

CENTERPOINT ENERGY – MISSISSIPPI GAS
GENERAL TERMS AND CONDITIONS FOR TRANSPORTATION SERVICE
RATE SCHEDULES MT-3, MT-5 & MT-6

1. APPLICABILITY

- 1.1 These General Terms and Conditions for Transportation Service ("General Terms") apply to service requested from or provided by **CENTERPOINT ENERGY- MISSISSIPPI GAS** ("Company") under the following rate schedule(s):

Rate Schedule MT-3; Rate Schedule MT-5; Rate Schedule MT-6

2. DEFINITIONS

- 2.1 The term "Agreement" or "Transportation Service Agreement" shall mean the written agreement for transportation service between Company and the Shipper.
- 2.2 The term "annual volume limitation" or "AVL" means the maximum MMBtu which the Company shall be obligated to deliver during the service year consisting of twelve consecutive billing periods specified in Agreement.
- 2.3 The term "applicable index" shall be the reference price used for computation of imbalance cash outs under Section 12 as specified by Company in the Agreement tendered to Shipper pursuant to Sections 3 and 4 hereof.
- 2.4 The term "Btu" shall mean British Thermal Unit.
- 2.5 The term "Business Day" means any day except Saturday, Sunday, or Federal Reserve Bank holidays.
- 2.6 The term "Company's applicable weighted average cost of gas" shall mean the weighted average cost of gas per unit sold as billed to Company's residential and commercial customers in the same jurisdiction as the Shipper's End-use Customer(s) unless otherwise specified in the Agreement or the Exhibit A.
- 2.7 The term "cubic foot" shall mean the volume of gas which occupies one (1) cubic foot when said gas is at a temperature of sixty degrees (60 degrees) Fahrenheit, and at a pressure of 14.65 pounds per square inch absolute.
- 2.8 The term "day" or "daily" shall mean a period of twenty-four (24) consecutive hours, beginning and ending as near as practicable to 9:00 a.m., Central Clock Time, at the point at which delivery of gas is made.
- 2.9 The term "Delivery Point" shall mean (a) an interconnection between Company's facilities and End-use Customer's facilities situated at only one location downstream of the Receipt Point; (b) where Company has adequate capacity; (c) where the actual consumption of such facility will be, based on Company's best estimate, (i) at least 50 Mcf per day for service under Rate Schedule MT-3; (ii) at least 50 Mcf per day for service under Rate Schedule MT-5; or (iii) at least 10 Mcf per day but less than 50 Mcf per day for service under Rate Schedule MT-6; and (d) the natural gas redelivered is for ultimate consumption at such facility and not for resale or sharing with others for service under Rate Schedule MT-3 or Rate Schedule MT-6 or the natural gas redelivered is for ultimate distribution by the End-use Customer on its natural gas distribution system for service under Rate Schedule MT-5.
- 2.10 The term "End-use Customer" shall mean the person or entity who owns the facilities receiving gas redelivered by Company at the Delivery Point.
- 2.11 The term "Exhibit A" shall mean a formal written request by the Shipper to establish or amend transportation service at a specified Delivery Point. The Exhibit A (a) will contain specified information as described in

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Section 4 herein; (b) will require signed acknowledgement of the Shipper and the End-use Customer; and (c) will be a binding commitment and addendum to the Transportation Service Agreement by and between Shipper and Company.

- 2.12 The term "gas" or "natural gas" shall mean any mixture of hydrocarbons and noncombustible gases in a gaseous state consisting primarily of methane.
- 2.13 The term "gas supply" as it relates to purchased gas costs shall mean the charge for the product known as natural gas, and does not include any charges associated with delivery of the product by Company or any supplier pipeline of the Company.
- 2.14 The term "imbalance" shall mean the difference in the MMBtus of natural gas which Shipper takes at the Delivery Point and the MMBtus which Shipper provides for transportation at the Receipt Point, net of Lost and Unaccounted for Gas and Fuel, if any, specified in the Agreement.
- 2.15 The term "Maximum Daily Quantity" or "MDQ" shall mean the total maximum MMBtu which Company shall be obligated to receive or deliver on a firm basis on any given day on behalf of customer.
- 2.16 The term "Maximum Hourly Quantity" or "MHQ" shall mean the maximum MMBtu Company is obligated to deliver or receive for customer's account in any single hour. Company shall not be obligated to agree to a maximum hourly quantity greater than 1/15 of the MDQ.
- 2.17 The term "Mcf" shall mean one thousand (1,000) cubic feet of gas. The term "MMBtu" shall mean one million (1,000,000) Btu's.
- 2.18 The term "month," "Service Month," or "monthly" shall mean the period beginning at 9:00 a.m., Central Clock Time, on the first day of the calendar month and ending on to 9:00 a.m. Central Clock Time, on the first day of the next succeeding calendar month.
- 2.19 The terms "Payments to Governmental Authorities" or a "Payment to a Governmental Authority", as used herein, means all taxes or fees levied upon and/or paid by Company [other than ad valorem, capital stock, income or excess profit taxes (except as provided herein)], including, but not limited to, municipal franchise fees, and street and alley rental fees set out in franchise ordinances, street crossing agreements, or licenses. Such terms also include any other taxes, fees, or charges levied, assessed, or made by any governmental authority on the revenue received by Company or the volume transported by Company under any Transportation Service Agreement, or the act, right, or privilege of selling, transporting, handling, or delivering Gas. Such taxes or fees may be based upon the quantity, volume, heat content, value, sales price of the Gas, purchase price of the Gas, transportation fee payable under any Transportation Service Agreement, and include any other fee, charge, cost reimbursement, tax reimbursement, or payment under any agreement, including any applicable federal income tax imposed as a result of the reimbursement of the cost of the installation of facilities and equipment at the Delivery Point(s) or Receipt Point(s) under the terms of the applicable Transportation Service Agreement.
- 2.20 The term "Receipt Point" shall mean the point or points specified in the Agreement where Company agrees to receive intrastate pipeline gas for transportation for the account of a Shipper.
- 2.21 The term "Shipper" shall mean the person or entity designated as the "Shipper" in a Transportation Service Agreement executed by Company.
- 2.22 The term "year" or "service year" shall mean a period of three hundred sixty-five (365) consecutive days beginning on the date specified in the Agreement for the commencement of the term of service or any

