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CANADA



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER..... G-80-95

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AN ORDER IN THE MATTER OF the Utilities Commission  
Act, S.B.C. 1980, c. 60, as amended

and

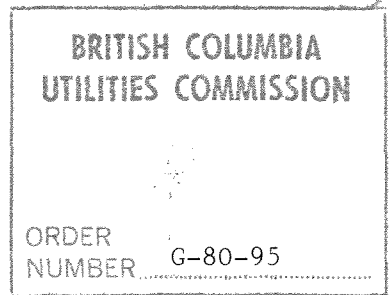
Applications by Gas Utilities for Approval of Standard Form  
Gas Purchase Contracts

**BEFORE:** M.K. Jaccard, Chairperson; and )  
K.L. Hall, Commissioner ) September 21, 1995

**O R D E R**

**WHEREAS:**

- A. The Commission by Order No. G-99-93 approved for BC Gas Utility Ltd. ("BC Gas") its standard form Buy/Sell Gas Purchase Contract ("the Contract") that was used for the gas contract years commencing November 1, 1993; and
- B. In its July 7, 1995 Decision on the Review of Buy/Sell Deliveries of Natural Gas to the Core Market, the Commission directed local distribution companies ("LDC's") to file a revised and simplified form of the contract; and
- C. On August 31, 1995 BC Gas filed a revised and simplified form of buy/sell contract ("the new Contract") that was generated by a committee of interested parties which included BC Gas, Pacific Northern Gas Ltd. ("PNG"), Centra Gas British Columbia Inc. ("Centra Gas"), the Canadian Independent Gas Marketing Association ("CIGMA") and B.C. Health Services Ltd.; and
- D. PNG filed an identical form of contract and Centra Gas indicated that it intended to use the same form of contract as that submitted by BC Gas; and
- E. The filed form of contract was fully supported by the committee, with the exception of one issue. CIGMA and Novagas Clearinghouse Ltd., for reasons set out in letters dated September 11, 1995 and September 19, 1995 respectively took the view that an ABM should not be a principal to the contract as well as an agent for the end-use consumers; and



F. By letter dated September 15, 1995, BC Gas set out reasons in support of the view that an ABM should be a principal to the contract; and

G. The Commission has reviewed the new Contract and these submissions and is satisfied that, at this time, approval of the contract as filed is necessary and in the public interest.

**NOW THEREFORE** the Commission orders as follows:

1. The Commission approves for BC Gas the Buy/Sell Gas Purchase Contract as filed on August 31, 1995, and attached as Appendix A to this Order, effective for the gas year commencing November 1, 1995.
2. The Commission approves for PNG the Buy/Sell Gas Purchase Contract as filed on September 1, 1995, and effective for the gas year commencing November 1, 1995.
3. The Commission approves for Centra Gas a Buy/Sell Gas Purchase Contract in the form of Appendix A to this Order, effective for the gas year commencing November 1, 1995.

**DATED** at the City of Vancouver, in the Province of British Columbia, this *22nd* day of September, 1995.

BY ORDER

A handwritten signature in cursive script, appearing to read "Mark K. Jaccard".

Dr. Mark K. Jaccard  
Chairperson

Attachment

**BUY/SELL  
GAS PURCHASE CONTRACT**

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Among

BC GAS UTILITY LTD.

Buyer

- and -

CUSTOMERS OF BC GAS UTILITY LTD.

Customer

- and -

XXXX

Agent

Submitted to BCUC  
for Approval 95-08-31

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SCHEDULE "A" - DAILY CONTRACT QUANTITY CALCULATION AND POINT OF  
DELIVERY

THIS BUY/SELL GAS PURCHASE CONTRACT ("CONTRACT") dated as of the  
1st day of September, 1995

AMONG:

BC GAS UTILITY LTD., a body corporate,  
having an office and carrying on business  
in the City of Vancouver, in the Province of  
British Columbia,

---

("Buyer")

OF THE FIRST PART

AND:

THE CUSTOMERS OF BC GAS UTILITY LTD., as described in  
Schedule "A" hereto,

(collectively called "Customer")

OF THE SECOND PART

AND:

XXXX, a body corporate, having an office and carrying on  
business in the City of XXXX, in the Province of XXXX,

("Agent")

OF THE THIRD PART

WHEREAS Buyer operates a Gas distribution and transmission system in the  
Province of British Columbia;

AND WHEREAS Customer has entered into arrangements under which Customer  
shall purchase or otherwise acquire quantities of Gas for its own use and desires to sell  
that Gas to Buyer in order to facilitate the repurchase by Customer of those same  
quantities of Gas from Buyer;

AND WHEREAS Agent has acted on behalf of Customer in acquiring those  
quantities of Gas and wishes to provide other services for Customer;

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AND WHEREAS, subject to the provisions of this Contract, Buyer wishes to purchase from Seller a quantity of Gas approximately equal to the amount of Gas that Customer purchases from Buyer under Buyer's approved sales tariffs;

