



**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**ATLANTIC COAST PIPELINE, LLC**

**Docket Nos.**

**CP15-\_\_-000**

**CP15-\_\_-000**

**CP15-\_\_-000**

**ABBREVIATED APPLICATION  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
AND BLANKET CERTIFICATES**

***ATLANTIC COAST PIPELINE***

**VOLUME I – PUBLIC**

Filed: September 18, 2015

September 18, 2015

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Atlantic Coast Pipeline, LLC  
Atlantic Coast Pipeline  
Docket Nos. CP15-\_\_ -000, CP15-\_\_ -000, and CP15-\_\_ -000**

Dear Secretary Bose:

Atlantic Coast Pipeline, LLC (Atlantic) hereby submits for filing, pursuant to Section 7 of the Natural Gas Act, as amended, and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), this Abbreviated Application (Application) requesting:

- a Certificate of Public Convenience and Necessity authorizing Atlantic to construct, install, own, operate and maintain the Atlantic Coast Pipeline to provide firm natural gas transportation service of up to 1.5 million dekatherms per day through a new interstate pipeline system extending from Harrison County, West Virginia, southeast to Greensville County, Virginia, and then south into eastern North Carolina;
- a Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G, of the Commission's regulations authorizing open-access transportation of gas for others with pre-granted abandonment authority; and
- a Blanket Certificate of public convenience and necessity pursuant to Part 157, Subpart F, of the Commission's regulations authorizing certain facility construction and operation, certain certificate amendments and abandonments.

### **Information Submitted**

In accordance with 18 C.F.R. §§388.112 and 388.113, this Application consists of the following volumes:

Volumes I and II – Public,

Volume III – Contains Privileged Information – Do Not Release, and

Volume IV – Contains Critical Energy Infrastructure Information – Do Not Release.

Atlantic requests that, pursuant to 18 C.F.R. § 388.112, the information filed in Volume III be treated as privileged and confidential, and that it not be released to the public. This volume is

labeled “Contains Privileged Information – Do Not Release” and contains information that is customarily treated as privileged and confidential.

Atlantic requests that, pursuant to 18 C.F.R. § 388.112, the information filed in Volume IV be treated as Critical Energy Infrastructure Information (CEII), and that it not be released to the public. This volume is labeled “Contains Critical Energy Infrastructure Information – Do Not Release” and contains information that is customarily treated as CEII.

Atlantic sent nine copies of Appendices A, B, C, and D (wetland, waterbody, seep point, and non-water point datasheets and photo pages) of Appendix 2D to Resource Report 2 and Appendices A and B (wetland and waterbody datasheets and photo pages) of Appendix 2E to Resource Report 2 in electronic format directly to Commission staff. These files are too large to fit on media appropriate for eLibrary submittals.

In addition, Atlantic is attaching its Form of Protective Agreement. Notwithstanding, Atlantic reserves its right to file an objection to disclosure of the filed information pursuant to Section 388.112(b)(2)(iii) of the Commission’s regulations.

A table of contents is provided in the Application listing the documents contained within each volume.

In accordance with the Commission’s Filing Guide/Qualified Documents list, Atlantic is also sending three hardcopies to the Commission.

### **Certification**

I hereby certify that I have read and am familiar with the contents of both the paper and electronic versions of the document comprising Atlantic’s Application and form of notice, that the contents of the Application are true and correct to the best of my knowledge and belief, and that the contents of the paper version is identical to the electronic version submitted herewith.

If you have any questions, please contact me at 866-319-3382.

Respectfully submitted,

*/s/ Matthew R. Bley*

Matthew R. Bley  
Director, Gas Transmission Certificates  
Authorized Representative for Dominion Transmission, Inc., as

Authorized Representative,  
Atlantic Coast Pipeline, LLC  
701 E. Cary Street  
Richmond, VA 23219

Enclosures

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>In the Matter of</b>	]	<b>Docket Nos.</b>	<b>CP15-__-000</b>
	]		<b>CP15-__-000</b>
<b>ATLANTIC COAST PIPELINE, LLC</b>	]		<b>CP15-__-000</b>

**ABBREVIATED APPLICATION  
OF ATLANTIC COAST PIPELINE, LLC  
FOR A CERTIFICATE  
OF PUBLIC CONVENIENCE AND NECESSITY  
AND BLANKET CERTIFICATES**

*ATLANTIC COAST PIPELINE*

Matthew R. Bley, Director  
Gas Transmission Certificates  
Dominion Transmission, Inc.  
701 E. Cary Street  
Richmond, VA 23219  
Telephone: (866) 319-3382  
Facsimile: (804) 771-4804  
E-mail: Certificates@dom.com

Margaret H. Peters  
Assistant General Counsel  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, VA 23219  
Telephone: (804) 819-2411  
Facsimile: (804) 819-2183  
E-mail: Margaret.H.Peters@dom.com

J. Patrick Nevins  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
Telephone: (202) 637-6441  
Facsimile: (202) 637-5910  
E-mail: patrick.nevins@hoganlovells.com

**VOLUME I – PUBLIC**

Filed September 18, 2015

**Application for a  
Certificate of Public Convenience and Necessity and Blanket Certificates**

**TABLE OF CONTENTS**

**VOLUME I – PUBLIC**

**APPLICATION**

- I. Applicant
- II. Background
- III. Executive Summary
- IV. Description of Proposal
- V. Public Convenience and Necessity
- VI. List of Exhibits
- VII. Notice
- VIII. Requested Authorization and Conclusion

- Exhibit A – Articles of Incorporation and Bylaws**
- Exhibit B – State Authorization**
- Exhibit C – Company Officials**
- Exhibit D – Subsidiaries and Affiliation**
- Exhibit E – Other Pending Applications and Filings**
- Exhibit F – Location of Facilities**
- Exhibit I – Market Data**
- Exhibit J – Federal Authorizations**
- Exhibit K – Cost of Facilities**
- Exhibit L – Financing**
- Exhibit M – Construction, Operation, and Management**
- Exhibit N – Revenues, Expenses, and Income**
- Exhibit O – Depreciation and Depletion**
- Exhibit P – Tariff**

**VOLUME II – PUBLIC**

- Exhibit F-I – Environmental Report**

**VOLUME III – CONTAINS PRIVILEGED INFORMATION – DO NOT  
RELEASE**

**Exhibit A – Articles of Incorporation and Bylaws**

**Exhibit F-I**

APPENDIX 1N – Landowner List

APPENDIX 4B – Phase I Cultural Resources Reports

**Exhibit L – Financing**

Schedule 1 – Proforma Statement of Income

Schedule 2 – Proforma Balance Sheet

Schedule 3 – Proforma Statement of Cash Flow

**VOLUME IV – CONTAINS CRITICAL ENERGY INFRASTRUCTURE  
INFORMATION – DO NOT RELEASE**

**Exhibit F-I**

APPENDIX 1C – Plot Plans

**Exhibits G, G-I, and G-II – Flow Diagram**

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

<b>Atlantic Coast Pipeline, LLC</b>	]	<b>Docket Nos.</b>	<b>CP15-__-000</b>
	]		<b>CP15-__-000</b>
	]		<b>CP15-__-000</b>

**ABBREVIATED APPLICATION OF ATLANTIC COAST PIPELINE, LLC  
FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
AND BLANKET CERTIFICATES**

***ATLANTIC COAST PIPELINE***

Atlantic Coast Pipeline, LLC (Atlantic) hereby files this Abbreviated Application (Application) with the Federal Energy Regulatory Commission (FERC or Commission), pursuant to Section 7 of the Natural Gas Act, as amended (NGA), 1/ and Part 157 of the Commission’s regulations 2/ requesting:

- a Certificate of Public Convenience and Necessity authorizing Atlantic to construct, install, own, operate and maintain the Atlantic Coast Pipeline (hereinafter “ACP” or “Project”) to provide firm natural gas transportation service of up to 1.5 million dekatherms per day (MMDt/day) through a new interstate pipeline system extending from Harrison County, West Virginia, southeast to Greensville County, Virginia, and then from this point south into eastern North Carolina and east to the City of Chesapeake, Virginia;

---

1/ 15 U.S.C. § 717 (f) (2000).

2/ 18 C.F.R. §§ 157.5 et seq. (2015).

- a Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G, of the Commission’s regulations authorizing open-access transportation of gas for others with pre-granted abandonment authority, pursuant to the terms of Atlantic’s initial FERC Gas Tariff, as well as approval of Atlantic’s filed *pro forma* Tariff, including initial recourse rates and authority to enter into negotiated rates; and
- a Blanket Certificate of public convenience and necessity pursuant to Part 157, Subpart F, of the Commission’s regulations authorizing certain facility construction and operation, certain certificate amendments and abandonments.

The new transportation service to be provided by the ACP will be made available through construction of a new interstate pipeline system at an estimated cost of approximately \$5.1 billion. The Project pipeline system will consist of certain facilities located in Harrison, Lewis, Upshur, Randolph and Pocahontas Counties, West Virginia; Highland, Augusta, Nelson, Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Brunswick, Greenville and Southampton Counties, and the Cities of Suffolk and Chesapeake, Virginia; and Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson Counties, North Carolina.

The ACP will be an approximately 564-mile-long interstate natural gas transmission pipeline system designed to provide access to low-cost natural gas supplies to serve growing energy needs in Virginia and North Carolina. The natural gas delivered by the ACP will be used to generate electricity, heat homes, and provide fuel for local businesses.



Atlantic, a limited liability company formed by affiliates of four major, regionally-based energy companies, was created to develop, own and operate the ACP. The companies are Dominion Resources, Inc. (Dominion), Duke Energy Corporation (Duke Energy), Piedmont Natural Gas Co., Inc. (Piedmont), and AGL Resources, Inc. (AGL). <sup>3/</sup> Atlantic has contracted with Dominion Transmission, Inc. (DTI) to permit and oversee the construction of the Project and subsequently to operate and maintain Atlantic's facilities.

Atlantic proposes to commence construction of the ACP facilities in September 2016 in order to meet an in-service date for the contracted firm transportation service on or before November 1, 2018. To meet this schedule, Atlantic respectfully requests that the Commission issue a final Certificate Order approving the Project by July 1, 2016.

The Project satisfies the guidelines set forth in the Statement of Policy Regarding Certification of new Interstate Natural Gas Pipeline Facilities <sup>4/</sup> as the proposal: (i) will provide increased natural gas firm transportation service; (ii) will have no adverse consequences on existing customers, existing pipelines or landowners and communities; and (iii) will result in no financial subsidization of the Project by existing customers.

In support of this Application, Atlantic respectfully shows as follows:

---

<sup>3/</sup> On August 24, 2015, Southern Company and AGL Resources announced that the boards of directors of both companies have approved a definitive merger agreement. Pursuant to the agreement, AGL Resources will become a new wholly owned subsidiary of Southern Company. The companies expect to complete the transaction in the second half of 2016.

<sup>4/</sup> *Certification of New Interstate Natural Gas Pipeline Facilities; Statement of Policy*, 88 FERC ¶ 61,227 (1999), *Order Clarifying Statement of Policy*, 90 FERC ¶ 61,128 (2000), *Order Further Clarifying Statement of Policy*, 92 FERC ¶ 61,094 (2000) (hereinafter, "Policy Statement").

## **I. APPLICANT**

The exact legal name of Atlantic is Atlantic Coast Pipeline, LLC. Atlantic is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 120 Tredegar Street, Richmond, Virginia, 23219. Atlantic was created to develop, own, and operate the ACP system, which will consist of approximately 564 miles of interstate natural gas pipeline, three compressor stations, and associated facilities in three states – West Virginia, Virginia, and North Carolina.

The members of Atlantic, with their respective ownership interests noted in parentheses, are as follows: Dominion Atlantic Coast Pipeline, LLC, a Delaware limited liability company and subsidiary of Dominion (45 percent), Duke Energy ACP, LLC, a Delaware limited liability company and subsidiary of Duke Energy (40 percent), Piedmont ACP Company, LLC, a North Carolina limited liability company and subsidiary of Piedmont (10 percent), and Maple Enterprise Holdings, Inc., a Georgia corporation and AGL subsidiary (5 percent).

Atlantic is not currently engaged in any natural gas transportation operations. Upon commencement of the operations proposed in this Application, Atlantic will become a “natural gas company” within the meaning of Section 2(6) of the NGA and, accordingly, will be subject to the Commission’s jurisdiction. Atlantic will provide natural gas transportation service in interstate commerce pursuant to the terms of its FERC Gas Tariff, a *pro forma* copy of which is included in Exhibit P for the approval of the Commission.

The names, titles, and mailing addresses of the persons to whom correspondence and communications concerning this application are to be addressed are:

Matthew R. Bley, Director  
Gas Transmission Certificates  
Dominion Transmission, Inc.  
701 E. Cary Street  
Richmond, VA 23219  
Telephone: (866) 319-3382  
Facsimile: (804) 771-4804  
E-mail: Certificates@dom.com

Margaret H. Peters  
Assistant General Counsel  
Dominion Resources Services, Inc.  
120 Tredegar Street  
Richmond, VA 23219  
Telephone: (804) 819-2411  
Facsimile: (804) 819-2183  
E-mail: Margaret.H.Peters@dom.com

J. Patrick Nevins  
Hogan Lovells US LLP  
555 Thirteenth Street, NW  
Washington, D.C. 20004  
Telephone: (202) 637-6441  
Facsimile: (202) 637-5910  
E-mail: patrick.nevins@hoganlovells.com

These persons are designated to receive service under 18 C.F.R. § 385.203(b)(3), and should be placed on the official service list for this proceeding pursuant to 18 C.F.R. § 385.2010. Atlantic requests waiver of 18 C.F.R. § 385.203(b)(3), to allow more than two persons to be designated to receive service and to whom communications regarding this proceeding are to be addressed.

## **II. BACKGROUND**

In recent years, a combination of population growth and displacement of coal-fired electric power generation has significantly increased the demand for natural gas in Virginia and North Carolina. Overall natural gas use grew by 31 and 78 percent, respectively, in Virginia and North Carolina between 2009 and 2013. Demand for gas-

fired electric power generation grew by 67 percent in Virginia and by 417 percent in North Carolina from 2009 to 2014. <sup>5/</sup>

To help meet this demand, Atlantic is applying for a Certificate of Public Convenience and Necessity to construct, install, own, operate and maintain the ACP to provide firm natural gas transportation service of 1.5 MMDt/day through a new interstate pipeline system in West Virginia, Virginia, and North Carolina. The ACP is a proposed interstate natural gas transmission system that will serve the growing energy needs of multiple public utilities and local distribution companies in Virginia and North Carolina. Based on current customer commitments, Atlantic estimates that approximately 79.2 percent of the natural gas transported by the ACP will be used as a fuel to generate electricity for industrial, commercial, and residential uses. The remainder of the natural gas is projected to be used directly for residential (9.1 percent), industrial (8.9 percent), and commercial and other uses such as vehicle fuel (2.8 percent). By providing access to low-cost natural gas supplies, the ACP will increase the reliability and security of natural gas supplies in Virginia and North Carolina.

The genesis of the Project was a solicitation in April 2014 by Duke Energy and Piedmont of competitive service proposals for incremental firm gas transportation service

---

<sup>5/</sup> U.S. Energy Information Administration 2015a. Annual Energy Outlook 2014. Available online at <http://www.eia.gov/forecasts/aeo/>. Accessed August 2015.

U.S. Energy Information Administration 2015b. Natural Gas Summary for Virginia. Available online at [http://www.eia.gov/dnav/ng/ng\\_sum\\_lsum\\_dcu\\_SVA\\_a.htm](http://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SVA_a.htm). Accessed August 2015.

U.S. Energy Information Administration 2015c. Natural Gas Summary for North Carolina. Available online at [http://www.eia.gov/dnav/ng/ng\\_sum\\_lsum\\_dcu\\_SNC\\_a.htm](http://www.eia.gov/dnav/ng/ng_sum_lsum_dcu_SNC_a.htm). Accessed August 2015.

U.S. Energy Information Administration 2015d. Market Trends; Electricity Demand. Available online at [http://www.eia.gov/forecasts/aeo/MT\\_electric.cfm](http://www.eia.gov/forecasts/aeo/MT_electric.cfm). Accessed August 2015.

U.S. Energy Information Administration 2015e. Market Trends; Natural Gas. Available online at [http://www.eia.gov/forecasts/aeo/mt\\_naturalgas.cfm](http://www.eia.gov/forecasts/aeo/mt_naturalgas.cfm). Accessed August 2015.

into North Carolina to support Duke Energy's existing and growing reliance on natural gas for needed electric generation and to meet Piedmont's core gas distribution load growth and system reliability and supply diversity goals. In June 2014, Virginia Power Services Energy Corp., Inc. (VPSE) also issued a request for proposals for firm natural gas transportation service to serve gas-fired power generation in the Commonwealth of Virginia. Dominion responded to these solicitations for new pipeline service with efforts that culminated in the ACP Project.

The Project will transport natural gas to the following electric generation and local distribution company customers in North Carolina and Virginia:

1. Duke Energy Progress, LLC (DEP), which will utilize the natural gas to help support its fleet of existing and proposed power generation facilities.
2. Duke Energy Carolinas, LLC (DEC), which will utilize the natural gas to help support its fleet of existing and proposed power generation facilities.
3. Piedmont, which will utilize the natural gas to help support its existing residential, commercial and industrial customers, as well as electric utilities in its service territory.
4. VPSE, which will utilize the natural gas to help support Dominion's fleet of existing and proposed power generation facilities.
5. Public Service Company of North Carolina, Inc. (PSNC), which will utilize the natural gas to help support its existing residential, commercial, and industrial customers, as well as electric utilities in its service territory.

6. Virginia Natural Gas Company, Inc. (VNG), which will utilize the natural gas to help support its existing residential, commercial, and industrial customers, as well as electric utilities in its service territory.

Atlantic has entered into precedent agreements with these six companies, (hereinafter, referred to as the “Customers”) for a total of 1.44 MMDt/day of firm transportation capacity, which is approximately 96 percent of the Project’s total capacity. Each of the precedent agreements is for a primary term of 20 years.

The Customers desired access to liquid receipt points in the competitive Appalachian supply region, to acquire the natural gas that will be transported through ACP. To provide that access for its Customers, Atlantic has contracted for capacity on DTI’s Supply Header Project, which is the subject of a separate, contemporaneous certificate application being submitted by DTI. Atlantic and DTI understand that because the two projects are related, their impacts will be reviewed in a combined environmental impact statement. To facilitate this review process, these two projects are addressed in combined environmental Resource Reports, just as they were presented through the Commission’s pre-filing process.

DTI requests the necessary authorizations to construct and operate the Supply Header Project and to provide firm transportation service to Atlantic in that application; Atlantic requests authorization herein for its proposed use of the contracted DTI capacity as an integrated part of Atlantic’s transportation service to its Customers.

On October 31, 2014, Atlantic requested Commission authorization to initiate the National Environmental Policy Act (NEPA) pre-filing process for the ACP. The Commission approved the request on November 13, 2014 in Docket No. PF15-6-000 and

combined the ACP pre-filing process with the pre-filing review of DTI's Supply Header Project (Docket No. PF15-5-000).

The FERC pre-filing process has enabled Commission Staff and other interested stakeholders to provide input and consultation that are reflected in this Application and formal request for authorization to proceed with the Project. During the FERC pre-filing process, Atlantic participated in meetings with local, state, and federal agencies and interested parties to seek out greater stakeholder involvement, identify interests, and resolve concerns early in the review of the Project. Atlantic filed draft Resource Reports in May 2015 for review and comment. As a result of the FERC pre-filing process, the Resource Reports included in Exhibit F-I of this Application address and incorporate comments of Commission Staff, resource agencies, and stakeholders.

### **III. EXECUTIVE SUMMARY**

Atlantic requests authorization here for a new interstate pipeline system to transport up to 1.5 MMDt/day from West Virginia into Virginia and North Carolina, to be constructed at an estimated cost of approximately \$5.1 billion. As previously mentioned, four major regional energy companies have joined together to form Atlantic and sponsor this important project. The ACP Project will help the economies of West Virginia, Virginia and North Carolina by bringing the benefits of additional supplies of clean, low-priced domestic natural gas to homes, businesses, manufacturers and power generators.

The ACP system will transport clean-burning natural gas from the nation's most prolific supply regions to serve the growing needs of natural gas consumers in Virginia and North Carolina. The electric utilities and gas distribution companies that have

contracted for nearly all of ACP's firm transportation capacity will gain access to abundant, growing and low-cost supplies available on the DTI system, including from the Marcellus and Utica Shale as well as other basins in the U.S. and Canada via interconnections with other interstate pipelines. Correspondingly, access to these new end-use, consumption markets will generally benefit producers in West Virginia, the Appalachian production region and other basins.

The benefits of natural gas are well known to this Commission. When burned, natural gas produces significantly lower emissions than coal, including just half the carbon, which furthers the goals of the Clean Power Plan recently announced by the U.S. Environmental Protection Agency on August 3, 2015 <sup>6/</sup>. ACP will provide a dependable supply of natural gas for electric utilities in the region, enabling them to use natural gas as a cleaner option to generate electricity. This new, reliable source of supply will help local gas utilities serve their customer obligations, and allow businesses to build or expand their operations.

Other key benefits of the Project include the following:

- Natural gas consumers in Virginia and North Carolina are expected to save \$377 million in net annual average energy costs as a result of the

---

<sup>6/</sup> The U.S. Environmental Protection Agency recently issued a new rule which is aimed at reducing carbon dioxide emissions from existing power generating facilities. (See, "The Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units", available online at <http://www2.epa.gov/cleanpowerplan/clean-power-plan-existing-power-plants#CPP-final> (pre-publication version)). This pre-publication version of the final rule identifies fossil fuel electric utility generating units as the largest stationary sources of greenhouse gas emissions in the United States, and notes that coal-fired units are the largest emitters. A main component of the rule is to encourage the decreased utilization of aging base load coal-fired plants and increased generation of electricity using cleaner fuel sources, including natural gas. Once the final rule is published in the Federal Register and becomes effective, each State/Commonwealth will be required to adopt a plan to meet tailored goals in carbon dioxide emissions, which will continue to spur increased reliance on natural gas.



operation of the ACP, according to an analysis by Virginia-based consulting firm ICF International. <sup>7/</sup>

- Property taxes paid to counties and municipalities by the proposed ACP would ultimately exceed \$25 million a year. Annual property tax payments will increase during the construction period, based on tax formulas in each state and locality. For example, counties and municipalities along the proposed route would receive an estimated nearly \$23 million in property tax payments in 2020, increasing to more than \$25 million starting in 2024, when the full value of the project is ultimately reflected in tax payments. <sup>8/</sup>
- A report prepared for Dominion on behalf of Atlantic by Chmura Economics & Analytics entitled “The Economic Impact of the Atlantic Coast Pipeline in West Virginia, Virginia and North Carolina” concludes that construction of the Project would have a cumulative economic impact (direct, indirect, and induced) of more than \$2.7 billion supporting a total of 17,240 jobs in the three-state/commonwealth region during the period from 2014 to 2019. <sup>9/</sup>

---

<sup>7/</sup> See news release, “Atlantic Coast Pipeline Estimated To Save Consumers, Businesses \$377 Million Annually In Energy Costs, Analysis Says,” available at: <http://dom.mediaroom.com/2015-02-11-Atlantic-Coast-Pipeline-Estimated-To-Save-Consumers-Businesses-377-Million-Annually-In-Energy-Costs-Analysis-Says>. The study is available at <https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-icf-study.pdf>.

<sup>8/</sup> A spreadsheet detailing the projected tax payments by year and county is available at: <https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-property-tax-estimates-may2015.pdf>.

<sup>9/</sup> This report is also publicly available at: <https://www.dom.com/library/domcom/pdfs/gas-transmission/atlantic-coast-pipeline/acp-chmura-report-091014.pdf>

For the foregoing reasons, and as demonstrated fully herein, the Project satisfies the requirements of Section 7 of the NGA. Accordingly, Atlantic requests that the Commission grant all the authorizations requested in this Application.

#### **IV. DESCRIPTION OF PROPOSAL**

##### **A. Non-Binding and Binding Open Seasons**

###### Non-Binding Open Season

Atlantic conducted a non-binding open season from April 16, 2014 to May 9, 2014 for the proposed firm transportation services offered for this Project. As a result of the open season and negotiations that followed it, Atlantic executed precedent agreements for firm transportation service totaling 1.44 MMDt/day. Atlantic's precedent agreements are with the following Customers, with each Customer's Maximum Daily Transportation Quantity (MDTQ) provided in parentheses: DEP (452,750 Dt/day), DEC (272,250 Dt/day), Piedmont (160,000 Dt/day), VPSE (300,000 Dt/day), PSNC (100,000 Dt/day), and VNG (155,000 Dt/day). <sup>10/</sup>

###### Binding Open Season

Atlantic conducted a binding open season from October 21, 2014 to November 10, 2014 for the proposed firm transportation services offered for this Project. No additional customers or executed binding precedent agreements for firm transportation service resulted from this second open season.

