

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

**DATE:** September 29, 2016

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Division of Economics (Ollila, Rome)

Office of the General Counsel (Janjic)

**RE:** Docket No. 160120-GU – Petition for approval of tariff modifications to rider NCTS, the firm delivery and operational balancing agreement, and negative imbalance cash-out prices, by Peoples Gas System.

**AGENDA:** 10/11/16 – Regular Agenda – Tariff Filing – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Administrative

**CRITICAL DATES:** 8-Month Effective Date: 01/06/17 (60-day suspension date waived by the utility)

**SPECIAL INSTRUCTIONS:** None

RECEIVED - FPSC  
2016 SEP 29 AM 9:21  
COMMISSION CLERK

## Case Background

On May 6, 2016, Peoples Gas System (Peoples or Company) filed a petition for approval of tariff modifications to its Natural Choice Transportation Service Rider (Rider NCTS), the Firm Delivery and Operational Balancing Agreement (Firm Delivery Agreement), and the cash-out price for negative imbalances in Rider NCTS and the Individual Transportation Service Rider (Rider ITS).

Rider NCTS allows certain customers to be part of a customer pool that uses a third party supplier or pool manager to meet their natural gas requirements. The pool manager assumes the responsibility for supplying the natural gas for its customer pool. Peoples receives the gas delivered by the pool manager and redelivers the gas to the customer's site. Rider ITS is available for larger commercial customers who choose their own pool manager and are not part

Docket No. 160120-GU  
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of a customer pool. The Firm Delivery Agreement is required to be signed by pool managers selling gas to an NCTS pool and is a standard form in Peoples' tariff.

The Office of Public Counsel (OPC) requested interested party status in this docket on June 7, 2016. Peoples responded to staff's first data request on June 22, 2016. On June 24, 2016, a noticed informal meeting was held with participation by staff, representatives from Peoples, OPC, and other interested persons, including pool managers.<sup>1</sup> The purpose of the meeting was for Peoples to provide an overview of their filing, explain the calculations, and allow staff and interested persons to ask questions. Prior to the June 24 informal meeting, Tiger Natural Gas, Inc. filed comments expressing concerns regarding certain aspects of Peoples' petition and Infinite Energy, Inc. sent an email (which is in the docket file), also expressing concerns. On July 15, 2016, Peoples filed an amended petition and tariff, stating that the amended petition resulted in part from comments received at the informal meeting.

In both filings Peoples waived the 60-day suspension deadline pursuant to Section 366.06(3), Florida Statutes (F.S.). The proposed tariff pages are contained in Attachment 1. The Commission has jurisdiction over this matter pursuant to Sections 366.03, 366.04, 366.05, and 366.06, F.S.

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<sup>1</sup> Other interested entities included City of Jacksonville, Gas South, LLC, Infinite Energy, Inc., Interconn Resources, LLC, JEA, Peninsula Energy Services Company, Inc., South Star Energy Services, LLC d/b/a Florida Natural Gas, and Tiger Natural Gas, Inc.

## Discussion of Issues

**Issue 1:** Should the Commission approve Peoples' tariff modifications filed in the amended petition?

**Recommendation:** Yes, the Commission should approve Peoples' tariff modifications filed in the amended petition, effective October 11, 2016. (Ollila, Rome)

**Staff Analysis:** Peoples' proposed modifications to Rider NCTS, the Firm Delivery Agreement, and the cash-out price of Riders NCTS and ITS are discussed below.

### Rider NCTS

Rider NCTS was approved by the Commission in 2000, following the Commission's adoption of Rule 25-7.0335, Florida Administrative Code (F.A.C.).<sup>2</sup> Rule 25-7.0335, F.A.C., requires local distribution companies, such as Peoples, to make gas transportation service available to non-residential customers. Rider NCTS is a voluntary program that allows residential customers with an annual consumption of 2,000 or more therms and non-residential firm customers to use a pool manager to meet their natural gas requirements. There are currently 18 pool managers qualified to serve Peoples' NCTS customer pools. Peoples stated that the number of NCTS customers has grown from 3,398 in October 2000 to 23,584 in April 2016. NCTS customers consume about 17 percent of system throughput and are not subject to Peoples' purchased gas adjustment (PGA) charges, whereas sales customers who buy their gas from Peoples are subject to PGA charges.

For 2016, Peoples' total capacity cost (i.e., the reservation charges Peoples pays pipeline companies, based on how much capacity Peoples reserves) is \$95 million. Peoples provides a monthly release of upstream pipeline capacity to the NCTS pool managers and charges the pool managers for released capacity at the weighted average cost of capacity (average capacity cost).<sup>3</sup> Peoples also allocates capacity to shippers outside the NCTS pool, such as shippers who contract directly with ITS transportation customers. Any unallocated capacity and its associated cost are assigned to the PGA. NCTS pool managers use the pipeline capacity released to them by Peoples to transport the gas to the customers in their customer pool. While the Commission does not regulate the prices pool managers charge their customers, staff believes that pool managers recover from the customers in their pool the cost of the gas and the cost of the upstream pipeline transportation.

As part of its total capacity portfolio, Peoples also holds capacity to cover peak system demand and future demand growth. The Company currently recovers the costs associated with capacity that is held for peak demand system requirements and future growth through the PGA mechanism. Furthermore, according to the Company, when upstream capacity is acquired, it must sometimes be grown into (i.e., it may be necessary to acquire additional capacity before the anticipated growth fully materializes). Because NCTS customers do not pay the PGA, they do not pay any of the cost of upstream capacity held for peaking and future growth. According to

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<sup>2</sup> Order No. PSC-00-1814-TRF-GU, issued October 4, 2000 in Docket No. 000810-GU, *In re: Petition for approval of modifications to tariff provisions governing transportation of customer-owned gas and tariff provisions to implement Rule 25-7.0335, F.A.C., by Tampa Electric Company d/b/a/ Peoples Gas System.*

<sup>3</sup> The weighted average cost of capacity is also known by its abbreviation, WACOC.

Peoples, the growth in NCTS customers has caused the PGA customers to pay a disproportionate share of the costs of peaking and future growth capacity.