AND WHEREAS Customer and Agent (collectively the "Seller") will be jointly and severally liable to Buyer for the performance of all obligations of Seller under this Contract;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties each with the others agree as follows:

#### ARTICLE I - DEFINITIONS

1.1 The following words and terms wherever and whenever used or appearing in this Contract shall have the following meanings unless the context otherwise requires:

- (a) **"BCUC"** means the British Columbia Utilities Commission.
- (b) **"Buyer's Quantity"** means the quantity of Gas taken by and delivered to Buyer by Seller during the Contract Year.
- (c) **"Contract Year"** means any consecutive twelve (12) Month period during the term of this Contract, with the first Contract Year commencing on the Date of First Deliveries.
- (d) **"Customer Quantity"** means a quantity of Gas in gigajoules equal to the sum of the Gas estimated to be consumed by the Customer during a Contract Year, such estimate to have been prepared within thirty (30) days prior to the commencement of the Contract Year and to exclude the allowance for peaking gas supply.
- (e) **"Daily Contract Quantity" or "DCQ"** means a quantity of gigajoules per Day as detailed in Schedule "A". The DCQ will be reviewed annually by Buyer in accordance with the BCUC rules governing direct purchases.
- (f) **"Date of First Deliveries"** means the Day that Seller commences deliveries of Gas to Buyer under this Contract, as specified in Schedule "A", such Day to always be the first Day in a Month.
- (g) **"Day"** means a period of twenty-four (24) consecutive hours, beginning and ending at 8:00 a.m. Pacific Standard Time.

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- (h) **"Gas"** means pipeline quality natural gas.
- (i) **"GJ"** or **"gigajoule"** means one billion (1,000,000,000) joules.
- (j) **"Joule"** or **"joule"** means the amount of work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force.
- (k) **"Month"** means a period beginning on the first Day of a calendar month and ending on the first Day of the next succeeding calendar month.
- (l) **"Nominated Daily Quantity"** means the quantity of Gas nominated for a Day by Buyer or by Transporter on behalf of Buyer, to Seller, or to Seller's suppliers, being from zero up to and including but not greater than the Daily Contract Quantity. For any Day for which Buyer or Transporter, on behalf of Buyer, does not nominate, the last effective nomination shall be the nomination for said Day.
- (m) **"Point of Delivery"** means the point at which Gas is to be delivered pursuant to Schedule "A" hereof.
- (n) **"Reference Price"** means the price per gigajoule of Gas established by Buyer from time to time, such price to be filed with and approved by the BCUC if and as may be required.
- (o) **"Substitute Supplies"** means substitute supplies of Gas, liquefied petroleum gas or Gas mixed with liquefied petroleum gas purchased by Buyer to replace quantities of Gas which Seller is obligated to deliver but does not deliver to Buyer at the Point of Delivery.
- (p) **"Transporter's General Terms and Conditions"** means the Westcoast General Terms and Conditions - Service in effect from time to time.
- (q) **"Transporter"** means Westcoast Energy Inc.

## ARTICLE II - CONDITIONS AND REPRESENTATIONS

### 2.1 Seller's Representations

- (a) Each of Customer and Agent represents and warrants that Customer and Agent will be jointly and severally liable to the Buyer for the performance of all obligations of the Seller.
- (b) Seller represents that it is entitled to sell Gas to Buyer. Seller represents that Seller will deliver Gas to Buyer in accordance with the provisions of this Contract.



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- (c) Seller warrants that the Gas delivered to Buyer under this Contract meets, and will continue to meet throughout the Contract Year, all of the requirements set out by the BCUC for baseload supply contracts serving core market loads. If Seller fails to perform in accordance with the Contract, Buyer may request evidence from Seller that reasonably demonstrates that the Gas delivered to Buyer under this Contract continues to meet the BCUC requirements.
- d) If Seller fails to perform in accordance with the Contract and Seller subsequently also fails, in Buyer's sole opinion, to reasonably demonstrate the requirements referred to in Subsection 2.1(c) above, Buyer may, in addition to all other remedies available to it by law or through other provisions of this Contract, upon five (5) days' prior written notice to Seller, terminate this Contract. Seller may apply to the BCUC for a review of Buyer's decision, at which time any termination would be effective no later than two (2) days after a BCUC decision confirming that the requirements for supply have not been met.

## **2.2 Conditions Precedent**

The obligations of Seller and Buyer under this Contract shall not arise unless:

- (a) the Buyer has obtained the approval of this Contract by the BCUC; and
- (b) if requested by the Buyer, the Seller has demonstrated to the BCUC that Seller has contracted for a Gas supply incorporating a corporate warranty acceptable to the BCUC.

Forthwith following the execution of this Contract by Buyer and Seller, Buyer will apply for the approval referred to in Subsection 2.2(a) and, if necessary, Seller will apply for the approval referred to in Subsection 2.2(b) above. Each of the parties will, at no cost to the other, co-operate with and assist the other to satisfy the conditions precedent for which such party is responsible.

