

# AIRD & BERLIS LLP

Barristers and Solicitors

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November 5, 2010

BY COURIER

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor, Box 2329  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.  
New Application to Vary Condition of Order (EB-2009-0187)  
Board File No. EB-2010-0310**

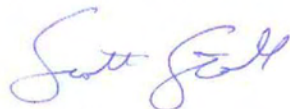
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Please find attached the evidence of Enbridge Gas Distribution Inc. in support of its application to vary a condition in this proceeding. Electronic copies of the materials will be filed on the Board's RESS system later today and hard copies will be couriered to the Board.

If there are any questions please contact the undersigned at your earliest convenience.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

SS/hm  
Encl.

cc: All Intervenors

EXHIBIT LIST

<u>EXHIBIT</u>	<u>TAB</u>	<u>SCHEDULE</u>	<u>DESCRIPTION</u>
<u>A - GENERAL</u>			
A	1	1	Exhibit List
	2	1	Application - Filed September 15, 2010
<u>B - EVIDENCE</u>			
B	1	1	Evidence
		2	EB-2009-0187 Decision and Order of the OEB, Dated April 5, 2010
		3	Gas Distribution Agreement Between York Energy Centre LP and Enbridge Gas Distribution Inc.
		4	Ontario Regulation 305/10 Energy Undertakings: Exempt Undertaking (July 29, 2010)
		5	Pristine Power Announcement August 4, 2010
		6	Pristine Power Announcement August 21, 2010
		7	York Energy Center Construction Photographs - October 19, 2010

September 15, 2010

BY COURIER AND EMAIL

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Enbridge Gas Distribution Inc.  
Request to Amend Condition of Approval  
Board File No: EB-2009-0187**

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On April 5<sup>th</sup>, 2010 the Ontario Energy Board ("**OEB**") issued a decision and order granting Enbridge leave to construct 16.7 kilometres of 406 millimetre (16 inch) diameter steel pipeline subject to certain conditions which were included in Appendix "A". The conditions of approval included condition 1.2 which is reproduced below.

1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.

The York Energy Centre had been the subject of delays related to certain approvals required for the construction of the facility. The Ontario Government recently enacted Ontario Regulation 305/10 Energy Undertakings: Exempt Undertakings (the "**Regulation**") in respect of the York Energy Centre. The Regulation exempts the York Energy Centre from these certain approvals.

With the passing of the Regulation York Energy Centre is moving forward with its project. However, given the time that has elapsed, Enbridge will not be commencing construction in the field prior to December 31, 2010. Materials and equipment are scheduled to be ordered by end-September 2010 and construction will start in early 2011. As such, Enbridge is requesting the Board amend condition 1.2 and insert the date December 31, 2011 in replacement of December 31, 2010.

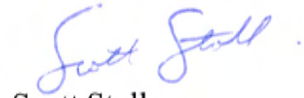
September 15, 2010  
Page 2

Filed: 2010-11-05  
EB-2010-0310  
Exhibit A  
Tab 2  
Schedule 1  
Page 2 of 2

If there are any questions please contact me at your convenience.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

SS/hm  
Encl.

7160357.1

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B) pursuant to Section 90(1);

**AND IN THE MATTER OF** an application by Enbridge Gas Distribution Inc. for an Order varying a condition of approval of the Decision and Order EB-2009-0187 by which the Ontario Energy Board granted leave to construct a natural gas pipeline in the Region of York.

## **EVIDENCE OF ENBRIDGE GAS DISTRIBUTION INC.**

### **Introduction**

1. On September 15, 2010 Enbridge Gas Distribution Inc. ("**Enbridge**") filed a request with the Ontario Energy Board ("**Board**") to amend one condition of the Decision and Order in EB-2009-0187, dated April 5, 2010, in which the Board granted Enbridge leave to construct a pipeline and related facilities (the "**Pipeline**") in the Region of York. A copy of the Decision and Order can be found at Exhibit B, Tab 1, Schedule 2.
2. The Conditions of Approval which formed part of the Decision and Order included:
  - 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.
3. As part of EB-2009-0187 Enbridge filed a copy of the gas delivery agreement ("**GDA**") between Enbridge and the York Energy Centre LP ("**YEC LP**"). A copy of the GDA may be found at Exhibit B, Tab 1, Schedule 3.

### **Events Since April 5, 2010**

4. On July 29, 2010, the Government of Ontario enacted O.Reg. 305/10 Energy Undertakings: Exempt undertakings ("**Reg. 305**") under the *Planning Act*, R.S.O. 1990, c. P- 13 (the "**Planning Act**") which exempted the York Energy Centre from the obligation to obtain certain approvals from the municipality. A copy of Reg. 305 is provided at Exhibit B, Tab 1, Schedule 4.
5. On August 4, 2010, Pristine Power Inc., the holder of a 50% interest in the York Energy Centre ("**YEC**"), announced the receipt of the Development Permit from the local

conservation authority. A copy of the announcement is provided at Exhibit B, Tab 1, Schedule 5.

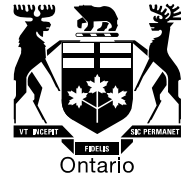
6. On August 25, 2010 Pristine Power Inc. announced YEC had achieved financial close and funding. A copy of the announcement is provided at Exhibit B, Tab 1, Schedule 6.
7. Construction of YEC has commenced. Attached at Exhibit B, Tab 1, Schedule 7 dated October 19, 2010 are photographs demonstrating that construction is underway.
8. Enbridge filed updates with the Board regarding the provision of financial assurance, the payment of the Contribution In Aid of Construction (“CIAC”) and changes to the schedules. These updates were filed with the Board on April 9, April 15, May 10, June 3, September 2, October 15 and November 4, 2010.
9. On November 1, 2010 Enbridge received the latest in a series of payments of CIAC from YEC LP. To date, YEC LP has provided to Enbridge CIAC payments totalling \$10,000,000 plus applicable taxes and a \$6,500,000 irrevocable letter of credit.
10. The Date of First Deliveries (GDA Appendix C Part 3 (b)) has been updated to December 1, 2011. YEC is expected to begin commercial operations in the second quarter of 2012.
11. Enbridge has been and is continuing to meet with regulatory authorities regarding permits for the Pipeline.
12. Enbridge has commenced the competitive process to choose a contractor for the construction of the Pipeline.
13. Enbridge has committed to the purchase of more than \$5 million in pipe and materials for the Pipeline.

#### **Reasons for extension**

14. To protect ratepayers, Enbridge’s commitment of expenses and resources to the Pipeline is tied to the receipt of financial assurance and CIAC payment from YEC LP. Given the time that elapsed before enactment of Reg. 305, potential delays due to weather, permits and material delivery, Enbridge may not be commencing construction prior to December 31, 2010.
15. Enbridge is working diligently to begin construction in 2010. Enbridge will advise the Board if this application to Vary Condition of Order is no longer required.

Ontario Energy  
Board

Commission de l'Énergie  
de l'Ontario



**EB-2009-0187**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*,  
S.O. 1998, c. 15, (Schedule B);

**AND IN THE MATTER OF** an Application by Enbridge Gas  
Distribution Inc. for an Order pursuant to Section 90(1) of  
the *Ontario Energy Board Act, 1998*, granting leave to  
construct a natural gas pipeline in the Region of York.

**BEFORE:** Gordon Kaiser  
Vice Chair and Presiding Member

Paul Sommerville  
Member

Ken Quesnelle  
Member

### **DECISION AND ORDER**

Enbridge Gas Distribution Inc. (“Enbridge”) filed an application with the Ontario Energy Board (the “Board”) on September 3, 2009, under section 90 of the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B, (the “Act”) for an order granting leave to construct approximately 16.7 kilometres of 406 millimetre (16 inch) diameter Extra High Pressure steel pipeline to deliver natural gas to the York Energy Centre LP, a proposed natural gas generating facility. The Board has assigned the application file number EB-2009-0187.

For the reasons set out below, the Board finds the construction of the proposed pipeline to be in the public interest and grants the leave to construct on the terms and conditions

(Conditions of Approval) set out in this Decision. The Board's Conditions of Approval are attached as Appendix A.

### **The Proposed Pipeline**

The proposed pipeline route begins at Enbridge's Schomberg Gate Station located at 4955 Lloydtown-Aurora Road and proceeds east along the road allowance of Lloydtown-Aurora Road for approximately 5.5 kilometres to Jane Street. The pipeline then proceeds north along Jane Street for 3.0 kilometres to Highway 9. The pipeline follows Highway 9 eastwards for 4.2 kilometres to Dufferin Street. It then proceeds north along Dufferin Street for 3.6 kilometres and then proceeds east for approximately 0.4 kilometres to the proposed York Energy Centre, located at 18781 Dufferin Street. Construction is scheduled to start in the spring of 2010 with a planned commissioning during the second quarter of 2011 and in-service date in the last quarter of 2011.

A map showing the location of the proposed pipeline is attached as Appendix B.

### **The Proceeding**

The Board issued a Notice of Application and Hearing dated September 22, 2009. The Board proceeded by way of a written hearing.

Intervenor status was granted to the York Region District School Board ("YRDSB") on behalf of Kettleby Public School, York Energy Centre LP ("YEC"), a customer supporting the pipeline approval and Hunter's Green Rate Payers Association, represented by Harten a Division of Harten Group ("Harten"). Harten was the only intervenor who requested and was granted cost award eligibility status and is the only intervenor who actively participated in the proceeding and opposed the approval of the application.

The Board granted Observer status to the Ontario Greenbelt Alliance and to the Global Environmental Action Group, both not-for-profit environmental organizations.

The Board also received letters of comment from Indian and Northern Affairs Canada ("INAC"), York Region Environmental Services Department ("York Region") and Save the Oak Ridges Moraine Coalition ("STORM").



On November 5, 2009 the Board issued Procedural Order No. 1 setting out a schedule for a written proceeding.

On November 27, 2009 the Board issued Procedural Order No.2 with an approved Issues List which set the scope of the proceeding.

Board Staff and Harten filed written interrogatories to Enbridge on December 11 and December 16, 2009 respectively and Enbridge responded on December 21, 2009. Harten filed intervenor evidence on January 8, 2010. Enbridge asked interrogatories on Harten's evidence on January 18, 2010 and Harten responded on January 25, 2010.

Enbridge filed its argument-in-chief on February 8, 2010. Board Staff and Harten filed their respective written submissions on February 12, 2010. Enbridge's reply argument was filed on February 22, 2010. This completed the record of the proceeding. As part of its submissions, Harten claimed that there exists a conflict of interest among legal representatives of Enbridge in this proceeding. It asserts the conflict arises because members of the same law firm acted for the Ontario Power Authority ("OPA") in its generation procurement process, which resulted in YEC's agreement with the OPA.

Enbridge responded that, in its view, there is no conflict of interest. It argued that the fact that members from the same firm acted for different parties in the two processes does not result in a conflict of interest.

The Board agrees. The two processes referred to have very different elements and there is no inherent conflict. The OPA process was directed to the identification of an appropriate generation solution for York region. The Board's process, that is this proceeding, concerns itself with the leave to construct facilities by the local gas distribution to support the generation solution selected. These are very different regulatory processes, which are merely tangentially related.

### **The Public Interest Test**

This is an application under section 90 of the Act seeking an order for leave to construct a natural gas pipeline. Section 96 of the Act provides that the Board shall make an Order granting leave if the Board finds that "the construction, expansion or reinforcement of the proposed work is in the public interest". When determining whether a project is in the public interest, the Board typically examines the need for the

project, the economics of the project, the impact on the ratepayers, environmental impact and the impact on land owners.

The Board set out the following four issues as defining the scope of the proceeding:

- Is there a need for the proposed pipeline?
- Are there any undue negative rate implications for Enbridge's rate payers caused by the construction and operation of the proposed pipeline?
- What are the environmental impacts associated with construction of the proposed pipeline and are they acceptable?
- Are there any outstanding landowner matters for the proposed pipeline routing and construction?

Each of these issues is addressed below.

### **The Need for the Project**

The need for the proposed pipeline is based on the requirement to provide a dedicated gas supply to the YEC generating peaking facility. The YEC has a 20 year Gas Delivery Agreement ("GDA") with Enbridge which supports that need.

YEC has entered into a 20-year agreement with the Ontario Power Authority ("OPA") to generate and supply electricity to Ontario. This agreement was the result of an OPA-administered competitive procurement process as per a directive of the Ontario Ministry of Energy. YEC is an intervenor in this proceeding and as the customer receiving natural gas on the proposed pipeline. YEC supports the need for the project and the approval of the application.

Harten pointed that the Council of the Township of King opposes the location of the YEC within the municipality. Harten provided, in written submissions and as part of its written evidence, a history of the Township's opposition. Specifically, Harten noted that the Township passed an Interim Control By-Law #2010-05 per section 38 of the

Planning Act, R.S.O. 1990 (“Interim By-Law”)<sup>1</sup> which allows the Township to conduct a review of land use policies with respect to power generation facilities. Harten posited that the Township’s unwillingness to host the generating plant was relevant because the pipeline was “an integral component of the generator project” and therefore could not be treated separately when reviewing the leave to construct by the Board.

Enbridge replied that in its view the “...Board’s jurisdiction is limited to the pipeline” and that the generating plant location approvals are outside the scope of EB-2009-1087 proceeding.

The Board noted at the outset of this proceeding, in Procedural Order No. 1, that its jurisdiction in this case is restricted to the review of matters related to the construction and operation of Enbridge’s proposed pipelines. Matters related to the location, construction, operation or impacts of the generating station are not within the scope of the Board review.

Board Staff submitted that there are no outstanding issues related to the need for the pipeline.

The Board finds that Enbridge has adequately addressed the need for the pipeline.

### **Project Economics and Ratepayers Protection**

The estimated capital cost of the pipeline is about \$ 39 million. An economic evaluation of the project was conducted using the Discounted Cash Flow methodology as set out in the “OEB Guidelines for Assessing and Reporting on Natural Gas System Expansion in Ontario” part of the “EBO 188 Report of the Board” dated January 1998. The Profitability Index (“PI”) of the project is 1.0 over a 20 year customer horizon. This PI is achieved with the inclusion of a Contribution in Aid of Construction (“CIAC”) to be paid by the YEC.

Enbridge’s evidence is that its ratepayers would be protected from financial risks occurring prior to pipeline construction, upon construction and during the operation of the YEC.

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<sup>1</sup> The Interim By-Law allows the Township of King to conduct a review of land use policies with respect to power generation facilities (EB-2009-0187 “Harten Consulting-Final Submission” February 15, 2010, page 3, paragraph 5)

Harten outlined concerns with the economics of the project and that the "...ultimate cost of course is borne by ratepayers".<sup>2</sup> Enbridge responded that other Enbridge ratepayers were protected and would not be subsidizing the YEC with regard to capital cost recovery. Enbridge submitted that there would be no residual depreciation after the 20-year GDA had been completed and there would be no impact on ratepayers. In addition, Enbridge replied that Board approved Rate 125 parameters were such that the revenue from the YEC would be received even if no gas is used by the generating plant.

The YEC also provided financial assurance to Enbridge in the form of an irrevocable Letter of Credit. The economic feasibility of the project is achieved by establishing the CIAC to be paid by the YEC in an estimated amount of \$12.3 million, which amount will be adjusted after the actual cost of construction is determined.

Enbridge also provided evidence that the revenues from the YEC are in accordance with Board approved Enbridge's Extra Large Firm Distribution Service Rate 125 which is the rate in the GDA. This rate is independent of the volume of gas YEC would consume. It protects the ratepayers during the operation of the YEC, because the revenues are based on the billing Contract Demand specified in the GDA. The Contract Demand is a maximum volume contracted that a customer has a right to receive each day. Monthly revenue consists of Monthly Customer Charge (\$500.00), plus Demand Charge (fixed at 9.0093 cents per cubic metre of the Contract Demand per month), plus Direct Purchase Administration Charge (\$50), plus Forecast Unaccounted for Gas Percentage (0.3%).

Board Staff submitted that there are no outstanding issues relative to the ratepayers protection and economics as long as Enbridge adheres to the Conditions of Approval.

The Board finds Enbridge's position to be acceptable and concludes that there is no identified risk to Enbridge's ratepayers related to construction and operation of the proposed pipeline.

The financial protections established for the ratepayers are specified in the GDA. The Board has included in the Conditions of Approval a requirement for Board approval of alterations and amendments to the GDA as follows:

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<sup>2</sup> EB-2009-0187 "Harten Consulting Evidence", January 4, 2010, page 10.

5.2 *Enbridge shall not, without prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Agreement dated and executed on August 28, 2009 where such alteration or amendment has or may have any material impact on Enbridge's ratepayers.*

With respect to the Board's monitoring of any changes to the letter of credit related to the costs of construction and CIAC calculation, the Board has included the following as a condition of approval:

5.3 *Enbridge shall file with the Board, copies of changes to the York Energy Centre LP's irrevocable bank letter of credit and Contribution in Aid of Construction payments. This filing shall take place not later than 14 days after receipt of change or payment and shall be in place until the end of construction.*

The Board finds that the GDA contains all the necessary terms to protect Enbridge and its ratepayers from the financial harm should the pipeline construction be postponed or cancelled if the YEC is not built.

### **Environmental Assessment**

The proposed route is located entirely within the road allowance. It is located in the area covered by "Oak Ridges Moraine Plan" and the "Greenbelt Plan". The routing and environmental assessment, including proposed mitigation for potential environmental impacts have been completed and filed as evidence in the Environmental Report ("ER"). The ER was prepared by Jacques Whitford Stantec Limited ("Stantec") an independent environmental consultant, retained by Enbridge. The ER and supporting evidence filed in the proceeding relating to the proposed pipeline have been produced in accordance with the "OEB Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario" (2003). The ER was reviewed by the Ontario Pipeline Coordinating Committee ("OPCC") and Enbridge confirmed that it would address any concerns raised in this review. This is addressed in Conditions of Approval-Condition 1.3.

