Via Hard Copy and Email Submission

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Re: AGA Request for Interpretative Guidance on the Treatment of Certain Natural Gas Supply Contracts with Volumetric Optionality

Dear Mr. Shilts:

Pursuant to Section 140.99(d)(2) of the regulations of the Commodity Futures Trading Commission (“CFTC” or “Commission”), the American Gas Association (“AGA”) respectfully requests on behalf of its member gas utilities an interpretative letter from the Commission’s Division of Market Oversight (“Division”) clarifying whether certain natural gas supply contracts with volumetric optionality would be exempt from the Commission’s regulation of “swaps”. AGA contends that such contracts are physical forwards providing necessary delivery flexibility to reliably meet the needs of American energy consumers, and as such, they are excluded from the definition of a “swap” under the seven-factor test established by the Commission in its interim final Product Definition rule. In the alternative, AGA requests that the Division provide no-action relief exempting all natural gas market participants from any reporting requirements for natural gas physical forward contracts with embedded volumetric optionality until the Commission issues further


2 Further Definition of “Swap,” “Security-Based Swap,” and “Security-Based Swap Agreement”; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, RIN 3038-AD46

Interim Final Rule Regarding Commodity Options, RIN 3038-AD62
guidance or orders to clarify applicability of the seven-factor test to these contracts and modify reporting requirements for Trade Options\textsuperscript{3} consistent with comments received from natural gas market participants in June and October, 2012.\textsuperscript{4}

I. Introduction

Correspondence regarding this submission should be directed to:

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The AGA, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States.\textsuperscript{5} There are more than 71 million residential, commercial and industrial natural gas customers in the U.S., of which 92 percent -- more than 65 million customers -- receive their gas from AGA members. AGA is an advocate for local natural gas utility companies and provides a broad range of programs and service for member natural gas pipeline, marketers, gatherers, international gas companies and industry associates. Today, natural gas meets almost one-fourth of the United States’ energy needs.

Many AGA members use a variety of financial tools such as futures contracts traded on Commission-regulated exchanges and over-the-counter energy derivatives, to hedge and mitigate the commercial risks associated with providing natural gas service -- in particular, volatility in natural gas commodity costs. As part of their business to provide natural gas utility service to their customers, AGA members also participate in the physical natural gas markets and contract for pipeline transportation, storage and asset management services. They are not financial entities. AGA is concerned that regulatory uncertainty regarding the Commission’s interim final rules governing the treatment of financial swaps and commodity trade options will distort AGA members’ ability to participate in these markets, and thereby increase the costs to AGA members for procuring and delivering affordable, reliable natural gas supplies to their customers.


\textsuperscript{4} See, e.g., Comments of the American Gas Association, RIN 3038-AD46 (Oct. 12, 2012); Comments of the American Gas Association, RIN 3038-AD62 (June 26, 2012).

\textsuperscript{5} AGA’s offices are located at 400 North Capitol Street, NW, Washington, DC 20001. The telephone number is (202) 824-7000.
II. Request for Interpretative Letter and Alternative No-Action Relief

AGA greatly appreciates the CFTC’s consideration of the comments submitted during the rulemaking process with respect to natural gas contracts with embedded volumetric optionality and the inclusion of the seven-factor test as a framework for analyzing whether such contracts would be exempt from the Commission’s regulation.\(^6\) AGA also appreciates the Commission’s discussion of natural gas supply contracts in describing the operation of the seven-factor test.\(^7\) AGA believes, however, that interpretative guidance is needed to clarify whether certain natural gas peaking supply contracts entered into to manage both expected and unexpected variations in commercial demand, would be exempt from Commission regulation as forward contracts with volumetric optionality under the seven-factor test.

Specifically, AGA seeks the Division’s guidance on whether a natural gas supply contract that gives the purchaser the right but not the obligation to schedule a delivery quantity to cover the purchaser’s demand in the course of commercial operations would be an exempt forward contract with volumetric optionality under the seven-factor test. AGA believes that in such contracts, the gas utility’s option to deliver or not deliver a certain quantity of natural gas does not undermine their overall nature as forward contracts. To support this request for guidance, AGA includes descriptions and documentation of specific contracting scenarios under which natural gas peaking quantities are contracted for and scheduled based on factors outside a gas utility’s control.

In the alternative, AGA requests that the Division issue no-action relief exempting all natural gas market participants from being required to report natural gas forward contracts with embedded volumetric optionality under the Commission’s rules for “swaps” or “commodity trade options,” until the Commission takes further action responding to AGA’s comments requesting clarity on application of these rules to peaking supply contracts\(^8\) and reduced reporting requirements for trade options.\(^9\)

Whichever means the Division pursues to provide AGA members relief, AGA urges the Division and the Commission to recognize that time is of the essence. As noted in AGA’s prior comments, natural gas end-users’ reporting obligations remain unclear until the Commission clarifies the interim final seven-factor test, as requested by AGA in comments filed in October 2012. Further, the interim final Trade Option rule requires significant modification to achieve the minimal reporting burdens intended for end users: unless the Trade Option rule is modified to allow all trade option reporting in one annual filing irrespective of other swap reporting obligations, many natural gas end users are likely to become reporting parties for their end user-to-end-user “swaps” as of April 10, 2013 and would also have to report peaking supply and other trade options under the Part 45 rules

\(^6\) See Product Definition Rule, 77 Fed. Reg. at pp. 48236-44.

\(^7\) Id. at p. 48240.

\(^8\) Comments of the American Gas Association, RIN 3038-AD46 (Oct. 12, 2012), available online on the AGA website.

\(^9\) Comments of the American Gas Association, RIN 3038-AD62 (June 26, 2012), available online on the AGA website.
instead of on Form TO. Even where end users would not be required to report peaking supply deals, their reporting counterparties may insist that the parties mutually represent these deals are either excluded forwards or trade options. AGA has provided documentation in this request to demonstrate that such representations and related negotiations are already taking place between AGA members and their supplier counterparties.

For these and other reasons articulated below, the need for timely guidance is readily apparent. Until the Commission or the Division provides this guidance, continued uncertainty as to the regulatory treatment of a broad range of natural gas supply contracts may impair the efficient functioning of physical natural gas markets and the effective reporting of financial transactions subject to the Commission’s jurisdiction, and gas utilities and their counterparties cannot achieve consensus on the regulatory requirements with respect to these transactions.

AGA urges the Commission to provide expedited clarification regarding the application of the forward contract exclusion to natural gas peaking supply contracts which are used to plan for adequate physical supplies, provide reliable service, and manage demand volatility associated with various commercial factors beyond their control. AGA also believes that Congress, and likely the Commission, did not intend for these agreements to be regulated as swaps.

III. Gas Utility Contracting Practices

AGA members routinely build natural gas supply portfolios that include “peaking” supply contracts for firm delivery of natural gas, which allow gas utilities to respond on short notice to changes in customer demand and satisfy regulatory requirements that the utility stand ready to meet customers’ gas supply needs. This portfolio of assets and contracts also includes baseload natural gas supplies, pipeline transportation storage and no-notice services, and on-system assets such as natural gas storage, liquefied natural gas storage, and propane air storage. In this portfolio, “peaking” supply contracts serve the special purpose of being a readily-available source of natural gas to meet demand swings driven by variable customer loads throughout the year. Factors affecting variable loads include expected and unexpected volatility in customer demand, weather events, constraints or disruptions to alternative sources of supply, and heightened seasonal (winter) demand fluctuations.10

Gas Utility Supply Planning

Gas utilities typically negotiate enabling agreements with potential suppliers, specifying the general terms and conditions applicable to subsequent physical gas supply transactions between the parties. These enabling agreements may take the form of independently negotiated “master” gas purchase agreements, such as the ISDA master

10 Exhibit A is a graphic illustration of the resource portfolio planning that a natural gas utility must undertake in the summer and fall to meet expected loads in the winter months. The temperature graph demonstrates how variations in predicted and actual temperature forecasts can require the utility to plan for a specific combination of storage, transportation and peaking services, and take those services in varying quantities depending on actual weather conditions which may be colder than or warmer than expected.
agreement and base natural gas annex as modified by the parties, or the NAESB Base Contract as modified by the parties. To document specifically agreed-upon natural gas sale and purchase transactions under the terms of a master gas purchase agreement, the parties usually execute a confirmation that sets forth the agreed-upon essential terms for the specific transaction. Depending on applicable state regulatory requirements, a natural gas utility may use a request-for-proposal (“RFP”) process to solicit bids for specific gas supply requirements that it anticipates having to fulfill in the coming months or years. Alternatively, it may negotiate mutually acceptable bilateral gas supply transactions under an existing master agreement with a gas supplier, and transaction specifics are documented on a separate confirmation for each arrangement. A typical RFP, included in Exhibit B, will state the specific gas supply requirement, the term of the requirement, the delivery point, quantity, level of service requested (such as base-load, daily call, peaking), a schedule for awarding the contract to the winning bidder, and related terms and conditions. Once a winning bidder is identified for a specific gas requirement, and any required or voluntary regulatory pre-approvals are obtained, the gas utility and the supplier may execute a separate transaction confirmation for purchase of natural gas in accordance with the specific gas supply requirements, which together with the master purchase agreement, govern any physical delivery made in the specified purchase period. Typically, these RFP processes are mandated by and conducted under the authority of state utility commissions, and suppliers may submit bids only if they are willing to negotiate or have already in place a master purchase agreement with the utility.

Use of either contracting process gives gas utilities the choice and flexibility required to secure short-term and long-term reliable gas supplies at lowest reasonable cost to customers, while managing commercial and operational conditions that may cause expected or unexpected constraints on the local distribution company’s delivery system. Importantly, this contracting process contemplates from the outset that the gas utility will include as a portion of its overall supply portfolio, contracts to fulfill certain peaking needs under which it will only request delivery of the gas if certain operational conditions or demand requirements materialize. As a significant portion of customer demand is weather responsive, the gas utility cannot know with certainty when or even if the gas supplies will be needed. Flexible delivery terms are essential to be able to respond to weather and other unexpected operational conditions. Much of the planning for unexpected increases in demand that would be served by peaking services occur in preparation for the “shoulder” months of October and April, a band of days or weeks around the typical winter heating season. Therefore, to plan for the upcoming 2013-2014 winter heating season, natural gas supply planning and negotiations for peak supplies may commence as early as mid-June, 2013.

11 The terminology “peaking contract” is used herein to describe a natural gas contract intending delivery of variable gas quantities which the buyer (natural gas utility) has the right but not the obligation to schedule for delivery. Such a contract may either be negotiated in the same agreement as a contract for base-load supplies or other agreement requiring delivery of a minimum quantity, or may be entered into as a stand-alone contract allowing the buyer to elect variable quantities without a minimum delivery obligation. These variable quantity arrangements may also be called “swing” or “daily swing” contracts, and other terminology may be used on an industry-wide basis to describe substantially similar arrangements, all of which are entered into with the intent to be physically settled through the delivery of natural gas.
Added to these considerations is the gas utility’s commitment to procure reliable gas supplies at least cost for its customers, as the costs of gas supplies flow through dollar-for-dollar to customer rates, typically through a “Purchase Gas Adjustment” mechanism. Utilities consistently seek to lower gas costs as this is typically required by their state regulators. Gas utilities particularly rely on the flexibility provided by peaking supply contracts to keep these costs low in the winter heating season months of November through March, and to meet unanticipated demand peaks in the shoulder months of October and April. Part of the active choice to schedule none, some or all of the available volumes under a peaking agreement is whether least cost supplies are readily available from other sources, and whether sufficient peaking quantities have been contracted for to be available for future unexpected increases in demand.

