

FILED

APR -1 1987

PUBLIC SERVICE COMMISSION

AGREEMENT

THIS AGREEMENT made and entered into as of this the 11th day of March, 1987 by and between Delta Natural Gas Company, Inc., a Kentucky corporation ("Delta"), and CertainTeed Corporation, a Maryland corporation of Corbin, Kentucky ("CertainTeed").

W I T N E S S E T H:

THAT, WHEREAS, CertainTeed has agreed to purchase certain quantities of natural gas from Delta Resources, Inc. ("Resources") and Resources has agreed to sell the same to CertainTeed; and

WHEREAS, CertainTeed, subject to the terms and conditions set forth herein, may from time to time require quantities of natural gas in excess of or in addition to the quantities purchased from Resources and accordingly desires to purchase same from Delta; and

WHEREAS, Delta, subject to the terms and conditions set forth herein, desires to sell and deliver to CertainTeed those quantities of natural gas in excess of or in addition to the Resources quantities that CertainTeed may from time to time require during the term hereof.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I. TERM.

Subject to the terms and conditions herein, the term of this Agreement shall commence upon the date first above written and continue in full force and effect for a period of one year.

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ARTICLE II. DEFINITIONS.

Unless this Agreement provides otherwise, the following definitions shall apply:

2.1. "Natural gas" or "gas" shall mean any mixture of hydrocarbons or hydrocarbons and noncombustible gases in a gaseous state, consisting essentially of methane.

2.2. "Resources Contract Quantities" shall mean that amount or quantity of natural gas purchased by CertainTeed from Resources and delivered to CertainTeed.

2.3. "Excess Quantities" shall mean that amount or quantity of natural gas sold by Delta to CertainTeed in excess of or in addition to the Resources Contract Quantities.

2.4. "Mcf" shall mean the quantity of gas occupying a volume of one thousand (1,000) cubic feet at a pressure base of 14.73 psia) and a temperature base of 60° Fahrenheit (60° F.).

ARTICLE III. SALE AND DELIVERY OF EXCESS QUANTITIES.

Delta shall sell and deliver to CertainTeed in Corbin, Kentucky, Excess Quantities of natural gas which CertainTeed may from time to time require.

ARTICLE IV. PRICE.

For all Excess Quantities delivered or sold by Delta to CertainTeed under the terms of this Agreement, CertainTeed shall pay Delta the applicable General Service total rate of Delta (Base Rate plus Gas Cost Recovery Rate), as filed with the PUBLIC SERVICE COMMISSION OF KENTUCKY tariffs on file with the PSC as same may be changed from time to time. EFFECTIVE

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ARTICLE V. STANDBY CHARGE.

In addition to the amounts set forth in Article IV, CertainTeed agrees to pay a monthly standby charge to Delta of \$3,200 during the term of this Agreement.

ARTICLE VI. STATEMENT AND PAYMENTS.

6.1. Statements shall be rendered by Delta to CertainTeed each month showing the total amount due from CertainTeed to Delta for service rendered by Delta for CertainTeed during the preceding billing month.

6.2. All statements required to be furnished to CertainTeed shall be mailed to it at the address set forth in this Agreement. Payments by check payable to the order of Delta Natural Gas Company, Inc. shall be made by CertainTeed by mailing same within fifteen (15) days after receipt of the bill.

ARTICLE VII. MEASUREMENT.

7.1. Meter(s) and other related equipment installed and maintained by or on behalf of Delta shall be the exclusive method and means of determining the quantity of gas delivered to CertainTeed. Reading, calibration and adjustment of Delta's meter(s) and related measurement equipment shall be performed solely by Delta using generally accepted procedures. Delta shall read said meters at regular intervals and the cost of reading, calibrating, adjusting and otherwise maintaining said meter(s), excluding repair of damage caused by CertainTeed, shall be borne by Delta. Delta shall test the accuracy of any meter in use under this Agreement at regular intervals during the term of this Agreement. Delta shall notify CertainTeed of each meter test not

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less than ten (10) days before said test so that CertainTeed, if it wishes, may be present at said test.

7.2. If either CertainTeed or Delta challenges the accuracy of any meter in use under this Agreement and requests to have the meter tested, Delta shall test the meter in the presence of CertainTeed or its representatives if CertainTeed exercises the right to be present or represented at such test. If the meter on test shall prove to be accurate within plus or minus two percent (2%), the cost of testing the same shall be borne by the party requesting the test, but if the meter on test proves to be in error by more than two percent (2%), then the cost of testing and repairing the same shall be borne by the party who benefitted from the inaccuracy. Meter measurements found to be in error more than two percent (2%) shall be corrected and accounts adjusted accordingly.

ARTICLE VIII. DELIVERY POINTS AND TITLE.

8.1. Resources Contract Quantities. The point of delivery from Delta Resources to CertainTeed shall be at the Delivery Point hereinafter described in this paragraph 8.1. Title to the Resources Contract Quantities shall pass from Resources to CertainTeed at the point of interconnection between the facilities of Delta with the metering facilities at CertainTeed ("Delivery Point").

8.2. Excess Quantities. The title to the Excess Quantities of natural gas sold by Delta to CertainTeed shall pass to CertainTeed at the Delivery Point.

