and a statement relative to the effective date of such proposed change.
- (2) A statement setting out the details of gas purchased under the provisions of the base rate for the previous twelve months showing billing under the base rate and under the proposed revised rate applicable to this service.
- (3) A balance sheet as of the end of the twelve months period and a statement of operating expenses and revenues in the same detail as reported to this Commission in the Utility's Annual Report.
- (4) A forecast showing the estimated gas purchases from all of the utilities contract suppliers for the next twelve months period together with an estimate of the cost thereof.
- (5) Such other information as this Commission may request for a proper determination of the purchased gas adjustment.

Upon receipt of this information this Commission will review the effect of the revised base rate on the operations of the Applicant and will prior to the effective date of the revised base rate, but not less than thirty days from the date of the filing of the above prescribed information, issue its order setting out the purchased gas adjustment that the utility shall apply to its rates and/or such refunds as may be proper.

The maximum amount of the adjustment so prescribed shall not produce revenue adjustments based upon the actual preceding twelve months period, greater than the difference between the purchased gas billed at the then existing rates and the purchased gas billed at the revised rate.

PAYMENT

The Net Monthly Bill is payable within fourteen (14) days from date. When not so paid, the Gross Monthly Bill, which is the Net Monthly Bill plus 5% is due and payable.

TERM OF SERVICE

One year, terminable thereafter on ten days' written notice by either Customer or Company.

SERVICE REGULATIONS

The supplying of, and billing for, service and all conditions applying thereto, are subject to the jurisdiction of the Public Service Commission of Kentucky, and to Company's Service Regulations currently effective, as filed with the Public Service Commission of Kentucky, as provided by law.

Issued by authority of an order of the Public Service Commission of Kentucky in Case No. 3646, dated December 9, 1959.