**Confirming Delivery of Peaking Supplies**

Certain baseload and/or peaking gas supply volumes needed to meet an upcoming demand spike are typically scheduled for firm delivery\(^\text{12}\) from the gas supplier under the process set forth in the applicable transaction confirmation. As described above, common natural gas industry transaction confirmations reflect a specific transaction between a seller and buyer and are executed pursuant to and incorporate the terms of a master supply agreement between the parties. These agreements note the specific price, quantities, performance obligation, and delivery location, and may also include any special conditions that must materialize in order for the buyer to be able to schedule gas. In some cases, peaking supplies with delivery flexibility will be part of a larger transaction that includes an agreement by the supplier to provide a daily baseload portion of firm gas supplies. Typically, baseload transactions are those were a specified fixed quantity of gas is to be delivered that, once the amount is agreed upon, the parties agree that said volume is to be sold and purchased daily on a firm basis between the parties during the specified delivery period. In other cases, a peaking supply contract will be a stand-alone transaction that specifies a daily quantity from “zero” to a maximum daily quantity, or “up to” a maximum daily quantity— which gives the purchaser the ability to nominate any quantity of natural gas to be delivered on a firm basis on a given day up to the maximum daily quantity specified for the delivery period.

AGA includes several exhibits in this request as examples demonstrating how transaction confirmations may be arranged to allow the utility to take anywhere from “zero” to a specified maximum daily quantity amount of firm peaking gas supplies for a specified delivery period. These confirmations include other certain terms for the transaction specific to the gas utility’s needs, including, without limitation, terms related to nomination times, delivery location, and the number of days in the delivery period the volumes can be nominated. In the transaction confirmation example in Exhibit C1, the gas utility may call on “Firm Variable Quantities” on a daily basis any time the 5-month delivery period, and could elect to take anywhere from “0” up to 5,000 MMBtus/day as peaking firm services for any of those days.

Under these agreements, the price to be paid for gas supplies generally consists of a reservation price and a commodity charge. However, as the Federal Energy Regulatory  

\(^{12}\) See infra, note 14.
Commission has deregulated the natural gas commodity market and allowed parties the flexibility to negotiate gas commodity transactions at negotiated rates, it should be noted that while pricing terms may be written similarly across various confirmations, supply contract pricing terms are not standardized. The reservation price is a fixed charge, which may be calculated on a daily or monthly basis for each day or month in the contract period. For example, in Exhibit C1, the reservation fee is calculated on a daily basis and is paid to the supplier regardless of whether any gas is purchased under the agreement. This fee compensates the gas supplier for standing ready to deliver the firm peaking supplies at all times during the delivery period, whether or not the utility ultimately requires any or all of the quantities contracted for under the agreement. The commodity charge is an additional volumetric charge for the physical gas supplies actually nominated and delivered. In Exhibit C1, for example, the utility is required to notify the supplier of its intent to purchase a specific gas quantity by 8 a.m. on the business day prior to the date of gas flow, and the applicable commodity charge is based on a daily price report that is published hours after the scheduling decision must be made. A similar example of an arrangement for peaking supplies appears on the transaction confirmation in Exhibit C2. Here, the reservation price is calculated on a monthly basis and the commodity charge is based on a first-of-the-month price published in a weekly price index, but the buyer’s ability to nominate peaking supply volumes is also conditioned on the occurrence of extreme weather forecasts anticipated for the day of flow.

AGA believes that these types of contracts are exempt from the Commission’s regulations pertaining to “swaps”, because they are forward contracts with embedded volumetric optionality that meet the seven-factor test as set forth in the Product Definition Rule. Fundamentally, a gas utility’s decision to enter into such contracts is to have assets available to respond to changes in customer demand that are caused by any variety of factors outside the gas utility’s control. As set forth below, AGA describes four example scenarios in which a gas utility enters into a natural gas supply contract giving the utility a right but not an obligation to nominate the firm delivery of a specified quantity of gas, in order to cover its demand requirements in the course of commercial operations. Based on the facts and circumstances presented in these scenarios, AGA contends that each peaking (variable) supply contract described herein, as well as substantially similar ones, should be treated as a forward contract with embedded optionality under the Commission’s seven-factor test set forth in the Product Definition Rule and thus exempt from the Commission’s regulations pertaining to swaps. AGA respectfully requests that the Division review this analysis and, as described more fully below, issue the appropriate interpretative guidance confirming AGA’s position and declaring that contracts entered into that have facts similar to the fact scenarios described herein are forward contracts with volumetric optionality exempt from the Commission’s jurisdiction.

IV. Application of the Seven-Factor Test

In the following examples of common fact scenarios, a gas utility contracts for firm natural gas supplies with the right but not the obligation to nominate various quantities for delivery.\(^\text{13}\) While the seller must always stand ready to deliver these on a firm basis,\(^\text{14}\) the

\(^\text{13}\) AGA members have provided example generic versions of their 2012-2013 gas supply peaking transaction confirmations and request for proposals for use in this interpretative guidance request. The fact scenarios
buyer-utility retains the right to nominate the delivery of the firm natural gas quantities, primarily based on the occurrence or non-occurrence of factors outside its control that affect its ability to meet customer demand and satisfy regulatory obligations to provide service. These factors may include the management of daily swings in winter heating season loads, providing a higher level of service on the coldest days in the winter heating season, managing unexpected warm or cold weather events, and ensuring sufficient supplies during operational or maintenance periods which create expected or unexpected supply constraints or disruptions. As described in the scenarios below, under “peaking” and “swing” contracts the gas utility has the right, but not the obligation, to schedule additional quantities to meet anticipated or unanticipated increases in demand. AGA believes that gas utilities entering into contracts for natural gas supply services under facts and circumstances similar to these example scenarios, should be able to consider these contracts as excluded forwards under the seven-factor test established in the Product Definition Rule.

Fact Scenario A – Winter Heating Season Baseload-and-Swing and Peaking Contracts

In this scenario, a natural gas utility seeks a combination of base-load, swing and daily peaking supply services to manage demand in the winter heating season, from Nov. 1, 2012 through March 31, 2013. Exhibit B documents this scenario, under which the gas utility is soliciting bids for two separate gas supply requirements – the first, a combined base-load and additional daily swing requirement, and the second, an additional daily requirement to meet potential demand peaks on up to 30 of the coldest days that may occur during the winter heating season.

Requirement 1: Under this requirement, the buyer will take and the seller will deliver a selected and locked-in delivery amount of up to 10,000 dekatherms (Dth) once the exact need for the volumes is identified prior to the delivery period; such volumes will be delivered each day from December 1, 2012, through February 28, 2013 as base-load quantities. Pricing for these quantities, in this example, will be based on the Platts’ Gas Daily Price Guide first-of-the-month gas price index for a specified pipeline delivery point. During the months of November 2012 and March described in this subsection are representative of typical gas contracting transactions entered into by AGA member companies that are located throughout the continental United States except the volume amounts, nomination times, delivery points, delivery periods or days, and prices will vary as negotiated by each company.

14 As commonly used in the natural gas industry natural gas commodity contracts, the term “firm service” is a performance obligation under which neither party may interrupt performance to the other without liability except in a Force Majeure event. In a similar context, the Federal Energy Regulatory Commission defines “service on a firm basis” for pipeline transportation and storage as a service that is “not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm services.” See 18 C.F.R. § 284.7(a)(3).

15 These terms may be used interchangeably to describe a physical contract under which the gas utility retains a right to elect delivery of anywhere between zero and a maximum daily quantity of gas supplies for a specified time period, to meet anticipated or unanticipated increases in demand. AGA contends that all physical gas supply agreements sharing the fundamental characteristics of “peaking” or standalone “swing” contracts should qualify as an “excluded forward with volumetric optionality” under the Product Definition rule. See also supra, note 11.

16 One dekatherm (Dth) is equal to one million Btus (MMBtu).
2013 only, the buyer shall have the right but not the obligation to nominate an additional quantity of up to 10,000 Dth of natural gas supplies each day as swing quantities. With respect to the swing quantities, the pricing in this example will be based on the Platts’ Gas Daily Price Guide daily gas price survey midpoint index for the specified delivery point location. The gas utility must make the decision to schedule quantities by 8:30 a.m. on the prior day, for the next Gas Day. This day-ahead election for next-day delivery must be made for each day on which the gas utility elects to flow gas. The daily gas price index, which determines the price of the gas that is scheduled to flow the following day, is published after the next-day quantities are nominated.

**Requirement 2:** Under this requirement, between December 1, 2012, and March 31, 2013, the buyer-gas utility may take up to 30,000 Dth per day up to a total of 900,000 Dth over the term of the contract. The buyer retains discretion to structure its nomination on a daily basis as commercial demand and operational conditions require. For example, the buyer may elect to take delivery of up to 30,000 Dth per day on 30 days during the term of the agreement, or up to 10,000 Dth per day on 90 of days during the term, or not take any gas on some days or any of the days. Pricing for quantities scheduled for delivery under this contract will be based on the Platts’ Gas Daily gas price survey midpoint index for a specified delivery point location – typically the gas utility’s city-gate. As the utility may only take up to a certain fixed volume on a firm basis throughout the term of the contract, gas supply managers generally wait until the last day-ahead gas nomination cycle to determine how much gas, if any, should be scheduled for the next Gas Day. As a result, the quantities are scheduled for flow on the applicable pipeline before the price is known.

**Fact Scenario B – Winter Heating Season Peaking Gas Contract**

In the example scenario documented in Exhibit D, a gas utility is contracting to purchase a flexible delivery quantity of gas during a specified delivery period in the winter heating season from November 2012 through February 2013. The gas utility may nominate the firm delivery of gas in an amount that is anywhere from zero up to 35,000 Dth/day for any or all days within the contract term, but is not required to purchase or take delivery of any minimum daily quantity of natural gas. The utility may schedule the quantities at a number of different delivery points each with an individual maximum daily delivery quantity; however, the total quantity scheduled among all of the delivery points may not exceed the maximum daily contract quantity of 35,000 Dth. The pricing in this example is based on Platts’ Gas Daily gas price indices for certain points specified in the contract. The utility is required to notify the seller of its decision to schedule quantities for delivery no later than 6:30 a.m. on the day prior to the day of gas flow. As above, the price indices are published after this nomination deadline, and therefore, quantities are scheduled for flow on the pipeline before the price is known.

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17 Gas Day: A period of twenty-four (24) consecutive hours beginning and ending as near as practicable at nine o’clock (9 a.m.), Central Clock Time (8 a.m. Mountain Clock Time). NAESB WGQ Standard 1.3.1 states: “Standard time for the gas day should be 9 a.m. to 9 a.m. (central clock time).”
Fact Scenario C – Temperature Strike Peaking Contract

In this scenario documented in Exhibit E, the gas utility purchases weather-contingent natural gas supplies and cannot elect to flow gas unless a certain weather temperature target forecast is demonstrated for the day of delivery. Under the contract, whenever the low forecasted temperature, as reported by a local weather service, will be 28 degrees Fahrenheit or lower at the local airport by 6:00 a.m. on the business day prior to any nomination period, the utility may schedule up to 15,000 Dth per day for a specific period of time during the contract term between December 1, 2012, and February 28, 2013. In other words, the contract states that the utility has the right but not the obligation to request that the supplier deliver any quantity from zero up to the maximum daily quantity of 15,000 Dth during the nomination period, when at least one day in the nomination period has a forecasted low temperature of 28 °F or lower at the local airport. If the utility elects to schedule quantities (up to the maximum daily quantity) over a nomination period of greater than 1 day (a multi-day election), the utility has the right and the obligation to purchase those identical quantities for each day throughout the nomination period, even if all of the days in the nomination period do not meet the temperature condition. In all cases under this example transaction, the nominations must be made at the latest by 7:45 a.m. on the business day prior to the date(s) of gas flow. The pricing in this example will be based on the index price for Henry Hub gas as listed in the Market Center Spot Gas Prices report in the first edition of Platts/Inside FERC-Gas Market Report published for the month in which the gas is sold.