The STORM, in a letter of comment dated October 15, 2009, stated that in their view the assessment of the different parts of the project, such as generating plant and the pipeline should be coordinated under an "umbrella assessment of the need for and potential impacts..." of the pipeline. STORM also noted that it participated in the generating plant selection process and that it continues to support the position of Concerned Citizens of King Township ("CCKT") in questioning the "...the need for the

project and the ability of the process to conform to both the Oak Ridges Moraine Conservation Plan and the Greenbelt Plan.”

INAC, in a letter of comment dated September 21, 2009, stated that it would not be reviewing the project but provided sources of information to assist the applicant with “... inviting interested First Nation communities to participate...” .

York Region, Water Resources Business Unit, in a letter of comment dated October 21, 2009 did not oppose the proposed project but noted that the pipeline must conform to the requirements of the Oak Ridges Moraine Conservation Plan (2001) and the York Regional Plan.

The Board finds that Enbridge has addressed the comments of INAC, STORM and York Region appropriately. The Board also notes that comments of STORM are not directly related to the pipeline approval proceeding but rather comments on the way provincial legislation deals with approvals of all aspects of the generating plant project.

Harten submitted that the Board should not grant its approval until all permits “from third party agencies” are obtained by Enbridge. In particular, Harten addressed the approvals and permits required from: the Lake Simcoe Conservation Authority (“LSCA”) and the Regional Municipality of York (“York Region”).

Harten maintained that environmental studies undertaken for the proposed pipeline project are inadequate. Harten submitted that the potential impacts and mitigation of the proposed pipeline on water resources, fisheries, and wildlife were not adequately addressed. Harten also argued that the application is deficient in that it does not meet many of the legal requirements related to environmental assessment and protection including the *Environmental Assessment Act*.

Enbridge replied that the environmental assessment under the *Environmental Assessment Act* is not applicable to the pipeline project. Enbridge maintains that the ER by Stantec is prepared in accordance with the “*OEB Environmental Guidelines for Hydrocarbon Pipelines and Facilities in Ontario*” (2003). Enbridge updated the pre-filed evidence to include a hydrogeologic assessment<sup>3</sup>. Enbridge submitted that it has

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<sup>3</sup> On January 29, 2010 Enbridge filed new evidence-“Hydrogeologic Investigation, Final Report” (Exhibit B, Tab 2, Schedule 5).

undertaken the environmental assessment, the archaeological assessment, hydrological assessment, and the hydrogeological assessment. Enbridge indicated that there has been no specific evidence that Enbridge has failed to meet any of the applicable requirements.

The Board is aware that other approvals will be required for Enbridge to construct the pipeline. The Board finds that Enbridge's compliance with the Conditions of Approval would ensure that issues around other permits, approvals and pipeline related environmental impacts and mitigation are fully addressed. The Board is satisfied that the environmental assessment followed the requirements of the Board's Environmental Guidelines. The Board finds that the location, mitigation and monitoring programs associated with the proposed pipeline by Enbridge are acceptable. The pipeline location, mitigation and restoration programs are consistent with the requirements of the Oak Ridges Moraine Conservation Plan (2001) and the York Regional Plan.

Regarding other approvals and permits, including applicable land use and environmental protection approvals for construction and operation of the proposed pipeline, the Board finds that condition 5.1, addresses the matter appropriately:

*5.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.*

The Board finds that the evidence supports the appropriate mitigation and restoration programs required to construct the pipeline. To ensure mitigation of impacts, restoration of land and protection of endangered species, land and water resources Board imposed monitoring and reporting requirements in the Conditions of Approval.

## **Land Issues**

The proposed route is located in the road allowances. Enbridge needs permission from the Ministry of Transportation, the Region of York and the Township of King for the location of the pipeline. Enbridge stated that the approvals by the Region of York have to be acquired from the Engineer/Road Superintendent and that this process has been started and will be completed in time for construction. Also, Enbridge stated that an Encroachment Permit to cross Hwy 400 is required from the Ministry of Transportation

and that it also needs to meet the Township of King's requirements for project construction.

The Board's condition 5.1, that requires that all other approvals be obtained by Enbridge, includes the permits to locate the pipeline within municipal road allowances.

Enbridge submits that temporary easements may be required during the construction if the road allowance is not sufficient to complete construction. For these locations Enbridge stated it would obtain temporary easement agreements in the form approved by the Board.

YRDSB expressed a concern regarding the safe construction and access in the proximity of Kettleby Public School. These concerns were addressed by Enbridge in its submission. Enbridge stated that the pipeline would be located across the road from the Kettleby Public School and that traffic management during construction would be in accordance with the requirements of the Ministry of Transportation.

Harten submitted that the operational safety risk of the proposed pipeline is higher than for other pipelines operated by Enbridge. Harten proposed that a comprehensive disaster contingency plan "...should be prepared by Enbridge and Regulators and made available for public scrutiny and comment before any leave to construct is granted."<sup>4</sup>

Enbridge's evidence is that the proposed pipeline is designed in accordance with requirements of Ontario Regulation 210/01, Oil and Gas Pipeline Systems, under the *Technical Standards and Safety Act, 2008* and the CSA Z662-07 Oil and Gas Pipeline Systems standard. Enbridge also noted that the Technical Standards and Safety Authority ("TSSA") reviewed the pipeline design specification and did not raise any issues regarding the safe operation of the pipeline.

The Board finds that the proposed pipeline adheres to the regulatory requirements for safe operation. Also, the TSSA, as the agency overseeing the operation of the pipelines in Ontario, has the authority to implement all of the applicable standards and regulatory requirements.

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<sup>4</sup> EB-2009-0187 "Harten Consulting-Final Submission", February 15, 2010, page 7 paragraph 14.



## Orders Granted

For the reasons set out above, the Board finds that the pipeline project being proposed by Enbridge in this proceeding is in the public interest and grants Enbridge leave to construct subject to the conditions set out in Appendix A.

### THE BOARD ORDERS THAT:

1. Enbridge Gas Distribution Inc. is granted leave, pursuant to subsection 90 (1) of the Act, to construct approximately 16.7 kilometres of 406 millimetre (16 inch) diameter Extra High Pressure steel pipeline, subject to the conditions of approval set forth in Appendix A.
2. Enbridge Gas Distribution Inc. shall pay the Board's costs incidental to this proceeding upon receipt of the Board's invoice.

**DATED** at Toronto, April 5, 2010

### ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX "A"**  
**TO BOARD DECISION AND ORDER**  
**IN THE MATTER OF EB-2009-0187**  
**DATED April 5, 2010**  
**CONDITIONS OF APPROVAL**

## **EB-2009-0187**

### **Enbridge Gas Distribution Inc. Leave to Construct Application**

#### **Conditions of Approval**

#### **1 General Requirements**

- 1.1 Enbridge Gas Distribution Inc. ("Enbridge") shall construct the facilities and restore the land in accordance with its application and the evidence filed in EB-2009-0187 except as modified by this Order and these Conditions of Approval.
- 1.2 Unless otherwise ordered by the Board, authorization for Leave to Construct shall terminate December 31, 2010, unless construction has commenced prior to that date.
- 1.3 Enbridge shall implement all the recommendations of the Environmental Report filed in the pre-filed evidence, and all the recommendations and directives identified by the Ontario Pipeline Coordinating Committee ("OPCC") review.
- 1.4 Enbridge shall advise the Board's designated representative of any proposed material change in construction or restoration procedures and, except in an emergency, Enbridge shall not make such change without prior approval of the Board or its designated representative. In the event of an emergency, the Board shall be informed immediately after the fact.

#### **2 Project and Communications Requirements**

- 2.1 The Board's designated representative for the purpose of these Conditions of Approval shall be the Manager, Natural Gas Applications.
- 2.2 Enbridge shall designate a person as project engineer and shall provide the name of the individual to the Board's designated representative. The project engineer will be responsible for the fulfillment of the Conditions of Approval on the construction site. Enbridge shall provide a copy of the Order and Conditions of Approval to the project engineer, within seven days of the Board's Order being issued.
- 2.3 Enbridge shall give the Board's designated representative and the Chair of the OPCC ten days written notice in advance of the commencement of the construction.

- 2.4 Enbridge shall furnish the Board's designated representative with all reasonable assistance for ascertaining whether the work is being or has been performed in accordance with the Board's Order.
- 2.5 Enbridge shall file with the Board's designated representative notice of the date on which the installed pipelines were tested, within one month after the final test date.
- 2.6 Enbridge shall furnish the Board's designated representative with five copies of written confirmation of the completion of construction. A copy of the confirmation shall be provided to the Chair of the OPCC.

### **3 Monitoring and Reporting Requirements**

- 3.1 Both during and after construction, Enbridge shall monitor the impacts of construction, and shall file four copies of both an interim and a final monitoring report with the Board. The interim monitoring report shall be filed within six months of the in-service date, and the final monitoring report shall be filed within fifteen months of the in-service date. Enbridge shall attach a log of all complaints that have been received to the interim and final monitoring reports. The log shall record the times of all complaints received, the substance of each complaint, the actions taken in response, and the reasons underlying such actions.
- 3.2 The interim monitoring report shall confirm Enbridge's adherence to Condition 1.1 and shall include a description of the impacts noted during construction and the actions taken or to be taken to prevent or mitigate the long-term effects of the impacts of construction. This report shall describe any outstanding concerns identified during construction.
- 3.3 The final monitoring report shall describe the condition of any rehabilitated land and the effectiveness of any mitigation measures undertaken. The results of the monitoring programs and analysis shall be included and recommendations made as appropriate. Any deficiency in compliance with any of the Conditions of Approval shall be explained.

### **4 Easement Agreements**

- 4.1 Enbridge shall offer the form of agreement approved by the Board to each landowner, as may be required, along the route of the proposed work.

### **5 Other Approvals and Agreements**

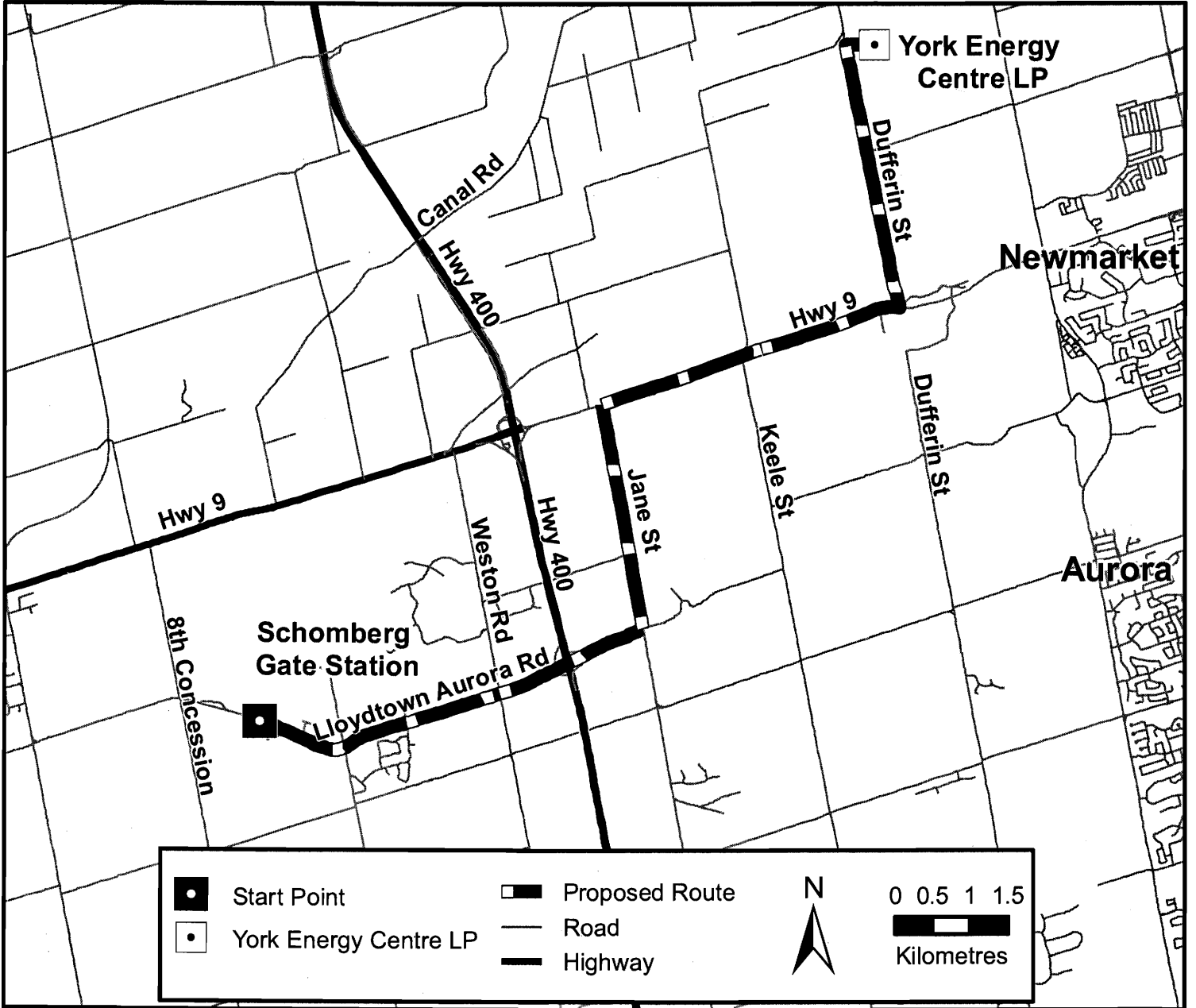
- 5.1 Enbridge shall obtain all other approvals, permits, licences, and certificates required to construct, operate and maintain the proposed project, shall provide a

list thereof, and shall provide copies of all such written approvals, permits, licences, and certificates upon the Board's request.

- 5.2 Enbridge shall not, without prior approval of the Board, consent to any alteration or amendment to the Gas Delivery Agreement dated and executed on August 28, 2009 where such alteration or amendment has or may have any material impact on Enbridge's ratepayers.
- 5.3 Enbridge shall file with the Board, copies of changes to the York Energy Centre LP's irrevocable bank letter of credit and Contribution in Aid of Construction payments. This filing shall take place not later than 14 days after receipt of change or payment and shall be in place until the end of construction.

**APPENDIX "B"**  
**TO BOARD DECISION AND ORDER**  
**IN THE MATTER OF EB-2009-0187**  
**DATED April 5, 2010**  
**MAP OF THE PIPELINE ROUTE**

# Enbridge Gas Distribution Inc. York Energy Centre Pipeline Project



**Execution Version**

ENBRIDGE GAS DISTRIBUTION INC.

- and -

YORK ENERGY CENTRE LP

**GAS DELIVERY AGREEMENT**

**[Rate 125 - Unbundled Firm Service]**



**GAS DELIVERY AGREEMENT  
(Rate 125 - Unbundled Firm Service)**

**DATE OF AGREEMENT:** August 28, 2009

**PARTIES TO AGREEMENT:** **ENBRIDGE GAS DISTRIBUTION INC.**, an Ontario corporation, hereinafter called the “**Company**”, and  
**YORK ENERGY CENTRE LP**, an Ontario limited partnership, hereinafter called the “**Customer**”, and

**BACKGROUND**

- A. The Customer requires the delivery of gas to the Terminal Location.
- B. This Agreement provides for the delivery of gas by the Company to the Terminal Location and, where applicable, for the limited balancing of the Customer’s gas supply and demand, in accordance with the terms and conditions hereof.

**THEREFORE IN CONSIDERATION** of the foregoing premises and the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

**ARTICLE I - INTERPRETATION**

1.1 **Definitions** - In addition to any terms or phrases defined elsewhere in this Agreement, unless the context otherwise specifies or requires, for the purposes of this Agreement (including the Appendices hereto), capitalized terms used in this Agreement shall have the respective meanings attributed to them as follows:

“**Agreement**”, “**hereto**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**”, and similar expressions refer to this Gas Delivery Agreement, together with all Appendices and other attachments hereto, as the same may be amended or updated from time to time.

“**Anniversary Date**” means (A) where this Agreement has been executed on or as of the 1<sup>st</sup> Day of any calendar month, that Day and month, and (B) where this Agreement has been executed on or as of any other Day in any calendar month, the 1<sup>st</sup> Day of the month immediately following the month in which this Agreement has been executed.

“**Applicable Laws**” means any and all applicable laws, statutes, by-laws, rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards of any Governmental Authority which are legally mandatory in nature, affecting the obligations of any of the Parties, from time to time.

“**Authorization Notice**” means the written approval provided by the Company, in its sole discretion, in response to the Customer’s request for a short-term amendment to certain parameters of this Agreement. Such Authorization Notice shall specify the approved amended parameters and the term for the amendment.

“**Authorized Demand Overrun Gas**” has the meaning ascribed thereto in Section 3.4.2.

“**Bill**” has the meaning ascribed thereto in Section 5.1.

“**Billing Contract Demand**” means an alternate Contract Demand for billing purposes, which, if applicable and agreed to by the Company, will be determined in accordance with the terms and conditions set out in Appendix “A”.

“**Billing Period**” means the period of days in respect of which the Company will regularly render a bill to the Customer as set out in Part 4 of Appendix “A”.

“**Business Day**” means any day on which the Company’s head office in Ontario is open for business as usual.

“**Change of Control**” has the meaning ascribed thereto in Section 19.6.

“**Commissioning Period**” has the meaning ascribed thereto in Section 12.7.

“**Companion Storage Contract**” means a gas storage service agreement between the Company and the Customer relating to service under a rate of the Company which Rate 125 specifies may be used in conjunction with Load Balancing.

“**Contract Demand**” means the volume of gas (expressed in m<sup>3</sup>) shown in item 2 of the Chart set out in Part 1 of Appendix “A”.

“**Contract Year**” means the twelve-month period:

- (a) commencing on the Date of First Deliveries; or
- (b) commencing at the beginning of the first Day immediately following the last day in a Contract Year.

“**cubic metre**” or “**m**” means that volume of gas which at a temperature of 15 degrees Celsius and at an absolute pressure of 101.325 kilopascals (“**kPa**”) occupies one cubic metre; “**10<sup>3</sup>m<sup>3</sup>**” means one thousand cubic metres.