In this filing Peoples therefore proposes to modify Rider NCTS to increase the rate at which Peoples releases upstream capacity to NCTS pool managers (and passed on to their customers). The increased rate would include a portion of peaking and future growth capacity costs, so that those costs are more equitably allocated between PGA customers and transportation customers in the NCTS pool. According to Peoples, the methodology change is revenue neutral to the Company. The proposed change to the capacity release pricing methodology is discussed below.

### ***Recovery of Costs of Capacity Held for Peaking and Future Growth***

Peoples' proposed change to its capacity release pricing mechanism is the application of a Load Factor Adjusted Release Rate, which is comprised of the average capacity cost plus a Load Factor Adder (addier). The adder represents the NCTS customers' portion of the upstream capacity costs associated with providing peaking and future growth currently embedded in the PGA.

Peoples provided work papers in response to staff's first data request No. 3 to illustrate how Peoples currently calculates the average capacity cost, which Peoples is not proposing to change.<sup>4</sup> For May 2016 Peoples' average capacity cost rate was 58.1 cents per MMBtu.<sup>5</sup> The proposed adder would be derived from dividing the projected NCTS customers' share of the upstream capacity costs associated with providing peaking and future growth by the projected NCTS customer throughput.

In response to staff's first data request No. 3, Peoples' calculated an initial adder of 14 cents per MMBtu, based on May 2016 data. By combining this adder with the average capacity cost rate of 58.1 cents per MMBtu, the resulting Load Factor Adjusted Release Rate would be approximately 72.1 cents per MMBtu. For an NCTS customer using 2,000 therms per year, this would result in an annual increase of approximately \$28.<sup>6</sup>

Peoples also stated that the corresponding PGA reduction would be approximately 4 cents per therm. For a typical residential (i.e., PGA) customer using about 240 therms per year, Peoples' proposed application of the Load Factor Adjusted Release Rate mechanism would result in an annual reduction of approximately \$9.60.

According to Peoples, the average capacity cost will continue to be calculated monthly and the adder will be calculated annually, in January. Factors that could vary the adder include the addition of new capacity to Peoples' portfolio, additional capacity releases to customers, a change in the swing service charge, or upstream transporter rate changes.

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<sup>4</sup> Average capacity cost (also known as WACOC) = (total capacity portfolio value – total capacity value released to customers other than NCTS pool managers)/remaining contracted capacity volume MMBtu/month.

<sup>5</sup> Staff notes that one MMBtu equals one million British thermal units or one dekatherm or 10 therms.

<sup>6</sup> The annual increase is calculated as follows:  $(2,000 \times \$0.14) / 10 = \$28$ .

**Firm Delivery Agreement**

Peoples’ proposed modifications to the Firm Delivery Agreement include changes in terminology, cash-out prices for negative monthly imbalances, and a modification that permits pool managers to request an increase in the quantity of gas released during the month.

**Terminology**

Peoples acquired additional upstream capacity on pipelines on which it did not hold capacity at the inception of Rider NCTS. The current Firm Delivery Agreement refers to only one particular pipeline (Florida Gas Transmission Company). The proposed tariff would change the references to upstream pipelines to “Transporter,” a more generic term. According to Peoples, this proposed change would eliminate the need for administrative tariff changes in the event additional pipelines enter the Florida transportation market in the future.

**Cash-out Price for Negative Monthly Imbalance Amounts**

A negative monthly imbalance results when the customer pool’s gas consumption exceeds what the pool manager delivered that month. Customer pools in a negative monthly imbalance posture have consumed gas that Peoples had acquired for its system supply or PGA customers. The proposed tariff would change the cash-out prices for negative monthly imbalances. These revisions would include changing the usage rates from the Florida Gas Transmission Company (FGT) FTS-1 usage rate to the FTS-3 usage rate, and changing the capacity reservation charges by replacing Peoples’ average capacity cost with the FGT FTS-3 maximum reservation charge. Table 1-1 displays the current and proposed rates/charges.

**Table 1-1  
 Current and Proposed Usage Rates and Reservation Charges**

Current Charge Description	Current Rate per MMBtu	Proposed Charge Description	Proposed Rate per MMBtu
FTS-1 Usage Rate	1.56 cents	FTS-3 Usage Rate	0.23 cents
Average Capacity Cost (as of May 2016)	58.1 cents	FTS-3 Reservation Charge	132.99 cents

Source: Peoples’ filing in Docket No. 160120-GU

As Table 1-1 demonstrates, under Peoples’ proposed tariff, the usage rate would decrease from 1.56 cents to 0.23 cents and the reservation charge would increase from 58.1 cents to 132.99 cents, resulting in an overall increase of 73.56 cents per MMBtu. Peoples asserts that the higher cash-out price is intended as a deterrent to negative monthly imbalances.

**Quantity Changes to Upstream Capacity During the Month**

Currently, by the 20<sup>th</sup> of the month, pool managers are allowed to request a decrease in the quantity of the upstream capacity released by Peoples to the pool manager to deliver gas for the customer pool. In its amended petition, Peoples stated that as a result of the informal meeting, it proposes that a pool manager also be permitted to request an increase in the quantity of upstream

capacity released to the pool manager for the month. According to Peoples, adding the ability to request an increase during the month should assist pool managers in avoiding negative monthly imbalance cash-outs.

### **Rider ITS Cash-out Price**

Rider ITS is applicable to firm or interruptible individual transportation service for any non-residential customer who uses 182,500 therms or more per year. Peoples proposes that the cash-out prices under Rider ITS be revised so that they continue to be identical to the proposed cash-out prices for Rider NCTS pool managers, as described in Table 1-1 above.

### **Conclusion**

Staff believes that the proposed changes are reasonable, specifically:

- As the number of NCTS customers has grown, PGA customers alone have paid for the cost of reserving upstream capacity for peaking and future demand which benefits both PGA and NCTS customers. Staff believes the proposed change to the allocation methodology is reasonable and will result in a more equitable allocation of capacity costs associated with peaking and future growth across customer classes.
- Staff believes using the more generic term, transporter, is reasonable and likely to promote administrative efficiency by eliminating tariff filings as new pipelines are added.
- Negative monthly imbalances result when NCTS and ITS customers consume gas originally acquired for Peoples' system supply or PGA customers. Staff believes that an increase in the cash-out price is a deterrent, and therefore, is reasonable.
- The opportunity for pool managers to increase the quantity of upstream capacity released during the month will allow pool managers to better manage their gas requirements and thus, mitigate the potential effect of the increased cost of negative cash-outs.