Fact Scenario D – Storage Maintenance /Injection Test Peaking Contract

In this example scenario, the gas utility seeks firm peaking natural gas supplies to cover daily demand requirements when firm service from off-system storage is restricted because of scheduled maintenance or testing at the storage facility. Exhibit F documents a peaking supply contract for a purchase period from October 1 to October 30 that the gas utility has entered into in response to a Critical Maintenance Notice from a storage service provider. The notice in Exhibit E states that the storage facility has scheduled a Storage Facility Injection Test for two gas days in October 2012, prior to which the gas utility will have an increasingly limited ability to nominate storage withdrawals, and after which the storage reservoir is shut in, until normal services resume nine days later. In the days before, during, and after the two scheduled test days, the gas utility uses its alternative supply sources and its October peaking contract to manage variable demand requirements. For example, from October 4 – 11, the utility may rely more heavily on the peaking supply contract because the utility is unable to pull gas from storage to meet its customer demand.

The gas utility is relying on these peaking supplies to bridge a supply-demand gap even under normal weather conditions, as it typically buys less gas than normally required to avoid the shut-in of its own production in warmer than normal weather. Further, the utility must consider, effectively in real-time, whether peaking quantities or other supplies are available at least cost to meet customer needs, while also planning to take some of those supplies on future days before delivery rights.
expire under those contracts. The utility is required to notify the supplier of its election to take service no later than 6:15 a.m. the day prior to the day(s) of gas flow. As above, the price indices are published after this nomination deadline, and therefore, quantities are scheduled before the price is known.

AGA contends that all of the contracts entered into under the examples scenarios set forth above, as well as substantially similar ones, should be considered excluded from the Commission’s regulation as forward contracts or forward contracts with embedded optionality that meet the seven-factor test established in the Product Definition Rule. The Commission has recognized that natural gas peaking supply contracts may satisfy the elements of the seven-factor test for forward contracts with embedded optionality.18 As the Commission noted, “the ability for a gas purchaser to specify a quantity of gas for a certain day is not to encourage speculative activity; rather, it is because the exact quantity of gas to be needed on that future day is unknown, and many gas purchasers have weather-dependent needs that cannot accurately be predicted in advance.”19

As set forth in the Product Definition Rule, a contract falls within the forward contract exclusion from the Commission’s swap and future delivery regulations when it meets the following seven factors: (1) the embedded optionality does not undermine the overall nature of the agreement, contract, or transaction as a forward contract; (2) the predominant feature of the agreement, contract, or transaction is actual delivery; (3) the embedded optionality cannot be severed and marketed separately from the overall agreement, contract, or transaction in which it is embedded; (4) the seller of a non-financial commodity underlying the agreement, contract, or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction to deliver the underlying nonfinancial commodity if the optionality is exercised; (5) the buyer of a non-financial commodity underlying the agreement, contract or transaction with embedded volumetric optionality intends, at the time it enters into the agreement, contract, or transaction to take delivery of the underlying nonfinancial commodity if it exercises the embedded volumetric optionality; (6) both parties are commercial parties; and (7) the exercise or non-exercise of the embedded volumetric optionality is based primarily on physical factors, or regulatory requirements, that are outside the control of the parties and are influencing demand for, or supply of, the nonfinancial commodity. With regard to the seventh factor, the Commission explained as follows:

the predominant basis for failing to exercise the option would be that the demand or supply (as applicable) that the optionality was intended to satisfy, if needed, never materialized, materialized at a level below that for which the parties contracted or changed due to physical factors or regulatory requirements outside the parties’ control. Such failure to exercise, or an exercise for a reduced amount of the underlying commodity, could, for example, be due to colder than expected weather during the summer decreasing demand for air conditioning, in turn decreasing demand for power to run the air conditioning. The Commission does not interpret this to mean

19 Id.
that absolutely all factors involved in the decision to exercise an option must be beyond the parties’ control, but rather the decision must be predominantly driven by factors affecting supply and demand that are beyond a parties control. This also means that the forward contract with embedded volumetric optionality needs to be a commercially appropriate method for securing the purchase or sale of the nonfinancial commodity for deferred shipment at the time it is entered into.\textsuperscript{20}

Under each of the scenarios described herein, the option to delivery or not deliver a quantity of natural gas does not undermine the overall nature of the contract as a forward contract. All of these contracts are commercial merchandising transactions where, when nominated, the parties intend physical delivery of natural gas on a firm basis. As the Commission noted in the Product Definition Rule “commercial merchandising transactions” fall within the historical interpretation of forward contracts because they have the primary purpose of transferring ownership of the commodity, not solely its price risk.\textsuperscript{21} These transactions are thus not “options”, notwithstanding the fact that the gas utility has the right but not the obligation to nominate specific quantities of natural gas on any particular day in accordance with the terms of the contracts.\textsuperscript{22} As noted in the 1985 CFTC OGC Interpretation, under an option, “[i]f the price of the underlying commodity moves in the manner favorable to the option purchaser, the purchase can exercise the option. If the price does not move in a favorable direction, the purchaser can simply abandon the option and forfeit any premium.”\textsuperscript{23} Thus, the economic purpose of the option is to mitigate price risk. By contrast, and as already recognized in the Products Definition Rule, the economic purpose of a gas utility entering into these natural gas peaking supply contracts is not to mitigate price risk (\textit{i.e.}, “not to encourage speculative activity”),\textsuperscript{24} but to market a commodity through normal commercial channels and ensure delivery obligations are met, as required by their state regulators.

The predominant feature of contract in each of the scenarios above is actual delivery of natural gas. As described above, gas utilities build natural gas supply portfolios in order to stand ready to meet its customers’ gas supply needs. The purpose of these agreements, therefore, is to ensure that natural gas supplies are available for actual delivery to meet customer demand. In each of the scenarios above, the ability to nominate the quantity of natural gas that is scheduled for delivery on the pipeline on any given day cannot be severed and marketed separately from the overall contract. The predominant driver of variability in these delivery terms is not price – it is that demand is variable due to weather and other operational considerations, all of which must be actively balanced to make reliable gas deliveries at lowest cost to customers. Having these types of contracts in place is critical to the business of a gas utility in being able to adequately plan to meet the needs of its customers under various weather, demand and operational contingencies.

\textsuperscript{20} Id. at p. 48238 n 341.
\textsuperscript{21} Id. at p. 48228.
\textsuperscript{22} See id. at p. 48238 (referencing \textit{Characteristics Distinguishing Cash and Forward Contracts and “Trade” Options}, 50 Fed. Reg. 39656 (Sept. 30, 1985)(“1985 CFTC OGC Interpretation”)).
\textsuperscript{23} Id.
\textsuperscript{24} Product Definition Rule, 77 Fed. Reg. at p. 48240.
Further, each contract is for the sale of a non-financial commodity (natural gas). In each case, the seller intends at the time that it enters into the contract to deliver the quantities of natural gas nominated by the utility on a firm basis. Typically, there are significant penalties for the seller’s failure to perform under the contract, including liquidated and cover damages, such that it is not in the economic interest of the seller to breach. In other words, the terms of the contracts prevent the seller from taking advantage of price movements in natural gas by failing to perform. Moreover, the utility (buyer) intends at the time that it enters into the contract to take delivery on firm basis of the quantities of natural gas that it nominates. As noted above, the predominant feature is actual delivery, and the purpose of these contracts is to ensure that the utility has adequate supplies to meet a variable demand.

In three of these example scenarios, the commodity price is determined after the utility makes a day-ahead nomination for the quantity of gas to be delivered by the seller, and in all four of these cases, the utility’s decision to enter into these physical agreements is driven by objective criteria predominantly outside the utilities’ control. Even where the gas utility may have prior knowledge of the monthly index price, its decision to enter into peaking supply arrangements is to fulfill potential physical gas needs created by anticipated or unanticipated demand such that utilities may continue to make prudent decisions to deliver reliable and affordable gas supplies to their customers. Further, the quantities contracted for under peaking deals are much less than a gas utility’s total projected sales to their customers – thus, whether or not the commodity price is known prior to scheduling gas flow does not give the utility a substantive speculative influence on price movements in natural gas by its decision to nominate appropriate quantities for delivery. Price speculation is neither the primary motivation to enter into these contracts nor is it practically possible for price to be a standalone trigger of the decision to elect or not elect peaking quantities for future days of flow. Contracts for “swing” or “peaking” supplies cannot be used as a vehicle to transfer meaningful price risk because they do not involve a right to buy or sell at a fixed, specified price, nor do they facilitate financial speculation.

Further, in all cases above, both the seller and buyer under the contracts would be “commercial parties” as the Commission has used that term. In the Product Definition Rule, the Commission clarified that under the Brent Interpretation, a market participant would be a “commercial party” if it regularly makes or takes delivery of a commodity in the ordinary course of their business. The Commission added that this factor is intended to ensure that the Commission’s jurisdiction is not abused by market participants not engaged in a commercial business in the underlying non-financial commodity. There is no question that a gas utility is a commercial party that regularly takes delivery of natural gas in the ordinary course of business. Equally, because the predominant feature of the transaction is actual delivery, the gas utility’s contracting partners are also commercial parties regularly making delivery in the ordinary course of business.

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26 Id. at p. 48239.
Finally, the gas utility’s decision to schedule or not schedule quantities of natural gas for delivery under the contracts in each of the scenarios described above, is based primarily on physical factors, or regulatory requirements, that are outside the control of the parties and are driven by the demand for natural gas. The predominant reason a gas utility would fail to nominate less than the maximum daily contract quantity on any given day in each of the scenarios described above is that the demand for natural gas (i.e., the gas supply needs of the utility’s customers) never materialized or materialized at a level below that for which the parties contracted, or changed due to physical factors or regulatory requirements outside the parties’ control. For example, as the utility’s customer demand is largely weather-driven, the failure to nominate quantities under the contracts could be due to warmer-than-expected weather during the peak winter heating season resulting in decreased demand for natural gas for space heating. While the gas utility has control over the operational decision to nominate the quantity of natural gas for delivery, these scenarios demonstrate that the predominant reasons for the exercise of this discretion are both physical factors outside the parties’ control and an overarching regulatory requirement that gas utilities provide reliable delivery services at reasonable cost to consumers. The contracts in each of these scenarios, and other physical delivery contracts entered into under similar facts and circumstances, satisfy the seventh factor because the decision to take or not take delivery under these contracts is predominantly based on factors outside the parties’ control.

Fact Scenario A is an example of a gas utility contracting for natural gas supplies to meet its peak winter needs at varying levels based on the needs of that gas utility. It contracts for base-load quantities during the expected peak demand months of December, January and February. It contracts for flexible swing quantities in November and March in case the utility experiences cold weather early or late in the season. In addition, it contracts for an additional overall quantity that it can draw on in case the winter season turns out to be colder than normal. Both the “swing” quantity appended to the baseload supply agreement, and the additional “swing” quantities in the standalone agreement, serve the same purpose of giving the gas utility necessary flexibility to manage anticipated or unanticipated weather events. If the expected demand does not materialize on any given day, the utility will consider the same factors, under both the baseload-swing contract and the standalone “swing” or peaking contract, to determine whether it should purchase additional quantities. If the demand does materialize, the utility may nominate any amount up to the maximum volume allowed under one, or both, of these flexible-delivery contracts to meet its needs.

Fact Scenario B is an example of a gas utility contracting for natural gas supplies that it can use at various locations on its system. Such transactions are typically used to meet peak winter needs or as otherwise needed to facilitate local distribution company operations as they carry out their responsibilities to provide natural gas supplies to their customers. The utility in this example may elect to take delivery of different quantities at the various delivery points specified under the contract (including scheduling zero quantities at a particular delivery point) as long as the total quantity scheduled among all of the delivery points does not exceed the maximum daily quantity under the contract. In this case, a utility’s decision not to nominate quantities at a particular delivery point may be due to operational reasons, such as the need to have the supply directed to a different delivery point on the utility’s system.
Fact Scenario C is an example of a gas utility contracting for natural gas supplies to manage a particular weather event, *i.e.*, when the forecast temperature falls below 28 °F. In this case, the gas utility must choose not only the quantity to be nominated, but also the duration of the nomination period as the contract requires the utility to take the same quantity for each day of the nomination period regardless of the temperature on subsequent days. This type of contract helps the utility manage not only high demand during a day of cold weather but also high demand when the cold weather event is expected to last several days.