“**Cumulative Imbalance Account**” means the record maintained by the Company on behalf of the Customer to account for cumulative Daily Imbalances for each Day up to the aggregate Maximum Contractual Imbalance in accordance with Load Balancing.

“**Customer Affiliate**” means any Person that would be considered to be “affiliated” with the Customer pursuant to the *Business Corporations Act* (Ontario).

“**Daily Imbalance**” has the meaning ascribed thereto in Rate 125.

“**Date of First Deliveries**” has the meaning ascribed thereto in Part 3 of Appendix “C”.

“**Day**” means a period of 24 consecutive hours, beginning and ending at 1000 hours EST and a Day that is specified by a date shall be the Day which begins at 1000 hours EST on the specified date.

“**Demand Overrun Gas**” means any volume of gas taken by the Customer at the Terminal Location: (a) on a Day which exceeds the Contract Demand, or (b) in an hour which exceeds the Hourly Demand.

“**Dispute**” has the meaning ascribed thereto in Section 18.1.

“**Dispute Notice**” has the meaning ascribed thereto in Section 18.2.

“**Early Termination Date**” has the meaning ascribed thereto in Section 16.2 and Section 16.3.

“**EST**” means Eastern Standard Time at Toronto, Ontario; and which, for certainty, includes any adjustment for Daylight Savings Time.

“**Force Majeure**” and “**Event of Force Majeure**” have the meaning ascribed thereto in Section 13.3.

“**gas**” means natural gas and/or residue gas comprised primarily of methane.

“**Gas Transporter/s**” means an entity engaged in the transportation of natural gas in inter-provincial or intra-provincial commerce and “**Gas Transporter/s Facilities**” means the actual facility used by the Gas Transporter/s.

“**Governmental Authority**” means any government, regulatory body or authority, agency, crown corporation, governmental department, board, commission, tribunal, court or other law, rule, or regulation making authority having or purporting to have jurisdiction or control on behalf of Canada or any provincial, regional or local governmental, or other subdivision thereof, whether over the Parties, their facilities, any gas supply, the sale, purchase or transportation of gas, or this Agreement or any part hereof.

“**Hourly Demand**” means, the volume of gas (expressed in m<sup>3</sup>) which is one twenty-fourth (1/24<sup>th</sup>) of the Contract Demand.

“**Load Balancing**” means the limited load balancing mechanism set forth in Rate 125 designed to reduce imbalances between anticipated and actual deliveries of gas to, and consumption of gas by, the Customer under this Agreement.

“**Maximum Contractual Imbalance**” has the meaning ascribed thereto in Rate 125.

“**month**” means a period beginning at 1000 hours EST on the first Day of a calendar month and ending 1000 hours EST, on the first Day of the next succeeding calendar month.

“**NAESB**” means the North American Energy Standards Board or any successor thereto.

“**Nomination**” means a written request from the Customer regarding a volume of gas that the Customer intends to deliver to the Company pursuant to this Agreement, or otherwise transfer or assign in a manner contemplated in this Agreement.

“**Nomination Times**” has the meaning ascribed thereto in Section 6.1.

“**OEB**” means the Ontario Energy Board or any successor thereto.

“**OEB Act**” means the Ontario Energy Board Act, 1998, and all rules, regulations, orders and ordinances together with all codes, guidelines, policies, notices, directions, directives and standards promulgated thereunder from time to time.

“**Operating Characteristics**” has the meaning ascribed thereto in Part 5 of Appendix “A”.

“**Party**” means either the Company or the Customer, and “**Parties**” means both of them, as the context requires.

“**Person**” means an individual, corporation, partnership, firm, joint venture, syndicate, association, trust, trustee, government, governmental agency, board, tribunal, ministry, commission or department or other form of entity or organization and the heirs, beneficiaries, executors, legal representatives or administrators of an individual, and “**Persons**” has a similar meaning.

“**Point of Acceptance**” means the point of interconnection with the Company’s facilities as specified in Part 2 of Appendix “A”, or such other location(s) as the Customer and the Company may mutually agree upon in writing.

“**Point of Delivery**” has the meaning ascribed thereto in Section 2.5.

“**Point of Delivery Pressure**” means the pressure (expressed in kPa) shown in item 5 of the Chart in Part 1 of Appendix “A”.

“**Rate 125**” means the Company’s rate number 125 and associated riders, charges, terms and conditions established by the Company from time to time as approved by the OEB and in effect at the relevant time and all of which are set out in the Rate Handbook.

“**Rate Handbook**” means the Company’s ‘Handbook of Rates and Distribution Services’, as amended or replaced from time to time with the approval of the OEB.

“**Required Permit**” means any license, authorization, permit, regulatory consent, credential or similar qualification required by the OEB or under any Applicable Laws.

“**Supply Imbalance**” means an imbalance resulting from the existence of any Supply Overrun Gas or Supply Underrun Gas.

“**Supply Overrun Gas**” means the amount of gas taken by the Customer on a Day in excess of the amount of gas delivered by the Customer on such Day.

“**Supply Underrun Gas**” means the amount of gas delivered by the Customer on a Day in excess of the amount of gas taken by the Customer on such Day.

“**Term**” means the period from and including the date hereof to the earliest of:

- (a) 1000 hours EST on the next day following the Termination Date,
- (b) any Early Termination Date, and
- (c) the date fixed by, or determined from, any Order of the OEB as the date for the termination or expiration of this Agreement.

“**Termination Charge**” has the meaning ascribed thereto in Section 16.4.1.

“**Termination Date**” means the date specified in Part 7 of Appendix “A”,

“**Terminal Location**” means the plant or facility of the Customer, the location of which is specified in the Table in Part 1 of Appendix “A”, which is to receive gas pursuant to this Agreement.

“**UFG**” has the meaning ascribed thereto in Section 3.3.

“**Unauthorized Demand Overrun Gas**” has the meaning ascribed thereto in Part 3 of Appendix “A”.

“**Unauthorized Supply Overrun Gas**” means any volume of gas taken by the Customer at the Point of Delivery on any Day in excess of the sum of: (a) the volume of gas delivered by the Customer on that Day, plus (b) the volume of gas available to the Customer under any applicable Load Balancing or any Companion Storage Contract, or both.

“**Unauthorized Supply Underrun Gas**” means any volume of gas delivered by the Customer on any Day pursuant to this Agreement in excess of the sum of: (a) the volume of gas taken by the Customer at the Point of Delivery on that Day, plus (b) the volume of gas available to the Customer under any applicable Load Balancing or any Companion Storage Contract, or both.

1.2 Appendices - The following Appendices are required to complete this Agreement and are incorporated herein by reference and are deemed to be a part hereof and are to be read in conjunction with and subject to this Agreement:

- Appendix “A” - Customer Information
- Appendix “B” - Financial Assurances
- Appendix “C” - Commissioning Information

1.3 Rate Handbook - Parts III and IV of the Rate Handbook are incorporated into this Agreement and form part hereof. Parts III and IV of the Rate Handbook shall be construed using the definitions in this Agreement and the terms used therein and not otherwise defined in this Agreement shall be construed using the definitions in Part I of the Rate Handbook. For certainty, for the purposes of this Agreement, the term “Applicant” as referenced in the Rate Handbook

shall be construed as "Customer". If there is any conflict between the provisions of this Agreement and the provisions of the Rate Handbook, then the provisions of the Rate Handbook then in effect shall prevail.

1.4 Rules of Interpretation - In this Agreement the following rules shall apply to the interpretation hereof:

- (a) words denoting the singular include the plural and vice versa and words denoting any gender include all genders;
- (b) the words "include", "includes" and "including" and other similar words and expressions shall in all cases be deemed to be followed by the words "without limitation";
- (c) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated and/or replaced, from time to time, and any successor statute thereto, unless otherwise expressly provided;
- (d) when calculating the number of days or other period within which or following which any act is to be done or step taken, the day which is the reference day in calculating such period shall not be counted in such number of days or other period;
- (e) unless otherwise specifically noted herein, all dollar amounts are expressed in Canadian currency;
- (f) the division of this Agreement into separate Articles, Sections, subsections and Appendices and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (g) except as otherwise specifically defined or provided for in this Agreement, words or abbreviations which have well known or trade meanings are used in accordance with their recognized meanings consistent with good utility practice; and
- (h) if there is any conflict between the provisions of the body of this Agreement and the provisions of any of the Appendices to this Agreement, then the provisions of the relevant Appendix shall prevail.

1.5 Entire Agreement - This Agreement and all Appendices and attachments contemplated herein or specifically referred to herein constitute the entire agreement among the Parties pertaining to all the matters herein, and supersede all prior agreements, understandings, negotiations, discussions and other communications, whether oral or written, of the Parties. No additions, deletions or modifications of this Agreement shall be binding on any Party unless made in writing and signed by or on behalf of such Party. For certainty, no oral representations

of the Company shall amend or modify this Agreement unless committed to writing and included herein by reference. To the extent that the Company permits the Customer, at the sole discretion and convenience of the Company, to use or employ any practice or procedure that is not specifically contemplated herein, the Customer may not rely on such practice or procedure where the same is not consistent with the terms of this Agreement.

1.6 Severability - This Agreement is a general form, intended for use by the Parties in their ongoing relations in Ontario. If any provision of this Agreement or portion thereof or the application thereof to any Person or circumstance shall to any extent be invalid or unenforceable or contravene any Applicable Laws, then (a) the remainder of this Agreement or the application of such provision or portion thereof to any other Party or circumstance shall not be affected thereby, and (b) the Parties will negotiate in good faith to amend this Agreement to implement the intentions set forth herein. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

1.7 Governing Law - This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and shall be treated as an Ontario contract. For the purpose of any legal actions or proceedings brought by any Party in respect of this Agreement, each Party hereby irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of Ontario.

## **ARTICLE II - BASIC AGREEMENTS**

2.1 Delivery of Gas - On and subject to Rate 125 and the other terms and conditions of this Agreement, during the Term the Customer shall deliver gas to the Company and the Company shall deliver gas to the Customer.

2.2 Condition to Obligations - Notwithstanding the execution of this Agreement by the Parties and any term or provision herein to the contrary, including Section 2.1, it shall be a condition precedent to the respective obligations of the Parties under this Agreement (other than the obligation of the Parties set out in Section 19.2, which obligation shall be binding upon execution of this Agreement) that each of the Parties shall have received all approvals and consents required for the construction and operation of the Terminal Location, if applicable, and any gas line required to deliver gas to the Terminal Location.

2.3 Applicable Rates - Rate 125 is incorporated into this Agreement and forms part of this Agreement. Each of the Parties shall have the rights and obligations which such Party is contemplated to have in the provisions of Rate 125 and Rate 125 shall be construed as though (i) a reference therein to "Applicant" is a reference to the Customer, (ii) a reference to "Service Contract" is a reference to this Agreement and (iii) words defined herein have the same meaning when used in Rate 125.

2.4 Point of Acceptance - All gas delivered to the Company by the Customer pursuant to this Agreement shall be delivered at the Point of Acceptance.

2.5 Delivery at Terminal Location - All gas delivered to the Customer by the Company pursuant to this Agreement shall be delivered at the outlet of the Company's metering equipment at or prior to the Terminal Location (the "**Point of Delivery**"). For these purposes, if

the Customer has a dedicated service, the Company may in its discretion deem the interconnection point between the dedicated distribution line and the Terminal Location to be the Point of Delivery. The Company agrees to deliver gas to the Point of Delivery at not less than the Point of Delivery Pressure.

### **ARTICLE III- CONTRACT VOLUMES, DEMAND OVERRUN GAS**

3.1 **Maximum Daily Receipt** - The maximum volume of gas the Company is required to receive from the Customer in any Day is the Contract Demand and in any hour is the Hourly Demand; provided that the Company, in its sole discretion, may agree to receive a volume of gas which is in excess of the foregoing maximum amounts.

3.2 **Maximum Daily Delivery** - The maximum volume of gas the Company is required to deliver to the Customer in any Day is the Contract Demand, and in any hour is the Hourly Demand.

3.3 **Unaccounted for Gas** - In addition to any other gas delivery requirement of the Customer in this Agreement, in respect of unaccounted for gas ("UFG"), the Customer must deliver to the Company an amount of gas, if any, as contemplated in the Rate Handbook and communicated by the Company to the Customer from time to time. For certainty, wherever in this Agreement there is a reference to a volume of gas in respect of an obligation of the Customer (other than in relation to a dedicated service), whether to be delivered by the Customer or otherwise, the volume of gas shall be automatically adjusted, upwards or downwards as the case may be, to account for the Customer's obligation hereunder in respect of UFG.

#### 3.4 **Demand Overrun Gas**

3.4.1 **Maximum Nominations** - The Customer shall not, at any time, submit a Nomination which is for an amount of gas in excess of the Contract Demand without first having obtained the prior written authorization of the Company to do so. This limitation on the Customer shall apply notwithstanding that the Company may accept such a Nomination without having first given such written authorization. Authorizations shall be granted in the sole discretion of the Company.

3.4.2 **Authorized Demand Overrun Gas** - Unless otherwise set out in Rate 125 or Appendix "A", the Company may, in its sole discretion, authorize the Customer to use Demand Overrun Gas by providing the Customer with an Authorization Notice, in which case the gas shall be deemed to be "**Authorized Demand Overrun Gas**" for the purposes of Rate 125 and the terms and conditions hereof.

3.4.3 **Unauthorized Demand Overrun Gas** - The terms and conditions set out in Appendix "A" and Rate 125 shall apply in the event the Customer consumes Unauthorized Demand Overrun Gas in excess of the Contract Demand or Hourly Demand, plus, if applicable, any Authorized Demand Overrun Gas.

3.5 **Gas Transporter Variances** - Notwithstanding any provision of this Agreement to the contrary:



- (a) the volume of gas which the Customer shall deliver to the Company hereunder shall equal the volume of gas confirmed to the Company by the relevant Gas Transporter/s delivering the Customer's gas to the Company;
- (b) other than in the case of dedicated service, the volume of gas which the Company shall deliver to the Customer hereunder shall be adjusted for the volume of UFG as determined by the Company from time to time in accordance with its standard practice consistently applied; and
- (c) subject to Load Balancing and the terms and conditions of any Companion Storage Contract between the Parties (in either case, as applicable), the Company shall have no obligation at any time to deliver to the Customer a volume of gas which is greater than the volume of gas confirmed for delivery to the Customer by the relevant Gas Transporter/s.

3.6 Annual Consumption Forecast - The Customer shall provide to the Company not less than sixty (60) days prior to the commencement of each Contract Year an annual forecast of daily gas consumption expressed in cubic metres identifying expected daily flows, expected down times and anticipated peak consumption periods. In addition, the Customer shall provide to the Company contemporaneously with the execution of this Agreement a forecast schedule of anticipated gas consumption for the Commissioning Period, if any. For certainty, the Company shall have no obligation to deliver gas to the Customer in accordance with any such annual or Commissioning Period forecast.

#### **ARTICLE IV - RATES FOR GAS DELIVERY SERVICES**

4.1 Rate 125 - Subject to the other terms and conditions of this Agreement, the rates and charges for delivery services contracted for by or provided to the Customer hereunder from time to time shall be determined in accordance with the version of Rate 125 as applicable at the time the relevant service is rendered. The rates and charges shall be applicable, and the Customer shall be responsible therefor, from and after the Date of First Deliveries.

4.2 Rate Changes - In the event of any change in any of the rates or charges approved or fixed by the OEB for or in respect of or applicable to this Agreement or any of the services which the Customer is to receive under this Agreement, including retroactive changes to the extent that such changed rate or charge is ordered by the OEB to be charged to the Customer or a class of customers of the Company that includes the Customer, the changed rate or charge shall be applicable hereunder and shall be applied upon becoming effective, and in accordance with any provisions relating to its application, in accordance with any applicable order of the OEB or rate number or schedule of the Company fixed, approved or authorized by the OEB.

4.3 OEB Directed Changes - In the event the terms and conditions of this Agreement are changed by order of the OEB, including retroactive changes, such changed terms and conditions shall be deemed to be in effect between the Company and the Customer in accordance with the terms of such order.

4.4 Independence of Rates - Except as specifically set forth in this Agreement, the charges applicable to gas delivered to the Customer hereunder shall be determined and computed

in accordance with Rate 125 without regard to any volume of gas contracted to be delivered or delivered under any other numbered rate of the Company or pursuant to any other agreement to which the Company and the Customer are parties.

## **ARTICLE V - BILLING AND PAYMENT**

5.1 **Billing** - Bills are issued at the end of each Billing Period in respect of services provided by the Company under this Agreement during the Billing Period (each, a "Bill") and are due when rendered. In addition, the Company will issue bills in respect of other services, costs and charges as set out in Part 4 of Appendix "A".

5.2 **Payment** - Payment terms are as set out in the Rate Handbook or as otherwise agreed by the Parties and set out in Part 4 of Appendix "A".

5.3 **Bills** - Bills delivered by the Company to the Customer hereunder shall include, in respect of the Billing Period to which the Bill relates:

- (a) the volume of gas delivered by the Customer to the Company hereunder during such Billing Period;
- (b) the volume of gas delivered by the Company to the Customer hereunder during such Billing Period; and
- (c) the amount payable by the Customer during such Billing Period,

as determined by the Company in accordance with this Agreement and Rate 125.

5.4 **Co-operation** - The Customer acknowledges that, as a shipper on Gas Transporter/s Facilities, the Customer may be in possession of information with respect to volumes of gas delivered to the Company hereunder which may be required by the Company in the preparation of a Bill. The Customer agrees to co-operate with the Company to the extent necessary for the Company to obtain any information not in its possession and required for the preparation of such Bill.

5.5 **Errors** - If an error is discovered by the Company or the Customer in a Bill, an adjustment to correct the same shall be made in a subsequent Bill.