Staff recommends that the Commission approve Peoples' tariff modifications filed in the amended petition, effective October 11, 2016.

**Issue 2:** Should this docket be closed?

**Recommendation:** If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order. (Janjic)

**Staff Analysis:** If Issue 1 is approved and a protest is filed within 21 days of the issuance of the order, the tariffs should remain in effect, with any revenues held subject to refund, pending resolution of the protest. If no timely protest is filed, this docket should be closed upon the issuance of a consummating order.

Peoples Gas System  
a Division of Tampa Electric Company  
Original Volume No. 3

Sixth Revised Sheet No. 7.803-1  
Cancels Fifth Revised Sheet No. 7.803-1

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**NATURAL CHOICE TRANSPORTATION SERVICE (Continued)**

2. For purposes of this Rider, "Pool Manager" means a person or entity which has:
- a. Entered into agreements to sell Gas to, or procure Gas for, the Customer accounts comprising an NCTS Customer Pool;
  - b. Executed and delivered to Company after approval of this Rider by the Commission an unmodified Firm Delivery and Operational Balancing Agreement (in the form set forth on Sheets 8.119 through 8.119-8 of this tariff) for an initial term of not less than one (1) year, obligating such person or entity to deliver Gas to Company on a firm basis for the accounts comprising an NCTS Customer Pool, resolve directly with the Company imbalances between (i) the quantities of Gas delivered to Company for the accounts in the NCTS Customer Pool and (ii) the quantities of Gas taken by such NCTS Customer Pool, and establish and maintain credit pursuant to the terms of such agreements; and
  - c. Executed and delivered to Company after approval of this Rider by the Commission an unmodified Master Capacity Release Agreement providing for such person's or entity's acquisition from Company of primary firm interstate pipeline transportation capacity, at a reservation charge equivalent to the Load Factor Adjusted Release Rate, to be used for the transportation and delivery to Company of Gas purchased by an NCTS Customer Pool receiving service pursuant to this Rider. The Load Factor Adjusted Release Rate may be varied as determined by Company from time to time for purposes of recovering from Customer Pools receiving service under this Rider Company's cost of the capacity acquired by Pool Manager plus an appropriate allocation of Company's costs of upstream pipeline capacity held by the company for peaking and future growth. Additional revenue derived by the Company from the Load Factor Adjusted Release Rate will be used to reduce costs recovered through the Purchased Gas Adjustment Clause.

Subject to the provisions of Special Condition 3, additional Customer accounts may be added to an NCTS Customer Pool administered by a Pool Manager at any time. A Pool Manager may be disqualified by Company from providing service hereunder in accordance with the Firm Delivery and Operational Balancing Agreement.

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Issued By: G. L. Gillette, President  
Issued On:

Effective:

Peoples Gas System  
a Division of Tampa Electric Company  
Original Volume No. 3

Fourth Revised Sheet No. 7.805-6  
Cancels Third Revised Sheet No. 7.805-6

**INDIVIDUAL TRANSPORTATION SERVICE Rider ITS (Continued)**

(c) If a Remaining Imbalance is Negative (*i.e.*, Actual Takes exceed Scheduled Quantities), Company shall sell the same to Customer (and Customer shall purchase the same from Company) at a price per Therm (the "Unit Price") equal to the sum of (i) the highest average of weekly prices for spot Gas delivered to FGT at Mustang Island (Tivoli), Texas, Vermillion Parish, Louisiana, or St. Helena Parish, Louisiana, as reported in *Natural Gas Week*, for the Month in which the Monthly Imbalance Amount accumulated, multiplied by the applicable factor set forth below:

<u>Imbalance Level</u>	<u>Factor</u>
0% to 5%	1.00
Greater than 5% to 20%	1.10
Greater than 20% to 40%	1.20
Greater than 40%	1.50

and (ii) maximum reservation rate for FGT FTS-3 capacity plus the FGT FTS--3 usage rate (including any applicable surcharges). The total amount due Company pursuant to this paragraph (c) shall be the product of the Unit Price (calculated as set forth herein) and the Remaining Imbalance. The Imbalance Level shall be calculated by dividing the Remaining Imbalance by the Scheduled Quantities for the Month in which the Monthly Imbalance Amount accumulated.

(d) Company's statement for a Remaining Imbalance calculated pursuant to paragraph (b) above shall show a credit for the amount payable by Company to Customer pursuant to paragraph (b), such credit to be applied on Company's bill rendered to Customer pursuant to the Gas Transportation Agreement for the Month following the Month in which the amount payable by Company to Customer pursuant to paragraph (b) was incurred. All amounts not so credited by Company shall be considered delinquent.

(e) Company's statement for a Remaining Imbalance calculated pursuant to paragraph (c) above shall be paid by Customer in accordance with the Gas Transportation Agreement. All amounts not so paid by Customer shall be considered delinquent.

**7A. Correction of Imbalances at PGS Receipt Points that Are Gulfstream Delivery Points.** If Company is the delivery point operator at a PGS Receipt Point that is a Gulfstream delivery point, Customer shall resolve with Company any Monthly Imbalance Amount attributable to Customer in accordance with the provisions of Special Condition 7 above. In addition, Customer shall bear sole responsibility for, and all costs associated with, the resolution with Gulfstream of imbalances (except imbalances caused by the acts or omissions of Company) resulting from Customer's nominations for deliveries of Gas at any such PGS Receipt Point. If Company is not the delivery point operator at a PGS Receipt Point that is a Gulfstream delivery point, the provisions of Special Condition 7 above shall not apply to the resolution of Monthly Imbalance Amounts at such PGS Receipt Point, and Customer shall bear sole responsibility for, and all costs associated with, the resolution with Gulfstream of imbalances (except imbalances caused by the acts or omissions of Company) resulting from Customer's nominations for deliveries of Gas at any such PGS Receipt Point.

