



**EB-2007-0717**

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

**AND IN THE MATTER OF** an Application from Union Gas  
Limited for approval of the parties to, the period of, and the  
storage that is the subject of a T1 Gas Storage and  
Distribution Contract with LANXESS Inc.

**BEFORE:** Bill Rupert  
Board Member

## **DECISION AND ORDER**

### **THE APPLICATION AND PROCEEDING**

Union Gas Limited ("Union") filed an Application, dated August 8, 2007, with the Ontario Energy Board under section 39 (2) of the *Ontario Energy Board Act, 1998* (the "Act") for an order of the Board approving the parties to, the period of, and the space for storage that is the subject of a T1 Gas Storage and Distribution Contract with LANXESS Inc.

A Notice of Application for the proceeding was issued on August 24, 2007 and was served on all the participants in the EB-2005-0520 proceeding that established Union's 2007 rates. In Procedural Order No. 1, issued October 5, 2007, the Board stated that it would proceed by way of a written hearing. The City of Kitchener ("Kitchener") and the Industrial Gas Users Association ("IGUA") were granted intervenor status.

In its letter of intervention, Kitchener objected to Union's request that the Board hold in confidence certain information in the contract that Union considers commercially sensitive or customer specific. The Board requested submissions on Kitchener's objection and, on October 29, 2007, issued its decision on the confidentiality issue. The

Board decided it would not require Union to disclose the contract's non-storage parameters (such as daily contract quantity) nor would it require disclosure of storage space or deliverability, if any, being provided to LANXESS at market rates. The Board ordered Union to file with the Board and interested parties information about the storage space and storage deliverability being provided at cost-based rates under the contract. Union filed that information on October 31, 2007.

## **THE CONTRACT**

The T1 Contract between Union and LANXESS Inc., a chemical producer located in Sarnia, is for 206,000 GJ of storage space. Union and LANXESS had entered into a one-year T1 contract for 206,000 GJ of space that expired October 31, 2007. The parties agreed to extend the term of the contract for five years from October 31, 2007 to October 31, 2012.

In its filing in response to the Board's order on the confidentiality issue, Union provided the following information on the storage space and deliverability to be provided to LANXESS at cost-based rates:

**Space** – 206,000 GJ of firm storage space. That amount was determined in accordance with Union's aggregate excess method for allocating storage space.

**Deliverability** – 2,500 GJ per day of firm injection and withdrawal rights. That amount is 1.2% of the firm storage space.

In response to an interrogatory, Union stated that the storage services contracted by LANXESS will not have adverse impacts on existing in-franchise customers.

## **SECTION 39 (2)**

Union filed the contracts for the Board's approval under section 39 (2) of the Act, which states:

***Gas storage agreements to be approved***

*(2) No storage company shall enter into an agreement or renew an agreement with any person for the storage of gas unless the Board, with or without a hearing has approved,*

- (a) the parties to the agreement or renewal;*
- (b) the period for which the agreement or renewal is to be in operation; and*
- (c) the storage that is the subject of the agreement or renewal.*

The Board has issued a Blanket Storage Order that permits Union to enter into storage contracts with in-franchise customers for volumes up to 2 Bcf with terms not exceeding 17 months without prior Board approval. The term of the extended LANXESS contract exceeds 17 months and, therefore, Board approval of the contract is required.

The LANXESS T1 contract is the first storage contract filed for approval under section 39 (2) since the Board's November 2006 decision on the Natural Gas Electricity Interface Review Proceeding (EB-2005-0551).<sup>1</sup>

In the NGEIR decision, the Board determined that it should refrain from regulating the prices of storage services provided to Union's ex-franchise customers. It also determined that it should refrain from requiring Union to submit such contracts for Board approval under section 39 (2). With respect to storage services for in-franchise customers like LANXESS, the Board concluded that it will regulate the price of storage services only to the extent of the customer's allocated amount (space and deliverability). It will refrain from regulating prices for in-franchise storage services above the allocated amount. The Board also determined that Union is required to reserve 100 PJ of its storage space at cost-based rates for the aggregate requirements of in-franchise customers.

The Board is considering, in a separate proceeding,<sup>2</sup> how much storage space and deliverability Union's unbundled and semi-unbundled in-franchise customers should be entitled to acquire at regulated cost-based rates. The outcome of that proceeding will be Board-approved methods that will govern the amounts of space and deliverability available to in-franchise customers at cost-based rates.

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<sup>1</sup> On the same day that it filed the LANXESS contract for the Board's approval, Union also filed for approval a 20-year contract with St. Clair Power LP.

<sup>2</sup> EB-2007-0725, Proceeding on Natural Gas Storage Allocation Policies.

It is impossible to determine now if the terms of the five-year LANXESS contract will be consistent with the allocation policies that will be approved in the storage allocation policies proceeding. Thus, a key issue in this case was whether the Board should be approving any long-term contracts for in-franchise storage services before the natural gas storage allocation policies proceeding is completed.

## **SUBMISSIONS BY THE PARTIES**

The submissions from IGUA and Kitchener refer at length to the implications of the Board's natural gas storage allocation policies proceeding on a decision to approve the LANXESS contract.

IGUA suggests the Board approve the contract subject to permitting LANXESS to re-open the storage parameters after the Board renders its decision on the storage allocation policies proceeding.

Kitchener's concerns about the contract relate primarily to the amount of deliverability (1.2% of storage space) provided to LANXESS at cost-based rates. Kitchener suggests that the contract provides for an undisclosed amount of deliverability greater than 1.2% for which LANXESS will pay market prices. It argues that Board approval of such a contract would only be valid if accompanied by a determination under section 29 of the Act that the Board will refrain from regulating deliverability services greater than 1.2% made available to in-franchise consumers.

Kitchener submits that this hearing should be adjourned until the Board issues its decision on the storage allocation policies proceeding. It also submits that the Board should issue an interim order to Union to provide the storage services called for by the contract on a cost-of-service basis.

Union does not support the Board issuing an interim order approving the contract pending the outcome of the gas storage allocation policies proceeding. Rather, Union requests that the Board issue a final order approving the parties, the period of the contract, and the storage (both space and deliverability). Union said it would not object if the order provides that the contract is approved subject to adjustment in the future if required by the Board's decision on the storage allocation policies proceeding.

**BOARD FINDINGS**

Under section 39 (2) of the Act, the Board is required to approve the parties to the contract, the period of the contract, and the storage that is the subject of the contract. The Board has no concerns with either the parties to the contract or the amounts of storage that are being provided at cost-based rates. LANXESS is an in-franchise customer and is entitled to some amount of storage at cost-based rates. Neither intervenor in this case has argued that the amounts of space or deliverability provided at cost-based rates under the contract are too high.

The Board is concerned about the five-year term of the contract.

A decision on the EB-2007-0725 proceeding on natural gas storage allocation policies will not be rendered until 2008. In that proceeding, Union has proposed an additional storage allocation methodology for in-franchise customers and IGUA has indicated that it expects to propose a different method. One of the possible outcomes of that proceeding is that the Board approves new storage allocation methods that would give LANXESS more space and/or deliverability at cost-based rates than are provided for in the current contract. It is also theoretically possible that the Board could approve methods that would give LANXESS less space and/or deliverability at cost-based rates (but no such methods have yet been proposed in the allocation proceeding).

Given these uncertainties, the Board accepts IGUA's recommendation that LANXESS be permitted to re-open the space and deliverability parameters of the contract after the Board's decision on the natural gas storage allocation proceeding is issued. The Board will also require that the contract's storage parameters be revised in the event that the space and deliverability amounts in the contract are greater than amounts that would be provided at cost-based rates under allocation methods approved by the Board in the storage allocation policies proceeding.

The Board does not agree with Kitchener's recommendation to adjourn this proceeding until the storage allocations proceeding is completed. The Board sees no benefit to withholding contract approval. The approach outlined in the preceding paragraph ensures that LANXESS will have the right to more storage space or deliverability at cost-based rates if that is the result of the storage allocation proceeding.

The Board also does not see any purpose in the interim order suggested by Kitchener. In the Board's view, approval of the LANXESS contract on the terms outlined above is not tantamount to a making a "forbearance" decision and is not in anyway pre-judging

the outcome of the storage allocation proceeding. Kitchener's submission is based on the belief that the LANXESS contract provides for unregulated market pricing for some storage services. Section 5 of the LANXESS T1 contract, which deals with rates for service, states that the customer agrees to pay for services based on "a) The Rate Schedules R1 and T1 as they may be amended from time to time by the Ontario Energy Board; and b) This Contract and the attachments thereto." The Board is not aware of any parts of the contract and the attachments thereto that provide for prices that differ from those in Rate Schedule T1. Thus, the Board cannot accept the premise of Kitchener's submission.