5.6 **Retention of Records** - All charts and calculations upon which a Bill is based, and the Company's books and records insofar as they pertain to measurement and settlement for accounts hereunder, shall be retained by the Company for the longer of (A) three (3) years from the date of such Bill, and (B) the period while any claim which relates to such Bill, and of which the Company receives written notice from the Customer within such three-year period, is outstanding; and shall be available for inspection by the Customer on reasonable prior notice during normal office hours of the Company.

5.7 **Withholding** - Notwithstanding anything in this Agreement to the contrary, the Company shall have the right to withhold (either by withholding payment or by withholding a credit to which the Customer might otherwise be entitled) an amount owing to the Customer by

the Company equal to the amount of money then due, owing and unpaid by the Customer to the Company (the "**Withheld Amount**"). Upon the Company ceasing to be entitled to hold any particular portion of a Withheld Amount, the Company shall forthwith pay to the Customer an amount equal to such portion of the Withheld Amount. In addition, at any time the Company shall have the right to set-off an amount due, owing and unpaid by the Customer to the Company against any amount owing to the Customer by the Company, upon delivering a notice to the Customer to that effect.

5.8 Taxes Applicable - Rates and charges do not include any goods and services taxes or any other taxes (whether existing as of the date of this Agreement or imposed after the date of this Agreement) which may be payable by the Customer, and such taxes remain the responsibility of the Customer.

## **ARTICLE VI - NOMINATIONS**

6.1 Nominations - The Customer shall submit to the Company Nominations in accordance with Rate 125 and NAESB standards and at the nomination times (the "**Nomination Times**") set out therein.

6.2 Changes to Nomination Volume - The Customer shall have the opportunity, subject to acceptance by the Company (not to be unreasonably withheld), to revise a Nomination by further notice or notices given to the Company, provided that (i) such notice or notices must be given in accordance with the applicable Nomination Times and (ii) the Customer must comply with the other terms and conditions of this Article VI regarding revisions to the Nomination.

6.3 Acceptance - Acceptance by the Company of any Nomination from the Customer shall be subject to the other terms and provisions of this Agreement, and is contingent upon the confirmation and actual delivery of the gas from the relevant Gas Transporter/s.

6.4 No Transfer of Volumes - Subject to the terms of Article VII, the accounting between the Customer and the Company will be on a daily basis and settled in each Billing Period and neither the Company nor the Customer will have the right to transfer any volumes of gas from one Day to the next Day.

6.5 Nomination Requirements - To qualify for firm contractual entitlements a Nomination must be submitted at the then current Nomination Times. Valid Nominations must be submitted regularly, failing which the last regular Nomination accepted by the Company shall be considered as a standing Nomination applicable to each subsequent Day until varied by the Customer.

## **ARTICLE VII - LOAD BALANCING, UNAUTHORIZED SUPPLY GAS**

7.1 Load Balancing

7.1.1 Availability - The Company shall provide Load Balancing to the Customer provided the Customer is deemed eligible for such service in accordance with Rate 125.

Notwithstanding the foregoing, if the Point of Acceptance is outside the TCPL Enbridge CDA, the Company will not provide Load Balancing to the Customer.

7.1.2 Maintenance of Cumulative Imbalance Account - The Company shall establish and maintain on behalf of the Customer the Cumulative Imbalance Account. Any volumes of gas delivered or taken by the Customer constituting a Daily Imbalance, up to the Maximum Contractual Imbalance, shall be debited or credited to the Cumulative Imbalance Account.

7.1.3 Balancing by the Company - Any Supply Imbalance shall be addressed by the Company as follows, and in the following order:

- (a) where the Customer has entered into a Companion Storage Contract which has 'no-notice storage service':
  - (i) the Company shall first utilize any Withdrawal Capacity or Injection Capacity (as such terms are defined in the Companion Storage Contract), as applicable, available to the Customer under such Companion Storage Contract in order to reduce such imbalance; and
  - (ii) the Company shall apply Load Balancing to any Excess Storage Withdrawal Gas or Excess Storage Injection Gas (as such terms are defined in the Companion Storage Contract), as applicable; and
- (b) where the Customer has not entered into a Companion Storage Contract or where the Customer has entered into a Companion Storage Contract which does not have 'no notice storage service', the Company shall apply Load Balancing to any Supply Imbalance.

Any Daily Imbalance which on any Day exceeds the Maximum Contractual Imbalance after the above steps have been followed shall be deemed to be either Unauthorized Supply Overrun Gas or Unauthorized Supply Underrun Gas for the purposes hereof.

7.1.4 Balancing by the Customer - In the event the Customer has, or is deemed to have, either a debit or credit in its Cumulative Imbalance Account, the Customer may seek to balance its Cumulative Imbalance Account by such means, and subject to such terms and conditions, as are set out in Rate 125, any Companion Storage Contract, and any rules of the Company applicable to Customer's Supply Imbalance.

7.1.5 Pooling and Pro-Rating - In the event that one or more Rate 125 Gas Delivery Agreements (in addition to this Agreement) has been executed between the Company and

- (a) the Customer; or
- (b) a Customer Affiliate,

then the Customer may make pooled Nominations for some or all of the terminal locations specified in such agreements (the "**Pooled Locations**") that share the same Point of Acceptance

as the Terminal Location, such that, in the event of any net Daily Imbalance (based on the aggregated Daily Imbalance of all such Pooled Locations), the Company shall apply Load Balancing after pro-rating such net Daily Imbalance amongst all Pooled Locations based on the relative contract demand applicable to each of the Pooled Locations.

7.1.6 Disposition of Gas Upon Termination or Expiry - If this Agreement terminates or expires then, except as authorized by the Company, the Cumulative Imbalance Account shall not be in a credit or debit balance situation, and:

- (a) any debit balance in the Cumulative Imbalance Account that remains as of such date of termination or expiry shall be deemed to be Unauthorized Supply Overrun Gas and the Customer shall be subject to the provisions of Section 7.2.1 in respect thereof;
- (b) any credit balance in the Cumulative Imbalance Account that remains as of such date of termination or expiry shall be deemed to be Unauthorized Supply Underrun Gas and the Customer shall be subject to the provisions of Section 7.2.2 in respect thereof.

## 7.2 Unauthorized Supply Gas

7.2.1 Unauthorized Supply Overrun Gas - In any instance of the occurrence, use of, or deemed taking of, a volume of Unauthorized Supply Overrun Gas, the Customer shall pay the rates and charges for such gas as set out in Rate 125 and Appendix "A". The Customer further agrees that it has no right to take Unauthorized Supply Overrun Gas and that payment therefor shall not relieve it from any other remedy available to the Company against the Customer for breach of any other provision of this Agreement.

7.2.2 Unauthorized Supply Underrun Gas - In any instance of the occurrence, use of, or deemed delivery of, a volume of Unauthorized Supply Underrun Gas, the Company shall pay the rates and charges for such gas as set out in Rate 125 and Appendix "A". The Customer further agrees that it has no right to deliver Unauthorized Supply Underrun Gas and that payment therefor by the Company shall not relieve the Customer from any other remedy available to the Company against the Customer for breach of any other provision of this Agreement.

## **ARTICLE VIII - DELIVERY, POSSESSION, TITLE AND COMMINGLING**

8.1 Possession - The Customer shall be deemed to be in control and possession of gas that is the subject matter of this Agreement (other than gas purchased from the Company) until it shall have been delivered to or for the account of the Company at the Point of Acceptance, after which the Company shall be deemed to be in control and possession of such gas until it is delivered to the Point of Delivery, after which the Customer shall be deemed to be in control and possession of such gas. The Customer shall bear the full cost and expense for transporting and delivering, as well as the full and complete liability and responsibility for, such gas to the Point of Acceptance and shall bear full and complete liability and responsibility for gas that is delivered to the Point of Delivery. Upon accepting custody of the gas at the Point of Acceptance, the Company shall bear full and complete liability and responsibility for gas until it is delivered to the Point of Delivery.

## 8.2 Delivery and Title

8.2.1 Under Consumption - The volume of gas delivered by the Customer to the Point of Acceptance on a Day (the "**Gas Delivered for the Day**") shall be deemed to have been redelivered to the Terminal Location to the extent of the lesser of: (A) the Gas Delivered for the Day; and (B) the volume of gas delivered by the Company to the Point of Delivery on such Day (the "**Gas Taken for the Day**"), and title to that lesser amount of gas shall at all times remain in the Customer.

8.2.2 Over Consumption - With respect to Gas Taken for a Day which is in excess of the Gas Delivered for the Day, title to such excess Gas Taken for the Day shall pass from the Company to the Customer at the Point of Delivery.

8.2.3 Title of Customer - Except as aforesaid, at any particular time the Customer shall have title to, and only to, gas delivered by or for the Customer to the Point of Acceptance and not delivered to the Point of Delivery to the extent of the credit balance, if any, at such time in the Cumulative Imbalance Account.

8.3 Right to Commingle - The Company and the Customer recognize that the gas delivered hereunder will be from a commingled stream of gas and will be carried to the Point of Acceptance through the facilities of one or more Gas Transporter/s. The Company shall have the right to commingle gas delivered to the Company by or for the Customer at the Point of Acceptance with gas owned by the Company or any other Person or Persons, and the Company shall have the right and full and absolute authority to deal in any manner with all gas delivered to it.

8.4 Representations and Warranties of the Customer - In addition to any other representations and warranties given to the Company under this Agreement, the Customer represents and warrants to the Company that at the date hereof and at all times during the Term:

- (a) the Customer shall have good and marketable title or sufficient rights in and to the gas to be delivered to the Company and shall be entitled to deliver and, where applicable, sell such gas to the Company in accordance with the terms of this Agreement, free and clear of any adverse claim of any nature or kind whatsoever; and
- (b) gas delivered to the Company by or for the Customer will not be subject to any royalties, taxes (federal and/or provincial) or other charges payable by, or that may become a liability of, the Company and the purchases by the Company from the Customer contemplated hereunder will not result in any liability to the Company for royalties, taxes (federal and/or provincial but not income taxes) or like charges which are applicable before possession of and title to such gas passes to the Company,

and acknowledges and agrees that the Company is relying on the accuracy of each of such representations and warranties in connection with the entering into of this Agreement and the acceptance by the Company of all Nominations made by the Customer.

8.5 Indemnity by Customer - The Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all suits, claims, liens and encumbrances of whatsoever nature relating to the title to gas delivered by the Customer to the Company. If at any time an adverse claim of any nature is asserted against the title to any of such gas, the Company may withhold, in an interest bearing escrow account at a Schedule I Bank in Canada, during the period of such claim or until the title is freed from such claim any amounts payable by the Company to the Customer not exceeding in the aggregate the amount of such claim or until the Customer furnishes a bond, in form and amount and with sureties acceptable to the Company, conditioned to save the Company harmless, as provided for in this Section 8.5.

## **ARTICLE IX - POINT OF ACCEPTANCE - QUALITY AND MEASUREMENTS**

9.1 Quality - The quality, pressure and temperature of the gas delivered by the Customer hereunder shall conform to the minimum standards of the relevant Gas Transporter/s and such gas shall otherwise be marketable gas.

9.2 Measurement - For the purpose of determining the volume of gas delivered to the Company by the Customer, the Parties agree to accept the measurement of the relevant Gas Transporter/s, or as the Gas Transporter/s and the Company may otherwise agree, and the volume of gas so determined for a particular Day shall be deemed to be the volume of gas delivered by the Customer to the Company on such Day. The standard of measurement and tests for the gas delivered hereunder shall be in accordance with the contractual arrangements made by the Company with the relevant Gas Transporter/s, or as the Gas Transporter/s and the Company may otherwise agree, in effect from time to time.

9.3 Testing - The Company agrees, in its arrangements with Gas Transporter/s, to obtain measuring and/or testing in a manner and at an interval which is in compliance with the practice of Gas Transporter/s. In the event that either Party should request measuring or testing at any time, the other Party will cooperate fully to obtain such measurement and testing from Gas Transporter/s, provided that the Party seeking the test shall bear the cost thereof if the contractual arrangements with Gas Transporter/s require payment of the cost. For certainty, a Party may not unreasonably withhold or delay giving its consent or providing any access necessary to complete such measuring or testing.

## **ARTICLE X - POINT OF DELIVERY - METERING AND EQUIPMENT**

### 10.1 Metering at Point of Delivery

10.1.1 Installation - Subject to Section 10.4, the Company agrees to install, operate and maintain measurement equipment of suitable capacity and design as is required to measure the volume of gas to be delivered by the Company under this Agreement. The Customer agrees to provide, at its own expense, (i) any and all housing reasonably required by the Company for the protection of measurement equipment and regulating equipment at the Customer's premises used in connection with the delivery of any such gas, and (ii) any electrical or other connections reasonably required for the Company's measurement equipment, including a continuous supply of electrical power at 110 volts; a dedicated, single, voice grade, analog outside telephone line

for local and WATTS (800 service) calls; and such other connections as the Company may require from time to time. The measurement and regulating equipment shall be installed at the Customer's premises and the site shall be as agreed between the Customer and the Company. All such installations of equipment shall be made in accordance with all applicable safety regulations.

10.1.2 Access - Each Party shall have access to and the right to enter the measurement/regulating location at any reasonable time and shall have the right to be present at the time of installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of measurement equipment.

## 10.2 Examination

10.2.1 Equipment Failure - If the measurement equipment is found to be out of service, or measuring inaccurately, the volume of gas shall be determined by the Company as follows:

- (a) by using the registration of any check meter or meter, if installed and accurately registering; or, in the absence of (a), then;
- (b) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation; or, in the absence of both (a) and (b), then;
- (c) by estimating the quantity of gas delivered during periods under similar conditions when the meter was registering accurately.

10.2.2 Examination - If requested by the Customer, the Company's measurement equipment shall be examined by the Company in the presence of a representative of the Customer, but the Company shall not be required as a matter of routine to examine such equipment more frequently than once in any nine (9) month period or such other period of time as may be required by Applicable Laws.

10.2.3 Error and Correction - If the measurement equipment is found to be in error by not more than three per cent (3%), the previous recording shall be considered correct but proper adjustments to the meter will be made immediately. However, if the error is greater than three per cent (3%), a correction in billing shall be made in accordance with the *Electricity and Gas Inspection Act*, R.S. 1986, c. E-4 and its regulations as amended from time to time or any other legislation which may succeed the said Act.

## 10.3 Measurement Criteria

10.3.1 All gas delivered shall be measured utilizing equipment which conforms to the regulations prescribed in the "Electricity and Gas Inspection Procedures" dated July, 1998 issued by Measurement Canada, Government of Canada, as amended from time to time.

10.3.2 The measurement unit shall be one cubic metre of gas at a pressure of 101.325 kPa absolute and at a temperature of fifteen (15) degrees Celsius measured or calculated in



accordance with the *Electricity and Gas Inspection Act* and its regulations as amended from time to time or any other legislation which may succeed the said Act.

10.3.3 Subject to Applicable Laws, supercompressibility factors shall be applied to gas volume calculations in accordance with A.G.A. Gas Measurement Report No. 3, 1969 edition, and Manual for the Determination of Supercompressibility Factors for Natural Gas, PAR Research Project NX-19, as amended from time to time.

10.4 Gas Transporter Metering - Notwithstanding the foregoing provisions of this Article X, in the case of a dedicated distribution line, the Company may, in its sole discretion, determine to rely solely on the measurement equipment of the Gas Transporter at the Point of Acceptance to measure the volume of gas to be delivered by the Company under this Agreement, and in such event the Parties agree to accept the measurements of such Gas Transporter and the volume of gas so determined for a particular Day shall be deemed to be the volume of gas delivered by the Company to the Customer at the Point of Delivery on such Day.

10.5 Equipment - The title to all service pipes, meters, regulators, attachments and equipment placed on the Customer's premises and not sold to the Customer shall remain with the Company, with right of removal, and no charge shall be made by the Customer for use of premises occupied thereby. The Customer agrees to be responsible for any loss or damage thereto resulting from wilful or negligent acts of the Customer or the Customer's agents or employees or any Person acting under the authority of or with the permission of the Customer.

## ARTICLE XI - CURTAILMENT AND SUSPENSION

11.1 Contingency Curtailment - In the event of actual or threatened inability to deliver the volume(s) of gas contracted for under this Agreement to the Terminal Location due to an Event of Force Majeure affecting the Company, or when curtailment or discontinuance of supply is ordered by a Governmental Authority, the Customer shall, at the direction of the Company, curtail or discontinue use of gas during the period specified by the Company upon notice to the Customer in accordance with the other terms of this Agreement and any applicable terms set forth in Rate 125. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer by reason of any such curtailment or discontinuance or because of the length of advance notice given directing such curtailment or discontinuance.

11.2 Maintenance Curtailment - The Company may be required from time to time to perform maintenance or construction to its facilities which may impact the Company's ability to meet the Customer's requirements, or the Company's obligations, set out in this Agreement. In such event, except in cases of emergency, the Company shall provide the Customer with reasonable notice of the suspension of service (in light of the circumstances relating to the suspension) in accordance with the other terms of this Agreement and any applicable terms set forth in Rate 125. For certainty, unless otherwise set out in Rate 125, in cases of emergency no prior notice or consultation by the Company shall be required to perform any required maintenance or construction, provided the Company shall use reasonable efforts to inform the Customer of the nature, extent and timing of such emergency. In all cases, the Company shall use reasonable efforts to schedule and limit the extent and duration of any service interruption

hereunder. During any such service interruption, the Customer will be required to pay prorated Demand Charges but such prorating shall not affect any other contracts or agreement for services between the Company and the Customer.