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Third Revised Sheet No. 8.119  
Cancels Second Revised Sheet No. 8.119

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**FIRM DELIVERY AND OPERATIONAL BALANCING AGREEMENT**

This Firm Delivery and Operational Balancing Agreement (the "Agreement") is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("PGS"), and \_\_\_\_\_, a \_\_\_\_\_ ("Pool Manager").

**WITNESSETH:**

WHEREAS, PGS operates a natural gas distribution system in the State of Florida, and transports Gas for industrial and commercial customers;

WHEREAS, PGS has enabled Pool Manager to enter into contract(s) pursuant to which Pool Manager will sell Gas to Customer Accounts comprising the Customer Pool (as hereinafter defined) by agreeing to transport such Gas from such points of receipt on PGS's distribution system to Customer Accounts without requiring such accounts to install and pay for telemetry or to individually balance Gas received and delivered by PGS for such accounts;

WHEREAS, Pool Manager has entered into a Master Capacity Release Agreement with PGS providing for PGS's release to Pool Manager of Firm transportation capacity rights on the upstream pipeline systems serving the PGS distribution system for use by Pool Manager in delivering Gas to PGS for the Customer Accounts;

WHEREAS, in order to maintain the operational integrity of its system, PGS must assure that Gas to be transported to the accounts in the Customer Pool is delivered to PGS at the times and in the quantities desired by such accounts, and that for each Month Pool Manager's ADQ (as herein defined) equals the quantity of Gas consumed by the Customer Pool; and

WHEREAS, PGS will transport Gas sold by Pool Manager and received by PGS for the Customer Pool to the Customer Accounts.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, PGS and Pool Manager hereby agree as follows:

**ARTICLE I - DEFINITIONS**

As used herein, the following terms have the meanings set forth below. Capitalized terms used, but not otherwise defined, herein have the meanings given in PGS's FPSC Tariff.

"Actual Takes" means, for a specified period of time, the quantity of Gas passing through the meter(s) of the Customer Accounts during such specified period of time.

"ADQ" or "Aggregate Daily Quantity" means, for each Day, the quantity of Gas established as such by PGS pursuant to Section 4.1.

"Alert Day" means an Alert Day as defined in Transporter's Tariff.

"Business Day" has the meaning given in the Capacity Release Agreement.

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a Division of Tampa Electric Company  
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Fourth Revised Sheet No. 8.119-1  
Cancels Third Revised Sheet No. 8.119-1

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**"Capacity Release Agreement"** means the Master Capacity Release Agreement between PGS and Pool Manager dated as of even date herewith, as the same may be amended from time to time.

**"Customer"** means the person or entity responsible for a Customer Account.

**"Customer Account"** means each account included in the Customer Pool.

**"Customer Pool"** means, collectively, the Customer Accounts identified by PGS pursuant to Section 4.1.

**"Day"** has the meaning given in the Capacity Release Agreement.

**"FGT"** means Florida Gas Transmission Company, a Delaware corporation, and its successors and assigns.

**"FGT's FERC Tariff"** means FGT's effective FERC Gas Tariff, as amended, supplemented or superseded from time to time.

**"Firm"** means: (i) with respect to the sale and purchase of Gas, that Pool Manager is obligated to sell and deliver and a Customer is obligated to purchase and receive the quantity of Gas specified, except as excused by an event of Force Majeure, and (ii) with respect to transportation, that Transporter of Gas is obligated to make available a quantity of pipeline capacity, without interruption except as excused by an event of force majeure under Transporter's Tariff, sufficient to enable Pool Manager to perform its obligations under this Agreement.

**"Gas"** means "Gas" as defined in Transporter's Tariff.

**"Month"** has the meaning given in the Capacity Release Agreement.

**"Monthly Imbalance Amount"** means, for a Month, the positive or negative whole number difference determined by subtracting the Actual Takes for such Month from the sum of the ADQs for such Month (less the Retainage).

**"OFO"** means an Operational Flow Order as defined in Transporter's Tariff.

**"Primary Delivery Point(s)"** means the Transporter Delivery Point(s) identified as the Primary Transporter Delivery Points in the Capacity Release Agreement, subject to modification by PGS from time to time.

**"Retainage"** means 0.35% of Gas received by PGS for the account of Customer at the Primary Delivery Point(s) to account for lost and unaccounted Gas between such point(s) and the meters of the Customer Accounts.

**"Transporter"** means, for purposes of this Agreement and the Capacity Release Agreement, individually or collectively as the context requires, any upstream pipeline(s) on which Firm Transportation Capacity Rights are being temporarily released by PGS to Pool Manager pursuant to the Capacity Release Agreement for purposes of serving the Customer Pool.

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a Division of Tampa Electric Company  
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Fifth Revised Sheet No. 8.119-2  
Cancels Fourth Revised Sheet No. 8.119-2

"Transporter Agreement" means, for purposes of this Agreement and the Capacity Release Agreement, the applicable Service Agreements for Firm Transportation Service (however named or titled) between Transporter and PGS in effect from time to time, including (a) Transporter's currently effective applicable Rate Schedule(s) and (b) General Terms and Conditions filed with the FERC or the FPSC (and incorporated in each said agreement by reference), as such agreements, rate schedules and general terms and conditions may be amended from time to time, and any successor firm agreement(s), firm rate schedule(s) or general terms and conditions applicable thereto.

"Transporter's Tariff" means, for purposes of this Agreement and the Capacity Release Agreement, Transporter's effective FERC or FPSC gas tariff applicable to firm transportation service under the Transporter Agreement, as such tariff may be amended from time to time.

#### ARTICLE II - TERM; PROGRAM CHANGES

**Section 2.1 Term.** This Agreement shall be effective on the date first written above. The term of this Agreement shall commence on the first Day of the Month for which PGS first delivers to Pool Manager a list of Customer Accounts as required by Section 4.1(a) (the "Effective Date") and shall continue, unless earlier terminated pursuant to this Agreement, until the first anniversary of the Effective Date (the "Initial Term"). Thereafter, the term of this Agreement shall be extended for additional periods of one year unless either party gives written notice, not less than 90 days prior to the expiration of the Initial Term (or any subsequent period for which this Agreement has been extended) to the other party, of termination.