**THE BOARD ORDERS THAT:**

1. The Board approves the parties to, the period of, and the storage that is the subject of T1 Contract 8348 between Union Gas Limited and LANXESS Inc. as amended on August 15, 2007. A redacted non-confidential version of the contract is attached to this Decision and Order as follows: Appendix A - T1 Contract 8348; and Appendix B – August 15, 2007 Amendment.
2. The unredacted confidential version of the contract shall not be placed on the public record.
3. Union shall file original signed or certified copies of the executed contract with the Board as soon as they are available.
4. On completion of the Board's proceeding on natural gas storage allocation policies (EB-2007-0725), Union shall determine the amounts of storage space and deliverability that would be available to LANXESS at cost-based rates under the method or methods approved by the Board in that proceeding. If the amounts are greater than the amounts in Contract 8348, LANXESS has the right to require Union to revise the contract for its remaining term to incorporate the higher amounts. If the amounts are less than the amounts in Contract 8348, Union shall revise the contract for its remaining term to incorporate the lower amounts.
5. Parties that were found eligible for an award of costs in this proceeding shall submit their cost claims by January 4, 2008. A copy of the cost claim must be filed with the Board Secretary and one copy is to be served on Union. The cost claims must be done in accordance with section 10 of the Board's Practice Direction on Cost Awards.

6. Union shall have until January 18, 2008 to object to any aspect of the costs claimed. A copy of the objection must be filed with the Board Secretary and one copy must be served on the party against whose claim the objection is being made.
7. The party whose cost claim was objected to will have until February 1, 2008 to make a reply submission as to why its cost claim should be allowed. Again, a copy of the submission must be filed with the Board Secretary and one copy is to be served on Union.

**DATED** at Toronto, December 12, 2007

ONTARIO ENERGY BOARD

*Original signed by*

Kirsten Walli  
Board Secretary

**APPENDIX “A”**

**TO**

**DECISION AND ORDER**

**Union – LANXESS Gas Storage Contract**

**Board File No. EB-2007-0717**



Contract ID	8348
Contract Name	LANXESS

## T1 CONTRACT

This GAS STORAGE AND DISTRIBUTION CONTRACT ("Contract"), made as of the fifteenth day of October, 2006

BETWEEN:

UNION GAS LIMITED

hereinafter called "Union"

- and -

LANXESS INC.

hereinafter called "Customer"

**WHEREAS**, Customer has requested Union and Union has agreed to provide Customer Services;

**AND WHEREAS**, Union will deliver Customer owned Gas to Customer's Point(s) of Consumption or Storage under this Contract pursuant to the T1 Rate Schedule;

**IN CONSIDERATION** of the mutual covenants, the parties agree as follows:

### **1     ATTACHMENTS**

The following are hereby incorporated in and form part of this Contract:

- a) Contract Parameters contained in Schedule 1; and
- b) T1 Contract Terms and Conditions contained in Schedule 2; and
- c) General Terms and Conditions, attached hereto.

For the purposes of this Contract, "Point(s) of Receipt" shall mean those points identified in Schedule 1 where Union may receive Gas from Customer.

### **2     PRELIMINARY AND CONTINUING CONDITIONS**

This Contract and the rights and obligations of the Parties hereunder shall be conditional upon the fulfillment and maintenance in good standing of the following conditions:

- a) Security arrangements acceptable to Union shall be supplied and maintained in accordance with the General Terms and Conditions; and
- b) Union shall have received all required OEB approvals.

The above conditions must be initially satisfied by Customer 25 days prior to the Day of First Delivery.



### **3 CONTRACT TERM**

This Contract shall be effective from the date hereof. However, the Service, obligations, terms and conditions hereunder, shall commence on the Day of First Delivery. Subject to the provisions hereof, this Contract shall continue in full force and effect for each Contract Year until notice to terminate is provided by either Union or Customer. Such notice must be delivered at least three (3) months prior to the end of a Contract Year.

### **4 SERVICES PROVIDED**

Union agrees to provide Storage Services and Distribution Services as specified in Schedule 1. To be eligible for these services, the Customer must have forecasted annual natural gas consumption of 5,000,000 m<sup>3</sup> or greater at one property or contiguous properties. If the Customer does not maintain this level of consumption during the current contract year or is not expected to maintain this level of consumption then, effective the following contract year, the Customer will be placed on an alternate service.

### **5 RATES FOR SERVICE**

Customer agrees to pay for Services herein pursuant to the terms and conditions of the following:

- a) The Rate Schedules R1 and T1 as they may be amended from time to time by the Ontario Energy Board; and
- b) This Contract and the attachments hereto.

### **6 NOTICES**

Notices shall be delivered pursuant to the Notice provision of the General Terms and Conditions and delivered to the addresses as referenced in Schedule 1.

### **7 AMENDMENTS TO GENERAL TERMS AND CONDITIONS**

#### **Section 2.02**

**Force Majeure Declared by Union** is deleted and replaced with the following:

#### **“Section 2.02 Force Majeure Declared by Union**

During a Force Majeure declared by Union, Customer will only be relieved of the charges applicable to that part of the Services not available to Customer as a result of the Force Majeure. Union will not be responsible for any Transporter charges.”



### Section 3.02

**Suspension of Service** is deleted and replaced with the following:

#### "Section 3.02 Suspension of Service

If Customer is the defaulting party and the default is material, Union reserves the right to suspend any or all of the Services and such suspension shall not relieve Customer from paying any charges payable under this Contract."

### Section 6.03

**Parties Responsibilities** is deleted and replaced with the following:

#### "Section 6.03 Parties Responsibilities

If the Gas being received by Union from Customer or delivered by Union to Customer fails at any time to conform to any of the specifications set forth in this Section 6, the party receiving such Gas shall notify the delivering party of such deficiency and thereupon the party receiving the Gas may, at its option, refuse to accept receipt of Gas pending correction by the party delivering the Gas. Notwithstanding any other provisions of the Contract, neither party is responsible for any loss, damage, or injury arising from such failure unless there is a finding of gross negligence or willful misconduct."

### Section 12.11

a) Confidentiality is deleted and replaced with the following:

"a) Confidentiality as outlined in Section 12.06 for a period of five years from the termination or expiry,"

### Section 12.16

**Consequential Claims or Damages** is deleted and replaced with the following:

#### "Section 12.16 Consequential Claims or Damages

Notwithstanding any other provisions of this Contract, neither party shall be responsible for consequential or indirect damages. This provision shall survive the termination or expiration of this Contract."

## 8 CONTRACT SUCCESSION

This Contract replaces all previous Gas Storage and Distribution Contracts, subject to settlement of any Surviving Obligations.

The undersigned execute this Contract as of the above date.

UNION GAS LIMITED

CUSTOMER

I have the Authority to bind the Corporation, or Adhere C/S, if applicable

**Stephen W. Baker**

Vice President

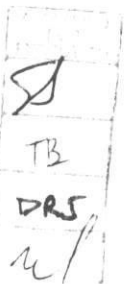
Business Development & Commercial Accounts

I have the Authority to bind the Corporation, or Adhere C/S, if applicable

**R. Huizingh**

President & Managing Director

May 25/07



Contract ID	SA
Contract Name	LANXESS T1
DUNS#	

**Schedule 1**  
**DCQ, Storage and Distribution Services Parameters**  
**Rate T1**

**1 DATES**

This Schedule 1 is effective on the 1<sup>st</sup> day of October, 2006 for Storage Services and November 1, 2006 for Receipt and Delivery Services.

The first Contract Year for all Services shall expire at the end of October, 2007.

**2 DAILY CONTRACT QUANTITY (DCQ)\***

**Upstream Point(s) of Receipt**

Location	Obligated DCQ GJ per Day
Western	
Western (Exchange)	

**Ontario Point(s) of Receipt**

Location	Obligated DCQ GJ per Day	Location	Obligated DCQ GJ per Day	Location	Obligated DCQ GJ per Day
Parkway	19,010	Dawn-Vector		Ojibway	
Parkway(Trunkline)		Dawn-Vector(VS)		St. Clair	
Parkway (PEPL)		Dawn	1,000	Bluewater	

\* Obligated DCQ does not include Compressor Fuel.

**3 SUPPLY OF COMPRESSOR FUEL**

Customer shall supply compressor fuel for Union's distribution and storage services.

**4 STORAGE PARAMETERS**

Parameter	Amount	Unit of Measure
Firm Storage Space	206,000	GJ
Firm Injection/Withdrawal Right (Union provides deliverability inventory)		GJ per Day
Interruptible Injection/Withdrawal Right (Union provides deliverability inventory)		GJ per Day



## 5 DISTRIBUTION PARAMETERS

### Point(s) of Consumption

	A	B	C	D
<b>Location</b>	LANXESS-East 0 Vidal St.S. 80 m N Tashmoo & Churchill	LANXESS-West 0 Vidal St St SW Corner Ave E & 5 <sup>th</sup> ST	LANXESS –SRCP 1741 River Road	
<b>Union Meter Number</b>	02007875	00500014	22222222	

	Unit of Measure	Point(s) of Consumption			
		A	B	C	D
<b>Daily Contract Demand (CD):</b>					
Firm Demand	m <sup>3</sup> /Day	10,000	10,000	10,000	
Interruptible Demand	m <sup>3</sup> /Day			10,000	
<b>Maximum Hourly Volume</b>	m <sup>3</sup> /hour	10,000	10,000		
<b>Minimum Gauge Pressure</b>	kPa	100	100		
<b>Notice Period for Interruption</b>	Hours			10	
<b>Maximum Number of Days Interruption</b>	Days			10	

### Rate Parameters

	Unit of Measure	Point(s) of Consumption			
		A	B	C	D
<b>Interruptible Commodity Charge</b>	cents per m <sup>3</sup>			10	

On any Day, any Gas in excess of 103% of the Contract Demand shall be unauthorized overrun as, and shall be paid for at the rate specified in the Rate Schedule.

