

GAS SERVICE CONTRACT

THIS GAS SERVICE CONTRACT made and entered into this 21st day of September, 1984, by and between ORBIT GAS COMPANY, a Kentucky corporation, 711 Leitchfield Road, Owensboro, Kentucky 42301, hereinafter referred to as "Seller" and ENSIGN-BICKFORD COMPANY, P. O. Box 128, Graham, Kentucky 42344, hereinafter referred to as "Buyer".

WITNESSETH:

WHEREAS, Seller required a right-of-way across Buyer's property to lay and maintain two inch gas transmission line connecting to Seller's system, and,

WHEREAS, Buyer agreed to grant such right-of-way in consideration of Seller offering to Buyer a supply of natural gas to be delivered through said pipeline,

NOW THEREFORE, in consideration of said right-of-way having been granted by Buyer to Seller's predecessor in interest and in further consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following terms shall respectively have the meanings set forth below:

(a) The term "gas" as used herein shall mean natural gas commonly produced from gas wells meeting the quality defined in Article VII hereof.

(b) The term "day" shall mean the 24-hour period commencing at eight o'clock (8:00) A.M. Central Standard Time.

(c) 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.

(d) The term "contract year" shall mean each consecutive period of twelve (12) months during the term of this agreement commencing with the effective date of this contract if on the first day of the month, otherwise commencing the first day of the month following the effective date of this contract.

(e) The term "cubic foot" shall mean the volume of gas which occupies one (1) cubic foot when such gas is at a temperature of sixty (60) degrees Fahrenheit and at a pressure of fourteen and seventy-three (14.73) pounds per square inch absolute.

(f) The term "MCF" shall mean one thousand (1,000) cubic feet of gas.

(g) The term "British Thermal Unit" shall mean the amount of heat required to raise the temperature of one (1) degree Fahrenheit at sixty (60) degrees Fahrenheit.

(h) The term "total heating value" when applied to a cubic foot of gas shall mean the number of British Thermal Units produced by the combustion at constant pressure of the amount of gas which would occupy a volume of one (1) cubic foot at a temperature of sixty (60) degrees

Fahrenheit, if saturated with water vapor, and under a pressure equal to that of thirty (30) inches of mercury at thirty-two (32) degrees Fahrenheit and under a standard gravitational force (acceleration of 980.655 cm. per second) 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 in air, and when the water formed by combustion is condensed to the liquid state.

(i) "Daily Demand" means the maximum daily amount of gas Buyer is entitled to receive.

ARTICLE II

DAILY DEMAND

A. The Daily Demand is two hundred (200) MCF per day. If Buyer does not use the daily demand on any day for a twelve-month period, Seller, on thirty (30) days written notice, may adjust the daily demand to one hundred and ten (110%) percent of the largest daily usage during said twelve-month period.

B. Seller shall not be obligated to deliver hourly quantities of gas in excess of ten (10%) percent of Daily Demand per hour.

ARTICLE III

POINT OF DELIVERY, EASEMENTS

A. The point of delivery shall be Seller's meter and regulator station, which shall be located on Buyer's property at Graham, Kentucky.

B. During the term of this contract, Seller shall have an easement in cross-over and on the property of Buyer in accordance with Seller's executed pipeline right-of-way agreement. Buyer may, however, direct Seller to relocate such facilities and in such event, Buyer shall be responsible for Seller's cost of relocation.

ARTICLE IV

TITLE OF POSSESSION

Seller shall have title to the gas deliverable hereunder and shall be in control and possession of and responsible for the safe transmission thereof until the same shall have been delivered at the point of delivery to Buyer, after which delivery, title to such gas shall pass to Buyer and Buyer shall be deemed to be in exclusive control and possession thereto.

ARTICLE V

PRICE AND PAYMENT

A. The price for gas delivered hereunder shall be composed of two (2) parts, the first being Seller's average purchase gas price for the month of the sale and the second being a commodity rate which shall be \$1.25/MCF for the original two-year term of this contract (September 1, 1984 through August 1, 1986).

B. Payment is due and payable on the tenth (10th) day after receipt of invoice. Invoices will be rendered monthly.

C. Should Buyer fail to pay any amount due on the tenth (10th) day after receipt of invoice, as hereinabove provided, such payment shall become delinquent and interest thereon shall accrue at the rate of ten (10%) percent per annum from the due date. In the event that any payment continues in default more than (thirty (30) days, Seller may, at its option, cancel and terminate this contract on thirty (30) days written notice to Buyer of such termination.