**Section 2.2 Program Changes.** Pool Manager understands that PGS is entering into this Agreement as part of a program approved by the FPSC. PGS reserves the right to file with the FPSC modifications to such program (including the terms and conditions of this Agreement). PGS shall give Pool Manager reasonable notice of any such filing. In the event the FPSC approves modifications to such program (including any terms or conditions set forth in this agreement), such modifications shall become binding on the parties hereto as of the date on which approval thereof by the FPSC becomes effective. Notwithstanding any other provision of this Agreement, PGS's obligations hereunder shall at all times be subject to the lawful orders, rules and regulations of the FPSC, and to the terms and conditions of PGS's FPSC Tariff.

#### ARTICLE III - NON-PAYMENT BY CUSTOMER

Pool Manager may terminate its obligation to deliver Gas hereunder for a Customer Account for non-payment of charges due Pool Manager by giving five days' written notice to PGS prior to the first Day of the Month as of which such termination is to be effective. Any such notice shall be accompanied by (i) documentary evidence of the Customer's failure to make payment for a period of at least 60 days, (ii) Pool Manager's affidavit that it has made commercially reasonable and good faith efforts to collect the amount due and (iii) a non-refundable termination fee of \$30.00.

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Fourth Revised Sheet No. 8.119-3  
Cancels Third Revised Sheet No. 8.119-3

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ARTICLE IV - FIRM DELIVERY

**Section 4.1 Pool Manager's Obligation.**

(a) PGS shall deliver to Pool Manager each Month, at least five (5) Days prior to FGT's deadline for posting capacity releases for the first Day of the following Month, (i) a list of the Customer Accounts comprising the Customer Pool and (ii) the Aggregate Daily Quantity ("ADQ") of Gas required to meet the needs of the Customer Pool for such following Month. Subject to the provisions of Section 2.2, on each Day during the term of this Agreement, unless excused by Force Majeure or under Section 5.2 of this Agreement, Pool Manager agrees to cause to be delivered to PGS, on a Firm basis, the ADQ for the Customer Pool.

Delivery of all such Gas shall be at the Primary Delivery Point(s), and pathed along the Transporter pipeline, as established by the Transporter pipeline capacity released to the Pool Manager under any Capacity Release Agreement and released under the applicable FERC and Transporter rules and regulations.

(b) Pool Manager shall deliver to PGS daily, a nomination of the quantity of Gas to be delivered at the Primary Delivery Point(s) for the Customer Pool. Pool Manager's Nomination for Gas to be made available for delivery on the first Day of any Month shall be given by 10 a.m. on the second Business Day prior to the Day on which a nomination must be delivered to Transporter for receipt of deliveries at the PGS Receipt Point(s) on such Day. Daily Nominations for Gas to be made available for delivery other than on the first Day of a Month shall be given to PGS by 10 a.m. on the Business Day prior to the Day on which a nomination must be delivered to Transporter for the receipt of deliveries at the PGS Receipt Point(s) on such Day. The following nomination information is required for a valid nomination:

1. The Pool Manager's downstream delivery pool number under which service is being nominated;
2. The receipt location including applicable DRN and upstream pipeline name, upstream pipeline package ID, including Pool Manager's PGS downstream delivery pool number, and quantity in Therms of Gas to be tendered at each PGS receipt point;
3. The downstream delivery pool number under which service is being nominated, and quantity in Therms of gas to be delivered for the Pool Manager's supply pool;
4. A beginning and ending date for each nomination;
5. The upstream contract identifier.

Pool Manager understands that PGS is subject to FERC regulations that may require PGS to post certain Pool Manager information on a publicly accessible website. The submission by Pool Manager of a required nomination shall constitute Pool Manager's authorization to PGS to publicly disclose any information (including but not limited to the information provided in such nomination) required by applicable law or regulation to be disclosed by PGS.

(c) Pool Manager shall pay to PGS every month the Pool Administration Fee consisting of (i) \$142.00, plus (ii) \$0.91 times the number of Customer Accounts contained in the Customer Pool.

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Fourth Revised Sheet No. 8.119-4  
Cancels Third Revised Sheet No. 8.119-4

**Section 4.2 Pool Manager's Failure to Perform.**

(a) If (unless excused by Force Majeure or excused according to section 5.2 of this Agreement) Pool Manager fails to cause to be delivered on any Day any portion (the "Shortfall Quantity") of the quantity of Gas required to be delivered to PGS pursuant to Section 4.1, Pool Manager shall pay to PGS (in dollars per MMBtu), for the Shortfall Quantity, an amount equal to five (5) times the highest price, for the calendar day on which such Day commences, for spot gas delivered to a Gulf Coast pipeline, as published in Gas Daily.

(1) If requested by Pool Manager, and agreed to by PGS, PGS will sell gas supply and interstate pipeline capacity on a delivered basis to the Pool Manager to offset a portion of the "Shortfall Quantity." The price for said "Backup Gas" shall be as mutually agreed between the parties plus a \$100 administration fee per Day that "Backup Gas" is supplied. PGS shall have no obligation to provide said "Backup Gas" and will do so only if the same can be provided without detriment to any other customer on the PGS distribution system.

(2) The Pool Manager's "Shortfall Quantity" will be reduced by the quantity of any "Backup Gas" provided by PGS.

(b) If Pool Manager causes to be delivered on any Day a quantity of Gas exceeding the quantity required to be delivered to PGS pursuant to Section 4.1, Pool Manager shall sell to PGS, and PGS shall purchase from Pool Manager, such excess Gas (the "Excess Quantity") at a purchase price equal to:

(1) fifty percent (50%) of the price reported in *Natural Gas Week* for the beginning of the Month in which Pool Manager delivered such Excess Quantity, for spot gas delivered to FGT at Tivoli, Texas; minus

(2) the sum of any balancing, scheduling, alert day, OFO, or other penalties or charges incurred by PGS as a result of Pool Manager's delivery of the Excess Quantity; minus

(3) a fee of \$0.15 per MMBtu as a liquidated amount representing incidental damages. Pool Manager agrees that it will not bill any Customer for any Excess Quantity which is purchased by PGS from Pool Manager pursuant to this paragraph (b).