The parties agree that any reference to Transportation Service in the Rate Schedule shall include the Distribution Parameters as set out in this Schedule 1.

On any Day during the Contract Year, Gas usage shall be deemed as follows:

First gas used	Firm Gas up to the Firm Contract Demand then in effect.
Next gas used	Interruptible Gas (if applicable) up to the Interruptible Contract Demand then in effect.
Overrun gas	As specified in this Section.

## 6 MINIMUM ANNUAL VOLUME ("MAV")

	Unit of Measure	Point(s) of Consumption			
		A	B	C	D
Firm MAV	m <sup>3</sup> /year				
Interruptible MAV	m <sup>3</sup> /year				

## 7 CONTACT LIST FOR NOTICES

### Notices for Nomination Matters

LANXESS Inc.

Manager, Energy & Purchasing Stores

1265 Vidal St., Sarnia, ON N7T 7M2

Phone: 519-337-8251 ext.7784

Fax: 519-339-7862

Union Gas Limited

Manager, Gas Management Services

50 Keil Dr N, Chatham Ontario N7M 5M1

Phone: 519-436-4545

Fax: 519-436-4635

### Notices for Invoices and Payments

LANXESS Inc.

Attention : Manager, Energy and Purchasing Stores

P. O. Box 3001, Sarnia ON N7T 7M2

Union Gas Limited

Manager, Revenue Cycle Services

50 Keil Dr N, Chatham Ontario N7M 5M1

Phone: 519-352-3100

Fax: 519-436-5320

### Notices for Interruptions and Force Majeure

	Point(s) of Consumption			
	A	B	C	D
Customer Name	LANXESS Inc.			
Position Title	Manager, Energy and Purchasing and Stores			
Phone	519-337-8251 extension 7784			
Fax	519-339-7862			

### Notices for All other Matters

LANXESS Inc.

Manager, Energy and Purchasing Stores

1265 Vidal St., Sarnia ON N7T 7M2

Phone: 519-337-8251 ext 7784

Fax: 519-339-7862

Union Gas Limited

Manager, Customer Support

50 Keil Dr N, Chatham Ontario N7M 5M1

Phone: 519-352-3100

Fax: 519-436-4645



**SCHEDULE "2"**  
Terms and Conditions  
T1 Contract

**1 UPSTREAM TRANSPORTATION COSTS**

Where Union is receiving Gas from Customer at a Point of Receipt upstream of Union's system, Customer shall be responsible to Union for all direct and indirect upstream transportation costs including fuel from the Point of Receipt to Union's system, whether Gas is received by Union or not for any reason including Force Majeure. Where actual quantities and costs are not available by the date when Union performs its billing, Union's reasonable estimate will be used and the appropriate reconciliation will be done in the following month.

**2 DELIVERY, RECEIPT, DISTRIBUTION AND STORAGE OBLIGATIONS**

**2.01 Delivery**

Customer accepts the obligations to deliver the Obligated DCQ parameters in Schedule 1 to Union on a Firm basis. On days when an Authorization Notice is given, the DCQ parameters are as amended in the Authorization Notice. For all Gas to be received by Union at the Upstream Point of Receipt, Customer shall, in addition to the DCQ, supply on each day sufficient Compressor Fuel as determined by the Transporter.

For all Obligated quantities of Gas actually received by Union at a Receipt Point, Union will pay Customer the Delivery Commitment Credit ("DCC") in Union's R1 Rate Schedule.

If a customer fails to deliver the Obligated DCQ, Union can demand that the DCC provided to Customer be retroactively refunded to Union for quantities Union determines were not Firm. This will only apply to quantities delivered as part of the current Contract Year. Union will not resume paying the DCC until Customer can substantiate to Union's satisfaction that the Gas received is Firm.

**2.02 Receipt**

Union agrees to receive a quantity of Gas at the Points of Receipt identified in Schedule 1, provided Union is not obligated to accept quantities of Gas that exceed any of the following:

- a) the sum of the Obligated DCQ as authorized for that Day;
- b) the amount properly nominated by Customer to Union for receipt by Union;
- c) an amount that would result in Customer exceeding the Firm Storage Space;
- d) an amount that would result in Customer exceeding the Firm Injection Right.

**2.03 Distribution to Point(s) of Consumption**

Union agrees to distribute a quantity of Gas to each Point of Consumption, not to exceed the sum of Firm Contract Demand and Interruptible Contract Demand, or the Firm Contract Demand only when an interruption is in effect, subject to the Maximum Hourly Volume parameters.

## **2.04 Storage Injection**

Union agrees to inject a quantity of Gas to storage, provided Union is not obligated to inject a quantity of Gas that exceeds the sum of the Firm Injection Right and, if applicable, the Incremental Firm Injection Right.

## **2.05 Storage Withdrawal**

Union agrees to withdraw a quantity of Gas from storage, provided Union is not obligated to withdraw a quantity of Gas that exceeds the Firm Withdrawal Right or exceeds the quantity of gas remaining in the Customer's Firm Storage Space.

## **2.06 Overrun**

Unless Union specifically provides written authorization to exceed contract parameters, any excess shall be unauthorized overrun and, in addition to any other remedies Union may pursue, Customer shall incur charges as referenced in the Rate Schedule.

## **2.07 Type Of Distribution Service**

The type of Distribution Service herein shall be a combination of Firm and Interruptible Service for each Point of Consumption as identified in Schedule 1.

The Interruptible Contract Demand at a Point of Consumption is subject to interruption by Union and, in addition to Force Majeure, is limited to the Maximum Number of Days of Interruption during each Contract Year as identified in Schedule 1. Union shall provide Customer notice of interruption not less than the Notice Period for Interruption for each Point of Consumption, as identified in Schedule 1.

# **3 MINIMUM ANNUAL VOLUME**

## **3.01 Firm Minimum Annual Volume**

In each Contract Year, the Customer shall consume or, in any event, pay for the Firm Minimum Annual Volume ("FMAV") as adjusted in the formula below. The payment required for the firm quantity not consumed in any Contract Year (the "Firm Deficiency Volume" or "FDV") shall be calculated by multiplying FDV by the Firm Delivery Commodity Charge as of the last day of the Contract Year. This payment would only apply if the FDV was greater than zero.

Where:

$$FDV = [FMAV \times [(U - D_F) / U]] - [FV - (F + O)]$$

And:

<b>FMAV</b>	=	Firm Minimum Annual Volume (as identified in Schedule 1)
<b>U</b>	=	number of days in the Contract Year
<b>D<sub>F</sub></b>	=	number of days of Force Majeure in the Contract Year where service is curtailed below the Firm Contract Demand, then in effect





<b>FV</b>	=	total firm volume taken in the Contract Year
<b>F</b>	=	volumes delivered to the Points of Consumption during Force Majeure
<b>O</b>	=	total Authorized and/or Unauthorized Overrun Gas taken in the Contract Year

### 3.02 Interruptible Minimum Annual Volume

In each Contract Year, the Customer shall consume or, in any event, pay for the Interruptible Minimum Annual Volume ("IMAV") as adjusted in the formula below. The payment required for the interruptible quantity not consumed in any Contract Year (the "Interruptible Deficiency Volume" or "IDV") shall be calculated by multiplying the IDV by the Interruptible Delivery Commodity Charge as of the last day of the Contract Year. This payment would only apply if the IDV was greater than zero.

Where:

$$IDV = [IMAV \times [(U - D_I) / U]] - [IV - (F + O)]$$

And:

<b>IMAV</b>	=	Interruptible Minimum Annual Volume (as identified in Schedule 1)
<b>U</b>	=	number of days in the Contract Year
<b>D<sub>I</sub></b>	=	number of days of Force Majeure or interruption in the Contract Year where service is curtailed below the Firm Contract Demand, then in effect
<b>IV</b>	=	total interruptible volume taken in the Contract Year
<b>F</b>	=	volumes delivered to the Points of Consumption during Force Majeure or periods of interruption or curtailment
<b>O</b>	=	total Authorized and/or Unauthorized Overrun Gas taken in the Contract Year

### 3.03 Qualifying Annual Volume

The sum of the adjusted FMAV and adjusted IMAV shall not be less than the qualifying annual volume defined in the Rate Schedule.

