

FLORIDA PUBLIC SERVICE COMMISSION

FLETCHER BUILDING
101 EAST GAINES STREET
TALLAHASSEE, FLORIDA 32399-0850

MEMORANDUM

May 7, 1992

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF ELECTRIC AND GAS (MAKIN, McCORMICK) *DM*
DIVISION OF LEGAL SERVICES (BIRCHFIELD) *Marb* *RLT*

RE: DOCKET NO. 920295-GU PETITION OF PEOPLES GAS SYSTEM, INC. FOR APPROVAL OF RATE SCHEDULE CG, CITY GATE GAS SALES AGREEMENT AND MODIFICATIONS TO ITS PURCHASED GAS ADJUSTMENT (PGA) CLAUSE

AGENDA: MAY 19, 1992 - PROPOSED AGENCY ACTION - CONTROVERSIAL AGENDA PARTIES MAY PARTICIPATE

PANEL: FULL COMMISSION

BACKGROUND

Prior to Florida Gas Transmission Company (FGT) becoming an open access transporter, Peoples Gas System, Inc. (PGS) entered into Capacity Agreements with several of its large-volume interruptible customers for firm transportation capacity on FGT's system. The agreements provided several of PGS' large volume interruptible customers with a means of obtaining competitively priced gas by transporting customer owned gas over the FGT system.

FGT became an open-access pipeline on August 1, 1990. Service agreements made at that time required conversions from sales service to transportation service to be "phased in" over a five-year period. Because phase-in requirements restricted PGS's customers' access to transportation, the capacity agreements permitted PGS to use its firm sales capacity entitlement on FGT on-behalf-of the customers in an amount generally equal to the difference between the transportation capacity committed to the customer and the customer's full gas requirements. They let the customer get all the gas it needed during the transition, or phase in period.

Under the existing Capacity Agreements, PGS' contract demand customers buy gas directly from third parties and PGS takes title as agent to the gas for purposes of transportation only. This meets a provision in FGT's FERC tariff requiring that the "shipper" (PGS) have title to gas transported by FGT. The agreements are typically for terms of three to five years. They require each customer to reimburse PGS for all charges associated with both firm transportation (FTS-1) and firm sales service (G) which PGS commits to use on-

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behalf-of the customer. The reimbursements are required whether or not the full amount of such capacity is actually used.

Ongoing proceedings before the FERC may limit the ability of PGS and other local distribution companies (LDCs) to make their contracted-for capacity on interstate pipelines available to customers behind the LDCs' city gates (such as PGS contract demand customers). What this means is that PGS would no longer be permitted to transport customer owned gas over the FGT pipeline system on-behalf-of its large-volume interruptible customers or any customer.

PGS' petition in this docket proposes an arrangement whereby certain of its largest customers would arrange for PGS to buy gas from certain producers at a price agreed to between the customer and the seller. PGS would then hold title to the gas and would have the gas transported to its city gate. At the city gate, PGS would resell the gas to the customer at the same price paid to the seller, plus costs associated with transportation. The customer would then pay PGS for transportation on the PGS system for final delivery. In essence, it is the same transaction as today, except PGS holds full title to the gas while it is on the FGT system. FERC calls this type of transaction a buy/sell agreement and considers them a type of capacity brokering. In the Mega-NOPR docket, which has resulted in Order No. 636, the FERC is doing away with most capacity brokering.

In an attempt to maintain flexibility for its large-volume interruptible customers, PGS filed the petition at issue here. The petition requests the Commission to approve a new tariff for PGS's large-volume interruptible customers. PGS's five largest customers would currently be affected by this proposed tariff. Specifically, PGS has asked the Commission to approve PGS's new Rate Schedule, to approve the form of its new City Gate Agreement, and to approve modifications to its purchased gas adjustment (PGA) clause. PGS asks that the Commission approve these items using the "proposed agency action" (PAA) process, instead of following Section 366.06(4), Florida Statutes (the "file-and-suspend" law).

DISCUSSION OF ISSUES

ISSUE 1: Should the company's proposed City Gate Service Rate Schedule CG and City Gate Sales Agreement be approved?

RECOMMENDATION: Yes.

STAFF ANALYSIS: This rate schedule and agreement should be seen as a bridging measure. When the restructuring of the interstate pipeline industry is complete, there may be other, better mechanisms to assure the continuation of large gas transportation contracts. This matter should be revisited then. The effect of approval of PGS' petition is that very little changes. The effect of disapproval is that potentially very great changes could occur to the detriment of many.

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Approval will permit PGS' largest customers to continue to transport gas during the restructuring of the natural gas industry by the FERC. They will benefit and all PGS' other customers will benefit by the continuation of revenues for gas transported. No customers are harmed. Transactions being made since August 1990 will continue with minor revisions.

Disapproval, on the other hand, could cause the directly affected customers to be unable to get transportation capacity on FGT. They stand to lose major invested capital that was, in some cases, invested on the basis of long-term direct-purchase gas contracts and pricing associated with those contracts. PGS' other customers could be faced with higher rates to make up for the lost revenues, after reductions for adjustments for plant no longer used and useful. This is more thoroughly described in PGS' petition.

The FERC, in Docket No. RM91-11-000, the so-called "Mega-NOPR", may limit or eliminate the use by LDC's of their contracted-for capacity on interstate pipelines for transporting gas on-behalf-of customers. Because of that possibility, PGS proposes to enter into a City Gate Gas Sales Agreement (Attachment 1) pursuant to the proposed Rate Schedule CG (Attachment 2) with five of its customers that each use over 50 million therms of gas per year. The agreements provide for purchase, transportation and resale of gas by PGS as described in the case background. The proposed CG rate schedule and sales agreement should eliminate any questions that may arise with respect to whether PGS's use of its firm transportation capacity on FGT in the manner contemplated by the Capacity Agreements will be permitted in the future, or at least, during the transition period of pipeline industry restructuring.

PGS' petition was filed April 1, 1992. On April 8, the FERC issued Order No. 636, its final order in the Mega-NOPR docket. "Final Order" may be optimistic: the order remains subject to requests for rehearing and to court review. As of the date of this Recommendation, however, the April 8 order embodies the FERC's position on future regulation of the interstate natural gas industry. The FERC issued two companion orders with Order 636, in Algonquin Gas Transmission Company, Docket CP90-134.002, et al (59 FERC 61,032) and in El Paso Natural Gas Company, Docket Nos CP88-433.001, et al (59 FERC 61,031). The Algonquin order deals with capacity brokering; the El Paso order deals with what the FERC calls buy/sell agreements.

The nature of the transaction proposed here by PGS fits FERC's description of a buy/sell agreement. Order 636 describes a buy/sell agreement: "Under those arrangements an LDC will purchase gas in the production area from an end user or a merchant designated by an end user. The LDC will ship the gas on its own firm capacity and sell the gas to the end user at the retail delivery point." (Order 636, p 71)

After defining buy/sell arrangements, Order 636 states, "... such agreements should not be necessary because, under the capacity releasing requirement, firm capacity holders will be able to release unwanted firm capacity to persons seeking firm capacity." (Order 636, p.71) However, the FERC will

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grandfather buy/sell deals existing today or in existence prior to completion of the pipeline restructuring process. They can continue if the firm capacity holder does not give up its capacity in the restructuring proceeding. Commission approval of this rate schedule and city gate sales agreement will allow PGS and its largest customers to have buy/sell agreements in place before the restructuring of FGT is complete. The schedule for FGT's compliance filing with the FERC is November 1992. If no such agreements are in place, the large transporters could end up losing all capacity rights during the restructuring process.