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anniversary thereof; provided, however, that any year which contains a date of February 29, shall consist of three hundred sixty-six (366) consecutive days.

3. APPLICATION FOR SERVICE

- 3.1 Upon request of Shipper, Company shall offer the requesting Shipper a Transportation Service Agreement in a form acceptable to Company.
- 3.2 Unless waived by Company, if a Shipper fails to execute and return to Company the Transportation Service Agreement which accurately reflects the Shipper's submitted request for service within ten (10) Business Days after such agreement is tendered by Company for execution, then Shipper's request and the Transportation Service Agreement shall be null and void. In all other circumstances, unless waived by Company, a Shipper's submitted request for service and Transportation Service Agreement shall be null and void if the Shipper fails to execute and return to Company the tendered Transportation Service Agreement within thirty (30) days after such has been tendered to Shipper by Company for execution.
- 3.3 Execution of a Transportation Service Agreement by Shipper means that Shipper agrees to abide by the terms of the Transportation Service Agreement, the terms of the applicable rate schedule(s), including these General Terms and Conditions as amended from time to time, and any other policies, rules or regulations incorporated into the Transportation Service Agreement either directly or by reference.
- 3.4 Shipper or potential Shipper must agree to a minimum term of one year under any Transportation Service Agreement.
- 3.5 Unless waived by Company, Shipper or potential Shipper must agree to bear the supply-related cost/credit shifts or additional costs/credits, if any, directly resulting from the conversion of an End-use Customer from natural gas service with Company to natural gas service with the Shipper or potential Shipper, including existing pipeline commitments, existing gas supply costs, and additional administrative costs. The Company shall maintain adequate records to demonstrate such costs and to substantiate that this result has been achieved, and shall make such information available to the Shipper upon request. Company shall provide a good faith estimate of such costs/credits based upon representations made by the Shipper as to End-use Customer usage, demand, timing and other factors upon request of the Shipper or potential Shipper.
- 3.6 Acceptance of a Shipper as an approved Shipper on Company's system is contingent upon a satisfactory credit appraisal by Company.
 - 3.6.1 Company shall perform a credit appraisal, if applicable, utilizing the following information which Shipper or potential Shipper shall furnish to Company:
 - 3.6.1.1 A copy of Shipper's most recent audited financial statements;
 - 3.6.1.2 A copy of Shipper's most recent twelve (12) month audited financial statement Annual Report and, if applicable, SEC 10-K form;
 - 3.6.1.3 A list of Shipper's affiliates, including parent and subsidiaries, if applicable; and
 - 3.6.1.4 A bank reference and two trade references. The results of reference checks must show that Shipper's obligations are being paid on a reasonably prompt basis.
 - 3.6.2 Shipper must meet the following criteria in order to be deemed satisfactory for purposes of Section 3.6:

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- 3.6.2.1 Shipper must not be operating under any chapter of the bankruptcy laws and must not be subject to liquidation or debt reduction procedures under state laws, such as an assignment for the benefit of creditors, or any informal creditors' committee agreement. An exception can be made for a Shipper who is a debtor in possession operating under Chapter XI of the Federal U.S. Bankruptcy Act but only with adequate assurances that the bills will be paid promptly as a cost of administration under the federal court's jurisdiction.
- 3.6.2.2 Shipper must not be subject to pending liquidation or judicial proceedings in state or federal courts which would cause a substantial deterioration in its financial condition or which could cause a condition of insolvency or adversely affect its ability to exist as an on-going business entity.
- 3.6.2.3 Shipper must have no significant outstanding collection lawsuits or judgments which would jeopardize Shipper's ability to remain solvent.
- 3.6.3 If a Shipper or potential Shipper fails to satisfy credit criteria, it may still obtain service hereunder if it provides one of the following to Company: (a) a continuing deposit equal to a minimum of 180 days service at the requested MDQ; (b) a standby irrevocable letter of credit acceptable to Company; or (c) a guarantee by a person or another entity which does satisfy Company's credit criteria.