(c) Billing and payment of any amounts due either party pursuant to this section shall be in accordance with Article VI.

**Section 4.3 Termination.** If (i) in any three-Month period, unless excused by Force Majeure, Pool Manager fails to cause to be delivered on any three (3) Days any portion of the quantity of Gas required to be delivered to PGS pursuant to Section 4.1, or (ii) Pool Manager fails to timely pay any amount due PGS pursuant to Section 4.2, or (iii) Pool Manager is delinquent in making payment of other amounts due hereunder more than three (3) times in any 12-Month period, or (iv) PGS determines that Pool Manager has delivered to PGS a letter of authorization not actually signed by the Customer named therein, PGS may, in its sole discretion, without incurring any liability to Pool Manager or any Customer, terminate this Agreement by facsimile notice of termination to Pool Manager and notice to each Customer Account in the Customer Pool, such termination to be effective when specified in such notices; provided, however, that PGS's exercise of the remedy forth in this section shall not be construed as a waiver of PGS's rights under either of Section 4.2 or

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Section 5.3. In addition, in the event of a determination by PGS pursuant to (iv) above, PGS may require that any future Customer letter of authorization submitted by Pool Manager be notarized.

Section 4.4 Pool Manager's Load Balancing Provisions. By the 18th Day of each calendar month, PGS will provide the Pool Manager with the meter reads that have occurred as of the 15th Day for the given billing month for Customer Accounts in the Customer Pool. By the 20th Day of that calendar month, the Pool Manager may request, and PGS may grant at its sole and reasonable discretion, one increase or reduction to the ADQ to be delivered by the Pool Manager for the Customer Pool for the remainder of the calendar month. If such request is granted, PGS and the Pool Manager will arrange for the release or recall of Transporter capacity and the associated change to the scheduled quantity of natural gas commodity according to the applicable FERC rules and regulations and the tariff provisions of the applicable Transporter. Should the aforementioned dates fall on a weekend or recognized federal holiday, the requirement will fall on the following Business Day.

**Section 4.5 Establishment of Credit.**

(a) Pool Manager shall establish credit prior to commencing deliveries of Gas hereunder (and shall maintain such credit during the term hereof) by one of the following methods:

- (1) making a cash deposit with PGS;
- (2) furnishing an irrevocable letter of credit from a bank, or a surety bond issued by a company with an A.M. Best Rating Service rating of B/VI or higher for bonds up to \$50,000 in amount and a rating of A-VII or higher for bonds over \$50,000 in amount;
- (3) possessing and maintaining a Standard & Poor's Long Term Debt Rating of A- or better, a Moody's rating of A3 or better, or a comparable rating by another nationally recognized rating organization acceptable to PGS;
- (4) if Pool Manager's debt is not rated, by demonstrating to PGS (pursuant to the provisions of paragraph (b) below) Pool Manager's creditworthiness (*i.e.*, that Pool Manager's financial strength and stability are adequate); or
- (5) if Pool Manager's parent company or a third-party establishes credit pursuant to subparagraphs (3) or (4) above, such parent company or third-party may serve as guarantor of Pool Manager's obligations under this Agreement.

(b) If Pool Manager seeks to establish credit pursuant to paragraph (a) (4) above, Pool Manager shall furnish to PGS Pool Manager's audited financial statements (accompanied by the opinion of independent certified public accountants or chartered accountants of recognized national or regional standing) for at least the two most recently completed fiscal years. In evaluating Pool Manager's creditworthiness, PGS will consider Pool Manager's tangible net worth, interest coverage ratio, ratio of long term debt to tangible net worth, net cash flow, and other known factors relating to Pool Manager's creditworthiness. If credit is established by Pool Manager pursuant to paragraph (a)(4) above, (i) PGS may periodically review its determination of creditworthiness to assure that no material adverse changes in Pool Manager's financial condition have occurred, and (ii) Pool Manager shall annually during the term of this Agreement, within ninety (90) days following the end of Pool Manager's fiscal year, furnish to PGS Pool Manager's audited financial statements for the

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year most recently ended (accompanied by the opinion of independent certified public accountants or chartered accountants of recognized national or regional standing). If Pool Manager's credit rating or financial statements are, or during the term of this Agreement become, unacceptable to PGS, or Pool Manager makes any payment required by this Agreement with a check which is dishonored by a bank, Pool Manager may establish credit only pursuant to paragraph (a)(1) or (a)(2) above. The provisions of this paragraph (b) shall apply to Pool Manager's parent company (or any third-party) in the event such parent company or third-party seeks to establish credit pursuant to paragraph (a)(4) above.

(c) The amount of any cash deposit, letter of credit or surety bond (collectively, "Security") furnished pursuant to paragraph (a)(1) or (a)(2) above shall be equal to the product of (i) the ADQ (in MMBtu) and (ii) \$150.00. PGS may require of Pool Manager, upon written notice of not less than fifteen (15) Days, new Security (if previously waived or returned), or additional Security, in order to more accurately reflect the amounts which may become due PGS from Pool Manager under Section 4.2, the amount of such Security to be determined as stated above.

(d) Upon termination of this Agreement, PGS shall credit the amount of any cash deposit against the final amount (if any) due PGS from Pool Manager hereunder, and the balance, if any, shall be returned to Pool Manager no later than fifteen (15) Days after the final bill hereunder is rendered (or was to be rendered).

(e) In no event will PGS confirm nominations of Pool Manager unless Pool Manager has established, and continues to maintain, credit as required by this Section 4.5.

(f) Pool Manager shall pay to PGS a non-refundable fee of \$250.00 for the cost incurred by PGS for the initial assessment of creditworthiness of any person hereunder pursuant to paragraph (a)(4) above. Pool Manager shall also pay the cost incurred by PGS for the review or re-establishment of creditworthiness in the event the Pool Manager's creditworthiness decreases to unacceptable levels or PGS incurs extraordinary expenses to review creditworthiness.

