

NATURAL GAS TRANSPORTATION AGREEMENT

THIS NATURAL GAS TRANSPORTATION AGREEMENT, hereinafter "Agreement", is made and entered into this 22 day of October 1985, by and between PENNWALT CORPORATION, a Pennsylvania corporation, hereinafter "Pennwalt", and TEXAS AMERICAN ENERGY CORPORATION, by and through its unincorporated division, ^{Western} Kentucky Gas Company, a Delaware corporation, ^{PUBLIC SERVICE COMMISSION OF KENTUCKY} hereinafter "Western".

DEC 13 1988

WITNESSETH:

PURSUANT TO KAR 5:011,
SECTION 9(1)
BY: [Signature]
PUBLIC SERVICE COMMISSION MANAGER

WHEREAS, Pennwalt has contracted to purchase natural gas for use at its existing facility located at Highway 1532, Calvert City, Marshall County, Kentucky, from sources other than Western; and,

WHEREAS, Pennwalt desires to have said natural gas transported by way of Western's natural gas distribution system to the above-mentioned facility; and,

WHEREAS, Western is agreeable to transporting said natural gas to the above-mentioned facility pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set out, Pennwalt and Western hereby covenant and agree as follows:

ARTICLE I

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DEFINITIONS

PURSUANT TO 207 KAR 5:011,

SECTION 9 (1)

shall apply to this

BY: [Signature]
PUBLIC SERVICE COMMISSION MANAGER

1. The following definitions

Agreement:

- a. "Point(s) of Receipt" shall mean the location(s), as specified in Exhibit "A" attached hereto, at which the natural gas to be transported under this Agreement first enters the natural gas distribution system owned, operated, and/or controlled by Western.
- b. "Point(s) of Delivery" shall mean the location(s), as specified in Exhibit "A" attached hereto, at which the natural gas transported under this Agreement leaves the natural gas distribution system owned, operated and/or controlled by Western and enters into pipes owned, operated, and/or controlled by Pennwalt.
- c. "Legally Effective Rate" shall mean Western's General Transportation Rate T-2 as filed with the Public Service Commission of Kentucky. A copy of said Tariff in effect as of the effective date of the Agreement is attached hereto and marked Exhibit "B"
- d. "Mcf" shall mean the volume of natural gas as determined pursuant to the terms of the measurement basis as set forth in paragraph two (2) of Article II herein.
- e. "Month" shall mean a period beginning at 8:00 a.m., local time, on the first day of a calendar month and ending at 7:59 a.m., local time, on the first day of the next succeeding calendar month.
- f. "Day" shall mean a period of twenty-four (24) consecutive hours beginning at 8:00 a.m., local time, and ending at 7:59 a.m., local time.

g. "Receive" and/or "Received" shall mean to take or to have taken into possession and/or control. In the case of the natural gas to be transported under this Agreement, said natural gas shall be deemed to be received when said natural gas first enters the natural gas distribution system owned, operated, and/or controlled by Western at the Point(s) of Receipt.

h. "Transport" and/or "Transported" shall mean to carry or convey or to have carried or conveyed. In the case of the natural gas covered by this Agreement, said natural gas shall be deemed to be transported when it shall have passed through the natural gas distribution system owned, operated, and/or controlled by Western, from the Point(s) of Receipt to the Point(s) of Delivery.

i. "Deliver" and/or "Delivered" shall mean to give or to have given possession and/or control. In the case of the natural gas to be transported under this Agreement, said natural gas shall be deemed to be delivered when said natural gas passes from the natural gas distribution system owned, operated, and/or controlled by Western into pipes or other structures owned, operated and/or controlled by Pennwalt at the Point(s) of Delivery.

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OF KENTUCKY
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ARTICLE II

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TRANSPORTATION SERVICE

PURSUANT TO KAR 5:011,
SECTION 9.11

1. Western agrees to receive at the Point(s) of Receipt those volume(s) of natural gas owned by Pennwalt, and to transport and deliver the same to and at the Point(s) of Delivery.

BY: *[Signature]*
PUBLIC SERVICE COMMISSION MANAGER

2. The unit of volume of the natural gas subject to this Agreement shall be as determined in Western's "Rates, Rules and Regulations for Furnishing Natural Gas" as filed with the Public Service Commission of Kentucky.