4. EXHIBIT A – ADDENDUM TO TRANSPORTATION SERVICE AGREEMENT

- 4.1 A Shipper must be approved by Company and must have executed a valid Transportation Service Agreement prior to submitting an Exhibit A requesting transportation services to a specified Delivery Point.
- 4.2 All approved Shippers must submit an Exhibit A for each individual End-use Customer pursuant to Section 4 hereof. An Exhibit A requesting initiation of transportation service to a specified End-use Customer must be executed by the Shipper and the End-use Customer and submitted to Company at least thirty (30) days prior to the anticipated commencement of such transportation service. An Exhibit A requesting changes in or renewal of service to a specified End-use Customer must be executed by the Shipper and the End-use Customer and submitted to Company at least fifteen (15) days prior to the anticipated change in or renewal of such transportation service. Company shall, within ten (10) Business Days after receipt of an Exhibit A, notify the Shipper in writing, or electronically via the Internet, that the Exhibit A has been approved or is deficient. If Company deems the Exhibit A deficient, Shipper shall have the opportunity to resubmit a valid Exhibit A subject to the notification requirements as set for in this Section.
- 4.3 All approved Shippers must submit an Exhibit A for any of the following:
 - 4.3.1 A request to initiate transportation service at a specified Delivery Point;
 - 4.3.2 A request to increase the MDQ, MHQ or AVL under an existing Exhibit A Addendum to a Transportation Service Agreement;
 - 4.3.3 A request by an existing Shipper to add new or delete existing Receipt Point(s) or Delivery Point(s) under an existing Exhibit A Addendum to a Transportation Service Agreement; or
 - 4.3.4 A request by an existing Shipper to extend or renew an existing Exhibit A Addendum to a Transportation Service Agreement that has expired or will expire and terminate by its own terms.
- 4.4 An Exhibit A must be in a form acceptable to Company. Such acceptable form will be provided to the Shipper and will contain the following information:

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- 4.4.1 Identity of Shipper – The exact legal name, identification (currently Dunn’s) number, mailing and street address and the name, phone number, telecopier number and e-mail address of person(s) to contact regarding the service requested. If the person or entity requesting service is acting as an agent, then the exact name and address of the agent’s principal and written proof of the agency must also be established. If Shipper is represented by an agent and/or asset manager, the exact name of such parties must be provided, and Shipper must keep Company appraised as to changes in the identity of such representatives;
- 4.4.2 Gas Quantities:
 - 4.4.2.1 The MDQ;
 - 4.4.2.2 The MHQ; and
 - 4.4.2.3 The AVL;
- 4.4.3 The Receipt Point(s) and Delivery Point(s);
- 4.4.4 Term of Service – Shipper or potential Shipper must request a minimum term of one year to initiate service or add a new Receipt Point or Delivery Point;
- 4.4.5 Identity of End-use Customer – the name, mailing and street address and the name, phone number, telecopier number and e-mail address of person(s) to contact for operational and other notices;
- 4.4.6 Upstream Pipeline Contact Information for Confirmations
- 4.4.7 Indexes and Lost and Unaccounted for Gas:
 - 4.4.7.1 Applicable Daily Index;
 - 4.4.7.2 Applicable Alternative Daily Index;
 - 4.4.7.3 Cash-out Index; and
 - 4.4.7.4 Lost and Unaccounted For Gas and Fuel as a Percent of Gas Received at Receipt Point
- 4.4.8 Certification may be required from an approved Shipper that it has the authority to deliver gas to Company’s system for transportation.
- 4.5 Acceptance of any Exhibit A is contingent upon a satisfactory credit appraisal by Company pursuant to Section 3 hereof. An Exhibit A requesting transportation services above and beyond the service levels contemplated in the initial or any subsequent credit appraisal will be contingent upon updated satisfactory credit appraisals by Company pursuant to Section 3 hereof.
- 4.6 The approved Shipper must provide a description and the proposed location of any facilities to be constructed or installed by any party affected by the proposed service.
- 4.7 Company shall promptly notify an approved Shipper if it cannot satisfy an otherwise valid request for transportation service due to inadequate capacity or facilities.
- 4.8 Company may reject any Exhibit A or limit the term of any Exhibit A requested by an approved Shipper, if Company, in its sole judgment, determines that the transportation service requested would impair the

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operational integrity of Company's system or adversely affect Company's existing gas purchases, sales or transportation. Company may, but shall not be required to, offer transportation service from alternate Receipt Points or at reduced MDQ, MHQ or AVL. Such alternative shall be put forth in a modified Exhibit A offered by Company to an approved Shipper.

5. SCHEDULING AND NOMINATIONS

- 5.1 Nominations for gas flow shall be submitted by the Shipper to Company no later than 10:00 a.m. Central Clock Time the day prior to gas flow; provided however, if a change in the nomination level is desired on a weekend or Company holiday, then nominations shall be submitted by the Shipper to Company no later than 10:00 a.m. Central Clock Time the last Business Day immediately prior to such weekend or holiday. Nominations shall be submitted via the Company's internet based nomination system. Company and the Shipper may agree on other means of submitting nominations from time to time. Nomination quantities shall be expressed in MMBtu. Company shall not be required to confirm a nomination that is: (A) inconsistent with the recently observed deliveries or projected deliveries for the Service Month; (B) higher than the MDQ specified in the Agreement for the applicable Delivery Point; or (C) not confirmed by the upstream pipeline. For these purposes, the projected deliveries for the Service Month shall be equal to the arithmetic average of the number of observed deliveries within the Service Month to date multiplied by the number of days in the Service Month. Once a nomination is made and confirmed by Company, that nomination will remain in effect through the end of the month or until changed by Shipper. Company shall confirm the nominated volume to upstream pipeline transporting Shipper's gas to the Receipt Point.
- 5.2 Company will require Shipper to comply with the scheduling and nominating procedures as set forth in applicable upstream pipeline transportation tariffs and or contracts, if any. Shipper shall be liable and shall compensate Company for any costs imposed upon Company as a result of Shipper's scheduling and nomination deviations or non-compliance with such scheduling and nominating procedures.