ARTICLE VI

TERM

Subject to the other provisions hereof, this contract shall be effective September 1, 1984, and shall continue and remain in full force and effect through August 30, 1986, and shall be automatically renewed for successive twelve-month periods unless written notice of cancellation is given by either party at least three (3) months prior to the beginning of any renewal term.

If the Federal Energy Regulatory Commission or the Public Service Commission of Kentucky or any other agency or authority assert jurisdiction in any manner over the delivery by Seller of the gas deliverable under this contract, or jurisdiction over the operations of Seller in the performance of its obligations under this contract, or if a reduction in the price specified in this contract for gas delivered hereunder should be ordered by any court or by any Federal or State governmental authority or agency, then, in any such event, Seller shall have the right at its option to

terminate this contract by giving to Buyer at least thirty (30) days advance written notice of such termination, provided such notice is given within ninety (90) days after the happening of the event entitling Seller to terminate this contract, except that if Seller shall in good faith engage in litigation or appeals to determine the legal effectiveness of the event entitling Seller to terminate this contract and such litigation is determined adversely to Seller by final judgment, Seller's notice of termination may be given within sixty (60) days after such judgment has become final.

ARTICLE VII

QUALITY

A. The gas delivered by Seller will be merchantable and will conform to the following quality specifications:

(a) Heating value - The gas shall have a total heating value of not less than nine hundred fifty (950 BTU's) British Thermal Units per cubic foot when burned with air and when saturated with water vapor at a temperature of sixty (60) degrees Fahrenheit and under a pressure of fourteen and seventy-three (14.73) pounds per square inch absolute, and with the products of combustion condensed to the liquid state.

(b) Solids - The gas shall be free from solid matter, dust, objectionable odors, gum forming constituents and other solids which interfere with the merchantability of the gas, or cause injury, or interfere with proper operation of

pipelines, meter, regulators or other appliances through which it flows.

(c) Total Sulphur - The gas shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet.

(d) Liquids - The gas shall be free from water, hydrocarbon liquids and other liquids which interfere with the merchantability of the gas, or cause injury or interfere with proper operation of pipelines, meter, regulators or other appliances through which it flows.

(e) Oxygen - The gas shall not contain more than two-tenths of one percent (0.2 of 1%) percent by volume of oxygen and the party delivering gas shall make every effort to keep the gas free of oxygen.

(f) Carbon Dioxide and Nitrogen - The gas shall not contain more than four (4%) percent of volume of a combined total of carbon dioxide and nitrogen; provided that the total carbon dioxide content shall not exceed three (3%) percent by volume.

(g) Temperature - The gas shall have a temperature of less than one hundred twenty (120) degrees Fahrenheit.

(h) Water Vapor Content - The gas shall have been dehydrated for removal of entrained water vapor and in no event contain more than seven (7) pounds of water per million cubic feet.

B. If gas delivered hereunder fails to conform to the quality specifications set out in Paragraph A of this Article VII, Buyer shall have the right, in addition to its other remedies at law and in equity, to terminate this contract upon Seller's failure to correct the gas quality within thirty (30) days of Buyer's written notice to do so.

ARTICLE VIII

MEASUREMENT

A. The measurement and test for quantity of gas delivered hereunder shall be governed by the following:

(a) The volume shall be measured by orifice meters and linear charts and twenty-four (24) hour chart rotation and shall include the use of orifice flange connections, or other mutually agreeable measuring devices installed and operated, and computations made, as prescribed in the Gas Measurement Committee Report Number Three, dated April 1955, of the American Gas Association and as such report may be amended or revised from time to time.

(b) The unit of volume for purposes 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 seventy-three (14.73) pounds per square inch absolute.

(c) The arithmetical average of the hourly temperature recorded during each day, the specific gravity according to the latest test or the arithmetical average of the hourly specific gravity during each day if a recording grav-

itometer is installed, the factors for the average hourly temperature and specific gravity, and the correction factor for deviation from Boyle's Law corrected for carbon dioxide and nitrogen, applicable during each day shall be used to make proper computations of volumes hereunder. Chart integration and volume computations shall be made by Seller as accurately as possible.