Four separate provisions of Order 636 discuss ways for an LDC to transport gas for a customer or to transfer its capacity to a customer so the customer can continue to transport. The four provisions deal with agency arrangements (p. 54), buy/sell agreements (p. 72), capacity release mechanisms (p. 77) and the right of firm shippers (p. 107). They are internally inconsistent. The discussion of agency arrangements and the rights of firm shippers appear to permit PGS to transport gas on FGT for customers, using PGS capacity. The discussion of buy/sell arrangements and capacity release appear to require PGS to release its capacity to its affected customers. However, the order is clear that existing buy/sell agreements will be permitted to continue. (Relevant pages of FERC Order No. 636 are attached as Attachment 3.)

When the dust has settled after the industry restructuring, the Commission should review this matter to determine whether there is a better way to ensure continuing transportation to all customers behind an LDC's city gate.

ISSUE 2: Should the Commission approve Peoples Gas System's proposed modification to its purchased gas adjustment (PGA) clause?

RECOMMENDATION: Yes.

STAFF ANALYSIS: The purchased gas adjustment (PGA) clause acts as a pass-through mechanism for costs associated with the purchase of gas. PGS has proposed a modification to its PGA clause (Attachment 4) which would enable the Utility to recover its cost for the gas purchased from the customers' suppliers directly from the customers, rather than under the current PGA clause. Thus, the PGA clause would not apply to gas purchased from the Utility pursuant to the City Gate Sales Agreement. Likewise, the cost of gas purchased by PGS for resale under the City Gate Sales Agreement would be excluded in calculating PGS's weighted average cost of gas (WACOG). Staff believes that this proposed modification to the existing PGA clause would ensure that the unaffected customers would not be obligated for any costs associated with city gate sales transactions.

ISSUE 3: Should the Commission makes its decision in this docket on the basis of the "proposed agency action" process?

RECOMMENDATION: Yes.

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STAFF ANALYSIS: In its petition, PGS requested that the Commission voice its decision on this matter on the basis of the "proposed agency action" process. The Utility stated that "[t]his petition is not submitted pursuant to Section 366.06(4), Florida Statutes (the "file-and-suspend" law)." PGS also requested that the Rate Schedule CG, the City Gate Agreement, and the modification to the PGA clause become effective "on one day's notice after publication."

Substantially interested persons will have an opportunity to protest the Commission's decision in this matter if it is decided pursuant to the PAA process. If there is a protest, the Rate Schedule CG, the City Gate Agreement, and the modification to the PGA clause would become null and void. Thus, a protest would keep the tariff from coming into effect. Whereas, if the Company had decided to file its petition pursuant to Section 366.06(4), Florida Statutes, the proposed tariff would remain in effect if there was a protest.

If there is no protest of the PAA, Staff believes that the Company should be given thirty days to file its Rate Schedule CG. The thirty days should begin to run at the expiration of the protest period. The day after the Company files its Rate Schedule CG, the tariff will become effective.

ISSUE 4: Should this Docket be closed.

RECOMMENDATION: Yes.

STAFF ANALYSIS: If no substantially affected party files an objection or protest to the Commission's action within the protest period, this docket should be closed.

CITY GATE SERVICE
Rate Schedule CG

Availability:

Throughout the service areas of the Company.

Applicability:

Gas delivered to any commercial or industrial Customer using more than 50,000,000 therms per year which has entered into both a City Gate Gas Sales Agreement and a Gas Transportation Agreement with the Company.

Monthly Rate:

Energy Charge: As provided in the City Gate Gas Sales Agreement between Customer and Company.

Company's Purchased Gas Adjustment Clause set forth on Sheet No. 7.102 shall not apply to purchases of gas made by Customer under this schedule.

Minimum Bill: As provided in the City Gate Gas Sales Agreement between Customer and Company.

Special Conditions:

1. A City Gate Gas Sales Agreement accepted by the Company, in substantially the form set forth on Sheets Nos. 8.____ through 8.____ is a condition precedent for service under this schedule.
2. Each prospective customer must submit a written application, in a form acceptable to the Company, prior to the initiation of service under this schedule. After the Company's receipt of a properly completed application, if the Company determines it is able to provide the service requested, the applicant and the Company will enter into a City Gate Gas Sales Agreement and a gas transportation agreement.
3. The rates set forth in this schedule shall be subject to the operation of the Company's Tax and Fee Adjustment Clause set forth on Sheet No. 7.103.

Issued By: J. A. Brabson, Jr., President Effective:
Issued On:

ATTACHMENT 1

CITY GATE GAS SALES AGREEMENT

This City Gate Gas Sales Agreement (this "Agreement") is made and entered into as of _____, 19____, by and between Peoples Gas System, Inc., a Florida corporation ("PGS"), and _____, a _____ ("Customer"). PGS and Customer are sometimes referred to herein as "the parties".

WHEREAS, Customer has entered into a Gas Purchase Agreement with _____, a _____ ("Supplier") (the "Supplier Agreement"), pursuant to which Customer will have the right to purchase up to _____ MMBtu of gas per day from Supplier and have such gas delivered to certain points on the pipeline system of Florida Gas Transmission Company ("FGT");

WHEREAS, PGS has entered into an agreement with FGT (said agreement and any amendatory or superseding agreements being hereinafter referred to collectively as the "FGT Agreement") granting PGS certain rights to firm gas transportation service on the FGT pipeline system for a period of up to twenty (20) years by conversion over a period of five (5) years commencing on August 1, 1990, of certain existing rights of PGS to purchase gas from FGT, the FGT Agreement is a condition precedent to PGS's obligations hereunder in the manner set forth herein;

WHEREAS, PGS desires to obtain, and Customer desires to grant to PGS, certain rights (i) to purchase gas available to Customer under the Supplier Agreement and (ii) to resell such gas to Customer at the Receipt Point (as defined in the PGS Transportation Agreement (as hereinafter defined)) of PGS; and

WHEREAS, PGS and Customer have entered into a Gas Transportation Agreement (the "PGS Transportation Agreement") pursuant to which PGS has agreed to transport such gas across PGS's distribution system from the Receipt Point to Customer's facility located at _____, Florida (the "Facility");

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements included herein, the parties hereby agree as follows:

1. Grant of and Conditions to the Gas Purchase Right.

1.1 Grant of Gas Purchase Right. Subject to the provisions of this Agreement, Customer hereby grants, conveys, assigns and transfers to PGS the right (the "Gas Purchase Right") at any time and from time to time during each year to acquire from Supplier for resale to Customer all, or any portion of, the gas available to Customer under the Supplier Agreement. For purposes of this Agreement, the term "Supplier Agreement" shall mean the Supplier Agreement as the same may

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be modified, amended, supplemented or substituted hereafter by one or more agreements entered into by Customer in form and substance substantially similar to the corresponding original of the Supplier Agreement with such changes as do not, individually or in the aggregate, have an adverse effect on PGS.