6. APPLICATION OF GENERAL TERMS AND CONDITIONS

- 6.1 Unless otherwise expressly stated, these General Terms apply to all Shippers, except insofar as they are changed by or are in conflict with any statute of the State of Mississippi, or valid final order of any court or the Mississippi Public Service Commission, in which case such statute or order shall control to the extent that it is applicable to the Shipper(s) in question. Whenever possible, these General Terms shall be construed harmoniously with such laws or orders.
- 6.2 The use of transportation service shall constitute an agreement by the Shipper to utilize such service in accordance with the General Terms set forth herein.
- 6.3 These General Terms and all subsequently effective General Terms, may be abrogated, modified, or added to in whole or in part by Company and any such change in these General Terms shall become effective when filed with the Mississippi Public Service Commission.

7. RECEIPT OF GAS FOR TRANSPORT

- 7.1 The Shipper must tender the gas for transportation hereunder at the Receipt Point specified in the Transportation Service Agreement at whatever pressure is necessary to effect redeliveries of the gas against

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the fluctuating working pressures maintained in Company's system at that Receipt Point from time to time. Company will not be obligated to accept any gas into such system for transportation that does not meet the quality specifications required to be met by Company's suppliers when delivering gas to Company for sales by Company.

- 7.2 Company will be responsible for installing and operating the necessary tap and measurement facilities at each Receipt Point necessary to receive and measure the gas delivered for transportation hereunder. If Company agrees to provide new or additional facilities to perform the services requested by Shipper then, upon Company's request, Shipper shall reimburse Company, or cause Company to be reimbursed, for all costs of construction, installation and/or acquisition of such facilities.

8. WARRANTY OF TITLE

- 8.1 Shipper shall have title to and shall warrant its title to all gas delivered to Company under the Agreement, and such gas shall be delivered to Company free and clear of all liens, claims and encumbrances. Shipper shall indemnify Company against all suits, actions, debts, accounts and damages arising out of any adverse claims to, against or in respect of such gas. Shipper shall also indemnify Company and hold it harmless from and against any and all claims, actions, suits, costs, liabilities and expenses caused by or arising out of possession or presence of such gas before it is delivered into Company's facilities.

9. UNACCEPTABLE QUANTITIES

- 9.1 Company shall have the right to refuse to receive at any Receipt Point or to deliver at any Delivery Point any quantity of gas that Company determines, in its reasonable judgment, will adversely affect its ability to deliver gas to human needs or other service sales customers or that exceeds the available capacity of Company's facilities.

10. GAS TRANSPORTED BY COMPANY

- 10.1 Except as may be otherwise specified elsewhere herein, the gas shall be tendered by Shipper at the Receipt Point at the working pressures maintained from time to time by Company at such point. It is recognized that gas delivered by Company at the Delivery Point may not be the same gas that Company received at the Receipt Point, and that gas delivered at the Delivery Point will meet the quality specifications applicable to gas that Company sells on its system. Company will use its best efforts, consistent with the prudent operation of its system, to deliver gas meeting such specifications but shall not be liable in damages for failure to do so. If the gas tendered by Company fails at any time to conform to any of said specifications, then the Shipper shall notify Company of such deficiency and thereupon may, at Shipper's option, refuse to accept delivery of gas pending correction by Company.
- 10.2 The point where responsibility for gas shall pass to Shipper after transportation by Company shall be at the outlet of Company's meter at the Delivery Point. Shipper shall provide reasonable access or ensure that reasonable access is provided to the premises at the Delivery Point for any purpose connected with this service.

11. FACILITIES

- 11.1 For any Exhibit A effective prior to October 1, 2013:
- 11.1.1 Company shall install, operate and maintain whatever facilities are necessary to receive gas at the Receipt Point(s). If Company agrees to provide new or additional facilities to perform services requested by

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Shipper, then, upon Company's request, Shipper shall reimburse Company, or cause Company to be reimbursed, for all costs of construction, installation and/or acquisition of such facilities. Telemetry is required for service under these General Terms. Company shall install telemetry equipment of standard make and manufacture to determine hourly and daily flow of gas at the Receipt Point. Shipper will reimburse Company or cause Company to be reimbursed for the full, installed cost of such telemetry.

- 11.1.2 Shipper or Shipper's designee shall install, operate and maintain at its own expense whatever facilities are necessary to safely receive and utilize gas at and beyond the Delivery Point. Shipper or Shipper's designee shall be responsible for installing and maintaining telecommunications lines. Should Shipper or Shipper's designee fail to maintain or repair telecommunications equipment and services required to communicate with telemetry equipment, Company shall have the right to bill Shipper for all labor, materials and other expense required to manually read the meter at whatever intervals the Company may deem necessary. In no case shall such charge be less than \$250.00 per meter read.