3. Pennwalt warrants that the natural gas received, transported and delivered by Western under this Agreement is owned by Pennwalt and is free from all liens and adverse claims, including liens to secure payment of production and/or severance taxes, and any and all other taxes of whatever nature. Pennwalt agrees to release, indemnify and hold harmless Western from any and all liability from any suit, action, loss and/or expense arising from or out of any adverse claim of any party to said natural gas. In addition, Pennwalt agrees to release, indemnify and hold harmless Western from any and all liability for any royalty, tax, license fee or charge on the natural gas covered by this Agreement which are or may be applicable thereto before said natural gas is received by Western hereunder, or which may be levied and/or assessed thereon during the period in which said natural gas is transported under this Agreement.

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OF KENTUCKY

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ARTICLE III

SCHEDULING

PURSUANT TO KAR 5:011,
SECTION 9(1)

BY: *[Signature]*
PUBLIC SERVICE COMMISSION MANAGER

1. Pennwalt shall furnish Western with a schedule of the monthly volume(s), stated on a daily basis, of natural gas it desires to have transported under the terms of this Agreement at least ten days prior to the commencement of said month.

2. Pennwalt shall give Western at least twenty-four (24) hours notice prior to the commencement of any day during which Pennwalt desires to change any volumes previously furnished under paragraph one (1) of this Article III.

ARTICLE IV

RATES

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PURSUANT TO KRS KAR 5:011,
SECTION 9.01

BY: *[Signature]*
PUBLIC SERVICE COMMISSION MANAGER

1. As consideration for the transportation service rendered hereunder of the natural gas owned by Pennwalt, Pennwalt agrees to pay Western at Western's Legally Effective Rate in effect at the time(s) of delivery.

2. For purposes of paragraphs one (1) and four (4) of this Article IV, the volumes of natural gas received, transported, and delivered by Western shall be measured at the Point(s) of Delivery.

3. Western shall render Pennwalt an invoice on or before the fifteenth (15th) day of each month indicating the amount(s) due under paragraph one (1) of this Article IV. Said invoice shall cover a period of time, hereinafter "billing period", which shall reasonably correspond to calendar months. Pennwalt shall pay Western within ten (10) days of receipt of said invoice the amount indicated as due therein. In the event Pennwalt fails to pay all of the amount of any invoice within ten (10) days, Pennwalt shall be liable for interest on the unpaid amount, with said interest accruing at the then effective prime interest rate according to Citizens Fidelity Bank & Trust Company, Louisville, Kentucky, from the due date until paid.

4. Notwithstanding the foregoing, it is recognized by the parties hereto that imbalances may exist between the volumes of natural gas owned by Pennwalt and received by Western, and the volume(s) Western transports and delivers hereunder.

a. If at the end of any billing period those volumes of natural gas owned by Pennwalt and received by Western under this Agreement exceed those volume(s) Western has transported and delivered during such period, such excess shall be deemed to be transported and delivered hereunder first during the next succeeding billing period(s). As to any such excess in existence as of the termination date of this Agreement, Western agrees to pay Pennwalt its, Western's, company-wide average suppliers' commodity rate corresponding with its effective Purchased Gas Adjustment, as of the termination date, for such excess.

b. If at the end of any billing period those volumes(s) of natural gas owned by Pennwalt which have been received, transported, and delivered by Western hereunder during such period are less than the total volumes of natural gas delivered by Western during such period, Pennwalt agrees to pay Western for the excess volumes pursuant to the latter's applicable tariff as filed with the Public Service Commission of Kentucky.

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ARTICLE V

CONDITIONS PRECEDENT

PURSUANT TO KY KAR 5:011, SECTION 9(1)

BY: *[Signature]*
PUBLIC SERVICE COMMISSION

1. It is a condition precedent of this Agreement that Pennwalt and Western execute, either simultaneously herewith or within ten (10) days of the date first hereinabove written, an Agency Agreement which provides, inter alia, that Western act as agent for Pennwalt in the negotiation and execution of any and all contracts and/or agreements necessary to provide for the transportation of the natural gas owned by Pennwalt to the Point(s) of Receipt hereunder. In the event Western and Pennwalt fail to execute said Agency Agreement within the ten (10) day

period as set out above, and/or Western be unsuccessful in negotiating and executing any contracts and/or agreements for the transport of said natural gas to the Point(s) of Receipt hereunder, this Agreement shall be null and void.