1.2 Certain Conditions to Gas Purchase Right. During the term of this Agreement, PGS agrees to exercise the Gas Purchase Right solely at the direction of Customer. PGS shall have no obligation to follow any direction from Customer with respect to the exercise of the Gas Purchase Right unless, and only to the extent that (a) the Supplier Agreement is substantially in the form thereof executed by and between Customer and Supplier with only such changes as shall not adversely affect PGS under this Agreement or its agreements with Supplier, (b) such direction is communicated to PGS not less than two (2) hours before PGS must notify Supplier pursuant to Section 2 of this Agreement to exercise such rights, (c) the direction is for a purchase of gas only during the term of the Supplier Agreement and (d) the FGT Agreement is in effect and firm transportation service for the amount of gas that PGS is directed to purchase is available thereunder to PGS. PGS agrees to use diligent efforts to cooperate with Customer in maintaining the firm transportation service under the FGT Agreement. Customer agrees to reimburse PGS for any costs incurred by PGS at Customer's request, other than in the ordinary course of PGS's business, in connection with such maintenance of the FGT Agreement, including without limitation any out-of-pocket expenses and the value of management time in such efforts as reasonably determined in accordance with PGS's customary practices.

2. Exercise of Gas Purchase Right.

2.1 Notice of Exercise. PGS shall exercise its Gas Purchase Right by giving notice (a "PGS Notice") to Supplier, with confirmation to Customer, of the Nomination (as such term is defined or used in the Supplier Agreement) in compliance with the provisions of the Supplier Agreement. In no event shall PGS be entitled to give any notice to Supplier, nor shall Supplier be obligated to comply with any notice from PGS under the Supplier Agreement except for a PGS Notice pursuant to the Supplier Agreement; provided, however, that nothing herein shall limit notice by PGS to Supplier in the event of an emergency. Nothing in this Agreement shall be construed to entitle PGS (i) to exercise any rights of Customer under the Supplier Agreement except the Gas Purchase Right on the terms set forth herein or (ii) to exercise any rights Customer may have to enforce, amend or terminate the Supplier Agreement. The parties agree that Supplier shall be entitled to rely conclusively on any PGS Notice received from PGS unless and until such notice is rescinded by notice from both PGS and Customer.

2.2 Purchase of Gas. Upon the exercise of its Gas Purchase Right, PGS shall purchase directly from Supplier the gas to be delivered under such right at the "Delivery Point" defined in the Supplier

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Agreement (the "Supplier Delivery Point"), and shall pay Supplier directly for gas so delivered as follows:

(a) Commodity Charges. PGS shall pay Supplier (on the same terms and conditions set forth in the Supplier Agreement) the purchase price (excluding any charges imposed as a result of any failure to take or purchase any minimum quantity of gas) for all gas so purchased and shall reimburse Suppliers for all taxes corresponding to such sales pursuant to the Supplier Agreement; provided, however, that PGS shall be obligated to pay Supplier such amounts only to the extent Customer has paid PGS with respect to the resale of such gas in accordance with Section 3 of this Agreement.

(b) Non-Commodity Charges. PGS shall not be liable to Supplier for any other charges under the Supplier Agreement, including without limitation any charges imposed as a result of any failure to take or purchase any minimum quantity of gas, all of which shall remain the sole obligation of Customer.

2.3 Suppliers Billing and Payment. Amounts due by PGS pursuant to the terms hereof shall be billed by Supplier to PGS, with a copy to Customer, and shall be payable in accordance with the terms of the Supplier Agreement. All amounts due and payments made hereunder by PGS shall be paid directly by PGS or, at Customer's sole option upon reasonable prior notice to PGS, by Customer to Supplier, and in either case shall be credited by Supplier against amounts otherwise due and payable by Customer under the Supplier Agreement. No exercise by PGS of the Gas Purchase Right nor any other action of PGS hereunder shall cause it to be liable to Supplier for any obligation of Customer under the Supplier Agreement and PGS's sole obligation shall be to pay Supplier for gas delivered for the account of PGS pursuant to its exercise of the Gas Purchase Right in accordance with the terms of this Agreement when and to the extent Customer has paid for the Resold Gas.

2.4 No Modification of the Supplier Agreement. Nothing in this Agreement shall relieve Customer of its obligations, nor modify any of Supplier's rights, under the Supplier Agreement, including any amendments thereto entered into by Customer and Supplier, regardless of whether such changes are not agreed to by PGS because they have an adverse effect on PGS. Customer shall continue to be the primary obligor under the Supplier Agreement and shall remain obligated to pay for all amounts due thereunder.

3. Resale of Gas Purchased by PGS.

3.1 Resale. Upon delivery from Supplier at the Supplier Delivery Point of gas purchased by PGS under the Gas Purchase Right (the "Purchased Gas"), PGS shall cause the Purchased Gas to be transported to the Receipt Point (as defined in the PGS Transportation Agreement) pursuant to PGS's rights under the FGT Agreement and shall resell the

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CITY GATE GAS SALES AGREEMENT (continued)

4. Transportation of the Resold Gas. Upon Customer's purchase of the Resold Gas from PGS, PGS shall transport the such gas from the Receipt Point to the Facility in accordance with the PGS Transportation Agreement, a copy of which is attached hereto and incorporated herein by reference.

5. No Resale of Resold Gas. Customer agrees not to resell the Resold Gas or the rights under this Agreement to the Resold Gas except by assignment in accordance with the terms hereof.

6. Regulatory Jurisdiction Over Transactions.

6.1 FPSC Jurisdiction. PGS is a public utility subject to regulation by the FPSC. This Agreement (or the form thereof) shall be filed with the FPSC and shall, subject to any disapproval or limitations imposed by the FPSC, become effective on the date on which the FPSC's order approving this Agreement (or the form thereof) becomes effective and final and no longer subject to appeal. Compliance by PGS with any order of the FPSC or any other federal, state or local governmental authority acting under claim of jurisdiction issued before or after the effective date of this Agreement shall not be deemed to be a breach hereof.

6.2 FERC. In the event that (i) the Federal Energy Regulatory Commission ("FERC") or any other regulatory authority of the United States asserts jurisdiction over the transactions provided for herein or (ii) such jurisdiction results from any amendment to the Natural Gas Act or the Natural Gas Policy Act or any enactment or amendment of any other statute or regulation of any jurisdiction in the United States, and in order that PGS may purchase the quantities of gas provided herein on the terms and conditions herein specified, each party shall use commercially reasonable efforts and shall cooperate with the other to pursue all necessary approvals and authorizations, if any, of FERC or any other regulatory authority of the United States or to amend the terms and conditions of this Agreement as may reasonably be required to avoid such jurisdiction; provided that in either case no party shall be required to take any action which shall have any adverse effect on such party's rights and benefits under this Agreement. Notwithstanding the foregoing, but without limiting PGS's right to terminate this Agreement pursuant to subsection 7.2 below, nothing herein shall impose on Customer any obligation to take any action hereunder which will cause PGS, in the opinion of counsel reasonably satisfactory to PGS, to be a "natural gas company".