## 4 CUSTOMER SUPPLIED DISTRIBUTION AND STORAGE COMPRESSOR FUEL

Customer shall have the option of supplying Compressor Fuel to Union for movement of Customer's Gas on Union's system for both Distribution and Storage services. Customer's right to supply Compressor Fuel herein shall only be effective where Schedule 1 states Customer has accepted this option.

### 4.01 Distribution Compressor Fuel Quantity

If Customer has elected to supply its own distribution compressor fuel, Union shall, on a daily basis, deduct the distribution fuel quantity from the Gas received from Customer. The distribution fuel quantity shall be equal to the quantity of Gas for which a distribution commodity charge applies multiplied by the distribution fuel ratio specified in the Rate Schedule.



#### **4.02 Storage Compressor Fuel Quantity**

If Customer has elected to supply its own storage compressor fuel, Union shall reduce Customer's storage inventory by a quantity equal to the "Storage Fuel Quantity". The "Storage Fuel Quantity" shall be the sum of the injection and withdrawal quantities for which a commodity charge applies, multiplied by the storage fuel ratio specified in the Rate Schedule.

### **5 ENERGY CONVERSION**

Balancing of Gas receipts by Union with Gas distributed to Customer is calculated in energy. The distribution to Customer is converted from volume to energy at the Customer site-specific heat measurement value.

Site-specific heat measuring equipment will be supplied, installed and maintained by Union Gas at each Point of Consumption, or as determined necessary by Union Gas, at the Customer's expense. The resulting heat value adjustment quantity shall be applied to the Customer's storage account.

### **6 STORAGE SERVICES**

#### **6.01 Storage Injection and Withdrawal**

Subject to Section 2, if on any Day the quantity of Gas Union receives from Customer exceeds the quantity distributed to Customer, the amount of such excess shall be deemed to have been injected into Customer's storage account.

Subject to Section 2, if on any Day the quantity of Gas Union distributed to Customer exceeds the quantity received from Customer, the amount of such excess shall be deemed to have been withdrawn from Customer's storage account.

#### **6.02 Deliverability Inventory Provided By Customer**

If Customer has agreed to supply their own deliverability inventory, Customer's right to withdraw Gas under the Firm Withdrawal Right shall be adjusted between January 1 and April 30. During this period, if Customer's inventory level in storage at the start of each Day is less than 20% of Storage Space entitlement then Customer's Firm Withdrawal Right will be adjusted in accordance with the following formula:

$$AFW = FW \times ( I / CDI )$$

Where:

<b>AFW</b>	=	Adjusted Firm Withdrawal
<b>FW</b>	=	Firm Withdrawal Right
<b>I</b>	=	Actual Inventory at the beginning of each Day
<b>CDI</b>	=	Customer Deliverability Inventory (Lesser of: $0.2 \times SP$ or $FW/0.075$ )

where: **SP** = Firm Storage Space

#### **6.03 Disposition of Gas at Contract Termination**

If this Contract terminates or expires and Customer does not have a contract for Storage Service with Union then, except as authorized by Union, any Gas balance remaining in Customer's Storage Space shall incur a charge equivalent to the Unauthorized Storage Space Overrun rate in the T1 Rate



Schedule. Customer shall incur such charge until the Gas balance remaining has been reduced to zero.

## **7 CUSTOMER'S FAILURE TO DELIVER GAS**

### **7.01 Customer's Failure To Deliver Obligated DCQ to Union**

If on any Day, for any reason, including an instance of Force Majeure, Customer fails to deliver the Obligated DCQ to Union then such event shall constitute a Failure to Deliver as defined in the General Terms and Conditions. The Failure to Deliver rate in the R1 Rate Schedule shall apply to the quantity Customer fails to deliver. The upstream transportation costs (if any) (Section 1) shall also apply and be payable by Customer.

For Gas that should have been received, Union may make reasonable attempts, but is not obligated to acquire an alternate supply of Gas ("Alternate Supply Gas"). Union's costs and expenses associated with acquiring Alternate Supply Gas will be payable by Customer. For greater certainty, payment of the Failure to Deliver charge is independent of and shall not in any way influence the calculation of Union's costs and expenses associated with acquiring the said Alternate Supply Gas.

Union's obligation to deliver Gas to the Point(s) of Consumption shall be reduced to a quantity of Gas (the "Reduced Distribution Obligation") in aggregate not to exceed the sum of:

- a) The confirmed Nomination quantity of Gas to be delivered to Union;
- b) Alternate Supply Gas if acquired by Union;
- c) Customer's Firm Withdrawal Right subject to Section 6.02.

In addition to any rights of interruption in the Contract, if the Customer consumes Gas in excess of the Reduced Distribution Obligation, Union may immediately suspend deliveries of Gas to the Point(s) of Consumption. In addition, Union may direct Customer to immediately curtail or cease consumption of Gas at the Point(s) of Consumption.

Customer shall immediately comply with such direction. Such suspension or curtailment shall not constitute an interruption under the Contract.

Union shall not be liable for any damages, losses, costs or expenses incurred by Customer as a consequence of Union exercising its rights under this Section.

### **7.02 Notice Of Failure**

Each Party shall advise the other by the most expeditious means available as soon as it becomes aware that such failure has occurred or is likely to occur. Such notice may be oral, provided it is followed by written notice.

### **7.03 Customer Failure To Deliver Compressor Fuel**

For Gas to be delivered by Customer to Union at an Upstream Point of Receipt, if Customer fails to deliver sufficient Compressor Fuel then in addition to any other remedy Union shall deem the first Gas delivered to be Compressor Fuel and Section 7.01 will apply.



## GENERAL TERMS AND CONDITIONS

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## GENERAL TERMS AND CONDITIONS

### **1 Nomination Requirements for Infranchise Contracted Services**

Customers with contracted services requiring Nominations to Union must submit Nominations to Union in accordance with Union's Nomination provisions. These Nominations must be submitted to Union via fax or Unionline where available for Nominations.

Union follows the North American Energy Standard Board (NAESB) timeline standards providing for 4 available Nomination cycles for each Gas Day. Each of the Nomination cycles follows the same process sequence: Nomination, acceptance, confirmation and scheduling.

#### **1.01 Nomination Cycle Timelines**

The table below identifies the deadlines for each of the 4 standard Nomination cycles. All times are identified as Eastern Clock Time (ECT)

Nomination Cycle	Fax Deadline	Unionline Deadline (where available)	Scheduling Deadline	Effective Flow
Timely (Cycle 1)	1130 hours	1230 hours	1730 hours	1000 hours
Evening (Cycle 2)	1800 hours	1900 hours	2300 hours	1000 hours

Intra-Day Nominations can be used to modify nominated quantities on the current Gas Day.

Nomination Cycle	Fax	Unionline (where available)	Scheduling Deadline	Effective Flow
Intraday 1 (Cycle 3)	1000 hours	1100 hours	1500 hours	1800 hours
Intraday 2 (Cycle 4)	1700 hours	1800 hours	2200 hours	2200 hours

#### **1.02 Nomination Deadline for Services requiring Union to Nominate on Other Pipelines**

The Nomination deadline for any contracted services (ie. exchanges) requiring Union to nominate on upstream pipelines is 10:30 ECT. These services are only offered on the Timely Nomination Cycle. If nominated after 10:30 ECT and before the close of the Timely Nomination deadline Union will attempt to accommodate on a reasonable efforts basis. Union does not accept changes to the nominated quantities for these services after the close of the Timely Nomination deadline.

#### **1.03 Nomination Quantities (Units)**

All Services are required to be nominated in whole Gigajoules (GJ's)

#### **1.04 Compressor Fuel**

For Services requiring Customer to provide compressor fuel in kind the nominated fuel requirements will be calculated by rounding to the nearest whole GJ



### **1.05 Union's Acceptance of Nominations**

Union will accept Nominations for contracted Services on each of the 4 standard Nomination cycles. The Nomination will be rejected if the activity on the Nomination does not properly balance or if the nominated quantities violate Customer's contractual entitlements.

If a Nomination is not received prior to the Nomination deadline it will be held for scheduling in the subsequent Nomination cycle for the Gas Day.

### **1.06 Confirmation Process**

The confirmation process validates nominated quantities to flow between interconnecting pipelines to ensure Customers have nominated identical quantities to both pipeline operators. In the case where there is a discrepancy between the nominated quantities and the discrepancy cannot be resolved with Customer, then the lower quantity will be the confirmed scheduled quantity.

### **1.07 Scheduling Process**

During the scheduling process Union compares all of the requests for services (Nominations) to the physical capacity available for the Gas Day in question.

If there is insufficient capacity available to meet all of the nominated quantities Union will complete scheduling reductions of Nominated Interruptible Services.

