

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :  
KNG Energy, Inc. for Approval of a :  
Natural Gas Transportation Service :  
Agreement with Ohio Gas Energy :  
Service. :

Case No. 11-3152-GA-AEC

APPLICATION OF KNG ENERGY, INC.

PUCO

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KNG Energy, Inc. ("KNG"), pursuant to Section 4905.31, Revised Code, hereby respectfully requests Commission approval of a natural gas transportation service agreement with Ohio Gas Energy Services ("OGES"). In support of its application, KNG states as follows:

1. KNG is a public utility and a natural gas company within the definitions of Sections 4905.02 and 4905.03(A)(6), Revised Code, and, as such, is subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
2. KNG owns and operates an 8-inch, 12-mile natural gas pipeline extending from an interconnection with the Crossroads interstate pipeline north of the village of Deshler, Ohio south to the village of Leipsic, Ohio (the "KNG Pipeline").
3. By its Finding and Order of April 5, 2011 in Case No. 11-1115-GA-ATR, the Commission granted the joint application of KNG and Ohio Gas Company ("Ohio Gas") for approval of an interconnection agreement to enable the parties to interconnect the KNG Pipeline with a pipeline Ohio Gas is in the process of acquiring from the villages of Hamler, Holgate, and Malinta, Ohio (the "the Ohio Gas Pipeline"). As explained in the joint application, this interconnection will permit KNG to transport gas from the Crossroads interconnection over the

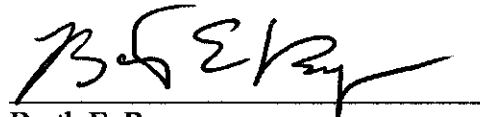
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KNG Pipeline to the Ohio Gas Pipeline for Ohio Gas, for its affiliate, Ohio Gas Energy Services ("OGES"), or for any competitive gas supplier that Ohio Gas authorizes to utilize the Ohio Gas Pipeline for the purpose of providing commodity service to end-user customers within its service area.

4. As contemplated by the Commission-approved interconnection agreement, KNG and OGES have entered into a natural gas transportation agreement containing mutually agreed rates, terms, and conditions pursuant to which KNG will provide natural gas transportation service to OGES. Because the agreement contains certain competitively-sensitive information, KNG has, this date, filed a motion for a protective order pursuant to Rule 4901-1-24(D), Ohio Administrative Code, and, as required by said rule, has submitted three confidential, unredacted copies of the agreement under seal. A public, redacted version of this agreement is attached hereto as Attachment A, with the redactions indicated by a series of asterisks (\*\*\*\*\*).

WHEREFORE, KNG respectfully requests that that its application be granted and that its natural gas transportation service agreement with OGES be approved as a reasonable arrangement pursuant to Section 4905.31, Revised Code.

Respectfully submitted,



Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3900  
(614) 228-0704 – Telephone  
(614) 228-0201 – Fax

Attorney for KNG Energy, Inc.

# **ATTACHMENT A**

**(Public, Redacted Version)**

## NATURAL GAS TRANSPORTATION AGREEMENT

**KNG Energy, Inc.**

This Agreement, effective this 7 day of March, 2011, by and between **KNG Energy, Inc.**, an Ohio public utility ("KNG") and **Ohio Gas Energy Service**, ("Ohio Gas or Shipper"), collectively, the "Parties."

### WITNESSETH

**WHEREAS**, KNG is a natural gas utility, which owns and/or operates natural gas pipelines and related facilities located within the State of Ohio; and

**WHEREAS**, Shipper desires to utilize KNG's facilities for the transportation of natural gas within the State of Ohio; and

**WHEREAS**, KNG desires to provide such transportation services subject to the terms and conditions hereof.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Definitions.** Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used herein and shall be construed to have the meaning as follows:

1.1 The term "Day" or "Daily" shall mean the 24 hour period beginning at 10:00 a.m. Eastern clock time.

1.2 The term "Month" shall mean a calendar month beginning at 10:00 a.m. Eastern clock time on the first day of the calendar month and ending at 10:00 a.m. Eastern clock time on the first day of the following calendar month.