11.3 Physical Suspension of Service - If

- (a) the Customer:
  - (i) takes gas at the Point of Delivery in excess of the (A) Hourly Demand, plus, (B) the amount of any Authorized Demand Overrun Gas, provided that if a Billing Contract Demand is applicable, no Authorized Demand Overrun Gas will be added, or
  - (ii) fails to deliver gas to the Point of Acceptance for which a Nomination has been provided to the Company,

in either case, to the extent that such excess taking or failure to deliver results in, or is determined by the Company, in its sole discretion acting reasonably, to likely result in, an interruption or interference with the Company's ability to provide services to any other customer of the Company; or

- (b) the Company, in its sole discretion acting reasonably, determines that it is necessary to reduce the load on any gas transmission or distribution pipeline to protect the safety or security of any of its other customers or the integrity of all or any part of the Company's gas distribution system; or
- (c) there occurs an Event of Default or as otherwise contemplated in Article XV,

then the Company shall have the right to curtail, or completely suspend, service under this Agreement in whole or in part for such period of time as is necessary to address such interruption, interference or other necessity, in the sole discretion of the Company acting reasonably and fairly in the circumstance. If such a determination is made by the Company, then the Company shall notify the Customer forthwith of the extent and timing of the service curtailment or suspension and the Customer shall comply with such curtailment or suspension requirement. If the Customer fails to comply with the terms of the curtailment or suspension notice, then the Company shall have the right, without any further notification to the Customer, to implement the shut-down protocol referred to in Section 12.3 (or, failing the inclusion of such protocol, the Company's then standard shut-down protocol) and to effect a complete shut-down of the delivery of gas to the Terminal Location. The Company shall not be liable, in any event, for any damages, losses, costs or expenses incurred or suffered by the Customer as a consequence of the exercise of any of such rights by the Company.

**ARTICLE XII - REPRESENTATIONS, WARRANTIES AND OTHER OBLIGATIONS**

12.1 Representations and Warranties of the Customer - In addition to any other representations, warranties and covenants given to the Company under this Agreement, the

Customer represents, warrants and covenants to the Company that at the date hereof and at all times during the Term:

- (a) all necessary action has been taken by the Customer to authorize the execution, delivery and performance by the Customer of this Agreement and this Agreement constitutes a legal, valid and binding obligation enforceable against the Customer in accordance with its terms;
- (b) the Customer will establish and maintain all appropriate operating controls and arrangements such as will allow the Customer to operate the Terminal Location within the parameters established by and set out in this Agreement;
- (c) the Customer will not, at any time, intentionally employ or otherwise use the rates and charges for Unauthorized Supply Overrun Gas or Unauthorized Supply Underrun Gas for the purpose of obtaining gas supply to the Terminal Location;
- (d) the Customer has not, and will not during the Term, make any direct connection to any Gas Transporter or other transmitter or distributor of gas for the delivery or sale, or possible delivery or sale, of gas to or in respect of the Terminal Location;
- (e) the Customer will not construct any gas line to or in respect of the Terminal Location;
- (f) the Customer is not a transmitter or distributor of gas (as contemplated in the OEB Act) and has no application before the OEB to become a transmitter or distributor of gas or for the construction of a gas line to or in respect of the Terminal Location, whether pursuant to Part VI of the OEB Act or otherwise; and
- (g) such other representations, warranties and covenants as are set out in Appendix "A", if any.

12.2 Operation of Facility - The Customer covenants and agrees that throughout the Term it will operate its business in the ordinary course of the type of business operating a similar facility of the size and nature set out in, and substantially in accordance with, the '**Operating Characteristics**' for the Terminal Location as set out in Part 5 of Appendix "A".

12.3 Start-Up/Shut-Down - In any circumstance where the Terminal Location is required, for any reason and at any time during the Term, to commence or cease operation, the Customer and the Company shall comply with the start-up and shut-down protocols as set out in Part 6 of Appendix "A", as the same may be amended from time to time by agreement of the Customer and the Company.

## 12.4 Adoption of NAESB Standards

12.4.1 Acknowledgement of Standards - Each of the Parties acknowledges and agrees that the NAESB develops and promotes standards for business practices and electronic communication of gas transactions, with a view to simplifying the management of gas across the entire North American pipeline grid.

12.4.2 Amendment to Conform with Standards - The Customer hereby acknowledges that the NAESB may, from time to time, revise or implement standards that conflict with or supplement the provisions of this Agreement. If it becomes necessary for the Company to adopt a recommended standard that conflicts with or supplements the provisions of this Agreement, it shall deliver a notice to the Customer which specifies such standard and sets out the revisions to this Agreement that are necessary to accommodate such standard. The Parties agree that on the thirtieth (30th) day following the delivery of such notice, this Agreement shall be deemed to be amended by the incorporation of the revisions set out in such notice.

12.5 Energy Conversion - Gas delivered to the Customer hereunder shall be converted from energy to volume at the rate published in the Rate Handbook.

12.6 Indemnification - The Customer shall save harmless and indemnify the Company, its directors, officers, employees and agents from and against any and all liability (including injury, loss, damage, expense or other cost) to the Company or of the Company to any third parties, howsoever caused, resulting from, arising out of or relating to a breach of this Agreement arising out of:

- (a) the Customer taking gas at the Point of Delivery in excess of (i) the Hourly Demand, plus, (ii) the amount of any Authorized Demand Overrun Gas, provided that if a Billing Contract Demand is applicable, no Authorized Demand Overrun Gas will be added; in each case, to the extent that such excess taking results in an interruption or interference with the Company's ability to provide services to any other customer of the Company; or
- (b) the Customer failing to deliver gas to the Point of Acceptance for which a Nomination has been provided to the Company, to the extent that such failure to deliver results in an interruption or interference with the Company's ability to provide services to any other customer of the Company.

12.7 Commissioning Period - The terms and conditions of this Agreement relating to the period commencing on the Date of First Deliveries and ending on a specific agreed upon date or event thereafter (the "Commissioning Period") are set forth in Appendix "C".

## **ARTICLE XIII - FORCE MAJEURE**

13.1 Effect of Force Majeure - Subject to the other provisions of this Article XIII, a Party shall not be liable to the other Party, in respect of such first mentioned Party's obligations under this Agreement (other than the obligations to make payment of money then due) as a result

of the inability of the first mentioned Party to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. A delay or interruption in the performance by a Party of any of such obligations due to Force Majeure shall suspend the period of performance of such obligation during the continuance of such Force Majeure.

### 13.2 Notice and Other Requirements

13.2.1 Initial Notice - Forthwith following a Party becoming or being made aware of an Event of Force Majeure which may impact on any of such Party's obligations, such Party shall notify the other Party of the event and of the manner in which such Party's obligations hereunder will or may be affected; and such Event of Force Majeure shall be deemed to have commenced when it occurred provided notice is given within six (6) hours of the occurrence, and otherwise when such notice is given.

13.2.2 Efforts to Eliminate - The Party claiming Force Majeure shall, unless such Event of Force Majeure is a strike, lockout or other industrial disturbance, use its best efforts to eliminate such event of Force Majeure.

13.2.3 Subsequent Notice - The Party claiming Force Majeure shall forthwith give notice to the other Party when such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling its obligation to deliver or receive gas as contemplated herein.

13.2.4 Resumption of Obligations - The Party claiming Force Majeure shall proceed to fulfill such Party's obligations which are impacted by the Event of Force Majeure as soon as reasonably possible after such Event of Force Majeure has been eliminated or has ceased to prevent the Party claiming Force Majeure from fulfilling such obligations.

13.2.5 Oral Notice - Any notice under this Section 13.2 may be given orally; provided that such notice shall only be effective if it is confirmed the same day in writing by facsimile or as otherwise provided in Section 19.1.

13.3 Definition - In this Agreement, "**Force Majeure**" or "**Event of Force Majeure**" means any cause (A) not reasonably within the control of the Party claiming force majeure, and (B) which by exercise of due diligence such Party is unable to prevent or overcome, and includes the following:

- (a) physical events such as an act of God, landslide, earthquake, storm or storm warning such as a hurricane which results in evacuation of an affected area, flood, washout, explosion, breakage or accident to machinery or equipment or lines of pipe used to transport gas, the necessity for making repairs to or alterations of such machinery or equipment or lines of pipe or inability to obtain materials, supplies (including a supply of services) or permits required to perform a Party's obligations under this Agreement;
- (b) interruption and/or curtailment of firm transportation by a Gas Transporter;

- (c) acts of others such as strike, lockout or other industrial disturbance, civil disturbance, blockade, act of a public enemy, terrorism, riot, sabotage, insurrections or war, as well as physical damage resulting from the negligence of others;
- (d) if the Company provides Load Balancing to the Customer, failure or malfunction of any storage equipment or facilities of the Company; and
- (e) governmental actions, such as necessity for compliance with any Applicable Laws.

13.4 Force Majeure Declared by Company - In the event a Force Majeure is declared by the Company, the Customer will continue to be obligated for all applicable charges relevant to contracted services which continue to be available notwithstanding the Event of Force Majeure and will only be relieved of any applicable charges, if any, relevant to contracted services not available to the Customer as a direct result of the Force Majeure. Any related upstream transportation charges would be the Customer's sole responsibility.

13.5 Force Majeure Declared by Customer - In the event the Force Majeure is declared by the Customer, all demand, commodity and service rates and charges in respect of currently effective Nominations or financial obligations otherwise payable under this Agreement will remain payable to the Company. If any Force Majeure occurs at the Customer's facilities downstream of the Point of Delivery, the Customer will remain obligated to, if applicable, deliver gas at the Point of Acceptance in respect of the then currently effective Nominations.

13.6 Additional Effect of Force Majeure - Except as provided in Section 13.7, and subject to Section 13.8, a Party hereunder shall not be liable to the other Party hereunder for the first mentioned Party's inability to deliver or receive gas as contemplated herein if such inability is caused by an Event of Force Majeure. In the case of any such inability so caused, then the other Party shall have no claim for damages or specific performance or other right of action against the first mentioned Party.

13.7 Limitations - Notwithstanding any other term of this Article XIII, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure if:

- (a) such Party's inability to perform the obligation was caused by its lack of finances; or
- (b) such Party's inability to perform the obligation was caused by its deliberate act or inaction; or
- (c) such Party failed to comply with Section 13.2 in respect of the Event of Force Majeure.

13.8 Further Limitations - Notwithstanding any other term of this Article XIII, no Party shall be entitled to, or to claim, the benefit of the provisions of Force Majeure to the extent performance is affected by any or all of the following circumstances:

- (a) the curtailment of interruptible gas supply; or
- (b) a Force Majeure claimed by a Gas Transporter responsible for the delivery to the Point of Acceptance of gas for which a Nomination has been accepted by the Company hereunder, if (i) another Gas Transporter is capable of delivering such gas to the Point of Acceptance (unless the Party has used its commercially reasonable best efforts to contract with such other Gas Transporter and has been unable to do so); or (ii) gas is available in the secondary market from another supplier sufficient to meet the terms of the relevant Nomination; or
- (c) economic hardship, including the Customer's ability to sell gas at a higher or more advantageous price or to buy gas at a lower or more advantageous price; or
- (d) the loss or failure of the Customer's gas supply or depletion of reserves, unless (i) the Force Majeure causing such loss or failure is a result of a natural disaster (such as landslide, earthquake or hurricane) or an act of others (such as terrorism, riot, sabotage, insurrection or war; but not a strike, lockout or other industrial disturbance); and (ii) gas is not available in the secondary market from another supplier sufficient to meet the terms of the Customer's then current obligations under this Agreement.

#### **ARTICLE XIV - FINANCIAL ASSURANCES AND INSURANCE**

14.1 Requirement for Financial Assurances - Contemporaneously with the execution of this Agreement and at any time during the Term, the Company may, upon notice to the Customer, require the Customer to provide the Company, and the Customer shall provide if the Company so requests, financial assurances in respect of the Customer's obligations hereunder in the amount and of the type required by the Company (the "**Financial Assurances**"), all in accordance with the terms set out in Appendix "B". Initially, the Financial Assurances required by the Company to be provided by the Customer shall be those set out in Appendix "B".

14.2 Nature of Financial Assurances - Any request for such Financial Assurances shall be based upon the creditworthiness of the Customer, and shall be consistent with the Company's then current policies relating to customer account security applicable to like customers. Such Financial Assurances may consist of an irrevocable letter of credit in a form and from an issuer acceptable to the Company and/or such other security as the Company may specify. Such Financial Assurances may relate to the Customer's pending or current distribution service with the Company and/or the Customer's requests of the Company for an extension of the Term or for additional payment or gas credit or terms.

14.3 Third Party Credit Review - Without in any way limiting the Company's rights under this Article XIV, the Company may from time to time contract with or use the services of a qualified, arm's length third party to assess, review and/or provide comment on the creditworthiness of the Customer. If such arm's length third party advises the Company that an adjustment to the Financial Assurances is recommended, the Company shall be entitled to rely

on such recommendations and require the Customer to adjust its Financial Assurances accordingly pursuant to the foregoing terms of this Article XIV.

14.4 Realization of Financial Assurances - The Company shall be entitled to realize upon any Financial Assurances in the manner and to the extent provided for and set out in this Agreement, including Appendix "B", and such Financial Assurances.

14.5 Requirement for Insurance - Contemporaneously with the execution of this Agreement and from time to time during the Term, the Company may, upon notice to the Customer, require the Customer to provide the Company, and the Customer shall provide if the Company so requests, evidence of insurance carried by the Customer in the amount and of the type required by the Company (the "**Customer's Insurance**"), all in accordance with the terms set out in Part 4 of Appendix "B". Initially, the Customer's Insurance shall be as set out in Part 4 of Appendix "B".

#### **ARTICLE XV- EVENTS OF DEFAULT AND REMEDIES**

15.1 Events of Default - In addition to any other events set out in this Agreement which are deemed to be an Event of Default, the occurrence of any one or more of the following events shall be considered an event of default (an "**Event of Default**"):

- (a) intentionally deleted;
- (b) if the Customer fails to make a payment due pursuant to Part 4(b) of Appendix "A":
  - (i) within five (5) days of the due date thereof (whether due in the ordinary course or by acceleration or otherwise); and
  - (ii) the Company has given a notice to the Customer specifying that (A) the due date for payment has passed and (B) forthwith following the expiry of the cure period referred to in (b)(i) above the Company will suspend any or all of its obligations under this Agreement, then
  - (iii) forthwith following the expiry of such cure period, the Company shall be entitled to suspend any or all of its obligations under this Agreement for a period of fourteen (14) days; and
  - (iv) the Customer fails to make the full amount of such payment within such fourteen (14) day period;
- (c) if the Customer:
  - (i) exceeds the Contract Demand or the Hourly Demand, except as specifically contemplated and provided otherwise, if at all, in Appendix "A";



- (ii) fails to perform, observe or comply with any of its other covenants or obligations under this Agreement or any other agreement now or hereafter entered into with the Company, or if any representation or warranty made in this Agreement is or proves to be incorrect or misleading in any material respect at the time made or deemed to have been made (or repeated), and such failure or incorrectness is not remedied within thirty (30) days after written notice of such failure or incorrectness is given to the Customer; or
- (iii) fails to perform, observe or comply with any particular covenant or obligation under this Agreement, or if any representation or warranty made in this Agreement is or proves to be incorrect or misleading in any material respect at the time made or deemed to have been made (or repeated), on more than three (3) occasions in any twelve (12) consecutive calendar month period, notwithstanding that it remedies each such failure or incorrectness within the applicable cure period, if any, provided for; provided that the Company has given a notice of each such failure or incorrectness to the Customer;
- (d) if the Customer fails to provide, maintain, extend or increase any Financial Assurances in accordance with the terms of this Agreement;
- (e) if the Customer, or any of its directors, officers, employees, agents or other representatives, as applicable, fails to obtain or maintain any applicable Required Permit which affects, or which the Company determines acting reasonably may affect, the safety or security of any of the Company's other customers or the integrity of all or any part of the Company's gas distribution system and such Required Permit is not reinstated, obtained or otherwise brought into good standing within thirty (30) days of such failure, provided that during such period prior to the reinstatement, obtaining or otherwise bringing into good standing of such Required Permit, the Company shall be entitled to exercise its rights under Section 15.2(a); or if the Customer, or any of its directors, officers, employees, agents or other representatives, as applicable, fails to obtain or maintain any other applicable Required Permit and such Required Permit is not reinstated, obtained or otherwise brought into good standing within thirty (30) days after written notice of such failure is given to the Customer;
- (f) if the Customer (i) is dissolved; (ii) admits in writing that it is insolvent or its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes, or has instituted against it, any proceeding (whether by way of petition, assignment, notice of motion or otherwise) seeking a judgment of bankruptcy or any other relief under any bankruptcy, insolvency or reorganization or relief from creditors law

whether the *Bankruptcy and Insolvency Act* (Canada) or the *Companies' Creditors Arrangement Act* (Canada) (as amended, supplemented or replaced from time to time), or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation and, in the case of any such proceeding or petition instituted or presented against it and not consented to by it, such proceeding or petition is not dismissed, discharged or vacated in each case within thirty (30) days of the institution or presentation thereof against it; (v) has a resolution passed for its winding up, official management or liquidation; (vi) seeks or becomes subject to or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, receiver-manager, trustee, custodian or similar official for it or for all or substantially all its assets or the Terminal Location and, in the case of any such appointment not sought by it and not consented to by it, such appointment remains in effect for a period of thirty (30) days; (vii) has a secured party take possession of all or substantially all its assets or the Terminal Location and maintain such possession for a period of thirty (30) days; (viii) causes or is subject to any event with respect to it which, under applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive) and, in the case of any such event not caused by it and not consented to by it, such event continues for a period of thirty (30) days; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

- (g) if any execution, distress, attachment, sequestration or other enforcement process or judgment or order, whether by court order or otherwise, which would have a material adverse effect on the financial viability of the Customer becomes enforceable against any property of the Customer including the Terminal Location; and, such execution, distress, attachment, sequestration or other enforcement process or judgment or order shall continue unsatisfied (or shall not have been vacated or discharged) for a period of fifteen (15) consecutive days; or
- (h) if the Customer ceases carrying on business in the ordinary course;

provided that each of the above-noted Events of Default has been inserted for the benefit of the Company and may be waived by the Company in its sole discretion in whole or in part at any time by notice to the Customer, and the Company may, in its sole discretion, extend the period for the cure of any such Event of Default (if any), provided that the Customer is then diligently pursuing the satisfaction thereof and demonstrates to the reasonable satisfaction of the Company that the steps being taken by the Customer are likely to cure the Event of Default within a reasonable period of time.