Fact Scenario D is an example of a gas utility contracting for natural gas supplies to cover demand requirements when a storage asset is unavailable due to scheduled maintenance or testing at the facility. In this case, the decision to nominate or not nominate quantities under the contract is both weather driven (*i.e.*, customer demand for natural gas is variable due to weather) and operational (*i.e.*, the utility cannot use gas in storage to manage variable customer demand). Whether the gas utility nominates quantities under the peaking supply contract will thus depend on a number of factors, including whether spot market gas purchases or other supply assets can make up the difference between forecasted customer demand and the reduced or unavailable gas in storage.

In all of the scenarios described above, the gas utility is required to “think on its feet” to determine how its natural gas supplies will meet the variable customer demand in a reliable manner at the lowest reasonable cost. A gas utility’s discretion to nominate quantities of natural gas for delivery under these peaking contracts cannot be viewed in isolation. Numerous business decisions, physical factors, and regulatory requirements can influence the exercise or non-exercise of discretion to nominate quantities under any particular peaking, swing, or other flexible delivery contract. Since these transactions are part of a portfolio of assets all designed to serve customer demand and satisfy regulatory requirements, gas utilities have choices and thus make decisions regarding which assets to use under the particular circumstances that best meet the needs of customers at the lowest reasonable cost. On any given day, therefore, a gas utility may use a variety of supply assets in its portfolio to meet customer demand, including: pipeline supply or storage agreements (*i.e.*, those without volumetric optionality), supply or storage agreements with volumetric optionality, or off-system or on-system storage assets. In addition, the utility may purchase gas on the spot market and have the quantities delivered to its city-gate(s).

While gas utilities often have some measure of control with regard to which assets to use on any given day, the purpose of holding these assets is still to meet variable customer demand and to satisfy the utility’s regulatory obligation to provide service. In other words, a gas utility’s decision not to exercise the volumetric flexibility contained in a particular transaction on a given day is still based predominantly on physical factors, *i.e.*, the lack of customer demand, even when the gas utility satisfies customer demand through other means. If peak demand does not materialize on any given day, the volume delivered under a peaking supply transaction may be zero. However, if peak demand does materialize, the utility may nominate any amount up to the maximum volume allowed under the peaking supply transaction to meet the need – and in making its decision, the gas utility will consider all the circumstances and gas supply choices available to meet that demand. Not surprisingly, price is an important factor is determining which asset to use. As explained above, because the prices AGA members pay for natural gas are passed on to ratepayers,
AGA members have a clear incentive to acquire these supplies at the lowest possible cost that allows the reliable operation of their systems in a commercially reasonable manner. As the Commission has stated, however, not all factors involved in the decision to exercise an option must be beyond the parties’ control, but rather the decision must be predominantly driven by factors affecting supply and demand that are beyond a parties control.\footnote{Id. at p. 48238 n 341.}

In sum, AGA contends that the Fact Scenarios described above demonstrate that natural gas peaking supply contracts and substantially similar agreements entered into for the physical delivery of natural gas satisfy the seven-factor test and are thus exempt from the Commission’s regulations as swaps or futures. Accordingly, AGA respectfully requests that the Division issue interpretative guidance declaring that contracts entered into under the fact scenarios described above and contracts entered into with substantially similar facts and circumstances may be analyzed as forward contracts with volumetric optionality under the seven-factor test.

\section*{V. Alternative No Action Relief and Market Impacts in the Absence of Relief}

AGA believes that the Commission must issue specific guidance or orders providing final resolution on how to classify natural gas physical supply contracts to avoid serious distortions to a competitive marketplace that natural gas utilities rely on to provide accessible, affordable and reliable natural gas supplies to American energy consumers. In the event that the Division cannot issue the specific interpretative guidance AGA seeks, AGA requests in the alternative that the Division issue expedited no-action relief exempting all natural gas market participants from being required to report natural gas forward contracts with embedded volumetric optionality under any of the Commission’s rules for “swaps” or “commodity trade options”, until the Commission takes further action responding to AGA’s comments requesting both clarity on application of these rules to peaking supply contracts\footnote{Comments of the American Gas Association, RIN 3038-AD46 (Oct. 12, 2012), available online on the AGA website.} and reduced reporting requirements for trade options.\footnote{Comments of the American Gas Association, RIN 3038-AD62 (June 26, 2012), available online on the AGA website.}

It is imperative that the Division provide guidance to natural gas market participants that counterparties can rely on to prepare for compliance with the Commission’s reporting and recordkeeping requirements beginning immediately. In August 2012, the Division issued a no-action letter, which expired on December 31, 2012, that allowed market participants to rely on the trade option exemption without complying with specified provisions.\footnote{Staff No-Action Relief: Temporary Relief for Persons Eligible for the Trade Option Exemption from the Requirements of §§ 32.3(b) and 32.3(c)(1), (3), (4) and (5) of the Commission’s Regulations, CFTC Letter No. 12-06 (August 14, 2012), available online on the CFTC website.} However, whether parties to a natural gas peaking supply contract can rely on the trade option exemption depends on the initial determination of whether such contracts are to be considered excluded forward contracts with volumetric optionality that satisfy the
seven-factor test or as trade options. The seven-factor test established in the Product Definition Rule thus remains the legally operative test for gas utilities seeking to appropriately comply and classify their physical natural gas peaking supply contracts.

Clarification is needed for gas utilities in particular because they are required by their state regulators to be able to stand ready to meet anticipated customer needs, and must manage a portfolio of assets that include peaking supply contracts to meet a variety of forecasted demand scenarios. In the absence of clarification on how to classify and report peaking supply contracts, the potential number of counterparties willing to enter into these contracts may decrease resulting in reduced liquidity and increased prices for consumers. If the market for peaking supplies were to “dry up” as a result of market participants’ concerns that there is insufficient clarity on reporting, or a risk of penalty for incorrect reporting, gas utilities may not be able to take advantage of the flexible, reliable, and short-notice service that is available under these types of contracts. AGA does not believe that the Congress or the Commission intended that regulation of the financial and commodity markets would constrain the physical natural gas markets, create business-changing impacts on regulated natural gas utilities, or ultimately increase the costs of reliable service for natural gas consumers.

Another imminent compliance issue for AGA members is that even where they are not reporting their physical volume transactions, they are now being asked in some cases by their natural gas supplier counterparties to analyze their various peaking, asset management, storage and other commodity agreements under the seven-factor test and/or the trade option test, and make legal representations to this effect. Exhibit H documents a generic notice sent out by a natural gas supplier in January 2013 to all of its gas purchasers, informing them that it was going to add representations to any new confirmations post January 21, 2013 regarding physical natural gas sale and purchase transactions if they contain any optionality that the exercise of such optionality is either “beyond the control of the exercising party” or otherwise is intended to be physically settled. A sample response to this notice from a gas utility is also included in Exhibit H, essentially binding the latter to an interpretation that may or may not apply to some or all of its natural gas physical supply/peaking contracts. AGA members also report that in some cases they cannot come to an agreement with their counterparties as to whether certain physical supply deals are to be classified as swaps, commodity options, trade options, or excluded forwards.

These issues are magnified because on one hand, certain major natural gas market players are likely to be set up for reporting are suppliers to natural gas utilities for their baseload natural gas needs. By contrast, peaking supply and other flexible delivery contracts are entered into with a host of counterparties, some of which will not be registered as swap dealers or otherwise be prepared or willing to report any of their smaller-quantity transactions, e.g. small producers, marketers, and utilities’ industrial customers that have available capacity because of their fuel switching capabilities. Expedited relief and clarity are required to minimize the likelihood of business-changing impacts in the gas industry that would ultimately lead to higher gas costs for customers – time is of the essence so that gas market participants can appropriately determine whether or not a transaction would be required to be reported by a swap dealer on April 10.
The growing confusion among various gas industry market participants could be alleviated if the Division issues appropriate clarity as AGA requests in this letter. Alternatively, AGA believes the Division should issue no-action relief until such time as the Commission clarifies the applicability of the seven-factor test and modifies the trade option reporting requirement to allow for an annual filing for all such activity and exempting it from position limits and large trade reporting regulations.

AGA believes that natural gas peaking supply contracts, if not found to be exempt forward contracts with volumetric optionality, would qualify as trade options under the Trade Option Rule. Unless modified, however, the Trade Option Rule remains problematic for the reporting of natural gas peaking supply contracts. The Trade Option Rule provides only a partial exemption from the Commission’s swap regulations for transactions determined to be trade options. Significantly, parties entering into trade options must comply with the swap data recordkeeping and reporting requirements under Part 45 of the Commission’s regulations. If a party to a trade option is already reporting other (non-trade option) swaps under Part 45, it must continue to be the reporting entity for Part 45 reporting of trade options. Alternatively, if a party to a trade option did not previously report swap transactions under Part 45, any trade options entered into in the prior calendar year must be reported by both counterparties in an annual notice filing on new Form TO.

As indicated above, AGA is concerned that because certain natural gas peaking supply contracts are physical transactions, and certain entities offering them are unlikely to be Swap Dealers (“SDs”) already subject to the reporting requirements under the Part 45 regulations, there is ongoing confusion in the marketplace as to what reporting requirements should be complied with, assuming the counterparties can agree on the proper classification of these transactions. Without further clarification and/or no-action relief, certain gas utilities may be required to report peaking supply contracts as trade options under the Part 45 reporting requirements to the extent the utility reports even one swap transaction on April 10, 2013. However, in the majority of companies comprising AGA’s membership, physical transactions are conducted in a gas supply function that is independent of, and unprepared to, follow through with the same reporting program that another division within the same company may be currently preparing to report financial “swap” activity. To the extent AGA members enter into physical supply deals that are reportable by their counterparties, they are experiencing difficulties in coming to an agreement with their counterparties on the proper classification and reporting obligations that apply to the transactions. AGA members report that they also anticipate some difficulty in entering into additional or new transactions with certain trading counterparties until the rules are clarified.

AGA believes that there are additional problems with the reporting of physical peaking supply contracts as trade options. For example, quantities that would need to be entered on Form TO for peaking contracts appear to require that that entire volume contracted for on the transaction confirmation (i.e., the maximum daily quantity, or the maximum term quantity) would have to be reported irrespective of the quantities that

32 Id.
33 Id.
actually flowed. For reporting trade options to an SDR, there is also no clarity on whether the SDR reporting needs to occur multiple times if there are multiple takes under the same peaking supply deal over the contract term, if those reports are to be sent at the beginning of the transaction confirmation process, a day prior to gas flow when quantities are scheduled, or actual quantities flowing on the day of delivery. Those timing details could further impact transaction confirmation processes and shape how utilities do their physical gas business.

Therefore, to the extent the Division provides no-action relief in lieu of interpretive guidance, AGA respectfully requests that the Division maintain this relief until the Commission clarifies that all counterparties that are not SDs or MSPs may report their trade option transactions in an annual notice filing on Form TO regardless of whether such counterparties are required to report any other swap transactions under Part 45. AGA contends that gas utilities, if required to report peaking supply contracts as trade options, should only have to report their trade options annually on Form TO. Having to put into place the systems and structures necessary to report peaking supply contracts under Part 45 would be unduly burdensome. Moreover, Part 45 reporting of peaking supply contracts would not contribute to transparency as such transactions are simply unlike other swap transactions that would be reported under Part 45.

VI. Conclusion

In sum, the American Gas Association respectfully requests that the Division clarify that natural gas peaking supply contracts entered into under the Fact Scenarios described herein and those entered into under substantially similar facts and circumstances would qualify as exempt forward contracts with volumetric optionality under the seven-factor test established in the Product Definition Rule. Until either the Division or the Commission takes necessary action, AGA’s members do not have regulatory certainty to appropriately classify their natural gas peaking supply contracts either as “trade options” subject to limited “swap” rules or as “forward contracts”– a problem that is only exacerbated when other market participants, including some AGA members’ trading counterparties, disagree on how these contracts should be classified and reported. AGA’s member natural gas utilities are relying on the Division or the Commission to provide clarity in an expedited fashion so that their physical contracting activities may continue in a stable business climate that allows them to procure affordable and reliable natural gas supplies for American energy consumers.