6.3 Consequences of Jurisdiction. In the event of (i) the issuance of any order of the FPSC which modifies the provisions of this Agreement (ii) assertion of jurisdiction contemplated by subsection 6.2 or (iii) receipt by either party of any approval or authorization described in subsection 6.2 above, the party receiving such order,

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assertion, approval or authorization shall promptly transmit to the other party a copy or notice thereof as appropriate, and either party shall, within thirty (30) days after delivery of such notice, give notice to the other party whether the terms and conditions of such order, assertion, approval, authorization or decision may have an adverse effect on such party or its rights and obligations under this Agreement, and as a result, are unsatisfactory to such party, setting forth the reasons therefor.

7. Term and Early Termination.

7.1 Term. The term of this Agreement shall commence on the date hereinabove first written and shall remain in full force and effect, unless earlier terminated under the terms of this Agreement, until the termination of the FGT Agreement or the PGS Transportation Agreement, whichever is earlier.

7.2 Early Termination. In the event of notice by either PGS or Customer to the other party of dissatisfaction with any order, assertion, approval, authorization or decision pursuant to subsection 6.3, each party shall have the option to terminate this Agreement by giving thirty (30) days notice of termination to the other. No such termination shall occur, if, within such thirty (30) day period, the party receiving such notice of termination agrees to amend this Agreement as reasonably required to eliminate the adverse effect on the party seeking such termination or to provide indemnity to such party against such adverse effect in form and with adequate security therefor satisfactory to such party. Neither party shall expressly request administrative or judicial modification of any term of this Agreement without the other party's consent. In the event that the Facility has been destroyed or suffered substantial damage and for a period of at least eighteen (18) consecutive months (i) neither Customer nor its successors or assigns has directed PGS to purchase gas hereunder and (ii) neither Customer nor its successors or assigns has promptly sought and is diligently pursuing the rebuilding of the Facility, either party shall have the option to terminate this Agreement immediately upon notice to the other party.

8. Limitation of Liability and Force Majeure. Neither PGS nor Customer shall be liable to the other for any failure of performance under this Agreement if such failure results from strikes, lockouts, transportation delays, governmental restrictions or regulations, acts of God or the public enemy, action or inaction of suppliers or other third parties or any causes whatsoever which PGS nor Customer, as the case may be, is unable to prevent by the exercise of reasonable diligence. Customer, however, shall not be relieved of any obligation to pay for gas pursuant to this Agreement. Neither PGS nor Customer shall be liable to the other or to any party claiming through the other for special, indirect or consequential damages relating to any matter covered by this

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Agreement.

9. Default. If either party shall fail to perform or shall otherwise be in default of any of its material obligations under this Agreement other than an obligation to make a payment required hereunder, the non-defaulting party may, subject to the defaulting party's right to cure such default as provided herein, terminate this Agreement by giving the defaulting party written notice stating specifically the nature of the default and the notice of termination. Any party in default of any of its obligations other than a payment obligation shall have ninety (90) days after such notice is given in which to remedy or remove the default. Any party in default of a payment obligation hereunder (excluding for this purpose any payment with respect to the Supplier Portion the non-payment of which does not give rise to any liability against PGS) shall have forty-five (45) days after such notice is given in which to remedy such default, including without limitation the payment of any late charges incurred with respect thereto. If within the applicable cure period the default is remedied or removed and the notifying party is made whole and fully indemnified for any and all consequences of such default to the extent required under this Agreement, then the notice of termination shall be withdrawn, and this Agreement shall continue in full force and effect. If within the applicable cure period the default is not remedied or removed, and the notifying party is not made whole and indemnified for any and all consequences of such default to the extent required under this Agreement, the notifying party shall have the right to terminate this Agreement immediately, effective upon giving notice thereof to the defaulting party, and to exercise any other remedy it may have at law or in equity. No waiver by either party of any default of the other party under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.

10. Warranties of Title. PGS warrants that it will, upon delivery of gas to Customer at the Receipt Point, have title commensurate with the title conveyed to PGS by Supplier at the Supplier Delivery Point to all gas so delivered to Customer, free and clear of any liens, encumbrances and claims arising from PGS's ownership thereof. PGS will indemnify Customer and save it harmless from all suits, actions, debts, accounts damages, costs, losses and expenses (collectively "Claims") arising out of the adverse claims to said gas and/or to royalties, licenses, or similar charges thereon which are applicable to such gas and/or the delivery of such gas to PGS for transportation hereunder, in each case only if such Claims are made by any persons claiming by or through PGS. Title to the gas from the time it is received at the Supplier Delivery Point until it is delivered to the Receipt Point shall remain with PGS and shall not pass to Customer until it is delivered at the Receipt Point.

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11. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given to a party at its address set forth below, or to such other address as any party may designate from time to time by notice to the other party given in accordance herewith, (i) upon delivery in person, (ii) on the third business day after mailing by registered or certified mail, postage prepaid, (iii) on the next business day after timely delivery to an overnight common carrier service, service fee payable by the sending party, for next-day delivery or (iv) on the date of facsimile transmission by telephone line provided such transmission is followed by delivery of a copy of such notice within twenty-four hours pursuant to clauses (i) or (iii):

PGS:Administrative Matters:

Peoples Gas System, Inc.
 111 East Madison Street, 17th Floor
 P. O. Box 2562
 Tampa, Florida 33601-2562
 Attention: Vice President - Marketing
 Telephone: (813) 272-0092
 Facsimile: (813) 272-0062

Payment:

Peoples Gas System, Inc.
 111 East Madison Street, 17th Floor
 P. O. Box 2562
 Tampa, Florida 33601-2562
 Attention: Vice President - Accounting
 Telephone: (813) 272-0087
 Facsimile: (813) 272-0062

Customer:Administrative Matters:

 Attention: _____
 Telephone: _____
 Facsimile: _____

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CITY GATE GAS SALES AGREEMENT (continued)

Invoices:

 Attention: _____
 Telephone: _____
 Facsimile: _____

Supplier:

Invoices:

 Attention: _____
 Telephone: _____
 Facsimile: _____

Payments:

 Attention: _____
 Telephone: _____
 Facsimile: _____

or such other address as such party may hereafter specify for the purposes by notice to the other parties hereto.

12. Miscellaneous.

12.1 No Waiver. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12.2 Amendments. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by both of the parties hereto. In the event of the termination or expiration of, or reduction in the quantities of gas deliverable under, the Supplier Agreement, upon Customer's request and subject to necessary regulatory approvals, PGS agrees to enter into a substitute or supplemental gas sale agreement, as the case may be, with Customer, on substantially the same terms provided herein, to provide

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for PGS's exercise of Customer's gas purchase rights under any gas purchase contract Customer may enter into in substitution or supplementation of the Supplier Agreement, provided, however, without limiting the foregoing, PGS does not hereby agree to enter into any such new or supplemental agreement which would increase the quantity of gas to be purchased hereunder, which has delivery points that are different from the Supplier Delivery Point under the Supplier Agreement (unless the addition, deletion or change in such delivery points shall not have an adverse effect on PGS), whether under the FGT Agreement or otherwise, or which has a term that extends beyond the stated term of the FGT Agreement then in effect.