---

<sup>10/</sup> VNG originally contracted for 75,000 Dt/day, and later in 2015 entered into an amendment to add an additional 80,000 Dt/day of capacity. VNG has an option, however, to provide Atlantic notice on or before June 30, 2016, to "turn back" this incremental capacity, while Atlantic has the opportunity to require VNG to decide whether or not it wants the capacity at an earlier date if Atlantic reaches agreement with another entity that would like to contract for that capacity. As a result of the sequencing of its contracting, VNG is not considered an Anchor Shipper even though its total contracting capacity would have qualified it for such treatment to the extent the full MDTQ was contracted for as part of the open season process.

## Foundation and Anchor Shippers

As described in the materials provided for its second open season, Atlantic recognizes two special categories of customers that are making significant contributions to ensure the viability of this major new pipeline project: Foundation Shippers, defined as those contracting for at least 300,000 Dt/day of firm transportation capacity for a term of at least 20 years, and Anchor Shippers, which are those contracting for at least 150,000 but less than 300,000 Dt/day for a term of at least 20 years. Affiliated customers (or bidders) were entitled to aggregate their contract volumes to qualify for Foundation or Anchor Shipper status. Foundation and Anchor Shippers have been granted certain contractual rights not available to other customers, as needed incentives to secure the level of contractual commitments necessary to develop the Project. These rights are explained in further detail below. All potential customers were given an opportunity to become Foundation or Anchor Shippers through the open season process. 11/ DEP, DEC and VPSE qualify as Foundation Shippers while Piedmont qualifies as an Anchor Shipper.

### B. Facilities and Operation

Atlantic proposes to construct, own, and operate Project pipeline system facilities that include:

---

<sup>11/</sup> The second open season materials explained the standards to qualify as Foundation and Anchor Shippers, and that such customers were being granted certain rights. Any interested potential customer executing a Confidentiality Agreement was provided a form of Precedent Agreement which reflected the relevant special terms applicable to the desired class of customer(s). The Precedent Agreement for Foundation Shippers provided that their capacity would not be reduced or prorated through the open season process, while the agreement for Anchor Shippers allowed for reductions only if the total capacity contracted by Foundation and Anchor Shippers exceeded 2 MMDt/day. The open season was structured to allocate capacity to Foundation and Anchor Shippers prior to allocating capacity to any other customers. The total capacity requested did not exceed the ACP's planned capacity, so all Customer contract quantity requests were met.

1. Mainline Pipeline AP-1

approximately 300.1 miles of underground 42-inch outside diameter natural gas transmission pipeline in Harrison, Lewis, Upshur, Randolph and Pocahontas Counties, West Virginia; Highland, Augusta, Nelson, Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Brunswick and Greensville Counties, Virginia, and Northampton County, North Carolina.

2. Mainline Pipeline AP-2

approximately 183.0 miles of underground 36-inch outside diameter natural gas transmission pipeline in Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson Counties, North Carolina.

3. Lateral Pipeline AP-3

approximately 79.3 miles of underground 20-inch outside diameter natural gas lateral pipeline in Northampton County, North Carolina; and Greensville and Southampton Counties and the Cities of Suffolk and Chesapeake, Virginia.

4. Lateral Pipeline AP-4

approximately 0.6 miles of underground 16-inch outside diameter natural gas lateral pipeline in Brunswick County, Virginia.

5. Lateral Pipeline AP-5

approximately 1.1 mile of underground 16-inch outside diameter natural gas lateral pipeline in Greensville County, Virginia.

6. Compressor Station 1 (Marts Compressor Station)

a new, natural gas-fired compressor station near milepost (MP) 7.6 of the AP-1 mainline in Lewis County, West Virginia. At this compressor station, Atlantic proposes to install four natural-gas driven turbines: a Solar Titan 130 unit (20,500 horsepower [hp]), a Solar Mars 100 unit (15,900 hp), a Solar Taurus 70 unit (10,915 hp) and a Solar Taurus 60 unit (7,700 hp), for a combined total of 55,015 hp of compression. <sup>12/</sup>

7. Compressor Station 2 (Buckingham Compressor Station)

a new, natural gas-fired compressor station near MP 191.5 of the AP-1 mainline in Buckingham County, Virginia. At this compressor station, Atlantic proposes to install four natural-gas driven turbines: a Solar Mars 100 unit (15,900 hp), a Solar Taurus 70 unit (10,915 hp), a Solar Taurus 60 unit (7,700 hp) and a Solar Centaur 50 unit (6,200 hp), for a combined total of 40,715 hp of compression.

8. Compressor Station 3 (Northampton Compressor Station)

a new, natural gas-fired compressor station near MP 300.1 of the AP-1 mainline in Northampton County, North Carolina. At this compressor station, Atlantic proposes to install three natural-gas driven turbines: a Solar Taurus 70 unit (10,915 hp), a Solar Centaur 50 unit (6,200 hp) and a Solar Centaur 40 unit (4,700 hp), for a combined total of 21,815 hp of compression.

---

<sup>12/</sup> The referenced hp for each compressor unit is the manufacturer's ISO hp rating for the compressor engine installed at sea level and operating at 59 degrees Fahrenheit.

#### 9. Metering and Regulating Stations

nine new metering and regulating (M&R) stations at receipt and/or delivery points along the new pipelines. Proposed M&R station sites include: (1) Kincheloe M&R Station near Marts Junction Interconnect (MP 7.6 on AP-1 in Lewis County, West Virginia), (2) Long Run M&R Station (MP 47.2 on AP-1 in Randolph County, West Virginia), (3) Woods Corner M&R Station at Buckingham Interconnect (MP 191.5 on AP-1 in Buckingham County, Virginia), (4) Smithfield M&R Station at Johnston County Interconnect (MP 92.7 on AP-2 in Johnston County, North Carolina), (5) Fayetteville M&R Station at Fayetteville Interconnect (MP 132.9 on AP-2 in Cumberland County, North Carolina), (6) Pembroke M&R Station at Robeson Interconnect (MP 183.0 on AP-2 in Robeson County, North Carolina), (7) Elizabeth River M&R Station at Southern Gate 1 Interconnect (MP 79.3 on AP-3 in the City of Chesapeake, Virginia), (8) Brunswick M&R Station (MP 0.6 on AP-4 in Brunswick County, Virginia) and (9) Greenville M&R Station (MP 1.1 on AP-5 in Greenville County, Virginia).

#### 10. Valve Sites

30 valve sites at select points along the new pipelines at intervals specified by U.S. Department of Transportation (USDOT) regulations at Title 49 Code of Federal Regulations (C.F.R.) Part 192.

11. Pig Launcher and/or Receiver Sites

eight sets of pig launchers and/or receivers at 11 points along the new pipelines.

See Exhibit F for the Project facilities locations and Exhibit F-I for more detailed descriptions of the Project facilities.

C. Cost

As detailed in Exhibit K, the estimated total cost for Atlantic's construction of the Project is \$5,136,539,674. The AFUDC included in Exhibit K is calculated in compliance with the Commission's AFUDC policy, with accruals beginning in March 2015. <sup>13/</sup> In accordance with the AFUDC policy, Atlantic affirms that it was incurring capital expenditures for the Project in March 2015, and that activities necessary to prepare the Project for its intended use were in progress at that time.

D. Market and Primary Delivery and Receipt Points

Atlantic has executed precedent agreements with its Customers, as further documented in Exhibit I. These precedent agreements require Atlantic and its Customers to execute firm transportation service agreements within 30 days after Atlantic receives and accepts the Commission authorizations requested in this Application.

Each Customer will receive firm transportation services for a primary term of 20 years under the terms of Atlantic's *pro forma* Rate Schedule FT, for a total Maximum Daily Transportation Quantity (MDTQ) of 1.44 MMDt/day. Therefore, the Project's firm

---

<sup>13/</sup> *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 (2010).

capacity is approximately 96 percent subscribed. The proposed commencement date for the firm transportation service is no later than November 1, 2018.

The Customers' primary delivery points include the ACP's interconnection with Columbia Gas Transmission, Randolph County, West Virginia; an interconnection with Transcontinental Gas Pipe Line Company, Buckingham County, Virginia; certain points in Brunswick County, Virginia and Greensville County, Virginia; the Southern Gate 1 Interconnect in Chesapeake, Virginia; the Johnson County Interconnect, Johnson County, North Carolina; the Fayetteville Interconnect, Cumberland County, North Carolina; and Junction A – Robeson Interconnect, Robeson County, North Carolina. New meter stations will be installed at all primary delivery points. Specific Customer rights at each of these delivery points are set forth in Exhibit I.

Primary receipt points for each Customer are also detailed in Exhibit I. All of the Customers will have primary receipt rights at the new Marts Junction Interconnection with DTI in Harrison County, West Virginia, at the northern-most origin of the Project. No M&R Station is proposed for the Marts Junction Interconnect, because the nearby terrain is unsuitable and because the ACP and DTI will interconnect again at the location of the Kincheloe M&R Station, at MP 7.6 on AP-1 in Lewis County, West Virginia. DTI and Atlantic have agreed that DTI may deliver gas to Atlantic, at DTI's election, 14/ either at Marts Junction itself or at the nearby interconnection with the ACP at the Kincheloe M&R, but all volumes received from DTI will be measured at Kincheloe M&R and treated for purposes of Atlantic's contracts with Customers as received at

---

14/ Receipts at Kincheloe, rather than at Marts Junction, provide a minor operational advantage to Atlantic as the gas at that point on AP-1 will be at a higher pressure when received. DTI's preferences regarding where to deliver gas to Atlantic will depend on operational conditions and the direction of flow on that part of its system, which will vary from time to time.



Marts Junction. In addition, all of the Customers have elected to secure additional upstream receipt points as explained in the next section of this Application.

E. Atlantic's Capacity on DTI's Supply Header Project and the Piedmont Lease

Access to a lower cost, highly liquid 15/ gas supply area is a critical requirement of Atlantic's Customers. To satisfy this requirement, Atlantic contracted for capacity on DTI's Supply Header Project that will be used as an integrated part of Atlantic's firm transportation service. Each of Atlantic's Customers had the choice of whether Atlantic should contract capacity for it on DTI to obtain upstream receipt points. All of the Customers desired that option, with upstream receipt point rights corresponding to their full MDTQs.

Accordingly, Atlantic has contracted for 1,450,882 Dt/day of firm transportation capacity for a 20-year term on DTI's Supply Header Project. The small difference of 10,882 Dt/day between this contract quantity on DTI's Supply Header and the contractual commitments of Atlantic's Customers reflects the capacity required to transport Atlantic's projected initial fuel retainage, so that the resulting quantities transported to Atlantic's delivery points may equal the Customer's MDTQ.

Atlantic will utilize its capacity on DTI to serve the Customers in a seamless, integrated fashion, treating gas received through the Supply Header Project as if it is a receipt onto its own system. To that end, Atlantic (and DTI) request a waiver of the

---

15/ "Liquid" here refers to the "liquidity" created by a large volume of transactions characterized by multiple buyers and sellers willing to trade natural gas on a daily basis and in the futures market.

Commission’s “shipper must have title” rule to allow DTI to transport gas for Atlantic that is owned by Atlantic’s Customers. 16/

As proposed, gas received at Atlantic’s receipt points on DTI are treated as receipts by Atlantic’s Customers, and Atlantic’s primary receipt point entitlements on DTI are divided among the Customers in proportion to their contractual rights, as reflected in the summary of the relevant terms of Atlantic’s precedent agreements with its Customers in Exhibit I. Each of Atlantic’s Customers is entitled to receive up to its full MDTQ at Dominion South Point, a non-physical trading point on the DTI system that is one of the most highly liquid trading hubs in the U.S. In addition, each Customer has primary receipt point rights at five different physical receipt points on DTI, providing access to a diverse range of supply options. The Customer may utilize, on a secondary basis, any physical point of receipt on the DTI system in accordance with the terms of DTI’s FERC Gas Tariff. The Customer may also deliver to points on DTI’s system on a secondary basis—including to Dominion South Point-- so long as the Customer is using a receipt point on DTI’s system, subject to the terms of DTI’s FERC Gas Tariff.

Atlantic has also entered into a lease of 100,000 Dt/day of capacity on the Piedmont local distribution system, from the point of interconnection between the ACP and Piedmont in Johnson County, North Carolina to a delivery point near Clayton, North Carolina. Atlantic entered into this lease because existing capacity was available on Piedmont’s system. This lease arrangement avoids construction of duplicative facilities

---

16/ The Commission routinely grants waivers of its “shipper must have title” policy for off-system capacity acquired by pipelines provided that the acquiring pipeline files tariff language specifying that it will only transport for others on the off-system capacity pursuant to its existing tariff and rates. *E.g.*, *Texas Eastern Transmission Corp.*, 93 FERC ¶ 61,273 (2000), *reh’g denied*, 94 FERC ¶ 61,139 (2001). Atlantic has addressed its use of off-system capacity in Section 29 of the General Terms and Conditions of its filed *pro forma* Tariff.

in the same corridor. Atlantic is entitled to utilize the leased Piedmont capacity as if it were its own capacity to serve its customers. Atlantic and Piedmont are jointly requesting Commission approval of this lease in a separate application that is also filed concurrent with this Application.

F. Part 284 Certificate, Tariff, and Rights of Foundation and Anchor Shippers

Atlantic proposes to provide natural gas transportation service in interstate commerce on an open-access, not unduly discriminatory basis consistent with the Commission's Part 284 regulations and pursuant to the terms of its FERC Gas Tariff, a *pro forma* copy of which is included in Exhibit P. Atlantic requests that the Commission issue a Part 284 Blanket Certificate to allow Atlantic to provide open access transportation service to the Customers and other customers requesting and qualifying for transportation service under Atlantic's FERC Gas Tariff, with pre-granted abandonment. With the Blanket Certificate, Atlantic will not require individual authorization to provide transportation service to any particular customer. Atlantic hereby states that it will comply with the conditions of the Blanket Certificate set forth in Section 284.221(c) of the Commission's regulations.

Atlantic also requests that the Commission approve the terms of Atlantic's proposed FERC Gas Tariff. This Tariff, which was developed with input from the Customers, has been prepared in conformance with Parts 154 and 284 of the Commission's regulations, Order No. 636, et seq., Order No. 637, et seq., and other

Commission orders and policies. <sup>17/</sup> The Tariff contains proposed rates, rate schedules, General Terms and Conditions (“GT&C”) and forms of service agreement.

Atlantic proposes to offer two basic transportation services: firm service under Rate Schedule FT and interruptible service under Rate Schedule IT. Both Rate Schedules require the Customers to tender, and Atlantic to deliver, gas at a uniform flow rate equal to 1/24<sup>th</sup> of the scheduled quantity unless Atlantic has the operational capability to allow the customers certain additional flexibility. The unique circumstances of this major new infrastructure enabled Customers to secure capacity at sufficient levels to ensure adequate, firm flow rates at peak hours - whether for gas-fired power generation or local distribution – while establishing a necessary clear basis for design of Project facilities.

Among the typical provisions of the GT&C are sections addressing: Requesting and Contracting for Service (Section 11), Nominations and Confirmation of Receipts and Deliveries (Section 12), Scheduling and Scheduling Priorities (Section 13), Allocation of Receipts and Deliveries (Section 14), Capacity Release (Section 15), Incorporation of NAESB Standards by Reference (Section 17), Operational Flow Orders (Section 18), Pregranted Abandonment and Right of First Refusal (Section 25), Allocation of Available Firm Capacity (Section 26), Reservation Charge Adjustments (Section 39), Imbalance Resolution Procedures (Section 42), and Operational Sales and Purchases of Natural Gas (Section 43).

---

<sup>17/</sup> Atlantic believes that all the Customers generally support or do not oppose the service terms and conditions reflected in its *pro forma* FERC Gas Tariff..

While Atlantic's proposed Tariff is consistent with the Commission's precedent and policy, some provisions that are more specific to Atlantic warrant additional brief explanation.

GT&C Section 29 addresses Off-System Capacity acquired by Atlantic and, specifically, its capacity on DTI's Supply Header Project. The Tariff section provides, generally, for customers with upstream primary receipt points rights on the DTI system (including all the Customers) to pay all applicable DTI rates and charges for the Supply Header Project, as they may be modified from time to time. GT&C Section 29 further provides that Customers holding primary receipt point entitlements on Atlantic's DTI capacity may direct Atlantic to request a primary receipt point change, and if DTI grants the request pursuant to its Tariff, then Atlantic shall also reflect the change in its Customer's Service Agreement. In addition, GT&C Section 29 provides that all other customers using the DTI capacity held by Atlantic will be charged the then-applicable IT usage rate and all other applicable charges for DTI's Supply Header Project.

GT&C Section 31 establishes Atlantic's transportation fuel retention methodology. The tariff provides that the transportation fuel retention percentage will be adjusted on a quarterly basis and that any over- or under-recoveries of fuel are tracked and flowed through in future period fuel retention percentages. The quarterly adjustment is necessary because actual fuel use on Atlantic's system will be affected by many factors, but primarily by customer nominations. Due to Atlantic's limited capabilities to manage gas balances relating to over- or under-collection of fuel quantities, quarterly adjustments are required to keep the physical inventory well balanced. In addition, the Tariff provides that Atlantic will submit an annual filing supporting the Transportation

Fuel Retainage Percentages charged during the previous year. Atlantic will submit a tariff filing 30 to 60 days prior to going in-service to establish its initial Transportation Fuel Retainage Percentage. Finally, GT&C Section 31 provides for Atlantic to retain the then-applicable fuel retainage assessed by DTI for the Supply Header Project capacity utilized by Atlantic (in accordance with the terms of GT&C Section 29).

GT&C Section 37 addresses overruns and penalties. Consistent with Commission policy, Atlantic has proposed authorized overrun rates at the standard interruptible transportation rates, while additional penalties apply for unauthorized overruns in excess of 102 percent of the applicable MDTQ. Atlantic also proposes scheduling penalties for deliveries that deviate from the scheduled quantities by more than 5 percent. The scheduling penalties are intended to provide customers with the incentive to schedule accurately. Inaccurate scheduling has the potential to threaten the reliability of Atlantic's service to other customers, in light of the system's lack of storage and limited available line pack. GT&C Section 37 requires Atlantic to credit its unauthorized overrun and penalty revenues to its customers.

GT&C Section 38 provides for revenue crediting of all amounts charged for interruptible transportation service and authorized overrun charges under Rate Schedule FT, net of applicable surcharges and variable costs incurred in providing the service. These revenue credits are to be allocated to customers based on the percentage of their base reservation revenue contributions. This revenue crediting mechanism is consistent

with the Commission's required policy. <sup>18/</sup> In addition, GT&C Section 38 provides that those customers being assessed Off-System Capacity charges, as described above, will be eligible for revenue credits that are attributable to the Off-System Capacity.

GT&C Section 35 describes Atlantic's Negotiated Rate authority and provides for Atlantic to file, prior to the effective date of the rate, either the negotiated rate agreement or a summary of its material terms. As explained below, all the Customers have agreed to pay negotiated rates. Atlantic agreed upon a number of aspects of its negotiated rates with Foundation and Anchor Shippers as described in Section IV.G below.

GT&C Section 34 addresses Non-Conforming Service Agreements and requires Atlantic, if it agrees to deviate from its Form of Service Agreement, to file the non-conforming service agreement with the Commission for approval. Atlantic agreed to a number of specific contractual provisions with its Foundation and Anchor Shippers, which may be viewed as material deviations from its Form of Service Agreement. Atlantic offered these provisions in order to obtain the capacity commitments making the Project possible, and provided them to Foundation and Anchor Shippers in recognition of their significant financial commitments to the Project that distinguish them from any other customers. Moreover, all potential customers were offered the opportunity to become Foundation or Anchor Shippers through the open season process.

Atlantic requests that the Commission approve its Foundation and Anchor related service provisions in its Order on this Application. The Commission has repeatedly recognized that non-conforming provisions may be necessary to reflect the

---

<sup>18/</sup> The Commission's general policy regarding new interruptible services requires pipelines to either credit 100 percent of interruptible revenue, net of costs, or to allocate costs and volumes to its interruptible services. *E.g.*, *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 at P 50 (2014); *Transcontinental Gas Pipe Line Corp., LLC*, 130 FERC ¶ 61,019 at P 21 (2010).

unique circumstances involved with construction of new infrastructure and to provide the needed security to ensure the viability of a project. <sup>19/</sup> The Commission's policy is to accept non-conforming provisions for major, initial customers if they will not present any risk of undue discrimination, affect the operational conditions of providing service, or result in a customer receiving a different quality of service from that available to other customers. <sup>20/</sup> Atlantic submits that all of the provisions applicable to its Foundation and Anchor Shippers should be accepted pursuant to these standards.

Atlantic's Foundation Shippers are provided the following contractual rights that may be viewed as non-conforming provisions:

1. The right to extend the initial 20-year primary term by additional five-year extension period(s), which may be exercised up to four times, with a contractual Right of First Refusal at the end of the final contractual term. <sup>21/</sup> The Foundation Shipper also is provided the right to reduce its MDTQ for an extended term. Atlantic and the Customers also have agreed upon negotiated rates to apply during these extension terms.
2. A one-time option to elect to contract for an additional quantity of up to one-third of its MDTQ, for a new 20-year term, in the first expansion of the ACP, which may be up to 500,000 Dt/day (depending on customer commitments).

---

<sup>19/</sup> *E.g.*, *Gulf South Pipeline Co., LP*, 149 FERC ¶ 61,174 at P 104 (2014); *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 at P 104 (2014); *Transcontinental Gas Pipe Line Corp., LLC*, 145 FERC ¶ 61,152 at P 34 (2013); *Tennessee Gas Pipeline Co.*, 144 FERC ¶ 61,219 at P 32 (2013); *Tennessee Gas Pipeline Co.*, 140 FERC ¶ 61,120 at P 25 (2012); *Tennessee Gas Pipeline Co.*, 139 FERC ¶ 61,161 at P 37 (2012); *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138 at P 56 (2012).

<sup>20/</sup> Commission decisions cited in the preceding footnote.

<sup>21/</sup> The Commission has previously agreed upon special contract extension rights for major shippers committing to capacity in new infrastructure projects. *E.g.*, *Tennessee Gas Pipeline Co.*, 139 FERC ¶ 61,161 at P 31 and 37 (2012); *Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138 at P 55-56 (2012).



This expansion may be requested by a Foundation Shipper any time after issuance of Commission approval of this Application and before the date that is four years after the ACP commences service. 22/ If and when a Foundation Shipper exercises this right, Atlantic commits, subject to agreeing on terms of a future contract and subsequent receipt of required regulatory approvals, to design, permit, construct and place facilities in service to provide the requested incremental expansion capacity within 36 to 48 months of contract execution. Atlantic has also agreed upon the methodology for setting the (negotiated) rate to charge the Foundation Shipper for the requested incremental expansion capacity, which is significantly lower than the initial Project rate, reflecting the ability to expand the Project inexpensively by adding compression. 23/

3. A right to request that Atlantic consider undertaking a second expansion (beyond the first expansion explained above). Upon the receipt of such a request, Atlantic is required to determine the scope, design, and estimated costs and rates for adding a requested level of incremental capacity, and Atlantic and the Foundation Shipper would then negotiate in good faith concerning the terms of the Foundation Shipper's potential participation in such a further expansion.

---

22/ If another Foundation Shipper first requests the expansion, the other Foundation Shippers may still elect to participate in it and contract for up to one-third of their MDTQ of incremental capacity.

23/ The Commission have previously recognized that when a subsequent expansion is less expensive, it is reasonable to provide a priority in allocating capacity to major shippers that made the original project possible and that will commit to both projects. *Transcontinental Gas Pipe Line Corp., LLC*, 145 FERC ¶ 61,152 at P 34 (2013). *See also Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 at P 104 (2014).

Atlantic also agreed to similar provisions with its Anchor Shippers. Anchor Shippers have the same term extension rights as Foundation Shippers. Anchor Shippers also are given the opportunity to participate in the ACP's first expansion, electing to contract for incremental capacity for a 20-year term of up to one-third of their MDTQ at the specified, negotiated rates. Anchor Shippers, however, cannot trigger the timing of that expansion; they may only participate when a Foundation Shipper requests that the ACP expand. Anchor Shippers do not have any right to cause Atlantic to negotiate the terms of a possible second expansion, unlike Foundation Shippers.

