

# Confidential Release

**Case Number: 07-01-PL-AEC**

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**Document Description**

**Service Agreement**

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Case # 07-0001-PL-AEC

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➤ Filed by VORYS, SATER, SEYMOUR AND PEARCE LLP on behalf of  
NORTH COAST GAS TRANSMISSION LLC

❖ **Summary of document:**

NATURAL GAS TRANSPORTATION SERVICE AGREEMENT

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January 2, 2007

## **CONFIDENTIAL**

Ms. René Jenkins  
Secretary, Public Utilities Commission of Ohio  
180 East Broad Street, 13th Floor  
Columbus, Ohio 43215-3793

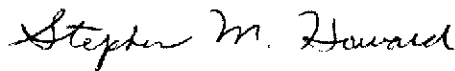
Re: Case No. 07-01-PL-AEC  
North Coast Gas Transmission LLC  
Confidential Version of Natural Gas Transportation Service Agreement

Dear Ms. Jenkins:

Pursuant to Rule 4901-1-24(D) of the Ohio Administrative Code, North Coast Gas Transmission LLC ("North Coast") respectfully submits three unredacted copies of a Natural Gas Transportation Service Agreement between North Coast and KNG Energy, Inc. North Coast requests that the prices, volumes and shrinkage factor be redacted and kept confidential. A Motion for a Protective Order seeking protection for such information has been filed in this case. Further, the application with a redacted version of the Natural Gas Transportation Service Agreement has been filed in this case.

Please keep this information protected until the Commission rules upon the Motion for a Protective Order. Please feel free to call me with any questions.

Sincerely yours,



Stephen M. Howard

Attorneys for North Coast Gas Transmission LLC

SMH/jab  
Enclosure

## NATURAL GAS TRANSPORTATION SERVICE AGREEMENT

BY THIS AGREEMENT, executed and effective this 21<sup>st</sup> day of December, 2006, North Coast Gas Transmission, LLC (North Coast) and KNG Energy, Inc. (Shipper), (North Coast and Shipper are hereinafter sometimes referred to collectively as the Parties and individually as a Party) for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby recite and agree as follows:

### RECITALS

WHEREAS, North Coast owns an intrastate natural gas pipeline and related facilities located in Ohio and operated under the authority of The Public Utilities Commission of Ohio (PUCO), which system is depicted on the map attached as Exhibit A; and

WHEREAS, Shipper desires to utilize the Pipeline for transportation of natural gas within the State of Ohio; and

WHEREAS, North Coast has agreed to provide transportation service to Shipper subject to the terms and conditions hereof

WITNESSETH: In consideration of the mutual covenants herein contained, the Parties hereto agree that North Coast will transport for Shipper on a firm basis, and Shipper will tender or cause to be tendered, natural gas for such transportation during the term hereof, at the prices and terms and conditions hereinafter provided:

### DEFINITIONS

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

- A. **"BTU"** shall mean the British thermal unit as defined by international standards.
- B. **"Business Day"** shall mean any weekday, excluding federal banking holidays.
- C. **"Central Clock Time"** (C.T.) shall mean Central Standard Time adjusted for Daylight Savings Time.
- D. **"Company"** North Coast Gas Transmission, LLC, its successors and assigns.
- E. **"Customer"** means any individual, governmental, or corporate entity taking transportation service hereunder.

- F. **"Dekatherm"** or **"Dth"** means the billing unit used by North Coast measured by its thermal value. A dekatherm is 1,000,000 Btus. Dekatherm shall be the standard unit for the purposes of nominations, scheduling, invoices and balancing.
- G. **"Delivery Point(s)"** shall mean the specific measurement location(s) listed on Exhibit C at which North Coast delivers Shipper-owned gas to Shipper and Shipper receives such gas from North Coast.
- H. **"Delivery Quantity"** shall mean the quantity of gas actually taken at the Delivery Point(s) by or on behalf of Shipper.
- I. **"Firm"** shall mean that each Dth Shipper tenders at the Receipt Point will be delivered to the Shipper's Delivery Point (s) minus North Coast's Shrinkage without interruption except under Force Majeure conditions or an energy emergency declared by the Commission.
- J. **"Gas"** shall mean natural gas of interstate quality.
- K. **"Gas Day"** or **"Day"** shall mean a period of 24 consecutive hours, beginning at 9:00 a.m. Central Clock Time, as adjusted for Daylight Savings Time, and the date of the Day shall be that of its beginning.
- L. **"Heating Value"** shall mean the gross heating value on a dry basis, which is the number of BTU's produced by the complete combustion at constant pressure of the amount of dry gas (gas containing no water vapor) that would occupy a volume of one Cubic Foot at 14.73 psia and 60° with combustion air at the same temperature and pressure as the gas, the products of combustion being cooled to the initial temperature of the gas and air, and the water formed by combustion condensed to the liquid state.
- M. **"Imbalance"** shall mean the daily difference between the volume of gas tendered for the Shipper's account at the Receipt Point minus North Coast's Shrinkage and the metered volumes allocated to the Shipper at the Delivery Point(s).
- N. **"Interruptible"** shall mean that the volume of gas tendered at the Receipt Point will be delivered to Shipper's Delivery Point(s) less Shrinkage if North Coast, using reasonable judgment, determines that capacity exists after all Firm transportation commitments are satisfied.
- Ø. **"Maximum Daily Quantity"** or **"MDQ"** shall mean the quantity of gas consumed by Shipper's existing customers, plus additional quantities consumed by Shipper's customers added after commencement of this Agreement in accordance with Paragraph 2.1.

- P. **"Month"** shall mean a calendar month beginning at 9:00 a.m. Central Clock Time on the first day of the calendar month and ending at 9:00 a.m. Central Clock Time on the first day the following month.
- Q. **"NCGT System"** shall mean the Buckeye 425 and 10 inch pipeline, the Ashland 8 inch pipeline and the Toledo to Marion line.
- R. **"Nomination"** shall mean the confirmed Quantity of Gas which Shipper shall arrange to have delivered to the Receipt Point(s) for redelivery to the Delivery Point(s). The nomination shall include sufficient gas to account for Shrinkage.
- S. **"Operational Flow Order" or "OFO"** shall mean a declaration made by North Coast that conditions are such that North Coast can only safely transport an amount of gas during a calendar day equal to the amount of gas which Shipper will actually receive at the Receipt Point(s) on that calendar day. North Coast shall only declare an OFO if an upstream pipe declares an operational flow order or otherwise restricts the flow of gas which would normally be delivered to North Coast at the Receipt Point(s).
- T. **"Overrun"** shall mean any quantity of gas actually transported which exceeds the MDQ established by this Agreement.
- U. **"PUCO" or "Commission"** means The Public Utilities Commission of Ohio or any successor governmental authority.
- V. **"Quantity of Gas"** shall mean the number of units of gas expressed in Dth or MMBtu unless otherwise specified.
- W. **"Receipt Point(s)"** shall mean those measurement locations where Shipper-owned gas enters the North Coast system.
- X. **"Shrinkage"** shall mean the quantity of gas required by North Coast to replace the estimated quantity of gas required for compressor fuel and lost-or-unaccounted for gas.
- Y. **"Written Notice"** shall mean a legible communication received by the intended recipient of the communication by United States mail, express courier or confirmed facsimile. Written Notice may also be provided by e-mail, but shall not be effective until such time as the e-mail is acknowledged by the intended recipient or a copy of the same is received by the intended recipient by mail, express courier, or facsimile.

## 1. DELIVERY AND TRANSPORTATION

1.1 Shipper shall arrange with suppliers of Shipper's selection to have gas in an amount not to exceed Shipper's MDQ, plus Shrinkage, tendered to the Receipt Point(s)

for delivery into the NCGT System on Shipper's behalf. North Coast shall redeliver, on a firm basis, those quantities less Shrinkage to the Shipper or on the Shipper's behalf to the Delivery Point(s) specified in this agreement. All transportation by North Coast for Shipper shall be governed by North Coast's current tariff on file with the PUCO, except as expressly modified in this Agreement.

1.2 Shipper shall provide Written Notice to North Coast, at least three (3) business days prior to the start of each calendar Month, of the quantity of gas it intends to transport for each day of upcoming month. Shipper may change its daily nomination by submitting its Nomination to North Coast no later than 11:30 am Central Clock Time for gas flow the following day (Nomination Deadline). This Nomination should correspond to the scheduled deliveries Shipper makes on the upstream and downstream pipelines delivering the gas to and receiving the gas from North Coast. Should Shipper desire to modify its Nomination either for the current Day or the next Day after the Nomination Deadline, North Coast will make every attempt to accommodate Shipper's request provided that North Coast can confirm such quantities with the upstream pipeline delivering the gas and the downstream pipeline receiving the gas.

1.3 Except as otherwise specified herein, Shipper shall be permitted to have delivered to and removed from North Coast's pipeline its nominated gas volume, adjusted for Shrinkage, up to the MDQ specified in this Agreement. .

1.4 If any pipeline interconnected with North Coast issues an OFO, then North Coast may issue its own matching OFO that will apply to all Shippers. North Coast may also issue OFO's which restrict Shippers from delivering more gas to North Coast than it will receive at the Delivery Point(s) or from receiving more gas from North Coast than it is causing to be delivered to North Coast at the Receipt Point(s), less Shrinkage when North Coast, in its sole discretion, determines such OFO is necessary to preserve its operational integrity or to meet its contractual obligations to all customers. North Coast will use its best efforts to limit the OFO to just the time necessary to comply with another interconnected pipeline's OFO or to remedy the operational integrity or contractual compliance concerns prompting issuance of the OFO. North Coast will only assess penalties for non-compliance with another pipeline's OFO if North Coast is actually assessed penalties by the pipeline which issued the OFO.

1.5 In the event that imbalances occur during the time an OFO is in effect, then imbalances shall be cashed in or out, calculated on a daily basis, in accordance with the Shipper's tariff. Imbalances created by Shipper during non OFO periods shall not be assessed a penalty unless North Coast incurs penalties from the upstream transporter; provided, however that the Parties will remedy all imbalances in the Month following the Month during which they were created.

1.6 Shipper warrants that it has title to all gas delivered to North Coast, free and clear of all claims, liens, and other encumbrances, and further covenants and agrees to indemnify and hold Shipper harmless from all claims, demands, obligations, suits, actions, debts, accounts, damages, costs, losses, liens, judgments, orders, attorneys fees,

expenses and liabilities of any kind or nature arising from or attributable to the adverse claims of any and all persons or parties relating to such gas tendered by Shipper at the Receipt Point(s).

## **II. QUANTITY AND PRICE**

2.1 Transporter will serve the full requirements of Shipper currently connected to the North Coast system. Shipper recognizes that Transporter's system capacity is limited and acknowledges and agrees that North Coast shall have no obligation to provide service in excess of the MDQ or at Point(s) of Delivery not specified in this Agreement. Shipper agrees that it will not add a customer or group of customers which in the aggregate will consume a quantity of natural gas in excess of 25 Dth on any day without first notifying Transporter and requesting from Transporter a determination of whether it has adequate system capacity to serve the additional requirements of Shipper. Transporter shall not have the right to refuse to provide the additional service unless, only in its reasonable judgment, it will not have adequate capacity to serve the additional requirements.

2.2 For each dekatherm transported hereunder, Shipper shall pay a rate of \$.38 plus provide shrinkage of 1.5%.

## **III. POINTS OF RECEIPT AND DELIVERY**

3.1 The Point of Receipt for gas tendered by Shipper to North Coast shall be the interconnection between the facilities of North Coast and Crossroads Gas Pipeline (Crossroads) commonly known as the Cygnet interconnection.

3.2 The Point(s) of Delivery for gas delivered by Shipper to North Coast shall be those set forth in Exhibit B attached hereto.

## **IV. TERM**

4.1 This Agreement is effective upon execution and service will commence on January 16, 2007 and end on March 31, 2010 and continue from year to year thereafter unless terminated by either Party upon one (1) year's written notice. If the above rate and terms are terminated by Transporter and Shipper wishes to continue receiving transportation service for the purpose of providing utility service, the Parties agree to negotiate in good faith to establish rates and terms mutually agreeable to the Parties for continued service. In the event that the Parties cannot reach agreement on such rates and terms, KNG shall file an application with the PUCO to set a rate for Shipper which equitably compensates NCGT for the utility to utility services it provides to KNG.

## **V. MEASUREMENT AND QUALITY OF GAS**

5.1 Measurement of the gas delivered and billed to Shipper shall be based upon an allocation conducted by the operator of the Delivery Point(s) and disputes regarding

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allocated throughput shall be handled in accordance with the tariff of the Delivery Point operator. Billings for all receipts and deliveries shall be made on a thermal basis 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 reasonable established from time to time by North Coast and upstream or downstream pipelines.

5.3 Measurement of gas delivered by North Coast to Shipper, except quantities delivered to the North Baltimore Station, shall be confirmed by Shipper meters read by Shipper's employees on or around the last day of the month. This information will be communicated by Shipper to North Coast for invoicing after North Coast provides Shipper with the heating value conversion information from the Receipt Point. Both Shipper and North Coast agree to provide the information necessary for invoicing by the third business day of the following month if available on that date. Shipper agrees to keep all its meters in good repair and to perform required inspection, maintenance and calibration as recommended by the meter manufacturer but in any event, testing and calibration of the three meters set forth in Exhibit C shall occur at least once each year. With reasonable prior notice during normal business hours, North Coast will have the right to review the records of the Shipper's delivery meters including inspections and calibrations and daily and monthly readings as available. Billings for all receipts and deliveries hereunder shall be made on a thermal basis in Dth based on Receipt Point heating value conversion information. North Coast, at its expense, reserves the right to install its own metering at any of the interconnections between it and Shipper and Shipper agrees that such meters shall be substituted for Shipper's measurement for the purposes of billing and determining quantities of delivery at the Delivery Point(s) where such meters are installed.

## **VI. BILLING AND PAYMENT**

6.1 On or about the tenth (10<sup>th</sup>) day of each calendar month, North Coast will render to Shipper a statement setting forth the total volumes of gas delivered hereunder and amount due from Shipper during the immediately preceding Month. In the event North Coast was not able to take actual meter readings at any meter or if North Coast has not received the necessary meter statements from the owner or operator of any applicable meter in time for preparation of the monthly statement, North Coast may use an estimated gas delivery volume based on confirmed nominations. 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 North Coast the amount payable according to such statement on or before the twenty-fifth (25<sup>th</sup>) day of the month or within ten (10) days of receipt of the invoice, whichever is later. If the Shipper, in good faith, shall dispute the amount of any statement or parts thereof, then Shipper shall pay the amounts Shipper concedes to be correct and provide documentation identifying the basis for the disputed amounts.

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 payments be delinquent by more than thirty (30) days, North Coast shall have the right, at its sole discretion, to terminate this Agreement and to 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, addressed as follows:

SHIPPER: KNG Energy, Inc  
1700 Westfield Drive  
Findlay, OH 45840  
Attention: Sandra L. Roller  
E-Mail: [sroller@kngenergy.com](mailto:sroller@kngenergy.com)  
Phone: (419) 424-3427  
Fax (419) 424-3309

NORTH COAST: North Coast Gas Transmission Company, LLC  
250 East Broad Street, Suite 1220  
Columbus, Ohio 43215  
Attention: Patrick J. McGonagle  
  
E-Mail: [pmcgonagle@somersetgas.com](mailto:pmcgonagle@somersetgas.com)  
Phone: (614) 545-0487  
Fax: (614) 545-0496

## **VII. FORCE MAJEURE**

7.1 Except with regards to a party's obligation to make payment due hereunder in accordance with Article VI, neither party shall be liable to the other for failure to perform a firm obligation to the extent that such failure was caused by Force Majeure. The term "Force Majeure" as employed herein means any cause not reasonably within the control of the party claiming suspension, as further defined below.

7.2 Force Majeure shall include but not be limited to the following: (1) physical events such as acts of God, landslides, lightning, earthquakes, fires, storm or storm warnings such as hurricanes which result in the evacuation of the affected areas, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (2) weather related events affecting an entire geographic region such as low temperatures which cause freezing or failure of wells or lines of pipe; (3) interruption of firm transportation and/or storage by upstream interstate pipeline(s); (4) acts of others such as strikes, lockouts or other industrial disturbances, riots, sabotage, terrorism, insurrections or wars; (5) governmental actions such as necessity for compliance with any court order, law, statute or ordinance, or regulations promulgated by

a governmental authority having jurisdiction and (6) the need to take a line out of service for the purpose of servicing the line, the connected M&R facilities or to add additional customer taps and/or M & R Facilities; provided, however, that when a line is to be taken out of service for such purposes, and such outage is expected to last less than 24 hours, North Coast shall provide three week's advance written notice of the outage. For outages expected to last greater than 24 hours, Transporter shall provide Shipper with 45 day's advance written notice of the outage and shall cooperate with Shipper to minimize the impact of the service interruption on Shipper's end-user customers. 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.

7.3 Neither Party shall be entitled to the benefit of the provision of Force Majeure to the extent that performance is affected by any or all of the following circumstances: (1) the curtailment of interruptible or secondary firm transportation, unless primary, in-path firm transportation is also curtailed; (2) the party claiming Force Majeure failed to remedy the condition and resume the performance of such covenants or obligations with reasonable dispatch; or (3) economic hardship.

7.4 Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts or other industrial disturbances shall be entirely within the sole discretion of the party experiencing such disturbances.

7.5 The party whose performance is prevented by the Force Majeure must provide notice to the other party. Initial notice may be given orally but written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. Upon providing written notification of Force Majeure to the other party, the affected party will be relieved of its obligation to make or accept delivery of gas as applicable to the extent and for the duration of the Force Majeure and neither party shall be deemed to have failed in such obligation to the other during such occurrences or event.

## **VIII. ADDITIONAL TERMS**

8.1 Shipper will join with North Coast in support of the application to the PUCO for approval of this Agreement pursuant to Section 4905.31, Revised Code

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

8.3 This Agreement shall be construed under the laws of the State of Ohio. No presumption shall operate in favor of or against either Party as the result of any responsibility either may have had for drafting this Agreement.

8.4 This Agreement, together with all schedules and exhibits hereto, constitutes the entire agreement of 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 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 the PUCO unless primary jurisdiction is vested in the Franklin County Common Pleas Court.

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, exemplary or punitive 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 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. Pollock

Its: Chief Operating Officer

**NORTH COAST GAS TRANSMISSION, LLC**

By: [Signature]

Its: Sr. VP

**SOMERSET GAS TRANSMISSION AND NORTH COAST GAS TRANSMISSION  
OHIO PIPELINE BASE MAP**



**EXHIBIT B**

(contained on compact disk)

## Exhibit C

KNG Large Meters to be Proven and Calibrated each year:

#11 Charter Steel

#13 City of McComb