12.3 Entire Agreement. This Agreement, together with the FGS Transportation Agreement, constitutes the entire agreement between the parties with respect to the delivery of gas to the Facility by PGS, and such agreements supersede all prior agreements and understandings among the parties.

12.4 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Customer may not assign or otherwise transfer any of its rights under this Agreement except by an assignment of this Agreement (i) as security in connection with the construction or permanent financing of the Facility (ii) to an entity owned or controlled by Customer or its owners that is formed to own and operate the Facility, or (iii) with PGS's prior written consent, which shall not be unreasonably withheld, to any successor to substantially all of Customer's interest in the Facility.

12.5 Defined Terms. Any term used herein shall have the same meaning as defined in the PGS Transportation Agreement unless expressly defined otherwise in this Agreement.

12.6 Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida.

12.7 Applicable Law. This Agreement and each party's performance thereunder shall be subject to all applicable laws, rules, orders and regulations of any federal, state, or local governmental authority having jurisdiction over the parties, their facilities, or the transactions contemplated.

12.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Issued By: John A. Brabson, Jr., President
Issued On:

Effective:

CITY GATE GAS SALES AGREEMENT (continued)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their authorized officers as of the date first written above.

PEOPLES GAS SYSTEM, INC.

By: _____
Title:

By: _____
Title:

CITY GATE GAS SALES AGREEMENT (continued)

The undersigned acknowledges receipt of the foregoing Agreement and agrees to be bound by the provisions of Section 2 hereof.

For the purposes of this Agreement notices may be given to the undersigned in accordance with Section 11 and otherwise in accordance with the terms hereof. This Agreement has been executed on behalf of the undersigned by a duly authorized officer and is a valid and binding obligation of the undersigned.

By: _____
Title: _____

Issued By: John A. Brabson, Jr., President
Issued On:

Effective:

ATTACHMENT 2
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that received under the bundled, city-gate, firm sales service. Therefore, the Commission is requiring all pipelines that make sales for resale on the effective date of this rule to offer in their tariffs a "no-notice" firm transportation service. This service must be available as of the effective date of the tariff sheets to be filed to comply with this rule. This service, discussed in more detail *infra*, must be available to all firm shippers. The mechanics of how this "no-notice" firm transportation service will be provided on a particular pipeline must be considered and developed in the restructuring proceedings established by this rule (see *infra*).

This new "no-notice" transportation service will be provided in addition to, rather than in lieu of, the pipelines' current open-access, firm transportation service where shippers must receive instantaneous but not "no-notice" service. The former "traditional" firm transportation service will still be subject to reasonable nominating, scheduling and other operational conditions, such as imbalance tolerances and penalties. However, the quality of this service should be enhanced under the steps taken here. These operational conditions, of course, must be devised and implemented on a nondiscriminatory basis. In assessing the pipeline's compliance filing, the Commission will seek to ensure that the pipeline is not attempting, through the "no-notice" transportation service, to simply replace one form of bundled service with another anti-competitive service.

In addition, the pipeline, or another gas merchant, could offer a "packaged" sales and transportation service where the separately sold sales and transportation services are packaged by a contract pursuant to which the gas purchaser allows the pipeline, or another gas merchant, to act as the gas purchaser's agent in making all arrangements necessary to deliver the gas to the city gate. ^{101/} However, the rates for each transportation service must be separately stated in the pipeline's tariff.

Since sales and transportation services must be offered on an unbundled basis, there would be no rate on file with the pipeline's tariff for an "agency" service. The "packaging" of separate services, offered under separate rate schedules, would be effected only by contracts between the gas purchaser and its agent. Whether or not the pipeline as a gas seller can collect a fee for acting as the gas purchaser's agent in arranging for pipeline services is a matter for negotiation between the pipeline and gas purchaser on entering into their sales contract. This is because the pipeline will be acting as agent in its capacity as a gas seller rather than as a gas transporter. Any agency fee would have to be recovered as part of the price for selling gas and not as part of the transportation rate. Of course, the pipeline must act in a non-discriminatory manner in offering agency services.

^{101/} See, e.g., Transcontinental Gas Pipe Line Corp., 53 FERC ¶ 61,446 (1991), order on reh'g, 57 FERC ¶ 61,345 (1991).

Agency Arrangements

to ensure that after the effective date of this rule all capacity reallocations are undertaken on the same basis on all pipelines. This will prevent any pipeline or firm shipper from achieving an undue advantage, or incurring an undue disadvantage, compared to firm shippers on other pipelines, from the working of the particular pipeline's capacity brokering program. Hence, the Commission is taking this action, in the above-noted order, to modify the terms of existing capacity brokering and other capacity assignment programs under NGA Section 5, as well as under the Commission's reserved right in those orders to modify a program, to ensure, as here, that they continue to be required by the public convenience and necessity. 118/

The Commission's treatment of "buy/sell" arrangements being considered in El Paso Natural Gas Co., et al., Docket No. CP88-433-002, et al., is related to the capacity brokering issue. Under those arrangements, an LDC will purchase gas in the production area from an end user or a merchant designated by an end user. The LDC will ship the gas on its own firm capacity and sell the gas to the end user at the retail delivery point. The Commission will not address buy/sell issues here but will do so in the El Paso docket. As explained in that order, under this rule, buy/sell arrangements should not be necessary because, under the capacity releasing requirement, firm capacity holders will be able to release unwanted firm capacity to persons seeking

118/ E.g., Texas Eastern Transmission Corp., 48 FERC ¶ 61,248 at p. 61,876 (1989).

firm capacity. However, existing buy/sell deals can continue if the firm capacity holder does not give up its capacity in the restructuring proceeding as discussed below. 119/ Similarly, buy/sell deals executed between the date of this order and the date the pipeline's capacity releasing mechanism goes into effect can continue if the firm capacity holder does not give up its capacity in the restructuring proceeding as discussed below. After a pipeline's capacity releasing mechanism goes into effect, no new buy/sell deals may be executed after that date and thereafter all allocations of interstate pipeline capacity must be done under the capacity releasing mechanism. When the pipeline's capacity releasing mechanism goes into effect, it must post on its electronic bulletin board for a reasonable period the price, terms and conditions, and names of the parties to all buy/sell deals existing on that date. All firm capacity holders who have executed buy/sell deals prior to that date must provide such information to the pipeline for posting on the electronic

119/ In the NOPR, the Commission requested comment on "whether termination of capacity brokering will have a negative impact on independent power producers or qualifying facilities who may be receiving gas service for electric generating purposes through, so-called, 'buy/sell' arrangements." If so, the Commission asked whether it should "provide some form of grandfathering of existing transactions as part of the transitional phase contemplated under the Final Rule?" 14 FERC Stats. & Regs. ¶ 32,480 at p. 32,545 (1991). The Commission believes that the steps taken in the final rule should avoid having a negative impact on IPPs or QFs using gas. To the extent this is not the case, interested persons should inform the Commission on rehearing of this rule.