Respectfully Submitted,

Arushi Sharma
American Gas Association
400 N. Capitol Street, NW, Washington, DC 20001
(202) 824-7120 | asharma@aga.org

Enclosures: Exhibits A, B, C1, C2, D, E, F, G, H; Certification; Affirmation.
EXHIBIT A

LDC Resource Portfolio – Load Duration Curve

Predicted and Actual Temperatures
“Buyer” is seeking proposals (“Proposals”) for gas supply. The winning bidder(s) (“Seller(s)”) shall deliver the required gas supply at certain receipt points on pipeline capacity (the “Assets”) currently held by “Buyer”. “Buyer” may subsequently retain an asset manager (“Asset Manager”) to manage the Assets. In the event that “Buyer” retains an Asset Manager, Seller shall deliver gas supply to the Asset Manager on behalf of “Buyer”.

Gas Supply Requirements:

Gas Supply Requirement 1

**Term:**
November 1, 2012 through March 31, 2013.

**Delivery Point:**
Delivered into Pipeline 1 at Location 1.

**Quantity:**
Base-Load Supply – During the period from December 1, 2012 through and including February 28, 2013, Seller shall deliver at the Delivery Point, up to 10,000 dt plus the quantity of fuel retained by Pipeline 1 to transport 10,000 dt to Pipeline 2 at Location 2 (the “MDQ”). The MDQ may be adjusted upward or downward during the Term to account for changes in fuel retention percentages at the Delivery Point(s).

Daily Call – During the Months of November 2012 and March 2013, Buyer shall have the right to call on a quantity of Gas up to 10,000 dt/Day. Seller shall deliver the requested quantity at the Delivery Point(s).

The quantities above are the based upon “Buyer”’s expected requirements as of November 1, 2012. However, depending upon elections made by participants in “Buyer’s” Retail Choice program, the quantities may be reduced. “Buyer” does not expect the reduction to be significant and once executed, the quantities will be fixed for the term of any transaction executed hereunder. To the extent that any modification of proposed pricing may be required to accommodate such a reduction, Bidders shall clearly set forth the adjustment mechanism.

**Price:**
Proposed pricing for the Base-Load quantities shall be based on Platts, Gas Daily Price Guide, first of month index for Location. Proposed pricing for Daily Call quantities shall be based on the Platts Gas Daily daily price survey midpoint index for Location. Bidders shall also specify any adjustment mechanism that may be required to accommodate the potential quantity reduction described above.

Gas Supply Requirement 2

**Term:**
December 1, 2012 through March 31, 2013.

**Delivery Point:**
Delivered into Pipeline 3 (transmission) at Location 3.

**Quantity:**
Daily Call – Each day during the Term Seller shall deliver, at the Delivery Point, the quantity of gas requested by Buyer up to 30,000 dt (the “MDQ”) and up to a total of 900,000 dt during the Term. The MDQ may be adjusted upward or downward during the Term to account for changes in fuel retention percentages.
Proposed pricing for the Daily Call quantities shall be based on the Gas Daily daily midpoint index for Pipeline 3’s city-gates.

Bidder(s) may bid on either or both of the Gas Supply Requirements above.

Instructions to Bidders

Proposals should be sent via e-mail to all of the e-mail addresses below.

All questions in connection with this RFP should also be sent to all of the e-mail addresses above.

Schedule (all times are Eastern Time)

September 27, 2012: All questions should be submitted via email on or before 5:00 pm.

October 2, 2012: “Buyer” will respond to Bidders’ questions in writing by 5:00 pm. All questions and responses will be distributed to all potential bidders.

October 4, 2012: Proposals must be received by “Buyer” by 10:00 am. All proposals shall expressly provide that they will remain binding and in effect, without modification, until 5:00 pm on October 5, 2012.

October 5, 2012: “Buyer” expects to award contracts to successful bidder(s)

Form of Agreement

“Buyer” will consider proposals only from bidders who have an executed NAESB Base Contract for Sale and Purchase of Natural Gas or an executed ISDA with a Gas Annex with “Buyer”. Any transaction entered into as a result of this RFP shall be documented as a transaction under an active NAESB Agreement or ISDA Gas Annex. Please be advised that if the Winning Bidder utilizes an ISDA with a Gas Annex, this transaction will be specifically excluded from margining calculation under the CSA.

Bidders submitting bids in response to this RFP understand and agree that unless and until a definitive Transaction Confirmation has been executed and delivered, no contract or agreement providing for a transaction between such parties shall be deemed to exist between the parties, and neither party will be under any legal obligation of any kind whatsoever with respect to such transaction by virtue of this or any other written or oral expression communication. “Buyer” reserves the right to withdraw or modify this RFP at any time and “Buyer” shall have the right, in its sole and absolute discretion, to reject any or all Proposals submitted in response to this RFP. Potential Sellers shall be subject to satisfactory credit review by “Buyer”
EXHIBIT C1

Transaction Confirmation

Dated: August 8, 2012

Seller: Buyer:
Telephone: Telephone:
Fax: Fax:
Master Agreement No. Master Agreement No.
Transporting Entity Contact Transporting Entity Contact

This Transaction Confirmation is subject to the Master Agreement between Seller and Buyer dated July 1, 2007. Except as otherwise specified in the Master Agreement, the terms of this Transaction Confirmation are binding unless disputed in writing within 2 Business Days of receipt.

**Contract Price:** The Contract Price shall be the sum of the Reservation Charge and the Commodity Charge. The Reservation Charge shall equal 7,000 MMBtu/day x number of days in the term x $0.0050. The Commodity Charge shall be the price per MMBtu appearing in “Platts Gas Daily” under the headings Daily Price Survey.

**Midcontinent Midpoint**

**Delivery Period:** Begin: November 1, 2012 End: March 31, 2013

**Performance Obligation and Contract Quantity:** (Select One)

| Firm (Fixed Quantity): | N/A |
| Firm (Variable Quantity): | 0 MMBtus/day Minimum |
| | 7,000 MMBtus/day Maximum |

**Interruptible:** N/A Up to ______ MMBtus/day

**Delivery Point(s):**

The Primary Delivery Point shall be I , Midcontinent Receipt and Delivery Zone Pooling Point. No Secondary Delivery Points shall be used.

**Other conditions:**

1. Seller shall deliver and sell and Buyer shall receive and purchase up to 5,000 MMBtu per Day.

2. Buyer shall notify Seller of its intent to purchase gas no later than 8:00 a.m. Central Time of the Business Day prior to the flow date. If Buyer makes a nomination for a non-Business Day, including the Business Day immediately following such non-Business Day(s), such as the Days of Saturday, Sunday and Monday, Buyer may not vary the quantity on such Days. For purpose of this Other condition (2), “Business Day” shall mean any Day except Saturday, Sunday or an Exchange holiday.

Seller: Buyer:
By: By:
Title: Title:
Date: Date:
EXHIBIT C2
Transaction Confirmation

Dated: August 8, 2012

Seller: 
Buyer: 

Telephone: 
Telephone: 

Fax: 
Fax: 

Master Agreement No. 
Master Agreement No. 

Transporting Entities, Contact Information:

This Transaction Confirmation is subject to the Master Agreement between Seller and Buyer dated July 1, 2005. Except as otherwise specified in the Master Agreement, the terms of this Transaction Confirmation are binding unless disputed in writing within 3 Business Days of receipt.

**Contract Price:** The Contract Price shall be the sum of the Reservation Charge and the Commodity Charge. The Reservation Charge shall equal 14,000 MMBtu/day x 31 days x 0.0875 = $37,975.00. The Commodity Charge shall be the price first published each month in “Natural Gas Intelligence Weekly Gas Price Index” under the heading Spot Gas Prices, Midwest, Citygate, Bidweek, Avg.

**Delivery Period:** Begin: January 1, 2013 End: January 31, 2013

**Performance Obligation and Contract Quantity:**

(Select One)

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<thead>
<tr>
<th>Firm (Fixed Quantity):</th>
<th>N/A</th>
<th>Firm (Variable Quantity):</th>
<th>Interruptible:</th>
<th>N/A</th>
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<td>MMBtus/day</td>
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<td>MMBtus/day Minimum</td>
<td>Up to ________ MMBtus/day</td>
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<td>□ EFP</td>
<td>14,000</td>
<td>MMBtus/day Maximum</td>
<td>subject to election of □ Buyer</td>
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**Delivery Point(s):**

Pipeline: The Primary Delivery Point shall be ………………. transfer point, which is a paper pooling point on ……………. System. No Secondary Delivery Points shall be used. Transporting entity shall be Pipeline.

**Other conditions**

(1) Seller shall deliver and sell and Buyer shall receive and purchase up to 14,000 MMBtu per Day.

(2) Buyer shall notify Seller of its intent to purchase gas no later than 8:00 a.m. Central Time of the Business Day prior to the flow date. If Buyer makes a nomination for a non-Business Day, including immediately following such non-Business Day(s), such as the Days of Saturday, Sunday and Monday, Buyer may not vary the quantity on such Days. For purpose of this Other condition (2), “Business Day” means any Day except Saturday, Sunday or an Exchange holiday.

(3) Buyer’s Call Rights. Buyer may, on any Day for which the Forecast Temperature is ten degrees Fahrenheit (10°F) or less and in its sole discretion, nominate any quantity up to and including the Contract Quantity. Buyer may exercise a call right for a non-Business Day, including the Business Day immediately following such non-Business Day(s), such as the Days of Saturday, Sunday and Monday, as long as the temperature criterion is met for one Day of the period. If Buyer makes a nomination for a non-Business Day, including the Business Day immediately following such non-Business Day(s), such as the Days of Saturday, Sunday and Monday, Buyer may not vary the nominated quantity on such Days.

(4) The term “Forecast Temperature” shall mean the average of High and Low temperatures for the Day of flow as shown at 7:00 a.m. Central Time on the Business Day prior to the Day of flow by the National Weather Service forecast for AMF local airport under the section “Forecast at a Glance,” or any successor to that section, at the following website or any successor to that website ____. If either the High or Low Temperatures is unavailable from the above National Weather Service Forecast website, the Forecast Temperature would be defined as the average of Daytime High and Overnight Low temperatures shown at 7:00 a.m. CCT on the Business Day preceding the day of flow by “accuweather.com” forecast for Local Airport.
EXHIBIT D

CONFIRMATION LETTER

Contract Reference: 

Seller: [ENERGY COMPANY] 
Seller’s contract no: 

Buyer: [GAS COMPANY] 
Buyer’s contract no. 

Buyer agrees to buy and Seller agrees to sell gas in accordance with the following specific terms and conditions:

Date: April 14, 2012
Deal: P-____ MKT-0---

Contract type: Long Term 
Service level: Peaking Gas

Purchase period: from November 1, 2012 through February 28, 2013

Quantity: Minimum daily quantity: 

Maximum daily quantity: 35,000

Price: 
Demand: $.0300 per MMBtu (dry) per day

Commodity: The higher of Gas Daily at Pipeline Location 1 High point common

or Gas Daily at Pipeline Location 2 High-Point common

or Gas Daily at Pipeline Location 3, Location 4 Pool, high point common

or Gas Daily at Pipeline Location 4, High-Point common

Liquidated Damages: 
If Buyer fails to nominate for delivery the minimum contract quantity during the term of this agreement, Buyer shall pay Seller a penalty of $15.00 per MMBtu times the difference between the minimum contract quantity and the amount Buyer actually nominated.

If on any day during the term of this Agreement, Seller fails to deliver the quantity of gas nominated by Buyer, Seller shall reimburse Buyer in an amount equal to $15.00 per MMBtu times the quantity that Seller failed to deliver plus all demand charges applicable to the entire term of the contract.