1.3 The term "Contract Year" shall mean a period beginning at 10:00 a.m. Eastern clock time, on the date of this Agreement and ending at 10:00 a.m. Eastern clock time, one year later, and each succeeding twelve month period thereafter.

1.4 The term "Gas" shall mean natural gas of pipeline quality as defined in the tariffs or contracts from the upstream interstate pipelines.

1.5 The term "Written Notice" shall mean a legible communication delivered to the intended recipient of the communication by United States mail, express courier, email, or

confirmed facsimile.

1.6 The term "PUCO" shall mean the Public Utilities Commission of Ohio or any successor governmental authority.

1.7 The term "British Thermal Unit" or "Btu" shall mean the amount of heat required to raise the temperature of one (1) pound of water one degree Fahrenheit (1°F) at sixty degrees Fahrenheit (60°F).

1.8 The term "Mcf" shall mean one thousand (1,000) cubic feet of gas.

1.9 The term "Dth" shall mean one million (1,000,000) Btus. The standard quantity for nominations, confirmations, scheduling, invoices and balancing is dekatherms ("Dth").

1.10 The term "Maximum Daily Quantity ("MDQ")" shall mean the maximum Daily firm Gas quantity to have nominated to the Delivery Point.

1.11 The term "Maximum Monthly Quantity ("MMQ")" shall mean the maximum monthly quantity to be taken at the Delivery Point.

1.12 The term "Overrun" shall mean any volume of gas actually transported which, as measured on a monthly basis, exceeds the MMQ, or as measured on a Daily basis, exceeds the MDQ as established by this agreement.

1.13 The term "Nomination" shall mean the confirmed volume of Gas which Shipper or its Agent or Marketer, advises KNG will be delivered to the Receipt Point.

1.14 The term "Delivery Volume" shall mean the volume of Gas actually taken at the Delivery Point(s) by or on behalf of Shipper.

1.15 The term "Imbalance" shall mean the Daily difference between the Nomination volume and the Delivered Volume.

1.16 Receipt Point(s) shall mean those measurement locations where Shipper owned Gas is delivered and where KNG will receive the gas.

1.17 Delivery Point(s) shall mean where KNG owns and operates a measurement station for delivery of Gas to Shipper.

## **2. Delivery and Transportation.**

2.1 Shipper shall arrange with suppliers of Shipper's choice to deliver Gas to KNG's Receipt Point(s) for delivery into KNG's system on Shipper's behalf. KNG shall then redeliver, on a firm basis, such volume, less the unaccounted for percentage, to the Shipper or on the

Shipper's behalf, to KNG's Delivery Point(s) specified in this agreement. All transportation by KNG for Shipper shall be governed by KNG's then current transportation tariff on file with the PUCO, except as expressly modified in this Agreement.

2.2 At least three (3) business days prior to the start of each calendar month, Shipper shall send Written Notice to KNG of the Nomination for each day of the next month. Shipper may change its Daily Nomination by submitting its Nomination to KNG no later than 11:30 a.m. Eastern Time for gas flow the following day.

2.3 Except as otherwise specified in this agreement, Shipper shall be permitted to have delivered to and removed from KNG's pipeline its Daily Nominated volume, adjusted for unaccounted for percentage, up to the MDQ specified in this agreement.

2.4 Volumes nominated over the MDQ shall be transported on an interruptible – only basis. Transport of such volumes shall not constitute a waiver of this provision or an adjustment of the MDQ. Transport of excess volumes may cease at any time if volumes are considered excessive by KNG. KNG shall have no obligation to transport volumes over the MDQ.

2.5 If any of the upstream pipelines interconnected with KNG issues an operational flow order, or takes other steps that reduce or eliminate the Parties balancing tolerance, or if local weather conditions or operational problems place human needs customers at risk; KNG may issue its own operational flow order. The operational flow order may restrict the Shipper to withdraw or inject into the KNG system only that volume of gas which Shipper will use or have redelivered the same day. KNG will use its best efforts to limit such operational flow order to just the time necessary to comply with interstate operational flow orders or adverse local conditions. KNG will only assess penalties for non-compliance if KNG is actually assessed penalties by the pipeline which issued the OFO.