11.2 For any Exhibit A effective on or after October 1, 2013:

- 11.2.1 Company shall install, operate and maintain whatever facilities are necessary to receive gas at the Receipt Point(s). If Company agrees to provide new or additional facilities to perform services requested by Shipper, then, upon Company's request, Shipper shall reimburse Company, or cause Company to be reimbursed, for all costs of construction, installation and/or acquisition of such facilities. Telemetry is required for service under these General Terms. Company shall install telemetry equipment of standard make and manufacture to determine hourly and daily flow of gas at the Receipt Point. Shipper shall choose between analog telemetry and wireless telemetry, if suitable wireless service is available at the Receipt Point.

- 11.2.2 Shipper or Shipper's designee shall install, operate and maintain at its own expense whatever facilities are necessary to safely receive and utilize gas at and beyond the Delivery Point.

- 11.2.3 If Shipper chooses analog telemetry, then Shipper or Shipper's designee shall be responsible for installing and maintaining telecommunications lines. Should Shipper or Shipper's designee fail to maintain or repair telecommunications equipment and services required to communicate with telemetry equipment, Company shall have the right to bill Shipper for all labor, materials and other expense required to manually read the meter at whatever intervals the Company may deem necessary. In no case shall such charge be less than \$250.00 per meter read.

- 11.2.4 If Shipper chooses wireless telemetry, then Shipper shall pay Company \$15 per month per meter for wireless telemetry service for the entire period such meter(s) is(are) served under this or any other transportation rate schedule.

- 11.2.5 Shipper will pay Company or cause Company to be paid for telemetry equipment under one of the following payment options as chosen by the original Shipper in the initial Exhibit A:

- 11.2.5.1 Shipper will reimburse Company or cause Company to be reimbursed for the full, installed cost of such telemetry within 45 days of installation; or

- 11.2.5.2 Shipper shall pay Company or cause Company to be paid a monthly administrative fee per meter for the entire period such meter(s) is(are) served under this or any other transportation rate schedule as follows:

Transportation redeliveries at low fixed pressure	\$30.00 per meter per month
Transportation redeliveries with pressure instrumentation	\$75.00 per meter per month

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- 11.3 Shipper or Shipper's designee shall have the right to request termination of service at a specific Delivery Point if the End-use Customer purchasing gas from Shipper at such Delivery Point fails to remit any and all amounts due to Shipper for the purchase of such gas. Shipper shall provide Company with an electronic statement requesting termination of service at such Delivery Point along with documentation that effectively demonstrates the delinquency. Company shall then terminate service at such Delivery Point as soon as is operationally feasible. Company shall have the right to bill Shipper for all labor, materials and other expense required to terminate service at the Delivery Point. In no case shall such charge be less than \$100.00 per service termination. Termination of service to any specific Delivery Point does not relieve Shipper of its contract obligations with Company for such Delivery Point. All standard tariff charges will continue to apply on a monthly basis through the remainder of the contract term whether or not Shipper is having gas delivered to the End-use Customer.
- 11.4 Shipper or Shipper's designee shall have the right to request reinstatement of service at a specific Delivery Point where service was previously terminated for non-payment by the End-use Customer if the End-use Customer purchasing gas from Shipper at such Delivery Point has remitted payment for any and all past due amounts to Shipper for the purchase of such gas. Shipper shall provide Company with an electronic statement requesting reinstatement of service at such Delivery Point along with documentation that effectively demonstrates the clearing of the delinquency or the institution of a payment plan. Company shall then reinstate service at such Delivery Point as soon as is operationally feasible. Company shall have the right to bill Shipper for all labor, materials and other expense required to reinstate service at the Delivery Point. In no case shall such charge be less than \$100.00 per reinstatement of service.

12. BALANCING

- 12.1 General Intent: These balancing provisions are in recognition of the fact that Company's upstream gas supply, transportation, storage and no-notice service capacity is reserved for the exclusive use by Company for transactions related to its system supply.
- 12.2 Shipper shall have a general obligation to: (i) conform its daily takes at Delivery Point(s) with its deliveries to Company at Receipt Point(s) to avoid imbalances, and (ii) when imbalances occur, to correct any such imbalances as soon as practical.
- 12.3 Company shall make available electronically daily imbalance information which shall notify Shipper of any imbalance under the Agreement in the current Service Month. Imbalance information shall be based on the best data then available to Company, including, but not limited to, nominations, allocations, electronic measurement data, and meter observations. The provision of such information by Company shall not relieve Shipper of its obligations under these General Terms to avoid, correct or eliminate actual imbalances.
- 12.4 Company shall monitor the accumulation of daily imbalances by Shipper and shall have the right to take corrective action as required, to eliminate Shipper's encroachment upon upstream gas supply, transportation, storage, or no-notice service capacity held by Company for general system supply.
- 12.5 Daily Imbalances During Critical Period Events
- 12.5.1 If Shippers' deliveries and takes are not in balance during a day, or are projected to be out of balance on a future day, and if Company determines in its reasonable judgment that such imbalances (i) impair Company's ability to maintain the operational integrity of its distribution system, or (ii) adversely affect Company's cost of gas purchased for resale to its firm service sales customers, then the Company may declare a Critical Period Event. "Critical Period Event" can be either: (i) an Excess Flow Event (Shipper's (deliveries exceed takes); or (ii) a Deficient Flow Event (Shipper's takes exceed deliveries). Under this Section 12, Operational Flow Orders ("OFO's") or Operational Alerts ("OA's") of pipelines serving the Company shall be deemed events which impair the Company's ability to maintain the operational integrity of its distribution system; and daily and intra-day price movements of greater than fifty cents (\$0.50) per MMBtu of the Daily Price Index(es)