## **ARTICLE III - QUANTITY OF GAS**

### **3.1 Seller to Deliver Gas**

- (a) Commencing on the Date of First Deliveries, Seller will deliver to Buyer Gas in such quantities and of such quality as to ensure performance by

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Seller under this Contract.

- (b) Commencing on the Date of First Deliveries, and continuing throughout each Contract Year during the term of this Contract, Seller will sell and deliver to Buyer each Day at the Point of Delivery a quantity of Gas equal to the Nominated Daily Quantity. Buyer will purchase and accept each Day a quantity of Gas at the Point of Delivery equal to the Nominated Daily Quantity.
- (c) Seller will provide the name of the Transporter shipper account from which the Gas is to be nominated no less than five (5) clear days ("clear days" as defined in Section 13.4) prior to the Date of First Deliveries. Any changes to that Transporter shipper account will be provided to Buyer in writing at least three (3) clear days prior to such change becoming effective.
- (d) Buyer will have the right to notify Transporter of the Nominated Daily Quantity.
- (e) If Transporter should modify its gas control procedures then the parties will modify this Article to accord with the modified procedures of Transporter and to ensure that the Gas Control Department of Buyer controls the day-to-day movement of Gas.

### **3.2 Delivery Imbalances**

- (a) Buyer will use reasonable efforts to order a quantity of Gas from Seller over each Contract Year that matches the annual Customer Quantity for such Contract Year. Notwithstanding the above, even if the Buyer's Quantity does not equal the Customer Quantity, there will be no adjustment.
- (b) Buyer will undertake reasonable efforts to ensure that the load factor under this Contract is no less than the average load factor under Buyer's system baseload contracts.
- (c) Buyer will adjust its purchase of Gas from Seller in each Contract Year following the first Contract Year, if applicable, by amending the DCQ detailed in Schedule "A" pursuant to the guidelines set out by Buyer in accordance with the BCUC rules governing direct purchase (buy/sell) activities as amended from time to time.
- (d) The DCQ calculation shall be adjusted such that any Substitute Supplies

purchased by Buyer for Seller's use shall be included in the calculation of the Buyer's Quantity.

**3.3 Transporter Fuel and Line Losses**

Seller will deliver to Transporter an appropriate allowance for fuel consumed in Transporter's transmission operations downstream of processing facilities and/or for Transporter line and unaccounted for Gas losses pursuant to Transporter's General Terms and Conditions.

**3.4 Substitute Supplies**

- (a) Seller is obligated to deliver to Buyer at the Point of Delivery quantities of Gas nominated or requested by Buyer in accordance with the terms and conditions of this Contract. The Daily Contract Quantity will not be reduced and Seller's obligation will not be lessened by any occurrence other than an occurrence of an event of force majeure as defined in Article IX which significantly impairs the delivery of firm Gas to Seller pursuant to those gas purchase contracts relied upon by Seller to satisfy its obligations to Buyer under this Contract.
- (b) If the Seller defaults in its obligation to deliver Gas, Buyer has the right to immediately obtain Substitute Supplies in quantities thermally equivalent to the Gas which Seller failed to deliver. Seller will then immediately notify Buyer of the reasons for the default and the anticipated duration of the period of default and will take all steps necessary to fully resume performance. Where Seller notifies Buyer of the anticipated duration of the period of default, Buyer may obtain Substitute Supplies for that period. Where Seller fails to so notify Buyer, Buyer may obtain Substitute Supplies for the period that Buyer anticipates that Seller will remain in default.
- (c) Any party who becomes aware of a default agrees to inform the other parties immediately.

**3.5 Liability for Costs of Substitute Supplies**

Agent and Customer will be jointly and severally liable to reimburse Buyer for all reasonable costs incurred by Buyer in acquiring and delivering Substitute Supplies, which are greater than the costs that would have been incurred by Buyer in acquiring Gas from and delivered by Seller under this Contract. In no event shall Seller be liable for prospective profits or special,

indirect or consequential damages.

**3.6 Payment of Costs of Substitute Supplies**

- (a) Buyer will have the right to recover the net costs of Substitute Supplies by deducting those costs from any amount that otherwise would have been payable to Seller pursuant to Article VIII at any time after such costs are actually incurred by Buyer and have been paid by Buyer or are due and payable to a third party. Buyer will have the further right to recover the costs of Substitute Supplies by claiming against any performance bond which exists to secure due performance by the Agent of its obligations under this Contract. Buyer will also have the right to apply a surcharge to any bill, rendered by Buyer to Customer for utility services, in order to recover the costs of Substitute Supplies.
- (b) The costs of Substitute Supplies that are recoverable by Buyer from Seller will not exceed the costs that were or would have been incurred in acquiring and delivering the lowest cost Gas, liquified petroleum gas or Gas mixed with liquified petroleum gas acceptable to Buyer which was at the time available to Buyer in Buyer's service area and of which Buyer could reasonably have been expected to have been aware, given the immediacy of Buyer's Gas needs. Disputes between the parties as to the reasonableness of the costs of acquiring and delivering Substitute Supplies will be resolved pursuant to the arbitration provisions in Article XI and in such case the arbitration will be mandatory and binding. In such case Buyer will not be entitled to recover any disputed amount from any performance bond posted with the BCUC or impose a surcharge on any Customer's bill until after the conclusion of the arbitration.