15.2 Remedies Upon Event of Default - Upon the occurrence of an Event of Default, the Company may, at its sole option, do any one or more of the following:

- (a) suspend any or all of the services or obligations of the Company or rights of the Customer under this Agreement provided that such suspension shall not relieve the Customer of the obligation to pay all rates and charges under this Agreement during such suspension;
- (b) exercise any of the rights and remedies of a secured party under this Agreement and under any law then in effect;
- (c) exercise its rights of set-off against any and all property of the Customer in the possession of the Company or its agents;
- (d) liquidate or exercise all or any part of any Financial Assurances then held by or for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer;
- (e) establish an Early Termination Date in accordance with Section 16.2 and terminate this Agreement; and/or
- (f) exercise any other rights or remedies the Company has at law, including bringing an action at law as may be necessary or advisable in order to recover damages and costs.

15.3 Suspension of Company's Obligations - In addition to any other rights or remedies the Company may have under this Agreement or otherwise, the Company shall not be required to provide the services or perform its obligations hereunder, and shall be entitled to suspend such services and obligations, at any particular time, if performance thereof would be in contravention of any Applicable Laws. If the Company suspends its obligations pursuant to this Section 15.3 and such suspension continues for more than ninety (90) consecutive days, then the Parties shall meet to consider and to discuss in good faith and settle whether the Agreement should be terminated or whether the Company should further suspend its obligations, and the effect of same. For certainty, if the parties determine to terminate this Agreement, then the Parties shall in good faith determine what amount, if any, of the Termination Charge the Customer shall pay to the Company.

#### ARTICLE XVI - TERM AND TERMINATION

16.1 Agreement Term - This Agreement shall be effective from the date hereof and shall continue for the Term.

16.2 Termination by the Company - If an Event of Default occurs at any time during the Term, the Company may, in its discretion, establish a date, which date shall be not less than five (5) Business Days after delivery of notice to the Customer (an "**Early Termination Date**"), on which this Agreement shall terminate, provided that no such notice is required to terminate this Agreement in the event that the Customer defaults by reason of an Event of Default described in Subsections 15.1(f), (g) or (h).

16.3 Termination by Customer - Subject to the other provisions of this Article XVI, the Customer may terminate this Agreement at any time upon not less than six (6) months prior notice to the Company (also, an "**Early Termination Date**"), which notice shall set out the Day upon which the termination shall be effective.

16.4 Termination Charge

16.4.1 Amount of Termination Charge - If an Early Termination Date has been established, either by the Company pursuant to Section 16.2, or by the Customer pursuant to Section 16.3, the Customer shall pay to the Company, within ten (10) Business Days of receipt of an invoice from the Company therefor, an amount (the "**Termination Charge**") calculated in accordance with Part 8 of Appendix "A".

16.4.2 Use of Security - Upon the establishment of an Early Termination Date, if the Customer fails to pay the Termination Charge in full when required to do so pursuant to the terms of this Section 16.4, the Company may, at its sole option, liquidate or exercise all Financial Assurances then held by or for the benefit of the Company free from any claim or right of any nature whatsoever of the Customer, including any equity or right of purchase or redemption by the Customer.

16.5 Liquidated Damages - The Parties agree that the Termination Charge constitutes liquidated damages that are a reasonable estimate of the damages or loss to be suffered by the Company as a consequence of early termination and is not a penalty.

16.6 Effects of Termination - Upon the termination of this Agreement, whether at the expiry of the Term or for any reason prior thereto:

- (a) the Company may, in its sole discretion and without any notification to the Customer, implement the shut-down protocol referred to in Section 12.3 (or, failing the inclusion of such protocol, the Company's then standard shut-down protocol) and effect a complete shut-down of the delivery of gas to the Terminal Location;
- (b) the Customer shall forthwith pay all amounts due and owing to the Company pursuant to the terms of this Agreement; and
- (c) all provisions of this Agreement relating to payments required hereunder shall continue after termination until all such payments have been fully satisfied.

16.7 Continuation of Service - On or prior to the expiry of the Term, the Customer shall have the option to continue uninterrupted service to the Terminal Location in accordance with the terms of the Applicable Rate and any terms and conditions generally applicable to customers obtaining service under such rate at that time, with such changes as are (a) consistent with the terms of this Agreement, or (b) agreed upon by the Parties, each acting reasonably, except in each case to the extent prohibited by then existing Applicable Laws. In such instance, subject to then Applicable Laws, the Customer will not be required to provide further CIAC in respect of such continued service to the Terminal Location; provided that: (i) the contract

demand for such continued service has not increased from the applicable Contract Demand herein; and (ii) the full Term (up to and including the Termination Date) has or will expire and service has been and will continue to be uninterrupted to the Terminal Location. The Customer shall notify the Company at least twelve (12) months prior to the expiry of the Term that it wishes to continue service to the Terminal Location as contemplated in this Section. For certainty, subject to the foregoing, it is the intent of this Section that at the expiry of the Term, service will continue to be uninterrupted to the Terminal Location.

## **ARTICLE XVII - INTENTIONALLY DELETED**

## **ARTICLE XVIII - DISPUTE RESOLUTION**

18.1 Mechanism for Resolution of Disputes – All disputes, claims, questions or differences arising out of or in connection with this Agreement, or its performance, enforcement, breach, termination or validity, (each a “Dispute”) shall be resolved in the manner set out in this Article XVIII.

18.2 Notice of Dispute - A Party claiming that a Dispute has arisen must give written notice (a “Dispute Notice”) to the other Party specifying the nature of the dispute, the relief sought and the basis for the relief sought.

18.3 Meeting between Parties – Forthwith following delivery of a Dispute Notice, the Parties must commence the process of attempting to resolve the Dispute by referring such Dispute to their respective representatives and shall cause their respective representatives to meet, discuss and negotiate in good faith with the intention of reaching a just and equitable solution satisfactory to both Parties .

18.4 Binding Arbitration - If the Dispute is not resolved to the satisfaction of the Parties with fifteen (15) Business Days after delivery of the Dispute Notice, then either Party may, upon notice by such Party to the other, at any time thereafter require the Dispute to be resolved by binding arbitration pursuant to this Section 18.4:

- (a) The Dispute shall be finally settled by arbitration in accordance with the provisions of the *Arbitration Act, 1991* (Ontario) based upon the following provisions of this Section 18.4.
- (b) The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties, or in the event of failure to agree within ten (10) Business Days following delivery of the written notice to arbitrate, each of the Parties shall designate an unaffiliated third person within a further ten (10) Business Days who together shall agree upon and appoint an arbitrator. In the event such unaffiliated third persons fail to appoint the arbitrator within such ten (10) Business Day period, any Party may apply to a judge of the Ontario Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to rule upon the particular matter to be decided.

- (c) The arbitrator shall be instructed that time is of the essence in the arbitration proceeding and, in any event, the arbitration award must be made within sixty (60) days of the submission of the Dispute to arbitration.
- (d) After written notice is given to refer any Dispute to arbitration, the Parties will meet within fifteen (15) Business Days of delivery of the notice and will negotiate in good faith any changes in these arbitration provisions or the rules of arbitration which are herein adopted, in an effort to expedite the process and otherwise ensure that the process is appropriate given the nature of the Dispute and the values at risk.
- (c) The arbitration shall take place in Toronto, Ontario, and the language of the arbitration shall be English.
- (f) The arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all related matters. The costs of arbitration include the arbitrators' fees and expenses, the provision of a reporter and transcripts, reasonable legal fees and reasonable costs of preparation.
- (g) The Parties agree that the arbitration shall be kept confidential and that the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions and any awards) shall not be disclosed beyond the arbitrator, the Parties, their counsel and any person necessary to the conduct of the proceeding, except as may lawfully be required in judicial proceedings relating to the arbitration or otherwise or as may be required by Applicable Laws.

## **ARTICLE XIX - GENERAL**

19.1 Notice or Communication - Except as otherwise expressly provided in this Agreement, all notices, directions, authorizations, and other communications of any nature required or permitted to be given hereunder by one Party to the other (in each case, a "Notice") shall be in writing and shall be delivered personally to an officer or other responsible employee of the addressee or sent by courier, by facsimile or by electronic internet communication to the applicable addressee as follows:

- (a) in the case of the Company, to it at:

Courier Address:	Enbridge Gas Distribution Inc. 500 Consumers Road North York ON M2J 1P8
Nominations:	Gas Nominations Direct: (780) 420-8850 Fax Number: (780) 420-8533 Attention: Gas Nominations [email: sms@enbridge.com]
Billing and Payment:	Billing Direct: 1 (800) 565-3364 Fax Number: (905) 762-3633 Attention: Key Account Billing Rep
Emergency/Shut-Down:	Emergency Toll Free: 1 (866) 420-6630 Gas Control Direct: (780) 420-8853 Fax Number: (780) 420-8533 Attention: Gas Control [email: gasctrl@enbridge.com]
Legal and Other:	Legal Direct: (416) 495-5868 Fax Number: (416) 495-5994 Attention: Vice President, Gas Distribution Law & Deputy General Counsel

(b) in the case of the Customer, to it at the address set out in Part 9 of Appendix "A",

or at such other address of which the addressee may from time to time have notified the addressor pursuant to this Section 19.1. A Notice shall be deemed to have been sent and received on the day it is delivered personally or by courier or by facsimile or by electronic internet communication. If such day is not a Business Day or if the Notice is received after 1700 EST (at the time of place of receipt) on any Business Day, the Notice shall be deemed to have been sent and received on the immediately following Business Day. The Company shall not be required to accept any communication from a third party which is sent on the Customer's behalf unless the Customer has provided the Company in advance with an authorization in form acceptable to the Company authorizing such third party to act as agent for the Customer and to send communications hereunder on the Customer's behalf.

19.2 Confidentiality - "**Confidential Information**" means any information relating to the terms or performance of this Agreement disclosed by one Party (the "**Disclosing Party**") to the other (the "**Receiving Party**"), whether prior to or after the execution of this Agreement, relating to the business and operations of the Disclosing Party or any of its affiliates (as that term is defined in the *Business Corporations Act* (Ontario)) and the terms and conditions and performance of this Agreement. Neither Party shall disclose any Confidential Information to any other Person (other than such Party's officers, directors, consultants, employees, lenders, project partners, counsel, accountants and other professional advisors and prospective purchasers of any of the rights under this Agreement, or the Ontario Power Authority or any successor thereto, all on a need-to-know basis and all of whom have agreed, or by the nature of their retainer,

engagement, employment or relationship to such Party, are required, to keep such information confidential on similar terms, and for whose breach such Party shall be liable to the other Party), except with the consent of the Disclosing Party or in order to comply with the provisions of any Applicable Laws. Further, the Receiving Party shall not use any Confidential Information except in the fulfillment of its rights and obligations under this Agreement. Each Party shall notify the other Party of any proceeding of which it is aware that may result in disclosure and use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation, provided that all monetary damages shall be limited to actual direct damages and a breach of this section, in and of itself, shall not give rise to a right to suspend performance under, or terminate this Agreement.

### 19.3 Limitation of Liability

19.3.1 Company's Liability - The liability of the Company, and its shareholders, directors, officers, employees and agents, whether founded in tort or breach of contract or otherwise, shall:

- (a) be limited to the loss sustained by the Customer as a result of direct physical damage sustained by the Customer, including reasonable costs of repair and replacement;
- (b) exclude any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties; and
- (c) exclude any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

19.3.2 Customer's Liability - Except in respect of the Customer's liability under Section 8.5 or Section 12.6 or in respect of any payment obligation of the Customer hereunder, the liability of the Customer, and its shareholders, directors, officers, employees and agents, whether founded in tort or breach of contract or otherwise, shall:

- (a) be limited to the loss sustained by the Company as a result of direct physical damage sustained by the Company, including reasonable costs of repair and replacement;
- (b) exclude any indirect or consequential losses, including loss of profits, business interruption losses, or any losses as a result of claims by third parties; and
- (c) exclude any aggravated or non-compensatory damages, including punitive or exemplary damages, whether by statute, in tort or contract.

### 19.4 Survival - Notwithstanding the termination of this Agreement:

- (a) the provisions of Section 19.2 shall survive for ten (10) years;



- (b) the provisions of Section 19.3 shall survive indefinitely;
- (c) the Customer and the Company shall maintain records applicable to this Agreement for a period of six (6) years following termination;
- (d) the Customer shall fulfill all payment and other obligations hereunder, including in respect of the Customer's Cumulative Imbalance Account balance obligations as provided hereunder, and the Company shall have a continuing right to enforce against all Financial Assurances; and
- (e) the Company shall have the continuing right to the use of easements granted by the Customer in favour of the Company for access to the plant, facilities and/or equipment owned by the Company.

19.5 Assignment - This Agreement shall be binding upon the Parties and their respective successors and assigns. The Customer may not assign this Agreement or any of its rights or obligations hereunder in whole or in part without the prior written consent of the Company, provided that such consent shall not be unreasonably withheld.

19.6 Change of Control - There shall be no Change of Control of the Customer without the prior written consent of the Company, provided that such consent shall not be unreasonably withheld where the Company is satisfied that neither the creditworthiness of the Customer or the Financial Assurances provided hereunder shall be adversely affected by the Change of Control. "**Change of Control**" means any sale, merger, reorganization or other transaction pursuant to which the shareholders or equity holders of the Customer immediately prior to completion of such transaction cease as a result of such transaction to hold at least 51% of the voting securities of the Customer.

19.7 Execution of Documents - This Agreement may be executed in several counterparts, each of which so executed being deemed to be an original, and such counterparts together shall constitute but one and the same instrument and notwithstanding their date of execution shall be deemed to be made and dated as of the date hereof.

[end of page]


IN WITNESS WHEREOF this Agreement has been executed by the Parties hereto, as of the day and year first above written.

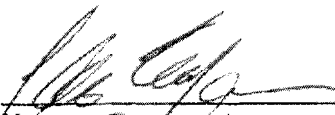
**ENBRIDGE GAS DISTRIBUTION INC.**

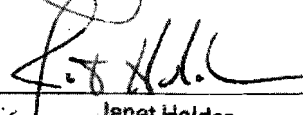
**YORK ENERGY CENTRE LP**


By its general partner


**YORK ENERGY CENTRE INC.**

By:   
Name: Arunas Pleckaitis  
Title: Vice President, Business Development & Customer Strategy

By:   
Name: J. M. Myers  
Title: President & CEO

By:   
Name: Janet Holder  
Title: President

By:   
Name: Geoff Krantz  
Title: CFO

APPROVED AS TO FORM	
LEGAL	

**APPENDIX "A"**  
**(Dedicated Service)**

**CUSTOMER INFORMATION**

**PART 1 - CONTRACT PARAMETERS**

Terminal Location	Applicable Rate  (item 1)	Contract Demand [m <sup>3</sup> ]  (item 2)	Hourly Demand [m <sup>3</sup> ]  (item 3)	Maximum Contractual Imbalance  (item 4)	Point of Delivery Pressure [kPa]  (item 5)
18781 Dufferin Street, Township of King	125 dedicated service	3,264,000	136,000	1,958,400 if Point of Acceptance is TCPL Enbridge CDA,  0 if Point of Acceptance is not TCPL Enbridge CDA	3,240

(a) Contribution in Aid of Construction -

(i) In order to provide service to the Terminal Location, the Company will complete the installation and commissioning of a distribution line(s) and other upgrades to the Company's gas distribution system. The Customer is required to make a 'contribution in aid of construction' (the "CIAC") in connection with this work to be undertaken by the Company. The Company estimates that the amount of CIAC which the Customer must pay to the Company will be approximately \$12,300,000 (the "Estimated CIAC").

(ii) The Company shall invoice the Customer for the Estimated CIAC in accordance with the following schedule:

Date	Amount
██████████	██████████

██████████	██████████
██████████	██████████
██████████	██████████
██████████	██████████

Note: The above dates and amounts are estimates only. The actual timing and amounts will be: (A) based upon (I) the dates upon which the Company commits to the relevant costs, and (II) the relevant costs; or (B) as directed by the OEB.

The Customer agrees to pay each invoice delivered by the Company in accordance with this Subsection (a) within thirty (30) days of receipt thereof. Payments made by the Customer under this Subsection (a) will be credited against the Customer's CIAC obligations set out herein.

- (iii) The Company will advise the Customer in writing of: (A) any material changes to the Estimated CIAC, and (B) any changes to the amounts and payment schedule set out in Subsection (a)(ii) above. In the event that the Estimated CIAC is increased and the amounts and payment schedule set out in Subsection (a)(ii) above are revised as a result, the Customer shall pay the Estimated CIAC to the Company in accordance with such revised payment schedule.
  - (iv) Within fifteen (15) months of completion of the installation and commissioning of the above-noted distribution line(s) and related infrastructure, the Company will establish the final amount of the CIAC (the "**Final CIAC**") based on the actual costs incurred to complete such installation and commissioning, and shall notify the Customer of such final amount and any remaining amounts owing by the Customer or the Company, as the case may be, in order to balance the total CIAC payments made by the Customer against the Final CIAC. Each Party agrees to pay any balance owing in respect of the Final CIAC within thirty (30) days of notice thereof to the Customer.
- (b) Delivery Pressure - In no event shall the Company be obligated to deliver gas pursuant to this Agreement at a pressure which exceeds any maximum allowable operating pressure prescribed or recommended by the Company or any Governmental Authority or under any agreement between the Company and any Gas Transporter(s).