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compared to the Monthly Price Index(es) specified in the Agreement shall be deemed to adversely affect Company's cost of gas purchased for resale to its firm service sales customers.

- 12.5.2 Company shall notify affected Shippers verbally of the Critical Period Event and Shippers shall have a minimum of four (4) hours to bring deliveries and takes into balance, or other longer time periods as deemed applicable by the Company. If, after the specified notice period indicated in Company's notice to Shipper of the Critical Period Event, Shipper has not balanced deliveries and takes, Company shall have the right to balance receipt and deliveries of gas. Company shall not be obligated to deliver a greater volume of gas to the Delivery Point than it received at the Receipt Point for Shipper's account, as indicated by the upstream delivering pipeline, until such time as Company determines that the Critical Period Event no longer exists. An imbalance that occurs following notice of a Critical Period Event may not be carried forward for clearing during the month, but instead may, at the Company's option, be cashed out based on the Critical Period Price.
- 12.5.3 The "Critical Period Price" shall be the "Applicable Daily Index" specified in the Agreement or, if the Applicable Daily Index is not published for the day, the "Applicable Alternative Daily Index" specified in the Agreement.
- 12.5.4 If, on any day during a Critical Period Event, after the expiration of the notice period, the Shipper delivers to Company volumes of gas that are greater than Shipper's gas requirements at the Delivery Point, then Company can purchase such over-delivered volumes at the Receipt Point from the Shipper at the following rates per MMBtu: (i) the first 5% of over-delivered volumes will be cashed out at the Critical Period Price; and (ii) amounts greater than 5% will be cashed out at a rate equal to 50% of the Critical Period Price.
- 12.5.5 If, on any day during a critical situation, after the expiration of the notice period, the Shipper delivers to Company volumes of gas that are less than the Shipper's gas requirements at the Delivery Point, then Company may require Shipper to purchase such deficiency at the Delivery Point from Company at the following rates per MMBtu. The first 5% of under-delivered volumes will be cashed out at the Critical Period Price. Amounts greater than 5% will be cashed out at a rate equal to 150% of the Critical Period Price for the day in which the deficiency occurred.

12.6 Multi-day Imbalances

- 12.6.1 For any multi-day period measured from the beginning of the first day of the month where a cumulative imbalance is equal to or greater than 5% of the projected redeliveries for the Service Month, Company may at its option, eliminate, through an intra-month cash-out action, all or part of said cumulative imbalance. For these purposes, the projected deliveries for the Service Month shall be equal to the arithmetic average of the number of observed deliveries within the Service Month to date multiplied by the number days in the Service Month. The "cash-out" price applicable to such intra-month cash-out transactions shall be equal to 50% of the Critical Period Price for cash-out purchases by Company from Shipper and 150% of Critical Period Price for cash-out purchases required of Shipper from Company. As a prerequisite to any such intra-month cash-out action, Company shall warn Shipper during the Business Day prior to the day on which the Company projects Shipper will be in violation of the 5% threshold, based on the information available to Company at the time said warning is issued. Once such warning is issued to Shipper in any Service Month, no additional warnings from Company will be required during that same Service Month, prior to an intra-month cash-out action by Company on Shipper's then cumulative imbalance.
- 12.6.2 Company shall not be obligated to do the following under any circumstances: (i) deliver more gas to Shipper during any given day or month than it shall have received at the Receipt Point for the account of Shipper during said period; or (ii) to receive at the Receipt Point or deliver at the Delivery Point during any given Day a total quantity of gas in excess of the MDQ.

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12.6.3 Shipper will be responsible for its allocable share of any incremental costs associated with Company's upstream transportation, storage, or no-notice services attributable to nomination and scheduling activities of Shipper, including but not limited to incremental overrun charges, commodity charges, daily demand charges, and penalties. The responsibility provided for herein shall not relieve Shipper of its obligations under these General Terms or the tariffs of Company's upstream service providers to avoid, correct or eliminate nomination or scheduling errors.

12.7 Monthly Imbalances

12.7.1 At the end of each Service Month, remaining Shipper imbalances shall be cashed out. To the extent Shipper owes natural gas volumes to Company (deliveries exceeded volumes received by Company), Shipper will purchase said volumes from Company at the percentage of the applicable cash-out price described below. To the extent Company owes natural gas volumes to Shipper (volumes received exceeded volumes delivered by Company), Company will purchase said volumes from Shipper at the applicable percentage of the cash-out price described below.