ARTICLE VI

FORCE MAJEURE

1. Pennwalt agrees to indemnify and hold Western harmless for any loss suffered by Pennwalt as a result of any failure, shortage, or interruption of deliveries of the natural gas covered by this Agreement due to Force Majeure. Force Majeure shall include, but not be limited to, acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, tornados, fires, storms, floods, washouts, arrests and restraints of rulers and people, civil disturbances, explosions, breakages or accidents to gas transmission and/or distribution lines, or any other cause, whether of the kind herein enumerated or not, not within the control of Western, and which, by exercise of reasonable care, Western is unable to prevent or overcome, and whether occurring within Western's distribution system or on the transmission lines through which the natural gas covered by this Agreement is delivered to the Point(s) of Receipt.

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OF KENTUCKY
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PURSUANT TO KAN 5:011,
SECTION 9(1)
BY: George L. Hill
PUBLIC SERVICE COMMISSION MANAGER

ARTICLE VII

EFFECTIVE AND TERMINATION DATES

1. It is contemplated by and between the parties hereto that the transportation service provided hereunder is governed by Sections 157.209 (a) (2) and (e) (1) of the Regulations of the Federal Energy Regulatory Commission ("FERC"). Pursuant to this, the parties hereto agree that this Agreement shall become effective on the day and date first hereinabove written, and remain in full force and effect until the early ~~effective date~~ ^{PUBLIC SERVICE COMMISSION, OF KENTUCKY} 1985, or the effective date of a final rule in FERC Docket No. RM85-1-000.

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2. If the transportation service ~~is contemplated by this Agreement~~ ^{is contemplated by this Agreement} is initiated hereunder pursuant to ~~paragraph (1) of this Article VII~~ ^{paragraph (1) of this Article VII}, and ~~and~~ authority for such service is subsequently granted by the FERC pursuant to an application filed under Section 7 (e) of the Natural Gas Act, 15 U.S.C. 717 (f) (1985), this Agreement shall become effective as provided in paragraph one (1) of this Article VII, and shall remain in full force and effect for a primary term of one (1) year, and from year-to-year thereafter, unless terminated by either party upon sixty (60) days prior written notice.

3. Notwithstanding the foregoing, Pennwalt and Western acknowledge that this Agreement shall continue in full force and effect if and only if all regulatory approvals and consents are obtained and continue in effect during the term hereof from any and all governmental agencies deemed necessary by Pennwalt and

Western to consummate all transactions contemplated by this Agreement, including those transactions referred to in paragraph one (1) of Article V herein, all of such consents and approvals being in a form and substance satisfactory to both Pennwalt and Western.

ARTICLE VIII

MISCELLANEOUS

1. All of the Terms and Conditions contained in Western's Transportation Tariff Rate T-2 are hereby incorporated by reference herein and made an integral and material part of this Agreement.

2. Any notice, request, demand, statement, bill, or invoice provided for in this Agreement shall be in writing and shall be considered as received when mailed by registered mail to the post office address of the parties hereto as follows:

a. If to Western -

Western Kentucky Gas Company
P.O. Box 866
Owensboro, KY 42302
ATTN: Jack W. Reynolds,
Manager - Gas Supply

b. If to Pennwalt Corporation

P.O. Box 187
Calvert City, KY 42029
ATTN: Mr. Wayne L. O:Quin
Plant Manager

PUBLIC SERVICE COMMISSION
OF KENTUCKY
DIRECTOR

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PURSUANT TO KAR 5:011,
SECTION 9(1)

BY: George L. Hill
PUBLIC SERVICE COMMISSION MANAGER

3. The address of either party to this Agreement may, from time to time, be changed by the party so changing by mailing appropriate notice thereof to the other party.

4. Pennwalt shall not assign this Agreement or any of its underlying rights and/or obligations without the prior written consent of Western. Said consent shall not be unreasonably withheld by Western.

5. No waiver by any party of any one or more defaults by the other in the performance of any duty or obligation under this Agreement shall operate or be deemed a waiver as to any future default or defaults.