**ARTICLE IV - PRICE**

**4.1 Reference Price Determination and Redetermination**

The Reference Price will be set by Buyer in accordance with the terms of this Contract and will be as filed and approved by the BCUC if and as may be required periodically over each Contract Year. The Reference Price is the full price to be paid by Buyer to Seller at the Point of Delivery for all Gas purchased under this Contract except as noted in any filing with the BCUC.

## **ARTICLE V - QUALITY OF GAS**

### **5.1 Specifications**

The Gas delivered by the Seller will meet the quality specifications contained in the Transporter's General Terms and Conditions and will be at a pressure which meets the delivery pressure required by the Transporter's General Terms and Conditions.

## **ARTICLE VI - MEASUREMENT**

### **6.1 Sales Unit**

The sales unit of Gas sold, purchased and delivered hereunder will be one (1) gigajoule and the quantity and GJ content of said Gas will be determined from measurement at the Point of Delivery.

## **ARTICLE VII - POINT OF DELIVERY**

### **7.1 Point of Delivery**

All Gas will be delivered at the point or points identified in Schedule "A". Title to Gas delivered and risk will pass from Seller to Buyer at the Point of Delivery.

## **ARTICLE VIII - BILLINGS AND PAYMENTS**

### **8.1 Billing**

(a) Commencing in the month following the month containing the Date of First Deliveries, and continuing in each month thereafter during each Contract Year and for one month following the final Contract Year (each said month herein called "Billing Month"), Buyer will provide a statement to Seller by the 20th day of each Billing Month showing:

- (i) the quantities of Gas delivered hereunder to Buyer in the Billing Month and the price payable;
- (ii) the quantity of the appropriate allowance for fuel consumed in Transporter's operations and line and unaccounted for Gas losses and the amount payable for the Billing Month;
- (iii) any adjustments to billing for prior Billing Months; and
- (iv) the net amount after accounting for any administrative fees approved by the BCUC due Buyer by Seller, plus any and all

federal and provincial taxes applicable to Gas purchased by Buyer, including the Federal Goods and Services Tax or its replacement (the "GST"), payable by Buyer or Seller, as the case may be, for the Billing Month.

- (b) Buyer or Seller, as appropriate, will pay the applicable GST provided that the Seller's (Buyer's) GST registration number has been furnished to Buyer (Seller) and provided that the nature and dates of supply of the goods and services have been clearly identified.
- (c) In each Billing Month next following any Month in which Buyer obtained Substitute Supplies, Buyer will render to Seller a statement showing the quantity of Substitute Supplies obtained by Buyer, their thermal equivalent, the GJ content and the amount, plus any applicable tax, payable by Seller. To the extent permitted by this Contract, Buyer may deduct the costs of any such Substitute Supplies from any funds due Seller in any Billing Month.
- (d) If an error is discovered in any billing statement, an adjustment will be made to correct the error made in the subsequent statement. All claims for errors will be made promptly upon discovery, but in no event more than twelve (12) months after the date that the erroneous statement was rendered. No interest will be paid by Buyer or Seller for adjustments correcting statement errors. The provisions of Article VIII will survive the termination of this Contract.

## **8.2 Payment**

Buyer will pay to Seller, or Seller will pay to Buyer, the net of the amounts payable as set out in the Buyer's statements rendered pursuant to Section 8.1 on or before the latest of:

- (a) the twenty-fifth (25th) day of the month next following the particular Billing Month; or
- (b) the fifth (5th) day immediately following the issuance by Buyer of the statement referenced in Section 8.1.

All payments will be made by wire transfer to an account designated in writing by Seller or Buyer.

## **8.3 Failure to Pay**

- (a) If Buyer fails to pay any amount not in dispute due to Seller by the due

date and if Buyer is at fault for such failure, then interest will accrue on all overdue amounts at a rate of interest one per cent (1 %) per annum over the rate of interest which is declared to be its "prime lending rate" by the Main Branch in Vancouver of the Bank of Montreal on such date, from such due date until the date paid and if such failure to pay continues for thirty (30) days, Seller thereafter may suspend deliveries of Gas hereunder and if such failure continues for thirty (30) additional days, Seller thereafter may, in addition to all other remedies available to it by law, terminate this Contract; provided, however, in order for Seller to have the right to suspend deliveries or terminate this Contract, Seller must after the expiry of the applicable thirty (30) day period first have notified Buyer fifteen (15) days prior to exercising either or both of such rights of its intent to do so and give Buyer the right to pay the amount so due to Seller within such fifteen (15) day period. Either Seller or Buyer may submit to arbitration, in accordance with Article XI, any dispute as to the amount due Seller for Gas delivered, such arbitration to be mandatory and binding. Pending the arbitrator's award, Seller's remedies will be suspended.