	Overage	Underage
Imbalance Level	The Company Pays Shipper the Following Percentage of the Cash-Out Price	Shipper Pays the Company the Following Percentage of the Cash-Out Price
From 0% to 5%	100%	100%
From 5% to 10%	80%	120%
From 10% to 15%	70%	130%
From 15% to 20%	60%	140%
Greater than 20%	50%	150%

12.7.2 In the event of an "Overage," the "Cash Out Price" shall be the lower of the "Cash-out Index" specified in the Agreement or Company's applicable weighted average cost of gas for the month. In the event of an "Underage," the "Cash Out Price" shall be the higher of the "Cash-out Index" specified in the Agreement or Company's applicable weighted average cost of gas for the month.

12.8 Company in its sole discretion, upon ten (10) days written notice to Shipper, may change the "Cash-out Index", "Applicable Daily Index" or "Applicable Alternative Daily Index" effective in the Agreement. Any such change will be applied to imbalances prospectively.

12.9 Effect of Reliance on Incomplete or Inaccurate Data. Imbalances caused by Shipper's reliance on imbalance data that differ materially from subsequently corrected data will be assumed to fall into the 0% to 5% range and the "Cash Out Price" shall be the "Cash Out Index" specified in the Agreement.

13. BILLING AND PAYMENT

13.1 Company shall invoice Shipper as near to the 15th day of each month ("Billing Date") as is operationally feasible for transportation during the preceding month and for any other applicable charges. If the actual quantity delivered is not known by the Billing Date, billing shall be prepared based on the quantity nominated

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by Shipper or Company's estimate. The invoiced quantity shall then be adjusted to the actual quantity on the following month's billing or as soon thereafter as actual delivery information is available.

- 13.2 Shipper shall remit the amount due under Section 13.1 no more than five (5) days after receipt of Company's invoice ("Payment Date") in immediately available funds. If the Payment Date is not a Business Day, payment is due on the next Business Day following that date.
- 13.3 If Shipper, in good faith, disputes the amount or any part of such invoice, then Shipper shall pay such amount as it concedes to be correct; provided, however, if Shipper disputes the amount due, it must provide Company with written notice of the basis for the disputed amount and supporting documentation acceptable in natural gas industry practice to support the amount paid and the amount disputed. In the event the parties are unable to resolve such dispute, either party may pursue any remedy available at law or in equity to enforce its rights pursuant to this Section.
- 13.4 If Shipper fails to remit the full amount payable when due, interest on the unpaid portion shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus one percent (1%) per annum; or (ii) the maximum applicable lawful interest rate.
- 13.5 Company and Shipper shall have the right, at their own expense, upon reasonable notice at reasonable times, to examine and audit and to obtain copies of the relevant portion of the books, records, and telephone recordings of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment, or computation made under the Agreement. All invoices and billings shall be conclusively presumed final and accurate and all associated claims for under payments or overpayments shall be deemed waived unless such invoices or billings are objected to in writing, with adequate explanation and/or documentation, within two (2) years after the month of gas delivery. All retroactive adjustments under this Section shall be paid in full by the party owing payment within thirty (30) days of notice and substantiation of such inaccuracy.

14. ASSURANCE OF PERFORMANCE

If Company has commercially reasonable grounds for insecurity regarding the performance of any obligation under the Agreement or these General Terms (whether or not then due) by Shipper (including, without limitation, the occurrence of a material change in the creditworthiness of Shipper or its guarantor or credit support provider), Company may demand Adequate Assurance of Performance. "Adequate Assurance of Performance" means Shipper's provision of Credit Support Obligation(s) or additional Credit Support Obligation(s) in a form, amount and for the term reasonably acceptable to Company. "Credit Support Obligation(s)" means Shipper's obligation(s) to provide or establish credit support for, or on behalf of, Company such as an irrevocable standby letter of credit, a margin agreement, a prepayment, a security interest in an asset, a performance bond, guaranty, or other good and sufficient security of a continuing nature acceptable to Company.

15. EVENT OF DEFAULT AND EARLY TERMINATION

- 15.1 In the event (each an "Event of Default") Shipper or its guarantor shall:
 - 15.1.1 Make an assignment or any general arrangement for the benefit of creditors;
 - 15.1.2 file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it;

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- 15.1.3 otherwise become bankrupt or insolvent (however evidenced);
- 15.1.4 be unable to pay its debts as they fall due;
- 15.1.5 have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets;
- 15.1.6 fail to perform any obligation to the Company with respect to any Credit Support Obligation(s) relating to the Contract;
- 15.1.7 fail to give Adequate Assurance of Performance under Section 14 within forty-eight (48) hours but at least one Business Day of a written request by Company;
- 15.1.8 not have paid any amount due the Company hereunder on or before the second Business Day following written notice that such payment is due; or
- 15.1.9 consolidate or amalgamate with, or merge with or into, or transfer all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting surviving, or transferee entity fails to assume all the obligations of Shipper under the Agreement or these General Terms or the resulting, surviving or transferee entity's credit is materially weaker as determined by the Company acting in good faith and in a commercially reasonable manner;

then Company shall have the right, at its sole election and upon written notice, to immediately withhold and/or suspend deliveries or payments and/or to terminate the Agreement in addition to any and all other remedies available hereunder. Company reserves all rights, set-offs, counterclaims, and any defenses to which it may be entitled.