If Union is unable to completely schedule an Interruptible Service Customer will be advised of their scheduled quantities no later than the close of the scheduling deadline for the applicable Nomination cycle. Once notified, Customer is, within 30 minutes, required to submit a revised Nomination to meet the scheduled quantity for the Interruptible Service. In order to be accepted, this Nomination must be properly balanced and the nominated quantities must not violate Customer's contractual entitlements. If a revised Nomination is not submitted, Union will, using the contracted services Customer has available; re-balance the Nomination to match the scheduled quantities.

Scheduling of Firm Services must be nominated on the Timely Nomination Cycle. Nominations for increasing quantities for Firm Services after the Timely Nomination Cycle will be treated as Interruptible Services and will only be scheduled if there is sufficient capacity available.

### **1.08 Subsequent Nominations**

All scheduled Nominations for franchise Services will remain in effect until a new Nomination is provided by Customer.

The Unbundled Service requires a valid daily Nomination.

### **1.09 Parkway Call**

This Section 1.09 is only applicable to Rates U2, U5, U7 and U9. Union shall advise Customer of the Parkway Call requirement on or before 1730 hours on the day immediately preceding the Gas Day for which the Parkway Call is required.





After being notified by Union but no later than 1900 hours on the same day, Customer shall provide a revised Nomination to Union, which shall include the entire Parkway Call. If a revised Nomination acceptable to Union is not provided by 1900 hours or does not include the entire Parkway Call, a Failure to Deliver will be deemed to have occurred, and the Failure to Deliver section in Schedule 2 the Contract shall apply.

## **2 FORCE MAJEURE**

In the event that either Customer or Union is rendered unable, in whole or in part, by Force Majeure, to perform or comply with any obligation or condition of this Contract then, subject to the provision of this Section 2, the obligations (other than the obligations to make payment of money then due) of both parties so far as they are directly related to and affected by such Force Majeure, shall be suspended during the continuance of the Force Majeure.

The party claiming Force Majeure shall give Notice, with full particulars of such Force Majeure, to the other party as soon as possible after the occurrence of Force Majeure.

The party claiming Force Majeure shall also give Notice to the other party as soon as possible after the Force Majeure is remedied in whole or part.

Force Majeure means:

- a) Acts of God, landslides, lightning, earthquakes, fires, storms, floods, washouts, explosions, breakage or accident to its machinery or equipment or lines of pipe;
- b) freezing or failure of wells or lines of pipe; curtailment of firm transportation and/or firm storage by Transporters;
- c) strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections, civil disturbance, acts of terrorism, wars, arrests or restraint of governments and people;
- d) any laws, orders, rules, regulations, acts of any government body or authority, civil or military;
- e) any act or omission by parties not controlled by the party claiming Force Majeure; and
- f) any other similar causes not within the control of the party claiming Force Majeure

which by the exercise of due diligence such party is unable to prevent or overcome. The party claiming Force Majeure shall make reasonable efforts to avoid, or correct the Force Majeure and to remedy the Force Majeure once it has occurred in order to resume performance.

### **2.01 Force Majeure Not Available**

A party claiming Force Majeure shall not be entitled to the benefit of the provisions of Force Majeure if any one or more of the following circumstances prevail:





- a) the failure resulting in the Force Majeure was caused by the negligence of the party claiming Force Majeure;
- b) the party claiming Force Majeure failed to make all reasonable efforts (not including litigation, if such remedy would require litigation) to remedy the Force Majeure;
- c) the Force Majeure was caused by lack of funds;
- d) the party claiming Force Majeure did not give Notice required, as soon as reasonably possible after the Force Majeure occurred.

## **2.02 Force Majeure Declared by Union**

During a Force Majeure declared by Union, Customer will be responsible for commodity charges and will only be relieved of the demand charges applicable to that part of the Services not available to Customer as a result of the Force Majeure. Union will not be responsible for any Transporter charges.

## **2.03 Force Majeure Declared by Customer**

During a Force Majeure declared by Customer, all demand charges and all commodity charges otherwise payable under this Contract will continue to be payable. Where Customer's Contract includes an Obligation to Deliver Gas to Union, such Obligation to Deliver Gas to Union at the Point of Receipt shall not be relieved under Force Majeure where such Force Majeure occurs at Customer's facilities downstream of the Point of Consumption. Union will not be responsible for any Transporter charges.

## **2.04 Applicability to Contractual Annual Quantity Requirements**

- a) The number of days of Force Majeure will proportionally reduce any minimum annual quantity upon which any minimum bills are determined, and such reduced minimum annual quantity will not be limited to the minimum quantity required to qualify for the applicable Rate Schedule.
- b) Service taken during the period of Force Majeure will be deemed not to have been taken for purposes of determining the applicable minimum annual quantity.

# **3 TERMINATION and SUSPENSION**

## **3.01 Terminations By Either Party**

Either party may terminate this Contract under the conditions and procedures as set out below.

Subject to the other provisions of this Contract, in the event of a breach, misrepresentation, non-observance or non-performance by any party to this Contract of any covenant, provision, representation, condition, continuing condition, restriction or stipulation contained in this Contract, the party not in default may give written Notice to the defaulting party requiring it to remedy such default. If the defaulting party fails to fully remedy the party not in default for all consequences of such default within a period of ten (10) Business Days from receipt of such Notice, this Contract may be terminated by Notice from the party not in default.



These rights shall be in addition to, and not in derogation of or in substitution for, any other right or remedy which the parties respectively at law or in equity shall or may possess.

If either party makes an assignment in bankruptcy, is a party against whom a receiving order is made, or for whom a receiver or monitor has been appointed under a security agreement or by a court or any similar action under any law, the other party may terminate the Contract immediately, except where not permitted by such law.

### **3.02 Suspension of Service**

If Customer is the defaulting party and the default is material, Union reserves the right to suspend any or all of the Services and such suspension shall not relieve Customer from paying any charges.

An event of default giving rise to Union's right to suspend shall include a failure to pay Union when payment is due, a failure to provide financial assurances when required under section 5.04, and a Failure to Deliver. In all cases, the materiality of the default shall be determined by the parties hereto, acting reasonably.

### **3.03 Effect of Termination**

Notwithstanding the termination of this Contract, each party shall continue to be liable to pay on the terms herein specified any amount accrued and payable up to the time of termination. Termination will be without waiver of any other remedy to which the party not in default may be entitled including breaches of contract, for past and future damages, and losses.

## **4 NOTICE**

All Notices required hereunder shall be in writing and shall be sufficiently given and received if personally delivered or sent by mail or Unionline or facsimile to the address of the party to which the Notice is given specified in Schedule 1.

Personally served Notice is deemed to be received when actually delivered.

Notice sent by mail or Unionline is deemed to have been received when actually received.

Notice sent by facsimile is deemed to have been received on the date of receipt of the transmission.

Notwithstanding the above, any Notice or Unionline communication, received after 5pm or on a weekend or a statutory holiday is deemed to be received on the next Business Day.

The addresses of Customer and Union for receipt of Notices are as set out in Schedule 1 and such addresses may be changed by Notice given in accordance with this Section 4.

Email is not an acceptable form of Notice.



## **5 BILLING**

### **5.01 Monthly Billing**

Each Month, Union shall render a bill for Services and any other charges for the preceding Month. Charges may be based on estimated quantities. If actual quantities are unavailable in time to prepare the bill, Union shall provide, in a future Month's billing, an adjustment based on any difference between actual quantities and estimated quantities.

### **5.02 Right of Examination**

Both Union and Customer shall have the right to examine at any reasonable time copies of the books, records and charts of the other to the extent necessary to verify the accuracy of any statement, chart or computation made under or pursuant to the provisions of this Contract.

### **5.03 Payments**

#### **5.03-1 Payment Date**

Payment date is identified in the applicable Rate Schedule. If payment date is not identified in a Rate Schedule, it will be as identified on the invoice.

#### **5.03-2 Remedies For Non-Payment**

In the event that Customer fails to pay Union when payment is due, late payment charges as identified in the applicable Rate Schedule and the termination and suspension provisions will apply.

#### **5.03-3 Adjustment of Underpayment or Overpayment**

If a Customer disputes a bill or any portion thereof, Customer shall pay the undisputed portions of the bill. Together with such payment, Customer shall provide written Notice to Union setting out the portions of the bill that are in dispute, an explanation of the dispute and the amount that Customer believes is the correct amount.

If it is subsequently determined that Customer has been overcharged and Customer has actually paid the bill(s) containing the overcharge then, within thirty (30) days after the final determination, Union shall refund the amount of any such overcharge with Interest.

If it is subsequently determined that Customer has been undercharged, Customer shall pay the amount of any such undercharge within thirty (30) days after the final determination. Any claim related to overcharge or undercharge must be made within twelve (12) Months from date such overcharge or undercharge is believed to have occurred.

### **5.04 Financial Assurance**

If at any time during the Term of this Contract, Union has reasonable grounds to believe that Customer's creditworthiness under the Contract has become unsatisfactory, then Union may by written Notice request financial assurances from Customer in an amount determined by Union in a commercially reasonable manner. Upon receipt of such written Notice, Customer shall have 14 days to provide such financial assurances.