Credit worthiness: 
Either party may terminate this confirmation letter as to future deliveries hereunder, if the credit rating of the other party (or of its guarantor or corporate parent if the other party is not rated) falls below either Moody’s Baa3 or Standard & Poor’s BBB- investment grade rating. Further, if either party has reasonable grounds for insecurity regarding the performance of any obligation by the other party (whether or not then due), including, without limitation, the occurrence of a material change in the creditworthiness of the other party, an adequate assurance of performance may be demanded. Such adequate assurance may include, but is not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty. If such adequate assurance is not provided within five business days, the party requesting the adequate assurance may terminate this confirmation letter.

Receipt Point(s): 
Map(s):

Receipt Location 1
Receipt Location 2
Receipt Location 3
Receipt Location 4
Receipt Location 5

Upstream contract information is due to GAS COMPANY by 9 am (TZ) on the day nominations are due.

GAS COMPANY will notify ENERGY COMPANY no later than 6:30 a.m. TIME ZONE (TZ) on the day prior to the applicable flow day(s). All quantities, up to the maximum of 35,000 MMBtu/day (10,000 MMBtu/day at MAP Receipt Location 1; 10,000 MMBtu/day at Receipt Location 2; 5,000 MMBtu/day at Receipt Location 3; 5,000 MMBtu/day at Receipt Location 4; and 5,000 MMBtu/day at Receipt Location 5, will be ratable over weekends and holidays.

Special Provisions: The sale of this gas is subject to the terms and conditions of the referenced master purchase contract.

Seller: Buyer:
ENERGY COMPANY

By: ____________________________

Its: ____________________________

Date: ____________________________

Buyer Representative: _____

Seller Representative: _______

GAS COMPANY

By: ____________________________

Manager Gas Supply, GAS COMPANY

Phone: -- ----- ----

Fax: -- ----- ----

Phone: -- ----- ----

Fax: -- ----- ----
EXHIBIT E

NAME OF BUYER
TRANSACTION CONFIRMATION
NATURAL GAS PURCHASE

THIS TRANSACTION CONFIRMATION IS SUBJECT TO THE MASTER GAS PURCHASE AND SALE AGREEMENT BETWEEN SELLER AND BUYER DATES -- -- ---- [BUYER CONTRACT NO. ####] [NAME OF SELLER – ENERGY COMPANY] NAME OF BUYER – GAS COMPANY

ADDRESS OF SELLER
ADDRESS OF BUYER

ATTN: NAME
ATTN: NAME

PHONE: --- ---- ----
PHONE: --- ---- ----

SERVICE LEVEL: Firm
PIPELINES [pipeline names]

POINTS OF DELIVERY:

##### Name of Point 1
##### Name of Point 2
POOL Name of Pool
OTHER Any other mutually agreeable Points of Delivery Designated by the Parties.

<table>
<thead>
<tr>
<th>Term</th>
<th>Maximum Daily Quantity (MDQ)</th>
<th>Demand Charge per MMBtu per day</th>
<th>Temperature Strike</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/1/2012 through</td>
<td>15,000 MMBtu/Day</td>
<td>$0.098</td>
<td>Forecasted low temperature of 28°F or lower</td>
</tr>
<tr>
<td>2/28/2013</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PROVISIONS:

When the forecasted low temperature for [LOCAL AIRPORT] as provided by AWIS Weather Services, Inc. to Buyer as of 6:00 AM [TIME ZONE] on the business day prior to any nomination period, is 28°F or lower for at least one of the Gas Days of flow for the subsequent nomination period, Buyer has the right but NOT the obligation to elect to purchase weather-contingent supply up to the MDQ.

For gas requested and delivered, Buyer will pay at the index price per MMBtu for “Henry Hub” gas, under the heading, “Market Center Spot Gas Prices,” as reported in the first edition of “Platts/Inside FERC – Gas Market Report” published for the month the Gas is sold, plus $0.03 per MMBtu.

Notifications of election to purchase must be prior to 7:45 AM [TIME ZONE] on the business day prior to the date(s) of flow; Buyer may request and nominate any volume from zero (0) up to the MDQ for any nomination period during the term of the Transaction Confirmation in which at least one Gas Day of that nomination period has a forecasted low temperature of 28°F or lower for [LOCAL AIRPORT.]

If Buyer elects to purchase over a nomination period of greater than 1 day, Buyer has the right AND the obligation to purchase the identical volume (up to the MDQ) for each day throughout the nomination period even though all Gas Days in the nomination period may not have met the temperature condition.

SELLER: ENERGY COMPANY
BUYER: GAS COMPANY

By: By:
Name: Name:
Title: Title:
Date: Date:

PLEASE MAIL TWO SIGNED ORIGINAL TRANSACTION CONFIRMATIONS TO BUYER FOR EACH TRANSACTION.
EXHIBIT F

CONFIRMATION LETTER AND CRITICAL NOTICE

Contract Reference: _____ ---- ----

Seller: [____________________]

Seller’s Contract no:

Buyer: [GAS COMPANY]

Buyer’s Contract no.

Date

Master: [MASTER-CONTRACT-NO.] [Master]

Title: [TITLE-DESIGNATION-NO.]

Date: September 11, 2012

Deal: [DEAL-DESIGNATION-NO.]

Buyer agrees to buy and Seller agrees to sell gas in accordance following specific terms and conditions:

Contract type: Long Term

Service level: Peaking Gas

Purchase period: from October 1, 2012 through October 31, 2012

Quantity: Minimum daily quantity: 0

Maximum daily quantity: 30,000

Price:

Demand: $.0010 per MMBtu per day

Commodity: Based on the index Gas Daily for Location 1 (dry)

Liquidated damages:

If Buyer fails to nominate for delivery the minimum contract quantity during the term of his confirmation letter, Buyer shall pay Seller a penalty of $15.00 per MMBtu times the difference between the minimum contract quantity and the amount Buyer actually nominated.

If on any day during the term of this confirmation letter, Seller fails to deliver the quantity of gas nominated by Buyer, Seller shall reimburse Buyer in an amount equal to $15.00 per MMBtu times the quantity that Seller failed to deliver plus all demand charges equal to applicable to the entire term of this confirmation letter.

Credit:

Either party may terminate this confirmation letter as to future deliveries hereunder, if the credit worthiness: rating of the other party (or of its guarantor or corporate parent, if the other party is not rated) falls below either Moody’s Baa3 or Standard & Poor’s BBB- investment grade rating. Further, if either party has reasonable grounds for insecurity regarding the performance of any obligation by the other party (whether or not then due), including, without limitation, the occurrence of a material change in the creditworthiness of the other party, an adequate assurance of performance may be demanded. Such adequate assurance may include, but is not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty. If such adequate assurance is not provided within five business days, the party requesting adequate assurance may terminate this confirmation letter.

Receipt Points(s): MAP(s):

-- LOCATION 1
Upstream contract information is due to Buyer by 9 AM (Time Zone) on the day nominations are due.

Buyer will notify Seller no later than 6:15 Mountain Time (MT) on the day prior to the applicable flow day(s). All quantities will be ratable over weekends and holidays.

Special Provisions:
The sale of this gas is subject to the terms and conditions of the reference contract.

Seller: [____________________] Buyer: [____________________]
By: [____________________] By: [____________________]
[Seller Signatory] [Buyer Signatory]
Date: [____________________]

CRITICAL NOTICE

To: [GAS COMPANY EMAIL LIST]

Subject: RE: CRITICAL, MAINTENANCE [SITE DESIGNATION NUMBERS] [TO GAS COMPANY] -- 2012 [FROM STORAGE SITE OPERATOR/PIPELINE] Regarding REVISED INJECTION TEST VOLUME

From: [CONTRACTING@STORAGEPROVIDER.COM]
Sent: Tuesday, August 28, 2012 10:53:37 AM ---- TIME ZONE (US & Canada)
To: [GAS COMPANY NOMINATIONS EMAIL LIST]

Subject: CRITICAL, MAINTENANCE [SITE DESIGNATION NUMBERS] [GAS PIPELINE]-- 2012 [GAS PIPELINE STORAGE FACILITY] REVISED INJECTION TEST VOLUME

[GAS PIPELINE] has scheduled the [STORAGE SITE] Injection test for gas days October 2-3, 2012. Key dates are as follows:

Friday, September 14, 2012: Operational flow order [OFO] letters issued to all Firm Storage Service holders for gas days October 2 and 3 injection requirements.

Saturday, September 29, 2012 to Monday, October 1, 2012: Reservoir conditioning. Field on physical injection only. No withdrawal nominations will be accepted. Transfer nominations will be accepted.

Tuesday, October 2, 2012: Based on the OFO requirements, injection limited to 200 mmcf/d (213 mdth/d) rate to ensure all wells are open and flowing. No withdrawal nominations accepted. Transfer nominations will be accepted.

Wednesday, October 3, 2012: Based on the OFO requirements, injection limited to test volume of 250 mmcf/d (266 mdth/d) rate. No withdrawal nominations accepted. Transfer nominations will be accepted.

Thursday, October 4, 2012: Reservoir shut-in. Only transfer nominations accepted.

Friday, October 12, 2012: Return to normal service. Injection and withdrawal nominations accepted.

Customers with questions should contact their Scheduling representative

EVENT DATE: 08/28/2012 10:47:18 AM
Article 1 - Agreement to Sell

1.1 Transactions between Seller and Buyer for the sale and purchase of natural gas shall be confirmed in writing in a confirmation letter, an example of which is attached to this contract as Attachment A. Buyer shall submit to Seller a confirmation letter specifying the following information:

a. the type of contract that is being made, either long-term (longer than a month) or short-term (a month or less);

b. the service level that is applicable, which includes firm, spot and peaking, where firm and peaking contracts may have penalties for nonperformance;

c. the purchase period during which Seller agrees to sell and Buyer agrees to purchase specified quantities of gas;

d. the obligations of Buyer and Seller, which may be stated as maximum and minimum quantities or may be stated as the percentage of the quantity that must be nominated and delivered over a specified period of time;

e. any applicable liquidated damages for nonperformance that is not excused by force majeure;

f. the price per MMBtu at which Seller shall sell the gas to Buyer at the receipt points, which shall include all third-party charges required to tender the gas at the receipt points;

g. the receipt points on the transporting pipeline company’s system (transporter) at which point title to and responsibility for the gas will pass from Seller to Buyer;

h. any special provisions relative to the sale of the gas other than the provisions of this contract.

1.2 Upon acceptance and execution by Seller, the terms of the confirmation letter shall be binding upon Buyer and Seller. This contract and the applicable confirmation letter shall govern the sale of gas for the purchase period shown in the confirmation letter. If there are conflicts between this contract and the confirmation letter, the confirmation letter shall control the transaction. If there are no confirmation letters in effect, neither party shall have an obligation to buy or sell gas.

Article 2 - Term

This contract shall be effective beginning on _________. The contract shall be in effect from month to month until it is canceled by either party upon 90 days’ written notice. No cancellation notice shall be effective, however, until the purchase period shown on any confirmation letter still in effect has expired. The rights of either party pursuant to Article 15, the indemnification obligations under Article 7, and the obligation to make payments due under this contract shall survive any such cancellation.

Article 3 - Liquidated Damages

3.1 Unless excused under this contract or by any applicable confirmation letter, if Buyer fails to nominate for delivery the minimum contract quantity specified in the confirmation letter, Buyer shall pay Seller the liquidated damages amount multiplied by the difference between the minimum contract quantity and the amount Buyer actually nominated.

3.2 If, on any day or part day during the period specified in the confirmation letter, Seller fails to deliver the quantity of gas nominated by Buyer and this failure is not excused by other provisions of this contract or the confirmation letter, then Seller shall pay Buyer in an amount equal to the liquidated damages amount multiplied by the quantity that the Seller failed to deliver. Overdeliveries may not be used to offset underdeliveries.