6. This Agreement represents the complete, exclusive and entire understanding of the parties hereto with regard to the natural gas owned by Pennwalt and received, transported, and delivered by Western hereunder. This Agreement may be amended only by written instrument signed by both Pennwalt and Western.

7. This Agreement shall be governed by the laws of the Commonwealth of Kentucky.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
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PURSUANT TO 207 KAR 6:011,
SECTION 9 (1)

BY: James A. Hill
PUBLIC SERVICE COMMISSION MANAGER

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

ATTEST:

PENNWALT CORPORATION

By: Lay L. Beckham
Title: Notary Public

By: W. J. [Signature]
Title: Vice President & Technical Director

ATTEST:

TEXAS AMERICAN ENERGY CORPORATION
by and through its unincorporated
division,
Western Kentucky Gas Company

By: [Signature]
Title: [Signature]

By: W. R. Hager
Title: Vice President Gas Utility Operations

PUBLIC SERVICE COMMISSION
OF KENTUCKY

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PURSUANT TO KAR 5:011,
SECTION 9(1)

BY: [Signature]
PUBLIC SERVICE COMMISSION MANAGER

EXHIBIT A

Points of Receipt and Delivery

1. Point of Receipt:

2. Point of Delivery:

PUBLIC SERVICE COMMISSION
OF KENTUCKY

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PURSUANT TO KAR 5:011,
SECTION 9(1)

BY: James S. Bell
PUBLIC SERVICE COMMISSION MANAGER

For Entire Service Area
Community, Town or City

P. S. C. No. 16

First ~~(Original)~~ SHEET No. 13A
~~(Revised)~~

Cancelling P. S. C. No. 16

~~(Original)~~ SHEET No. 13A
~~(XXXX)~~

WESTERN KENTUCKY GAS COMPANY

Name of Issuing Corporation

CLASSIFICATION OF SERVICE

PUBLIC SERVICE COMMISSION

OF KENTUCKY

GENERAL TRANSPORTATION TARIFF RATE ~~TABLE~~-2

DEC 13 1988

1. Applicable:

Entire service area of the Company.

PURSUANT TO KAR 5:011,
SECTION 9(1)

2. Availability of Service:

BY: [Signature]
PUBLIC SERVICE COMMISSION MANAGER

Available to customers who have purchased their own natural gas supply and require transportation through interstate and/or Company pipelines to the point of utilization, subject to suitable service being available from existing facilities.

3. Rate:

In addition to any charges assessed by other parties there will be applied a Company Transportation Charge which shall be calculated as the sum of:

- A. The Company's approved rate for the applicable sales tariff, including the Purchased Gas Adjustment but not including any Refund Factor, less
- B. The Company-wide average supplier's commodity rate corresponding with its effective Purchased Gas Adjustment.

Any volumes used by the customer in excess of the Transportation volumes will be billed at the rate specified in the applicable rate schedule.

4. Terms and Conditions:

- A. Specific details relating to volumes, delivery points and other matters shall be covered by a separate contract with the individual customer.
- B. Gas transported under this rate schedule is subject to the same interruptible provisions as those contained in the applicable sales rate tariff.

DATE OF ISSUE April 16, 1985

DATE EFFECTIVE May 6, 1985

month day year month day year

WESTERN KENTUCKY GAS COMPANY

Name of Issuing Corporation

CLASSIFICATION OF SERVICE

GENERAL TRANSPORTATION TARIFF RATE T-2

4. Terms and Conditions: (Continued)

- C. The Company will not be obligated to deliver a total supply of gas to a customer in excess of that customers contracted volumes.
- D. It shall be the customer's responsibility to make all necessary arrangements including regulatory approval required to deliver gas transported under this tariff to the facilities of the Company.
- E. The Company reserves the right to refuse to accept gas that does not meet the Company's quality specifications.
- F. The rules and regulations and orders of the PSC and of the Company and the Company's Terms and Conditions applicable to industrial sales shall apply to this Tariff and all contracts thereunder.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

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PURSUANT TO KRS 202.011,
SECTION 9(1)

BY: [Signature]
PUBLIC SERVICE COMMISSION MANAGER

DATE OF ISSUE April 16, 1985

DATE EFFECTIVE May 6, 1985

Issued by Authority of Ky. P.S.C. Order - Case No. 9083