The financial assurances requested by Union will not exceed the sum of the following:



- a) an amount equal to 60 days of all Union Services; and,
- b) if Customer holds a temporary capacity assignment from Union of a third party asset (for example, upstream pipeline capacity), an amount equal to the higher of 60 days of all charges for the third party asset, or security equivalent to that which may be required by the third party asset provider as if Customer held the asset directly; and,
- c) if Customer supplies their own Gas, an amount equivalent to the value, as determined by Union, of any current or projected negative Banked Gas Account balance.

Customer may provide Union such financial assurances in the form of cash, letters of credit, guarantees or such other form as may be agreed upon between Customer and Union.

In the event that Customer fails to provide financial assurances as set out above, the termination and suspension provisions in Section 3 may apply.

Where Customer has provided financial assurances to Union, and the grounds for requesting such financial assurances have been removed so that Customer's creditworthiness under the Contract has become satisfactory, then Customer may request the return of such financial assurances from Union by written Notice. Upon receipt of such written Notice Union shall have 14 days to return such financial assurances to Customer.

#### **5.05 Non-Payment Remedy**

If Customer shall be indebted (whether past, present, or future, liquidated or unliquidated) to Union, under this Contract, Union has the right to reduce any amount payable by Union to Customer under this Contract by an amount equal to the amount of such indebtedness to Union.

As part of this remedy, Union may take title to any or all of Customer's Gas in Union's possession. Such Gas shall be valued at the day price for Gas at Dawn as listed in Canadian Gas Price Reporter for the day of non-payment.

## **6 QUALITY**

### **6.01 Natural Gas Quality**

In any Month, the minimum average gross heating value of the Gas received by Union from Customer and delivered to Customer by Union shall be thirty six (36) Megajoules per Cubic Metre. Gas shall not contain more than twenty three (23) milligrams of hydrogen sulphide per Cubic Metre nor four hundred and sixty (460) milligrams of total sulphur per Cubic Metre of Gas, as determined by standard methods of testing.

### **6.02 Freedom from Objectionable Matter**

The Gas received by Union and delivered to Customer hereunder shall be free (at prevailing pressure and temperature in Union's pipeline at the Point of Receipt or Point of Consumption, as the case may be) from dust, or other solids or liquids which cause injury to, or interfere with proper operation of the lines, regulators, or meters through which it flows.



### **6.03 Parties' Responsibilities**

If the Gas being received by Union from Customer or delivered by Union to Customer fails at any time to conform to any of the specifications set forth in this Section 6, the party receiving such Gas shall notify the delivering party of such deficiency and thereupon the party receiving the Gas may, at its option, refuse to accept receipt of Gas pending correction by the party delivering the Gas. Neither party is responsible for any loss, damage, or injury unless there has been gross negligence or wilful misconduct.

## **7 MEASUREMENT**

### **7.01 Determination of Volume and Energy**

- a) The volume and energy amounts shall be determined in accordance with the Electricity and Gas Inspection Act, assented to 31 March, 1982 and the Electricity and Gas Inspection Regulations, P.C. 1986-116, 16 January, 1986, and any documents issued under the authority of the Act and Regulations and any amendments thereto. Where there is no site specific energy measurement, Union's Average Heat Value will be used to convert volumes to energy.
- b) The supercompressibility factor shall be determined in accordance with either the "Manual for Determination of Supercompressibility Factors for Natural Gas" (PAR Project NX-19) published in 1962 or with American Gas Association Transmission Measurement Committee Report No. 8, Nov. 1992, at Union's discretion.

### **7.02 Metering by Union, Check Measuring Equipment**

Union will install and operate meters and related equipment in accordance with the Act and the Regulations referenced in these General Terms and Conditions.

Customer may install, maintain, and operate such check measuring equipment as desired, and shall be so installed as not to interfere with the operation of Union's measuring equipment at or near the Consumption Point. This check measuring equipment will be downstream of the Consumption Point and at Customer's own expense.

Where Union has installed heat value measuring equipment at Customer's End Use location, the heating value properly measured at this site will be used to convert volume to energy for Gas delivered by Union to Customer.

### **7.03 Observation of Measurement Work**

Union and Customer shall have the option to have representatives present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting done in connection with the other's measuring equipment. Each party shall provide reasonable notification to the other party in connection with testing, calibrating or adjusting measuring equipment, to enable the other party to be present if desired.

### **7.04 Calibration and Test of Meters**

The accuracy of Union's measuring equipment shall be verified by Union at reasonable intervals.



If Customer notifies Union that it desires a special test, the expense of any such test shall be borne by Customer if the measuring equipment tested is found to be in error by two per cent (2%) or less. In this event, previous recordings shall be considered accurate, but such equipment shall be adjusted to record as near to absolute accuracy as possible. If the special test shows a percentage of inaccuracy greater than two percent (2%), the expense of the test will be borne by Union and the financial adjustment shall be calculated in accordance with the Act and Regulations thereunder, in accordance with any successor statutes and regulations. Union shall not be required to verify the accuracy of such equipment more frequently than once in any thirty (30) day period.

#### **7.05 Correction of Metering Errors - Failure Of Meters**

In the event a meter is out of service, or registered inaccurately, the volume or quantity of Gas shall be determined by Union 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.

### **8 POSSESSION OF AND RESPONSIBILITY FOR GAS**

#### **8.01 Point of Receipt and Point of Consumption Controls**

As between Union and Customer, control, responsibility, and possession of all Gas received and/or delivered and transported hereunder shall pass from the delivering party to the receiving party at the Points of Receipt and the Points of Consumption as applicable.

#### **8.02 Title to the Gas**

Each party warrants that it owns or controls, has the right to deliver or have delivered to the other party, Gas that is free and clear of any lien, mortgage, security interest or other encumbrance whatsoever. The delivering party shall indemnify and hold harmless the receiving party from all claims, actions, or damages arising from any adverse claims by third parties claiming an ownership or an interest in such Gas.

#### **8.03 Common Carrier and Insurance**

To further clarify the relationship between Union and Customer, Union is not a common carrier and Union is not an insurer of Customer's Gas.

#### **8.04 Right to Commingle the Gas**

Union shall have the right to commingle and use the Gas received under this Contract with Gas owned by Union or others and deliver such commingled Gas to Customers.

## **9 FACILITIES AT CONSUMPTION POINT**

### **9.01 Construction, Maintenance and Entry**

Union may construct on Customer's property (whether owned by Customer or some other party), at each Point of Consumption the metering stations and facilities required by Union. Union employees or agents may at any reasonable time, with notification to Customer (except in cases of emergency where no notification is required), enter Customer's property provided that in all cases Union's employees or agents agree to abide by Customer's facility security policies and procedures and health and safety policies provided that they are reasonable and provided by Customer to Union's employees or agent prior to entry to the property.

### **9.02 Property, Easements, Utilities**

Customer agrees that all stations and facilities installed by Union, including the meter station, are the property of Union whether the facilities are on property belonging to Customer or some other party.

Customer grants to Union on such commercial terms and conditions as may be agreed upon any required easements or agreements and undertakes to obtain or execute and deliver to Union such required easements or agreements to allow Union to have the related use of Customer's land interests which may be reasonably required by Union to facilitate Construction.

In the event that the meter at the Point of Consumption has telemetry capabilities, Customer agrees to provide and pay for, a minimum of one (1) 115 V.A.C. single phase 15 ampere power circuit and one exclusive telephone line at the metering stations for Union's telemetry purposes.

## **10 INDEMNITY**

Each party hereby agrees to indemnify and save the other harmless from and against all claims, demands, actions, causes of action, damage, loss, deficiency, cost, liability and expense which may be brought against such party or which such party may suffer or incur as a result of, in respect of, or arising out of:

- a) any non-performance or non-fulfilment of any covenant or agreement on the part of the other party contained in this Contract;
- b) any misrepresentation, inaccuracy, incorrectness or breach of any representation or warranty made by the party contained in this Contract or contained in any document given pursuant to this Contract;
- c) payment of any Goods and Services Tax or other government tax made on behalf of the other party; and
- d) *(Subsection 10(d) is only applicable to Agent or Customer)*  
the failure of Customer or Agent to satisfy its obligations to End Use locations listed in Schedule 3 (where a Schedule 3 is included in this Contract);



- e) *(Subsection 10(e) is only applicable to Agent)*  
any dispute arising out of any aspect of the relationship between the Agent and Customer;
- f) all costs and expenses including, without limitation, legal fees, incidental to or in respect of the foregoing;
- g) any negligence or wilful misconduct.

This indemnity shall survive the termination or expiration of the Contract.

## **11 REPRESENTATIONS AND WARRANTIES BY AGENT**

The Agent hereby represents and warrants to Union as follows and confirms that Union is relying upon the accuracy of each of such representations and warranties in connection with the execution of this Contract by Union and the acceptance of its rights and obligations hereunder:

- a) the Agent is the duly appointed agent of the Customers and, in such capacity, is entitled to enter into this Contract on behalf of the Customers and to act on their behalf hereunder;
- b) Union is entitled to rely on anything done or any document signed by the Agent on behalf of the Customers, or any of them, in respect of this Contract as if the action had been taken or the document had been signed by the Customers; and
- c) payments made by the Customers to Union pursuant to invoices shall be made without any right of deduction or set-off regardless of any rights the Customers may have against the Agent.