Buy/Sell

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Buy/Sell
Agreements

Buy/Sell

bulletin board. This posting is to make those arrangements public and not to allow other persons to make a better offer.

1. Upstream Pipeline Capacity

As discussed above, the Commission is requiring pipelines to unbundle the sales and transportation components of their bundled, city-gate, firm sales services to remedy the pipelines' undue advantage as merchants of gas over other merchants. As stated, one reason for the pipelines' advantage is that, as bundled merchants, they had access to more gas suppliers because of capacity held on upstream pipelines that connect with those gas suppliers.

The unbundling of sales and transportation will occur in many instances near the production area. However, in some instances, unbundling of a downstream pipeline's sales and transportation services will occur where it interconnects with an upstream pipeline which provides the downstream pipeline with access to the production areas. The downstream pipeline will be able to use its transportation capacity on the upstream pipeline to acquire gas to make sales at the interconnection point to its (the downstream pipeline's) sales customers. The downstream pipeline would have an undue competitive advantage over other gas merchants because of the downstream pipeline's access to the capacity on the upstream pipeline. This situation would inhibit the goal of a competitive national market because the downstream gas purchasers would not have access to the production areas and

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gas merchants reached through the capacity held on the upstream pipeline by the downstream pipeline.

New section 284.242, therefore, provides that an open access upstream pipeline must permit a downstream pipeline to assign its firm transportation capacity (whether Part 284 or individually certificated) on the upstream pipeline on a non-discriminatory basis to the downstream pipeline's firm shippers. This rule also applies to contract storage capacity that the downstream pipeline holds on the upstream pipeline. In addition, the downstream pipeline will be required to assign its upstream firm transportation capacity (whether Part 284 or individually certificated) and its upstream firm contract storage capacity to its firm transportation customers to the extent necessary to provide capacity to those shippers that desire upstream capacity. All section 284.242 reassignments will be permanent. While this reassignment should occur initially in the restructuring proceedings, 120/ section 284.242 will continue in effect after the restructuring proceedings to permit further reassignments of available upstream capacity held by downstream pipelines 121/ to customers of downstream pipelines.

120/ Section 284.242 capacity reassignment must be effectuated in the restructuring proceedings before downstream pipelines release their capacity under new Section 284.242 discussed below.

121/ If the downstream pipeline releases the capacity under new section 284.242, the capacity would be assignable, however, any prior release would remain in force.

Accordingly, the Commission is adding a new Section 284.243 to require all open access pipelines to provide a capacity releasing mechanism through which shippers can voluntarily reallocate all or part of their firm transportation capacity rights to any person who wants to obtain that capacity by contracting with the pipeline. Shippers may reallocate their firm transportation capacity (whether Part 284 capacity or individually certificated capacity) only under Section 284.243.

This capacity releasing mechanism would allow firm capacity holders to permanently or temporarily release some or all of their capacity through the pipeline to be reassigned to persons desiring capacity. The capacity releasing mechanism would afford buyers and sellers of firm capacity with one place to shop to ensure that firm capacity is used as efficiently as possible.

Capacity releasing will operate as follows. The firm capacity holder will inform the pipeline that it wants to release capacity on a permanent or temporary basis, the specific quantity to be released, the period of time, and any other conditions of the release. For example, the releasing customer might state that it will release a specified amount of capacity only so long as the temperature remains above a specified degree. That is, the firm shipper may release firm capacity on an interruptible basis. In addition, the releasing customer can bring to the pipeline for posting a pre-arranged deal for releasing capacity.

CAPACITY
Release
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If no better offer is received, 121/ the pipeline MUST contract with the replacement shipper found by the releasing customer. If a better offer is forthcoming, the pipeline must give the replacement shipper found by the releasing customer an opportunity to match the better offer. If the replacement shipper matches the better offer, the pipeline must contract with the replacement shipper found by the releasing customer. If the releasing customer's designated replacement shipper does not match the better offer, the pipeline must contract with the person who made the better offer.

The pipeline must immediately post the capacity releasing information on its electronic bulletin board for a reasonable period of time during which applicants for capacity can agree to the releasing customer's terms and conditions. 124/ As discussed below, the pipeline may take other action to market any released capacity.

The pipeline will be required to resell that capacity under Part 284 to the applicant meeting the releasing customer's specifications. The replacement shipper must, of course, satisfy all of the pipeline's tariff provisions governing shipper eligibility before it can contract with the pipeline for the

121/ The Commission will not define what constitutes a better offer because of the wide variety of potential releasing scenarios. The parties must consider in the restructuring proceedings the issue of what constitutes a better offer.

124/ For example, the pipeline should alert shippers in advance of the conditions under which the releasing shipper may recall released capacity.

Capacity
Release

capacity. Unless the pipeline otherwise agrees (such as where there is a permanent reallocation of annual capacity), the releasing customer will remain liable on its contract but will receive a credit against its bill for the capacity resold. The pipeline itself should be indifferent to the substitution because its total contract demand will remain unchanged. 125/

Once the replacement shipper enters into a contract with the pipeline, the replacement shipper becomes a shipper like any other shipper and is subject to the pipeline's operational provisions as stated in its tariff. In addition, the replacement shipper as a shipper can also release its capacity through the pipeline's capacity releasing program. The pipeline's tariff must have provisions that clearly delineate the rights and obligations of such secondary releasing shippers and those of the primary releasing shipper.

The NOPR would have allowed the pipeline to sell its own uncommitted capacity prior to reselling that of a releasing customer. The new rule requires the pipeline to post its available capacity and terms and conditions on its electronic bulletin board. Potential purchasers of capacity will then be able to choose from among the pipeline and the releasers the service that best suits their needs.

The Commission will permit the pipelines and their customers, and other interested participants, to determine the details of a pipeline's capacity releasing program in the

125/ See *infra* on interruptible transportation capacity.

individual restructuring proceedings. For example, the NOPR proposed a seven day open season for applicants to agree to the releasing customer's terms. However, the Commission is not mandating a particular time period for an open season to avoid inhibiting needed flexibility. The participants in the restructuring proceedings may determine what is a reasonable period and may, for example, decide that different periods are needed for different types of released capacity. In addition, the participants should determine the pipeline's compensation for the capacity releasing program. This recompense would, of course, consist of a reasonable administrative fee to cover the pipeline's out-of-pocket expenses in connection with establishing and operating the capacity releasing program. 126/

Moreover, as a further incentive to effectuate capacity releases, the Commission will permit the pipeline to be compensated when it actively markets released capacity. 127/ The participants in the restructuring proceedings must determine the appropriate amount of the pipeline's recompense (E.G., a sharing of proceeds) when it takes affirmative action to market the released capacity, beyond posting the information on the bulletin board, and finds a replacement shipper. The releasing shipper will receive a net credit against its reservation fee for

126/ See Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497-A, 54 FR 52781 (Dec. 12, 1989), FERC Stats. & Regs. [Regulations Preambles] § 30,868 at p. 31,602 (1989).

127/ E.G., Initial Comments of Michigan Consolidated Gas Company.