One other provision of the GT&C of Atlantic's FERC Gas Tariff reflects certain capacity rights that have been allocated exclusively to Foundation and Anchor Shippers. Rate Schedule FT and GT&C Section 41 describe "pack accounts" that may be utilized to tender gas quantities into the account in advance, for later delivery on a no-notice basis. The Foundation or Anchor Shipper will utilize its FT receipt point entitlements to bring gas to the ACP system for this purpose; re-delivery of packed quantities will be achieved using the Customer's FT delivery point rights. This flexibility to utilize "packed" volumes to ensure very prompt initiation of gas flow is an important service feature for Atlantic's Foundation and Anchor Shippers, many of whom are electric generation customers that may have significant and unexpected variations in their gas needs. Atlantic has no access to gas storage on its system and has only a limited system-wide capability to retain gas for such needs, in addition to the line pack required for the pipeline's day-to-day operations. Accordingly, Atlantic allocated this tool to its Foundation and Anchor Shippers, and each such Customer has a specified Maximum Pack Quantity included in its Rate Schedule FT service agreement. Again, because all

potential customers had the right to become Foundation or Anchor Shippers through the open season process, this allocation of packing capacity to those customers making the financial commitments that make the Project possible is not unduly discriminatory.

For all of the initial Customers, Atlantic also agreed to certain provisions that may be considered non-conforming, which include:

1. certain special creditworthiness provisions with all of the initial Customers , as is typically done for new pipeline projects;
2. the extension rights described above for the Foundation and Anchor Shippers, including the MDTQ reduction rights, contractual ROFR and negotiated rates for the extended terms; and,
3. with respect to the capacity rights held on DTI, a non-conforming provision which provides that, prior to the termination date of Atlantic's DTI FT service agreement, Atlantic will determine if Customer elects to extend its DTI capacity right and if so, Atlantic will contract with DTI accordingly. However, if Customer elects not to maintain its DTI capacity rights, such rights will be removed from the affected service agreements.

Finally, Atlantic has made every effort to reflect the input of its Customers, current NAESB standards, applicable Commission regulations and policies, and relevant operational capabilities in the development of its *pro forma* FERC Gas Tariff. Atlantic respectfully requests any waivers of the Commission's regulations that may be deemed necessary to implement the FERC Gas Tariff as proposed.

## G. Initial Rates

As shown in Exhibit P and consistent with the Commission's rate design policies, Atlantic has designed initial, firm transportation base recourse rates to recover the projected costs of the Project facilities. The proposed base recourse rates are based on the cost of Atlantic's facilities recovered over the total available capacity based on a straight fixed-variable basis and a single, system-wide ("postage stamp") rate design. The cost of service underlying the firm transportation recourse rates has been calculated based on Atlantic's estimated capital costs (as detailed in Exhibit K), estimates for operation and maintenance expenses based on the costs of similar facilities, and other expenses such as property taxes. The recourse rates are based on an overall pre-tax rate of return of 15.0 percent -- based on a capital structure of 50 percent equity and 50 percent debt, a rate of return on equity of 14 percent, and an estimated cost of debt of 6.8 percent – a Federal and State effective income tax rate of 39.5 percent, and a depreciation rate of 2.5 percent. The proposed rate of return reflects the risks inherent in a new, major project venture like the ACP and is consistent with returns authorized for other new pipeline companies. <sup>24/</sup>

The proposed maximum recourse rate for service under Rate Schedule IT is based on the 100 percent load factor equivalent of the Rate Schedule FT rate. The derivation and support for Atlantic's initial recourse rates is set forth in Exhibit P and fully

---

<sup>24/</sup> See, e.g., *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 at P 48-49 (2014)(50/50 capital structure and rate of return on equity of 14%); *Sierrita Gas Pipeline, LLC*, 147 FERC ¶ 61,192 at n. 24 (2014)(70% debt / 30% equity, with a rate of return on equity of 14%); *Ruby Pipeline LLC*, 136 FERC ¶ 61,054 at ¶ 11 (2011)(14% rate of return on equity with an imputed 50/50 capital structure); *Bison Pipeline LLC*, 131 FERC ¶ 61,013 (2010) (50/50 capital structure and rate of return on equity of 14%); *ETC Tiger Pipeline, LLC*, 131 FERC ¶ 61,010 (2010) (50/50 capital structure and rate of return on equity of 14%).

presented in the *pro forma* Tariff contained therein. An estimate of revenues and expenses for Atlantic's first three years of operations is included in Exhibit N.

In addition to the base recourse rates described above, and as fully set forth in Atlantic's *pro forma* Tariff, the recourse rates for service shall include all other applicable rates, charges and surcharges under Atlantic's Rate Schedule FT or IT. Those charges include, for example, the Transportation Fuel Retention in accordance with GT&C Section 31, the Commission-required Annual Charge Adjustment in accordance with GT&C Section 20 and (for customers with receipt point rights on the DTI Supply Header Project) the Off-System Capacity charges in accordance with GT&C Section 29.

All of Atlantic's Customers were given the choice of paying recourse rates or agreeing instead to negotiated rates, and all chose negotiated rates. The agreed-upon negotiated rates include reservation and usage base rates that are less than the proposed, initial base recourse rates. <sup>25/</sup> In addition to the negotiated base reservation and base usage rate, Atlantic will also charge the Customers all other applicable rates, charges and surcharges under its Rate Schedule FT. Atlantic recognizes that it must file for separate Commission authorization of the negotiated rates, prior to commencing service. <sup>26/</sup> Atlantic further acknowledges that it may be at risk for any revenue shortfall associated with negotiated rate agreements that may be identified in a subsequent rate proceeding, to the extent consistent with applicable Commission policies at that time.

---

<sup>25/</sup> The revenue reflected on Exhibit N, Line 1 is based on the fixed negotiated rates that Atlantic has agreed to charge its Customers.

<sup>26/</sup> "In certificate proceedings, the Commission establishes initial recourse rates but does not make determinations regarding specific negotiated rates for proposed services." *MoGas Pipeline, LLC*, 124 FERC ¶ 61,287 (2008) citing *Centerpoint Energy – Mississippi River Transmission Corp.*, 109 FERC ¶ 61,007 at P. 19 (2004).

To avoid any potential future issues, Atlantic explains here certain aspects of its negotiated rate agreements with its Customers. Those agreements set forth a fixed rate for the entire 20-year primary terms, with other fixed rates specified for extension terms, as well as for a rate adjustment for Foundation and Anchor Shippers to reflect the lower rate applicable to incremental capacity under certain circumstances as described above. In an agreed-upon risk sharing arrangement, the negotiated rate would be decreased by specified amounts for certain delays in the Project in-service date or if Atlantic agrees to charge other customers meeting specified criteria a lower rate (a “Most Favored Nation” provision). The fixed rate may be increased in the event of certain, unexpected future governmental actions imposing increased costs on Atlantic or for Commission-approved surcharges to recover new costs. Atlantic and its Customers also agreed on a negotiated rate applicable to the upstream DTI Supply Header Project capacity that mirrors the rate agreement between DTI and Atlantic. <sup>27/</sup> Atlantic requests that the Commission hold, in its Order acting on this Application, that negotiated rate terms like those described here and applicable to its Customers are not unduly discriminatory. <sup>28/</sup>

H. Request for Part 157(F) Blanket Certificate

Atlantic requests that the Commission issue it a Blanket Certificate of public convenience and necessity pursuant to Section 157.204 of the Commission’s regulations authorizing future facility construction, operation and abandonment as set forth in the

---

<sup>27/</sup> Atlantic will pay DTI a very slightly lower unit rate than Atlantic’s Customers will pay under the proposed rate design, to reflect the small amount of incremental DTI capacity held for purposes of delivering Atlantic system fuel. As a result, the total amount paid by Atlantic’s Customers for the DTI capacity will equal the total amount that Atlantic pays DTI for the capacity held for its Customers’ benefit.

<sup>28/</sup> See cases cited in note 20, *supra*. and *Revisions to Blanket Certificate Regulations and Clarification Regarding Rates*, FERC Stats. & Regs. P 32,606 at P 98 (2006)(“rate differentials between foundation shippers that sign up for service early and shippers that sign up for service later are not unduly discriminatory since later shippers are not similarly situated to the foundation shippers,” provided that “all potential shippers have an equal and open opportunity to become foundation shippers.”)

Blanket Certificate regulations in Part 157(F). This Blanket Certificate will provide Atlantic, as a new interstate pipeline, NGA Section 7 authority to perform certain activities related to the construction, acquisition, abandonment, and replacement and operation of certain pipeline facilities, as allowed under Part 157, Subpart F regulations. Atlantic hereby states that it will comply with the related conditions of that Subpart.

## **V. PUBLIC CONVENIENCE AND NECESSITY**

Atlantic submits that the proposed Project is in the public convenience and necessity and that the Commission should grant certificate authority to construct, own and operate the Project, as well as the requested Blanket Certificates. In deciding whether to authorize new pipeline construction, the Commission balances the public benefits against potential adverse consequences.

The ACP Project will result in significant public benefits. Atlantic's precedent agreements, for nearly all of the Project capacity, demonstrate the long-term market need for the Project from major electric utilities and local distribution companies in Virginia and North Carolina. The ACP will provide those Customers, and the consumers they serve, with new access to the nation's most dynamic natural gas production area – the Appalachian supply basins – with its abundant, low-cost supplies. The Project will provide a corresponding new outlet to major markets to the south for producers in the Appalachian region and other supply basins in North America. The Project will also provide other important benefits to the States where the ACP will be located, including the new jobs related to construction of this multi-billion dollar new pipeline system and the associated tax revenues.

These benefits of the Project outweigh any adverse impacts on Atlantic's existing customers (since there are none), captive customers of other pipelines, or affected landowners and communities, as examined pursuant to the Commission's Policy Statement. By applying the Policy Statement framework, the Commission seeks to foster competitive markets, to protect captive customers, and to provide "incentives for the optimal level of construction and efficient customer choice." <sup>29/</sup> Atlantic's proposal meets each of the Commission's objectives.

A. The Threshold Requirement - No Financial Subsidies

Under the Policy Statement, Atlantic must demonstrate that its Project is in the public interest, which can be met by establishing that the Project is financially viable without subsidies. Atlantic clearly meets this requirement. Atlantic is a new pipeline with no existing customers; so, it cannot rely on subsidies by existing customers to support its Project. As discussed in Section IV.G above, the proposed recourse rates for Atlantic's service provide adequate financial support to cover the cost of the proposed facilities. Atlantic expects the negotiated rates agreed to with its Customers to support the cost of the Project facilities, and if they do not, Atlantic has indicated in Section IV.G that it will be at risk for any revenue shortfall. Atlantic also is at-risk for costs associated with the small remaining amount of unsubscribed capacity.

B. No Adverse Effects on Potentially Affected Interests

In deciding whether Atlantic's proposal is required by the public convenience and necessity, the Commission will consider any adverse effects on the economic interests of existing customers, of competing existing pipelines and their captive customers, and of

---

<sup>29/</sup> Policy Statement at p. 61,743.



landowners and surrounding communities. As noted, Atlantic does not have existing customers prior to this Project, so there are no pre-existing customers that could be affected. Atlantic's proposal also will have no adverse effect on any competing pipeline and its captive customers. Atlantic will eliminate or minimize the limited adverse impacts on affected landowners and communities, and any residual adverse impact on these interests is justified by the public benefits of Atlantic's proposal.

1. Effects on Atlantic's Customers

The Project will not adversely affect existing customers. As previously explained, Atlantic does not have existing customers prior to this Project.

2. Effects on Other Pipelines and Their Customers

The proposed Project will not affect the captive customers of other existing pipelines that already serve the market. Atlantic's project will provide new, incremental gas transportation capacity to its Customers, as well as provide them access to an important and attractive new supply area. In each case, the Customers are located in areas of substantial, comprehensive demand growth and a region where the major existing pipelines are undergoing expansions of their own in an effort to meet increasing demand.

3. Effects on Affected Landowners

The Project has been designed to minimize the impact on landowners and the environment.

Atlantic began engaging environmental and landowner stakeholders in May 2014, prior to commencement of the FERC pre-filing process. Atlantic sent

survey notification letters to landowners and met with landowners, elected officials (Federal, State/Commonwealth, and County/City/local), community leaders, business and civic groups, and non-governmental organizations. The goal of initial outreach was to provide stakeholders with preliminary information about the Project, obtain input regarding a study corridor for the proposed pipeline facilities, and identify potential issues and concerns.

Prior to the commencement of the Commission-authorized pre-filing process, Atlantic hosted 13 public Open Houses for the ACP during the weeks of September 15 and September 22, 2014, for the purpose of obtaining input from potentially affected landowners and other stakeholders. The public Open Houses were held in Buckhannon and Durbin, West Virginia; Monterey, Fishersville, Lovingson, Buckingham, Lawrenceville and Franklin, Virginia; and Weldon, Nashville, Smithfield, Fayetteville and Pembroke, North Carolina.

The Commission approved Atlantic's request to initiate the pre-filing process for the ACP on November 13, 2014. Atlantic then hosted a second round of 11 Open Houses for the ACP from January 6 through January 22, 2015. These Open Houses were held in Fayetteville, Smithfield and Jackson, North Carolina; McKenney, Chesapeake, Blackstone, Lovingson, Monterey and Fishersville, Virginia; and Elkins and Weston, West Virginia. Atlantic also hosted four supplemental Open Houses in Counties and Cities where major route alternatives were identified. Supplemental Open Houses were held on March 10 in Lovingson, Virginia; March 19 in Monterey, Virginia; March 23 in Elkins, West

Virginia; and July 8 in Emporia, Virginia. In total, Atlantic has hosted 28 public Open Houses prior to and during the pre-filing process.

In addition to gathering input from affected landowners and their representatives at Open Houses, Atlantic has engaged affected landowners and obtained input through a toll-free telephone number, a mailing address, an e-mail address, a webpage, social media, and in-person meetings. Numerous route modifications, including major route alternatives, route variations, and minor route adjustments have been closely considered, evaluated, and adopted when technically feasible and constructible, to mitigate or avoid impacts on landowners and environmental resources.

A list of landowners whose property may be affected by construction is included as part of Exhibit F-I. Atlantic will provide landowner notification in accordance with 18 C.F.R. §157.6(d). In the event that any affected landowners have concerns related to the proposed Project, Atlantic intends to continue to work cooperatively with them to address their concerns.

## **VI. LIST OF EXHIBITS**

This is an abbreviated Application and, as such, contains only that data required to disclose fully the nature and extent of the proposed action. Atlantic believes this Application contains all the information necessary to explain fully its request, and to support a finding that the requested authorizations are consistent with the public convenience and necessity. To the extent this Application does not contain every submission required by the Commission, Atlantic respectfully requests waiver of the Commission's regulations. The information required by Section 157.14 of the

Commission's regulations is set forth below, attached hereto as exhibits, or omitted for the reasons stated:

- Exhibit A - Articles of Incorporation and Bylaws  
Attached.
- Exhibit B - State Authorization  
Attached.
- Exhibit C - Company Officials  
Attached.
- Exhibit D - Subsidiaries and Affiliation  
Attached.
- Exhibit E - Other Pending Applications and Filings  
Attached.
- Exhibit F - Location of Facilities  
Attached.
- Exhibit F-I - Environmental Report  
Attached in Volume II.
- Exhibits G, G-I, and G-II - Flow Diagrams  
Attached in Volume IV.
- Exhibit H - Total Gas Supply Data  
Omitted. Not Applicable.
- Exhibit I - Market Data  
Attached.
- Exhibit J - Federal Authorizations  
Attached.
- Exhibit K - Cost of Facilities  
Attached.
- Exhibit L - Financing  
Attached.
- Exhibit M - Construction, Operation, and Management  
Attached.

- Exhibit N - Revenues, Expenses, and Income  
Attached.
- Exhibit O - Depreciation and Depletion  
Atlantic proposes a depreciation rate of 2.5 percent. This is consistent with primary and extension terms of the contracts for firm service.
- Exhibit P - Tariff  
Attached.

## **VII. NOTICE**

A form of notice suitable for publication in the Federal Register is attached.

## **VIII. REQUESTED AUTHORIZATION AND CONCLUSION**

Atlantic respectfully requests that the Commission accept this Application for filing; publish in the Federal Register a notice of this Application; and issue an Order no later than July 1, 2016 authorizing Atlantic to construct, install, own, operate and maintain certain facilities located in Harrison, Lewis, Upshur, Randolph and Pocahontas Counties, West Virginia; Highland, Augusta, Nelson, Buckingham, Cumberland, Prince Edward, Nottoway, Dinwiddie, Brunswick, Greensville and Southampton Counties, and the Cities of Suffolk and Chesapeake, Virginia; and Northampton, Halifax, Nash, Wilson, Johnston, Sampson, Cumberland and Robeson Counties, North Carolina.

Atlantic also requests that the Commission issue the requested Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G of the Commission's regulations to authorize open-access transportation, and the requested Blanket Certificate under Part 157, Subpart F of the Commission's regulations authorizing certain construction, operation, amendment and abandonment activities.

In addition, Atlantic requests that the Commission process this Application in accordance with the shortened procedures set forth in Rules 801 and 802 of the Commission's Rules of Practice and Procedure, and that the Commission omit the intermediate decision procedures. If the Commission grants this request, Atlantic agrees to waive oral hearing and the opportunity for filing exceptions to the decision of the Commission, while reserving the right to request rehearing and petition for judicial review of the Commission's decision.

Atlantic requests that the Commission waive, to the extent necessary, its general rules and regulations applicable to this filing in order to grant promptly the requested authorization. Other than the Supply Header Project and the Atlantic/Piedmont Lease, which applications are being submitted contemporaneously with this one as noted above, Atlantic knows of no other application to supplement or effectuate this proposal that must be filed by Atlantic, its customers, or any other person to this Commission.

Respectfully submitted,

*/s/ Matthew R. Bley*

---

Matthew R. Bley  
Director, Gas Transmission Certificates  
Authorized Representative for Dominion Transmission, Inc. as

Authorized Representative,  
Atlantic Coast Pipeline, LLC  
701 East Cary Street  
Richmond, VA 23219

Dated: September 18, 2015

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC	)	Docket Nos.	CP15-__-000
	)		CP15-__-000
	)		CP15-__-000

NOTICE OF APPLICATION FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY AND BLANKET CERTIFICATES  
( , 2015)

Take notice that on September 18, 2015 Atlantic Coast Pipeline, LLC (Atlantic) with a principal place of business at 120 Tredegar Street, Richmond, VA filed with the Federal Energy Regulatory Commission (FERC or Commission) an Abbreviated Application under Section 7 of the Natural Gas Act, as amended, and Part 157 of the Commission’s regulations seeking:

- a Certificate of Public Convenience and Necessity authorizing Atlantic to construct, install, own, operate and maintain the “Atlantic Coast Pipeline” (ACP or Project) to provide firm natural gas transportation service of up to 1.5 million dekatherms per day (MMDt/day) through a new interstate pipeline system extending from Harrison County, West Virginia, southeast to Greensville County, Virginia, and then south into eastern North Carolina;
- a Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G, of the Commission’s regulations authorizing open-access transportation of gas for others with pre-granted abandonment authority, pursuant to the terms of Atlantic’s initial FERC Gas Tariff; and
- a Blanket Certificate of public convenience and necessity pursuant to Part 157, Subpart F, of the Commission’s regulations authorizing certain facility construction and operation, certain certificate amendments and abandonments.

Any questions regarding this Application should be directed to Angela Woolard, Gas Transmission Certificates, Dominion Transmission, Inc., 701 East Cary Street, Richmond, VA 23219, telephone no. (866) 319-3382.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date:

Kimberly D. Bose  
Secretary



Atlantic Coast Pipeline, LLC  
Atlantic Coast Pipeline  
Docket Nos. CP15-\_\_-000, CP15-\_\_-000, and CP15-\_\_-000

EXHIBIT A

**ARTICLES OF INCORPORATION AND BYLAWS**

**NOTE: Applicant has filed portions of this document denoted [\*\*\*]  
as privileged information in accordance with 18 C.F.R. §§388.112**

---

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**ATLANTIC COAST PIPELINE, LLC**

**a Delaware Limited Liability Company**

**Dated as of September 2, 2014**

---

THE SECURITIES REFERENCED IN THIS LIMITED LIABILITY COMPANY AGREEMENT (THIS “**AGREEMENT**”) HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED, OR REGISTERED OR QUALIFIED UNDER ANY OTHER STATE OR FEDERAL SECURITIES LAWS. SUCH SECURITIES MAY NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT AN EFFECTIVE REGISTRATION STATEMENT OR QUALIFICATION UNDER SUCH ACT AND LAWS OR AN EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER SUBSTANTIAL RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN. THEREFORE, MEMBERS MAY NOT BE ABLE TO READILY LIQUIDATE THEIR INVESTMENTS. THERE IS NO TRADING MARKET FOR THE SECURITIES REFERENCED IN THIS AGREEMENT, AND IT IS NOT ANTICIPATED THAT ONE WILL DEVELOP.

THE SECURITIES REFERENCED IN THIS LIMITED LIABILITY COMPANY AGREEMENT ARE SUBJECT TO CONDITIONS AND RESTRICTIONS ON TRANSFER SET FORTH HEREIN AND CERTAIN RESTRICTIONS ON VOTING RIGHTS.