## **12 MISCELLANEOUS PROVISIONS**

### **12.01 Interpretation**

#### **12.01-1 Definitions and Industry Usage**

Capitalized terms and certain other terms used in this Contract and not specifically defined shall have the meaning set forth in these General Terms and Conditions and/or Union's Rate Schedule. Words, phrases or expressions which are not defined herein and which, in the usage or custom of the business of the exploration, production, transmission, storage, and distribution or sale of natural Gas in Canada have an accepted meaning shall have that meaning.

#### **12.01-2 Expanded Meaning**

In this Agreement, unless there is something in the subject matter or context inconsistent therewith:

- a) words importing the singular shall include the plural and vice versa;
- b) words importing the gender shall include the masculine, feminine and neuter genders; and



- c) references to any statute shall extend to any orders in-council or regulations-passed under and pursuant thereto, of any amendment or re-enactment or such statute, orders-in-council or regulations, or any statute, orders-in-council or regulations substantially in replacement thereof.

#### **12.01-3 Inconsistency**

In the event of a conflict among the terms of the (i) Rate Schedules; (ii) Contract; (iii) Schedules; and, (iv) General Terms and Conditions, the terms of the documents shall govern in the priority as listed.

#### **12.01-4 Currency**

Unless otherwise indicated, all reference to dollars in this Contract shall mean Canadian dollars.

#### **12.01-5 Time**

All references to time in this Contract shall be stated in Eastern Clock Time.

#### **12.02 Assignability**

Neither the rights nor the obligations of Customer under this Contract shall be assignable without the prior written consent of Union. Union's consent may not be unreasonably withheld or delayed.

#### **12.03 Proper Law of Contract**

The Contract shall be governed by and construed in accordance with the laws of the Province of Ontario, and the parties to this Contract exclusively attorn to the jurisdiction of the Courts of Ontario.

#### **12.04 Successors and Assigns**

The Contract shall be binding upon and shall enure to the benefit of the Parties hereto and their respective successors and permitted and lawful assigns.

#### **12.05 Entire Contract**

This Contract constitutes the entire agreement between the parties pertaining to the subject matter hereof. This Contract supersedes any prior agreements, understandings, negotiations or discussions, whether oral or written, between the Parties in respect of the subject matter hereof.

#### **12.06 Confidentiality**

Except for credit purposes, unless the Parties to this Contract otherwise expressly agree in writing, the terms of this Contract will remain strictly confidential except as otherwise required by applicable law or by any competent regulatory body or court of competent jurisdiction.



### **12.07 Priority of Service**

Despite any other provision of this Contract, when the use of Gas or Service is curtailed or restricted, by order of any authorized government agency, or by Force Majeure, Customer shall, in accordance with the direction of Union, curtail or discontinue use of Gas or Service during the period in which such Gas or Service is so jeopardized. Union shall not be liable for any loss of production or for any damages whatsoever by reason of such curtailment or discontinuance or because of the length of advance Notice given directing such curtailment or discontinuance. However, Union shall use its reasonable efforts to provide Notice as soon as possible to Customer, of such curtailment or discontinuance of Gas or Service as aforesaid.

### **12.08 Waiver and Future Default**

No waiver by either Union or Customer of any one or more defaults by the other in the performance of any provisions of this Contract shall operate or be construed as a waiver of any future default or defaults, whether of a like or a different character.

### **12.09 Laws, Regulations and Orders**

This Contract and the respective rights and obligations of the Parties hereto are subject to all present and future valid laws, statutes, orders, rules and regulations of any competent legislative body, or duly constituted authority now or hereafter having jurisdiction. The Contract shall be varied and amended to comply with or conform to any valid order or direction of any board, tribunal or administrative agency, which affects any of the provisions of this Contract.

### **12.10 Right to Contract**

Customer hereby represents and warrants to Union that it or its Agent has the sole right to enter into this Contract for each of the Points of Consumption, for the term of this Contract.

### **12.11 Surviving Obligations**

Despite the termination or expiry of this Contract, the following defined provisions shall remain in full force and effect in accordance with their terms and shall survive termination or expiry. The term of the survival shall be for the period referenced in this section.

- a) Confidentiality as outlined in Section 12.06
- b) liability and Gas balancing obligations to the extent any liabilities and Gas balancing obligations have accrued prior to the date of termination or expiry of this Contract, and may continue as a result of an event occurring prior to the termination or expiry of this Contract (for the period until all liabilities and Gas balancing and reconciliations have been completed)
- c) Settlement of accounts; rights to set off; calling any Letter of Credit; collecting on any security (for the period until all accounts have been settled).



#### **12.12 Joint and Several Liability**

In the event that Customer is more than one person the obligations of all of such persons shall be joint and several and Union shall not be required to exhaust its rights and remedies against any one person prior to exercising its rights and remedies in respect of any other person.

#### **12.13 Invalidity of Provisions**

If any of the provisions of this Contract are invalid, illegal or unenforceable in any respect, the validity or legality of enforceability of the remaining provisions shall not in any way be affected.

#### **12.14 Service Curtailment**

Union may be required from time to time to perform Construction to its facilities, which may impact Union's ability to meet Customer's requirements. In such event, Union shall have the right to suspend Service in whole or in part but will use reasonable efforts to determine a mutually acceptable period during which such Construction will occur and also to reasonably limit the extent and duration of any impairments. Union shall provide at least fifteen (15) days Notice (except in cases of emergency, then it may be done immediately with Notice provided as soon as reasonably possible afterwards) to Customer of the extent that Union's ability to provide Service may be impaired. During any such curtailment, Customer will be relieved of the demand charges for Services directly related to the said curtailment, but commodity and proportionate demand charges for Gas Service available to Customer will be payable.

#### **12.15 Unauthorized Use of Services**

If Customer exceeds the contract parameters (including Service, after notification of interruption of Interruptible Service or Curtailment resulting from a Force Majeure), in addition to charges identified in the Rate Schedules, Customer shall also be responsible for any direct damages resulting from exceeding the contract parameters and/or not complying fully with any Notice.

If Customer uses Interruptible Services, in breach of notification of Interruption, Union will have the right to change Customer from Interruptible Service to Firm Service or increase its Firm Service, by an amount equivalent to the quantity of such excess Interruptible Service used on any day effective on the first day of any Month following such breach.

#### **12.16 Consequential Claims or Damages**

Neither party shall be responsible for consequential or indirect damages. This provision shall survive the termination or expiration of this Contract.

#### **12.17 Further Assurances**

Each party will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents, and assurances as may reasonably be requested for the carrying out and performance of this Contract.



### 12.18 Amendment

Union may from time to time incorporate updates to Schedule 2 and/or the General Terms and Conditions which are intended to be applicable to all of Union's customers on non-discriminatory basis. Union will notify Customer not less than 60 days prior to the effective date of the update and post the update on Union's website. Union will notify Customer again not less than 30 days prior to the effective date of the update. If 10 Business Days prior to the effective date, Customer has not provided Notice to Union objecting to the update, then Customer will be deemed to have accepted the revised Schedule 2 and/or General Terms and Conditions, as the case may be, which shall, as of the effective date, apply to this Contract. If Customer has provided Notice objecting to the update, the revision shall not apply to this Contract.

### 12.19 Counterparts

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

## 13 DEFINITIONS

Except where this Contract expressly states another meaning, the following definitions, when used in these Terms and Conditions or in this Contract and its Schedules, shall be construed to have the following meanings:

1. **"10<sup>3</sup>m<sup>3</sup>"** means one thousand (1000) cubic metres of Gas.
2. **"Act and Regulations"** means all relevant legislation or regulations applicable to the Services including but not limited to the following Ontario Acts: Ontario Energy Board Act 1988, Public Utilities Act, Energy Act, Municipal Franchises Act, Electricity and Gas Inspection Act 1982, and Electricity and Gas Inspection Regulations 1986.
3. **"Affiliate"** means with respect to the relationship between corporations that one of them directly and beneficially owns voting securities representing direct and beneficial ownership of not less than fifty-one percent (51%) of the equity capital of the other.
4. **"Average Heat Value"** means the average forecasted heating value of all Gas to be received by Union for the applicable Delivery Area for the applicable period.
5. **"Authorization Notice"** means the written approval provided by Union in response to Customer's request for a short-term amendment to certain contract parameters. Such Authorization Notice shall specify the approved amended parameters and the term for the amendment.
6. **"Business Day"** means any day upon which Union's head office in Chatham, Ontario, is normally open for business.
7. **"Bundled Service"** means a Service provided by Union under the Bundled T and Gas



Distribution Contract without daily Nominations at the Consumption Point.

