

Copy

GAS TRANSPORTATION AGREEMENT

THIS AGREEMENT, made and entered into this 4th day of November, 1996, by and between SCOTTY'S CONTRACTING AND STONE COMPANY, hereinafter referred to as "Customer," and NATURAL GAS OF KENTUCKY, INC., hereinafter referred to as "Company".

WHEREAS, Customer owns and operates an asphalt plant in ^{Warren} ~~Barron~~ County, Kentucky, which Plant currently does not have access to natural gas service of any kind; and

WHEREAS, Customer has obtained a supply of gas for use at its facilities upon receipt of transportation from Company; and

WHEREAS, Company will construct a transportation facility for delivery of Customer's gas to Customer's Plant pursuant to the terms and conditions contained herein.

NOW THEREFORE, in consideration of the mutual agreements, covenants and conditions herein contained, Company and Customer hereby agree as follows:

ARTICLE I

Definitions:

- 1.1 RATE shall mean the charge to be paid by Customer to Company for each MCF of gas delivered from the Delivery Point(s) to Customer's Plant.
- 1.2 DELIVERY POINT(s) shall mean the point(s) designated herein or mutually agreed by Customer and Company for delivery of the gas from Texas Gas Pipeline to the facilities of the Company.
- 1.3 QUANTITY shall mean the maximum amount of gas measured in MCF ^{PUBLIC SERVICE COMMISSION} ~~Customer~~ expects to cause to be delivered to Company at the Delivery Point(s) for ^{OF KENTUCKY} ~~Company~~ to Customer's Plant.

DEC 22 1996

ARTICLE II

Term:

- 2.1 The term of the Agreement shall commence upon the execution hereof and shall remain in effect for an initial term of ten (10) years from the date of the first deliveries hereunder, and for successive renewal terms of one (1) year thereafter, unless terminated by either party upon sixty (60) days written notice prior to the end of the initial term or any renewal term.

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)
BY: Phillip Lammie
DIRECTOR OF RATES & RESEARCH

ARTICLE III

Delivery Point(s), Pressure, and Title:

3.1 Company shall cause the gas to be delivered to Customer at the Delivery Point(s) mutually agreed. Gas will be delivered at a pressure which is sufficient to effect delivery into Customer's facilities. Company shall at all times retain title to the gas while it is being transported by Company to Customer's Plant.

3.2 Location of facilities for final delivery of gas:

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

At Customer's Asphalt Plant on McGinnis Quarry Road in Barren County, Kentucky.

DEC 23 1996

ARTICLE IV

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

Quantity:

BY: Phillip Lammie
DIRECTOR, RATES & RESEARCH

4.1 Company agrees to transport all natural gas used at Customer's asphalt plant located on McGinnis Quarry Road in Barren County, Kentucky, over the facilities to be constructed by Company for the term of this Agreement, subject to any capacity or operational limitations of such facilities, and Customer agrees to buy all fuel used at this asphalt plant exclusively from Company for the term of this Agreement. Gas will be transported on an interruptible basis. Customer represents that it has alternate fuel capabilities to supply this plant during periods of interruption. Customer shall submit to Company a nomination for the quantity (including allowances for fuel, compression, and shrinkage) of gas Customer expects to transport during the next calendar month, on or before ten days prior to the first day of such month, specifying its nominated quantity in MCF/day on a form supplied by Company. Customer shall be responsible for current payment of any penalties or other transporter charges resulting from imbalances caused by its failure to properly match its nominations and its purchases. Company shall be responsible for current payment of any penalties or transporter charges resulting from imbalances caused by its failure to provide supply and effect transportation of the nominated quantities to the Delivery Point(s). At least every sixty (60) days, the parties shall reduce to zero, imbalances for all but the current month, by making tender of gas volumes, cash payments, or other adjustment as appropriate.

ARTICLE V

Measurement Facilities:

5.1 At or near each Delivery Point(s) hereunder, or any other mutually agreeable point, Company, at its sole expense, shall construct and install a metering station and grant and assign to Customer, or Customer's representative, all necessary rights of ingress and egress to the metering station site. The metering facilities shall be designed, owned, and constructed by Company.

- 5.2 Company's representative shall operate and maintain the measuring facilities including the reading, calibration, and adjusting thereof. Volumes shall be computed and the facility maintained and operated in accordance with and as prescribed by the American National Standards Institute/American Petroleum Institute (ANSI/API) standard number 2530 including current revisions thereto. Adjustments will be made for measurement errors in excess of two percent (2%) in accordance with standard pipeline practices and procedure. Customer shall have the right to install check measurement facilities provided that such does not interfere with the operation of the above mentioned measuring facilities.

ARTICLE VI

Quality:

- 6.1 The gas delivered hereunder shall be of pipeline quality and conform to the specifications set forth in the applicable tariff of the Texas Gas Pipeline system.

ARTICLE VII

Price:

- 7.1 Customer agrees to pay Company, for each MCF of gas transported from the Delivery Point(s) to the place of final delivery at Customer's Plant for the calendar month being billed \$3.00 per MCF transported. At the end of one (1) year, the price shall be the monthly acquisition cost plus an additional \$2.70 per MCF transported.

Such price will be the total consideration paid by Customer to Company for transportation over Company's facilities and is inclusive of any and all costs, fees, royalties, gathering, treating, and transportation expenses, subject to Section 7.2 hereof, and Company agrees to indemnify, defend and hold Customer harmless from any and all obligation or liability for same.