**TABLE OF CONTENTS**

	<u>Page</u>
Article 1 ORGANIZATIONAL MATTERS .....	1
1.1. Formation and Continuation .....	1
1.2. Name .....	1
1.3. Purpose .....	2
1.4. Registered Office and Registered Agent; Principal Place of Business .....	2
1.5. Foreign Qualification .....	2
1.6. Term .....	2
1.7. Expense .....	3
1.8. No State Law Partnership .....	3
1.9. Mergers and Exchanges .....	3
Article 2 DEFINITIONS AND REFERENCES .....	3
2.1. Definitions .....	3
Article 3 MEMBERS .....	19
3.1. Members .....	19
3.2. Membership Interests .....	20
3.3. Voting .....	20
3.4. Additional Members and Membership Interests .....	20
3.5. Liability to Third Parties .....	21
3.6. Withdrawal .....	21
3.7. Members Have No Agency Authority .....	21
3.8. Priority and Return of Capital .....	21
3.9. Limitation on Liens .....	21
Article 4 CAPITAL CONTRIBUTIONS; DEFAULT .....	21
4.1. Capital Contributions .....	21
4.2. Additional Capital Contributions .....	22
4.3. Dilution .....	25
4.4. Pre-Effective Expenditures .....	26
4.5. Events of Default .....	27
4.6. Interest on and Return of Capital Contributions .....	29
4.7. Financing .....	29
Article 5 ALLOCATIONS AND DISTRIBUTIONS .....	30
5.1. Allocations of Profits and Losses .....	30
5.2. Special Allocations .....	30
5.3. Allocation and Other Rules .....	32
5.4. Allocations for Tax Purposes .....	33
5.5. Distributions .....	34
5.6. Acknowledgement of Allocation Rules .....	34
5.7. Tax Withholding .....	34
Article 6 MANAGEMENT AND GOVERNANCE .....	35

6.1.	Board.....	35
6.2.	Certain Agreements .....	35
6.3.	Designation of Managers .....	36
6.4.	Removal of Managers.....	37
6.5.	Vacancies .....	37
6.6.	Meetings of Board.....	37
6.7.	Restricted Action Requiring Board Approval.....	39
6.8.	FERC Certificate Approval.....	42
6.9.	Officers .....	44
6.10.	Duties of Managers.....	44
6.11.	Commercially Sensitive Information .....	45
6.12.	Employees.....	46
Article 7	<b>BUDGETS; ACCOUNTING, TAX AND BANKING MATTERS.....</b>	<b>46</b>
7.1.	Facilities Budgets.....	46
7.2.	Annual Budgets.....	47
7.3.	Books and Records; Reports.....	47
7.4.	Fiscal Year .....	50
7.5.	Bank Accounts .....	50
7.6.	Capital Accounts.....	50
7.7.	Tax Partnership.....	51
7.8.	Tax Elections.....	51
7.9.	Tax Matters Member.....	51
7.10.	Tax Returns and Reports.....	52
7.11.	Audit Rights .....	52
Article 8	<b>INDEMNIFICATION.....</b>	<b>52</b>
8.1.	Right to Indemnification .....	52
8.2.	Indemnification of Employees and Agents.....	53
8.3.	Advance Payment .....	53
8.4.	Appearance as a Witness .....	54
8.5.	Nonexclusivity of Rights .....	54
8.6.	Insurance .....	54
8.7.	Certain Definitions.....	54
8.8.	Severability .....	55
Article 9	<b>COMMITTED FACILITIES; OTHER ACTIVITIES.....</b>	<b>55</b>
9.1.	Development of Committed Facilities .....	55
9.2.	Development of Approved Facilities Projects .....	55
9.3.	Proposed Facilities Projects .....	56
9.4.	Development of Business Opportunities .....	57
9.5.	Certain Opportunities.....	57
9.6.	Insurance .....	57
Article 10	<b>DISPOSITION.....</b>	<b>58</b>
10.1.	Dispositions; Exception to Application of this Article 10.....	58
10.2.	Other Restrictions on Dispositions .....	59

10.3.	[RESERVED] .....	60
10.4.	Preemptive Right .....	60
10.5.	Dominion ROFR .....	61
Article 11	DISSOLUTION, LIQUIDATION, AND TERMINATION .....	62
11.1.	Dissolution .....	62
11.2.	Liquidation and Termination .....	62
11.3.	Deficit Capital Accounts .....	64
11.4.	Certificate of Cancellation .....	64
Article 12	REPRESENTATIONS AND WARRANTIES .....	64
12.1.	Representations and Warranties of the Members .....	64
Article 13	EFFECTIVENESS .....	65
13.1.	Effectiveness .....	65
Article 14	GENERAL PROVISIONS .....	65
14.1.	Notices .....	65
14.2.	Amendment or Modification .....	66
14.3.	Entire Agreement .....	66
14.4.	Extensions; Waivers .....	66
14.5.	Assignment; Binding Effect .....	67
14.6.	Governing Law .....	67
14.7.	Dispute Resolution .....	67
14.8.	Waiver of Jury Trial .....	67
14.9.	Affiliate Contracts .....	68
14.10.	No Consequential Damages .....	68
14.11.	Severability .....	68
14.12.	Further Assurances .....	69
14.13.	Title to Company Property .....	69
14.14.	Intellectual Property .....	69
14.15.	Press Releases and Public Announcements .....	69
14.16.	No Third Party Beneficiaries .....	69
14.17.	Confidentiality .....	70
14.18.	Headings .....	70
14.19.	Construction .....	70
14.20.	Fair Market Value Determination .....	71
14.21.	Counterparts; Effectiveness .....	71
14.22.	Adjustment for Inflation .....	72
14.23.	Legal Representation .....	72

INDEX TO ANNEXES

Annex A Transferee Representations

Annex B Accession Agreement

Annex C Form of Capital Call Notice

INDEX TO EXHIBITS

Exhibit 2.1 Initial Precedent Agreements

Exhibit 3.1 Member Addresses, Capital Contributions and Percentage Interests

Exhibit 4.4 Pre-Effective Expenditures

Exhibit 6.3(a) Designated Managers

Exhibit 6.9(c) Officers

Exhibit 14.9 Affiliate Contracts

INDEX TO SCHEDULES

Schedule A Initial Facilities

Schedule B Minimum Insurance Coverage

**LIMITED LIABILITY COMPANY AGREEMENT  
OF  
ATLANTIC COAST PIPELINE, LLC**

THIS LIMITED LIABILITY COMPANY AGREEMENT of ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company (the “*Company*”), dated as of September 2, 2014 (the “*Effective Date*”), is adopted, executed and agreed to by DOMINION ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company (“*Dominion*”), DUKE ENERGY ACP, LLC, a Delaware limited liability company (“*Duke*”), PIEDMONT ACP COMPANY, LLC, a North Carolina limited liability company (“*Piedmont*”), and MAPLE ENTERPRISE HOLDINGS, INC., a Georgia corporation (“*AGL*”). Capitalized terms used herein shall have the meanings set forth in Article 2 unless otherwise defined herein.

WHEREAS, the Company was formed on August 27, 2014 by the filing of a Certificate of Formation (the “*Certificate*”) with the Secretary of State of the State of Delaware; and

WHEREAS, the Members desire to enter into this Agreement for purposes of evidencing the various rights, privileges, duties and obligations of the Members.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound hereby enter into this Agreement.

**ARTICLE 1  
ORGANIZATIONAL MATTERS**

1.1. Formation and Continuation

The Company was formed upon the filing of the Certificate with the Secretary of State of the State of Delaware on August 27, 2014 under and pursuant to the Act. The Members desire to continue the Company for the purposes and upon the terms and conditions hereinafter set forth. The Members hereby agree that during the term of the Company, the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and provisions of this Agreement and the Act (except where the Act provides that such rights and obligations specified in the Act shall apply “unless otherwise provided in a limited liability company agreement” or words of similar effect and such rights and obligations are set forth in this Agreement). Notwithstanding anything herein to the contrary, the Members shall not have the rights described in Section 18-210 of the Act (entitled “Contractual Appraisal Rights”), which shall not apply to this Agreement or to the Company.

1.2. Name

The Company’s name is “Atlantic Coast Pipeline, LLC.” The Company’s business shall be conducted in the Company’s name or in any other name approved by the Board. If the law of a jurisdiction where the Company does business requires the Company to do business under a different name, the Company’s business in such jurisdiction may be conducted under such other name or names as the Board may select.

### 1.3. Purpose

Subject to the terms of this Agreement, the purpose of the Company shall be to engage in the Business and to engage in any lawful act or activity for which limited liability companies may engage under the Act and other applicable laws in furtherance of, ancillary to or in connection with the Business. The Company shall have all powers and privileges granted by the Act, any other law or this Agreement, including incidental powers thereto, to the extent that such powers and privileges are necessary, customary, convenient or incidental to engaging in the Business.

### 1.4. Registered Office and Registered Agent; Principal Place of Business

(a) The Company's registered office required by the Act to be maintained in the State of Delaware shall be the initial registered office named in the Certificate or such other office (which need not be a place of business of the Company) as the Board may designate from time to time in the manner provided by law. The Company's registered agent in the State of Delaware shall be the initial registered agent named in the Certificate or such other Person or Persons as the Board may designate from time to time.

(b) The principal place of business of the Company shall be in Richmond, VA. The Board, at any time and from time to time, may change the location of the Company's principal place of business and may establish such additional place or places of business of the Company as the Board shall determine to be necessary or desirable.

### 1.5. Foreign Qualification

Prior to the Company conducting business in any jurisdiction other than Delaware, the Company shall comply, to the extent procedures are reasonably available, with all requirements necessary to qualify the Company as a foreign limited liability company in such jurisdiction. At the request of the Board or an officer of the Company upon proper authorization, each Member agrees to execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in such jurisdiction; *provided* that no Member shall be required to file any general consent to service of process or to qualify as a foreign corporation, limited liability company, partnership or other entity in any jurisdiction in which it is not already so qualified.

### 1.6. Term

The existence of the Company commenced on the date the Certificate was filed with the Secretary of State of the State of Delaware and shall continue in existence until it is dissolved and the Certificate is cancelled in accordance with the terms hereof and the Act.



### 1.7. Expense

Each Member and each of their respective Affiliates shall be responsible for and bear their own costs and expenses incurred in connection with the consideration of their investment in the Company, their due diligence review of the Company, and the negotiation, preparation and execution of the Transaction Documents.

### 1.8. No State Law Partnership

The Members intend that: (a) the Company shall not be treated as a common law partnership or joint venture; and (b) this Agreement shall not create any agency or other relationship creating fiduciary or quasi-fiduciary duties owed by any Member to the Company or to any other Member or Manager, and this Agreement may not be construed to suggest otherwise, except for the implied covenant of good faith and fair dealing. To the extent that, at law or in equity, a Member owes any fiduciary or other duty to the Company or any Manager pursuant to this Agreement, such duty is hereby eliminated pursuant to Section 18-1101(c) of the Act, except for the implied covenant of good faith and fair dealing. This Agreement shall not subject the Members to joint and several or vicarious liability for the obligations of the Company or any other Member or impose any duty, obligation or liability on any Member that would arise therefrom with respect to any or all of the Members or the Company. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement is intended to change or in any way modify or reduce the fiduciary or other duties which may be agreed to by a Member in its capacity as a party to a Transaction Document or other contract with the Company or any Subsidiary of the Company other than this Agreement.

### 1.9. Mergers and Exchanges

Except as otherwise provided in this Agreement, the Company may be a party to any merger, equity exchange, consolidation, acquisition or other type of reorganization upon proper authorization taken pursuant to the terms hereof.

## **ARTICLE 2** **DEFINITIONS AND REFERENCES**

### 2.1. Definitions

When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Section 2.1 or in the sections or other subdivisions referred to below:

“**Accession Agreement**” means the agreement substantially in the form attached hereto as Annex B.

“**Act**” means the Delaware Limited Liability Company Act or any successor statute, as amended from time to time.

“**Acting Member**” means, with respect to any Affiliate Contract, each Member that is not itself, nor is any of its Affiliates, a party to such Affiliate Contract.

“**Additional Capital Contribution**” means, with respect to any Member, any Capital Contribution allowed or required to be made by such Member from time to time in accordance with the terms of Article 4.

“**Adjusted Capital Account**” means the Capital Account maintained for each Member as provided in Section 7.6, (a) increased by an amount equal to the amount such Member is deemed obligated to restore under the penultimate sentences of Treasury Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5) as computed on the last Day of such Fiscal Year in accordance with the applicable Treasury Regulations, and (b) decreased by the adjustments provided for in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4)-(6).

“**Affected Member**” is defined in Section 14.20(b).

“**Affiliate**” means, when used with respect to any Person, any Person directly or indirectly Controlling, Controlled by, or under common Control with such Person, and the term “Affiliate” includes, with respect to any Member, (a) a limited partnership or a Person Controlled by a limited partnership if the general partner of such limited partnership is Controlled by such Member’s Parent, or (b) a limited liability company or a Person controlled by a limited liability company if the managing member of the limited liability company is Controlled by such Member’s Parent. For purposes of this Agreement, neither the Company nor any of its Subsidiaries is an Affiliate of any of the Members or any of their respective Affiliates. For the purposes of Article X, the term “Affiliate” includes, in the case of Dominion, Dominion Midstream Partners, LP (“**Dominion MLP**”).

“**Affiliate Contract**” means a contract, agreement, document or other instrument between the Company or a Subsidiary thereof on one hand and a Member or an Affiliate of a Member on the other hand.

“**AFP Budget**” is defined in Section 7.1(c).

“**Aggregate Budget Cap**” means, with respect to any Committed Facilities, an amount equal to the aggregate of the Budget Caps of all Members for such Committed Facilities.

“**AGL**” is defined in the recitals.

“**AGL Manager(s)**” is defined in Section 6.3(a).

“**Agreement**” means this Limited Liability Company Agreement, as hereafter amended, modified or changed from time to time in accordance with the terms hereof.

“**Allocation Period**” means (a) the period commencing on the Effective Date and ending on December 31, 2014, (b) any subsequent 12-month period commencing on January 1, and ending on December 31, (c) any portion of the periods described in clauses (a) or (b) for which the Company is required to allocate Profits, Losses and other items of Company income, gain, loss or deduction under Article 5 or (d) the period commencing on the immediately preceding January 1, and ending on the date on which all Properties of the Company are distributed to the Members under Article 11; *provided, however*, if such period is not permissible for tax purposes, the Tax Matters Member shall select another period that is permissible for tax purposes.

“**Alternate Manager**” is defined in Section 6.3(b).

“**Annual Budget**” means the annual budget of the Company, comprised of the Annual Capital Budget and, with respect to any year (or portion thereof) following the In-Service Date, the Annual Operating Budget.

“**Annual Capital Budget**” is defined in Section 7.2(a).

“**Annual Operating Budget**” is defined in Section 7.2(a).

“**Appraiser**” is defined in Section 14.20(b).

“**Approved Facilities Project**” means any Facilities Project to be undertaken by the Company that the Board approves pursuant to Section 6.7(b)(iii).

“**Available Cash**” means, with respect to any period, the following, without duplication: (a) all revenues and other cash and cash equivalents collected or received by the Company from any and all sources (other than Capital Contributions) as of the end of such period *less* (b) as of the end of such period, reserves reasonably established by the Board to provide for the proper conduct of the business of the Company, including any reserves to comply with applicable law or any instrument of indebtedness or obligation to which the Company is a party or by which it is bound or its assets are subject; *provided, however*, that Available Cash shall not be reduced by depreciation, amortization, cost recovery deductions or similar non-cash expenses or allowances, and shall be increased by any reductions of cash reserves previously established pursuant to the first clause of this definition. Available Cash generated from Capital Contributions pursuant to Sections 4.1 and 4.2 shall not be considered “Available Cash” for distribution purposes.

“**Bankrupt Member**” means any Member:

(a) that (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceeding; (iv) files a petition or answer in a court of competent jurisdiction seeking for such Member a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any applicable law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Member in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents, or acquiesces to the appointment of a trustee, receiver, or liquidator of such Member or of all or any substantial part of such Member’s assets or properties; or

(b) against which a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law has been commenced and ninety (90) Days have expired without dismissal thereof or with respect to which, without such Member’s consent or acquiescence, a trustee, receiver, or liquidator of such Member or of all or any substantial part of such Member’s properties has been appointed and sixty (60) Days have expired without such

appointments having been vacated or stayed, or sixty (60) Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

**“Base Facilities Project”** means any project that involves (i) constructing or installing any pipeline that would loop (as such term is commonly used in the natural gas pipeline industry) the Facilities, (ii) installing or upgrading any compression with respect to the Facilities, (iii) increasing the transportation capacity of the Facilities through the installation of greater capacity pipe, looping or similar improvements, and/or (iv) any extension to the Trunkline, in each case excluding any project upstream of the Marts Junction receipt point in Lewis County, West Virginia.

**“Base Facilities Project Notice”** is defined in Section 9.3(a).

**“Board”** is defined in Section 6.1.

**“Budget Cap”** means, for each Member (a) with respect to the Initial Facilities, the amount in U.S. dollars set forth opposite such Member’s name in the Initial Facilities Budget, (b) with respect to the PA Required Expansion Facilities, the amount in U.S. dollars set forth opposite such Member’s name in Attachment D to the Initial Resolution, in each case as such amount may be increased from time to time in accordance with Section 4.2(f).

**“Budget Overrun”** is defined in Section 6.7(b)(iii)(14).

**“Business”** means the business of acquiring, planning, designing, financing, constructing, operating, owning, improving, marketing, maintaining and expanding the Facilities, engaging in the transmission of natural gas through the Facilities, procuring or leasing gas transportation capacity on any other pipeline facilities and engaging in the transmission of natural gas through such pipeline facilities, and performing other activities or services related or ancillary thereto and such other related business as approved by the Board.

**“Business Day”** means a Day, other than a Saturday or a Sunday, on which commercial banks in the United States of America are open for business with the public.

**“Capital Account”** is defined in Section 7.6(a).

**“Capital Call Notice”** is defined in Section 4.2(a).

**“Capital Contribution”** means, for any Member at the particular time in question, the aggregate of the dollar amounts of any cash contributed to the Company’s capital and/or the Gross Asset Value of any property or asset contributed (or deemed contributed pursuant to this Agreement) by such Member to the Company’s capital.

**“Capital Expenditures”** shall mean costs and expenses associated with the acquisition, development or redevelopment of Company Properties or any other fixed or capital assets of the Company or any of its Subsidiaries which are capitalized pursuant to GAAP and subject to depletion, depreciation or amortization.

**“Certificate”** is defined in the recitals.

“**Chairman**” is defined in Section 6.6(f).

“**Change in Control**” means, with respect to any Member, any transaction or series of transactions that causes such Member’s Parent to be Controlled by a Person (or group of Persons that have agreed to act in concert) that does not Control (or is not Controlled by) such Parent as of the date that such Member first executed this Agreement.

“**Collection Costs**” is defined in Section 4.5(a).

“**Committed Facilities**” means the Initial Facilities and the PA Required Expansion Facilities, collectively.

“**Company**” is defined in the preamble to this Agreement.

“**Company Nonrecourse Liabilities**” means nonrecourse liabilities (or portions thereof) of the Company as defined in Treasury Regulations Section 1.752-1(a)(2) or Treasury Regulations Section 1.752-7 liabilities (as defined in Treasury Regulations Section 1.752-7(b)(3)(i)) assumed by the Company from a Member.

“**Company Property**” or “**Company Properties**” or “**Properties of the Company**” means any right, title or interest of the Company or any Subsidiary in or to property or assets of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible and including equity interests or other ownership interests in any Person and whether now in existence or owned or hereafter acquired or constructed.

“**Competitive Facilities Project**” means (i) any project that involves the addition of any lateral or other pipeline that connects directly to the Facilities and that would transport natural gas for: (1) the ultimate delivery to an end-use facility or (2) further downstream transportation after such natural gas has been transported through any of the Facilities, or (ii) any pipeline project delivering natural gas directly into the Facilities, in each case excluding (x) any project upstream of the Marts Junction receipt point in Lewis County, West Virginia and (y) any extension to the Trunkline.

“**Competitive Facilities Project Notice**” is defined in Section 9.3(a).

“**Contribution Default**” is defined in Section 4.2(d)(ii).

“**Contribution Default Notice**” is defined in Section 4.2(d)(ii).

“**Control**” and its derivatives mean, with respect to any Person, the possession, directly or indirectly, through one or more intermediaries, of the power to direct or cause the direction of management or policies (whether through ownership of securities, by contract or otherwise) of a Person. For the purposes of the preceding sentence but without limiting the generality thereof, Control is deemed to exist when a Person (or group of Persons who have agreed to act in concert) possesses, directly or indirectly, (i) the ability to elect or cause the election of a majority of the board of directors, board of managers or other governing authority of the applicable Person, (ii) in the case of a corporation, 50% or more of all classes and series of issued and outstanding capital stock entitled to vote for the election of the board of directors, (iii) in the case

of a limited liability company, partnership, limited partnership or joint venture, the right to 50% or more of the distributions therefrom (including liquidating distributions), (iv) in the case of a limited liability company, 50% or more of the outstanding securities of all classes and series of securities entitled to vote in the election of the board of managers, management committee or other governing authority thereof, (v) in the case of a limited partnership (including any master or publically traded limited partnership), a general partner interest therein or the right to vote or designate or cause the voting or designation of a general partner thereof or (vi) in the case of any Person, 50% or more of the economic or beneficial interest therein or the right to receive 50% or more of the profits or income of such Person.

“*CPI*” is defined in Section 14.22.

“*Day(s)*” means any calendar day.

“*Defaulting Member*” means any Member for which an Event of Default has occurred.

“*Deficiency*” is defined in Section 4.2(d)(i).

“*Deficiency Interest Expense*” has the meaning set forth in the definition of “Interest.”

“*Deficiency Interest Income*” has the meaning set forth in the definition of “Interest.”

“*Depreciation*” means for each taxable period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such period for federal income tax purposes, except that (a) with respect to any asset the Gross Asset Value of which differs from its adjusted tax basis for federal income tax purposes and which difference is being eliminated by use of the remedial allocation method pursuant to Treasury Regulations Section 1.704-3(d), Depreciation for such period shall be the amount of book basis recovered for such period under the rules prescribed by Treasury Regulations Section 1.704-3(d)(2) and (b) with respect to any other asset the Gross Asset Value of which differs from its adjusted tax basis at the beginning of such period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such period bears to such beginning adjusted tax basis, provided, however, that if the adjusted tax basis of an asset at the beginning of such period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Board.

“*Diluting Member*” is defined in Section 4.3(c).

“*Dilution Election*” is defined in Section 4.3(a).

“*Dilution Funding Member*” is defined in Section 4.3(d).

“*Dilution Shortfall*” is defined in Section 4.3(c).

“*Disagreeing Member*” is defined in Section 6.8(b).

“**Dispose**” (including the correlative terms “**Disposed**” or “**Disposition**”) means any direct or indirect sale, assignment, transfer, conveyance, gift, distribution or any other disposition, whether voluntary, involuntary or by operation of law or otherwise, including by merger or consolidation or upon liquidation or dissolution, of any rights, interests or obligations with respect to all or any portion of any Membership Interest, Company Properties or other assets; *provided, however*, that the foregoing expressly excludes (i) a Change in Control and (ii) any pledge of a Member’s Membership Interest or grant of a lien or security interest in a Member’s Membership Interest pursuant to Section 10.1(a).

“**Disposition Default**” is defined in Section 10.1(a).

“**Dominion**” is defined in the recitals.

“**Dominion Manager(s)**” is defined in Section 6.3(a).

“**Dominion MLP**” is defined in the definition of “Affiliate.”

“**Duke**” is defined in the recitals.

“**Duke Manager(s)**” is defined in Section 6.3(a).

“**Effective Date**” is defined in the preamble to this Agreement.

“**Elective Contribution**” is defined in Section 4.2(e)(i).

“**Elective Funding Member**” means each Member that elects to fund an Elective Contribution in accordance with Section 4.2(e)(i).

“**Elective Notice**” is defined in Section 4.2(e)(i).

“**Emergency Services**” is defined in the Operations Agreement.

“**Event of Default**” means in respect of a Member (a) a Contribution Default, (b) a Performance Default, (c) a Disposition Default or (d) the occurrence of a Fundamental Event.

“**Exercising Member**” is defined in Section 10.4(b).

“**Facilities**” means the Initial Facilities, the PA Required Expansion Facilities and any Approved Facilities Project.

“**Facilities Budget**” means the Initial Facilities Budget, the PA Required Expansion Facilities Budget and any AFP Budget.

“**Facilities Project**” means a Base Facilities Project or a Competitive Facilities Project, as applicable.

“**Facilities Project Notice**” is defined in Section 9.3(b).

“**Facilities Project Proposal**” is defined in Section 9.3(b).

“**Fair Market Value**” means, (i) with respect to any property (including Company Property) or assets, the fair market value of such property or assets as determined in good faith by the Board; and (ii) with respect to a Member’s Membership Interest, the fair market value of such Membership Interest as determined pursuant to the terms of Section 14.20. If any party disputes the Fair Market Value of any property or assets determined in accordance with the foregoing sentence, the Fair Market Value of the property or assets in question shall also be determined pursuant to the procedures set forth in Section 14.20.

“**FERC**” means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers of such commission.

“**FERC Application**” means the document, including any amendments, modifications, alterations, revisions or changes thereto, pursuant to which the application for a certificate(s) of public convenience and necessity is made under Section 7 of the Natural Gas Act of 1938, as amended, to the FERC by the Company for authority to construct, own, acquire and operate, and provide service on the Facilities.

“**FERC Certificate**” means the certificate(s) of public convenience and necessity issued by the FERC pursuant to any FERC Application.

“**FERC Certificate Non-Accepting Member**” is defined in Section 6.8(c)(i).

“**Financing Commitment**” means any definitive agreements between one or more Financing Entities and the Company pursuant to which such Financing Entities agree, subject to the conditions set forth therein, to lend money to, or purchase securities of, the Company, the proceeds of which shall be used to finance all or a portion of the Facilities.

“**Financing Commitment Assurance**” is defined in Section 4.7(b).

“**Financing Entity**” means a corporation, limited liability company, trust, financial institution, lender or other entity or Person that may be organized for the purpose of lending money or issuing or purchasing securities, the net proceeds of which are to be advanced directly or indirectly to the Company and used to finance the construction of all or a portion of the Facilities.

“**Fiscal Quarter**” means (a) any three-month period commencing on each of January 1, April 1, July 1 and October 1 of a calendar year, and ending on the last date before the next such date and (b) the period commencing on the immediately preceding January 1, April 1, July 1, or October 1, as the case may be, and ending on the date on which all Properties of the Company are distributed to the Members pursuant to Article 11.

“**Fiscal Year**” means (a) any twelve-month period commencing on January 1 and ending on December 31 of a calendar year and (b) the period commencing on the immediately preceding January 1, and ending on the date on which all Properties of the Company are distributed to the Members under Article 11; *provided, however*, if such period is not permissible for tax purposes, the Board shall select another period as the Company’s “Fiscal Year” that is permissible for tax purposes.



“**FMV Notice**” is defined in Section 14.20(b).

“**FMV Report**” is defined in Section 14.20(b).

“**Fundamental Event**” means in respect of a Member (a) that Member or such Member’s equity owner approves of the winding up, dissolution and/or termination of the Member (unless such event occurs after the In-Service Date and the sole distributee of the Member’s Membership Interest is a Permitted Transferee) and such winding up, dissolution and/or termination is not withdrawn or cured by such Member or such Member’s equity owner within 30 Days thereafter or (b) the Member becomes a Bankrupt Member.

“**Funding Deadline**” is defined in Section 4.2(d)(i).