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8.3. After delivery of the Excess Quantities of natural gas sold by Delta to CertainTeed hereunder and the Resources Contract Quantities at the Delivery Point, CertainTeed shall be deemed in exclusive control and possession thereof and, as between the parties hereto, shall be responsible for any loss of gas or damage, claim, liability or injury caused thereby.

ARTICLE IX. TAXES AND FRANCHISE FEES.

Delta may collect from CertainTeed any taxes and franchise fees, including, but not limited to, sales tax, school tax and gross receipts tax, which by law may be collected from CertainTeed whether such tax is now in existence or hereinafter promulgated or applied and such taxes shall be in addition to the price set forth in Article IV of this Agreement, all as set forth in Delta's tariffs on file at the PSC.

ARTICLE X. FORCE MAJEURE.

10.1. In case any party to this Agreement fails to perform any obligations hereunder assumed by it and such failure is due to acts of God or a public enemy, strikes, riots, injunctions or other interference through legal proceedings, breakage or accident to machinery, equipment or pipe, washouts, earthquakes, storms, freezing of lines or wells, blow-outs, or the compliance with any statute, either state or federal, or with any order of the federal government or any branch thereof, or of the government of the Commonwealth of Kentucky, or to any causes not due to the fault of such party, or is caused by the necessity of making repairs or alterations in machinery, equipment or pipe, such failure shall not be deemed to be a violation of such party

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of its obligations hereunder, but such parties shall use due diligence to again put itself in position to carry out all of the obligations which by the terms hereof it has assumed.

10.2. Notwithstanding the provisions of paragraph 10.1, CertainTeed shall not be relieved of its obligations under Articles IV, V and IX of this Agreement to pay for gas delivered, the Standby Charge and those taxes and franchise fees which Delta may collect from CertainTeed.

ARTICLE XI. GOVERNMENTAL REGULATION.

11.1. This Agreement shall be subject to all applicable and valid statutes, rules, orders and regulations of any federal, state or local governmental authority or agency having jurisdiction over the parties, or Resources, their facilities or gas supply, this Agreement or any provision thereof. The parties agree that should any state, federal or local governmental authority or agency with jurisdiction over this Agreement or transactions herein require approval for the Standby Charge or sale of gas hereunder, then each party shall make all necessary applications or filings and shall submit any records or data required by such governmental authority or agency.

11.2. Delta shall not be liable for failure to perform hereunder if such failure is due to compliance with rules, regulations, laws, orders or directives of any state, federal or local governmental regulatory authority or agency. If at any time during the term of this Agreement, any of ~~KENTUCKY~~ <sup>PUBLIC SERVICE COMMISSION</sup> state or local governmental authority, agency or regulatory body shall take any action whereby Delta will be prohibited or prevented

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from receiving in full all amounts and monies which CertainTeed has agreed to pay Delta or Delta shall be subject to terms, conditions or restraints that in the judgment of Delta are unduly burdensome, Delta, upon fifteen (15) days written notice to CertainTeed, may cancel and terminate this Agreement.

11.3. Nothing in this Agreement shall prevent either party from contesting the validity of any law, order, rule, regulation or directive of any state, federal or other governmental regulatory authority or agency, nor shall anything in this Agreement be construed to require either party to waive its right to assert the lack of jurisdiction of such regulatory body, governmental entity, or agency over this Agreement or any party thereof.

ARTICLE XII. GOVERNING LAW.

This Agreement was entered into under and, to the extent permitted by law, shall be construed in accordance with the laws of the Commonwealth of Kentucky.

ARTICLE XIII. NOTICES.

Any notice, request, demand, statement, bill or payment or other communication which either party may desire to give to the other, shall be in writing and shall be delivered to the addresses listed below or at such other address as the parties may designate in writing:

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To Delta: Delta Natural Gas Company, Inc.  
3617 Lexington Road  
Winchester, Kentucky 40391  
Attention: George S. Billings

To CertainTeed: CertainTeed Corporation  
P. O. Box 448  
Corbin, Kentucky 40701  
Attention: Brian Sullivan

ARTICLE XIV. ASSIGNMENT.

CertainTeed shall not assign this Agreement or any of its rights or obligations hereunder unless it shall have obtained prior written consent of Delta.

ARTICLE XV. SUCCESSORS.

Subject to the terms and conditions of this Agreement, this Agreement shall extend to and be binding upon the successors, heirs and assigns of the parties hereto.

ARTICLE XVI. WAIVER.

A waiver by either party of any one or more defaults by the other in the performance of any provision of this Agreement shall not operate as a waiver of any future default.

ARTICLE XVII. SEVERABILITY.

Except as otherwise provided herein, any provision of this Agreement declared or rendered unlawful by a statute, court of law or regulatory agency with jurisdiction over the parties or either of them shall not otherwise affect the other obligations of the parties under the Agreement.

ARTICLE XVIII. HEADING.

The headings of the provisions of this Agreement are used for convenience only and shall not be deemed to affect the meaning or construction of such provisions.

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*B. J. [Signature]*



ARTICLE XIX. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties and there are no promises, agreements, warranties, obligations, assurances or conditions other than those contained herein.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands this the day and year first above written.

DELTA NATURAL GAS COMPANY, INC.

By: Glenn R. Jennings  
Title: President

CERTAINTEED CORPORATION

By: Rene Goutte 3-25-87  
Rene Goutte  
Title: Vice President

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