2.6 Shipper warrants that it has title to all Gas delivered to KNG, free and clear of all claims and covenants and agrees to indemnify and hold harmless KNG from all suits, actions, debts, accounts, damages, costs, losses, liens, judgements, attorney fees and expenses and liabilities of any kind arising from or attributable to the adverse claims of any and all other persons or parties relating to such Gas tendered by Shipper at the Receipt Point(s).

### **3. Quantity, Price and Balancing**

3.1 KNG will serve the full requirements of Shipper as measured at the Delivery Point up to the MDQ and MMQ as listed on Schedule A.

3.2 Shipper shall pay KNG for Gas transported equal to the Delivery Volume multiplied by the charge per Dth shown on Schedule A. All Riders approved and on file with PUCO shall apply.

3.3 Charges for imbalances caused by Shipper shall be assessed in accordance with the KNG's then current tariff on file with the PUCO. KNG shall reserve the right to waive

imbalance charges on a nondiscriminatory basis. During any month if KNG determines that the Daily Delivery Volumes are out of balance with the Nominations for that Month then KNG shall advise Shipper to either reduce or increase the Nominations in order to reduce or eliminate the differences between the Delivery Volumes and the Nominations. KNG shall advise Shipper of the magnitude of such differences and Shipper shall cause such difference to be eliminated in a timely manner, per KNG's recommendation. Shipper shall be responsible for all upstream pipeline penalties incurred as a result of its failure to adjust its Nomination as requested by KNG.

Shipper shall eliminate any imbalances for a given Month no later than the end of the following Month. Notwithstanding the foregoing, KNG reserves the right to cash out imbalances as described in its tariff and eliminate month to month balancing if Nominations are not changed as requested by KNG. The operational balancing described above shall be suspended for any day for which an Operational Flow Order has been declared on an upstream pipeline.

3.4 Shipper shall be liable for incremental costs experienced by KNG from upstream pipelines due to unauthorized Overruns or daily imbalances caused by Shipper. KNG will not be liable for any gas flow interrupted by the upstream pipeline company delivering gas to the Receipt Point.

#### **4. Term.**

4.1 This Agreement as related to transportation of gas shall be in effect for a primary term of \*\*\*\*\* years and continue from year to year thereafter unless terminated by either Party upon one (1) year's written notice. Notwithstanding the notice period for termination of this Agreement, no termination shall be effective during the Winter heating season (November through March). The Parties understand that termination of this Agreement during the Winter heating season would cause significant problems relative to natural gas supply and transportation arrangements.

#### **5. Measurement and Quality of Gas**

5.1 Measurement of gas delivered and billed to Shipper shall be based upon a meter reading at the Delivery Point and will be billed in Dth.

5.2 All Gas delivered under this agreement shall be commercially free from solid and liquid impurities and shall satisfy all pipeline quality standards reasonably established from time to time by KNG and upstream pipelines.

#### **6. Billing and Payment**

6.1 On or before the tenth (10th) day of each calendar month, KNG will render a statement setting forth the total quantity of Gas delivered during the immediately preceding Gas Month. Any estimated delivery volume shall be corrected in the first statement after the actual meter readings become available.

6.2 In the event of a meter failure a reconstructed bill using the best information

available shall be used.

6.3 Shipper agrees to pay KNG the amount payable according to such statement on or before the twenty-fifth (25th) day of the month or within fifteen (15) days of receipt of the invoice whichever is later.

6.4 Failure to tender payment within the above specified time limit shall result in a monthly interest charge of one and one half percent (1-1/2%) per month on the unpaid balance. In addition, should Shipper's payment be delinquent by more than thirty (30) days, KNG may terminate Gas transportation in addition to its seeking other legal redress.

6.5 Any notice, request, demand, statement, or other correspondence shall be given by Written Notice to the Parties hereto, as set forth below:

Ohio Gas Energy Service  
200 W. High Street  
Bryan, OH 43506  
PHONE: 419-630-2256  
FAX: 419-553-0080  
ATTN: Robert Eyre

KNG Energy, Inc.  
1700 Westfield Drive  
Findlay, OH 45840  
PHONE: 419-424-3427  
FAX: 419-424-3309  
ATTN: Sandy Roller

## 7. Force Majeure

7.1 If either party is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonably within its control, to perform or comply with any obligation or condition of this Agreement, upon giving written notice to the other Party of particulars within a reasonable time after the occurrence of the cause relied upon, such Party shall be relieved of liability for failure to perform the same during such period provided. The obligations to make payments when due for Gas delivered hereunder shall not be suspended by the operation of this provision. The Party declaring a forced majeure shall remedy the cause of suspension (other than strikes, lockouts, or other labor matters) so far as possible with reasonable dispatch. Settlement of strikes and lockouts shall be wholly within the discretion of the Party having the difficulty. The term "force majeure" shall include, without limitation by the following enumeration, acts of God and the public enemy, the elements, fire accidents, rupture, breakdown, or accidents to machinery, equipment or lines of pipe, freezing of wells, lines or pipe, strikes and other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, any act or omission which is excused by any event or occurrence of the character herein defined as constituting force majeure, partial or complete failure of Gas supply dedicated hereto, failure of third party transportation to receive any volume of Gas tendered by KNG or for Shipper's account, any laws, orders, rules, regulations, acts of restraints of any governmental body or authority, civil or military. The Parties shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event of occurrence once it has occurred in order to resume performance.



## **8. Additional Terms**

8.1 In the event of an energy emergency declared by the Governor or any other lawful official or body, it is understood that KNG shall and will follow the dictates of any energy emergency rule, or order, and KNG shall not be liable for any loss or damage suffered by Shipper as a result thereof.

8.2 Each Party agrees to proceed with due diligence in good faith efforts to obtain and maintain such regulatory authorizations as may be necessary to enable performance of such obligation under this Agreement.

8.3 This Agreement shall be construed under the laws of the State of Ohio.

8.4 This Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (regardless of whether similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided.

8.5 This Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns. Neither this Agreement nor any of the rights, benefits or obligations hereunder shall be assigned, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as expressly provided herein, nothing in this Agreement is intended to confer upon any person other than the Parties and their respective permitted successors and assigns, any rights, benefits or obligations hereunder.

8.6 The Parties agree that any dispute arising hereunder or related to this Agreement shall be resolved by binding arbitration under the auspices of the American Arbitration Association. Prehearing discovery shall be permitted in accordance with the procedures of the Ohio Rules of Civil Procedure. The arbitrator or arbitrators shall have authority to impose any remedy at law or in equity, including injunctive relief. The parties agree that any hearing will be conducted in Hancock County, Ohio.

8.7 Recovery by either Party of damages, if any, for breach of any provision hereof shall be limited to direct, actual damages. Both Parties waive the right, if any, to recover consequential, indirect, punitive and exemplary damages.

8.8 Each Party hereby agrees that it will not disclose the rates, terms or other conditions of this Agreement to any person other than (a) to the extent required by statute, rule, regulation or judicial or administrative process; and (b) to its legal counsel. Furthermore, prior to making any disclosure of such information, each Party agrees to notify the other Party of such

potential disclosure of such information, each party agrees to notify the other Party of such potential disclosure and to fully cooperate with the other Party's efforts, if any, seeking to limit the disclosure of such information, including, but not limited to, making filings to public bodies under seal or with redactions.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the date set forth above.

KNG Energy, Inc.

By: Pandra Z Polke

Its: President

Ohio Gas Energy Service

By: Rob S. Eyr

Its: VP

## SCHEDULE A

### KNG -- Ohio Gas Energy Service Transportation Agreement

Receipt Point.....Crossroads/KNG Deshler

Delivery Point.....KNG Energy/Road 3, Deshler, Ohio

Monthly Maximum Quantity ("MMQ")	April	10,000
	May	5,000
	June	5,000
	July	2,000
	August	2,000
	September	3,000
	October	5,000
	November	10,000
	December	15,000
	January	20,000
	February	19,000
	March	16,000

Maximum Daily Quantity ("MDQ").....1,500

Unaccounted for percentage.....1%

Charge per Dth.....\*\*\*\*\*