“**GAAP**” means generally accepted accounting principles in effect in the United States of America from time to time consistently applied throughout the applicable period.

“**Governmental Authority**” means any federal, state or local government of the United States or any state thereof, any political subdivision thereof, whether state or local, and any agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of government.

“**Gross Asset Value**” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(1) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the Fair Market Value;

(2) The Gross Asset Values of all Company Properties shall be adjusted to equal their respective gross fair market values (taking Internal Revenue Code Section 7701(g) into account on the date determined), as reasonably determined by the Board as of the following times: (A) the acquisition of an additional Membership Interest by any new or existing Member in exchange for more than a *de minimis* Capital Contribution; (B) the acquisition of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Company; (C) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for a Membership Interest; and (D) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); *provided* that any or all adjustments described in clauses (A), (B) and (C) of this paragraph shall be made only if the Board reasonably determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company, and *provided, further*, that, consistent with Section 4.2(e)(iii), the adjustment described in clause (A) of this paragraph shall not be made in connection with any Contribution Default by a Non-Funding Member if no Elective Contributions are made by Non-Defaulting Members and the Non-Funding Member’s Membership Interest is not purchased pursuant to Section 4.5(d);

(3) The Gross Asset Value of any item of Company Properties distributed to any Member shall be adjusted to equal the Fair Market Value (taking Internal Revenue Code Section 7701(g) into account) of such asset on the date of distribution as reasonably determined by the Board; and

(4) The Gross Asset Values of Company Properties shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Company Properties under Internal Revenue Code Sections 734(b) or 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and subparagraph (6) of the definition of “Profits” and “Losses”; *provided, however*, that Gross Asset Values shall not be adjusted under this subparagraph (4) to the extent that an adjustment under subparagraph (2) is required in connection with a transaction that would otherwise result in an adjustment under this subparagraph (4).

If the Gross Asset Value of a Company Property has been determined or adjusted under subparagraphs (2) or (4) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Company Property for purposes of computing Profits and Losses.

“**Initial Facilities**” means an approximately 550-mile natural gas pipeline running generally between Lewis County, West Virginia and Chesapeake, Virginia and Robeson County, North Carolina, together with certain gas-fired compression stations and associated meter and regulation stations, all as more fully described and identified in the FERC Application for such Facilities (as amended or modified) and as further described on Schedule A hereto.

“**Initial Facilities Budget**” means the multi-year budget for the development and construction of the Initial Facilities attached to and approved pursuant to the Initial Resolution.

“**Initial Notice**” is defined in Section 10.4(b).

“**Initial Percentage Interest**” means the initial Percentage Interest of each Member set forth on Exhibit 3.1 attached hereto.

“**Initial Precedent Agreements**” means the Precedent Agreements listed on Exhibit 2.1.

“**Initial Resolution**” means the initial written consent of all of the Managers dated as of the Effective Date.

“**In-Service Date**” means the initial date of the placing of the Initial Facilities in service, as notified by the Operator to the Company pursuant to the Operations Agreement.

“**Intellectual Property Rights**” means (i) patents, trademarks, service marks, rights in designs, trade names, domain names, copyrights, know-how, rights in confidential information and all other intellectual property rights and similar property rights of whatever nature, in each case whether registered or not; (ii) applications and rights to apply for registrations of any of the foregoing and (iii) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

“**Interest**” means, with respect to any Contribution Default, (i) if the Company incurred indebtedness to fund the amount of such Contribution Default, any interest incurred by the Company on such Indebtedness (“**Deficiency Interest Expense**”), or (ii) otherwise, interest on the amount of the Deficiency with respect to such Contribution Default at the Interest Rate, accruing from the Funding Deadline with respect to such Deficiency until the date that the Total Amount in Default is satisfied pursuant to Section 4.2(e)(iii); *provided* that interest shall accrue only on the amount of the Deficiency that has not been satisfied with retained distributions pursuant to Section 4.2(e)(iii) (“**Deficiency Interest Income**”).

“**Interest Rate**” means, on the applicable date of determination, the Prime Rate (as published in the “Money Rates” table of *The Wall Street Journal*).

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

“**IP Rights**” is defined in Section 14.14.

“**Lender**” is defined in Section 10.1(a).

“**Lien**” means any of the following: mortgage; lien (statutory or other); other security agreement, arrangement or interest; hypothecation, pledge or other deposit arrangement; assignment; charge; levy; executory seizure; attachment; garnishment; encumbrance (including any easement, exception, reservation or limitation, right of way, and the like); conditional sale, title retention, voting agreement or other similar agreement, arrangement, device or restriction; preemptive or similar right; the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction; restriction on Disposition; or any option, equity, claim or right of or obligation to any other Person of whatever kind and character; *provided, however*, that the term “Lien” excludes any of the foregoing to the extent created by or as permitted under this Agreement.

“**MAE**” is defined in Section 6.8(a).

“**Manager**” and “**Managers**” are defined in Section 6.1 and shall include any Person then serving as a Manager but shall not include any removed Manager.

“**Material Contract**” means any of the following contracts or agreements to which the Company is or becomes a party after the Effective Date: (i) engineering, procurement and construction contracts, contracts for the construction of the Facilities, and contracts for the procurement of pipe, compression and associated equipment, (ii) any contracts or agreements that require expenditures by the Company in excess of \$5,000,000 in the aggregate or provide revenues to the Company in excess of \$5,000,000 in the aggregate, (iii) any service agreements for the transmission of natural gas through the Facilities and any other pipeline facilities on which the Company maintains gas transmission capacity, and (iv) any contracts or agreements for the leasing or procurement of any gas transmission capacity on any pipeline facilities not owned by the Company.

“**Member**” is defined in Section 3.1, but such term excludes any Person who has ceased to be a member.

“**Member Nonrecourse Debt**” has the same meaning as the term “partner nonrecourse debt” set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

“**Member Nonrecourse Debt Minimum Gain**” has the same meaning as “partner nonrecourse debt minimum gain” set forth in Treasury Regulations Section 1.704-2(i)(2).

“**Member Nonrecourse Deductions**” means the amount of deductions, losses and expenses equal to the net increase during the year in minimum gain attributable to a Member Nonrecourse Debt, reduced (but not below zero) by proceeds of such Member Nonrecourse Debt distributed during the year to the Members who bear the economic risk of loss for such debt, as determined in accordance with applicable Treasury Regulations.

“**Members Holding a Majority of the Percentage Interests**” means Members, subject to the provisions of Section 4.5(b), holding at least fifty-five percent (55%) of the Percentage Interests.

“**Membership Interest**” means the interest of a Member in the Company, including the right of such Member to receive distributions (liquidating or otherwise), to be allocated income, gain, loss, deduction, credit, or similar items, to receive information, vote, grant consents or approvals, and all other rights, benefits and privileges enjoyed by or incidental to being a Member, and all liabilities and obligations imposed upon a Member under the Act, the Certificate, this Agreement or otherwise in its capacity as a Member.

“**Minimum Gain**” means with respect to Company Nonrecourse Liabilities, the amount of gain that would be realized by the Company if it Disposed of (in a taxable transaction) all Company Properties that are subject to Company Nonrecourse Liabilities in full satisfaction of such liabilities, computed in accordance with Treasury Regulations Section 1.704-2(d).

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Non-Defaulting Members**” is defined in Section 4.2(e)(i).

“**Non-Funding Member**” is defined in Section 4.2(d)(ii).

“**Nonrecourse Deductions**” means, for each Allocation Period or other period, the Company allocations that are characterized as “nonrecourse deductions” under Treasury Regulations Section 1.704-2(b)(1).

“**Offered Interest**” is defined in Section 10.5(a).

“**Officer**” is defined in Section 6.9(a).

“**Operations Agreement**” means that certain Construction, Operation and Maintenance Agreement to be entered into by and between the Company and Operator on the Effective Date in substantially the form attached to the Initial Resolution.

“**Operator**” means, initially, Dominion Transmission, Inc.

“**PA Execution Date**” means the date on which the last of the Initial Precedent Agreements is executed and delivered by the Company and the other party thereto.

“**PA Required Expansion Facilities**” means the facilities described in the relevant attachment to the Initial Resolution.

“**PA Required Expansion Facilities Budget**” is defined in Section 7.1(b).

“**Parent**” means the Person that Controls a Member as of the date that such Member executed this Agreement, and that is not itself Controlled by any other Person. The Parents of the Members as of the Effective Date are: (i) with respect to Dominion, Dominion Resources, Inc., (ii) with respect to Duke, Duke Energy Corporation, (iii) with respect to Piedmont, Piedmont Natural Gas Company, Inc., and (iv) with respect to AGL, AGL Resources, Inc. Upon any change to the identity of a Member’s Parent, such Member shall immediately notify all other Members.

“**Participation Election Period**” is defined in Section 4.2(e)(i).

“**Participation Notice**” is defined in Section 4.2(e)(i).

“**Percentage Interest**” means, as of any date of determination, the ratio (expressed as a percentage) that (a) such Member’s aggregate Capital Contributions as of such date bears to (b) the aggregate Capital Contributions of all Members as of such date; *provided* that amounts treated as Capital Contributions pursuant to (i) Section 4.2(e)(iii) and applied to the payment of Deficiency Interest Expense or Collection Costs and (ii) Section 4.5(a) shall not be included in Capital Contributions for purposes of this definition of “Percentage Interest.” Notwithstanding the foregoing, the Initial Percentage Interests of the Members shall not be adjusted for any amounts contributed pursuant to Section 4.1 or Section 4.4. In addition, if there are no Elective Contributions in respect of any Contribution Default by a Non-Funding Member and such Non-Funding Member’s Membership Interest is not purchased pursuant to Section 4.5(d), then for purposes of this definition of “Percentage Interest” the Non-Funding Member will be treated as having made a Capital Contribution of the Deficiency with respect to such Contribution Default but will not be treated as having made a further Capital Contribution when Retained Distributions of the Non-Funding Member are applied to the payment of such Deficiency pursuant to Section 4.2(e)(iii).

“**Performance Default**” means any material breach or material default (other than a Contribution Default) by a Member in the performance of, or any material failure by a Member to comply with, any agreement, obligation, covenant, or undertaking of such Member under this Agreement which has not been remedied on or prior to (i) the expiration of the cure period, if any, set forth herein or (ii) if no cure period is set forth herein, thirty (30) Days after such Member’s receipt of such written notice of such breach, default or failure from the Company or any other Member, or if such breach, default or failure cannot reasonably be remedied within such thirty (30) Day period, sixty (60) days after such Member’s receipt of such written notice (*provided* that such Member has and continues to diligently pursue such remedy).

“**Permitted Liens**” means any of the following matters:

(i) any (a) undetermined or inchoate liens or charges constituting or securing the payment of expenses which were incurred incidental to maintenance or operation of the Company’s Properties and (b) materialman’s, mechanics’, repairman’s, employees’, contractors’, operators’ or other similar liens, security interests or charges for liquidated amounts arising in the ordinary course of business incidental to construction, maintenance or operation of the Company’s Properties that are not due and payable and that will be paid in the ordinary course of business;

(ii) any liens for taxes, assessments, or other government charges that are not yet due and payable; and

(iii) rights reserved to or vested in any Governmental Authority to control or regulate any of the Company’s Properties and all applicable laws.

“**Permitted Transfer**” means (a) with respect to any Member, (i) a Disposition by such Member of all or any portion of its Membership Interests, to one or more Permitted Transferees, or (ii) a Change in Control of such Member and (b) with respect to Dominion and AGL, a one-time Disposition by Dominion to AGL of a portion of Dominion’s Membership Interest equal to two percent (2%) of the Membership Interests of the Company.

“**Permitted Transferee**” means any Affiliate of the transferring Member.

“**Person**” is defined in Section 18-101(12) of the Act.

“**Piedmont**” is defined in the recitals.

“**Piedmont Manager(s)**” is defined in Section 6.3(a).

“**Pledged Interest**” is defined in Section 10.1(a).

“**Pre-Effective Expenditures**” means (a) expenditures made and costs incurred by any Member or any of its Affiliates prior to the Effective Date, as set forth on Exhibit 4.4, or (b) expenditures and costs incurred by any Member or any of its Affiliates prior to the PA Execution Date that are approved by the Board pursuant to Section 4.4, in either case, in the course of planning and designing the Initial Facilities, including expenditures made and costs incurred in preparing materials necessary for the FERC Application for the Initial Facilities and determining the route(s), acquiring survey and land rights and commencing public outreach efforts for the Initial Facilities, except for any costs or expenses described in Section 1.7.

“**Precedent Agreement**” means an agreement between the Company and a prospective shipper of natural gas through the Facilities, including any Facilities Project, that involves the commitment by such shipper, upon satisfaction of one or more conditions precedent, to execute a service agreement with Company obligating such shipper to pay demand charges in return for a firm transportation obligation on the part of the Company.

“**Proceeding**” is defined in Section 8.1.

“*Profits*” and “*Losses*” mean, for each Allocation Period, an amount equal to the Company’s taxable income or loss for such Allocation Period, determined in accordance with Internal Revenue Code Section 703(a) (for purposes of such determination, all items of income, gain, loss or deduction required to be stated separately under Internal Revenue Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(5) Any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses under this definition of “Profits” and “Losses” shall be added to such taxable income or loss;

(6) Any expenditures of the Company described in Internal Revenue Code Section 705(a)(2)(B) or treated as Internal Revenue Code Section 705(a)(2)(B) expenditures under Treasury Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Profits or Losses under this definition of “Profits” and “Losses” shall be subtracted from such taxable income or loss;

(7) If the Gross Asset Value of any Company asset is adjusted under clauses (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits or Losses;

(8) Gain or loss resulting from any Disposition of property of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property Disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(9) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Allocation Period, computed in accordance with the definition of Depreciation;

(10) To the extent an adjustment to the adjusted tax basis of any Company asset under Internal Revenue Code Section 734(b) is required, under Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) from the Disposition of such asset and shall be taken into account for purposes of computing Profits or Losses; and

(11) Notwithstanding any other provision of this definition, any items which are specially allocated under Section 5.2 shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated under Section 5.2 shall be determined by applying rules analogous to those set forth in subparagraphs (1) through (6).

***“Proposing Member”*** is defined in Section 10.5(a).

***“Purchase Notice”*** is defined in Section 10.5(a).

***“Purchased Interest”*** is defined in Section 10.5(a).

***“Qualified Transferee”*** means a corporation, limited liability company or partnership organized and existing under the laws of the United States, any state thereof or the District of Columbia that either (a) both before and after giving effect to the relevant Disposition, has a Sufficient Credit Rating, or is Affiliated with a Person having a Sufficient Credit Rating that has agreed in writing to irrevocably and unconditionally guarantee all of such transferee’s obligations under this Agreement or (b) has the requisite financial capability to assume the responsibilities and obligations as a Member as reasonably determined, in writing, by Members holding at least 70% of the Percentage Interests.

***“Regulatory Allocations”*** is defined in Section 5.2(k).

***“Reimbursed Expenditures”*** is defined in Section 4.1(d).

***“Retained Distributions”*** is defined in Section 4.2(e)(iii).

***“ROFR Expiration Date”*** is defined in Section 10.5(a).

***“ROFR Interest”*** is defined in Section 10.5(a).

***“ROFR Notice”*** is defined in Section 10.5(a).

***“S&P”*** means Standard and Poor’s Rating Group.

***“Securities Act”*** means the Securities Act of 1933, as amended.

***“Senior Executives”*** means the employees of the Members who have the authority to settle disputes among the Members.

***“Subsequent Notice”*** is defined in Section 10.4(c).

***“Subsequent Purchase”*** is defined in Section 10.4(c).

***“Subsidiary”*** means (i) any corporation or other entity a majority of the common stock (or similar equity securities) of which having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions is at the time owned, directly or indirectly, with power to vote, by the Company or any direct or indirect Subsidiary of the Company or (ii) a partnership in which the Company or any direct or indirect Subsidiary is a general partner.



“**Sufficient Credit Rating**” means a credit rating for a Person’s long-term, senior, unsecured debt not supported by third party credit enhancements (or if such Person has no long-term, senior unsecured debt, then such party’s long-term issuer rating) of Baa2 or higher from Moody’s and BBB or higher from S&P (in the event such Person is rated differently by S&P and Moody’s, the lower of which shall apply).

“**Tax Matters Member**” is defined in Section 7.9.

“**Total Amount in Default**” means, as of any time with respect to any Non-Funding Member, an amount equal to: (a) the outstanding amount of such Non-Funding Member’s Deficiency, plus any associated Interest and Collection Costs, *reduced by* (b) distributions otherwise payable to the Non-Funding Member which are retained by the Company pursuant to Article 4.

“**Transaction Documents**” means, collectively, (a) this Agreement, (b) the Certificate, and (c) the Operations Agreement.

“**Treasury Regulations**” (or any abbreviation thereof used herein) means temporary or final regulations promulgated under the Internal Revenue Code.

“**Trunkline**” means the principal natural gas transmission pipeline component(s) of the Facilities.

“**Unfunded Default Amount**” means, as of any date of determination with respect to a Member, an amount equal to the sum of (i) the excess, if any, of (x) the cumulative amount of items of deductions and loss for Deficiency Interest Expense or attributable to Collection Costs allocated to such Member pursuant to Section 5.2(h) or Section 5.2(j), as applicable, over (y) the cumulative amount of Retained Distributions of such Member that are applied to the payment of such Deficiency Interest Expense or Collection Costs pursuant to Section 4.2(e)(iii) and the amount of payments made by such Member to the Company with respect to such Collection Costs pursuant to Section 4.5(a) plus (ii) the excess, if any, of (x) any Deficiency of such Member that is subject to the provisions of Section 4.2(e)(iii), over (y) the amount of Retained Distributions applied to the payment of such Deficiency pursuant to Section 4.2(e)(iii).

“**Undistributed Deficiency Interest Income**” means, as of any date of determination with respect to a Member, an amount equal to cumulative amount of items of income or gain for Deficiency Interest Income allocated to such Member pursuant to Section 5.2(i).

### **ARTICLE 3** **MEMBERS**

#### 3.1. Members

The names and addresses of the members of the Company are set forth in Exhibit 3.1 (the “**Members**”).

### 3.2. Membership Interests

The Company shall have one class of Membership Interests which shall be expressed as a percentage and may be issued in whole or fractional percentages. The Membership Interests shall have the rights, preferences, privileges, restrictions and obligations set forth in this Agreement. The creation of any new series or class of Membership Interests by designation, resolution, amendment or otherwise shall be deemed to be an amendment, modification or restatement of this Agreement requiring compliance with Section 14.2. The Membership Interests shall not be certificated. Each of the Members was admitted as a Member of the Company in accordance with this Agreement. Subject to each Member making its initial Capital Contribution as provided in Sections 4.1(a) and (b), each Member's Capital Contributions and Percentage Interest shall be as set forth opposite such Member's name on Exhibit 3.1 hereto. Without the consent of the Members, the Board may amend Exhibit 3.1 to reflect any changes thereto resulting from any additional Capital Contributions by a Member, Permitted Transfers or other Dispositions of Membership Interests, admissions of new Members and dilutions or upward adjustments to a Member's Percentage Interest effected in accordance with this Agreement.

### 3.3. Voting.

(a) In order for the Company to determine the Members entitled to (i) vote at any meeting of Members or any adjournment thereof, (ii) express consent to action in writing without a meeting, (iii) receive payment of any distribution and (iv) exercise any rights hereunder and in order to determine the allocation of votes or rights based on the Membership Interests held by the Members, the Board may fix a record date, which shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) Days nor less than five (5) Days before the date of such meeting or other action.

(b) Except as otherwise provided in this Agreement, to the extent that the vote of Members may be required hereunder or under applicable law, the affirmative vote of the Members Holding a Majority of the Percentage Interests shall constitute an act of the Members.

### 3.4. Additional Members and Membership Interests

The Company may issue additional Membership Interests at such price and on such terms as may be agreed upon by the Board with the consent of the Members holding at least 96% of the Percentage Interests from time to time; *provided* that, pursuant to Section 10.4, all Members (other than a Defaulting Member or a Diluting Member) will have pro rata preemptive rights in the issuance by the Company of any such additional Membership Interests to the extent necessary to maintain their respective Percentage Interests in the Company, as adjusted, prior to such additional Membership Interest issuance. Additional Persons may only be admitted to the Company as Members as expressly provided in Section 10.1(c).

### 3.5. Liability to Third Parties

Except as otherwise required by the Act, no Manager and no Member or any Affiliate, officer, director, manager, partner, employee or other agent of such Member, solely by reason of being a Member or a Manager, shall be liable for the debts, obligations or liabilities of the Company or any other Member.

### 3.6. Withdrawal

A Member has no power or right to voluntarily withdraw, resign or retire from the Company, and each Member irrevocably waives any and all rights of a resigning or withdrawing member under Section 18-604 of the Act. Any attempted withdrawal by any Member from the Company before any dissolution of the Company will be deemed a Performance Default and result in such Member being treated as a Defaulting Member, and such Member shall be liable to the Company for any damages arising directly or indirectly from such purported withdrawal and shall not be entitled to any distribution from the Company by reason of such purported withdrawal.

### 3.7. Members Have No Agency Authority

Except as expressly provided in this Agreement, no Member (in its capacity as a member of the Company) has any agency authority on behalf of the Company.

### 3.8. Priority and Return of Capital

No Membership Interest shall have any priority over any other Membership Interest, either as to the return of Capital Contributions or as to the allocation of Profits, Losses or in any distributions.

### 3.9. Limitation on Liens

Except for (i) Liens described in Section 10.1(a) (ii) a right of first offer granted by Dominion or its Affiliate in favor of Dominion MLP in respect of the direct or indirect ownership of Dominion's Membership Interest and (iii) Liens granted to a Financing Entity (or any agent or trustee thereof) in connection with any approved Financing Commitment, no Member shall pledge, grant a security interest in or otherwise permit or suffer to exist any Lien on its Membership Interest without the prior written approval of the other Members.

## ARTICLE 4

### **CAPITAL CONTRIBUTIONS; DEFAULT**

#### 4.1. Capital Contributions

(a) Effective Date Capital Contributions. Simultaneous with the execution of this Agreement, each Member hereby agrees to contribute all of its right, title and interest, if any, in the assets acquired by means of the Pre-Effective Expenditures, free and clear of any encumbrances, liens or mortgages, and agrees to execute and deliver any and all assignments and conveyances as may be necessary or appropriate to evidence

such contribution. The amount of each such Member's initial Capital Contribution shall be the amount of the Pre-Effective Expenditures set forth opposite such Member's name on Exhibit 4.4 attached hereto.

(b) PA Execution Date Capital Contributions. Subject to the last sentence of this Section 4.1(b), within two (2) Business Days after the PA Execution Date, each Member hereby agrees to make a cash Capital Contribution in the amount set forth opposite such Member's name on Exhibit 3.1 attached hereto under the column titled "Capital Contributions" as part of its initial Capital Contribution in order to equalize the Members' Capital Contributions in proportion to their respective Percentage Interests (so that all Members' Capital Contributions made pursuant to Section 4.1(a) and this Section 4.1(b), after giving effect to the distribution of such cash described in the next sentence, are pro rata in proportion to their Initial Percentage Interests). The Members acknowledge and agree that such cash Capital Contributions shall, subject to the last sentence of this Section 4.1(b), immediately be distributed pursuant to Section 5.5(d) to the Members that have Pre-Effective Expenditures set forth on Exhibit 4.4 such that the amount of Pre-Effective Expenditures of a Member set forth on Exhibit 4.4 less the cash distribution to such Member equals such Member's pro rata portion (in accordance with its Initial Percentage Interest set forth on Exhibit 3.1) of all such Pre-Effective Expenditures. Notwithstanding the foregoing, in the event that prior to the PA Execution Date, Duke or Piedmont makes Capital Contributions to the Company pursuant to Section 4.1(d), the amount of such Capital Contributions shall reduce the amount otherwise required to be contributed by such Member(s) (and distributed to the Members that have Pre-Effective Expenditures set forth on Exhibit 4.4) pursuant to this Section 4.1(b); provided, further, [\*\*\*].

(c) Further Capital Contributions. Except as specifically set forth in this Article 4 or otherwise agreed to in writing by all of the Members, no Member will be required or permitted to make any Capital Contributions.

(d) Reimbursement. The Members acknowledge that Dominion and/or its Affiliates have incurred or committed to incur on behalf of the Company, and prior to the PA Execution Date will continue to incur or commit to incur on behalf of the Company, all of the Pre-Effective Expenditures. [\*\*\*]

#### 4.2. Additional Capital Contributions

---

\*\*\* Confidential information has been omitted and filed separately with the Securities and Exchange Commission.