3.3 Liquidated damages under Sections 3.1 and 3.2 may be computed by either party at the end of the month or the end of the purchase period specified in the confirmation letter to determine whether Buyer nominated the
minimum contract quantity or whether Seller delivered the nominated quantity. A claim for liquidated damages must be made within 90 days after the end of the purchase period or the claim will be waived. The parties agree that this article sets forth a fair and reasonable method for determining the harm to the performing party in the event of a failure to perform by the other when that injury would otherwise be difficult to compute or ascertain.

3.4 EXCEPT AS PROVIDED IN SECTIONS 3.1 THROUGH 3.3 AND 6.3, NEITHER BUYER NOR SELLER SHALL BE LIABLE TO THE OTHER FOR ANY DAMAGES FOR THE FAILURE TO RECEIVE OR DELIVER THE QUANTITIES OF GAS DESCRIBED IN ANY APPLICABLE CONFIRMATION LETTER INCLUDING, WITHOUT LIMITATION, GENERAL, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES.

ARTICLE 4 – QUALITY AND MEASUREMENT

The gas that Seller delivers to Buyer shall conform to the quality specifications of the interstate pipeline that is transporting the gas. If more than one pipeline is involved, the pipeline on which Buyer takes title to the gas will be the transporter. Buyer may refuse to accept and pay for any gas that does not conform to the transporter’s quality specifications and will not incur any penalties as a result of its refusal. As between Seller and Buyer, Seller will be liable for all claims relating to the failure of gas delivered by Seller to meet the quality specifications of the transporter. The volume of gas sold under this contract shall be measured and allocated in accordance with the procedures of the transporter.

ARTICLE 5 – FORCE MAJEURE

5.1 If, as a result of force majeure, as defined in section 5.2, a party is wholly or partially unable to meet its obligations under this contract, other than for payment of monies due, that party shall give the other written notice of such situation, describing it in reasonable detail. Notice shall be given within a reasonable time after the event or after receipt of sufficient information concerning the event. The obligations of both parties shall be suspended to the extent that the force majeure affects such obligations during the continuance of the force majeure. The party affected by the force majeure shall attempt to rectify the conditions brought about by the force majeure in a commercially reasonable manner, but need not rectify the conditions if doing so requires it to settle a strike against its will.

5.2 Force majeure means acts of God, including, but not limited to landslides, lightning, fires, storms, floods, earthquakes; civil disturbances, strikes, lockouts, or other industrial disturbances; acts of the public enemy, wars, blockades, public riots; breakage, explosions, or accident to machinery, pipelines or materials; inability to secure labor, rights of way or materials; interruptions by government or court orders; or any other cause, whether of the kind enumerated or otherwise, which is not reasonably within the control of the party claiming the suspension. In addition, interruptions at any affiliated or unaffiliated third-party facility upon which either party must rely shall be considered an event of force majeure under this contract.

ARTICLE 6 – TAXES, PRODUCTION AND TRANSPORTATION

6.1 Seller shall be responsible for all taxes assessed with respect to the gas prior to its delivery to Buyer and Buyer shall be responsible for all taxes assessed with respect to the gas upon or after delivery. In any event, Seller shall be responsible for all conservation, severance and production-related taxes.

6.2 Seller shall arrange for the transportation and delivery of gas to Buyer’s receipt point, and Seller shall be responsible for all production, gathering, processing, transportation and other costs incurred in delivering gas to Buyer’s receipt point.

6.3 If Buyer’s or Seller’s transporter imposes a balancing, scheduling or other penalty or charge as a result of Buyer’s failure to take a confirmed quantity or Seller’s failure to deliver a confirmed quantity, the party causing the difficulty shall reimburse the other for penalties or charges imposed.

ARTICLE 7 – TITLE

Seller warrants title to and the right to sell the gas committed under the contract and further warrants that all such gas is free from all liens and adverse claims, including tax liens. Seller shall have the obligation to make settlements for all royalties due and payments owed to Seller’s mineral and royalty owners. Seller agrees to indemnify Buyer and save it harmless from all suits, actions, claims, debts, accounts, damages, costs, losses, liens, license fees, and expenses that arise or attach before the title to the gas passes to Buyer or that may be levied and assessed upon the sale of the gas to Buyer. If any adverse claim of any character whatsoever is asserted in respect to any of the gas, Buyer, at its option, may suspend payment until the claim is resolved or may request and receive indemnification for the purchase price from Seller.

ARTICLE 8 – NOTICES

Notices required under the contract shall be deemed fully delivered or served when sent by fax or overnight delivery service to Seller or to Buyer, at the addresses set forth below, or at such other address as either party shall
designate in writing. Communications sent by fax may be confirmed by delivery through the mail or overnight delivery service but shall be deemed delivered when electronic confirmation of receipt is obtained.

**BUYER:**
Manager, Gas Supply
Gas Company
[Address]

[Phone Number]
[Fax Number]

**SELLER:**

**ARTICLE 9 – BILLING**

9.1 Seller shall send to Buyer an invoice after the 5th business day of the month showing the amount of gas delivered during the preceding month. Buyer shall pay the invoice within 10 business days from the date Buyer receives Seller’s invoice. Quantities measured and allocated by the transporter at the receipt points at which Buyer receives the gas shall be presumed to be correct. If the transporter’s quantities differ from those shown on Seller’s invoice, Buyer shall pay for quantities shown on the transporter’s allocation statement. For measurement and payment purposes, all quantities will be determined on a dry basis. Any request for an adjustment to an invoice must be made within 180 days from the date Buyer or Seller receives notification from the transporter of a change in quantities or it will be deemed to have been waived. In no event will any adjustment be made if it is requested later than 24 months from the date of the original invoice. Either party shall pay any additional amounts due as a result of an adjustment within 30 days of a determination of the correct amount. No interest shall accrue until the correct amount is determined. During the term of this contract and for a period of two years thereafter, each party shall have access at all reasonable times to the records and books of the other that pertain to quantities of gas received by Buyer.

9.2 If Seller owes any money to Buyer as a result of Buyer’s overpayment for purchases or any liquidated damages incurred by Seller under this contract or as a result of any obligation under any other contract, Seller authorizes Buyer to withhold payments due to Seller under this contract and to apply the amount to be paid to Seller to the amount due to Buyer. In lieu of payment Seller shall provide Seller with a statement of the reasons for withholding payment. If the contract has terminated, Seller shall pay any amounts that are determined to be owed after the termination within 60 days. Buyer’s failure to exercise its right under this paragraph shall not constitute a waiver of Buyer’s right to withhold future payments.

9.3 Interest shall accrue on any outstanding balance resulting from late payments at a rate equal to 1% above the prevailing prime rate of interest published on the first business day of the month in *The Wall Street Journal* in the “Money Rates” column, for each month until paid, compounded monthly. Interest will accrue on any outstanding balance from the due date until payment is sent.

9.4 If Buyer has agreed to reimburse any of Seller’s costs, Seller will provide Buyer with an invoice and copies of supporting documents. Buyer shall pay Seller within 30 days of its receipt of Seller’s invoice and supporting documents.

9.5 Buyer shall not tender any payment due Seller under an invoice until Buyer receives an executed copy of the confirmation letter associated with the invoice. A payment delayed under this paragraph shall not be considered late and interest shall not accrue.

**ARTICLE 10 – SUCCESSORS AND ASSIGNS**

This contract shall be binding on the successors and assigns of the parties. Without the prior consent of the other party, either party may assign its right and obligations under this contract to an entity (i) controlled by the assigning party, (ii) under common control with the assigning party, or (iii) controlling the assigning party (such entity is referred to herein as an affiliate); however, the assigning party shall notify the other party in writing of such assignment to an affiliate and the assigning party shall not be released from its obligations under this contract. Either party may assign its right and obligations under this contract to an entity that is not an affiliate; provided the assigning party has obtained the written consent of the other party hereto, which consent shall not be unreasonably withheld. In this event, the assigning party shall be released from such obligations under this contract as may accrue on and after the date such written consent is given and the assignment to an entity that is not an affiliate takes effect.

**ARTICLE 11 – CONFIDENTIALITY**

Neither Buyer nor Seller shall disclose the terms of this contract including confirmation letters without the other party’s written consent unless required by a court or regulatory agency or unless the disclosure is to lenders, royalty
owners, or representatives of prospective purchasers of all or substantially all of a party’s assets and those parties have agreed to keep the terms of the contract confidential.

ARTICLE 12 – GOVERNMENT AUTHORITY

12.1 If any state or federal governmental authority with jurisdiction over Buyer’s transactions precludes Buyer from recovering in its rates and charges any portion of the amount paid under this contract, Buyer shall notify Seller of such order in writing. Seller shall then have the option of reducing the sale price to the authorized price or terminating the sale, as provided in Section 12.2. Seller shall not be obligated to reduce the contract price for any gas that Buyer has already received. Buyer shall not be obligated to purchase gas at a price in excess of the authorized price once written notice has been sent to Seller.

12.2 Notwithstanding anything in Article 2 to the contrary, if Buyer notifies Seller that the price indicated in a confirmation letter under this contract is reduced pursuant to Section 12.1 above, Seller may terminate the transactions specified in the applicable confirmation letter.

ARTICLE 13 – ALLOCATION

13.1 If in any month Seller delivers more than the total quantity nominated by Buyer for that month, Buyer may elect to pay for any excess quantities at the lowest daily price quoted in Gas Daily for Region gas delivered into the transporter’s system for the month of overdeliveries. If Buyer does not elect to pay for such excess quantities, as provided above, then Buyer shall return the excess quantities to Seller during the following month at a mutually agreeable point of delivery.

13.2 If Buyer is purchasing gas from Seller under two or more confirmation letters and Buyer receives less than the total quantity for all transactions, Buyer will use its discretion to allocate the total quantity delivered.

ARTICLE 14 – DISPUTE RESOLUTION

14.1 The parties shall attempt in good faith to resolve informally any dispute arising out of or related to this Agreement. The disputing party shall give the other party written notice of the dispute. Within 30 days following receipt of the notice, the receiving party shall submit to the other a written response. Both the notice and response shall include a statement of the party’s position and a summary of the evidence and arguments supporting its position. If the parties are still unable to resolve their dispute, within 90 days of the original notice senior executives of the parties shall meet at mutually agreeable times and places to attempt to resolve the dispute.

14.2 If the parties are unable to resolve the dispute within 120 days of the original notice by following the procedures described in section 14.1, the parties shall select a mediator, who will conduct mediation in [Mediation Location] or such other place as the parties and mediator choose. The mediator will select the procedures to be followed, but neither party shall be required to participate in the mediation for more than 40 hours. The mediator’s fee and expenses and any facilities’ cost shall be equally divided between the parties. Each party shall bear its own legal fees and other costs incurred in presenting its case. The mediation must be completed within 180 days of the original notice, unless otherwise agreed by the parties.

14.3 If the mediation is unsuccessful or in any event after 180 days from the original notice, either party may use any appropriate legal remedies. Neither party shall be required to wait for this period to file a lawsuit if doing so might cause an applicable statute of limitations to bar its claim. Both parties waive any rights they may have to a jury trial in the event of litigation concerning this contract or transactions under this contract.

ARTICLE 15 – FINANCIAL RESPONSIBILITY

15.1 If either party (X) has reasonable grounds for insecurity regarding the performance of any obligation under this contract (whether or not then due) by the other party (Y) (including, without limitation, the occurrence of a material change in the creditworthiness of Y), X may demand adequate assurance of performance. Adequate assurance of performance shall mean sufficient security in the form, amount and for the term reasonably acceptable to X, including, but not limited to, a standby irrevocable letter of credit, a prepayment, a security interest in an asset or a performance bond or guaranty (including the issuer of any such security).