- 15.2 If an Event of Default has occurred and is continuing, Company shall have the right, by notice to Shipper, to designate a day, no earlier than the day such notice is given and no later than twenty (20) days after such notice is given, as an early termination date (the "Early Termination Date") for the termination all of Company's obligations to transport gas under the Agreement (collectively, the "Terminated Obligations"). On the Early Termination Date, all transportation of natural gas hereunder shall cease.
- 15.3 As of the Early Termination Date, Company shall determine the following, in good faith and in a commercially reasonable manner: (A) the amount owed (whether or not then due) for all gas transported by Company under Terminated Obligations on and before the Early Termination Date and all other applicable charges relating to such transportation, including but not limited to amounts due Company under to Section 12 hereof.
- 15.4 As soon as practicable, Company shall invoice Shipper for the amounts due to Company under this Section 15. Shipper shall pay the invoice amount by the close of business on the second Business Day following such the date of the invoice, which date shall not be earlier than the Early Termination Date. Interest on any unpaid portion of the invoice shall accrue from the date due until the date of payment at a rate equal to the lower of (i) the then-effective prime rate of interest published under "Money Rates" by The Wall Street Journal, plus two percent (2%) per annum, or (ii) the maximum applicable lawful interest rate.

16. LIMITATIONS OF LIABILITY AND FORCE MEJEURE

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16.1 Limitations of Liability

16.1.1 Full or partial interruption of gas deliveries during the term of this Contract due to acts of God, the elements, requirements for residential and other uses declared superior to Shipper's use by law, order, rule or regulation ("Law"), damage to Company's pipes or equipment or to other causes or contingencies beyond the control of Company shall not be cause for termination of the Agreement or the basis for any claims. Delivery and receipt of gas under the Agreement shall be resumed whenever any such cause or contingency ends.

16.1.2 **FOR BREACH OF ANY PROVISION OR EVENT OF DEFAULT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED UNDER THE AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. A PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED UNDER THE AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS, A PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED UNDER THE AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED UNDER THE AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THE AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED UNDER SUCH AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS INCURRED.**

16.1.3 **EXCEPT AS OTHERWISE PROVIDED UNDER THE AGREEMENT, APPLICABLE RATE SCHEDULE OR THESE GENERAL TERMS, SHIPPER EXPRESSLY AGREES TO PROTECT, DEFEND, INDEMNIFY, AND SAVE COMPANY, ITS OFFICERS, DIRECTORS, AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL LOSS, DESTRUCTION, OR DAMAGE TO PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY OF COMPANY, SHIPPER, OR ANY THIRD PARTY) AND ANY AND ALL CLAIMS, DEMANDS, AND COURSES OF ACTION OF EVERY KIND AND CHARACTER, WITHOUT LIMIT AND WITHOUT REGARD TO THE CAUSE OR CAUSES OR THE NEGLIGENCE OF ANY PARTY OR PARTIES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE GAS OR THE TRANSPORTATION OF GAS UNDER THE TRANSPORTATION SERVICE AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF**

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COMPANY, ITS OFFICERS, AGENTS AND EMPLOYEES. SHIPPER SHALL ON COMPANY'S REQUEST, DEFEND ANY SUIT ASSERTING A CLAIM COVERED BY THIS INDEMNITY. SHIPPER SHALL PAY ALL COSTS THAT MAY BE INCURRED BY COMPANY IN ENFORCING THIS INDEMNITY, INCLUDING ALL REASONABLE ATTORNEY'S FEES.

16.2 Force Majeure

- 16.2.1 *Suspension of Performance.* In the event either party is rendered unable, wholly or in part, by an event of force majeure to carry out its obligations under any Transportation Service Agreement, except the obligation to pay monies due under such Agreement, on such party's giving notice and reasonably full particulars of such event of force majeure, in writing or by fax, to the other party within a reasonable time after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as they are affected by such event of force majeure, will be suspended during the continuance of any inability so caused, but for no longer period, and such cause will, so far as possible, be remedied with all reasonable dispatch.
- 16.2.2 *Definition of Force Majeure.* The term "force majeure" as used herein, means acts of God; strikes, lockouts, or other industrial disturbances; acts of terrorism, acts of the public enemy, wars, blockades, insurrections, civil disturbances, riots, and epidemics; landslides, lightning, earthquakes, fires, storms, tornadoes, hurricanes, floods, and washouts; arrests, orders, directives, restraints, and requirements of the government and governmental agencies, either federal or state, civil or military; any application of governmental conservation or curtailment rules and regulations; explosions, breakage, or accident to machinery or lines of pipe; shutdowns of lines of pipe for inspection, maintenance, or repair; freezing of lines of pipe; and any other causes, whether of the kind enumerated or otherwise, not reasonably within the control of the party claiming suspension. The settlement of strikes or lockouts will be entirely within the discretion of the party having the difficulty, and the above referenced reasonable dispatch will not require the settlement of strikes or lockouts by acceding to the demand of the opposing party when such course is, or is deemed to be, inadvisable or inappropriate in the discretion of the party having the difficulty.
- 16.2.3 *Balancing Obligations Remain.* Notwithstanding the foregoing, an event of force majeure will in no way terminate Shipper's obligation to balance quantities of gas under the applicable Agreement or make payment for quantities delivered prior to such event of force majeure.