(c) Continuity of Service during the Term -

- (i) The Company and the Customer agree that, so long as the Terminal Location is serviced by a dedicated distribution line, the metering equipment at the connection of such distribution line to the Gas Transporter(s) will be used for all purposes of this Agreement, as if such metering equipment were located at the Terminal Location, and the provisions of Subsection 10.1.1 shall not apply. At or prior to the time at which the Terminal Location is no longer serviced by a dedicated distribution line, then the provisions of Subsection 10.1.1 shall thereupon apply, and the Company will install appropriate metering equipment at the Terminal Location as contemplated in Subsection 10.1.1.
- (ii) If, at any time during the Term, the Terminal Location ceases to be serviced by a dedicated distribution line, then the Customer shall continue to receive the benefit of the Company's obligations, and shall continue to be bound by its own obligations, in each case as set out in this Agreement, subject always to the terms and conditions of this Agreement, as if the Terminal Location continued to be serviced by a dedicated distribution line.

(d) Certain Gas Requirements -

- (i) The Company shall supply the gas necessary to initially pressurize the dedicated distribution line to the Point of Delivery Pressure. The Customer will provide to the Company not less than three (3) Business Days notice of the Day on which it will first take gas at the Terminal Location and, notwithstanding anything to the contrary in this Agreement, the Company will not be required to ensure that the Point of Delivery Pressure is available prior to that Day.
- (ii) Customer shall ensure that, at the time of the termination or expiration of this Agreement, it has delivered to the Point of Acceptance sufficient gas to ensure that the Point of Delivery Pressure is maintained in the distribution line.
- (iii) Customer shall supply the gas required to heat the gas in the distribution line, if dedicated, from the Point of Acceptance to the Terminal Location.

**PART 2 - POINT OF ACCEPTANCE AND NOMINATIONS**

Location
TCPL Enbridge Central Delivery Area (CDA)

- (a) The Parties may agree in writing to alternate Point(s) of Acceptance along the TransCanada Pipelines Ltd. Gas Transporter pipeline. The Company shall offer the Customer such Point(s) of Acceptance as are permitted by the then Rate 125, subject to any terms and conditions set out therein. If the Company agrees to offer an alternate Point of Acceptance to its customers who have contracted for upstream services that require such alternate Point of Acceptance, such alternate Point of Acceptance shall be made available to the Customer, subject to any applicable terms and conditions.
- (b) The Company will not offer Load Balancing if the Point of Acceptance is other than TCPL Enbridge CDA. If the Point of Acceptance has not been TCPL Enbridge CDA and the Customer plans to change to an upstream service where the Point of Acceptance is TCPL Enbridge CDA, the Company reserves the right to require up to eighteen months notice prior to providing Load Balancing to the Customer.
- (c) The Customer shall, at least three (3) months prior to the Date of First Deliveries and thereafter annually on or before December 1<sup>st</sup> in each year of this Agreement, provide to the Company reasonable evidence that the Customer has made arrangements for firm upstream transportation and load balancing services sufficient to meet the needs of the Terminal Location.
- (d) The Company shall make available to the Customer, all additional nomination windows made available to the Customer pursuant to a National Energy Board or OEB approved service from the relevant Gas Transporter.

### **PART 3 - CONTRACT DEMAND ALTERATION**

- (a) With the Consent of the Company - The Customer may make a request for an increase to the Contract Demand, on either a permanent or temporary basis, in writing not less than six (6) months in advance of the Day on which the Customer wishes the increase to become effective. If the Company determines that: (i) the distribution line and related infrastructure which the Company has installed to service the Terminal Location can accommodate the requested additional Contract Demand, and (ii) that such increase will not detrimentally impact the Company's local distribution facilities or the distribution of gas to its other customers, the Company will consent to such increase, subject to any terms and conditions which the Company may reasonably require (including but not limited to a change to the Point of Delivery Pressure, if required).
- (b) Unauthorized Demand Overrun Gas - If at any time the Customer's gas consumption exceeds the Contract Demand or the Hourly Demand (without the prior written authorization of the Company), the Customer shall be deemed to be in material breach of this Agreement and such material breach shall constitute an Event of Default for the purposes of Section 15.1(c)(i), without any opportunity to cure, and the Company shall be entitled to exercise any of its remedies set out in

Section 15.2. Notwithstanding the foregoing, if the Customer's gas consumption exceeds the Contract Demand or the Hourly Demand the Company may elect, in its sole discretion, to deem the Customer's excess consumption to be a request for a permanent increase to the Contract Demand, commencing as of the first Day of the excess consumption, which the Company may accept, subject to any terms and conditions which the Company may reasonably require. For certainty, the Company's obligations under this Agreement, and specifically the Point of Delivery Pressure, shall not apply in the event the Customer's gas consumption exceeds the Contract Demand or the Hourly Demand unless the Company accepts the Customer's excess consumption as a deemed request for a permanent increase to the Contract Demand, and in such instance, subject to any modifications to the terms and conditions of this Agreement which the Company may reasonably require.

#### **PART 4 - BILLING AND PAYMENT**

(a) Billing Period


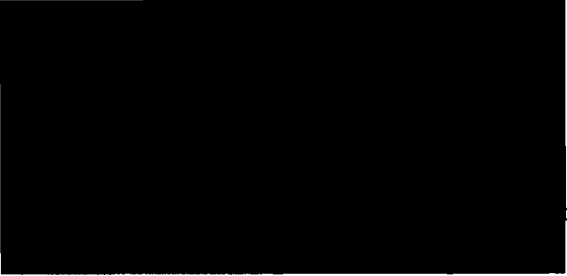




- (i) In respect of the billing for all services, costs and charges payable under this Agreement (including the Demand Charge, Direct Purchase Administration Charge and Authorized Demand Overrun Charges) other than charges for Unauthorized Supply Overrun Gas and Unauthorized Supply Underrun Gas, the Billing Period shall be a period commencing on the first Day of each calendar month and ending on the first Day of the next following calendar month.
- (ii) In respect of the billing for Unauthorized Supply Overrun Gas and Unauthorized Supply Underrun Gas, such bills may be rendered forthwith following the charges being incurred or will be included with the Customer's regular monthly bill.

(b) Payment Period

- (i) Payment in full of all bills rendered as contemplated in clause 4(a)(i) above is due and shall be paid by Customer not more than **seventeen (17)** days following the date on which the relevant bill is rendered.
- (ii) Payment in full of all bills rendered as contemplated in clause 4(a)(ii) above is due and shall be paid by Customer not more than **three (3)** days following the date on which the relevant bill is rendered.

- (c) Interest - Any amount to be remitted by the Customer under this Agreement and which is not remitted on or before the relevant due date shall bear interest at the rate set out in the Rate Handbook (currently Part III, Section F), compounded monthly, until the amount, and all interest thereon, has been paid in full.

**PART 5 - CUSTOMER'S OPERATING CHARACTERISTICS**

Type of Facility:	Natural gas-fired simple cycle turbine
Operating Scenario:	Peak-electricity generating facility
	
	
	

**PART 6 - START-UP AND SHUT-DOWN PROTOCOLS**

Pursuant to Section 12.3 of the Agreement, the Customer and the Company shall comply with the start-up and shut-down protocols set out in Exhibit 1 attached hereto, as the same may be amended from time to time by prior written agreement of the Parties.

**PART 7 - TERMINATION DATE**

The Termination Date shall be September 30, 2031.

**PART 8 - TERMINATION CHARGE**

- (a) The Termination Charge shall be an amount equal to:
  - (i) any non-recoverable costs or expenses incurred by the Company as a direct result of such termination, including decommissioning costs, to a maximum amount of not more than twenty-four (24) months of Contract Value; plus
  - (ii) any Unrecovered Investment.
- (b) For the purposes of this Part 8:



- (i) "Contract Value" shall mean an amount of money calculated by multiplying the Contract Demand times the applicable demand charge(s) set out in Rate 125;
- (ii) "Unrecovered Investment" shall mean an amount of money equal to the accumulated net present value of the Company's Investment calculated:
- A. where an Early Termination Date has been established, as of such Early Termination Date, or
- B. for purposes of paragraph (c) of this Part 8, as of the last Day of the applicable Contract Year,
- and in accordance with the methodology set out in Appendix "B", Schedule 1 of E.B.O. 188 – Report of the Board dated January 30, 1998 issued by the OEB or any subsequent methodology approved by the OEB (and for certainty, in applying any such methodology, "Revenue" shall include demand charges, authorized demand overrun charges and administrative charges); and
- (iii) "Company's Investment" shall mean the actual cost (net of CIAC) the Company incurred in the installation and commissioning of the distribution line and related infrastructure to service the Terminal Location.
- (c) The Company shall, on an annual basis, promptly following the end of each Contract Year during the Term, notify the Customer of the amount of Unrecovered Investment as of the last Day of the Contract Year then ended. In addition, the Company shall notify the Customer when the Company determines, based on the foregoing annual calculation, that the Unrecovered Investment has fallen below an amount equal to thirty-six (36) months of Contract Value. Neither the failure of the Company to notify the Customer in accordance with the foregoing or the existence of any Dispute relating to the amount of Unrecovered Investment, shall impact the obligations of the Customer hereunder, including the obligation of the Customer to pay the applicable Termination Charge.

**PART 9 - COMMUNICATIONS**

Communications to the Customer shall be directed as follows:

Courier Address:	Suite 2250, 350 – 7 Ave. S.W. Calgary, Alberta T2P 3N9
Nominations:	Fax Number: 403-444-6784 Email: <a href="mailto:dvandriel@pristinepower.ca">dvandriel@pristinepower.ca</a> Attention: A. Dave Van Driel (Director, Asset Management)
Billing and Payment:	Fax Number: 403-444-6784 Email: <a href="mailto:cclavette@pristinepower.ca">cclavette@pristinepower.ca</a> Attention: Carol Clavette (Supervisor, Accounts Payable)
Emergency/Shut-Down*:	Fax Number: 403-444-6784 Email: <a href="mailto:dvandriel@pristinepower.ca">dvandriel@pristinepower.ca</a> Telephone: 403-218-3746 Attention: A. Dave Van Driel (Director, Asset Management)
Legal and Other:	Fax Number: 403-444-6784 Email: <a href="mailto:taustin@pristinepower.ca">taustin@pristinepower.ca</a> Attention: Toby Austin (VP, General Counsel)

\*Note: The Customer is required to, and covenants and agrees that it will, monitor the Emergency/Shut-Down contact twenty-four (24) hours per day seven (7) days a week during the Term.


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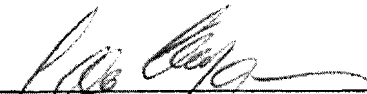
**PART 10 - ACKNOWLEDGEMENT**

Each of the Customer and the Company acknowledges and agrees that this Appendix "A" forms an integral part of, is required to complete, and is incorporated by reference into, the Rate 125 Gas Delivery Agreement entered into among them.


**ENBRIDGE GAS DISTRIBUTION INC.**


**YORK ENERGY CENTRE LP  
By its general partner  
YORK ENERGY CENTRE INC.**

By:   
Name: **Arunas Pleckaitis**  
Title: **Vice President, Business Development & Customer Strategy**

By:   
Name: **J. N. Myers**  
Title: **President & CEO**

By:   
Name: **Janet Holder**  
Title: **President**

By:   
Name: **Gott Krause**  
Title: **CFO**

APPROVED AS TO FORM	
LEGAL	

**EXHIBIT 1**  
**to Appendix "A"**  
**of the Gas Delivery Agreement – Rate 125**

**START-UP AND SHUT-DOWN PROTOCOLS**

**1. Regular Operational Start-up and Shut-down**

For regular operational start-ups and shut-downs of the Terminal Location, the Customer will:

- (a) follow regular Nomination procedures as required by and set out in the Agreement and Rate 125;
- (b) provide the Company with a day ahead hourly gas consumption forecast and use reasonable efforts to communicate to the Company changes from the original day ahead forecast; and
- (c) promptly notify the Company following receipt of a direction from the Independent Electricity System Operator or any successor thereto, to start-up or shut-down the Terminal Location.

**2. Emergency Shut-down / Suspension**

In the event that either the Company or the Customer requires an emergency shut-down of or suspension of service to the Terminal Location due to an Event of Force Majeure or other situation contemplated in the Agreement or Rate 125, the Party initiating the shut-down / suspension will use reasonable efforts to provide the Company or the Customer, as applicable, with as much notice of the required shut-down / suspension as is reasonably possible in the circumstances, and in any event with such notice, if any, as may be required by the Agreement and/or Rate 125.

**3. Event of Default Suspension**

In the event that the Company determines to suspend service to the Terminal Location pursuant to Article XV of the Agreement, the Company will:

- (a) provide the Customer with notice thereof in accordance with the terms of the Agreement; and
- (b) in addition to the foregoing, provide the Customer with a minimum of one hour prior notice in advance of the actual suspension of service to the Terminal Location.

#### 4. Communications

Each of the Company and the Customer shall keep the other Party apprised of the status of a start-up or shut-down of the Terminal Location and/or suspension of service to the Terminal Location in accordance with the Agreement and the terms set out herein. Communications between the Company and the Customer shall be directed:

- (a) in the case of regular operational start-up or shut-down,
  - (i) to the Company, at the contact information set out in Section 19.1 of the Agreement under the heading "Nominations"; and
  - (ii) to the Customer, at the contact information set out in Part 9 of Appendix "A" to the Agreement under the heading "Nominations"; and
- (b) in the case of emergency shut-down / suspension or event of default suspension,
  - (i) to the Company, at the contact information set out in Section 19.1 of the Agreement under the heading "Emergency/Shut-Down"; and
  - (ii) to the Customer, at the contact information set out in Part 9 of Appendix "A" to the Agreement under the heading "Emergency/Shut-Down".

**APPENDIX "B"**

**FINANCIAL ASSURANCES AND INSURANCE**

**PART 1 - FINANCIAL ASSURANCES**

Pursuant to Section 14.1 of the Agreement, the Customer will be required to post and maintain, at all times during the Term, an irrevocable Letter of Credit, to the benefit of the Company, substantially on the terms of Exhibit 1 attached hereto.

Such Letter of Credit to be provided by the Customer shall be for an amount which is not less than the following:

- (a) during the period from the date of this Agreement until April 15, 2012:

Date	Cumulative Amount of Letter of Credit
████████████████████	████████████████
████████████████████	████████████████
████████████████████	████████████████
████████████████████	████████████████
████████████████████	████████████████
████████████████████	████████████████
████████████████████	████████████████
████████████████████	████████████████
February 1, 2011	\$26,820,000

Note 1 to paragraph (a): These dates and amounts are estimates only. The actual required timing and amounts will be: (i) based on (A) the respective dates on which the Company commits to the relevant costs, and (B) the relevant costs; or (ii) as directed by the OEB.

Note 2 to paragraph (a): Notwithstanding the provisions of paragraph (b) of Part 2 of this Appendix "B", during the period from the date of this Agreement to April 15, 2012, the Customer shall deliver to the Company the appropriate Letter of Credit in the required amount on or before the Date specified in the above table, or such other applicable Date as contemplated in Note 1 above, and if the Customer fails to do so, then such failure shall not become an Event of Default under this Agreement, unless (i) the then current Letter of Credit held by the

Company hereunder will expire or terminate on such Date, or (ii) the Customer shall not have delivered to the Company the appropriate Letter of Credit in the required amount on or before two (2) Business Days following the Date specified, provided that, notwithstanding the foregoing, the Company shall be entitled to suspend all or any of its obligations under this Agreement, and all or any of its obligations in respect of installation and commissioning of the distribution line and related infrastructure, until the appropriate Letter of Credit in the required amount has been delivered to it and the Company shall continue to be entitled to liquidate or exercise its rights under the then current Letter of Credit prior to its expiry.

(b) during the period from April 16, 2012 until the date on which the Unrecovered Investment equals the amount contemplated below in paragraph (c) of this Part 1:

an amount equal to the Unrecovered Investment

(c) during the period from the date on which the Unrecovered Investment equals the amount contemplated in this paragraph (c) until the expiry or termination of this Agreement:

an amount equal to: (A) twenty-four (24), times (B) the Contract Demand, times (C) demand charges payable by the Customer set out under the Applicable Rate.

For purposes of this Part 1:

(i) the 'Unrecovered Investment' means:

A. during the first year of the Term commencing on April 16, 2012, an amount equal to the Company's Investment; and

B. in each subsequent year of the Term, an amount equal to the accumulated net present value of the Company's Investment calculated at the end of the immediately preceding year, where the accumulated net present value is calculated applying the methodology set out in Appendix "B", Schedule 1 of E.B.O. 188 – Report of the Board dated January 30, 1998 issued by the OEB or any subsequent methodology approved by the OEB; and for certainty, in applying such methodology, 'Revenue' shall include demand charges, authorized demand overrun charges and administrative charges;

and, for certainty, the amount of the Unrecovered Investment established at the beginning of a year of the Term shall apply for the duration of that year;

- (ii) the 'Company's Investment' means the actual cost (net of CIAC) the Company incurred in the installation and commissioning of the distribution line and related infrastructure to service the Terminal Location; and
- (iii) a "year of the Term" means the period from April 16 in one calendar year to April 15 of the next following calendar year.

## **PART 2 - REALIZATION ON FINANCIAL ASSURANCES**

In addition to any other rights in respect thereof set out in the Agreement, the Company shall be able to liquidate or exercise all or any part of any Financial Assurances then held by or for the benefit of the Company free from any claim of set-off or otherwise or right of any nature whatsoever of the Customer:

- (a) in respect of any claim for indemnity made by the Company pursuant to Section 8.5 or Section 12.6, and in respect of which the Customer does not dispute the claim or the claim is the subject of a final and binding arbitration decision made pursuant to Article 17; or
- (b) if any Financial Assurance then held by or for the benefit of the Company will terminate or expire or otherwise be of no further force or effect, or is to be increased in amount, after a specified date, and at least ten (10) days prior to such date such Financial Assurance is not renewed or extended and increased, if applicable.