- (b) If Seller fails to pay any amount not in dispute due to Buyer by the due date and if Seller is at fault for such failure, then interest will accrue on all overdue amounts at a rate of interest one per cent (1 %) per annum over the rate of interest which is declared to be its "prime lending rate" by the Main Branch in Vancouver of the Bank of Montreal on such date, from such due date until the date paid. If such failure to pay continues for thirty (30) days, Buyer thereafter may recover such amount from any performance bond provided to the BCUC by Agent and through a surcharge applied to any bill rendered by Buyer to Customer for utility services. If such failure continues for thirty (30) additional days, Buyer thereafter may, in addition to all other remedies available to it by law, terminate this Contract; provided, however, in order for Buyer to have the right to terminate this Contract, Buyer must after the expiry of the applicable thirty (30) day period first have notified Seller fifteen (15) days prior to exercising either or both of such rights of its intent to do so and give Seller the right to pay the amount so due to Buyer within

such fifteen (15) day period. Either Seller or Buyer may submit to arbitration in accordance with Article XI hereof any dispute as to the amount due Buyer for Gas delivered hereunder, such arbitration to be mandatory and binding. Pending the arbitrator's award, Buyer's remedies will be suspended.

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**8.4 Transporter Penalties**

Any penalties payable to Transporter ("Transporter Penalties") will be borne by the party causing the Transporter Penalties to be incurred.

**8.5 Accuracy of Calculations**

The price per sales unit of Gas will be rounded to the nearest one-thousandth (1/1000th) of a cent and all calculations with respect to payments for Gas will be carried to the nearest cent.

**8.6 Audit**

During normal business hours during the term of this Contract and for twelve (12) months thereafter in which a statement, charge, computation or demand is made hereunder, each party will have the right, at its sole cost and expense, to have a third party auditor, who will be a member of a national Canadian chartered accounting firm, audit the relevant books, accounts and records of the other parties to the extent necessary to verify the accuracy of any statement, charge, computation or demand. Any claims or discrepancies disclosed by any such audit will be reported, in writing, by the auditor in question and the parties will resolve all such claims or discrepancies as soon as is reasonably possible following the completion of the audit. Any and all data and information, including the audit report, disclosed by the auditor to his client and obtained by the auditor during his audit of the other parties' books, accounts and records will be kept in strict confidence and used solely for purposes related to this Contract.

**ARTICLE IX - FORCE MAJEURE**

**9.1** Subject to the other provisions of this Article, if a party to this Contract is unable by reason of force majeure as defined herein to perform in whole or in part any obligation or covenant set forth in this Contract, the obligations of all parties under this Contract will be suspended to the extent necessary for the period of such force majeure condition.



**9.2 (a)** For the purposes of this Contract, when the Point of Delivery (as detailed in Schedule "A") is the point where Transporter's mainline facilities interconnect with Buyer's distribution system, the term "force majeure" means:

(i) For Seller, when Transporter curtails the availability of firm transportation service relied upon by Seller to deliver Gas to the Point of Delivery under this Contract. When Transporter is Westcoast Energy Inc., such curtailments will be limited to transportation service downstream of Compressor Station #2.

**(b)** For the purposes of this Contract, when the Point of Delivery (as detailed in Schedule "A") is upstream of Buyer's distribution system, the term "force majeure" means:

(i) For Seller, when Transporter curtails the availability of firm transportation service relied upon by Seller to deliver Gas to the Point of Delivery under this Contract. When Transporter is Westcoast Energy Inc., such curtailments will be limited to transportation service downstream of Compressor Station #2.

(ii) For Buyer, when any transporter (including Transporter but excluding Buyer) curtails the availability of firm transportation service relied upon by Buyer to deliver Gas from the Point of Delivery under this Contract to Buyer's distribution system.

**9.3** No party will be entitled to the benefit of the provisions of Section 9.1 under any or all of the following circumstances:

**(a)** to the extent that the inability was caused by the contributory negligence of the party claiming suspension;

**(b)** to the extent that the inability was caused by the party claiming suspension having failed to remedy the condition, and to resume the performance of such covenants or obligations, with reasonable dispatch;

**(c)** to the extent that the inability was caused by lack of funds;

**(d)** unless as soon as possible after the happening of the occurrence relied upon or as soon as possible after determining that the occurrence was in the nature of force majeure and would affect the claiming party's ability to observe or perform any of its covenants or obligations under this Contract, the party claiming suspension will have given to the other

parties notice to the effect that such party is unable by reason of force majeure (the nature whereof will be therein specified) to perform the particular covenants or obligations.

**9.4** The party claiming suspension will likewise give notice, as soon as possible after the force majeure condition will have been remedied, to the effect that the same has been remedied and the claiming party has resumed, or is then in a position to resume, the performance of such covenants or obligations.

**9.5** Notwithstanding anything to the contrary in this Article IX expressed or implied, the parties agree that the settlement of strikes, lockouts and other industrial disturbances will be entirely within the discretion of the particular party involved therein and such party may make settlement thereof at such time and on such terms and conditions as it may deem to be advisable and no delay in making such settlement will deprive such party of the benefit of Section 9.1.