(a) Capital Call. From and after the PA Execution Date, the Board shall make a capital call for Additional Capital Contributions from the Members by issuing a written notice to the Members in the form set forth as Annex C (a “**Capital Call Notice**”) at any time the Operator determines in good faith that the Company requires capital to fund (i) expenditures contemplated in and substantially consistent with the current Annual Budget for the purposes set forth therein and, if with respect to expenditures contemplated by the Initial Budget or the PA Required Expansion Facilities Budget, up to an amount not to exceed, in the aggregate, the applicable Aggregate Budget Cap or (ii) Emergency Services. Except as provided in Sections 4.2(f) and 4.3, all Capital Contributions described in any Capital Call Notice issued in accordance with Section 4.2(b) are mandatory, and each Member hereby agrees to make such Capital Contributions to the Company, by wire transfer in immediately available funds, at the time and in such amount as is specified in each Capital Call Notice.

(b) Capital Call Notice. Each Capital Call Notice will specify: (i) the aggregate amount of Capital Contributions to be made consistent with the current Annual Budget; (ii) the date on which such funds are to be contributed (which date will not be less than twenty (20) Days after the date the Capital Call Notice is issued by the Board); (iii) the amount of the Capital Contribution to be made by each Member (calculated as the product of such aggregate amount of Capital Contributions described in clause (i) multiplied by such Member’s Percentage Interest); (iv) the bank account of the Company to which such Capital Contributions should be transferred; and (v) the purpose(s) for which the additional capital will be utilized (including a reference to the applicable item(s) in the Annual Budget or Facilities Budget against which such capital will be applied). In no event shall a Capital Call Notice be issued for the purpose of funding cash distributions to the Members. Each Capital Call Notice issued by the Board shall, absent manifest error, be conclusive and binding for all purposes on the Members.

(c) Upon the making of any Capital Contribution, the Members’ respective Capital Account balances shall be adjusted to reflect such Capital Contributions.

(d) Failure to Contribute.

(i) Notice. If a Member fails to contribute all or any portion of a Capital Contribution required to be made by it hereunder by the date required in the relevant Capital Call Notice, then a Manager on behalf of the Board will, and any Member may, promptly provide written notice of such failure to such Member, and such Member will have ten (10) Days from receipt of such written notice (the “**Funding Deadline**”) to contribute such Capital Contribution in full (such amount, the “**Deficiency**”).

(ii) Failure to Make a Capital Contribution. If a Member fails to contribute (or satisfy through Financing Commitment Assurance, if any, that may be in existence for the benefit of the Company pursuant to Section 4.7(b)) the Deficiency in full by the Funding Deadline (such Member, a “**Non-Funding**”

**Member**”), then such Member shall be in default of its obligations hereunder in respect of such Capital Contribution (referred to as a “**Contribution Default**”). The Board will, or any Member may, promptly provide written notice of such Contribution Default to each Member, which notice will indicate the amount of such Deficiency (a “**Contribution Default Notice**”); *provided* that the failure to provide such notice shall have no effect on the existence of such Contribution Default.

(e) Elective Contributions.

(i) Funding by Non-Defaulting Members. After the Funding Deadline, each Member (other than the Non-Funding Member(s) and any other Defaulting Member) (the “**Non-Defaulting Members**”) shall have the right but not the obligation to deliver written notice (an “**Elective Notice**”) to the Board and each other Member not later than thirty (30) Days after receipt of the Contribution Default Notice stating that such Non-Defaulting Member agrees to fund the full amount of the Deficiency as a Capital Contribution to the Company (an “**Elective Contribution**”); *provided* that two or more Non-Defaulting Members may jointly elect to make Elective Contributions in respect of the full amount of the Deficiency. Each other Non-Defaulting Member shall have the right, but not the obligation, for a period of ten (10) Days after its receipt of an Elective Notice (the “**Participation Election Period**”), to elect to participate in the Elective Contribution specified in the applicable Elective Notice by providing written notice thereof to the Board and each other Member (a “**Participation Notice**”). If a Participation Notice is given prior to the expiration of such ten (10)-Day period, then the amount of the Elective Contribution of each Elective Funding Member shall be an amount equal to the product of (x) the Deficiency *multiplied by* (y) a fraction, the numerator of which shall be the Percentage Interest of such Elective Funding Member and the denominator of which shall be the aggregate Percentage Interests of all such Elective Funding Members. Elective Contributions shall be made by wire transfer in immediately available funds not later than ten (10) Days after the expiration of the Participation Election Period.

(ii) Adjustment of Percentage Interests. In the event that an Elective Funding Member makes an Elective Contribution to the Company, the Percentage Interests of all affected Members will be recalculated based on the respective aggregate Capital Contributions of each Member through and including the date such Elective Contribution is made.

(iii) No Elective Contributions. If there are no Elective Contributions in respect of any Contribution Default by a Non-Funding Member and the Non-Funding Member’s Membership Interest is not purchased pursuant to Section 4.5(d), (x) the Percentage Interests of the Members shall not be adjusted and (y) from and after the occurrence of the relevant Contribution Default until the Total Amount in Default is paid in full, and without prejudice to any other remedies available to the Company and the Non-Defaulting Members under this Agreement, at law or in equity, all distributions from the Company that would

otherwise be made to the Non-Funding Member pursuant to this Agreement shall not be made to the Non-Funding Member but shall instead be retained by the Company (“**Retained Distributions**”) and applied, dollar-for-dollar, to reduce the Total Amount in Default. Retained Distributions applied towards the Total Amount in Default shall be deemed paid first, to reimburse the Company for any Collection Costs, second, to the payment of Interest and third, to payment of the outstanding amount of the Deficiency. Retained Distributions shall be treated as having been distributed to the Non-Funding Member and then contributed by the Non-Funding Member to the capital of the Company; *provided* that any Retained Distributions applied to the payment of Interest that constitutes Deficiency Interest Income shall be treated as having been paid by the Non-Funding Member to the Company.

(f) Budget Cap. Notwithstanding anything contained in this Agreement to the contrary, no Member shall be obligated to make any Capital Contributions in respect of the Committed Facilities to the extent that such Capital Contributions would, taking into account all Capital Contributions previously made by such Member with respect to such Committed Facilities, exceed such Member’s applicable Budget Cap with respect to such Committed Facilities. The Members acknowledge that each Budget Cap applicable to each Member shall initially be set at an amount equal to (i) 110% of such Member’s Percentage Interest of the Initial Facilities Budget (in effect as of the Effective Date) with respect to the Initial Facilities or (ii) the amount in U.S. dollars set forth opposite such Member’s name in Attachment D to the Initial Resolution with respect to the PA Required Expansion Facilities, as applicable, and that the Budget Cap for each Member that voted to approve a Budget Overrun shall be deemed to be automatically increased by an amount equal to such Member’s Percentage Interest of the amount of such Budget Overrun. A Budget Cap applicable to any Member shall not be reduced under any circumstances, including as a result of such Member becoming a Diluting Member or Defaulting Member.

#### 4.3. Dilution.

(a) Notwithstanding anything contained in Section 4.2 to the contrary, any Member that voted in the negative in connection with an Approved Facilities Project approved by the Board in accordance with Section 6.7(b)(iii)(4) shall be permitted to elect, by written notice to the other Members within ten (10) Days after such vote, to have its Percentage Interest diluted (a “**Dilution Election**”). Any Dilution Election made pursuant to this Section 4.3 shall be final and irrevocable.

(b) Notwithstanding anything contained in Section 4.2 to the contrary, if the Board at any time approves a Budget Overrun in accordance with Section 6.7(b)(iii)(14), the Board shall, no later than two (2) Business Days following such determination, notify the Members in writing of such approval (such notice to include details of the Budget Overrun). Any Member that voted in the negative in connection with the Budget Overrun shall be permitted to elect, by written notice to the other Members within ten (10) Days of its receipt of the notice described in the immediately preceding sentence, to make a Dilution Election.

(c) Effective upon a Dilution Election: (i) the Member that made such election (the “**Diluting Member**”) shall have no obligation to make any Capital Contribution(s) to the Company in respect of such Approved Facilities Project or Budget Overrun, as applicable; (ii) the amount of the Capital Contribution(s) that the Diluting Member would otherwise have been obligated to fund absent such election (the “**Dilution Shortfall**”) shall be made by the other Members as provided in Section 4.3(d); (iii) the Diluting Member shall not be considered to be a Defaulting Member or to have an outstanding Deficiency with respect to such Approved Facilities Project or Budget Overrun, as applicable; (iv) a Diluting Member will be entitled to participate in any future proposed Facilities Project at its then-current Percentage Interest and (v) following the funding of any Dilution Shortfall pursuant to Section 4.3(d), the Diluting Member shall be deemed to have waived all of its rights under Section 10.4. Notwithstanding the foregoing, in no event shall a Diluting Member be relieved of its obligations under Section 4.2 to make any Capital Contributions in respect of any of the Committed Facilities at its then-current Percentage Interest up to the amount of its Budget Cap relating to such Committed Facilities.

(d) Following a Dilution Election, (i) each of the Members holding at least 15% of the Percentage Interests whose designated Managers approved the Budget Overrun or Approved Facilities Project (any such Member, a “**Dilution Funding Member**”) shall be obligated to make Capital Contributions to the Company of either (1) an amount equal to the Dilution Shortfall multiplied by a fraction, the numerator of which is the Percentage Interest of such Dilution Funding Member and the denominator of which is the aggregate Percentage Interests of all Dilution Funding Members or (2) such other portion of the Dilution Shortfall as may be agreed by the Dilution Funding Members; *provided* that the entire Dilution Shortfall is funded. The applicable Budget Cap for each Dilution Funding Member shall be increased by the amount of Capital Contributions it makes to fund the Dilution Shortfall, consistent with the above.

(e) Following the making of the Capital Contributions by the Dilution Funding Member(s) pursuant to Section 4.3(d), the Members’ respective Percentage Interests shall be adjusted to reflect such Capital Contributions and the dilution of the Diluting Member’s Percentage Interest. The adjustment of the Members’ respective Percentage Interests shall constitute the sole and exclusive remedy of the Company and each other Member with respect to such Dilution Election.

#### 4.4. Pre-Effective Expenditures

Set forth in Exhibit 4.4 are the amounts of Pre-Effective Expenditures that have been incurred by each Member (or its Affiliates) with respect to the Initial Facilities and that are, as of the Effective Date, approved by the Members and the Company. If any Member or Affiliate thereof has made expenditures or incurred costs prior to the PA Execution Date that are not set forth in Exhibit 4.4 but which such Member desires to be considered as Pre-Effective Expenditures, such Member may, no later than ninety (90) Days after the PA Execution Date, request approval thereof by consent of the Managers designated by the Members holding at least 70% of the Percentage Interests. After all such additional expenditures and costs to be



considered as Pre-Effective Expenditures hereunder have been approved or disapproved by the Members, each Member whose additional expenditures or costs are approved as Pre-Effective Expenditures pursuant to this Section 4.4 shall be treated as having made an additional Capital Contribution in the amount of such approved Pre-Effective Expenditures and, if after the Effective Date, the applicable Member(s) shall, without the requirement for any Capital Call Notice and not later than two (2) Business Days following its receipt of written notice from the Board, make cash Capital Contributions to the Company in order to equalize the Members' Capital Contributions in proportion to their respective Percentage Interests (so that all Members' Capital Contributions made pursuant to Section 4.1(a), Section 4.1(b), Section 4.1(d) and this Section 4.4, after giving effect to the distributions of cash described in Section 4.1(b), Section 4.1(d) and in the proviso to this sentence, are pro rata in proportion to their Initial Percentage Interests); *provided*, that the amount of such cash Capital Contributions shall immediately be reimbursed to each Member whose (x) cash Capital Contributions pursuant to Section 4.1(b) and Section 4.1(d), *plus* Pre-Effective Expenditures, *less* cash distributions pursuant to Section 4.1(b) and Section 4.1(d) are greater than (y) an amount equal to such Member's respective Initial Percentage Interest times all Pre-Effective Expenditures, in any such case, in the amount of such excess. The assets, if any, acquired by means of the additional Pre-Effective Expenditures of the Members shall be and are hereby contributed to the Company free and clear of any encumbrances, liens or mortgages. All applicable Members agree to execute and deliver any and all assignments and conveyances as may be necessary or appropriate to evidence such contribution.

#### 4.5. Events of Default

(a) Certain Remedies. If any Event of Default has occurred and is continuing, the Company and the Non-Defaulting Members may each exercise all rights and remedies available under this Agreement, at law or in equity, in connection with enforcing the Company's and/or such Member's rights and remedies hereunder in connection with such Event of Default, including court proceedings as may be necessary to collect any Total Amount in Default, as applicable. The Members agree that the Company shall, and each Non-Defaulting Member shall have the right to instruct the Board to, commence any action or proceeding to enforce the Company's rights hereunder at law or in equity in any court of competent jurisdiction consistent with Section 14.7 below. The Defaulting Member shall indemnify, hold harmless, pay and reimburse the Company, each other Member and their Affiliates and their respective directors, officers, employees and agents from and against any costs and expenses, including reasonable attorneys' fees and costs, and claims asserted by or on behalf of any Person that result from such Event of Default, including in connection with collecting all or any portion of the relevant Total Amount in Default (the "**Collection Costs**"); *provided, however*, the foregoing shall not apply to damages referenced in Section 14.10, other than in the case where the indemnified Person is legally obligated to pay such damages to another Person in connection with such claim. Collection Costs paid by a Defaulting Member to the Company shall be treated as a Capital Contribution by the Defaulting Member.

(b) Impact of Event of Default. If any Event of Default has occurred and is continuing, then for so long as such Event of Default is continuing:

(i) The Defaulting Member shall, other than with respect to any amendment or restatement of this Agreement or the Certificate in a manner which is materially adverse to the Defaulting Member's distribution (liquidating or otherwise) and/or allocation rights in this Agreement, forfeit all voting and consent rights of a Member hereunder (including any voting and consent rights relating to the approval, suspension or termination of, or enforcement of rights under, any Transaction Document).

(ii) No Disposition or other transfer or assignment of a Membership Interest (by operation of law or otherwise) in a Disposition, Change in Control or otherwise by a Defaulting Member shall be effective unless the transferee pays to the Company, at the time of such Disposition, transfer or assignment, an amount equal to the Total Amount in Default of such Defaulting Member.

(iii) Neither the Defaulting Member nor any of its Affiliates shall have the right to exercise any rights pursuant to Sections 4.5(d), 10.4 or 10.5.

(iv) A Defaulting Member shall continue to be required to make Capital Contributions pursuant to any Capital Call issued by the Board pursuant to the then-current Budget as approved by the Board and pursuant to the terms of this Agreement.

(c) Affiliates. For all purposes of this Agreement, if any Member is a Defaulting Member, then each Affiliate (other than an Affiliate that is a publicly-traded limited partnership or a publicly-traded limited liability company with partnership tax status, in each case, publicly-traded on a national securities exchange) of such Defaulting Member that is also a Member at the time of such Event of Default shall be deemed to be a Defaulting Member.

(d) Buy-Out Right. Upon the occurrence of an Event of Default (but in the case of a Contribution Default, only if and after the Elective Funding Members fail to deliver Elective Notices in accordance with Section 4.2(e)(i)), any Non-Defaulting Member may (but shall not be obligated to), by delivery of written notice to the Defaulting Member and the other Members, purchase, at any time for so long as such Event of Default is continuing, all of the Defaulting Member's Membership Interest by written notice to the other Members. In the event that more than one Non-Defaulting Member elects to purchase such Membership Interest, the Non-Defaulting Members so electing to purchase shall be entitled to purchase a portion of such Membership Interest in proportion to their respective Percentage Interests. The purchase price for the defaulting Member's Membership Interest shall be (i) if the Event of Default occurred prior to the In-Service Date, an amount equal to seventy-five percent (75%) of the amount of all Capital Contributions made by the Defaulting Member as at the date of such Event of Default or (ii) if the Event of Default occurred following the In-Service Date, an amount equal to seventy-five percent (75%) of the Fair Market Value of such Membership Interest as at the date of such Event of Default. If such purchase right is exercised, the closing shall occur within sixty (60) days following the first delivery of a notice to the Defaulting Member pursuant to this Section 4.3(d) or the

determination of the Fair Market Value of such Membership Interest, as applicable, at such time and place as the relevant Members may agree. At the closing, the Non-Defaulting Member(s) shall pay for the Membership Interest by wire transfer of immediately available funds to one or more accounts of the Defaulting Member designated by the Defaulting Member in writing, and the Membership Interest so purchased shall be conveyed by the Defaulting Member free and clear of all Liens (except those created under or pursuant to this Agreement). Each Member agrees to execute and deliver all related documentation and take such other action in support of the transfer of the Defaulting Member's Membership Interest as shall be requested by the Non-Defaulting Members in order to carry out the terms and provision of this Section 4.3(d). The right of the Non-Defaulting Members to purchase the Defaulting Member's Membership Interest shall be in addition to such other rights and remedies hereunder or that may exist at law, in equity or under contract on account of such Event of Default.

(e) Equitable Relief. The Members agree that irreparable damage would occur in the event that any of the provisions of Article 4 were not to be performed in accordance with the terms hereof and that the Members will be entitled to specific performance of the terms hereof in addition to any other remedy available at law or in equity without the obligation to post bond or other security.

(f) Notice. Each Member agrees to notify the Board within five (5) Days of the occurrence of a Fundamental Event affecting it.

#### 4.6. Interest on and Return of Capital Contributions

(a) No interest shall be paid by the Company in respect of any Member's Capital Contributions or Capital Account.

(b) Except as otherwise provided herein, no Member may withdraw or receive a return of its Capital Contribution.

#### 4.7. Financing

(a) The Members anticipate that the Company may, following its acceptance of the FERC Certificate in respect of the Initial Facilities, seek Financing Commitments for the construction and operations of the Committed Facilities and any Approved Facilities Projects. As of the Effective Date, any such Financing Commitments, if approved in accordance with this Agreement, are currently contemplated to be structured to reflect the principles identified in the financing plan approved pursuant to the Initial Resolution. The Members hereby acknowledge and agree that any Financing Commitment shall be subject to the approval of the Managers and/or Members in accordance with this Agreement.

(b) In connection with the Financing Commitments described in Section 4.7(a) above, if or as required by a Financing Entity, each Member shall deliver to such Financing Entity (or the Company, as necessary to secure any Financing Commitment) credit support for the payment of its Capital Contribution obligations in any form

required by or acceptable to such Financing Entity in connection with an approved Financing Commitment (“*Financing Commitment Assurance*”). The Members acknowledge that the failure by a Member to provide Financing Commitment Assurance as and when required in connection with an approved Financing Commitment shall constitute a Performance Default.

## **ARTICLE 5**

### **ALLOCATIONS AND DISTRIBUTIONS**

#### 5.1. Allocations of Profits and Losses

After giving effect to the special allocations set forth in Section 5.2, Profits and Losses for any Allocation Period shall be allocated to the Members in accordance with their Percentage Interests.

#### 5.2. Special Allocations

Notwithstanding the provisions of Section 5.1, the following allocations shall be made for each Allocation Period in the following order and priority:

(a) If there is a net decrease in Minimum Gain of the Company for an Allocation Period, then there shall be allocated to each Member items of income and gain for that year equal to that Member’s share of the net decrease in Minimum Gain of the Company (within the meaning of Treasury Regulations Section 1.704-2(g)(2)), subject to the exceptions set forth in Treasury Regulations Section 1.704-2(f)(2), (3), and (5). In the event that the application of the minimum gain chargeback requirement would cause a distortion in the economic arrangement between the Members, the Tax Matters Member may request that the Commissioner of the Internal Revenue Service waive the minimum gain chargeback requirement pursuant to Treasury Regulations Section 1.704-2(f)(4). The foregoing is intended to be a “minimum gain chargeback” provision as described in Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in all respects in accordance with that Regulation.

(b) If during an Allocation Period there is a net decrease in Member Nonrecourse Debt Minimum Gain, then, in addition to the amounts, if any, allocated pursuant to the preceding paragraph, any Member with a share of that Member Nonrecourse Debt Minimum Gain (determined in accordance with Treasury Regulations Section 1.704-2(i)(5)) shall, subject to the exceptions in Treasury Regulations Section 1.704-2(i)(4), be allocated items of income and gain for the year (and, if necessary, for succeeding years) equal to that Member’s share of the net decrease in the Member Nonrecourse Debt Minimum Gain. In the event that the application of the Member Nonrecourse Debt Minimum Gain chargeback requirement would cause a distortion in the economic arrangement among the Members, the Tax Matters Member may request that the Commissioner of the Internal Revenue Service waive the minimum gain chargeback requirement pursuant to Treasury Regulations Section 1.704-2(f)(4) and 1.704-2(i)(4). The foregoing is intended to be the “chargeback of member nonrecourse debt minimum gain” required by Treasury

Regulations Section 1.704-2(i)(4) and shall be interpreted and applied in all respects in accordance with that Regulation.

(c) Any Nonrecourse Deductions for any Allocation Period shall be allocated between the Members in accordance with their Percentage Interests.

(d) Any Member Nonrecourse Deductions for any Allocation Period shall be specially allocated to the Member who bears (or is deemed to bear) the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(2).

(e) Losses allocated pursuant to Section 5.1 and items of losses and deductions allocated pursuant to this Section 5.2 shall not exceed the maximum amount of losses and deductions that can be allocated to a Member without causing or increasing a deficit balance in the Member's Adjusted Capital Account. If, at the end of any Allocation Period, as a result of the allocations otherwise provided for in Section 5.1 and this Section 5.2, the Adjusted Capital Account balance of any Member shall become negative, items of deduction and loss otherwise allocable to such Member for such year, to the extent such items would have caused such negative balance, shall instead be allocated to Members having positive Adjusted Capital Account balances remaining at such time in proportion to such balances. If a Member receives an allocation of Losses or items of losses and deductions otherwise allocable to another Member pursuant to this Section 5.2(e), such Member shall be allocated Profits in subsequent Allocation Periods necessary to reverse the effect of such allocation of Losses or items of losses and deductions, and such allocation of Profits (if any) shall be made before any other Profit allocations pursuant to Section 5.1.

(f) If any Member receives any adjustments, allocations or distributions described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate the deficit in such Member's Adjusted Capital Account (as determined in accordance with Treasury Regulations Section 1.704-1(b)(2)(ii)(d)) created by such adjustments, allocations or distributions as promptly as possible; *provided* that an allocation pursuant to this paragraph shall be made only to the extent that a Member would have a deficit Adjusted Capital Account balance (as determined as provided in the prior clause), after all other allocations provided for in Section 5.1 and this Section 5.2 have been tentatively made as if this paragraph were not in the Agreement. This paragraph is intended to qualify with the "qualified income offset" requirement in the Treasury Regulations.

(g) If any Member has a deficit in its Adjusted Capital Account, such Member shall be specially allocated items of income and gain in the amount of such deficit as rapidly as possible, *provided* that an allocation pursuant to this paragraph shall be made if and only to the extent that such Member would have a deficit to its Adjusted Capital Account after all other allocations provided for in this Agreement have been tentatively made as if this paragraph were not in this Agreement.

(h) All items of deductions and loss for any Deficiency Interest Expense shall be allocated to the Member whose Retained Distributions are required to be applied to the payment of such Deficiency Interest Expense pursuant to Section 4.2(e)(iii).

(i) All items of income or gain for any Deficiency Interest Income shall be allocated to the Members other than the Member whose Retained Distributions are required to be applied to the payment of such Deficiency Interest Income pursuant to Section 4.2(e)(iii) in proportion to their relative Percentage Interests.

(j) All items of deduction and loss attributable to Collection Costs of the Company shall be allocated to the Defaulting Member responsible for the payment of such Collection Costs pursuant to Section 4.5(a), including any Member whose Retained Distributions are required to be applied to the payment of such Collection Costs pursuant to Section 4.2(e)(iii).

(k) In the event that, in any Allocation Period, the Company is deemed to realize gain or loss from the adjustment to the Gross Asset Values of the Company's assets in connection with the making of Elective Contributions pursuant to Section 4.2(e)(i) or as a result of a Dilution Election pursuant to Section 4.3, such gain or loss will be allocated to the Members in a manner that, to the extent possible, causes the Capital Account balances of the Members to be in proportion to their respective Percentage Interests as adjusted pursuant to Section 4.2(e)(ii) in connection with the making of such Elective Contributions or Section 4.3 in connection with a Dilution Election.