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Capacity Release

Capacity Release

the proceeds of the resale minus the pipeline's recompense. The participants should determine what actions merit compensation. Even though the pipelines are required to post the releasing shipper's offer to release capacity, this recompense will give the pipelines a financial incentive to promote efficient capacity reallocations beyond simply posting capacity availability and to benefit releasing shippers via the credit to their bills. Of course, the pipeline will not be compensated if it does not find the replacement shipper, such as where the releasing shipper had a pre-arranged deal as discussed above, or where someone accepts a posted offer without the pipeline finding that new shipper. It is only appropriate for the pipeline to receive compensation when it makes an extra effort to market the released capacity, for example, when it combines two or more packages of released capacity into one, more attractive package. The administrative fee would apply regardless of whether a replacement shipper takes the released capacity since it is designed to recover the pipeline's out-of-pocket expenses in administering the capacity releasing program.

The pipeline and the participants must devise in the restructuring proceeding methods for dealing with the circumstance where more than one applicant meets the releasing shipper's price and other specifications or where an applicant makes a counter offer.

The main difference between capacity brokering as it now exists and the new capacity releasing program is that, under

capacity brokering, the brokering customer could enter into and execute its own deals without involving the pipeline. Under capacity releasing, all offers MUST be put on the pipeline's electronic bulletin board and contracting is done directly with the pipeline. Nonetheless, the releasing shipper may search for someone to take its capacity both before and after the capacity is put on the electronic bulletin board. However, as stated, a capacity releasing deal cannot be consummated until after it is posted.

The main objection by commenters 128/ is that pipelines will have no incentive to effect the releasing of capacity. However, the rule requires the pipeline to establish and operate a capacity releasing program. The pipeline must transfer released firm capacity to willing buyers of that capacity. Because the program will be operated in accordance with the pipeline's open-access transportation tariff, the pipeline may not refuse to provide the requested service if the shipper meets the pipeline's applicable tariff conditions. In addition, as stated above, the Commission is permitting pipelines to market released capacity and to be compensated if they take affirmative action to market the released capacity and find a replacement shipper, beyond posting the information on the bulletin board.

128/ E.g., Department of Energy, Public Service Commission of the State of New York, Public Utilities Commission of the State of California, United Distribution Companies, and Northern Indiana Public Service Company.

Capacity Release

Capacity Release

Hence, the Commission concludes that pipelines will not act to inhibit capacity releasing.

Of course, the pipeline must continue to sell all its available firm or interruptible capacity. The pipeline must do this by putting the terms and conditions on the electronic bulletin board. It is up to customers to decide if they want the pipeline's uncommitted firm capacity, the released capacity or interruptible capacity. 122/ In addition, any change in the level of the pipeline's interruptible volumes due to the releasing program will be accounted for in the pipeline's next rate case when projecting interruptible volumes.

The Commission's adoption of capacity releasing for all pipelines overrules all orders issued subsequent to Order No. 436 to the extent they prohibited capacity assignment. 120/

The regulations require the pipeline to allocate released capacity to the person offering the highest rate not over the maximum tariff rate the pipeline can charge to the releasing shipper. This means that the persons seeking to obtain the released capacity can offer up to the pipeline's filed maximum rate for the service received by the releasing shipper. For example, if a releasing shipper wants to release firm capacity from the Gulf of Mexico to New York City, the maximum rate would

122/ For example, a customer might want annual interruptible capacity rather than firm capacity on a limited basis.

120/ E.g., El Paso Natural Gas Co., 35 FERC ¶ 61,440 at p. 62,065-66 (1986), reh'g denied, 38 FERC ¶ 61,008 (1987) and Texas Eastern Transmission Corp. 37 FERC ¶ 61,260 at p. 61,684 (1986).

Capacity Release

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be the pipeline's maximum rate for service from the Gulf of Mexico to New York. That is the maximum rate even if a replacement shipper only wants the releasing shipper's capacity to move gas for a shorter haul (e.g., from the Gulf of Mexico to Atlanta, Georgia).

In addition, the Commission is issuing, to the extent necessary, in the new regulations, a limited blanket certificate of public convenience and necessity under NGA Section 7 to all shippers holding firm capacity rights on pipelines to allow those shippers to release their capacity pursuant to the new capacity releasing program. The purpose of this certificate is limited to allowing those shippers to release capacity to the pipeline as described above. This certificate does not authorize shippers to broker or assign or release capacity as under prior certificates. Rather, new Section 284.243 permits the Commission to ensure that all releases are on a nondiscriminatory basis pursuant to new Section 284.243. Moreover, this will make it clear that the Commission has sufficient jurisdiction to take appropriate enforcement action if capacity is not released on a nondiscriminatory basis. As stated above, the pipeline must contract with, and bill, the replacement shipper.

Last, as stated above, the Commission is amending existing capacity brokering and other capacity assignment programs to conform to the capacity allocation regulations adopted by this rule. Capacity brokering or other assignment arrangements in effect on the effective date of a pipeline's capacity releasing

Capacity Release

program under new Section 284.243 of the Commission's regulations can continue, provided the broker or assignor does not give up its capacity in the restructuring proceeding as discussed *infra*. In addition, on the effective date of the pipeline's capacity releasing program, the pipeline must contract with the holder of the brokered or assigned capacity as it would with a replacement shipper at the same price and terms and conditions of the contract between the broker or assignor and the holder of the brokered or assigned capacity. The pipeline must immediately post on its electronic bulletin board for a reasonable period the price, terms and conditions of, and names of the parties to, all such arrangements. This posting is to make those arrangements public and not for allowing other persons to make a better offer.

D. "No-Notice" Transportation Service

As discussed above, the Commission is adding Section 284.8 (a)(4) to its regulations to require pipelines to provide a "no-notice" firm transportation service if they are providing a "no-notice" bundled, city-gate, firm sales service on the effective date of this rule. The Commission expects the pipelines and all interested participants to craft in the restructuring proceedings the operating conditions needed to ensure that the pipelines can provide a "no-notice" transportation service pursuant to which firm shippers can receive delivery of gas on demand up to their firm entitlements on a daily basis without incurring daily balancing and scheduling penalties. This "no-notice" service will enable pipeline customers to continue to receive unoadinated

volumes to meet unexpected requirements caused, for example, by unexpected changes in temperature. Thus, pipeline customers will be able to receive varying volumes of gas to meet their fluctuating needs during a twenty-four hour period. So, for example, constant rate of flow requirements would not apply to prohibit delivery on demand throughout the day up to a customer's daily firm entitlement under this service. The pipeline, however, could charge reasonable imbalance penalties, for example, monthly imbalance penalties.