**9.6** Where an occurrence or occurrences of force majeure is claimed by a party, the Daily Contract Quantity will be reduced for each Day with respect to which force majeure is claimed by a quantity of Gas equal to the Daily Contract Quantity which would have been in effect if said force majeure had not occurred multiplied by the period, to the nearest hour, of force majeure during the Day divided by twenty-four (24) hours, less any quantity of Gas actually delivered during such period.

#### **ARTICLE X - WARRANTY OF TITLE AND RESPONSIBILITY OF SELLER**

**10.1** Seller represents and warrants that it has full right and authority to enter into this Contract. Seller further represents and warrants that it has title to the Gas to be sold and delivered hereunder and that all such Gas is owned and will be delivered by Seller free from all liens and adverse claims, including liens to secure payment of any taxes. Seller will indemnify, defend and save harmless Buyer from all suits, judgments, demands, debts, accounts, damages, costs, losses, liabilities and expenses arising from or out of claims of any or all persons to said Gas or to royalties, taxes or other charges thereon which attach to the Gas or which may be levied and assessed upon the sale thereof to Buyer, but does not apply to any adverse claims of third parties if those claims arise from the terms or conditions of any contracts or any arrangement between Buyer and a third party for the subsequent sale or other disposition of the Gas delivered

hereunder unrelated to Seller's warranty of title. As security for the performance of Seller's obligations with respect to such claim under this Section, Buyer may deduct up to the amount of such claim from any amounts payable by Buyer to Seller under this Contract, without incurring liability for interest, until such claim has been finally determined or until Seller has furnished a bond to Buyer in favour of the Buyer with respect to such claim.

#### **ARTICLE XI - ARBITRATION**

**11.1** Any dispute respecting a matter arising from this Contract or arising from any of the schedules to this Contract will be resolved by binding arbitration. The arbitration will be conducted in accordance with the following procedures and principles.

A party may deliver written notice to the other parties to the dispute to concur in the appointment of an arbitrator. If the parties to whom notice is delivered do not within ten (10) days of receipt of such notice concur in the appointment of the arbitrator then the party who delivered the notice may apply to the Supreme Court of British Columbia for the appointment of an arbitrator.

The arbitrator selected to act will be sufficiently qualified by education, skills and training to decide the particular questions in dispute. Unless otherwise agreed, the arbitrator may not be a past or present employee, officer or director of any of the parties or their respective successors, permitted and lawful assigns or affiliates, or of any supplier to Customer, Agent, or Buyer.

The arbitrator will proceed immediately to hear and determine the matter in dispute. The decision of the arbitrator will be made within forty-five (45) days after the appointment of the arbitrator, subject to any reasonable delay due to unforeseen circumstances. Notwithstanding the foregoing, in the event the arbitrator fails to make a decision within sixty (60) days after the appointment then either party may elect to have a new arbitrator appointed in like manner as if none had previously been appointed.

The decision of the arbitrator will be in writing, signed by the arbitrator and will be final and binding upon the parties.

Whenever there is an arbitration proceeding under this Article, operations under this Contract shall continue in the same fashion as they were conducted before the arbitration proceeding was commenced, without prejudice to any

party, pending a decision in the arbitration proceeding.

The failure of any party hereto to participate in any arbitration proceeding as scheduled by the arbitrator shall not delay the proceeding. Notwithstanding a party's failure to participate, the arbitrator shall proceed to consider submissions, to take evidence, and to issue a decision as though such party were a participant in the arbitration proceeding, and the decision shall be final and binding on such non-participating party.

The compensation and expenses of the arbitrator will be paid in equal proportions by Buyer and Seller.

The Commercial Arbitration Act of British Columbia or successor legislation will apply to any arbitration conducted with respect to this Contract.

The place of any arbitration hearing shall be Vancouver, British Columbia.

#### **ARTICLE XII - TERM OF CONTRACT**

- 12.1 (a)** Subject to the other provisions hereof, the term of this Contract will commence on the Date of First Deliveries and will continue for one (1) Contract Year. Thereafter, this Contract will automatically continue for subsequent Contract Years unless terminated by Customer and Agent providing written notice to Buyer no less than sixty (60) days prior to the start of the next Contract Year.
- (b)** In the event that Buyer or Seller becomes bankrupt or insolvent or commits or suffers any act of bankruptcy or insolvency or enters into receivership pursuant to a statute or under a debt instrument or seeks protection from the demands of its creditors pursuant to any legislation enacted for that purpose, this Contract may be terminated forthwith by one party giving the other parties notice of such termination.
- (c)** In the event the licensing of Agent by the BCUC ceases, or in the event that Agent fails to maintain the required performance bond with the BCUC, this Contract may be terminated by Buyer by giving the other parties notice of such termination. The preceding provisions will only remain in effect as long as the BCUC rules governing direct purchase (buy/sell) contracts, as amended from time to time, require either licensing of the Agent by the BCUC or the posting of a performance bond by Agent.