15.2 In the event (each an event of default) either party (the defaulting party), its guarantor, and/or other credit support provider shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any obligation to the other party with respect to any guarantee, letter of
credit, or other credit support obligation relating to this contract (related credit support obligation); (vii) fail to give adequate assurance of performance under Section 15.1 within 48 hours but at least one business day of a written request by the other party; (viii) not have paid any amount due the other party hereunder on or before the second business day following written notice that such payment is due, or (ix) allow the occurrence and continuation of an event of default with respect to that party under any physical or financial commodity contract or transaction between the parties that gives rise to the right to terminate and liquidate such contract or transaction; then the other party (the non-defaulting party) shall have the right, at its sole election, to immediately withhold and/or suspend deliveries or payments upon notice and/or to terminate and liquidate the transactions under this contract, in the manner provided in Section 15.3, in addition to any and all other remedies available hereunder.

15.3 If an event of default has occurred and is continuing, the non-defaulting party shall have the right, by notice to the defaulting party, to designate a day, no earlier than the day such notice is given and no later than 20 days after such notice is given, as an early termination date (the early termination date) for the liquidation and termination pursuant to Section 15.3 (a) of all transactions under this contract, each a terminated transaction. On the early termination date, all transactions will terminate, other than those transactions, if any, that may not be liquidated and terminated under applicable law or that are, in the reasonable opinion of the non-defaulting party, commercially impracticable to liquidate and terminate (excluded transactions), which excluded transactions must be liquidated and terminated as soon thereafter as is reasonably practicable, and upon termination shall be a terminated transaction and be valued consistent with Section 15.3 (a) below. With respect to each excluded transaction, its actual termination date shall be the early termination date for purposes of Section 15.3 (a).

a. As of the early termination date, the non-defaulting party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each party with respect to all Gas delivered and received between the parties under terminated transactions and excluded transactions on and before the early termination date and all other applicable charges relating to such deliveries and receipts (including without limitation any amounts owed under Article 3), for which payment has not yet been made by the party that owes such payment under this contract and (ii) the market value, as defined below, of each terminated transaction. The non-defaulting party shall (x) liquidate and accelerate each terminated transaction at its market value, so that each amount equal to the difference between such market value and the contract value, as defined below, of each terminated transaction(s) shall be due to the Buyer under the terminated transaction(s) if such market value exceeds the contract value and to the Seller if the opposite is the case; and (y) where appropriate, discount each amount then due under clause (x) above to present value in a commercially reasonable manner as of the early termination date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to the relevant terminated transactions). For purposes of this Section 15.3 (a), contract value means the amount of gas remaining to be delivered or purchased under a transaction multiplied by the contract price, and market value means the amount of gas remaining to be delivered or purchased under a transaction multiplied by the market price for a similar transaction at the delivery point (including without limitation any amounts owed under Article 3) determined by the non-defaulting party in a commercially reasonable manner. No market value and no contract value shall be ascribed to any terminated transaction that is interruptible. To ascertain the market value, the non-defaulting party may consider, among other valuations, any or all of the settlement prices of NYMEX gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A party shall not be required to enter into replacement transactions in order to determine the market value. Any extensions of the term of a transaction to which parties are not bound as of the early termination date (including but not limited to evergreen provisions) shall not be considered in determining contract values and market values. For the avoidance of doubt, any option pursuant to which one party has the right to extend the term of a transaction shall be considered in determining contract values and market values. The rate of interest used in calculating net present value shall be determined by the non-defaulting party in a commercially reasonable manner.

b. The non-defaulting party shall net or aggregate, as appropriate, any and all amounts owing between the parties under Section 15.3 (a), so that all such amounts are netted or aggregated to a single liquidated amount payable by one party to the other (the net settlement amount). At its sole option and without prior notice to the defaulting party, the non-defaulting party may set off any net settlement amount owed to the non-defaulting party against any collateral held by it in connection with any related credit support obligation and any amount(s) payable by the defaulting party to the non-defaulting party under any other agreement or arrangement between the parties.
c. If any obligation that is to be included in any netting, aggregation or setoff pursuant to Section 15.3 (b) is unascertained, the non-defaulting party may in good faith estimate that obligation and net, aggregate or setoff, as applicable, in respect of the estimate, subject to the non-defaulting party accounting to the defaulting party when the obligation is ascertained. Any amount not then due which is included in any netting, aggregation or setoff pursuant to Section 15.3 (b) shall be discounted to net present value in a commercially reasonable manner determined by the non-defaulting party.

15.4 As soon as practicable after a liquidation, notice shall be given by the non-defaulting party to the defaulting party of the net settlement amount, and whether the net settlement amount is due to or due from the non-defaulting party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount, provided that failure to give such notice shall not affect the validity or enforceability of the liquidation or give rise to any claim by the defaulting party against the non-defaulting party. The net settlement amount shall be paid by the close of business on the second business day following such notice, which date shall not be earlier than the early termination date. Interest on any unpaid portion of the net settlement amount shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under Money Rates by The Wall Street Journal, plus two percent per annum; or (ii) the maximum applicable lawful interest rate.

15.5 The parties agree that the transaction hereunder constitute a forward contract within the meaning of the United States Bankruptcy Code and that buyer and seller are each forward contract merchants within the meaning of the United States Bankruptcy Code.

**ARTICLE 16 – MISCELLANEOUS**

16.1 No waiver by either party of any one or more defaults or breaches by the other in the performance of the contract shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

16.2 The contract is subject to all present and future valid laws and lawful orders of all regulatory bodies. Should either of the parties, at any time during the term of the contract, be ordered or required to do any act inconsistent with the provisions of the contract, the contract may be terminated by either party after giving 30 days’ written notice.

16.3 THE CONTRACT, INCLUDING THESE GENERAL TERMS AND CONDITIONS, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF [STATE].

16.4 There are no third-party beneficiaries to the contract.

16.5 This contract plus any applicable confirmation letters set forth the entire agreement of the parties. This contract may be amended only by a writing executed by both parties.

16.6 Nothing contained in this contract shall be construed as requiring either party to enter into any transaction hereunder. Neither party shall be obligated hereunder unless and until a transaction has been agreed to pursuant to the procedures described herein. All transactions are entered into in reliance on the fact that this contract and all such transactions form a single agreement between the parties, and the parties would not otherwise enter into any transactions.

**THIS CONTRACT** is entered into by the authorized representatives of the parties whose signatures appear below.

**SELLER:**

By _____________________________

[Name],

Executive Vice President & COO

**BUYER:**

GAS COMPANY

By _____________________________

[Name],

Executive Vice President & COO
ATTACHMENT A
TO THE
MASTER GAS PURCHASE CONTRACT
BETWEEN
________________________, SELLER
AND
GAS COMPANY
DATED ________________

CONFIRMATION LETTER

Contract Reference:
Seller: ________________________________
Seller’s Contract No.: __________________
Buyer: Gas company
Buyer’s contract number: _______  Seller’s contract number: _______

Date: __________________________

Buyer agrees to buy and Seller agrees to sell gas in accordance with the following specific terms and conditions:
Contract type: Short term □ Long term □
Service level: Firm □ Spot □ Peaking □ Other: ________________________________
Purchase period: from: __________________ through: __________________
Quantity:
Minimum daily quantity: _______ MMBtu
Maximum daily quantity: _______ MMBtu
Obligation: ____________________  Obligation Period: ________________________

Price:
Liquidated Damages:
Receipt points:
Special provisions:
The sale of this gas is subject to the terms and conditions of the referenced contract.

SELLER: By: ________________________
Its: ______________________________

BUYER: By: ________________________
[Name],
Executive Vice President & COO
EXHIBIT H

Counterparty Notice to Gas Utility’s Gas Supply Department Requiring Representations Applying CFTC Rules

NOTICE OF ADDITION OF MUTUAL REPRESENTATIONS TO NATURAL GAS PURCHASE AND SALE TRANSACTION CONFIRMATIONS

Please be advised that beginning on January 21, 2013, all new Transaction Confirmations issued subject to a Contract for Sale and Purchase of Natural Gas or other form of natural gas purchase and sale contract to which is a party:

Each party represents to the other that, as of the date of this transaction (as first set forth above on this Transaction Confirmation):

(a) It regularly makes or takes delivery of the commodity that is the subject of this transaction in the ordinary course of its business and it is entering into this transaction in connection with such business;

(b) If the transaction contains an option, then either the factors determining the exercise of such option are beyond the control of the exercising party, or (i) if it is the offeree of such option, it is a producer, processor, commercial user of, or a merchant handling the commodity, or the products or byproducts thereof, that is/are the subject of the transaction (a “Commercial Party”) and it is entering into the transaction solely for purposes related to its business as such; (ii) and if it is the offeror of such option, it is either a Commercial Party and it is entering into the transaction solely for purposes related to its business as such or it is an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act; and

(c) It intends to make or take physical delivery of the commodity in accordance with the terms and provisions of this Transaction Confirmation and the Contract of which this Transaction Confirmation is a part.

The following statement will also be added with respect to the foregoing mutual representations: “If the foregoing mutual representations are inconsistent with or are in conflict with any of the provisions, as the same may have been or may be amended from time to time, of the Contract for Sale and Purchase of Natural Gas or other form of natural gas purchase and sale contract to which this Transaction Confirmation is subject, the foregoing mutual representations will control.”

This is to inform you that, as of January 21, 2013, all new Transaction Confirmations entered into on and after January 21, 2013. Of necessity, we will first begin adding these provisions to written/paper Transaction Confirmations. We are working to incorporate the same language into electronic Transaction Confirmations as soon as reasonably possible.

Why is this being done? Given the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) and the regulations promulgated thereunder, believes that it is reasonable and prudent for the parties to natural gas physical forward purchase and sale contracts to do what they can to ensure (with the understanding, of course, that no particular regulatory or legal outcome can ever be ensured or guaranteed) that the physical natural gas transactions they enter into will be treated as either excluded physical forward contracts or commodity trade options for Dodd-Frank purposes. The mutual representations set forth above have been developed with that purpose in mind.

If you have any commercial questions regarding any of the foregoing, please feel free to give your commercial representative a call so that he or she can respond to your question. If you have any legal questions regarding any of the foregoing, please have your counsel give in-house counsel for

Thank you very much for your business.
EXHIBIT H (Continued)

Natural Gas Utility Response to Counterparty Notice

February xx, 2013

NATURAL GAS SUPPLIER
Attn: Commercial Contracts

The Natural Gas Utility makes the following representations and acknowledgements under the Base Contract for Sale and Purchase of Natural Gas as of September 1, 2006 between the Natural Gas Utility and Natural Gas Supplier (“Contract”). Natural Gas Utility represents that it is qualified to enter into Trade Options as defined by the Commodity Futures Trading Commission. Natural Gas Utility represents, and will be deemed to represent on each date that it enters into a transaction under the Contract, that it is a producer, processor, or commercial user of, or merchant handling Gas, or the products or by-products thereof, and that all transactions under the Contract are solely for purposes related to its business as such. Natural Gas Utility acknowledges that all transactions entered into pursuant to the Contract are intended to settle physically.

Natural Gas Utility agrees that this correspondence exchange will constitute a written document executed by both parties pursuant to the Contract.

DIVISION, GAS SUPPLY

NATURAL GAS UTILITY BUSINESS SUPPORT O/BO Utility Company

(Officer signing of behalf of Natural Gas Supplier)

(Insert Title)

NATURAL GAS SUPPLIER

----------------------------------------------------------End of Comments and Exhibits----------------------------------------------------------
CERTIFICATION

Pursuant to CFTC Rule 140.99(c)(3)(i), I hereby certify that the material facts set forth in the attached letter dated February 22, 2013, are true and complete to the best of my knowledge.

__________________
Arushi Sharma, Esq.
American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001
AFFIRMATION

Pursuant to 17 CFR 140.99(c)(3)(ii), if any material representation made in this request ceases to be true and complete, I or another authorized representative will ensure that Commission staff is informed promptly in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a Letter, I or another authorized representative will promptly so inform Commission staff.

________________
Arushi Sharma, Esq.
American Gas Association
400 N. Capitol Street, NW
Washington, DC 20001