(d) Seller shall preserve all original test data, charts and other similar records for a period of at least three (3) years.

(e) Temperature shall be determined by a recording thermometer installed and continuously used so as to record properly the temperature of the gas being measured.

(f) Specific gravity shall be determined with accuracy to the nearest one thousandth (.001) by taking samples of the gas at the point of measurement at such times as may be designated by either party and having the specific gravity determined by use of the Acme Senior Gravity Balance or any other instrument mutually agreed upon. Should the gravity vary more than five thousandths (0.005), either party may request the use of a recording gravitometer of a type acceptable to both parties properly installed so as to accurately record the specific gravity of the gas being measured.

(g) Deviation from Boyle's Law at the pressures, specific gravities and temperatures upon delivery shall be determined by joint test soon after initial delivery. The

apparatus and method recommended by the U. S. Bureau of Mines (Burnett type) or as otherwise mutually agreed upon, shall be used in making such tests. This test shall determine the corrections to be used in computing volumes. Gas analysis shall be run once each year to determine if sufficient change in the composition of the gas has taken place to warrant retesting for deviation. Either party may request an analysis more often or a resumption of deviation testing at any time.

(h) The accuracy of the measuring and testing equipment shall be verified at least once each three (3) months and at other times upon request of either party. Tests for quality of the gas may be made at time of testing equipment or at other times. Notice of the time and nature of each test made at the request of Buyer shall be given sufficiently in advance to permit convenient arrangement for representatives of both parties to be present. Measuring and testing equipment shall be tested by means and methods approved by both parties (which approval shall not be unreasonably withheld). Tests and adjustments shall be made in the presence of and observed by representatives of both parties, if present. If, after proper notice, Buyer fails to have a representative present, the results of the tests shall nevertheless be considered accurate until the next tests are made. All tests of measuring equipment shall be made at Seller's expense, except that Buyer shall bear the

expense of tests made at its request if the inaccuracy found is two (2%) percent or less.

(i) If at any time any of the measuring or testing equipment is found to be out of service or registering inaccurately in any percentage, it shall be adjusted at once to read accurately within the limits prescribed by the manufacturer. If such equipment is out of service or inaccurate by an amount exceeding two (2%) percent at a reading corresponding to the average rate of flow for the period since the last preceding tests, the previous readings of such equipment shall be disregarded for any period definitely known or agreed upon, or if not so known or agreed upon, for a period of sixteen (16) days or one-half of the elapsed time since the last test, whichever is shorter. The volume of gas delivered during such period shall be estimated by (i) using the data recorded by any check measuring equipment if installed and accurately registering, or if not installed or registering accurately, (ii) by correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation, or if neither such method is feasible, (iii) by estimating the quantity or quality delivered based upon deliveries under similar conditions during a period when the equipment was registering accurately. No correction shall be made for recorded inaccuracies of two (2%) or less.

B. The measurement installation and test for quality of the gas delivered hereunder shall be governed by the following:

(a) All measuring and testing equipment, housing devices and materials shall be of standard manufacture and type approved by both parties and shall, with all related equipment, appliances and buildings, be installed, maintained and operated, or furnished by Seller at its expense. Buyer may install and operate check measuring and testing equipment which shall not interfere with the use of Seller's equipment.

(b) Both parties shall have the right to inspect equipment installed or furnished by the other and the charts and other measurement or testing data or the other at all times during business hours; but the reading, calibration and adjustment of such equipment and changing of charts shall be done only by the party installing and furnishing the same.

(c) Seller shall furnish, install, operate and maintain drips, separator, heaters and other mechanical devices as may be necessary to remove solids and liquids that might become separated from the gas in the other party's pipeline.

(d) The total heating value of the gas shall be determined by joint tests made by taking samples of the gas at the delivery point at such time as may be designated by either party, but not more often than once each month, and

not less than once per calendar quarter, and having the British Thermal Unit content per cubic foot determined by chromatographic analysis or by periodically running a spot sample on a recording calorimeter. The gas total heating value content for a cubic foot shall be determined when burned with air and saturated with water vapor at a temperature of sixty (60) degrees Fahrenheit and under a pressure of fourteen and seventy-three (14.73) pounds per square inch absolute and with the products of combustion condensed to the liquid state.