## **ARTICLE XIII - MISCELLANEOUS PROVISIONS**

### **13.1 Non-waiver of Future Default**

No waiver by Seller or Buyer of any default by the other under this Contract will operate as a waiver of a future default, whether of a like or different character.

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### **13.2 Successors and Assigns**

This Contract will be binding upon and will enure to the benefit of the parties and their respective successors and permitted and lawful assigns. This Contract may not be assigned by any of the parties except with the prior written consent of the other parties, which consent will not be unreasonably withheld. This Contract may not be assigned by Agent unless the party to whom Agent intends to assign this Contract is duly licensed by the BCUC and has posted a performance bond as required by the BCUC or unless the BCUC rules governing direct purchase (buy/sell), as amended from time to time, no longer require such provisions. No assignment will be effective unless and until the assignee executes and delivers to the other parties an agreement in writing whereby the assignee agrees to be bound by the assignor's obligations under this Contract and no such assignment will release the assignor from its duties and obligations under this Contract, unless such release is expressly consented to in writing by the other parties.

### **13.3 Headings**

The headings used throughout this Contract are inserted for reference purposes only, and are not to be considered or taken into account in construing the terms or provisions of any Article nor to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

### **13.4 Notices and Statements**

Unless specified otherwise, every notice and statement provided for in this Contract or correspondence pertaining to this Contract among the parties hereto will be in writing directed to the party to whom such notice, statement or correspondence is given, made or delivered to such party's address or telefax number as follows:

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**CUSTOMER/AGENT/SELLER:**

XXXX  
XXXX  
XXXX  
XXXX

**Attention:**

**Telefax: (XXX) XXX-XXXX**

**BUYER:**

**BC Gas Utility Ltd.  
1111 West Georgia Street  
Vancouver, British Columbia  
V6E 4M4**

**Attention:**

**Vice President, Gas Supply &  
Industrial Services**

**Telefax: (604) 443-6953**

Any notice or statement provided for in this Contract:

- (a) if given or delivered by prepaid registered mail will be deemed to have been effectively delivered to the addressee thereof at the end of the third (3rd) clear day following the day on which it was mailed; and
- (b) if given or delivered by telefax between 8:00 a.m. PST and 4:30 p.m. PST will be deemed to have been effectively delivered to the addressee thereof on that day and, if not, on the first clear day following the day on which it was dispatched; and
- (c) if given or delivered by hand to an officer of the addressee between 8:00 a.m. PST and 4:30 p.m. PST, it will be deemed to have been effectively delivered to the addressee thereof on that day and, if not, on the first clear day next following such delivery to said officer.

The term "clear day" means any day excluding statutory holidays, Saturdays and Sundays and in the case of mailing, the day of mailing being the date of postmark and any day on which the post office is closed, and in the case of telefax, the day of dispatching, and in the case of hand delivery, the day of delivery by hand. If there is a disruption or threatened disruption affecting delivery of mail, all such delivery will be made by telefax or by hand. If there is a disruption or threatened disruption affecting telefax services, all such deliveries will be made by hand.

Any party may change its address or telefax number by giving notice to the other parties; provided that for Gas purchased hereunder Buyer will in no

event be obligated to pay for the said Gas at a point outside of Canada or in currency other than Canadian currency.

**13.5 Amendment in Writing**

Except as provided, no amendment or variation of this Contract will be effective or binding upon the parties hereto unless it is set forth in writing and has been duly executed by each of the parties by authorized representatives.

**13.6 Time of Essence**

Time will be of the essence.

**13.7 Entire Agreement**

This Contract, including the attached Schedule, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Contract supersedes any prior or contemporaneous agreements, understandings, negotiations or discussions, whether oral or written, of the parties in respect of the subject matter hereof. The Schedule hereto is incorporated into and made part of this Contract by this reference as fully as though contained in the body of this Contract.

**13.8 Further Assurances**

Each of the parties hereto will from time to time and at all times do such further acts and execute and deliver all such further deeds and documents as will be reasonably required in order to fully perform and carry out the intent and purpose of this Contract.

**13.9 Severability**

If any provision of this Contract is held invalid under any law, that provision shall be considered severable and its invalidity shall not affect the remainder of this Contract, which shall be interpreted without the invalid provision and in accordance with the objectives of this Contract.