The pipelines must include in their tariffs filed as part of their restructuring filings, and maintain in their tariff after implementation of their restructuring proposal, all operating conditions germane to the provision of a "no-notice" firm transportation service. In addition to knowing those operational conditions, it is important for firm shippers to be aware of the component costs attributable to the "no-notice" transportation service. Only then will pipeline customers be able to make an informed choice about, for example, whether to elect "no-notice" transportation or the pipeline's other open-access, firm transportation service. The pipeline's customers need to know the differences between various services and the costs associated with those differences. Hence, the pipelines must, in the restructuring proceedings, indicate how they derived their "no-notice" and other firm transportation rates. This requires the pipelines to prepare workpapers detailing, among other things, the discrete elements of the "no-notice" transportation service

Capacity Release

At whatever place unbundling occurs, 146/ and whether or not a pipeline establishes pooling areas, the Commission believes that pipelines should consider entering into "operational balancing agreements" with other gas merchants to allow them to balance, in the aggregate, for all of their gas purchasers shipping on the pipeline. The Commission also wants the pipelines and their customers and interested parties to consider in the restructuring proceedings the need for appropriate equipment to accurately monitor and measure injections into the system on a timely basis. It may not be cost-effective on some pipeline systems to install the necessary equipment. In those cases, the pipelines should consider allowing other gas merchants to provide the pipeline with pre-determined allocation plans for the merchant's gas. The pipeline should report on this matter in its restructuring filing.

g. Flexible Receipt and Delivery Points

Section 284.221(g) of the Commission's regulations gives pipelines the authority to permit flexible receipt points for receipts of gas volumes into their systems. 147/ In implementing that section, the Commission has required that firm shippers must have flexibility in changing firm receipt points and in using all available receipt points on an interruptible

146/ The point of unbundling should be located as far upstream as possible.

147/ 18 CFR 284.221(g).

basis. 148/ This flexibility includes the right to bump interruptible shippers on reasonable notice. 149/

Section 284.221(h) of the Commission's regulations, also promulgated by Order No. 436, gives pipelines the authority to permit flexible delivery points for deliveries of gas volumes from their systems. 150/ However, the Commission subsequently concluded that, in most cases, flexible delivery points were inconsistent with the Commission's requirement of identification of the recipient of the gas in each transaction. 151/ The Commission's concern was that flexible delivery points could lead shippers to broker capacity and thereby abuse the first come, first served principle for allocating mainline capacity. However, in Columbia Gas Transmission Corp., the Commission permitted Columbia to institute flexible delivery points because Columbia's firm sales customers had conjunctive billing rights where the customer could accept delivery at multiple delivery points. 152/ Recently, in Transwestern Pipeline Co., the Commission approved a proposal

148/ Northwest Pipeline Corp., 46 FERC ¶ 61,106 at p. 61,428 (1989).

149/ Williams Natural Gas Co., 56 FERC ¶ 61,281 at p. 62,055 (1991).

150/ 18 CFR 284.221(h).

151/ El Paso Natural Gas Co., 35 FERC ¶ 61,440 at p. 62,066 (1986), reh'g denied, 38 FERC ¶ 61,008 (1987).

152/ 52 FERC ¶ 61,041 at p. 61,193 (1990).

Rights of Firm Shippers

27- Rights of Firm Shippers

establishing flexible receipt and delivery points on Transwestern's system. 153/

The Commission concludes that it should modify its current policies with respect to flexible receipt and delivery point policies to provide for more flexibility. First, the Commission will require pipelines to give firm shippers flexible delivery points in their distribution areas in the same manner as it gives firm shippers flexible receipt points in the production areas.

Firm shippers will have the right to change firm delivery points and to use other delivery points on an interruptible basis without losing their priority for firm service. 154/ The allocation of capacity at receipt and delivery points will be determined in the restructuring proceedings and set out in the pipeline's tariff as required by new Section 284.14(b)(1)(v) of the Commission's regulations. Second, the Commission will expand firm shippers' rights to receipt and delivery points to include the right to receive gas from any person at any place on the system and the right to deliver gas to any person at any place on the system on a firm basis with the flexibility to change firm receipt and delivery points and to use all delivery points on an interruptible basis. Of course, receipt and delivery points must be within the firm transportation capacity to which the shipper is entitled, and for which it pays. So, for example, an LDC in a

153/ 58 FERC ¶ 61,299 (1992).

154/ This refers to existing capacity at the distribution area delivery points.

Rights of Firm Shippers

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downstream region of the country could arrange to deliver gas to an LDC or an industrial in an upstream region, 155/ but conversely an LDC in an upstream region could not arrange for delivery in a downstream region.

The Commission believes that these policies are necessary to promote maximum efficient usage of the pipeline systems. For example, flexible receipt and delivery points are necessary to the continued development of market centers where pipelines interconnect. In addition, both flexible rights to receipt and delivery points and distribution area delivery point flexibility are necessary to achieve a broad and meaningful firm capacity releasing program. The Commission believes that the new firm capacity releasing program can operate in a nondiscriminatory manner alongside the pipeline's allocation of its own available capacity on the electronic bulletin board as discussed above. The new capacity releasing program and flexible delivery point policy mean that a shipper will not lose its firm capacity by changing firm delivery points in order to permit another entity to ship gas through the releasing shippers' firm capacity. Any Commission orders that indicate that a shipper would lose its right to firm mainline capacity by changing firm delivery points are overruled. 156/

155/ The issue of industrial customers potentially by-passing an LDC is discussed below in the transition cost section.

156/ E.g., El Paso Natural Gas Co., 35 FERC ¶ 61,440 at p. 62,066 (1986), reh'g denied, 38 FERC ¶ 61,008 (1987) and Texas Eastern Transmission Corp. 37 FERC ¶ 61,260 at p. 61,684 (1986).

Rights of Firm Shippers

GENERAL APPLICABILITY PROVISIONS (Continued)

B. PURCHASED GAS ADJUSTMENT CLAUSE.

Except for gas purchases by Customer at the initial point of Company's receipt of such gas on Company's distribution system pursuant to Rate Schedule CG, the The energy charge of the Monthly Rate for gas supplied in any billing period shall be adjusted by the Company's expected weighted average cost of gas (WACOG). A standby sales customer shall not pay demand charges embedded in the WACOG unless its usage exceeds its contracted-for demand. The WACOG may not exceed the Commission-approved purchased gas cost recovery factor based on estimated gas purchases (excluding purchases made by Customers at the initial point of Company's receipt of such gas on Company's distribution system pursuant to Rate Schedule CG) for the six-month periods of April through September and October through March, in accordance with the methodology adopted by the Commission on May 2, 1991, in Order No. 24463, Docket No. 910003-GU, or as such methodology may be amended from time to time by further order of the Commission. The WACOG determined as set forth above shall be multiplied by 1.00376 for regulatory fees, rounded to the nearest \$.00001 per therm, and applied to the total number of therms (excluding purchases made by Customer at the initial point of Company's receipt of such gas on Company's distribution system pursuant to Rate Schedule CG) consumed by the customer during the billing period.

The purchased gas cost recovery factor approved by the Commission for bills rendered for meter readings taken from April 1, 1992 through September 30, 1992 is 24.639 cents per therm.

The purchased gas cost recovery factor shall serve as a cap or maximum recovery factor. If re-projected expenses for the remaining period exceed projected recoveries by at least 10% for the six month period, a mid-course correction may formally be requested by the Company. For changes in market conditions and costs, the Company, upon one day's notice to the Commission, may increase or decrease the WACOG as long as any increase does not exceed the authorized cap. The current month WACOG may be adjusted for prior months' differences between projected and actual costs of gas purchased, but may not exceed the approved cap for the period.

Issued By: J. A. Brabson, Jr., President
Issued On:

Effective:

ATTACHMENT 4