(l) The allocations set forth in subsections (a) through (g) of this Section 5.2 (collectively, the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. The Members intend that, to the extent possible, all Regulatory Allocations that are made be offset either with other Regulatory Allocations or with special allocations pursuant to this Section 5.2. Therefore, notwithstanding any other provisions of this Article 5 (other than the Regulatory Allocations), the Board shall make such offsetting special allocations in whatever manner they determine appropriate so that, after such offsetting allocations are made, each Member's Adjusted Capital Account balance is, to the extent possible, equal to the Adjusted Capital Account balance such Member would have had if the Regulatory Allocations were not part of this Agreement. In making such determination, the Board shall take into account future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made.

### 5.3. Allocation and Other Rules

(a) Profits, Losses, and any other items of income, gain, loss, or deduction will be allocated to the Members pursuant to this Article 5 as of the last day of each Fiscal Year, *provided* that Profits, Losses, and the other items will also be allocated at any time the Gross Asset Values of the Company's assets are adjusted pursuant to

paragraph (2) of the definition of “Gross Asset Value” in Section 2.1 and in a manner that the Board and Tax Matters Member reasonably deem appropriate to take into account the varying interests of the Members.

(b) Profits, Losses, and any other items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee as agreed by the transferor and the transferee and based on the portion of the calendar year during which each was recognized as owning such interest, without regard to whether cash distributions were made to the transferor or the transferee during that calendar year; *provided, however*, that this allocation must be made in accordance with a method permissible under Section 706 of the Internal Revenue Code and the applicable Treasury Regulations. If no such agreement has been made, the allocation shall be determined by the Board in its reasonable discretion in accordance with such Treasury Regulations.

(c) The Members are aware of the income tax consequences of the allocations made by this Article 5 and hereby agree to be bound by the provisions of this Article 5 in reporting their shares of Company income and loss for income tax purposes.

#### 5.4. Allocations for Tax Purposes

(a) Except as otherwise provided herein, for federal income tax purposes, each item of income, gain, loss and deduction shall be allocated among the Members in the same manner as its correlative item of “book” income, gain, loss or deduction is allocated pursuant to Sections 5.1 and 5.2.

(b) In accordance with Section 704(c) of the Internal Revenue Code and the Treasury Regulations thereunder, income and deductions with respect to any property carried on the books of the Company at a Gross Asset Value that differs from such property’s adjusted tax basis shall, solely for federal income tax purposes, be allocated among the Members in a manner to take into account any variation between the adjusted tax basis of such property to the Company and such Gross Asset Value. In making such allocations, the Board shall use the remedial allocation method permitted under Treasury Regulations Section 1.704-3(d).

(c) All recapture of income tax deductions resulting from the Disposition of Company Property shall, to the maximum extent possible, be allocated to the Member to whom the deduction that gave rise to such recapture was allocated hereunder to the extent that such Member is allocated any gain from the Disposition of such Company Property.

(d) All items of income, gain, loss, deduction, and credit allocable to any Membership Interest that may have been transferred shall be allocated between the transferor and the transferee as agreed by the transferor and the transferee and based on the portion of the calendar year during which each was recognized as owning such interest, without regard to whether cash distributions were made to the transferor or

the transferee during that calendar year; *provided, however*, that this allocation must be made in accordance with a method permissible under Section 706 of the Internal Revenue Code and the applicable Treasury Regulations. If no such agreement has been made, the allocation shall be determined by the Board in its reasonable discretion in accordance with such Treasury Regulations.

#### 5.5. Distributions

(a) Except as provided in Section 5.2(d) and Section 11.2(c), the Company shall make distributions of all Available Cash each Fiscal Quarter to the Members within thirty (30) Days after the last Day of the last month of each Fiscal Quarter.

(b) All distributions of Available Cash or otherwise shall be made to the Members in such proportion as the Percentage Interest of each such Member at such time shall bear to the total Percentage Interests owned by all of the Members.

(c) The amount of any non-cash distributable property to be distributed in accordance with this Section 5.5 shall be its Fair Market Value.

(d) The Company shall distribute any cash contributed to the Company pursuant to Section 4.1(b), Section 4.1(d) and Section 4.4 in the manner set forth in Section 4.1(b), Section 4.1(d) and Section 4.4, as applicable. To the maximum extent permitted by Treasury Regulations Section 1.707-4(d), the Members agree to treat any distributions made pursuant to this Section 5.5(d) as received by each distributee Member in reimbursement of pre-formation capital expenditures.

(e) Notwithstanding any provision to the contrary contained in this Agreement, the Company may not make a distribution to any Member on account of its Membership Interest if such distribution would violate Section 18-607 of the Act or other law.

#### 5.6. Acknowledgement of Allocation Rules

The Members are aware of the income tax consequences of the allocations and distributions made by this Article 5 and hereby agree to be bound by the provisions of this Article 5 in reporting their shares of Company income and loss for income tax purposes.

#### 5.7. Tax Withholding

To the extent that the Company is required by the Internal Revenue Code (including Internal Revenue Code Sections 1441, 1442, 1445, 1446, 1471, 1472, 1473 and 1474) or pursuant to any provision of any state or local tax law to withhold or to make tax payments on behalf of or with respect to any Member, the Company may withhold such amounts and make such tax payments as so required. All tax payments made on behalf of a Member shall, at the Company's option, (i) be promptly paid to the Company by the Member on whose behalf such payments were made, or (ii) be repaid by reducing the amount of current or future distributions which would otherwise have been made to such Member, or if such distributions are not sufficient for that purpose, by so reducing the proceeds of liquidation otherwise payable to such



Member. Whenever the Company selects option (ii) pursuant to the preceding sentence for repayment of a tax payment by the Company, for all other purposes of this Agreement, such Member shall be treated as having received all distributions unreduced by the amount of such tax payment. The Company shall promptly provide written notification to each Member with respect to which the Company has determined it has a tax payment or tax withholding obligation as contemplated under this Section 5.7.

## **ARTICLE 6**

### **MANAGEMENT AND GOVERNANCE**

#### 6.1. Board

Subject to any approval rights contained herein or in the Act, the powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of managers, who shall individually be referred to herein each as a “*Manager*” or collectively as the “*Managers*,” and who shall act as a board (when acting as a board, the Managers are referred to herein as the “*Board*”). Decisions or actions taken by the Board in accordance with the provisions of this Agreement shall constitute decisions or actions by the Company and shall be binding on each Member, Manager, Officer and employee, if any, of the Company. Any Person dealing with the Company, other than a Member or a Member’s Affiliate, may rely on the authority of the Board or the Officers in taking any action in the name of the Company without inquiry into the provisions of this Agreement or compliance with it, regardless of whether that action actually is taken in accordance with the provisions of this Agreement. No Member in its capacity as a Member shall have any unilateral right or authority to take any action on behalf of the Company or to bind or commit the Company to any agreement, transaction or other arrangement with respect to third parties or otherwise or to hold itself out as an agent of the Company. Except as otherwise expressly provided in this Agreement, each Member hereby (a) specifically delegates to the Board its rights and powers to manage and control the business and affairs of the Company in accordance with the provisions of Section 18-407 of the Act, and (b) revokes its right to bind the Company, as contemplated by the provisions of Section 18-402 of the Act.

#### 6.2. Certain Agreements

Subject to the oversight of the Board and as more specifically set forth in the Operations Agreement, certain activities of the Company will be performed by the Operator in accordance with the Operations Agreement; *provided* that, notwithstanding the foregoing, neither the Operator nor any Affiliate thereof shall have the authority to take any action without the prior consent of the Managers designated by Members holding at least 70% of the Membership Interests unless such authority is expressly granted in the Operations Agreement. The Managers designated by Members holding at least 70% of the Membership Interests shall be permitted to delegate authority with respect to the supervision of construction and the operation and maintenance of the Facilities and the conduct of certain administrative and supervisory services to the Operator; *provided* that the Operator shall have no authority over any action or decision subject to approval of the Board under Sections 6.7(b)(i), (ii) or (iii). The Members acknowledge that, pursuant to the Initial Resolution, the Operations Agreement will be ratified

and approved by the Members and any officer will be entitled to, on behalf of the Company, execute the Operations Agreement.

### 6.3. Designation of Managers

(a) From and after the Effective Date unless changed in accordance with this Section 6.3, the Board shall be composed of four (4) individuals. Dominion shall have the right to designate one (1) Manager (the “*Dominion Manager*”), Duke shall have the right to designate one (1) Manager (the “*Duke Manager*”), Piedmont shall have the right to designate one (1) Manager (the “*Piedmont Manager*”) and AGL shall have the right to designate one (1) Manager (the “*AGL Manager*”). Each Manager shall serve until his successor is duly selected in accordance with this Agreement and qualified or until such individual’s death, resignation or removal. The Managers as of the Effective Date are set forth on Exhibit 6.3(a).

(b) In addition to the Managers, each of Dominion, Duke, Piedmont and AGL shall have the right to designate one (1) individual to represent its respective designated Manager at any Board meeting at which such Manager is unable to attend (each, an “*Alternate Manager*”). The term “*Manager*” shall also refer to any Alternate Manager that is actually performing the duties of the applicable Manager in lieu of such Manager. In addition, the act of an Alternate Manager shall be deemed the act of the Manager for which such Alternate Manager is acting, without the need to produce evidence of the absence or unavailability of such Manager.

(c) Each Manager shall have the full authority to act on behalf of the Member that designated such Manager; the action of a Manager at a meeting (or through a written consent) of the Board shall bind the Member that designated such Manager, and the other Members shall be entitled to rely upon such action without further inquiry or investigation as to the actual authority (or lack thereof) of such Manager.

(d) The Board may by consent of the Managers designated by the Members Holding a Majority of the Percentage Interests establish and name one or more committees, each committee to consist of one or more of the Managers, and any such committee of which shall be dissolved at the written request of any one or more Managers. Any committee established pursuant to this Section 6.3(d) shall have and may exercise all the powers and authority delegated to such committee by the Board.

(e) Each Manager shall vote the entire Percentage Interest of the Member that appointed such Manager.

(f) Each Manager may vote in person or by delivering a written proxy to another Manager. A Manager shall serve until such Manager dies, resigns or is removed from office as provided herein.

(g) The number of Managers serving on the Board may not be increased or decreased except by the consent of the Members holding at least 90% or more of the

Percentage Interests; *provided* that in no event shall the Board have less than four Managers.

(h) Managers will not be paid any fee for serving on the Board and each Manager shall be responsible for any out-of-pocket expenses incurred in connection with attending meetings of the Board.

#### 6.4. Removal of Managers

A Manager may be removed from the Board, with or without cause, only by the Member(s) who designated such Manager to serve on the Board.

#### 6.5. Vacancies

If a vacancy is created on the Board at any time by the death, disability, retirement, resignation or removal of a Manager, the Member(s) that had designated such Manager to serve on the Board shall have the sole and exclusive right to designate a replacement therefor.

#### 6.6. Meetings of Board

(a) Meetings of the Board, regular or special, may be held either inside or outside the State of Delaware.

(b) Regular meetings of the Board shall occur at least semi-annually and may be called on fifteen (15) Days' notice (effective upon receipt) to each Manager, either personally or by facsimile, electronic transmission (including electronic mail), overnight courier, or telegram, by any Manager; *provided* that such notice may be waived by each applicable member of the Board. Except as otherwise provided by statute, the Certificate or this Agreement, any and all business may be transacted at any regular meeting.

(c) Special meetings of the Board may be called on seven (7) Days' notice (effective upon receipt) to each Manager, either personally or by facsimile, electronic transmission (including electronic mail) or overnight courier by any Manager. The business to be transacted at, and the purpose of, any regular or special meeting of the Board shall be specified in the notice unless there is a waiver of notice of such meeting.

(d) Emergency meetings of the Board may be called on 24 hours' notice (effective on receipt) to each Manager, either personally or by facsimile, electronic transmission (including electronic mail) or overnight courier by any Manager. The business to be transacted at and the purpose of the emergency meeting of the Board shall be specified in the notice unless there is a waiver of notice of such meeting; *provided, however*, emergency meetings of the Board shall only be called for the purpose of acting on incidents and issues that arise in emergency situations for which action may be required by the Company in such a manner or a limited time frame that calling a special meeting of the Board to deal with such incidents or issues is impractical.

(e) Except for matters in this Agreement specifying other approval or consent requirements or thresholds, at all meetings of the Board the presence in person or by proxy of the Managers designated by the Members then holding at least 70% of the Percentage Interests shall be necessary and sufficient to constitute a quorum for the transaction of business. Each Member shall use all reasonable efforts to cause the Manager(s) designated by it to attend all meetings of the Board.

(f) All meetings of the Board shall be presided over by the chairman of the meeting, who shall be a Manager appointed and approved on an annual basis by the Managers designated by the Members Holding a Majority of the Percentage Interests (the “*Chairman*”), *provided* that the office of the Chairman must rotate annually among the Members (excluding Defaulting Members) whose Percentage Interests are at least 4%. The initial Chairman is listed on Exhibit 6.3(a) hereto. The Chairman shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as determined by him to be in order, but shall not have a second, deciding vote in such capacity. The Company’s secretary (or if such Person is not available, the Person designated by the Chairman of the meeting to be the acting secretary at a meeting) shall act as the secretary of the meeting who shall make a written record of the proceedings of such meeting which shall be provided to the Members promptly after the meeting. Notwithstanding the preceding rights set forth herein to designate a Chairman, in the event a Member’s right to designate a Manager is terminated pursuant to this Agreement, such Member’s right to designate the Chairman shall also be terminated.

(g) Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the minimum number of Managers that would be required to take such action at a duly called and convened meeting of the Board. A signature delivered by portable document format attached to an e-mail, a photographic, photostatic, facsimile or similar reproduction of a writing signed by a Manager, shall be regarded as an original signature of the Manager. The Company shall use commercially reasonable efforts to provide reasonable prior notice to all of the Managers of any such action to be taken by written consent of the Board so long as the delay caused by providing the notice to all of the Managers does not materially adversely affect the Company, and, in any event, will promptly deliver such written consent to all Managers that did not execute such consent.

(h) Subject to the provisions of applicable law and this Agreement regarding notice of meetings and the granting of proxies, individuals serving on the Board (i) may, unless otherwise restricted by the Certificate or this Agreement, participate in and hold a meeting of the Board by using conference telephone, electronic transmission, or similar communications equipment by means of which all individuals participating in the meeting can hear each other, and (ii) may grant a proxy to another Manager or delegate its right to act to another Manager which proxy or delegation shall be effective as the attendance or action at the meeting of the Manager giving such proxy or delegation. Participation by a Manager in a meeting pursuant to this Section

6.6(h) shall constitute presence in person at such meeting, except when an individual participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened. Each Manager may invite a reasonable number of advisors (not to exceed five (5) in respect of any Member in the aggregate) to attend meetings of the Board.

(i) Except for actions set forth in this Agreement which expressly require (x) the consent of Managers designated by the Members holding at least 96% of the Percentage Interests, (y) the consent of Managers designated by the Members holding at least 90% of the Percentage Interests or (z) consent of the Managers designated by the Members holding at least 70% of the Percentage Interests, all actions and approvals of the Board shall be approved and passed at a meeting at which a quorum is present by the consent of the Managers designated by the Members Holding a Majority of the Percentage Interests.

#### 6.7. Restricted Action Requiring Board Approval

(a) Subject to the limitations set forth in Sections 6.7(b) or as otherwise provided in this Agreement, the Board shall have the full and exclusive authority to manage the operations and business of the Company and to make any and all decisions on behalf of the Company with respect to the Business of the Company without the approval or consent of any Member.

(b) Notwithstanding anything in this Agreement to the contrary, except for actions taken by a Member or an Affiliate of a Member in its capacity as a party to a Transaction Document which actions are in compliance with the terms of a Transaction Document, the Company shall not, directly or through any Subsidiaries, and the Managers, Members, Officers and agents of the Company shall not approve of or take any action specified in this Agreement requiring (i) the consent of the Managers designated by the Members holding at least 96% or more of the Percentage Interests without obtaining the consent of the Managers designated by the Members holding at least 96% or more of the Percentage Interests, (ii) the consent of the Managers designated by the Members holdings at least 90% or more of the Percentage Interests without obtaining the consent of the Managers designated by the Members holding at least 90% or more of the Percentage Interests, (iii) the consent of the Managers designated by the Members holding at least 70% or more of the Percentage Interests without obtaining the consent of the Managers designated by the Members holding at least 70% or more of the Percentage Interests, and (iv) the consent of the Managers designated by the Members Holding a Majority of the Percentage Interests without obtaining the consent of the Managers designated by the Members Holding a Majority of the Percentage Interests.

(i) In addition to any other matters specified in this Agreement as requiring the consent of the Managers designated by the Members holding at least 96% or more of the Percentage Interests, the Company shall not, directly or through any Subsidiaries, and the Managers, Members or their Affiliates, Officers and agents of the Company shall not approve of or take any of the following

actions without obtaining the consent of the Managers designated by the Members holding at least 96% or more of the Percentage Interests:

1. dissolution of the Company pursuant to Section 11.1(a);
2. causing or permitting the Company to voluntarily file a bankruptcy petition in a court of competent jurisdiction or a petition seeking a reorganization, liquidation, dissolution or similar relief under any law or otherwise suffer to exist an involuntary proceeding against the Company seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law (but this provision shall not be construed to require any Member to ensure the profitability or solvency of the Company);
3. amending, modifying, changing or otherwise altering in any material respect the FERC Application for the Initial Facilities or recourse rates;
4. providing for the basic geographic configuration, points of receipt and delivery, extensions of the pipeline described in section c. of Schedule A, pipeline diameter or design capacity of the Initial Facilities to be materially different from that set forth in Schedule A;
5. amending any Annual Operating Budget to increase any line item therein by an amount in excess of \$200,000 (as such amount may be adjusted from time to time in accordance with Section 14.22);
6. causing or permitting the Company to merge or consolidate with or into, or convert into, any other entity;
7. intentionally conducting any activity or business that may generate income for federal income tax purposes that may not be “qualifying income” (as such term is defined pursuant to Section 7704 of the Internal Revenue Code);
8. electing for the Company to be treated for federal income tax purposes as a corporation; and
9. the actions specified in any other express provision of this Agreement requiring the consent of the Managers designated by the Members holding at least 96% of the Percentage Interests.

(ii) In addition to any other matters specified in this Agreement as requiring the consent of the Managers designated by the Members holding at least 90% or more of the Percentage Interests, the Company shall not, directly or through any Subsidiaries, and the Managers, Members or their Affiliates, Officers and agents of the Company shall not approve of or take any of the following

actions without obtaining the consent of the Managers designated by the Members holding at least 90% or more of the Percentage Interests:

1. approving a sale or abandonment of the Facilities; and
2. the actions specified in any other express provision of this Agreement requiring the consent of the Managers designated by the Members holding at least 90% of the Percentage Interests.

(iii) In addition to any other matters specified in this Agreement as requiring the consent of the Managers designated by the Members holding at least 70% of the Percentage Interests, the Company shall not, directly or through any Subsidiaries, and the Managers, Members, Operator or their Affiliates, Officers and agents of the Company shall not approve of or take any of the following actions without obtaining the consent of the Managers designated by the Members holding at least 70% of the Percentage Interests:

1. approving any Annual Budget;
2. approving the PA Required Expansion Facilities Budget or any AFP Budget;
3. amending any Annual Capital Budget;
4. approving any Facilities Project;
5. removing any Officer;
6. appointing the Company's independent certified public accountants or auditors;
7. entering into any Financing Commitment, including any Financing Commitment that, consistent with Section 4.7(b), may require Financing Commitment Assurances from all Members;
8. causing any Lien to be placed on the Facilities or any other material asset of the Company other than Permitted Liens;
9. subject to Section 14.9, amending, modifying, changing or otherwise altering the Operations Agreement;
10. delegating authority to the Operator pursuant to the Operations Agreement;
11. subject to Section 14.9, entering into, amending, suspending or terminating any Material Contract, or taking any action that results in a material default by the Company under any Material Contract;

12. approving any lease of capacity on the Facilities;
13. causing the Company to enter into any Affiliate Contract;
14. approving additional Capital Contributions from the Members to fund cost overruns in excess of the relevant Aggregate Budget Cap (the aggregate amount of such additional Capital Contributions, a “*Budget Overrun*”);
15. approving any Precedent Agreement associated with the Facilities that has not been entered into as of the Effective Date;
16. approving the form, purchase, termination or amendment by the Operator of any insurance policy that the Operator obtains and maintains on behalf of the Company pursuant to the Operations Agreement; and
17. the actions specified in any other express provision of this Agreement requiring the consent of the Managers designated by the Members holding at least 70% of the Percentage Interests.

(iv) By way of illustration and not in limitation of any other matters specified in this Agreement as requiring the consent of the Managers designated by the Members Holding a Majority of the Percentage Interests or otherwise the consent of the Board, the Company shall not, directly or through any Subsidiaries, and the Managers, Members, Operator or their Affiliates, Officers and agents of the Company shall not approve of or take any of the following actions without obtaining the consent of the Managers designated by the Members Holding a Majority of the Percentage Interests:

1. selecting a different name for the Company;
2. approving the amount of Available Cash; and
3. any other action that, pursuant to an express provision of this Agreement, requires the approval of the Managers designated by the Members Holding a Majority of the Percentage Interests.

#### 6.8. FERC Certificate Approval

(a) Voting on FERC Certificate for Initial Facilities. The Board shall immediately review the FERC Certificate for the Initial Facilities upon the Company’s receipt thereof and shall call a special meeting as soon as reasonably practicable (and in any event within twenty-one (21) Days of the Company’s receipt thereof) in order to determine, reasonably and in good faith, whether acceptance of the FERC Certificate for the Initial Facilities has or would have a material adverse effect on the rights, obligations, financial condition, properties or prospects of the Company (an “*MAE*”). At such special meeting, the Managers shall vote on (i) whether acceptance



of the FERC Certificate results in an MAE, and (ii) whether to accept the FERC Certificate.

(b) No MAE. If at such special meeting, Managers designated by Members holding at least 70% of the Percentage Interests vote that acceptance of the FERC Certificate would not result in an MAE, then the Company shall also be deemed to accept the FERC Certificate, and the Members whose Managers voted that acceptance of the FERC Certificate would not result in an MAE shall purchase, in proportion to their respective Percentage Interests, the entire Membership Interest(s) of any Member whose Manager voted in good faith that acceptance of the FERC Certificate would result in an MAE (any such Member, a “**Disagreeing Member**”) at a price equal to ninety-five percent (95%) of all Capital Contributions made by such Disagreeing Member as of the date of such special meeting.

(c) MAE. If at such special meeting, Managers designated by Members holding at least 70% of the Percentage Interests do not vote that acceptance of the FERC Certificate would not result in an MAE, then the Managers shall vote at such special meeting whether to nevertheless accept the FERC Certificate and the following subsections (i) or (ii) shall apply:

(i) Accept FERC Certificate. If Managers designated by Members holding at least 70% of the Percentage Interests vote to accept the FERC Certificate, then the Company shall be deemed to accept the FERC Certificate, and such Members whose Manager voted to accept the FERC Certificate shall purchase, in proportion to their respective Percentage Interests, the entire Membership Interest(s) of any Member whose Manager voted not to accept the FERC Certificate (any such Member, a “**FERC Certificate Non-Accepting Member**”) at a price equal to one hundred percent (100%) of all Capital Contributions made by such FERC Certificate Non-Accepting Member as of the date of such special meeting.

(ii) Reject FERC Certificate. If Managers designated by Members holding at least 70% of the Percentage Interests do not vote to accept the FERC Certificate, then, unless it is otherwise agreed to unanimously by all the Members to take an alternative course of action (including seeking rehearing of the order issuing the FERC Certificate), the Company shall be dissolved and its affairs shall be wound up in accordance with the provisions of Article 11.

(d) The acceptance of any FERC Certificate in respect of the PA Required Expansion Facilities or any Approved Facilities Project shall be subject to the vote of the Managers designated by the Members holding at least 70% of the Percentage Interests.

(e) The closing of any purchase of the Membership Interests of a Disagreeing Member or FERC Certificate Non-Accepting Member shall occur no later than sixty (60) Days after the date of the relevant vote, unless the Members agree upon a different date. At the closing, the Disagreeing Member or FERC Certificate Non-

Accepting Member, as applicable, shall execute and deliver to the purchasing Members (i) an assignment of its Membership Interest, in form and substance reasonably acceptable to the purchasing Members and (ii) any other instruments reasonably requested by the purchasing Members to give effect to the purchase; and the purchasing Members shall deliver to the Disagreeing Member or FERC Certificate Non-Accepting Member, as applicable, in immediately available funds the purchase price.