**Section 4.6 Pool Manager's Obligations.** If any act or omission of Pool Manager causes PGS to incur penalties or other expenses or liabilities for unauthorized overrun Gas, for imbalances on a pipeline system, for a failure to comply with a pipeline tariff, or for a failure to comply with a curtailment notice or to take deliveries as scheduled, Pool Manager will indemnify and reimburse PGS for all such amounts which the acts or omissions of Pool Manager or its supplier have caused PGS to incur. Nothing herein shall be deemed to foreclose PGS from employing other remedies, including cessation of deliveries, and PGS reserves the right to do so, for the unauthorized consumption of Gas.

#### ARTICLE V - IMBALANCES; INTERRUPTION OF DELIVERIES

**Section 5.1 Interruption of Deliveries.** Pool Manager recognizes that PGS is entitled to curtail or interrupt deliveries of Gas to the Customer Pool pursuant to PGS's FPSC Tariff. Pool Manager agrees that it will not bill any Customer for any quantities of Gas which are not consumed by such Customer due to interruption by PGS. If deliveries of Gas to a Customer Account are curtailed or interrupted pursuant to PGS's FPSC Tariff, Pool Manager shall sell to PGS, and PGS shall purchase from Pool Manager, that portion of the ADQ that is curtailed or interrupted. PGS shall notify Pool Manager with respect to each notice of curtailment or interruption issued pursuant to PGS's FPSC Tariff. After receiving such notice from PGS, unless otherwise directed by PGS, Pool Manager shall not curtail, cause to be curtailed, redirect, or cause to be redirected, any of the Customer Pools

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ADQ in a manner which would have the effect of reducing the quantities of Gas delivered at the Primary Delivery Point(s). For all Gas sold by Pool Manager to PGS pursuant to this section, PGS shall pay to Pool Manager an amount per MMBtu equal to the sum of (i) the price for spot Gas delivered to FGT at Vermillion Parish, Louisiana, as reported in the "Daily Price Survey" in *Gas Daily* for the Day in which PGS purchased the Gas, and (ii) the 100% load factor rate at which Pool Manager acquired the Released Capacity (as defined in the Capacity Release Agreement) from PGS pursuant to the Capacity Release Agreement. PGS warrants that it will not at any time exercise its right to interrupt deliveries of Gas to the Customer Pool pursuant to PGS's FPSC Tariff based solely on a determination that Gas being delivered by Pool Manager to the Primary Delivery Point(s) is less expensive than Gas which is, at the time of PGS's exercise of such right, otherwise available to PGS. For any Month in which PGS purchases Gas from Pool Manager pursuant to this section, PGS shall make payment of the amount payable to Pool Manager on or before the last Day of the Month following the Month in which PGS purchased such Gas.

**Section 5.2 Mutually Beneficial Transactions.** Pool Manager recognizes that PGS maintains the operation and system integrity of the PGS distribution system on a daily basis. Pool Manager also recognizes that as Delivery Point Operator for the Transporter interconnects, PGS is subject to the rules and regulations of the applicable Transporter with regard to operational flow rates, pressures and penalties. As such, PGS may have need for the Pool Manager to vary its daily delivery from the agreed to ADQ. On those occasions, PGS may request, at its sole discretion, and the Pool Manager may agree to, a change to the Pool Manager's level of Gas supply and interstate pipeline capacity. Terms and conditions of such transaction will be agreed upon at the time of the transaction and will be recorded and confirmed in writing within two business days of the transaction.

**Section 5.3 Correction of Imbalances.** PGS and Pool Manager intend that all Monthly Imbalance Amounts shall be resolved as of the end of each Month. At the end of each Month, the Monthly Imbalance Amount (if any) incurred during such Month shall be resolved in kind or cash. PGS will provide Pool Manager with a statement of the Monthly Imbalance Amount by noon on the 10<sup>th</sup> Day of the following Month, and post a list of all Monthly Imbalance Amounts on its Internet web site (or otherwise if such web site is not available). Pool Manager shall have a Book-Out Period until the 14<sup>th</sup> Day of such following month to utilize the Book-Out provisions in Section 5.4 below. Pool Manager and PGS shall utilize the provisions in Section 5.5 below to resolve in cash all Monthly Imbalance Amounts (or any portions thereof) remaining after the close of the Book-Out Period.

**Section 5.4 Book-Out.** Pool Manager may, during the Book-Out Period, net Positive Monthly Imbalance Amounts (as hereinafter defined), or portions thereof, with Negative Monthly Imbalance Amounts (as hereinafter defined), or portions thereof, of other Pool Managers or other Customers, and may net Negative Monthly Imbalance Amounts, or portions thereof, with Positive Monthly Imbalance Amounts of other Pool Managers or Customers. A Pool Manager availing itself of the provisions of this paragraph shall submit a completed Book-Out Agreement, in form designated by PGS, via facsimile or mail to PGS before the end of the Book-Out Period. Such agreement shall not be deemed effective unless signed by an authorized representative of each Pool Manager or Customer which is a party thereto. PGS shall have no responsibility or liability for incorrect, incomplete, late, lost or illegible Book-Out Agreements.

**Section 5.5 Cashout.** By the 15<sup>th</sup> Day (or the subsequent Business Day if a weekend or holiday) of the following Month, any end-of-Month imbalance remaining after trading will be resolved in cash as follows:

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(a) **Positive Imbalances.** If a Monthly Imbalance Amount is Positive (*i.e.*, the sum of the ADQs of the Customer Pool for the Month (less the Retainage) exceeds the Actual Takes of the Customer Pool for such Month), PGS shall purchase from Pool Manager (and Pool Manager shall sell to PGS) such Monthly Imbalance Amount at a price per Therm (the "Unit Price") equal to the lowest of the average of weekly prices for spot gas delivered to FGT at Mustang Island (Tivoli), Texas, Vermillion Parish, Louisiana, or St. Helena Parish, Louisiana, as reported in *Natural Gas Week* for the Month in which such Monthly Imbalance Amount was incurred. The total amount due Pool Manager pursuant to this paragraph (a) shall be the product of the Unit Price (calculated as set forth herein) and such Monthly Imbalance Amount.

