

MAIN EXTENSION
AND
NATURAL GAS SERVICE AGREEMENT

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MAY 28 1999

PUBLIC SERVICE
COMMISSION

This MAIN EXTENSION AND NATURAL GAS SERVICE AGREEMENT ("Agreement"), is made and entered into on April 19, 1999 by and between THE UNION LIGHT HEAT AND POWER COMPANY ("COMPANY"), a Kentucky corporation, having offices at 107 Brent Spence Square, Covington, Kentucky 41011 and A-Carb L.L.C. ("CUSTOMER"), a Delaware corporation, with temporary offices at 50 East River Center Boulevard, Suite 650A, Covington, Kentucky 41011, and which is constructing a manufacturing facility and permanent offices at 1 Carbon Way, Walton, Kentucky.

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WITNESSETH

WHEREAS, CUSTOMER has requested COMPANY to furnish natural gas service for its use at its new manufacturing facility which is under construction at 1 Carbon Way in Walton, Kentucky; and

PURSUANT TO 807 KAR 5:011,
SECTION 9(1)
BY: Stephan O Bell
SECRETARY OF THE COMMISSION

WHEREAS, CUSTOMER requires its natural gas service to contain no more than 0.5 percent oxygen; and

WHEREAS, in order for COMPANY to furnish natural gas with a maximum oxygen content of 0.5 percent to CUSTOMER, COMPANY must extend its Line UL7 gas main approximately 22,000 feet at an approximate cost of \$830,000.

WHEREAS, CUSTOMER desires to purchase its natural gas supplies from COMPANY under COMPANY'S Gas Cost Adjustment (GCA) procedures; and

WHEREAS, CUSTOMER desires to have such quantities of natural gas delivered by COMPANY through its facilities, following completion of a main extension, to COMPANY's existing delivery point to CUSTOMER; and

WHEREAS, COMPANY is willing to provide gas service all in accordance with the terms and conditions hereinafter set forth and/or set forth in COMPANY's Rate GS, Ky. P.S.C. Gas No. 5, Sheet No. 31.

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

BY: Stephan O. Bell
SECRETARY PUBLIC SERVICE COMMISSION

NOW THEREFORE, in consideration of the following premises covenants, COMPANY and CUSTOMER ("the parties") agree as follows:

Cost and Financing: CUSTOMER agrees to pay COMPANY no more than \$50,000 which shall be due and payable within ten (10) days from the date that COMPANY notifies CUSTOMER that physical construction on the main extension has begun. COMPANY agrees to finance the balance of the main extension project cost ("Company's Investment") in exchange for minimum natural gas usage requirements over a ten-year period. COMPANY, not CUSTOMER, shall be the owner of the main extension at all times regardless of reimbursed or unreimbursed financial contributions by CUSTOMER. Should CUSTOMER permanently cease operations at anytime during the ten year primary term of this Agreement, the remaining unpaid balance of Company's Investment shall become immediately due and payable by CUSTOMER to COMPANY. The remaining unpaid balance of Company's Investment shall be determined by multiplying the fraction that is determined by dividing the extent to which CUSTOMER has satisfied its ten year annual minimum natural gas usage requirement at the time that operations cease, ("X"), by the sum of CUSTOMER'S total annual minimum natural gas

usage requirements during the ten year primary term of this Agreement, (885,000 Mcf), times the COMPANY's original investment in the project, and subtracting that amount from the COMPANY'S original investment, i.e:

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Remaining Unpaid Balance = [\$775,000 - (X / 885,000 Mcf) (\$775,000 estimated)]

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Permanent cessation of operations shall be conclusive upon a production shutdown of sixty (60) days or more, or a reduction in production of fifty percent during any period of four (4) consecutive months, as determined based on CUSTOMER's reduced gas consumption. CUSTOMER's normal production gas consumption shall be assumed to be the agreed upon annual minimum usage requirement stated herein, which is further assumed to be used in equal monthly amounts. COMPANY has reviewed CUSTOMER'S publicly available credit and financial information and has determined that collateral in the form of an irrevocable letter of credit from a bank that is satisfactory to the COMPANY must be provided to the COMPANY, to secure CUSTOMER'S satisfaction of its obligations under this Agreement.