8. **"Bundled T"** means the contract with Union under which Customer receives Receipt Services.
9. **"Compressor Fuel"** means an amount of Gas specified by Transporter to be supplied by a shipper as a fuel source for Transporter's pipeline compressors.
10. **"Construction"** means constructing, maintaining, removing, operating and/or repairing Union's facilities for the purpose of commencing, maintaining, or discontinuing deliveries of Gas to Customer.
11. **"Contract Demand"** ("CD") means the maximum volume or quantity of Gas that Union is obliged to deliver in any one day to a Customer under all Services or, if the context so requires, a particular Service at the Consumption Point.
12. **"Contract Year"** means a period of twelve (12) consecutive Months beginning on the day of First Delivery and each anniversary date thereafter unless mutually agreed otherwise.
13. **"Cubic Metre"** ("m<sup>3</sup>") means the volume of Gas which occupies one cubic metre when such Gas is at a temperature of 15 degrees Celsius, and at an absolute pressure of 101.325 kilopascals.
14. **"Day"** means a period of twenty-four (24) consecutive hours beginning at 10:00 a.m. in the Eastern Time Zone. The reference date for any day shall be the calendar date upon which the twenty-four (24) hour period shall commence.
15. **"Daily Contract Quantity"** ("DCQ") means the sum of the Firm Entitlements.
16. **"Day of First Delivery"** means the date the Service, obligations, terms and conditions of the Gas Distribution Contract commence, as set out in its Schedule 1.
17. **"Day of First Receipt"** means the date the Service, obligations, terms and conditions of the Bundled T commence, as set out in its Schedule 1.
18. **"Delivery Services"** means the transportation Services of Gas by Union to Storage or the Consumption Points.
19. **"Distribution Services"** means any Services that provide for the Storage or Delivery of Gas.
20. **"End User"** means the ultimate user of the Gas in Union's franchise area.
21. **"Failure to Deliver"** means the circumstance where Customer is Obligated to deliver a quantity of Gas to Union, and all or a portion of the said quantity is not received by Union at the Points of Receipt.
22. **"Firm"** means any Gas service not subject to interruption or curtailment except under



sections titled Force Majeure; Service Curtailment; and Priority of Service of these Terms and Conditions.

23. **"Firm Entitlements"** means the quantity of Gas as set out in Schedule I, which Customer will nominate and deliver to Union and Union shall receive at each Receipt Point.
24. **"FT Toll"** means the transportation toll and all other applicable costs in effect for such day on the applicable Transporters system for firm transportation service calculated at 100% load factor.
25. **"Gas"** means Gas as defined in the Ontario Energy Board Act, 1998, as amended, supplemented or re-enacted from time to time, which may be commingled supplies.
26. **"Gas Distribution Contract"** means a written Contract, (or the unwritten Contract for General Service), to provide Services to the Consumption Point of End User.
27. **"Gas Marketers License"** means the license required to carry on business as a Gas marketer as set out in the Part IV of the Ontario Energy Board Act 1998.
28. **"Interruptible"** means any gas services subject to interruption, after being notified by Union.
29. **"Interest"** means the minimum commercial lending rate of Union's principal banker for the relevant period.
30. **"Joule"** (J) means the work done when the point of application of a force of one (1) newton is displaced a distance of one (1) metre in the direction of the force. The term "Megajoule" (MJ) shall mean 1,000,000 Joules. The term "gigajoule" (GJ) shall mean 1,000,000,000 Joules.
31. **"Manitoba, Western, Northern, Sault Ste. Marie, Central, and Eastern Delivery Areas"** means the receipt zones of Union which are defined as the delivery zones of TCPL for service under its applicable toll schedules.
32. **"Month"** means a period beginning at 10:00 a.m. (Eastern Clock Time) on the first day of the calendar month and ending at the same hour on the first day of the next succeeding calendar month.
33. **"Nomination"** means a request to Union for a Gas Service in accordance with Union's nomination provisions.
34. **"Non-Obligated"** means any quantities of Gas that are not committed to be delivered by Customer and received by Union on a Firm basis.
35. **"Obligated"** means that volume of Gas which Customer is Obligated to deliver to Union on a Firm basis at the Points of Receipt.
36. **"OEB"** means the Ontario Energy Board.



37. **"Points of Consumption" or "Consumption Points"** means, unless otherwise specified in this Contract, the outlet side of the Union measuring equipment located at Customer's or End User locations as specified in Schedule 1 or Schedule 3, as applicable.
38. **"Price Point Values"** means the amount specified by the Agent for Services listed in the Unionline Price Point Cross Reference Report as permitted by the Gas Services Agreement.
39. **"Rate Schedule"** means the Ontario Energy Board approved Rate Schedule applicable to the Service being provided, (including Schedules attached thereto), or such other replacement Rate Schedule as approved by the Ontario Energy Board from time to time.
40. **"Receipt Services"** means the approved receipt of Gas from Customer to Union at the Points of Receipt.
41. **"Receipt Point" or "Points of Receipt"** shall mean the points listed on Schedule 1 of the Bundled T where Union may receive Gas from Customer.
42. **"Seasonal"** means any Gas service that is available during a specified period of the Year.
43. **"Services"** means Gas Receipt, Delivery and Storage Services provided by Union.
44. **"Stand Alone Fees"** means the amount specified by the Agent for other Services listed in Unionline Price Point Cross Reference Report, excluding Price Point Values, as permitted by the Gas Services Agreement.
45. **"Storage Services"** means the space and deliverability service for storage, either Bundled or Unbundled Service.
46. **"Surviving Obligations"** means those Surviving Obligations set out in Section 12.12 of the General Terms and Conditions.
47. **"TCPL"** means TransCanada PipeLines Limited.
48. **"TCPL Delivery Zone"** means one of "Manitoba, Western, Northern, Sault Ste. Marie, Central, and Eastern Delivery Areas," or other such applicable areas created by TCPL.
49. **"Transporter"** means the Gas transmission company that transports the Gas to the Receipt Point.
50. **"Unbundled Service"** means a Service provided by Union under which Customer will nominate and balance daily for Receipt, Storage and Delivery Services.
51. **"Unionline"** means Union's electronic web based system for Customer and Union to interact electronically, including but not limited to Nominating and information



exchange.

52. "**When Available**" means any interruptible Gas service that is available based on Union's sole discretion after Firm and Interruptible services have been exhausted and is priced at the interruptible rate in the applicable Rate Schedule.
53. "**Western**" means the points of receipt on the TCPL system where Union is able to receive Gas.
54. "**Year**" means a period of 365 days; provided, however, that any such Year, which contains a date of February 29, shall consist of 366 days.





**APPENDIX “B”**

**TO**

**DECISION AND ORDER**

**Union – LANXESS Gas Storage Contract**

**Board File No. EB-2007-0717**

## **FIRST AMENDING AGREEMENT**

**THIS AGREEMENT** effective as of August 15, 2007, between Union Gas Limited (“**Union**”) and LANXESS Inc. (“**LANXESS**”):

**WHEREAS** Union and LANXESS entered into a Gas Storage and Distribution Contract dated as of October 15, 2006 (the “**Contract**”);

**AND WHEREAS**, pursuant to the Capstone Agreement, dated March 28, 2001 between Union, LANXESS and other parties, the term of the Sarnia Regional Cogeneration Project (“**SRCP**”) portion of this Agreement shall end October 31, 2012 and remains unchanged;

**NOW THEREFORE** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Amendment.** The Contract is hereby amended as follows:  
Section 3 CONTRACT TERM is deleted in its entirety and replaced with the following:

### **3 CONTRACT TERM**

#### **a) Storage Services**

The Storage Services shall commence on October 1, 2006 and continue until October 31, 2012, and continuing thereafter on a year to year basis unless written notice to terminate is provided by one party to the other at least ninety (90) days prior to the expiration of the then current term.

#### **b) Receipt Services and Distribution Services**

##### **a) LANXESS East and LANXESS West**

Receipt Services and Distribution Services shall commence on November 1, 2006. Subject to the provisions hereof, this Contract shall continue for each Contract Year until notice to terminate is provided by either Union or Customer. Such Notice must be delivered at least three (3) months prior to the end of the Contract Year.

b) **LANXESS SRCP**

Receipt Services and Distribution Services shall commence November 1, 2006 and continue until October 31, 2012, and continuing thereafter on a year to year basis unless written notice to terminate is provided by one party to the other at least ninety (90) days prior to the expiration of the then contact term.

2. **Acknowledgement.** The parties acknowledge that save as otherwise indicated herein, the Contract shall continue unamended, is in all respects confirmed, ratified and preserved.

3. **Further Assurances.** The parties shall, at all times hereafter at the reasonable request of the other, execute and deliver to the other all such further documents and instruments and shall do and perform such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

4. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the Laws of the Province of Ontario, without regard to the principles governing the conflict of laws.

5. **Counterparts.** This Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first written above.

**LANXESS INC.**

**UNION GAS LIMITED**

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature