

## SPECIAL GAS TRANSPORTATION AND STORAGE AGREEMENT

This **SPECIAL GAS TRANSPORTATION AND STORAGE AGREEMENT** including Attachments A, B, C, D and E ("Agreement"), made as of the 28<sup>th</sup> day of November, 2001 ("Effective Date") by and between **MICHIGAN CONSOLIDATED GAS COMPANY**, a Michigan corporation, having an office at 2000 Second Avenue, Detroit, Michigan 48226 ("MichCon"), and **FIRSTENERGY SOLUTIONS CORP.**, an Ohio corporation, having an office at 395 Ghent Road, Akron, Ohio 44333 ("Customer").

### RECITALS

- A. FirstEnergy Generation Corp. is developing an electric generation facility to be located between Bemis and Willis Roads and east of Rawsonville Road in Sumpter Township, Michigan, within MichCon's service area (the "Facility").
- B. Customer is providing the Facility's natural gas requirements pursuant to a Gas Supply and Management Service Agreement with FirstEnergy Generation Corp.
- C. Customer desires to have MichCon transport the natural gas requirements that Customer will provide to the Facility, and MichCon desires to provide Customer with such services pursuant to the terms of this Agreement.
- D. The Parties have negotiated the terms of this Agreement in recognition of the unique nature of the Facility, the services required, and their respective commercial objectives, and desire that MichCon submit this Agreement to the MPSC for approval in accordance with Section 13.

THEREFORE, MichCon and Customer agree as follows:

### **AGREEMENT**

#### **1. TRANSPORTATION SERVICES**

- (a) Transportation Services. Customer shall cause to be delivered to MichCon at the Receipt Points(s), and MichCon shall transport from the Receipt Point(s) to the Delivery Point, Customer's natural gas to meet the Facility's requirements. Unless specifically modified by the terms of this Agreement, services provided by MichCon shall be in accordance with MichCon's Tariff under Rate Schedule LT-2, or any successor rate schedule that replaces Rate Schedule LT-2

(collectively "MichCon's LT-2 Rate Schedule"). Furthermore, transportation services provided during the months of May through November shall be firm unless this Agreement or MichCon's Tariff specifically provides otherwise. To the extent any terms or conditions of this Agreement are inconsistent with MichCon's LT-2 Rate Schedule, the terms and conditions of this Agreement shall control.

- (b) Transportation Parameters. Customer's Maximum Hourly Requirement ("MHR") and Maximum Daily Quantity ("MDQ") required to provide natural gas to the Facility are shown on Attachment A.
- (i) MDQ Limitations. The aggregate requirements on any Gas Day shall not exceed the MDQ; provided MichCon shall be entitled to curtail all deliveries on behalf of the Customer to the Facility for the remainder of the Gas Day if MichCon has already delivered to the Facility, in accordance with this Agreement, the applicable MDQ on such Gas Day. If on any Gas Day the Facility requires more than the applicable MDQ at the Delivery Point, then (1) MichCon shall have the right to curtail all deliveries of gas on behalf of Customer as provided above and (2) Customer shall pay Unauthorized Gas Use Charges on the difference between the volume of gas taken hereunder and the applicable MDQ.
- (ii) MHR Limitation. The aggregate Facility requirements for any hour during which the Facility is in operation shall not exceed the MHR shown on Attachment A. Customer acknowledges that MichCon will design its facilities upstream of the Delivery Point for deliveries to the Delivery Point to accommodate all flows up to the MHR. Such equipment will be designed to restrict deliveries to the MHR and under no circumstances shall MichCon be required to permit deliveries to the Delivery Point to exceed the MHR.

## 2. WINTER BALANCING REQUIREMENT

- (a) Winter Balancing Options. Subject to Customer's service election rights below, Customer will be subject to and will adhere to one of the following winter balancing options. For purposes of Section 2(a)(i) and Section 2(a)(ii), Gas Day means the Gas Industry Standard Board's ("GISB") gas day, which, upon the Effective Date of this Agreement is the 24 hour period commencing at 9:00 a.m. central standard time.
- i) 100% Daily Balancing Option
1. Applicability and Determination. Throughout the period from December 1st through April 30th, if at 10 a.m. EST the day prior to the start-up or operation of any turbine, the next day's 12 a.m.

to 11:59 p.m. Forecasted Average Temperature is equal to or less than the temperatures provided in Attachment E for the respective period, then a "Gas Balancing Event" will be required.

A Gas Balancing Event will be in effect and required for the period commencing at 12 a.m. after which verbal notice of a Gas Balancing Event is issued by MichCon ("Gas Day A") and will terminate 24 hours later, at 12:00 am the following Gas Day ("Gas Day B").

2. Balancing Requirement. If a Gas Balancing Event is in effect, then Customer will be required to deliver or cause to be delivered to MichCon at the Receipt Point(s), consistent with Section 9(b), a balanced flowing supply equal to:

(A) If the Facility starts-up or operates any turbines during the last twelve (12) hours of Gas Day A, then Customer will be required to deliver or cause to be delivered to MichCon a daily quantity equal to or greater than the daily delivery to the Facility during the last twelve (12) hours of such Gas Day;

(B) If the Facility starts-up or operates any turbines during the first twelve (12) hours of Gas Day B, then Customer will be required to simultaneously deliver or cause to be delivered to MichCon an hourly quantity of supply equal to or greater than the maximum instantaneous hourly delivery to the Facility.

3. Non-Compliance of a Gas Balancing Event. If Customer fails to fulfill its obligation to meet the Gas Balancing Event requirement in Section 2(a)(i)(2) above, then (x) Customer shall pay an Unauthorized Gas Usage Charge on any quantities not in compliance with the balancing requirements in Section 2(a)(i)(2)(A) or 2(a)(i)(2)(B), and (y) MichCon shall have the right to curtail all gas deliveries on behalf of the Customer to the Facility until Customer has caused to be delivered to MichCon a supply equal to the volume of gas used by Customer to satisfy its obligation to provide gas to the Facility while Customer was out of compliance with the balancing requirements of Section 2(a)(i)(2).

ii) 50% Daily Balancing Option

1. Applicability and Determination. Throughout the period from December 1st through April 30th of each Contract Year, if at 10 a.m. EST the day prior to the start-up or operation of any

turbine, the next day's 12 a.m. to 11:59 p.m. Forecasted Average Temperature is equal to or less than the temperatures provided in Attachment E for the respective period, then a "Gas Balancing Event" will be required. A Gas Balancing Event will be in effect and required for the period commencing at 12 a.m. after which verbal notice of a Gas Balancing Event is issued by MichCon ("Gas Day A") and will terminate 24 hours later, at 12:00 a.m. the following Gas Day (Gas Day B").

2. Balancing Requirement. If a Gas Balancing Event is in effect and the Facility's hourly requirement is greater than 50% of MHR, then Customer will be required to deliver or cause to be delivered to MichCon at the Receipt Point(s), consistent with Section 9(b), a balanced flowing supply equal to:
  - (A) If the Facility starts-up or operates any turbines during the last twelve (12) hours of Gas Day A such that deliveries to the Facility are greater than 50% of MHR, then Customer will be required to deliver or cause to be delivered to MichCon a daily quantity equal to or greater than the aggregate hourly deliveries in excess of 50% of MHR to the Facility during the last twelve (12) hours of such Gas Day;
  - (B) If the Facility starts-up or operates any turbines during the first twelve (12) hours of Gas Day B such that deliveries to the Facility are greater than 50% of MHR, then Customer will be required to simultaneously deliver or cause to be delivered to MichCon an hourly quantity of supply equal to or greater than the maximum instantaneous hourly delivery to the Facility in excess of 50% of MHR.
3. Non-Compliance of a Gas Balancing Event. If Customer fails to fulfill its obligation to meet the Gas Balancing Event requirement in Section 2(a)(ii)(2) above, then (x) Customer shall pay an Unauthorized Gas Usage Charge on any quantities not in compliance with the balancing requirements in Section 2(a)(ii)(2)(A) or 2(a)(ii)(2)(B), and (y) MichCon shall have the right to curtail all gas deliveries on behalf of the Customer to the Facility until Customer has caused to be delivered to MichCon a supply equal to the volume of gas used by Customer to satisfy its obligation to supply the Facility while Customer was out of compliance with the balancing requirements of Section 2(a)(ii)(2).

iii) Winter Interruptible Option. Throughout the period from December 1st through April 30th of each Contract Year, the following transportation and storage service parameters will be subject to prior approval by MichCon:

1. Deliveries to the Facility,
2. Transportation to or from Customer's storage account,
3. Injections or withdrawals from Customer's storage account, and
4. Deliveries and quantities scheduled at the Receipt Point(s).

MichCon may, at its sole discretion, modify any of the above parameters that were previously approved by MichCon from one Gas Day to the next. Failure of Customer (1) to seek prior approval from MichCon or (2) to comply with MichCon's instructions can result in curtailment of gas deliveries on behalf of the Customer to the Facility or receipts into MichCon's system.

(b) Initial Service Election. The 100% Daily Balancing Option will be in effect for the Test Period and Contract Year 1 of this Agreement.

(c) Change in Service Election. Customer shall have the right, at its sole discretion, to change its Winter Balancing Requirement option for Contract Years 2 and 3. If Customer desires to change its Winter Balancing Requirement for Contract Year 2, then Customer shall give MichCon written notice of its election on or before March 1, 2003. If Customer desires to change its Winter Balancing Requirement for Contract Year 3, then Customer shall give MichCon written notice of its election on or before March 1, 2004. Customer's service election in effect for Contract Year 3 will remain in effect through the remainder of the term of this Agreement. If Customer fails to provide MichCon timely notice of its Winter Balancing Requirement election, Customer shall be deemed to have elected the Winter Balancing Requirement in effect the prior Contract Year.

### 3. STORAGE SERVICES

(a) Storage Services. Subject to the other terms of this Agreement, MichCon shall store for Customer's account, gas delivered by Customer hereunder to the Receipt Point(s) in excess of the then-prevailing Facility requirement. Customer's daily volumes scheduled and delivered by MichCon based on Customer's nominations in excess of the Facility's actual usage will be injected into Customer's storage account subject to the Storage Capacity Limit, Daily Injection Limit, and Monthly Injection Limit specified in Attachment A. If Customer's daily volumes scheduled and delivered by MichCon based on Customer's nominations are less than the Facility's actual usage, then on any Gas Day when a Gas Balancing Event is not required, the deficiency will be withdrawn from Customer's storage

account subject to the Storage Capacity Limit, Minimum Daily Storage Balance, and Monthly Withdrawal Limit specified in Attachment A.

- (b) Storage Parameters. Customer will use its best efforts to adhere to the storage parameters specified in Attachment A:
- (i) Storage Capacity Limit. The maximum volume of gas that Customer may cause to be held in Customer's storage account at the end of a Gas Day, (the "Storage Capacity Limit") is as specified on Attachment A. If at the end of any Gas Day, the volume of gas held by MichCon in Customer's storage account exceeds the Storage Capacity Limit, then, until Customer reduces its storage balance to an amount equal to or less than the Storage Capacity Limit, MichCon shall (1) charge Customer a Storage Balancing Charge on all daily volumes in excess of the Storage Capacity Limit and (2) have the right to refuse further nominations by Customer; provided, however, that if Customer exceeds the Storage Capacity Limit during a Gas Balancing Event, MichCon shall waive the Storage Balancing Charge on such volumes until the earlier of (x) Customer reduces its excess storage volumes through plant usage or storage transfers or (y) the next June 30th. At no time that Customer's storage balance exceeds the Storage Capacity Limit will MichCon accept nominations for delivery of gas to the Receipt Points, except during a Gas Balancing Event.
  - (ii) Daily Injection Limit. The maximum net addition of Customer's gas to its storage account that Customer may cause hereunder over any Gas Day, (the "Daily Injection Limit") is as specified on Attachment A. The net addition of Customer's gas to its storage account shall be determined by comparing (1) the volume of gas in Customer's gas storage account at the end of the Gas Day against (2) the volume of gas in Customer's gas storage account at the end of the prior Gas Day. If at the end of a Gas Day Customer's net addition of gas to its gas storage account exceeds the Daily Injection Limit, MichCon shall charge Customer a Storage Balancing Charge on all daily volumes injected in excess of the Daily Injection Limit; provided however, that if Customer exceeds the Daily Injection Limit during a Gas Balancing Event, then Customer will not be assessed the Storage Balancing Charge on the excess daily injections.
  - (iii) Monthly Injection Limit. The maximum net addition of Customer's gas to its gas storage account that Customer may cause hereunder over any month, (the "Monthly Injection Limit") is as specified on Attachment A. The net addition of Customer's gas to its storage account shall be determined by comparing (1) the volume of gas in Customer's gas storage account at the end of last Gas Day of the month against (2) the volume of

gas in Customer's gas storage account at the end of the last Gas Day of the prior month. If at the end of any month, Customer's net addition of gas to its gas storage account exceeds the Monthly Injection Limit, then MichCon shall charge Customer a Storage Balancing Charge on all volumes injected in excess of the Monthly Injection Limit.

- (iv) Minimum Daily Storage Balance. The minimum volume of gas that Customer must cause to be in Customer's storage account at the end of a Gas Day, (the "Minimum Daily Storage Balance") is as specified on Attachment A. If at the end of any Gas Day, the volume of gas in Customer's storage account is less than the Minimum Daily Storage Balance, then, until Customer increases its storage balance to the Minimum Daily Storage Balance, MichCon shall (1) have the right to curtail all gas deliveries on behalf of Customer to the Facility, and (2) Customer shall pay an Unauthorized Gas Usage Charge on the negative storage balance at the end of such Gas Day.
- (v) Monthly Withdrawal Limit. The maximum net withdrawal of gas from its gas storage account that Customer may cause hereunder over any month, (the "Monthly Withdrawal Limit") is as specified on Attachment A. The maximum net withdrawal of gas from Customer's gas storage account shall be determined by comparing (1) the volume of gas in Customer's gas storage account at the end of the last Gas Day of the month against (2) the volume of gas in Customer's gas storage account at the end of the last Gas Day of the prior month; provided, however, that any volumes transferred pursuant to Section 3(c) below will not be included in such calculation. If at the end of any month Customer's net withdrawal of gas from its storage account exceeds the Monthly Withdrawal Limit, then Customer will be deemed to have received unauthorized gas, as defined in MichCon's LT-2 Rate Schedule, and Customer will be subject to the Unauthorized Gas Usage Charge; provided, however, that if Customer exceeded its Storage Capacity Limit during a Gas Balancing Event, MichCon, in its sole discretion, may allow Customer to exceed the Monthly Withdrawal Limit to withdraw that volume of gas that exceeded the Storage Capacity Limit.
- (c) Storage Transfers. Customer may transfer gas from its storage account to any other MichCon on-system, end user transportation customer taking service under MichCon's Tariff Rate Schedule No. ST-1, ST-2, LT-1, LT-2, or any other successor rate schedules ("EUT Transferee") at no charge to Customer. Customer's storage transfer rights shall be subject to the following:
  - (i) Customer may request only one storage balance transfer per month, but such transfer may be made to multiple EUT Transferees, each of whom

may individually confirm such transfer on ConQuest. All transfers must be requested prior to the first day of the month in which the transfer is to occur. Customer's transfer will be effective on the first day of the month and will be subject to Customer's Monthly Winter Storage Transfer Limits specified in Attachment A. However, if Customer has exceeded its Storage Capacity Limit due to a Gas Balancing Event, then MichCon, in its sole discretion, upon request from Customer, may allow Customer to exceed the Monthly Storage Transfer Limits.

- (ii) Gas transferred to an EUT Transferee(s) under this Section 3(c) will be deemed to be flowing supply received at a receipt point into such EUT Transferee(s)' account and subject to the EUT Transferee(s) maximum daily quantity delivery limitations and gas-in-kind fuel charges under MichCon's Tariff.

#### 4. PERFORMANCE OBLIGATIONS

- (a) Minimum Delivery Pressure. Provided Customer adheres to the operating provisions set forth in Sections 1(b), 2(a), 3(b) and 5(a) of this Agreement ("Operating Provisions"), MichCon will maintain a minimum delivery pressure of 425 psig ("Minimum Delivery Pressure") at the Delivery Point.
  - (i) MichCon makes no representations or warranty as to the resulting pressures on the Facility's side of the Delivery Point. When MichCon has provided the Minimum Delivery Pressure at the Delivery Point in accordance with this Section 4, Customer shall be solely responsible for and shall indemnify and hold MichCon harmless for any and all operational, maintenance or equipment failures on the Facility's side of the Delivery Point. MichCon shall have no obligation to maintain the Minimum Delivery Pressure and shall not be in breach of this Section 4(a) during any periods of (1) Force Majeure as defined in Attachment B, B-11, or (2) failure of Customer to adhere to the Operating Provisions.
- (b) Failure to Perform. Subject to Section 4(a) and Attachment B, Section B-11, commencing with the Commercial Operation Date of the Facility, if Customer requires and MichCon fails to transport and deliver to the Delivery Point, at the Minimum Delivery Pressure, all or part of the volumes of natural gas in accordance with the terms of this Agreement, MichCon shall be in default under this Agreement. MichCon shall promptly undertake and diligently pursue a cure plan at its expense, including, if necessary, capital improvements to its system designed to prevent further occurrences of default. Unless otherwise agreed by the Parties, MichCon shall have thirty days from notice of the default to cure the



default. If MichCon fails or is unable to cure the default, Customer may terminate this Agreement in accordance with Section 11.

## 5. SCHEDULING AND START-UP NOTICE

- (a) Start Up Notice. Customer shall provide MichCon's operations group with at least four (4) hours notice during the months of May through November and at least eight (8) hours notice during the months of December through April prior to start up of any turbine at the Facility ("Start-up Notice"). The Facility may start-up only by the Customer providing MichCon with the required notice as outlined in this Section 5(a). Subject to MichCon's sole discretion, if Customer provides MichCon less than the required notice prior to startup of any turbine at the Facility, MichCon may either (1) curtail all deliveries to the Facility or (2) deliver gas to the Facility and use reasonable commercial efforts to provide the Minimum Delivery Pressure. For purposes of this Agreement, Customer shall be deemed to have provided MichCon notice of the start-up of any combustion gas turbine at the Facility upon (1) the delivery by Customer's schedulers to MichCon's schedulers of an Operations Schedule or a Change Notice indicating the start up of such gas turbine(s), and (2) Customer's schedulers verbally advising MichCon's Operations Group of the expected time of start-up of such gas turbine. If verbal notice is timely given to MichCon's Operation's Group, delivery of the Operations Schedule will be deemed timely if received within 30 minutes after the deadline for Start-up Notice.
- (b) Operations Schedule. Beginning on the day immediately preceding the start of the Test Period, and on each day thereafter throughout the Term, Customer's Schedulers shall prepare and fax to MichCon's Schedulers an "Operations Schedule", in substantially the form of Attachment D, for the following Gas Day that estimates on a good faith basis:
- (i) the Gas Day and the respective start-up time of the turbine(s) covered by the Operations Schedule;
  - (ii) the estimated aggregate daily and hourly requirement of the natural gas requirements of the Facility ("Facility Requirements") on such Gas Day;
  - (iii) the aggregate quantity of gas estimated to be either withdrawn from or injected into Customer's gas storage account and transported by MichCon to the Delivery Point on such Gas Day;
  - (iv) the aggregate daily quantity of gas estimated to be delivered by Customer hereunder to each of the Receipt Points on such Gas Day;

- (v) such additional scheduling information as the Parties or their schedulers may agree in writing from time to time.

Customer's schedulers shall fax an Operations Schedule to MichCon's schedulers no later than 2:00 p.m. Eastern Standard Time ("EST") of the day such Operations Schedule is due. If Customer's schedulers fail to fax to MichCon's schedulers an Operations Schedule by 2:00 p.m. EST, then Customer shall be deemed to have submitted an Operations Schedule in which the estimated aggregate daily and hourly requirement of the Facility for the next Gas Day is zero Mcf and shall not be in default for failing to submit an Operations Schedule as required hereunder.

The Parties may mutually agree upon a method other than fax for communication of the Operations Schedule to MichCon's operations group.

From time to time by verbal notice to MichCon's schedulers, Customer's schedulers may propose to revise any Operations Schedule after its submission to MichCon's schedulers. Any notification received by MichCon after 2:00 p.m. EST on the day preceding the requested Gas Day will be considered a "Change Notice." The Change Notice shall modify the Operations Schedule previously submitted for such Gas Day and may serve as a Start-up Notice pursuant to Section 5(a) if timely given.

Unless the Parties' schedulers otherwise agree, Customer shall prepare each Operations Schedule (and make all changes thereto) such that (1) Customer shall nominate its gas consistent with Schedule B, B-3, (2) the scheduled daily quantity shall not exceed the Maximum Daily Quantity; (3) the scheduled daily quantity shall be delivered to one or more of the Receipt Points in accordance with the requirements and restrictions of this Agreement; (4) the Operations Schedule complies with the other applicable limitations and obligations specifically set forth in this Agreement; and (5) the Operations Schedule shall act as, indicate or otherwise convey Customer's notice to start-up, operate or run the turbines.

## 6. TRANSPORTATION RATE

- (a) Transportation Charges. Customer shall pay MichCon the following fees:
  - (i) A Monthly Service Charge of \$2,100 per month; and
  - (ii) Transportation Charge (Rate):
    - (1) For all volumes delivered to the Delivery Point during the Test Period:  
\$0.5458 per Mcf

(2) For all volumes delivered to the Delivery Point after the Commercial Operation Date:

(A) Tier 1 - for the first 3,600,000 Mcf per Contract Year, subject to the winter balancing option in effect under Section 2:

- Winter Interruptible Option: \$0.260 per Mcf
- 100% Daily Balancing Option: \$0.320 per Mcf
- 50% Daily Balancing Option: \$0.560 per Mcf

(B) Tier 2 - \$0.115 per Mcf for all volumes greater than 3,600,000 Mcf per Contract Year; and

(iii) A Gas-in-Kind (Fuel) Charge per MichCon's LT-2 Rate Schedule.

(b) Third-Party Charges. Customer is responsible for all upstream or third Party transportation arrangements and charges necessary in transporting the gas to the Receipt Point(s).

(c) Penalties. MichCon shall not be responsible under this Agreement for any penalties levied against Customer caused by Customer or any agent acting on Customer's behalf, unless such penalty is levied as the result of the negligence or intentional misconduct of MichCon.

(d) Delivery Curtailment. In the event that MichCon curtails deliveries to the Delivery Point due to a non-Force Majeure condition that occurs at a time when Customer has complied with all Operating Provisions as defined in Section 4(a), MichCon shall credit Customer's monthly bill in an amount equal to the greater of the following:

(i)  $(\$0.042 \text{ per Mcf}) \times (\text{total volumes delivered to the Delivery Point during the month in which curtailment occurred})$

*or;*

(ii) \$25,000 per curtailment occurrence up to a maximum of four (4) occurrences per month. In no event shall more than one curtailment occurrence accumulate in any 24-hour period and a curtailment occurrence that extends beyond a 24-hour period shall be deemed to be a single curtailment occurrence.

## 7. MINIMUM TRANSPORTATION REVENUE COMMITMENT

- (a) Minimum Three-Year Revenue Commitment. In consideration for the services provided herein, Customer shall guarantee to MichCon a minimum revenue commitment in three-year increments, commencing with the Commercial Operation Date and continuing throughout the term of this Agreement, equal to the sum of 1) the product of 3,600,000 Mcf and the Tier 1 Transportation Charge for the 1st year of the three-year revenue commitment period, 2) the product of 3,600,000 Mcf and the Tier 1 Transportation Charge for the 2nd year of the three-year revenue commitment period, and 3) the product of 3,600,000 Mcf and the Tier 1 Transportation Charge for the 3rd year of the three-year revenue commitment period ("Minimum Three-Year Revenue Commitment").
- (b) Deficiency Payments. Customer's initial Minimum Three-Year Revenue Commitment will start on the first day of the month in which the Commercial Operation Date occurs. This day will be the anniversary date for the beginning of each successive three-year period. If Customer has not paid or incurred Transportation Charges equal to at least the Minimum Three-Year Revenue Commitment by the expiration of the applicable three-year revenue commitment period, then Customer shall pay MichCon, within thirty (30) Days after being invoiced by MichCon, a lump sum payment equal to the Minimum Three-Year Revenue Commitment, as calculated in Section 7(a) above (using the Transportation Rates applicable for the current three year period), minus (1) the amount of any credit given to Customer under Section 6(d) and (2) the actual transportation payments per Section 6(a)(ii) that Customer has made to MichCon during such three-year period ("Deficiency Payment"). The Deficiency Payment will not be less than zero.
- (c) Excess Payments. Any transportation payments received during the Test Period or a three-year period that are in excess of the Minimum Three-Year Revenue Commitment will not be transferred to the next three-year period. Each three-year period will be reset to zero at the commencement of that three-year period.

## 8. NO BYPASS COMMITMENT

In exchange for and in consideration of MichCon's commitments under this Agreement, during the term of this Agreement, Customer shall not bypass MichCon's system via a direct or indirect interconnection with another supplier of natural gas transportation service for the amount of natural gas service required by the four, 90 MW turbines contemplated under this Agreement. If at any time during the term of this Agreement, a party other than MichCon delivers natural gas to the Facility, except where the Facility requires additional natural gas service beyond that provided for in this Agreement, MichCon shall have the right to terminate this Agreement upon 12 months prior written notice to Customer.

## 9. RECEIPT POINTS

- (a) General. Subject to the other terms of this Agreement, Customer may deliver gas hereunder to one or more Receipt Points on any Gas Day. The aggregate daily nomination for all Receipt Points shall not exceed Customer's MDQ, unless agreed upon by MichCon in advance.
- (b) Gas Balancing Event Receipt Points. On any Gas Day when a Gas Balancing Event is required, Customer's Receipt Points shall be limited to the following:
- (i) Willow Run (ANR Pipeline), and Northville (Consumers Energy), up to the MDQ;
  - (ii) Kalkaska and Brown 19, up to the quantity nominated at each of these points for the Facility forty-eight (48) hours prior to the Gas Balancing Event.
  - (iii) Additional Receipt Point(s) may be added at MichCon's sole discretion.
- (c) Non-Gas Balancing Receipt Points. On any Gas Day when a Gas Balancing Event is not required, Customer's Receipt Points will be any of the following:
- Willow Run (ANR Pipeline), Northville (Consumers Energy), Milford (Vector Pipeline), Rouge (Panhandle Eastern), Belle River (Vector Pipeline), Belle River (Great Lakes), Belle River (MichCon), Woolfolk (ANR Pipeline), Shell Kalkaska (Antrim Pipeline and Shell Plant Outlet), Washington 10, and Brown 19.
- (d) Receipt Point Capacity. Capacity at all Receipt Points shall be based on operating conditions on MichCon at the time of request and shall be subject to MichCon's then effective curtailment and allocation procedures as embodied in MichCon's Tariff. Such capacity approval shall not be unreasonably withheld.
- (e) Future Receipt Points. Receipt Point capacity at any future interconnections constructed during the term of this Agreement will be available to Customer subject to the following:
- (i) Availability of future Receipt Points may, at MichCon's sole discretion, be limited to days in which a Gas Balancing Event is not required. MichCon's then effective capacity allocation procedures for MichCon's Rate Schedule LT-2, shall apply as well as the terms and conditions of this Agreement. MichCon shall not unreasonably withhold access to any future Receipt Points and will duly consider Customer's request for access.

- (ii) Customer may request a new interconnection and MichCon will agree to pursue and install, in a timely manner, such interconnection subject to (1) Customer reimbursing MichCon 100% of such costs including applicable federal and states taxes and (2) the upstream pipeline agreeing to such interconnection. The terms and conditions set forth above in Section 9(e)(i) shall apply.

## 10. TERM OF AGREEMENT

This Agreement shall become effective on the Effective Date and, unless extended by mutual agreement of the Parties, shall terminate upon the fifteenth anniversary of the Commercial Operation Date or the prior termination of this Agreement as provided in Section 11.

## 11. EVENTS OF DEFAULT AND TERMINATION

- (a) Events of Default. Each of the following shall constitute a default hereunder:
  - (i) a Party fails in any material respect to comply with, observe, or perform, or shall default in any material respect in the performance of, the other terms and conditions of this Agreement. Customer acknowledges that under no circumstances will MichCon's exercise of its curtailment rights under this Agreement or its Tariff result in an event of default.
  - (ii) a Party fails to pay to the other Party any material amount due and owing and not in dispute under Section B-9 of Attachment B;
  - (iii) a Party (1) applies for or consents to the appointment of a trustee, receiver, liquidator, custodian, or the like for itself or its properties, (2) is unable, or admits in writing the inability, to pay its debts as they mature, (3) makes a general assignment for the benefit of its creditors, (4) commences a voluntary case under a chapter of the Bankruptcy Reform Act of 1978 or other applicable legal requirement, or file a petition, answer, or consent seeking reorganization or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization, or insolvency proceeding, or fail to controvert in a timely and appropriate manner (or acquiesce in writing to) any such petition, or (5) takes any corporate or partnership action for the purposes of effecting any of the foregoing; and
  - (iv) a proceeding or case is commenced, without the application or consent of the Party against which the proceeding or case was commenced, in any court of competent jurisdiction, seeking (1) its liquidation, reorganization of its debts, dissolution, or winding-up, or the composition or readjustment of its debts, (2)

the appointment of a receiver, custodian, liquidator, or the like of such Party or of all or any substantial part of its assets, or (3) similar relief in respect of such Party under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, and such proceeding remains in effect, for a period of 120 days.

- (b) Notice and Cure. Except to the extent more limited rights are provided elsewhere in this Agreement, if a default occurs, the Party not in default shall give the Party in default (the "Defaulting Party") written notice describing such default and an opportunity to cure the default. The cure periods for particular defaults are as follows: (i) if the default is the event described in Section 11(a)(i) or (ii), the Defaulting Party shall have thirty (30) days to cure the default after receipt of notice thereof from the other Party; (ii) if the default is the event described in Section 11(a)(iii), the Defaulting Party shall have no opportunity to cure; and (iii) if the default is the event described in Section 11(a)(iv), the Defaulting Party shall have the opportunity to cure as specified therein. MichCon acknowledges and agrees that any default by Customer may be cured, directly or indirectly, by the third party providing credit support under Section B-10 of Attachment B, or any lender thereto, and that MichCon will accept any conforming cure of a default tendered by such third party, or lender.
- (c) Termination for Default. If after the giving of notice and the expiration of any applicable cure period a default remains uncured, the Party not in default, by notice in writing to the Defaulting Party, may, in addition to any other rights and remedies available to it under this Agreement, at law, or in equity, suspend performance or withhold payments due and owing under this Agreement or terminate this Agreement until the default hereunder is cured.
- (d) Force Majeure Terminations. A Party may terminate this Agreement upon at least fifteen (15) days prior written notice to the other Party if either of the following events occur:
  - (i) the other Party has given it four (4) or more notices claiming an event of Force Majeure during any period of thirty-six (36) consecutive months; or
  - (ii) the other Party relies upon a claim of an event of Force Majeure to suspend its obligations under this Agreement (1) for more than ten (10) consecutive Gas Days in May through November or fifteen (15) consecutive Gas Days in December through April in any period of twelve (12) consecutive months, or (2) for 60 cumulative Gas Days or more in any period of thirty-six (36) consecutive months.

For the purposes of this Section 11(d), no more than one event of Force Majeure shall be counted during any Gas Day and an event of Force Majeure that is

continuous and lasts for more than one Gas Day shall be considered as one event of Force Majeure. A Party must exercise its right of termination under this Section 11(d) within one hundred twenty (120) days of the last occurrence giving rise to the particular termination right.

- (e) Termination by Mutual Agreement. This Agreement may be terminated at any time with the mutual agreement of the Parties
- (f) By-pass, Milestone and MPSC-Related Terminations. This Agreement may be terminated pursuant to Section 8, Section 12(b), or Section 13(b), (c), (d)(ii), or (f)(ii).
- (g) Effect of Termination: Survival. All obligations and liabilities of the Parties hereunder shall cease upon the termination of this Agreement, except their respective liabilities that accrued prior to termination or result from their respective defaults hereunder.
- (h) Termination Payment. As soon as practicable after a notice of termination is given, the Non Defaulting Party will give the Defaulting Party notice of the amount of the Termination Payment, and whether the Termination Payment is due to or from the Non Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) business days of receipt of the notice.

## 12. PROJECT MILESTONES

- (a) Commercial Operation Date. The Commercial Operation Date of the Facility is expected no later than August 1, 2002. If the Commercial Operation Date of the Facility is delayed beyond August 1, 2002, and notice of termination is not given by the Customer pursuant to Section 12(b), then August 1, 2002 shall be used as the Commercial Operation Date for purposes of calculating the Minimum Three-Year Revenue Commitment of Section 7(a).
- (b) Customer Right of Termination. If the Facility fails to be developed, and Customer notifies MichCon prior to July 1, 2002 that Customer will not need MichCon transportation and storage services to provide gas to the Facility, then Customer may terminate this Agreement with prior written notice to MichCon.
- (c) Penalty/Bonus For Timely Provision Of Services. If Michcon fails to provide service by the later of (1) March 1, 2002 or (2) when Customer requests transportation service under Section 1 of this Agreement, then Customer will reduce the amount it owes Michcon for services by \$5,000 per day until Michcon provides services, up to a total maximum of



\$150,000. Customer agrees to pay MichCon an additional \$5,000 per day for each day prior to March 1, 2002 that Michcon is able to provide service, up to a maximum of \$150,000.

### 13. MPSC APPROVAL

- (a) MPSC Approval. In view of certain terms and conditions herein that vary from those in MichCon's Tariff, this Agreement is specifically conditioned upon approval from the Michigan Public Service Commission (the "MPSC") before MichCon can provide this service for Customer. MichCon will apply to the MPSC for approval of this Agreement on an ex parte basis within thirty (30) days after execution of this Agreement. Both Parties shall support MichCon's application to the MPSC.
- (b) MPSC Approval Denied. If the MPSC considers and expressly denies approval without setting the matter for a contested case or public hearing, then either Party may terminate this Agreement upon written notice thereof to the other. If Customer elects to terminate, Customer shall reimburse MichCon for all non-recoverable costs incurred pursuant to this Agreement.
- (c) MPSC Fails to Approve within 90 Days. If MPSC approval is not granted within ninety (90) days after the submittal date for ex parte approval, both Customer and MichCon have the right to terminate this Agreement. If Customer elects to terminate, Customer shall reimburse MichCon for all non-recoverable costs incurred pursuant to this Agreement.
- (d) MPSC Sets Hearing. If the MPSC issues an order, notice, or other directive in connection with the filing of the application for approval of this Agreement that would cause a contested case hearing to be held that could potentially affect the rates or costs of MichCon or its customers that are not parties to this Agreement, MichCon shall, within thirty (30) days of such order, at its sole discretion, elect to either:
  - (i) Proceed with the contested case proceeding and ultimately perform service under the terms of this Agreement, as approved; or
  - (ii) Terminate this Agreement; or
  - (iii) Issue the Customer a revised special gas transportation agreement that includes the modifications necessary to address the MPSC's directive(s). Customer shall accept and execute such revised special gas transportation agreement, provided the revised agreement does not cause a material

negative economic impact to the electric generation project as currently proposed.

- (e) Revised Agreement. If Customer or MichCon has exercised its right to terminate this Agreement pursuant to this Section 13, and if Customer so desires, MichCon will provide transportation services within the framework of its standard LT-2 Rate Schedule for a period of five (5) years from the Commercial Operation Date, at a Tariff rate of \$0.23 per Mcf on all volumes transported to the Delivery Point ("Revised Agreement"). Such Revised Agreement will include an ACQ of 3,600,000 Mcf and the MHR and the MDQ as defined in Attachment A, a storage capacity equal to 10% of the ACQ, and all Gas Balancing and Operating Provisions as specified in this Agreement for the 100% Daily Balancing Option. MichCon shall have the right to terminate the Revised Agreement if, at any time during the term of the Revised Agreement, Customer uses MichCon's transportation services to supply the Facility with less than 2,400,000 Mcf per contract year.

During the term of the Revised Agreement, the Parties agree to negotiate in good faith for a long-term transportation and storage agreement that is mutually acceptable to the Parties. If the Parties do not reach agreement by the end of the term of the Revised Agreement, then the Revised Agreement shall terminate with no further obligation by either Party to the other.

- (f) MPSC Conditions. If the MPSC approves this Agreement with conditions or amendments that, in Customer's sole reasonable opinion, materially and adversely affect Customer's economic assumptions, then within thirty (30) days of MPSC approval and upon written notice to MichCon, Customer may elect to either:
- (i) Accept the transportation service as modified and approved by the MPSC;  
or
  - (ii) Terminate this Agreement and reimburse MichCon for all non-recoverable costs incurred pursuant to this Agreement.

#### 14. LATERAL CAPACITY RIGHTS AND CREDIT

- (a) Lateral Capacity Rights. MichCon will reserve an additional 4,400 Mcf per hour of capacity in the 20-inch Lateral for a potential expansion of Customer's needs to serve the Facility for the initial term of this Agreement ("Capacity Reservation"). Such Capacity Reservation assumes a minimum delivery pressure to the Facility of 425 psig. Customer acknowledges that the Capacity Reservation does not

include additional capacity rights on any other portion of MichCon's transmission, distribution, or storage system.

(b) Lateral Credit. In lieu of the Capacity Reservation, if MichCon connects another merchant power generation facility(s) ("Third-Party Facility") to the 20-inch Lateral prior to Contract Year 15 of this Agreement, then Customer may relinquish its Capacity Reservation, and will receive a one-time only credit of \$1,000,000 (in 2002 dollars inflated at 2% per annum ("Lateral Credit")) subject to the following conditions:

- i) The Third-Party Facility will have an aggregate transportation obligation of at least 5 Bcf of gas as an end use transportation customer(s) of MichCon;
- ii) Customer must relinquish its Capacity Reservation in writing; and
- iii) The Lateral Credit will be paid to Customer in the form of a rate reduction in the Tier 1 Transportation Charge for the remaining term of the Agreement. The rate reduction contemplated herein will be calculated using an 8% per year discount factor as provided below:

$$\text{Tier 1 Rate Reduction} = \frac{(\text{Lateral Credit})(i) (1+i)^n}{(1+i)^n - 1} \quad \times \quad 12 / 3,600,000 \text{ Mcf}$$

where i = 0.00667

n = number of remaining full Contract Years in the initial term times 12

## 15. FUTURE EXPANSION

If during the term of this Agreement an expansion is undertaken at the Facility, and as a result Customer contracts to provide additional natural gas to the Facility requiring modifications or additions to the Service Description in Attachment A, then MichCon and Customer will negotiate in good faith to accommodate the natural gas requirements associated with such expansion at the Facility utilizing the methodology used to determine contract rates and terms of this Agreement.

## 16. ASSIGNMENT

Neither Party may assign this Agreement or any of its rights or obligations arising under this Agreement without the prior written consent of the other Party, provided however, either Party shall assign this Agreement to an affiliate or institution providing financing to Customer so long as the assignor guarantees the continuing performance of the

assignee. Consent to assignment to other parties shall not be unreasonably withheld, provided, however, that MichCon may withhold its consent of any assignee that fails to meet the creditworthiness standards set forth in Attachment B, B-10.

## 17. NOTICES

All communications related to this Agreement shall be to the persons listed below or to such other persons as the parties may specify in writing:

Customer: Randy Feucht  
Address: 395 Ghent Rd.  
Akron, Ohio 44333  
Phone: (330) 315-7377  
Fax: (330) 315-7351

MichCon: Vice President, Midstream & Supply  
500 Griswold Street  
Detroit, Michigan 48226  
FAX # (313) 256-6251

Gas Control: Andrew Springstead  
Director, Gas Planning & Control  
(313) 256-5878  
  
Gas Control (direct)  
(800) 852-5423  
(313) 256-5776

Either Party may change its address under this Agreement by written notice to the other Party. All notices given by one Party to the other must be sent by registered mail, overnight mail or by facsimile and will be effective upon receipt thereof. However, routine communications, including monthly statements, will be considered as duly delivered when mailed by registered, overnight or ordinary mail. Operational communications will be by facsimile, e-mail, or telephone, or such other means as may be agreed upon by the Parties.

## 18. GENERAL TERMS AND CONDITIONS

MichCon's Rules, Regulations and Rate Schedules For Gas Service, MPSC No. 4 are incorporated by reference in this Agreement to the extent applicable and then only to the extent not inconsistent with the terms of this Agreement. All transportation services

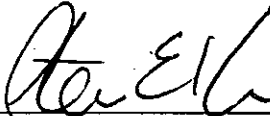
provided under this Agreement shall be in accordance with the General Terms and Conditions set forth in Attachment B hereto.

**19. ENTIRETY**

This Agreement and Attachments A, B, C, D, and E constitute the entire agreement between MichCon and Customer concerning the subject matter hereof, and supersede all prior negotiations, representations, correspondence and agreements. No modification, alteration, amendment or construction of this Agreement is binding upon the Parties unless in writing signed by both Parties hereto.

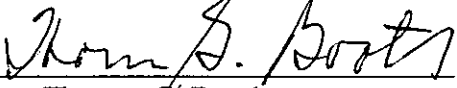
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

MICHIGAN CONSOLIDATED GAS COMPANY

By   
Steven E. Kurmas  
Sr. Vice President, Midstream & Supply

APPROVED  
AS TO FORM  


FIRSTENERGY SOLUTIONS CORP

By:   
Thomas G. Booth  
Vice President, Commodity Sourcing

## ATTACHMENT A

### SERVICE DESCRIPTION

- (a) Service Type: In accordance with MichCon's Rate Schedule LT-2.
- (b) Maximum Daily Quantity (MDQ): (i) equal to 26,400 Mcf per day during the Test Period and (ii) initially equal to 105,600 Mcf per day upon Commercial Operation Date.
- (c) Maximum Hourly Requirement (MHR): 4,400 Mcf per hour
- (d) Storage Capacity Limit: 360,000 Mcf from September 1st through March 31st, and 575,000 Mcf from April 1st through August 31st.
- (e) Minimum Daily Storage Balance: 0 Mcf
- (f) Monthly Withdrawal Limit: Withdrawals from storage for Facility requirements during December through April will be limited to 108,000 Mcf per month.
- (g) Daily Injection Limit: initially equal to:
- |      |                                      |                    |
|------|--------------------------------------|--------------------|
| i)   | December 1st through May 31st:       | 70,400 Mcf per day |
| ii)  | June 1st through August 31st:        | 26,400 Mcf per day |
| iii) | September 1st through November 30th: | 10,560 Mcf per day |
- (h) Monthly Injection Limit: Injections into storage during September and October will be limited to 51,500 Mcf per month.
- (i) Monthly Winter Storage Transfer Limit: Storage transfers during December through April will be limited to:
- 300,000 Mcf per month for the 100% Daily Balancing Option;
  - 150,000 Mcf per month for the 50% Daily Balancing Option;
  - 108,000 Mcf per month for the Winter Interruptible Option.

Such Monthly Winter Storage Transfer Limits are in addition to the Monthly Withdrawal Limit for plant usage.

**ATTACHMENT B**  
**GENERAL TERMS AND CONDITIONS**

**B-1. DEFINITIONS**

- (a) "Capacity Reservation" has the meaning specified in Section 14(a).
- (b) "Construction Commencement Date" means the date on which the Facility's civil subcontractor has actively commenced construction activities.
- (c) "Commercial Operation Date" means the earlier of (i) the date on which the Facility has been placed into commercial service, (ii) the date the Facility issues a certificate of substantial completion to the EPC Contractor, (iii) the date MichCon has delivered 1,000,000 Mcf of gas, in aggregate to the Facility on behalf of Customer, or (iv) August 1, 2002.
- (d) "ConQuest" refers to MichCon's electronic bulletin board (EBB) as modified or subsequently replaced.
- (e) "Contract Year" means the first twelve-month period after the Commercial Operation Date and each consecutive twelve-month period thereafter.
- (f) "Daily Injection Limit" is the maximum daily quantity of natural gas that MichCon will inject into storage on Customer's behalf as more fully set forth in Attachment A and Section 3(b)(ii).
- (g) "Delivery Point" is the interconnection(s) of the pipeline facilities of MichCon and the Facility.
- (h) "Facility" has the meaning specified in recital A.
- (i) "Forecasted Average Temperature" is the mean temperature for the Detroit Metropolitan Airport, as forecasted by the United States Weather Bureau ("Selected City Summary and Forecast"). If such forecast ceases to be made, the parties shall mutually agree to substitute a forecast by a nationally recognized weather service.
- (j) "Gas Balancing Event" has the meaning specified in Section 2.
- (k) "Gas Day" means a period of 24 consecutive hours commencing and ending at those times specified in MichCon's then effective gas nomination procedures. Upon the Effective Date of this Agreement, MichCon's Gas Day is from noon to

noon Eastern Standard Time, provided however, that for purposes of winter balancing, Gas Day shall have the meaning specified in Section 2(a).

- (l) "Lateral Credit" has the meaning specified in Section 14(b).
- (m) "Maximum Daily Quantity" or "MDQ" is the maximum quantity of natural gas that may be delivered at the Receipt Point(s) on any one Gas Day as more fully set forth in Attachment A and Section 1(b)(i).
- (n) "Maximum Hourly Requirement" or "MHR" is the maximum quantity of natural gas that may be delivered to the Facility over any one hour as more fully set forth in Attachment A and Section 1(b)(ii).
- (o) "Minimum Daily Storage Balance" has the meaning specified in Section 3(b)(iv).
- (p) "Minimum Delivery Pressure" has the meaning specified in Section 4(a).
- (q) "MPSC" means the Michigan Public Service Commission.
- (r) "MichCon's LT-2 Rate Schedule" has the meaning specified in Section 1(a).
- (s) "Operating Provisions" has the meaning specified in Section 4(a).
- (t) "Operations Schedule" has the meaning specified in Section 5(b).
- (u) "Pipeline Quality Gas" has the meaning specified in B-5.
- (v) "Receipt Point(s)" are those interconnection(s) between the facilities of MichCon and third parties that deliver gas to MichCon, for the account of Customer, identified in Section 9.
- (w) "Revised Agreement" has the meaning specified in Section 13(e).
- (x) "Storage Balancing Charges" means the applicable load balancing charges plus gas-in-kind, as specified in MichCon's LT-2 Rate Schedule.
- (y) "Storage Capacity Limit" is the maximum quantity of natural gas that MichCon will hold in storage on Customer's account under the terms of this Agreement, as specified in Attachment A and Section 3(b)(i).
- (z) "Tariff" means MichCon's Rules, Regulations and Rate Schedules for Gas Service, MPSC No. 4 as modified and approved from time to time by the Michigan Public Service Commission.
- (aa) "Termination Payment" means the net amount payable to one Party by the other Party under this Agreement at the time of termination. The amount payable shall



include, but is not limited to amounts due but not yet paid for: transportation, storage, balancing, Storage Balancing Charges, or other services provided under this Agreement, including any interest or penalties thereon; Gas-in-Kind, Unauthorized Gas Usage Charges; damages due either Party under any provision of this Agreement, including any arbitration award; the fair market value of the Customer's gas in storage at the time of termination; and any other amounts due under this Agreement. The net amount payable as Termination Payment shall include the Minimum Three-Year Revenue Commitment, prorated to the termination date. The Termination Payment shall be subject to the limitations provided in B-16.

- (bb) "Test Period" means the period commencing the latter of (x) March 1, 2002 or (y) when Customer requests transportation service under this Agreement and continuing until the Commercial Operation Date.
- (cc) "Unauthorized Gas Usage Charge" means the applicable unauthorized gas use charges plus gas-in-kind, as specified in MichCon's LT-2 Rate Schedule.
- (dd) "20-inch Lateral" means the approximately 7.5 miles of 20-inch pipeline being constructed from near MichCon's Willow station and terminating at the Facility.

## **B-2. INTENTIONALLY LEFT BLANK**

## **B-3. NOMINATIONS**

All Customer nominations must be made in accordance with MichCon's nomination practices under Rate Schedule LT-2, and in effect at the time of nomination. Customer shall comply with any revisions to the nomination process posted on MichCon's electronic bulletin board. MichCon, in its reasonable sole discretion, may refuse any nominations if such receipts or deliveries would threaten the operational integrity of MichCon's system.

## **B-4 MEASUREMENT**

- (a) All quantities of Gas received at the Receipt Point(s) by MichCon for the account of Customer shall be measured at the Receipt Point(s) by MichCon or its designee in accordance with, and shall comply with the measurement specifications contained herein: the average unit total heating value of the gas shall, at MichCon's option, be determined at each point of measurement by: (1) use of a spot sample taken during each month to be analyzed on a gas chromatograph, (2)

use of a sample taken by a continuous sampler to be analyzed on a gas chromatograph, (3) use of an on-line gas chromatograph or (4) use of a calorimeter, mechanical or otherwise. If chromatographic analysis is used, the unit total heating value shall be calculated using the compound values contained in the American Gas Association Gas Measurement Committee Report No. 3. September, 1985 (ANSI/API 2530 approval May, 1985), or any revision thereof (1992 for the bulk of the standard and 2000 for part 2). Gas samples shall be analyzed for the determination of the relative density of the gas delivered hereunder. The result shall be obtained to the nearest one thousandth (0.001) and shall be applied during the applicable period for the determination of Gas volumes received.

- (b) All quantities of gas transported by MichCon for Customer, or for the account of Customer, shall be measured at the Delivery Point by MichCon, or its designee in accordance with, and shall comply with the measurement specifications contained herein: the average unit total heating value of the gas shall, at MichCon's option, shall be determined at each point of measurement by: (1) use of a spot sample taken during each month to be analyzed on a gas chromatograph, (2) use of a sample taken by a continuous sampler to be analyzed on a gas chromatograph, (3) use of an on-line gas chromatograph or (4) use of a calorimeter, mechanical or otherwise. If chromatographic analysis is used, the unit total heating value shall be calculated using the compound values contained in the American Gas Association Gas Measurement Committee Report No. 3. September, 1985 (ANSI/API 2530 approval May, 1985), or any revision thereof (1992 for the bulk of the standard and 2000 for part 2). Gas samples shall be analyzed for the determination of the relative density of the gas delivered hereunder. The result shall be obtained to the nearest one thousandth (0.001) and shall be applied during the applicable period for the determination of gas volumes delivered.
- (c) Adjustments to measured gas volumes for the effects of supercompressibility shall be made according to API MPMS Chapter 14.3 standard. MichCon shall obtain representative relative density, gas compositions, carbon dioxide and nitrogen mole fraction values, from the gas samples obtained for the gas delivered or received as may be required to compute such adjustments according to standard testing procedures. Equations for the calculation of supercompressibility will be taken from the latest revision of AGA Report No. 8, "Compressibility for Natural Gas and Other Hydrocarbon Gases." Each Month, the supercompressibility will be calculated using the latest Gas analysis.
- (d) An assumed atmospheric pressure of fourteen and four tenths (14.40) psia shall be used for measurement and calculation purposes. MichCon shall have the right, in its sole determination, to utilize actual barometric pressure for measurement and calculation purposes as an alternative to 14.4 pounds per square inch absolute. The pressure base shall be fourteen and sixty-five hundredths (14.65) psia and the

temperature base shall be sixty degrees (60 °) Fahrenheit. Samples obtained under the terms above shall have the gross heating value calculated from a gas analysis according to the latest revision of GPA 2172.

- (e) Ultrasonic meters utilized to measure gas pursuant to this Agreement shall be constructed and operated according to the AGA Report No. 9 (Measurement of Gas by Multi-path Ultrasonic Meters) as such publications may be revised from time to time, revisions will be incorporated as excepted by MichCon within a reasonable time period.
- (f) Customer and MichCon shall grant each other a data port at the inlet of the other's respective systems. Either Party may install, maintain and operate at its own expense, at or near each Receipt Point and Delivery Point, such check measuring equipment as desired, provided that such equipment is installed so as not to interfere with the operation of any other measuring equipment.
- (g) In the event check-measuring equipment is installed by either Party, the other Party shall have access to the same at all reasonable times, but the reading, calibration and adjusting thereof and the changing of charts shall be done only by the Party installing the checking equipment.
- (h) Measuring Party shall give reasonable notice to the other Party so that said Party may have representatives present to observe any installing, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting of Measurement Party's measuring equipment used in measuring or checking the measurement of receipts or deliveries of Shipper's gas under this Agreement. The official charts (recordings) and all Electronic Flow Computer files (logs) from such measuring equipment shall remain the property of Measuring Party, but upon request and within 30 Days Measuring Party will submit its records and charts, together with calculations therefrom, to the other Party for inspection and verification, subject to return to Measuring Party within sixty (60) days after receipt thereof.
- (i) Measuring Party shall verify the accuracy, adjust and calibrate all recording devices used in the measurement of the receipt of Shipper's Gas hereunder on a quarterly basis not to exceed 120 days (4 calibrations per year). Measuring Party shall not be required to, but may elect to, adjust or calibrate such equipment more frequently than specified above unless the other Party desires a special test be performed. Wherever any governmental agency requires more frequent calibration than described above, Measuring Party agrees to comply with the more frequent calibration schedule.
- (j) If during any test of the measuring equipment, an adjustment or calibration error is found which results in an incremental adjustment to the calculated daily flow rate through each meter run in excess of two percent (2%) of the correct flow rate

(whether positive or negative and using the correct flow rate as the percent error equation denominator), then any previous recording of such equipment shall be corrected to zero (0) error for any period which the error existed (and which is either known definitely or agreed to by both Parties) and the total flow for the period redetermined in accordance with the provisions below. If the period of error cannot be determined or agreed upon between the Parties, such correction shall be made over a period extending over the last one-half (1/2) of the time elapsed since the date of the last correct test, provided however that such period shall not exceed 60 days.

- (k) If, during any test of the measuring equipment, an adjustment or calibration error is found which results in an incremental adjustment to the calculated daily flow rate which does not exceed the two percent (2%) limit as described above, all prior recording shall be considered to be accurate for quantity determination purposes. Any measuring equipment found to be measuring inaccurately in any percentage shall be adjusted at once to read accurately.
  
- (l) In the event a Party desires a special test (a test not scheduled by Measuring Party under the provisions above) of any measuring equipment, reasonable advance notice, in writing, shall be given to Measuring Party and both Parties shall cooperate to secure a prompt test of the accuracy of such equipment. If the measuring equipment falls within the accuracy provisions above, and if the measurement equipment meets all appropriate specifications stated above, the requesting Party shall bear the cost of such special test. If the measuring equipment does not fall within the accuracy provisions as stated above, or if the measurement equipment does not meet all the appropriate specifications, Measuring Party shall bear the cost of such special test, and Measuring Party shall also bear the costs to promptly repair or replace the defective equipment.
  
- (m) If, for any reason, any measurement equipment is (i) out of adjustment, (ii) out of service, or (iii) out of repair and the total calculated daily flow rate through each meter run is found to be in error by an amount of the magnitude described above, the total quantity of gas delivered shall be determined according to the first of the following methods that is feasible:
  - (i) By using the registration of any duplicate measuring equipment installed by either Party, if installed and registering correctly;
  
  - (ii) By using the registration of any check meter facility, if installed and accurately registering (subject to testing as described above);

- (iii) By correcting the error by re-reading of the official records, or by straightforward application of a correction factor to the quantities recorded for the period (if the net percentage of error is ascertainable by calibration, tests, or mathematical calculation);
- (iv) By estimating the quantity, based upon deliveries made during periods of similar conditions when the meter was registering accurately.
- (n) Each Party shall retain and preserve all test data, charts, and other similar records for the greater of (2) years, or the time required by any governmental agency.
- (o) Each Party shall have the right to inspect measurement equipment installed or furnished by the other and the charts and other measurement or testing data of such Party at all times during business hours; but the reading, calibration and adjustment of such equipment and collection of data shall be done by Measuring Party, unless agreed to otherwise by the Parties.

#### **B-5. QUALITY**

- (a) All gas delivered by Customer at the Receipt Point(s) or redelivered by MichCon at the Delivery Point shall be Pipeline Quality Gas. Pipeline Quality Gas
  - (i) shall have a total heating value of not less than nine hundred fifty (950) Btu's per cubic foot, and not more than eleven hundred (1100) Btu's per cubic foot;
  - (ii) shall be commercially free (at prevailing pressure and temperature in Transporter's pipeline) from objectionable odors, dust, hydrocarbon liquids, water and any other substance that might become separated from the gas in Transporter's facilities, and MichCon shall furnish, install, maintain and operate such drips, separators, heaters, and other mechanical devices as may be necessary to effect compliance with such requirements (after having secured the prior approval of Transporter as to the design and construction of such facilities, which approval shall not be unreasonably withheld);
  - (iii) shall not contain more than twenty (20) grains of total sulphur, nor more than one fourth (1/4) of one grain of hydrogen sulphide per hundred (100) cubic feet;

- (iv) shall not contain more than two-tenths of one percent (0.2%) by volume of oxygen, and MichCon shall make every reasonable effort to keep the gas free of oxygen;
  - (v) shall not contain more than four percent (4%) by volume of a combined total of carbon dioxide and nitrogen components; provided, however, that the total carbon dioxide content shall not exceed three percent (3%) by volume.
  - (vi) shall have a temperature of not more than one hundred twenty degrees (120 degrees) Fahrenheit;
  - (vii) in no event contain more than seven (7) pounds of entrained water per million cubic feet, at a pressure base of fourteen and seventy three hundredths (14.73) pounds per square inch and a temperature of sixty degrees (60 degrees) Fahrenheit as determined by dew-point apparatus approved by the Bureau of Mines or such other apparatus as may be mutually agreed upon.
- (b) If the gas delivered by Customer at any Receipt Points or by MichCon at any Delivery Point fails at any time to be Pipeline Quality Gas, then MichCon or Customer, as the case may be, shall notify the other of such deficiency and thereupon may, at its option, refuse to accept delivery pending correction. Upon demonstration acceptable to MichCon or Customer, as the case may be, that the gas being tendered for is Pipeline Quality Gas, MichCon or Customer, as the case may be, shall resume taking delivery of gas.

#### **B-6. POSSESSION AND LIABILITY**

As between MichCon and Customer, Customer shall be deemed in exclusive control and possession of the gas transported hereunder and responsible for any damage or injury caused thereby until it is delivered to MichCon at the Receipt Point(s) and after it is delivered by MichCon at the Delivery Point. MichCon shall be deemed in exclusive control and possession of said gas and responsible for any damage or injury caused thereby after it is delivered by Customer, or for Customer's account, at the Receipt Point(s) and until it is delivered by MichCon at the Delivery Point.

#### **B-7. WARRANTY**

Possession of, risk of loss of, and responsibility for Gas delivered hereunder from Customer to MichCon hereunder shall transfer from Customer to MichCon at the applicable Receipt Point(s). Possession of, risk of loss of, and responsibility for Gas

delivered hereunder from MichCon to Customer shall transfer from MichCon to Customer at the Delivery Point. Each Party warrants good and marketable title to the Gas delivered hereunder to the other Party. Customer warrants that it will indemnify MichCon and save it harmless from suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any and all persons to said gas or to royalties, taxes, license fees or charges thereon.

**B-8. TAXES**

Customer shall pay any taxes, tariffs, and duties however designated, levied, or charged resulting from this Agreement, including, without limitation, all state and local privilege or excise taxes and any amount in lieu of such taxes, tariffs and duties paid or payable by MichCon, exclusive however of taxes based on the net income of MichCon, property taxes, and MichCon's single business taxes. Customer shall reimburse MichCon for any such taxes, tariffs and duties that are collected and remitted or paid on Customer's behalf by MichCon because of Customer's failure to pay.

**B-9 BILLING AND PAYMENT**

MichCon shall follow the billing practices outlined in its Tariff for invoicing commercial Customers, and all such invoices shall be due and payable as provided in the Tariff.

**B-10. CREDITWORTHINESS**

(a) Upon execution of this Agreement, Customer shall provide MichCon with a corporate guaranty of all Customer obligations under this Agreement from a creditworthy entity. Such corporate guaranty shall terminate only after all of Customer's obligations under this Agreement have been satisfied.

(b) A guarantor shall be deemed creditworthy provided it has an investment grade rating for its long-term senior unsecured debt from at least two of the recognized rating agencies listed below. The minimum acceptable investment grade rating from each of the indicated rating agencies is:

Moody's	Baa3
S&P	BBB-
Fitch	BBB-

(c) A guarantor that is considered creditworthy at the time it provided the guaranty hereunder but, at a later date, no longer meets the creditworthiness standards of subsection B-10(b) will be required to provide other security acceptable to

MichCon within two (2) business days of notice from MichCon that the guarantor fails to meet the credit worthiness standards of subsection B-10(b).

- (d) For any period of time that Customer is in breach of this Section B-10, MichCon shall be relieved of all obligations under this Agreement to transport or store Customer's gas. Customer's breach of this Section B-10 shall not relieve Customer of any payment obligations under this Agreement, including but not limited to the Minimum Three-Year Revenue Commitment.

#### **B-11. FORCE MAJEURE**

- (a) Neither Customer nor MichCon shall be liable in damages, or in any other remedy, legal or equitable, to the other for any act, omission or circumstances occasioned by or in consequence of any acts of God, vandalism, strikes, lockouts, acts of the public enemy, wars, sabotage, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests, and restraints of rulers and peoples, civil disturbances, failure of electronic data, explosions, breakage or accident to machinery or lines of pipe or the necessity to make repairs, tests, or alteration to machinery or lines of pipe, line freezeups, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, or any other cause, whether of the kind herein enumerated, or otherwise, and whether caused or occasioned by or happening on the account of the act or omission of one of the parties hereto or some person or concern not a Party hereto, not within the control of the Party claiming suspension and which by the exercise of due diligence such Party is unable to prevent or overcome. A failure to settle or prevent any strike or other controversy with employees or with anyone purporting or seeking to represent employees shall not be considered to be a matter within control of the Party claiming suspension. Economic hardship of the Parties shall not constitute Force Majeure.
- (b) It is agreed that performance of the respective obligations of the Parties hereto to deliver and receive gas, so far as they are affected by such Force Majeure, shall be suspended from the inception of any such inability until it is corrected, but for no longer period. The Party claiming such inability shall give notice thereof to the other Party as soon as practicable after the occurrence of the Force Majeure. If such notice is first given by telephone, it shall be confirmed promptly in writing giving full particulars. The Party claiming such inability shall promptly correct such inability to the extent it may be corrected through the exercise of due diligence.



## **B-12. REGULATION**

This Agreement and the respective obligations of the parties hereunder are subject to all laws, orders, rules and regulations of duly constituted authorities having jurisdiction. This Agreement is also subject to all applicable federal, state and local taxes or surcharges.

## **B-13. DISPUTES AND GOVERNING LAW**

This Agreement is governed by the law of the **State of Michigan**.

## **B-14. NON-WAIVER OF FUTURE DEFAULTS**

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

## **B-15. ARBITRATION**

- (a) Except for matters subject to the exclusive jurisdiction of the MPSC, which matters shall not be subject to arbitration, any dispute under this Agreement, which cannot be resolved senior management of the parties within 30 days, shall be submitted to binding arbitration.
- (b) Any matter subject to arbitration hereunder shall be submitted in accordance with the Rules of Commercial Arbitration of the American Arbitration Association (AAA) then in effect. It is understood and agreed that the references in this Article to the rules of the AAA shall signify only the Parties' agreement to utilize such rules where appropriate, and not the Parties' agreement to utilize the full service of the AAA.
- (c) The arbitration shall be deemed initiated when a Party receives written notice thereof from the other Party.
- (d) The dispute shall be decided by an arbitrator, qualified by education, training, and experience to hear the dispute. The arbitrator will be chosen from a list of five qualified arbitrators submitted by the Party initiating the arbitration. at the time it notifies the other Party of its intention to arbitrate their dispute. The responding Party shall strike the name of one arbitrator candidate from the panel within fifteen (15) days of receiving the above notice. Each party shall take alternate turns in striking the name of one member of the panel within 15 days of receipt of the panel list from the other party. If either Party fails to strike an arbitrator within the allotted time the AAA shall appoint the arbitrator.

- (e) The arbitration shall be held in a neutral forum mutually agreed upon by the parties. The arbitrators shall apply as the substantive law to dispute the laws of the State of Michigan.
- (f) The Parties' right to reasonable discovery shall be determined by the arbitrator, and the arbitrator shall be authorized to request from either Party such information, as the arbitrator deems necessary to resolve the dispute. The Parties expressly agree to the consolidation of separate arbitral proceedings for the resolution in a single proceeding of all disputes that arise from the same factual situation, and the Parties further expressly agree that any issue of arbitrability – the existence, validity, and scope of the agreement to arbitrate – shall be decided by the arbitrators.
- (g) Time shall be of the essence in any arbitration. The hearing shall be held as expeditiously as reasonably possible, however the hearing must commence within ninety (90) days from the selection of the arbitrator. The arbitrator's decision in writing shall be issued no more than 30 days following submission of the matter for decision at the conclusion of the hearing.
- (h) Each Party shall pay its own costs incurred in connection with the arbitration proceedings as well as the costs of the arbitrator selected by or for it. All other costs of the arbitration shall be equally divided between the Parties.
- (i) To the extent arbitration is sought with respect to matters of valuation or interpretation hereof, each Party shall set out its proposed valuation and/or interpretation in writing and the arbitrators must select and adopt as their final decision only one of the following options, either: (i) MichCon's proposed valuation or interpretation, as applicable, or (ii) Customer's proposed valuation or interpretation, as applicable.
- (j) No arbitration proceeding may consider a matter designated by this Agreement to be within the judgment or discretion of one Party, and the arbitration proceeding may not revoke or revise any provisions of this Agreement.
- (k) Pending a decision by the arbitrators, the Parties shall continue to operate under the Agreement as it existed on the date arbitration was requested; provided, however, the arbitrators' decision shall be retroactive to the date arbitration was initiated. Either Party may apply to a court of competent jurisdiction, pending arbitration, for injunctive relief to preserve the status quo, to preserve assets, or to protect documents from loss or destruction, and such application will not be deemed inconsistent with or operate as a waiver of the Party's right to arbitration.
- (l) The arbitrators' decision shall be final and binding on the Parties. Judgment upon the award rendered by the arbitrators may be entered in a court of law having

jurisdiction thereof. In the event it is necessary to enforce such award, all costs of enforcement, including reasonable attorney's fees (for in-house or outside counsel) shall be payable by the Party against whom such award is enforced. The Parties understand and agree that the arbitration proceedings established in this provision shall be binding and effective as between the undersigned Parties only, and shall not bestow, create or grant any legal rights to any third Party.

- (m) In no event shall either Party be required to arbitrate any dispute based on transactions or occurrences, which occurred more than 24 months prior to the date of the demand for arbitration.

#### **B-16 LIMITATION OF LIABILITY**

Neither party shall be liable to the other party for consequential, incidental, exemplary, punitive or indirect damages, lost profits or other business interruption damages arising out of the performance or nonperformance of any obligation under this Agreement by statute, in tort or contract.

[END OF ATTACHMENT B]

ATTACHMENT C

[INTENTIONALLY LEFT BLANK]



**ATTACHMENT E**

**GAS BALANCING EVENT TEMPERATURES**

December	15°F
January	20°F
February	20°F
March	25°F
April	35°F

[END OF ATTACHMENT E]