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY: Stephen D. Bell
(SECRETARY OF THE COMMISSION)

Easements: CUSTOMER agrees to convey to COMPANY any and all necessary easements and/or rights-of-way over which it has control, at no cost to COMPANY. COMPANY agrees to extend its gas main a distance of approximately 22,000 feet in public and private Rights of Way from a point of interconnection with COMPANY'S Line UL-7 located in Independence, Kenton County, Kentucky, per drawing No. 98-5361-5, attached.

Term: Natural gas service will be available to CUSTOMER and CUSTOMER can commence receiving service under this Agreement as soon as the main extension is complete and service is connected. The in service date shall be no later than September

30, 1999 so long as this Agreement is accepted as evidenced by CUSTOMER's signature by April 19, 1999. This Agreement shall continue in full force and effect through December 31, 2009, and will continue thereafter unless canceled by either party upon a thirty (30) days prior written notice. However, this Agreement may be canceled by either party without notice if subsequent orders by any appropriate regulatory agency would eliminate the availability and/or deliverability of natural gas pursuant to this Agreement.

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Minimum Usage Requirement: Unless CUSTOMER's remaining unpaid balance is paid to COMPANY as described under "Cost and Financing" above, CUSTOMER agrees that for a period of ten (10) years commencing on January 1, 2000, it will use or pay for the following respective annual minimum quantities of natural gas delivered by COMPANY: 2000 - 35,000 Mcf; 2001 - 70,000 Mcf; 2002 - 90,000 Mcf; 2003 - 90,000 Mcf; and 2004 through 2009 - 100,000 Mcf annually. If CUSTOMER'S gas usage is less than the required minimum annual amount during any of the ten (10) annual periods, CUSTOMER shall be billed, and CUSTOMER agrees to pay, for the deficiency between the actual quantity of gas used and the required minimum amount, which will be billed at the then effective commodity transportation rate under Rate GS along with all associated and/or incorporated tariffs, riders, service regulations, and taxes. If CUSTOMER'S gas usage exceeds the required annual minimum amount during any of the ten (10) annual periods, the gas usage above the required annual minimum amount may not be used to offset any gas usage deficiency below the required annual minimum amount in any of the other ten (10) annual periods. If COMPANY interrupts gas delivery to CUSTOMER, the respective annual minimum usage requirement shall be reduced in proportion to the period of interruption.


PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)
BY: Stephan Bill
SECRETARY OF THE COMMISSION

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Customer Reimbursement: During the first ten (10) years of the primary term of this Agreement, COMPANY shall pay CUSTOMER for each new customer addition directly connected to and within the main extension that is the subject of this Agreement, an amount equivalent to 100 times a \$10 per foot rate, or the equivalent of \$1,000 per customer unit rate. Such reimbursements under this Agreement shall not apply to customers added along laterals or subsequent main extensions hereafter directly or indirectly connected to and within the main extension that is the subject of this Agreement. However, should CUSTOMER permanently cease operations at any time during the ten year term of this Agreement, any and all reimbursements payable to CUSTOMER under this Paragraph shall be suspended until CUSTOMER pays COMPANY's total investment as described in the "Costs and Financing" Paragraph of this Agreement. In no case shall the total amount reimbursed to CUSTOMER pursuant to this Paragraph exceed the amount paid by CUSTOMER to COMPANY in accordance with the "Costs and Financing" Paragraph above. COMPANY reserves the right to decide when any gas meter will be connected to the main. Under no circumstances will the gas meter be connected to the main until gas usage will begin.

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PURSUANT TO 807 KAR 5:011,
SECTION 9(1)
BY: Stephan B. Bell
SECRETARY OF THE COMMISSION

1) **Force Majeure:** Neither of the parties hereto shall be liable in damages to the other for any act, omission, or circumstance occasioned by force majeure. The term "force majeure" shall include acts of God, acts of public enemy, insurrection, riots, strikes, labor disputes, fires, explosions, floods, extreme or prolonged cold weather, breakdowns of or damage to plants, equipment, or facilities, acts or orders of regulatory, civil or military authorities, fuel shortages, or other causes of a similar or dissimilar nature beyond the reasonable control of the parties. Such excuses from performance shall


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continue until such preventive cause is eliminated or ceases to exist, provided parties shall use reasonable efforts to eliminate such cause as promptly as possible, recognizing, however, that the settlement of any strike or other labor dispute shall be solely within the discretion of the party with authority to settle with its labor force. The party claiming a force majeure situation agrees to promptly notify the other party of its claim.

Regulatory Approvals: COMPANY and CUSTOMER recognize and agree that this Agreement shall be expressly contingent on the receipt of any and all regulatory approvals and authorizations as may be required. The parties agree to cooperate to obtain all required approvals or authorizations, but recognize that subsequent to the execution of this Agreement, the Kentucky Public Service Commission ("KyPSC"), or another body lawfully empowered to do so, may impose restrictions on this main extension project or any other aspect of this Agreement, including, but not limited to the COMPANY's act of supplying natural gas to new customers (whether or not a gas main is adjacent to the property for which natural gas service is requested). COMPANY and CUSTOMER agree to be bound by all such restrictions. COMPANY and CUSTOMER also agree to be bound by any determination of the KyPSC, or another body lawfully empowered to do so, that would effect the method of payment outlined in the "Costs and Financing" Paragraph above.

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PURSUANT TO 807 KAR 5:011,
SECTION 04M
BY: Stephan Bell
SECRETARY OF THE COMMISSION

Governing Tariff: Service under this Agreement shall be in accordance with Rate GS, Ky. P.S.C. Gas No. 5, Sheet No. 31 (Rate GS) attached hereto as Appendix A, and the terms and conditions, and other provisions thereof, along with all associated and/or incorporated tariffs, riders, taxes, and/or Service Regulations shall control all aspects of this Agreement. CUSTOMER is aware of and specifically acknowledges that

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the rates, charges and other terms and conditions for service under Rate GS may be changed from time to time by valid order of the KyPSC or other regulatory body having jurisdiction over such service.

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Interruption of Service: In accordance with Rate GS and COMPANY'S Service Regulations, all of which have been approved by the KyPSC, COMPANY reserves the right, at any time, to curtail or interrupt the delivery or transportation of gas under this Agreement when, in the judgment of COMPANY, such curtailment or interruption is necessary to enable COMPANY to maintain deliveries to higher priority customers or to respond to any emergency. In the event CUSTOMER fails to interrupt its own use of gas and/or fails to interrupt deliveries into COMPANY 's system under this Agreement, then such unauthorized gas deliveries or usage shall be billed in accordance with the Unauthorized Deliveries provision of Rate GS, irrespective of whether or not COMPANY itself has incurred such charges.

807 KAR 5.011,
SECTION 9 (1)
Stephan B. Bell
SECRETARY OF THE COMMISSION

Charges and Payment Terms: Billing for gas service provided under this Agreement will be in accordance with Rate GS or such amendments or revisions thereto as may be approved from time to time by the appropriate regulatory authorities having jurisdiction over such service.

Payment by CUSTOMER must be received by COMPANY by the due date shown on the bill. When not so paid, a late payment charge will be added to CUSTOMERS billing in accordance with Rate GS.

Quality of Gas: The gas to be delivered hereunder shall be natural gas or its equivalent of the quality and characteristics as received by COMPANY from gas transmission companies from which it receives its supply for delivery to its customers.

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COMPANY recognizes that gas delivered to CUSTOMERS' plant will be used in processes that require precise limitations on the amount of oxygen in the gas stream, and therefore COMPANY agrees that it will operate its system in such a way that it does not inject propane gas into Line UL-7 or its main extension serving CUSTOMER.

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Delivery Pressure and Equipment: COMPANY will use best efforts to deliver gas at Point of Delivery at a pressure of 60 pound(s) per square inch gauge. It is mutually agreed that in times of emergency, high demand delivery, or during periods of construction and maintenance, the pressure may fall below 60 pound(s) per square inch. Therefore, nothing herein shall be construed as implying a warranty by COMPANY as to gas pressure. A separate Pressure Gas Service Agreement is required to be negotiated with customers receiving gas delivered at pressures in excess of COMPANY 's standard delivery pressure of seven inches (7") water column.

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)
BY: Robert J. Bell
SECRETARY OF THE COMMISSION

Measuring Equipment: measurement equipment shall be as follows.

- 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 1 Carbon Way, Walton, Kentucky or such locations as may be mutually agreed upon by COMPANY and CUSTOMER.
- 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 as specified by the Kentucky Public Service Commission and, if requested, in the presence of representative(s) of the CUSTOMER. Tests requested by CUSTOMER will be made at

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CUSTOMER'S expense if the gas meters prove accurate within the limits established by the KyPSC.

D. Correction of Metering Errors - If, upon tests, any metering equipment is found to be in error exceeding the limits established by the KyPSC, recording of such equipment shall be corrected to zero error for any period which is known or definitely agreed upon since the last previous test. In case the period is not known or definitely agreed upon, such correction shall be for the current billing only.

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BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

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 by COMPANY from such data as may be available, including CUSTOMER'S records.

F. Automatic Meter Reading Device - COMPANY reserves the right to change its metering from time to time for maintenance purposes and also to add remote meter reading devices or other equipment as it may desire for monitoring and measuring the CUSTOMER'S gas deliveries. The CUSTOMER agrees to install telephone service at CUSTOMER'S sole cost and maintenance at a location not nearer than five (5) feet nor greater than fifteen (15) feet from the location of ULH&P's gas meter(s) for this purpose. All telephone lines so installed by CUSTOMER under this Agreement must be suitable for use with COMPANY'S Automatic Meter Reading (AMR) equipment. CUSTOMER must maintain and install adequate protection for the telephone service so that COMPANY can receive continuous and dependable information on such metering.



Gas Service Regulations: Nothing in this Agreement shall be construed so as to alter, modify or change conditions of normal gas deliveries pursuant to other tariffs, contracts or curtailment priorities as is from time to time imposed upon COMPANY 's customers pursuant to regulatory orders, laws, requirements or sanctions. All service provided hereunder shall be subject to COMPANY 's Gas Service Regulations as on file with the KyPSC and as may be amended from time to time, and also subject to the rules, orders and regulations of other governmental authorities having jurisdiction.

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Obligation for Taxes: CUSTOMER and COMPANY shall each be obligated to pay all taxes of every kind as respectively assessed to or levied on each, without contribution by the other. Neither the price to be paid nor any provision of this Agreement shall be affected by an increase or decrease in the rate or amount or the repeal of an existing tax imposed on either party hereto, by the enactment of a new tax, or by the subsequent application hereto of any existing tax.

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)
BY: Sharan Bell
SECRETARY OF THE COMMISSION

Alternative Dispute Resolution. If a dispute arises between the parties relating to the Agreement, the parties agree to use the following alternative dispute resolution ("ADR") procedure prior to either Party pursuing other available remedies:

A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

- (a) If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral") to act as a mediator. If the parties are unable to

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agree on the Neutral within twenty (20) days, they shall seek assistance in such regard from the CPR Institute for Dispute Resolution, Inc. ("CPR").

The fees of the Neutral and all other common fees and expenses shall be shared equally by the parties.

- (b) The mediation may proceed in accordance with CPR's Model Procedure for Mediation of Business Disputes, or the parties may mutually establish their own procedure.

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- (c) The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within sixty (60) days, then, upon seven (7) days' written notice to the other party either party may suggest another form of ADR, e.g., arbitration, a mini-trial or a summary jury trial, or may pursue other available remedies.

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)
BY: Stewart Bell
SECRETARY OF THE COMMISSION

Resolution of any dispute may not conflict with Kentucky law and/or regulation applicable to public utilities, and is subject to the authority of the KyPSC and any orders and/or regulations of the KyPSC and any other governmental authorities having jurisdiction. All ADR proceedings shall be strictly confidential and used solely for the purposes of settlement. Any materials prepared by one party for the ADR proceedings shall not be used as evidence by the other party in any subsequent litigation; *provided, however,* the underlying facts supporting such materials may be subject to discovery.