(c) Tests to determine total sulphur, hydrogen sulphide, oxygen, carbon dioxide and nitrogen shall be made by approved standard methods in general use by the gas industry. Such tests shall be made at the request of either party hereto and the requesting party will pay the costs of such testing.

ARTICLE IX

SUBJECT TO REGULATION

This contract shall be subject to the valid laws, orders, rules and regulations of all duly constituted authorities having jurisdiction over either or both Seller and Buyer and should at any time during the term of this contract, either party, by force of any such law or regulation imposed, be ordered or required to do any act inconsistent with the provisions of this contract, the contract shall, subject to the provisions of Article VI hereof, continue nev-

ertheless, but shall be deemed modified to conform with the requirements of such law or regulation.

ARTICLE X

PRESSURE

The gas to be delivered hereunder shall be delivered by Seller into Buyer's pipeline at the delivery point at a pressure of at least fifty (50) PSIG.

ARTICLE XI

FORCE MAJEURE AND REMEDIES

A. Neither Buyer nor Seller shall be liable in damages to the other for any act, omission or circumstances occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, accidental breakage or damage to machinery or lines of pipe, line freeze-ups, 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 caused or occasioned by (or) happening on account of the act or omission of some person or concern not a party hereto, not within the control of the party claiming suspension and which by the ex-

ercise of due diligence such party is unable to prevent or overcome. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered to be a matter within the control of the party claiming suspension.

B. Such causes or contingencies affecting the performance of this contract by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting the performance of said contract relieve either party from its obligations to make payments of amounts then due thereunder nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

C. Seller shall not be liable in damages to Buyer for loss of profits, cost of shut-down and start-up, loss to property or persons, by reason of failure to deliver gas pursuant to the terms of this contract.

ARTICLE XII

USE OF NATURAL GAS

A. During the term of this contract, Buyer shall not use natural gas from any other source including, but not limited to, affiliated companies without first obtaining written consent from Seller, which consent shall not be unreasonably withheld. Nor may Buyer sell any gas to any other person including but not limited to affiliated companies without first obtaining written consent from Seller.

B. Nothing herein shall be deemed to prevent Buyer from using stand-by service or another fuel to provide for the interruptions and/or curtailment of service under provisions of this contract. Any violation of the terms of Paragraph A of this Article XII shall be deemed a material breach of this agreement and in such event Seller, in addition to its rights at law or in equity, shall have the right to discontinue further deliveries of gas to Buyer.

ARTICLE XIII

CURTAILMENTS

Seller shall have the right to curtail or to discontinue the delivery of gas, on a pro-rata basis with Seller's other customers, for any period of time upon notice only for reason of force majeure as defined in Article XI of this Agreement. or when such curtailment or discontinuance is necessary to comply with any restriction or curtailment as may be imposed by any governmental agency having jurisdiction over Seller or its suppliers. Whenever possible Seller will give eight (8) hours notice to Buyer for fifty (50%) percent

curtailment and twelve (12) hours notice for full curtailment.

ARTICLE XIV

MISCELLANEOUS

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

B. Any notice, request, demand, 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: Ensign-Bickford Company
 P. O. Box 128
 Graham, Kentucky 42344

Seller: Orbit Gas Company
 711 Leitchfield Road
 Owensboro, Kentucky 42301

or to such other address as either party shall from time to time designate for the purpose of this agreement by a certified letter addressed to the other party. The date of service and receipt of such notice, request, demand, statement or bill shall be deemed to be the date the same is deposited in the United States mail, postage prepaid by the party giving same.

C. All the terms, covenants and agreements hereof shall run in favor of and be binding upon the parties hereto and their successors and assigns.

D. This contract may be executed in duplicate, each of which shall be considered an original.

E. This writing 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 to determine the meaning of this contract even though the accepting or acquiescing parties have knowledge of the nature of the performance and opportunity for objection.

F. This contract may be modified, amended, rescinded or terminated only by a writing signed by both Buyer and Seller as provided in Article VI.

G. This contract and any dispute arising hereunder shall be interpreted under the laws of the State of Kentucky.

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

SELLER:

ORBIT GAS COMPANY

BY: Frank I. Lindsey
FRANK I. LINDSEY, President

ATTEST:

George J. Stone

BUYER:

ENSIGN-BICKFORD COMPANY

BY: Jerry R. Fuller

ATTEST:

Wanda Jarvis