- 7.2 Any state or local sales or use tax or any utility gross receipts license tax imposed by any state or local government agency or instrumentality within Kentucky shall be paid by Customer. Nothing contained herein shall be construed as imposing any obligation on Company with respect to any tax imposed on Customer after title and possession of the gas shall have passed to Customer or Customer's designee.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DEC 23 1996

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Phyllis Lammie
DIRECTOR, RATES & RESEARCH DIV.

ARTICLE VIII

Facilities to be Constructed:

- 8.1 Upon execution of this Agreement, and subject to the receipt of all required regulatory approvals, and right of way agreements, and subject to the completion of a tap to the Texas Gas Pipeline at the Delivery Point, Company shall commence the construction of a pipeline from the Delivery Point to Customer's Plant in Barren County, Kentucky. Upon completion, Company's facilities will be operated and maintained by Company during the term of this Agreement.
- 8.2 In event Company serves additional customers through these facilities, an equitable allocation of gas for compression, fuel, and shrinkage shall be made among such customers for purposes of determining the amount of gas transported to Customer hereunder.

ARTICLE IX

Billing and Payment:

- 9.1 Company shall render to Customer on or before the fifth day of each calendar month a statement setting forth the total quantity of gas transported to Customer's Plant during the preceding month, payment of which will be due by the fifteen of same month. If payment is not made within such time, the unpaid balance shall bear interest until paid at the prime rate of interest charged from time to time by Chase Manhattan Bank, N.A., New York, New York, to responsible industrial and commercial borrowers, plus two percent (2%); provided, however, that such rate shall not be in excess of the maximum interest rate permitted under applicable law. Payment and presentation dates hereunder will be determined by postmark dates.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

ARTICLE X

DEC 23 1996

Government Regulation:

PURSUANT TO 907 KAR 5.011,
SECTION 9 (1)

- 10.1 It is understood by the parties that this Agreement, and performance hereunder, is subject to all present and future valid laws, orders, statutes, and regulations of courts or regulatory bodies (State or Federal) having jurisdiction over this transaction or any party hereto. Should any party hereto, by force of any such law, order, statute, or regulation, be ordered or required to do or refrain from any act inconsistent with the provisions of this Agreement, then this Agreement may be immediately terminated by such party by written notice to the other party. If the right to termination is not exercised by either party, then this Agreement shall continue, but shall be deemed modified to conform with the requirements of such law, order, statute, or regulation.

- 10.2 Company agrees to make, on a timely basis, all regulatory filings if any, that may be needed to effectuate the contemplated purchase and sale.

ARTICLE XI

Warranties:

- 11.1 Company warrants unto Customer, its successors, and assigns, that it holds good and marketable title to the gas transported hereunder and/or that it has the authority from the holder(s) of such title to said gas to contract for the transportation of the gas delivered to Customer hereunder.
- 11.2 Company shall indemnify Customer against all claims, liabilities, demands, rights of action, and causes of action (collectively "Claims"), caused by, resulting from, or arising out of Company's obligations hereunder, including any event occurring while Company is in possession of the gas transported hereunder, except where such Claims are caused by, result from, or arise out of the gross negligence of Customer.

ARTICLE XII

Force Majeure:

- 12.1 In the event Company or Customer is rendered unable, by an event of force majeure, to carry out wholly or in part, its obligations under the provisions hereunder, it is agreed that if such party gives notice and full particulars of such event of force majeure to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party affected by such effect of force majeure shall, other than the obligation to make payments when due hereunder, shall be suspended during the continuance of any such inability so caused, and such event of force majeure shall, so far as possible, be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts and events not reasonably within the control of the party claiming suspension, but in no event shall "force majeure" mean financial inability to pay for any amount due under this Agreement.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

ARTICLE XIII

DEC 3 2 1996

Notices:

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

- 13.1 Any notice, request, demand, statement, or payment provided for in this Agreement shall be in writing and shall be deemed delivered as of the postmarked date when mailed by ordinary mail to the other party at the address appearing below. A notice sent by telecopier shall be

BY: *Phillip Lanning*
LHS HOLDINGS & RESEARCH, INC.

deemed received twenty-four (24) hours after such notice was sent. The addresses of the parties are as follows:

CUSTOMER:

NOTICES AND CORRESPONDENCE:

Scotty's Contracting and Stone Company
1140 Flint Knob Road
Glasgow, Kentucky 42141

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DEC 22 1996

COMPANY:

NOTICES AND CORRESPONDENCE:

Mark O'Brien
Natural Gas of Kentucky
13400 U. S. Highway 42, #290
Prospect, Kentucky 40059

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Phillip Lammie
DIRECTOR, RATES & RESEARCH DIV.

or to such address as Company or Customer shall from time to time designate by letter properly addressed.

ARTICLE XIV

Miscellaneous:

- 14.1 The provisions of this Agreement shall extend to the parties hereto and to their heirs, successors, and assigns. This Agreement may not be assigned without the written consent of both parties, which shall not be unreasonably withheld; provided, however, either party hereto may assign this Agreement to a financially-responsible affiliate without the prior consent of the other party.
- 14.2 This Agreement constitutes the entire agreement between the parties and no waiver, representation, or agreement, verbal or otherwise, shall affect the subject matter hereof unless and until such waiver, representation, or agreement is reduced to writing and executed by the authorized representative of the parties.
- 14.3 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

"CUSTOMER"

By: Scotty's Contracting and Stone Company

David Stewart
Signature

Secretary
Title

Attest: Debbie Potter
Signature

"COMPANY"

By: Natural Gas of Kentucky, Inc.

Mark J. [Signature]
Signature

President
Title

Attest: _____
Signature

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DEC 23 1996

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Phyllis Lannin
DIRECTOR, RATES & RESEARCH DIV.