## **PART 3 - ADJUSTMENT OF FINANCIAL ASSURANCES**

### ***Initiated by the Company***

- (a) The amount and type of the Financial Assurances may be adjusted from time to time in accordance with the provisions of Article XIV and this Appendix "B". Without in any way limiting the foregoing, if, at any time during the Term: (A) the Company has reasonable grounds to believe that the Customer's creditworthiness or performance under this Agreement has or may become unsatisfactory; (B) there is a material adverse change in market conditions; (C) there occurs a change in OEB policies or requirements; or (D) for any other reason set out in this Appendix "B", the Company may provide the Customer with notice requiring the Customer to post additional or increased Financial Assurances in a form, amount and for a duration identified by the Company in a commercially reasonable manner and agreed upon with the Customer. If the Maximum Contractual Imbalance as set out in item 4 of Part 1 of Appendix "A" is 0 (nil) m<sup>3</sup>, then the Company will not request additional or increased Financial Assurances as a result of a change in the creditworthiness of the Customer.



- (b) Upon receipt of such notice, the Company and the Customer shall have the period of days specified in the notice to settle and agree upon the form, amount and duration of such additional or increased Financial Assurances.
- (c) If the Company requests additional or increased Financial Assurances from the Customer as a result of a third party credit review provided to the Company as contemplated in Section 14.3 of the Agreement, then the Company will, upon receipt of a request from the Customer therefore, provide to the Customer a copy of the results of such review.
- (d) If the additional or increased Financial Assurances are not agreed upon or, if agreed upon, not provided to the Company within the specified period, the Customer shall thereupon be deemed to be in default under this Agreement and the Company shall, in addition to any of its other rights hereunder, thereafter have the option to terminate this Agreement in accordance with the terms hereof.
- (e) If the Customer provides additional or increased Financial Assurances required by the Company in accordance with this Part 3 (the "**Additional Financial Assurances**") and, prior to or contemporaneously with the delivery of such Additional Financial Assurances, delivers a Dispute Notice to the Company alleging that the Company was not acting in a commercially reasonable manner in requiring such Additional Financial Assurances, the limitation set out in Section 19.3.1 of this Agreement shall not apply to any damages or costs of the Customer which the arbitrator presiding over the arbitration of the Dispute as to whether the Company acted in a commercially reasonable manner in requiring such Additional Financial Assurances determines to be direct and verifiable damages and costs suffered by the Customer as a result of the posting by the Customer of such Additional Financial Assurances.

*Initiated by the Customer*

- (f) The Customer may at any time, by notice to the Company, request that the Financial Assurances be substituted, adjusted, replaced or released in a commercially reasonable manner. The Company shall promptly respond to the Customer's request and advise whether it has determined, acting reasonably, to agree to the Customer's request.

**PART 4 - CUSTOMER'S INSURANCE REQUIREMENTS**

Pursuant to Section 14.5 of the Agreement, the Customer will be required to carry, at all times during the Term, the following insurance coverage:

- (a) The Customer shall, at its cost and expense, take out and maintain for the Term comprehensive commercial general liability insurance covering bodily injury and property damage, including blanket contractual coverage, with a minimum

inclusive limit of not less than twenty-five million dollars (\$25,000,000) per occurrence (the "Required Insurance").


- (b) The Company shall be named as an additional named insured under the Required Insurance. All of the Required Insurance policies shall contain a provision that the coverage afforded thereunder shall not be modified or cancelled until at least thirty (30) days prior written notice has been given to the Company.
- (c) On or before the date the Customer commences construction of the Terminal Location, the Customer shall provide the Company with a certificate of insurance from its insurer(s) or insurance broker evidencing that the insurance coverage and the additional insured endorsement, required pursuant to this Part 4, are in effect. Upon request of the Company, a copy of the Required Insurance policies shall be provided to it.


The Company shall have the right to review the minimum amount of the Required Insurance from time to time. If the Company determines, acting in a commercially reasonable manner, that it would be appropriate for the amount of the Required Insurance to be increased or decreased, it shall provide a notice to the Customer to that effect and setting out the revised minimum amount of the Required Insurance. The Customer shall increase or decrease the Required Insurance to the amount set out in such notice within sixty (60) days of receipt of such a notice, and shall provide to the Company the certificate referred to in paragraph (c) above to evidence such adjustment. The Company may require such an adjustment of the minimum insurance amount not more often than once every five (5) years.

#### **PART 5 - ACKNOWLEDGEMENT**

Each of the Customer and the Company acknowledges and agrees that this Appendix "B" forms an integral part of, is required to complete, and is incorporated by reference into, the Rate 125 Gas Delivery Agreement entered into among them.


#### **ENBRIDGE GAS DISTRIBUTION INC.**

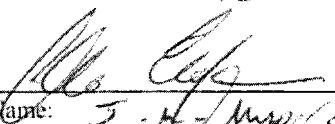
By:   
Name: Arunas Plockaitis  
Title: Vice President, Business Development & Customer Strategy

By:   
Name: Janet Holder  
Title: President

#### **YORK ENERGY CENTRE LP**

**By its general partner  
YORK ENERGY CENTRE INC.**

By:   
Name: G. H. Frank  
Title: CFO

By:   
Name: S. H. Myers  
Title: Pres + CEO



**EXHIBIT 1**  
**to Appendix "B"**  
**of the Gas Delivery Agreement – Rate 125**

**TERMS OF LETTER OF CREDIT**

IRREVOCABLE LETTER OF CREDIT

Enbridge Gas Distribution Inc.  
500 Consumers Road  
Toronto, Ontario  
M2J 1P8

Letter of Credit # ●

Date: ●

Attention: Law Department

Dear Sir/Madam:

**RE: GAS DELIVERY AGREEMENT BETWEEN YORK ENERGY CENTRE LP AND  
ENBRIDGE GAS DISTRIBUTION INC. DATED ●, AS AMENDED OR RESTATED**

---

We hereby authorize you to draw on THE ● BANK, ●, for the account of our Customer, York Energy Centre LP (the "Customer"), up to an aggregate amount of \*\*● -- 00/100 \*\* (\$●) Dollars available on demand as follows:

Pursuant to the request of our Customer, we, THE ● BANK, hereby establish and give to you an Irrevocable Standby Letter of Credit (the Credit) in your favour in the total amount of \*\* ● -- 00/100 \*\* (\$●) Dollars which may be drawn on by you at any time and from time to time upon written demand for payment made upon us by you, which demand we shall honour without enquiring whether you have a right as between yourself and our Customer to make such demand and without recognizing any claim of our Customer.

Provided, however, that you are to deliver to us at such time a written demand for payment is made upon us a certificate purported to be signed by you agreeing and/or confirming that the monies drawn pursuant to this Credit No. ● will be retained and used by you to meet our Customer's obligations in connection with the agreement between the Customer and Enbridge Gas Distribution Inc.

This Credit will continue to the ● and will expire at the Branch Address at the close of banking business on that date.

It is a condition of this Credit that it shall be deemed to be automatically extended for one year from the present or any future expiration date hereof, unless thirty (30) days before any such date we notify you in writing by Registered Mail that we elect not to consider this Credit renewed for any such additional period. Upon receipt by you of such notice, you may draw by means of your demand accompanied by your written certification, that the amount drawn will be retained and used by you to meet obligations incurred or to be incurred in connection with the agreement.

Partial drawings are permitted.

The drawings under this Letter of Credit are to state that they are drawn under THE • BANK •

THIS LETTER OF CREDIT SHALL BE GOVERNED BY THE INTERNATIONAL CHAMBER OF COMMERCE'S INTERNATIONAL STANDBY PRACTICES ("ISP98").

For: THE • BANK

## APPENDIX "C"

### COMMISSIONING PERIOD

#### PART 1 - CONTRACT PARAMETERS

During the Commissioning Period:

- (a) all services provided shall be interruptible and the Company shall only be obligated to use reasonable efforts to provide such services;
- (b) the Customer shall not be obligated to pay any demand charges under this Agreement;
- (c) any and all volumes of gas that may be delivered by the Company to the Customer under this Agreement shall be charged to the Customer at the Authorized Demand Overrun Gas rate set out in Rate 125; and
- (d) all other costs and charges shall be applicable as set out in Rate 125.

#### PART 2 - ESTIMATED QUANTITY AND OPERATIONS

The estimated quantity of gas to be delivered by the Customer to the Company during the Commissioning Period shall not exceed 3,264,000 m<sup>3</sup> per Day.

The Customer shall provide not less than twenty-four (24) hours prior written notice to the Company in advance of the Customer making any Nominations or commencing any operation of the Terminal Location requiring the delivery of any gas.

#### PART 3 - COMMISSIONING PERIOD

The Commissioning Period shall commence on the Date of First Deliveries and continue until **October 1, 2011**.

The "**Date of First Deliveries**" shall be 10:00 hours EST on the later to occur of:

- (a) The date on which the Company notifies the Customer that it is ready to commence deliveries of gas to the Terminal Location pursuant to this Agreement; or
- (b) **April 15, 2011**.

**PART 4 - MAXIMUM CONTRACTUAL IMBALANCE**

Terminal Location	Maximum Contractual Imbalance [m <sup>3</sup> ]
18,781 Dufferin Street, Township of King	1,958,400 if Point of Acceptance is TCPL Enbridge CDA,  0 if Point of Acceptance is not TCPL Enbridge CDA

**PART 5 - EFFECT OF NON-COMPLIANCE**

If the Customer fails to comply with any of its obligations set out in this Appendix "C", then, forthwith following delivery of a notice from the Company to the Customer to that effect, all of the Customer's rights and benefits established hereby shall immediately terminate, and the provisions of Appendix "A" shall immediately apply, including the Contract Demand.

**PART 6 - ACKNOWLEDGEMENT**


Each of the Customer and the Company acknowledges and agrees that this Appendix "C" forms an integral part of, is required to complete, and is incorporated by reference into, the Rate 125 Gas Delivery Agreement entered into among them.


**ENBRIDGE GAS DISTRIBUTION INC.**

**YORK ENERGY CENTRE LP**


By its general partner


**YORK ENERGY CENTRE INC.**

By:   
Name: Artinas Peckaitis  
Title: Vice President, Business  
Development & Customer Strategy

By:   
Name: J.M. Cyfers  
Title: President & CEO

By:   
Name: Janet Holder  
Title: President

By:   
Name: Chris H. Krause  
Title: CFO

APPROVED  
AS TO FORM  
LEGAL 

**Planning Act**  
**Loi sur l'aménagement du territoire**

**ONTARIO REGULATION 305/10**

**ENERGY UNDERTAKINGS: EXEMPT UNDERTAKINGS**

**Consolidation Period:** From July 29, 2010 to the [e-Laws currency date](#).

No amendments.

*This Regulation is made in English only.*

**York Energy Centre project**

1. (1) The **York Energy** Centre project is prescribed for the purposes of clause 62.0.1 (1) (b) of the Act as an undertaking that is not subject to the Act if one of the conditions set out in clause 62.0.1 (1) (a) of the Act is also satisfied. O. Reg. 305/10, s. 1 (1).

(2) For the purposes of this section,

**"York Energy Centre project"** means the undertaking that is the natural gas-fired simple cycle peaking electrical generation facility proposed to be located on those lands legally described as being in the Township of King, York Region being Part of Lot 9 in Concession 2 Old Survey King more particularly described as:

Firstly: Parts 1, 4, 5, 6, and 7 on Reference Plan 65R-23427, further identified as Property Identifier Number 03414-0241 (LT), filed in the Land Registry Office for the Land Titles Division of York Region (No. 65), and

Secondly: Parts 4, 5, 6, 7, and 8 on Reference Plan 65R-867, save and except Parts 1, 3, 4, 5, 6, and 7 on Reference Plan 65R-23427, further identified as Property Identifier Number 03414-0243 (LT), filed in the Land Registry Office for the Land Titles Division of York Region (No. 65). O. Reg. 305/10, s. 1 (2).

2. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 305/10, s. 2.

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## **Pristine Power Inc. Announces Receipt of Development Permit**

**Calgary, Alberta – August 4, 2010** – Pristine Power Inc. (TSX: PPX) (“Pristine” or the “Company”), an independent Canadian developer and operator of electricity and steam generation facilities, today announced that the Company has received its Development Permit from the local Conservation Authority (“CA”). YEC has now acquired all of the necessary permits required for its long term debt financing.

“We have worked diligently with the CA over the past year to ensure that all their requirements have been met. The YEC is located beyond both the 100 year and 350 year floodplain, with the exception of our driveway (representing 3% of the facility) which has been designed to withstand flooding. As an environmental improvement, YEC will be reconstructing an on-site wetland that reestablishes a linkage between two adjacent wetlands”, says Jeffrey M. Myers President and Chief Executive Officer of Pristine.

As previously announced by Pristine on July 29, 2010, the Province of Ontario enacted a regulation exempting the York Energy Centre project site from the requirements of the *Planning Act* (Ontario). With the enactment of the regulation and the receipt of its Development Permit, the Company is working with its lenders to complete negotiations for its non-recourse debt financing, which is targeted to close during the third week of August, 2010. Construction is expected to commence shortly thereafter. Prior to closing such financing, the Company expects to commence site investigative technical work activities in anticipation of construction.

The York Energy Centre is a (nominal) 400 MW natural gas fired peaking facility to be located in the Township of King under the terms of a 20 year peaking generation contract with the Ontario Power Authority. The Company holds a 50% interest in the Project.

### **About Pristine**

Pristine (TSX: PPX) is in the business of developing, owning and operating independent power plants that produce and sell electricity and in some cases, sell process steam to industrial users. Pristine capitalizes on opportunities in the independent power market by actively pursuing the development of dependable, cost-effective and environmentally responsible power generation facilities utilizing technology with proven past performance. Pristine pursues a mix of large gas-fired, bioenergy and hydroelectric projects, and smaller replicable waste heat recovery ERG® and bioenergy projects. Pristine currently has three projects in operation, and two under contract and in advanced development. Pristine is developing projects in strategic regions of North America. Visit [www.pristinepower.ca](http://www.pristinepower.ca) for more information.

### **Cautionary Statement Regarding Forward-Looking Information**

Certain statements in this news release may constitute “forward-looking information” or “forward-looking statements” which involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of the Company or industry results to be materially different from any future results, performance or achievements expressed or implied by such forward-looking information. When used in this news release, such information uses such words as “estimates”, “expects”, “plans”, “anticipates” and other similar terminology. This information reflects the Company’s current expectations regarding future events, including the development, financing, construction and operation of the York Energy Centre project. Forward-looking information involves significant uncertainties, should not be read as a guarantee of future performance or results, and will not necessarily be an accurate indication of whether or not such results will be achieved. A number of factors could cause actual results to differ materially from the results discussed in the forward-looking information.



Although the forward-looking information in this news release is based upon what management of the Company believes are reasonable assumptions, the Company cannot assure investors that actual results will be consistent with this forward-looking information. This forward-looking information is provided as of the date of this news release, and, subject to applicable securities laws, the Company assumes no obligation to update or revise such information to reflect new events or circumstances.

**FOR FURTHER INFORMATION, PLEASE CONTACT:**

**Pristine Power Inc.**

Geoffrey D. Krause, CA CPA

Chief Financial Officer

(403) 444-6405

[gkrause@pristinepower.ca](mailto:gkrause@pristinepower.ca)



## **Pristine Power Inc. Announces Closing and Funding of York Energy Centre Financing**

**Calgary, Alberta – August 25, 2010** – Pristine Power Inc. (TSX: PPX) (“Pristine” or the “Company”), an independent Canadian developer and operator of electricity and steam generation facilities, today announced that it has achieved financial close and funding for its 400 MW York Energy Centre project in Ontario. Under the terms of the financing, a syndicate of financial institutions, led by Union Bank, ING Capital LLC and Royal Bank of Canada and including Bank of Nova Scotia, Siemens Financial Ltd., National Bank of Canada, Canadian Western Bank and Allied Irish Banks, PLC, will provide construction and term non-recourse debt financing of \$270.2 million, as well as a \$60 million letter of credit facility and a \$3 million operating working capital facility.

“Closing and funding of the non-recourse debt financing marks a very significant milestone for the York Energy Centre,” said Jeffry Myers, President and Chief Executive Officer of Pristine. “With the debt financing in place, we are proceeding with major equipment purchases and will commence construction of the project. Commercial operations are expected to begin in the second quarter of 2012.”

Under the terms of the York Energy Centre partnership agreement, Pristine earned a development fee of \$3 million from the project. A further \$3 million fee is due from the project upon commencement of commercial operations. Pristine’s equity contribution for its 50% share of the project totaled \$26.1 million. Accordingly, approximately \$15 million of previously committed cash and cash collateralized for letters of credit is now available to be used by the Company for general corporate purposes.

The York Energy Centre is a (nominal) 400 MW natural gas fired peaking facility to be located in the Township of King under the terms of a 20 year peaking generation contract with the Ontario Power Authority. The Company holds a 50% interest in the Project.

### **About Pristine**

Pristine (TSX: PPX) is in the business of developing, owning and operating independent power plants that produce and sell electricity and in some cases, sell process steam to industrial users. Pristine capitalizes on opportunities in the independent power market by actively pursuing the development of dependable, cost-effective and environmentally responsible power generation facilities utilizing technology with proven past performance. Pristine pursues a mix of large gas-fired, bioenergy and hydroelectric projects, and smaller replicable waste heat recovery ERG® and bioenergy projects. Pristine currently has three projects in operation, and one project under construction. Pristine is developing projects in strategic regions of North America. Visit [www.pristinepower.ca](http://www.pristinepower.ca) for more information.

### **Cautionary Statement Regarding Forward-Looking Information**

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uncertainties, should not be read as a guarantee of future performance or results, and will not necessarily be an accurate indication of whether or not such results will be achieved. A number of factors could cause actual results to differ materially from the results discussed in the forward-looking information. Although the forward-looking information in this news release is based upon what management of the Company believes are reasonable assumptions, the Company cannot assure investors that actual results will be consistent with this forward-looking information. This forward-looking information is provided as of the date of this news release, and, subject to applicable securities laws, the Company assumes no obligation to update or revise such information to reflect new events or circumstances.

**FOR FURTHER INFORMATION, PLEASE CONTACT:**

**Pristine Power Inc.**

Geoffrey D. Krause, CA CPA

Chief Financial Officer

(403) 444-6405

[gkrause@pristinepower.ca](mailto:gkrause@pristinepower.ca)









10/19/2010