**13.10 Industry Meanings**

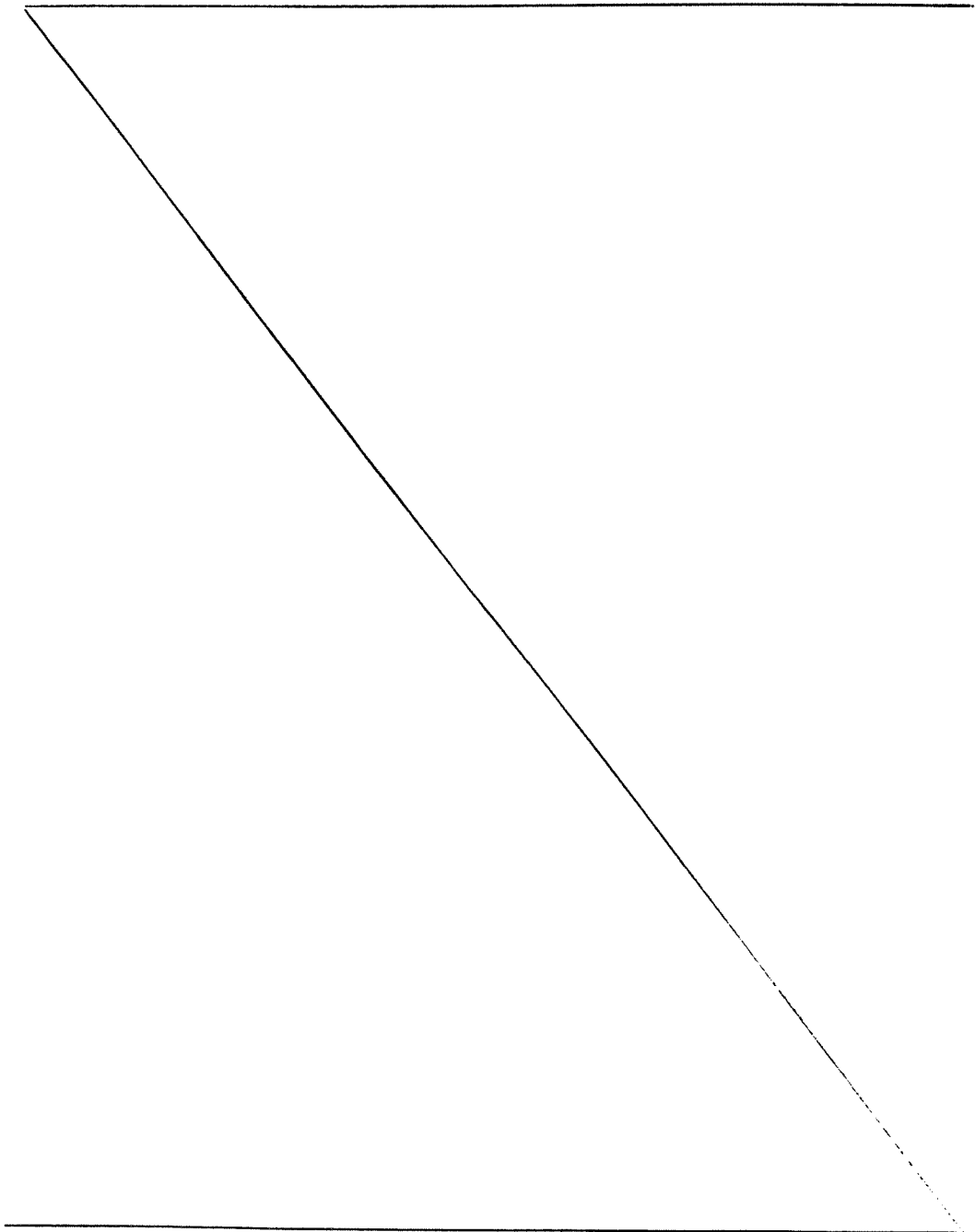
Words and phrases used in this Contract, with the exception of those specifically defined, that have acquired special meanings in the natural gas industry shall be read and construed in accordance with the special meanings attached to those words and phrases.

**13.11 Law and Jurisdiction**

(a) This Contract and the rights and obligations of the parties hereunder are subject to all present and future laws, rules, regulations and orders of

any legislative body or duly constituted authority now or hereafter having jurisdiction.

- (b) This Contract will be governed by and construed in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein, and, subject to the provisions of Article XI, the parties attorn to the jurisdiction of the courts of British Columbia.





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IN WITNESS WHEREOF the parties hereto have executed this Contract as of the  
day and year first above written.

**BUYER:** BC GAS UTILITY LTD.

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

**CUSTOMER:** XXXX (as agent for and on behalf of Customer)

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

**AGENT:** XXXX (on its own behalf)

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

SAMPLE

## SCHEDULE "A"

To the Buy/Sell Gas Purchase Contract made among BC Gas Utility Ltd., Customers of BC Gas Utility Ltd. and A/B/M Marketing Ltd., and dated as of the 1st day of September, 1995.

BC GAS - POOL #	A/B/M DOCUMENT REFERENCE	ESTIMATED NORMALIZED ANNUAL USE (GIGAJOULES)
0001	BC0101A	9,066
0002	BC0101B	2,609
0003	BC0101C	2,774
0004	BC0101D	8,629
0005	BC0101E	8,080

Peaking gas percentage = 95%

Load factor = 100%

DCQ =  $\frac{31,158}{365 \text{ days}} \times \frac{95\%}{100\%}$

= 81 Gj/d

POINT OF DELIVERY = Station #2

DATE OF FIRST DELIVERIES = November 1, 1995