(b) **Negative Imbalances.** If a Monthly Imbalance Amount is Negative (*i.e.*, Actual Takes of the Customer Pool exceed the sum of the ADQs of the Customer Pool for such Month less the Retainage), PGS shall sell to Pool Manager (and Pool Manager shall purchase from PGS) such Monthly Imbalance Amount at a price per Therm (the "Unit Price") equal to the sum of (i) the highest average of weekly prices for spot gas delivered to FGT at Mustang Island (Tivoli), Texas, Vermillion Parish, Louisiana, or St. Helena Parish, Louisiana, as reported in *Natural Gas Week*, for the Month in which such Monthly Imbalance Amount accumulated plus (ii) an amount equal to the sum of (A) the FGT FTS-3 usage rate (including, but not limited to, usage charges, surcharges, fuel reimbursement charges, and other applicable charges, taxes, assessments and fees) for the applicable calendar month and (B) the maximum reservation rate for FGT FTS-3 capacity. The total amount due PGS pursuant to this paragraph (b) shall be the product of the Unit Price (calculated as set forth herein) and such Monthly Imbalance Amount.

(c) For any Month in which a Monthly Imbalance Amount is required by paragraph (a) to be purchased by PGS, PGS shall make payment of the amount payable to Pool Manager on or before the last Day of the Month following the Month in which the Monthly Imbalance Amount accumulated. For any Month in which a Monthly Imbalance Amount is required by paragraph (b) to be purchased by Pool Manager, the amount payable to PGS shall be billed by PGS and paid by Pool Manager pursuant to Article VI.

#### ARTICLE VI - BILLING AND PAYMENT

**Section 6.1 Amounts Due PGS.** When any amounts are payable by Pool Manager pursuant to Articles IV or V, PGS shall, as soon as practicable after such amounts are determined, deliver a bill to Pool Manager for such amounts. Pool Manager shall pay any such bill rendered by PGS, minus any disputed amounts, to PGS at the address specified in the invoice on or before the 20th Day following the date of PGS's mailing or other delivery of such bill.

- (a) Charges for services due and rendered which are unpaid, and not in good faith dispute, by the due date are subject to a Late Payment Charge of 1.5% per Month, except for the accounts of federal, state and local governmental entities, agencies and instrumentalities. A Late Payment Charge shall be applied to the accounts of federal, state and local governmental entities, agencies and instrumentalities at a rate no greater than allowed, and in a manner permitted, by applicable law.
- (b) If Pool Manager fails to make any payment to PGS when due and such failure is not remedied by or on behalf of Pool Manager within five (5) Days after written notice by PGS of such default in payment, then PGS, in addition to any other remedy it may have, may, without incurring any liability to Pool Manager and without terminating this Agreement, suspend further deliveries of Gas to the Customer Pool until such amount

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is paid; provided, however, that PGS shall not do so if (i) Pool Manager's failure to pay is the result of a bona fide billing dispute, (ii) Pool Manager has paid all amounts not in dispute, and (iii) the parties are negotiating in good faith to resolve the dispute.

**Section 6.2 Amounts Due Pool Manager.** Any amounts due Pool Manager from PGS pursuant to Section 4.2(b) shall be paid to Pool Manager on or before the 20th Day of the Month following the Month in which PGS purchased any Excess Quantity from Pool Manager pursuant to Section 4.2(b). If PGS fails to make any payment to Pool Manager when due and such failure is not remedied by or on behalf of PGS within five (5) Days after written notice by Pool Manager of such default in payment, then Pool Manager, in addition to any other remedy it may have, may, without incurring any liability to PGS and without terminating this Agreement, suspend payment of any amounts due PGS pursuant to this Agreement until such amount is paid; provided, however, that Pool Manager shall not do so if (i) PGS's failure to pay is the result of a bona fide billing dispute, (ii) PGS has paid all amounts not in dispute, and (iii) the parties are negotiating in good faith to resolve the dispute.

#### ARTICLE VII - FORCE MAJEURE

To the extent provided in this article, Pool Manager shall be excused from delivering, on any Day, the amount of Gas required under Article IV, if (and only to the extent) such delivery is prevented by a Force Majeure event. For purposes of this Agreement, "Force Majeure" events shall be limited to those which directly cause the failure of Firm transportation of Gas to the Primary Transporter Delivery Point(s), where the cause of such failure constitutes an event of force majeure pursuant to the terms of Transporter's Tariff. If, at the time of any such failure, Pool Manager is delivering Gas to or for the account of persons other than the Customer Accounts in the Customer Pool, the quantity of Gas as to which Pool Manager shall be excused from delivering pursuant to Article IV will be no more than a proportionate amount of the total deliveries curtailed by Transporter due to the Force Majeure event. Pool Manager is responsible for establishing, to the reasonable satisfaction of PGS, Pool Manager's entitlement to the excuse from performance provided by this article. Any quantities of Gas which Pool Manager is excused from delivering pursuant to this article shall be made up by Pool Manager as soon as possible at a rate of delivery reasonably established by PGS, and Pool Manager shall pay to PGS, for any such quantities which have not been made-up by Pool Manager within thirty (30) Days following the Day on which they were to have been delivered by Pool Manager pursuant to Article IV (as such Day may have been extended by Force Majeure), an amount per MMBtu equal to five (5) times the highest price, during such 30-Day period, for spot gas delivered to a Gulf Coast pipeline, as published in *Gas Daily*. Billing and payment of any amounts payable by Pool Manager to PGS pursuant to this article shall be in accordance with Article VI.

#### ARTICLE VIII - MISCELLANEOUS

Except for Gas purchased by PGS from Pool Manager pursuant to Section 5.5(a), nothing in this Agreement shall be construed as vesting in PGS title to any Gas delivered by Pool Manager hereunder.

Neither PGS nor Pool Manager is in any way or for any purpose, by nature of this Agreement or otherwise, a partner, joint venturer, agent, employer or employee of the other. Nothing in this Agreement is intended to be for the benefit of, or to create any duty or liability to, any person not a party hereto.

This Agreement may not be assigned by Pool Manager without the prior written consent of PGS.

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