Each party fully understands its specific obligations under the ADR provisions of the Agreement. Neither Party considers such obligations to be vague or in any way

unenforceable, and neither Party will contend to the contrary at any future time or in any future proceedings.

Assignment: This Agreement shall not be assigned except upon agreement, which Agreement shall not be unreasonably withheld. This Agreement shall be binding on, and inure to, the successors and assigns of COMPANY and CUSTOMER.

Applicable Law: This Agreement shall be governed by the laws of the Commonwealth of Kentucky, regardless of choice of law provisions of the Commonwealth of Kentucky or any other state.

Entire Agreement: The terms and conditions contained in this Agreement represent the entire Agreement between COMPANY and CUSTOMER and may not be changed or varied in any manner other than in a writing, signed by both COMPANY and CUSTOMER.

Timeliness Provision: This AGREEMENT shall be void, at the sole option of the COMPANY, if not signed by CUSTOMER and received by COMPANY on or before April 19, 1999.

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JUN 27 1999
PURSUANT TO 807 KAR 5:011,
SECTION 9(1)
BY: Stephan O Bell
SECRETARY OF THE COMMISSION

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IN WITNESS WHEREOF, COMPANY and CUSTOMER represent that they have read, understand and wish to be bound by this Agreement and therefore willing to execute this AGREEMENT below in duplicate.

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OF KENTUCKY
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PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

WITNESS

THE UNION LIGHT & POWER COMPANY
BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

Carl H. Henninger By: William A. Gu
Account
Its Manager Its Manages, Gas Rates & Transportation

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A-Carb L.L.C.

Edwin Manning / EDWIN MANNING By: Bernard MALASSINE
Its MANAGEMENT CONSULTANT Its Chairman & CEO

W. Manning

43098v4

The Union Light, Heat and Power Company
107 Brent Spence Square
Covington, Kentucky 41011

Ky.P.S.C. Gas No. 5
Sheet No. 31.39
Canceling and Superseding
Sheet No. 31.38
BILL NO. 22C

RATE GS

GENERAL SERVICE

APPLICABILITY

Applicable to gas service required for any purpose by an individual customer on one premise when supplied at one point of delivery where distribution mains are adjacent to the premise to be served. This schedule is also applicable for purposes of providing non-metered service for street lighting to such entities as certificated homeowners associations, businesses, and federal, state, and local governments. Company may decline requests for service under this tariff due to gas supply limitations.

NET MONTHLY BILL

The Net Monthly Bill is determined as follows:

All gas used by customer is billed in units of 100 cubic feet (CCF)

Customer Charge per month:

	<u>Base Rate</u>		<u>Gas Cost Adjustment</u>		
Plus a Commodity Charge for All CCF consumed at	20.07¢	plus	30.64¢	equals	50.71¢

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PURSUANT TO 807 KAR 5011,
SECTION 9(1)
BY: Stephan Bess
Treasurer of the Commission (D)

The "Gas Cost Adjustment," as shown above, is an adjustment per 100 cubic feet determined in accordance with the "Gas Cost Adjustment Clause" set forth on Sheet No. 70 of this tariff.

When bills are rendered less frequently than monthly the time related units such as cubic feet blocks, minimum or other charges, will be billed in accordance with the number of billing months in the meter reading interval.

DSM CHARGE

All CCF shall be subject to the charge stated on Sheet No. 62, Rider DSMR, Demand Side Management Rate for non-residential service

LATE PAYMENT CHARGE

Payment of the Net Monthly Bill must be received in the Company's office within twenty-one (21) days from the date the bill is mailed by the Company. 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 (10) 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 Kentucky Public Service Commission, and to Company's Service Regulations currently in effect, as filed with the Kentucky Public Service Commission as provided by law.

Issued by authority of an Order of the Kentucky Public Service Commission dated February 19, 1999 in Case No. 92-346-V.

Issued: February 23, 1999

Effective: March 3, 1999

Issued by J. L. Turner, President