#### 6.9. Officers

(a) The Board may, from time to time, designate one or more Persons to be officers of the Company (each, an “*Officer*”). No Officer need be a resident of the State of Delaware, a Member or a Manager. Any Officers so designated shall have such authority to perform such duties as the Board may, from time to time, delegate to them. The Board may assign titles to particular Officers. The Officers of the Company shall report to the Board as requested from time to time. Unless the Board decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law (or any successor statute), the assignment of such title shall constitute the delegation to such officer of the authority and duties that are normally associated with that office, subject to the Board’s oversight and any specific delegation of authority and duties made to such Officer by the Board under this Section 6.9(a) and the other terms and provisions hereof, including Section 6.7 hereof. Each Officer shall hold office until his successor is duly designated and qualified or until his death or until he resigns or has been removed in the manner hereinafter provided. Any number of offices may be held by the same person. No Officer shall be employed by the Company.

(b) Any Officer may resign as such at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or if no time be specified, at the time of its receipt by the Board. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Any Officer may be removed as such, either with or without cause, by the Board; *provided, however*, that such removal shall be without prejudice to the contract rights, if any, of the Person so removed. Designation of an Officer shall not of itself create contract rights. Any vacancy occurring in any office of the Company may be filled by the Board.

(c) The initial Officers of the Company are listed on Exhibit 6.9(c).

#### 6.10. Duties of Managers

(a) Notwithstanding anything in this Agreement or in the Act to the contrary, a Manager, in performing his or her duties and obligations as a Manager under this Agreement, may act or omit to act solely at the direction of the Member(s) that designated such person to serve on the Board, considering only such factors, including the separate interests of the designating Member(s), as such Manager or Member(s) choose to consider, and any action of such a Manager or failure to act,

taken or omitted in good faith reliance on the foregoing provisions shall not constitute a breach of any duty (including any fiduciary or other similar duty, to the extent such exists under the Act or other applicable law) on the part of such Manager or Member(s) to the Company or any other Manager, Member, or Officer. No Member shall owe any fiduciary or other similar duties to the Company, any other Member, Manager or Officer except the implied duty of good faith and fair dealing. No Manager shall owe any fiduciary or other similar duty to the Company, any Member (other than the Member appointing such Manager), Manager or Officer except the implied duty of good faith and fair dealing. The Operator shall owe such duties to the Company, Members, Managers and Officers as contemplated in the Operations Agreement.

(b) The Members (and the Members on behalf of the Company) hereby:

(i) agree that (A) the terms of this Section 6.10, to the extent that they modify or limit a duty or other obligation, if any, that a Member or Manager may have to the Company or any other Member, Manager or Officer under the Act or applicable law, are reasonable in form, scope and content; and (B) the terms of this Section 6.10, subject to the last sentence of Section 6.10(a), shall control to the fullest extent possible if it is in conflict with a duty, if any, that a Member or Manager may have to the Company or another Member, Manager or Officer under the Act or other applicable law;

(ii) waive any duty or other obligation, if any, that a Member may have to the Company or another Member, pursuant to the Act or other applicable law, to the extent necessary to give effect to the terms of this Section 6.10, other than the implied duty of good faith and fair dealing;

(iii) agree that (i) the other Members would not be willing to make an investment in the Company, and no person designated by a Member to serve on the Board would be willing to so serve, in the absence of this Section 6.10, and (ii) it has reviewed and understands the provisions of Sections 18-1101(b) and (c) of the Act, and to the extent that at law or in equity, a Member or Manager owes any fiduciary or other duties to the Company or any Member (other than fiduciary duties owed by a Manager to the Member that appointed such Manager), Manager or Officer, such duties are eliminated to the fullest extent permitted pursuant to Section 18-1101(c) of the Act, other than the implied duty of good faith and fair dealing and subject to the last sentence of Section 6.10(a); and

(iv) agree that nothing herein is intended to create a partnership, joint venture, agency or other relationship creating fiduciary or quasi-fiduciary duties or similar duties or obligations or otherwise subject the Members to joint and several liability or vicarious liability for the actions of the other Members or to impose any duty, obligation or liability that would arise therefrom with respect to any or all of the Members or the Company.

#### 6.11. Commercially Sensitive Information

In any materials submitted to the Board for review and approval, and in all communications between itself and the Members (in their capacity as such), the Managers shall maintain the confidentiality of (and redact from written materials as appropriate) customer names and commercially sensitive information the disclosure or exchange of which between competitors would be inconsistent with applicable federal and state antitrust or unfair competition laws and regulations. The foregoing confidentiality requirement shall also apply to non-public operational information and non-public customer-specific information, the disclosure of which would violate Applicable Laws (as defined in the Operations Agreement). Disclosure of any proposals shall be done in a form that prevents the direct or indirect disclosure of customer-specific, competitive-sensitive or operationally sensitive information. Each Member shall prohibit the use, dissemination or disclosure of such information in any form by a Manager for the purpose of planning, marketing or operating a separate, competing business now or in the future.

#### 6.12. Employees

##### Secondees.

(a) The Company shall have no employees.

(b) The Members agree that, upon the approval of the Board and the applicable Member, employees of a Member or its Affiliates may be seconded to the Company pursuant to a secondment agreement to be entered into between the Company and such Member or its Affiliate. Any employee of a Member or its Affiliate seconded to the Company pursuant to this Section 6.12(b) shall enter into a confidentiality agreement satisfactory in form and substance to the Company.

### ARTICLE 7

#### **BUDGETS; ACCOUNTING, TAX AND BANKING MATTERS**

##### 7.1. Facilities Budgets

(a) The Members acknowledge that, as of the Effective Date, the Board will pursuant to the Initial Resolution approve the Initial Facilities Budget for the period from the Effective Date through the In-Service Date, which budget includes an Annual Capital Budget for the period through December 31, 2014.

(b) Prior to commencing the construction of the PA Required Expansion Facilities, the Board shall develop (in conjunction with the Operator), consider and approve a multi-year budget for development and construction of the PA Required Expansion Facilities (a "***PA Required Expansion Facilities Budget***"), which budget shall include a maximum capital commitment of each Member in an amount not exceeding such Member's applicable Budget Cap.

(c) Prior to approving any Approved Facilities Project, the Board shall develop (in conjunction with the Operator), consider and approve a multi-year budget for development and construction of such Approved Facilities Project, in form and substance substantially similar to the Initial Facilities Budget (an "***AFP Budget***").

## 7.2. Annual Budgets

(a) Not later than November 1 of each Fiscal Year, the Operator shall deliver to the Company an Annual Budget for the next following Fiscal Year. Each Annual Budget shall consist of (i) a budget setting forth the Capital Expenditure requirements of the Company for the relevant Fiscal Year, including maintenance Capital Expenditures and the Capital Expenditures set forth in the relevant Facilities Budget that are applicable to such Fiscal Year, together with, in respect of any period prior to the In-Service Date, such other expenditures that may be incurred during such Fiscal Year (an “**Annual Capital Budget**”) and (ii) for each Fiscal Year (or portion thereof) following the In-Service Date, a budget setting forth the operational expenditures to be incurred by the Company during such Fiscal Year (an “**Annual Operating Budget**”). Each Annual Budget shall include an indicative budget for the two Fiscal Years immediately following the next Fiscal Year. Each Annual Capital Budget shall also include a capital call schedule showing the anticipated timing and amount of the Capital Contributions to be required during the Fiscal Year to which such Annual Capital Budget relates. The Members agree that each Annual Budget shall be intended to include all costs and expenses necessary or advisable for the conduct of the Business.

(b) Not later than December 15 of each Fiscal Year, the Board shall consider and approve the Annual Budget for the next following Fiscal Year. As of the Effective Date, the Board hereby approves the initial Annual Budget for the period from the Effective Date through December 31, 2014.

(c) If the Board does not approve the Annual Budget in respect of any Fiscal Year on or prior to the commencement of such Fiscal Year, the Annual Budget for such Fiscal Year shall be the indicative budget applicable to such Fiscal Year that was included with the most recently approved Annual Budget.

(d) The Company, the Managers and the Operator shall use reasonable commercial efforts to conduct the business and operations of the Company consistent in all material respects with the then-applicable Annual Budget.

(e) If, during the Fiscal Year covered by an Annual Budget, a Manager, the Operator or an Officer determines that an adjustment or addition to, or deferral or acceleration of, the estimated costs, expenses or Capital Expenditures of any line items in such Annual Budget is necessary or appropriate, then such person shall submit (or cause to be submitted) to the Board for approval such adjustments or additions, or deferrals or accelerations, as are necessary or required. The Board shall approve or disapprove the adjustments or additions to, or deferrals or accelerations of, the Annual Budget in accordance with Section 6.7(b) as promptly as practicable, but in any event within fifteen (15) Days after receipt of such adjusted draft Annual Budget.

## 7.3. Books and Records; Reports

(a) The Company shall keep and maintain full and accurate books of account for the Company in accordance with GAAP consistently applied in accordance with the terms of this Agreement. The Company shall keep books and records indicating the names, addresses, Capital Contributions and Percentage Interests of all Members and shall keep minutes of the proceedings of the Board and the Members and supporting documentation of the transactions with respect to the conduct of the Company's Business. Such books shall be maintained at the principal United States office of the Company or offsite so long as they are easily accessible. Each Member and its Affiliates and designated representatives shall have full and complete access at all reasonable times to review, inspect and copy the books and records of the Company.

(b) The Company shall provide to each Member the following reports:

(i) As soon as practicable after receipt thereof, any reports provided to the Company or the Board pursuant to the Operations Agreement;

(ii) within thirty (30) Days of the end of any Fiscal Quarter, quarterly consolidated financial statements of the Company (including an unaudited consolidated balance sheet of the Company and its consolidated Subsidiaries as of the end of such Fiscal Quarter and the related unaudited consolidated income statement and statement of cash flows of the Company and its consolidated Subsidiaries for the Fiscal Quarter then ended) for the previous quarter prepared in accordance with GAAP (subject to normal year-end adjustments) and showing any variance between actual and budgeted figures;

(iii) within sixty (60) Days of the end of each Fiscal Year, consolidated financial statements of the Company (including a balance sheet of the Company as of December 31 of each Fiscal Year and the related income statement and statement of cash flows of the Company for the Fiscal Year then ended) and a schedule showing any variance between actual and budgeted figures. The annual financial statements shall be prepared in accordance with GAAP and shall be audited in accordance with generally accepted auditing standards and certified by Deloitte & Touche LLP or another nationally recognized, "Big 4" firm of certified public accountants approved by the Board;

(iv) As soon as available, but not later than thirty (30) Days after the end of each calendar month, monthly financial and business reports, including (A) an operating statement and report of financial condition of the Company for such monthly period and year-to-date, including summary unaudited consolidated balance sheet, consolidated income statement and statement of cash flows of the Company and its consolidated Subsidiaries for such period, (B) a reconciliation report setting forth material discrepancies or variances between (x) amounts included in such reports for such month period and year-to-date and (y) the budgeted amounts as reflected in the Budget for the corresponding periods to which such amounts relate, (C) a summary description of the business activities that took place during such period and the operating and financial performance of

the Company during such period and year-to-date, including an explanation of material discrepancies described in clause (B) and (D) such other information as any Manager or Member shall reasonably request;

(v) Copies of Annual Budgets, Facilities Budgets and all amendments thereto;

(vi) Notice of material events; and

(vii) such other reports and information (in any form, electronic or otherwise) as any such Member or any Manager may reasonably request, as the Board may determine, or as otherwise required by law.

(c) Each of the quarterly and annual financial statements provided in accordance with Section 7.1 shall include a statement of the Capital Accounts and a summary narrative discussion of such financial statements. Monthly reports shall include a statement as to significant variations from any Annual Budget or Facilities Budget.

#### 7.4. Fiscal Year

The calendar year shall be selected as the accounting year of the Company.

#### 7.5. Bank Accounts

The Company shall maintain one or more bank accounts in the name of the Company at such bank or banks as may be determined by the Board, which accounts shall be used for the payment of expenditures incurred by the Company in connection with the business of the Company and in which shall be deposited any and all receipts of the Company. All such receipts shall be and remain the property of the Company and shall not be commingled in any way with funds of any other Person. The designated Officers or Managers may invest the Company funds only in (a) readily marketable securities issued by the United States or any agency or instrumentality thereof and backed by the full faith and credit of the United States maturing within three months or less from the date of acquisition, (b) readily marketable securities issued by any state or municipality within the United States of America or any political subdivision, agency or instrumentality thereof, maturing within three months or less from the date of acquisition and rated “A” or better by any recognized rating agency, (c) readily marketable commercial paper rated “Prime 1” by Moody’s or “A 1” by S&P (or comparably rated by such organizations or any successors thereto if the rating system is changed or there are such successors) and maturing in not more than three months after the date of acquisition or (d) certificates of deposit or time deposits issued by any incorporated bank organized and doing business under the laws of the United States of America which is rated at least “A” or “A2” by S&P or Moody’s, which is not in excess of federally insured amounts, and which matures within three months or less from the date of acquisition.

#### 7.6. Capital Accounts

(a) A capital account shall be established and maintained for each Member in accordance with the terms of this Section 7.6 (a “*Capital Account*”). Each Member’s Capital Account (a) shall be increased by (i) such Member’s Capital Contributions (including amounts deemed contributed by the Member pursuant to Section 4.2(e)(iii) or 4.5(a)), (ii) the amount of any Profits or items of income or gain allocated to such Member pursuant to Sections 5.1 and 5.2, and (iii) the amount of any Company liabilities assumed by the Member or that are secured by any Property distributed to the Member, and (b) shall be decreased by (i) the amount of money distributed to that Member by the Company (including amounts deemed to be distributed to the Member pursuant to Section 4.2(e)(iii)), (ii) the Gross Asset Value of property distributed to that Member by the Company, (iii) allocations to that Member of Losses or other items of loss or deduction pursuant to Sections 5.1 and 5.2, and (iv) the amount of any liabilities of the Member assumed by the Company or that are secured by any Property contributed by the Member to the Company.

(b) It is the intention of the Members that the Capital Accounts of each Member be kept in the manner required under Treasury Regulations Section 1.704-1(b)(2)(iv). To the extent any additional adjustment to the Capital Accounts is required by such regulation, the Board is hereby authorized to make such adjustment.



(c) On the transfer of all or part of a Member's Membership Interest, the Capital Account of the transferor that is attributable to the transferred Membership Interest shall carry over to the transferee Member in accordance with the provisions of Treasury Regulations Section 1.704-1(b)(2)(iv)(l).

#### 7.7. Tax Partnership

The Members agree to classify the Company as a partnership for federal income tax purposes. Neither the Company, any Member nor any officer or other representative of any of the foregoing shall file an election to classify the Company as an association taxable as a corporation for federal tax purposes.

#### 7.8. Tax Elections.

The Company shall make the following elections:

- (a) to elect the calendar year as the Company's Fiscal Year if permitted by applicable law;
- (b) to elect the accrual method of accounting;
- (c) to elect, in accordance with Section 754 of the Internal Revenue Code and comparable state law provisions, to adjust basis in the event any Membership Interest is transferred in accordance with this Agreement or any Company Property or cash of the Company is distributed to any Member;
- (d) to elect the application of Internal Revenue Code Sections 709(b) and 195(b) with respect to all organizational expenses and start-up expenditure of the Company, respectively; and
- (e) to elect with respect to such other federal, state and local tax matters as the Board shall approve.

#### 7.9. Tax Matters Member

The Board shall from time to time designate a Member to act as the "tax matters partner" under Section 6231 of the Internal Revenue Code, subject to replacement by the Board (such Member, the "***Tax Matters Member***"). The initial Tax Matters Member shall be Dominion. The Tax Matters Member shall promptly notify the Members if any tax return or report of the Company is audited or if any adjustments are proposed by any Governmental Authority. In addition, the Tax Matters Member shall promptly furnish to the Members all notices concerning administrative or judicial proceedings relating to federal income tax matters. During the pendency of any such administrative or judicial proceeding, the Tax Matters Member shall furnish to the Members periodic reports, not less often than monthly, concerning the status of any such proceeding. Without the consent of the Board, the Tax Matters Member shall not extend the statute of limitations, file a request for administrative adjustment, file suit concerning any tax refund or deficiency relating to any Company administrative adjustment or enter into any settlement agreement relating to any Company item of income, gain, loss, deduction or credit for

any Fiscal Year of the Company. The costs and expenses reasonably incurred by the Tax Matters Member in performing its obligations under this Section 7.9 and Section 7.10 shall be reimbursed to the Tax Matters Member by the Company promptly following the Company's receipt of an invoice therefor.

#### 7.10. Tax Returns and Reports

The Tax Matters Member shall deliver to each Member the following schedules and tax returns: (i) within two (2) Business Days prior to the federal estimated tax payment date for corporations, an estimated Schedule K-1 through the applicable quarter, (ii) within 60 Days after the Company's year-end, an estimated Schedule K-1 and (ii) not less than 45 Days prior to the due date for the filing of the Company's federal information return for the immediately preceding taxable year, a final Schedule K-1, along with copies of all other federal, state, or local income tax returns or reports filed by the Company for the previous year as may be required as a result of the operations of the Company. In addition, on or before the 30<sup>th</sup> day after the end of each Fiscal Quarter, the Tax Matters Member shall cause each Member to be furnished with (i) an estimate of the Company's taxable income for the current Fiscal Year through the end of such Fiscal Quarter and (ii) book and tax basis information for the Company's assets (including information regarding additions and retirements of assets during such Fiscal Quarter) sufficient to allow such Member to satisfy its own obligations and make its own computations, allocations and adjustments under Code sections 704(b), 704(c) and 754. The Company shall notify each Member promptly (and in any event within 30 days) after it learns that it will earn (or, if not previously reported to the Members pursuant to this Section 7.10, after it learns that it has earned) any gross income which may not be "qualifying income" (as such term is defined pursuant to Section 7704 of the Code); such notification shall include an estimate of each Member's allocable share of any such gross income.

#### 7.11. Audit Rights

Each Member shall have the right to inspect and audit the books and records of the Company. Such audits shall be conducted at the cost of the Member(s) requesting same. A Member may exercise its audit rights hereunder by giving at least thirty (30) Days' advance written notice to the Company of the desire to perform such audit, which notice shall include the estimated timing and other particulars related to such audit. The audit shall be conducted during normal business hours of the Company. The audit shall not unreasonably interfere with the operation of the Company. Each Member may conduct no more than one audit per calendar year.

## **ARTICLE 8** **INDEMNIFICATION**

#### 8.1. Right to Indemnification

Subject to the limitations and conditions as provided herein or by applicable law, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitral or investigative (hereinafter a "***Proceeding***"), or any appeal in such a

Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a Person of whom he or she is the legal representative, is or was a Manager or Officer of the Company, or while such a Person is or was serving at the request of the Company as a manager, officer, partner, venturer, member, trustee, employee, agent or similar functionary of another foreign or domestic general partnership, corporation, limited partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise (other than the Operator in its capacity as such), shall be indemnified by the Company to the extent such Proceeding or other above-described process relates to any such above-described relationships with, status with respect to, or representation of any such Person to the fullest extent permitted by the Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said applicable law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including attorneys' and experts' fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article 8 shall continue as to a Person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder for any and all liabilities and damages related to and arising from such Person's activities while acting in such capacity; *provided, however,* that no Person shall be entitled to indemnification under this Section 8.1 in the event the Proceeding involves acts or omissions of such Person which constitute an intentional breach of this Agreement or fraud, gross negligence or willful misconduct on the part of such Person. The rights granted pursuant to this Article 8 shall be deemed contract rights, and no amendment, modification or repeal of this Article 8 shall have the effect of limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. **It is expressly acknowledged that the indemnification provided for in this Article 8 may involve indemnification for negligence or under theories of strict liability.** The Operator shall only be indemnified to the extent provided in the Operations Agreement.

## 8.2. Indemnification of Employees and Agents

The Company may indemnify and advance expenses to Persons who are entitled to indemnification under Section 8.1, including current and former employees (if any) or agents of the Company, and those Persons who are or were serving at the request of the Company as a manager, director, officer, partner, venturer, member, trustee, employee (if any), agent or similar functionary of another foreign or domestic general partnership, corporation, limited partnership, joint venture, limited liability company, trust, employee benefit plan or other enterprise against any liability asserted against such Person and incurred by such Person in such a capacity or arising out of such Person's status as such a Person to the same extent that it may indemnify and advance expenses to a Member under this Article 8.

## 8.3. Advance Payment

Any right to indemnification conferred in this Article 8 shall include a limited right to be paid or reimbursed by the Company for any and all reasonable expenses as they are incurred by a Person entitled to be indemnified under Section 8.1 who was, or is threatened, to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the

Proceeding and without any determination as to such Person's ultimate entitlement to indemnification; *provided, however*, that the payment of such expenses incurred by any such Person in advance of final disposition of a Proceeding shall be made only upon delivery to the Company of a written affirmation by such Person of such Person's good faith belief that such Person has met the requirements necessary for indemnification under this Article 8 and a written undertaking, by or on behalf of such Person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article 8 or otherwise.

#### 8.4. Appearance as a Witness

Notwithstanding any other provision of this Article 8, the Company shall pay or reimburse expenses incurred by any Person entitled to be indemnified pursuant to this Article 8 in connection with such Person's appearance as a witness or other participation in a Proceeding at a time when he is not a named defendant or respondent in the Proceeding.

#### 8.5. Nonexclusivity of Rights

The right to indemnification and the advancement and payment of expenses conferred in this Article 8 shall not be exclusive of any other right which a Person indemnified pursuant to Section 8.1 may have or hereafter acquire under the Act or other applicable law, this Agreement, or any other agreement, vote of Members or otherwise.

#### 8.6. Insurance

The Company may purchase and maintain insurance on behalf of any Person against any liability asserted against him or it and incurred by him or it in any such capacity, or arising out of his or its status as such, whether or not the Company would have the power or the obligation to indemnify him or it against such liability under the provisions of this Article 8.

#### 8.7. Certain Definitions

For purposes of this Article 8, references to "the Company" shall include, in addition to the resulting entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its members, managers, officers, and employees or agents, so that any Person who is or was a member, manager or officer of such constituent entity, or is or was serving at the request of such constituent entity as a member, manager or officer of another limited liability company, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article 8 with respect to the resulting or surviving entity as he or it would have with respect to such constituent entity if its separate existence had continued. For purposes of this Article 8, references to "fines" shall include any excise taxes assessed on a Person with respect to an employee benefit plan; and references to "serving at the request of the Company" shall include any service as a Member, Manager or officer of the Company which imposes duties on, or involves services by, such Member, Manager or officer with respect to an employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he or it reasonably believed to be in the interest of the participants

and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Company” as referred to in this Article 8.

#### 8.8. Severability

The provisions of this Article 8 are intended to comply with the Act. To the extent that any provision of this Article 8 authorizes or requires indemnification or the advancement of expenses contrary to the Act or the Certificate, the Company’s power to indemnify or advance expenses under such provision shall be limited to that permitted by the Act and the Certificate and any limitation required by the Act or the Certificate shall not affect the validity of any other provision of this Article 8.

### **ARTICLE 9** **COMMITTED FACILITIES; OTHER ACTIVITIES**

#### 9.1. Development of Committed Facilities

The Members hereby approve the development of the Committed Facilities, including the acquisition of necessary regulatory approvals for the Committed Facilities and the construction, ownership, operation and maintenance of the Committed Facilities, in accordance with (in the case of the Initial Facilities) the preliminary timetable approved pursuant to the Initial Resolution; *provided* that such approval is subject to Section 6.8. The Members shall cooperate with the Company and the Operator in their respective efforts to develop the Committed Facilities, and shall, subject to Section 6.8, not take any action or fail to take any action that would delay or obstruct the Company from obtaining the FERC Certificate in respect of any Committed Facilities.

#### 9.2. Development of Approved Facilities Projects

(a) The Members may from time to time consider and approve the development of Facilities Projects other than the Committed Facilities. The Company shall not undertake the development or construction of any Facilities Project other than any Approved Facilities Project approved in accordance with Section 6.7(b)(iii); *provided* that such approval is subject to Section 6.8.

(b) With respect to the Initial Facilities, “Foundation Shippers” (subscribers holding 300,000 Dt per day or greater of service entitlements) have each secured a one-time right to request an expansion of the Facilities, which right is also set forth in Precedent Agreements. This right may be exercised either (i) at the time of the customer’s election of Optional Quantities or (ii) after the date of a FERC order concerning the Optional Quantity expansion project and during the primary term of that customer’s service agreement with the Company. In order to implement this customer right, the Company will develop a Facilities Project Proposal as specified in Section 9.3(b) and proceed to evaluate the requested project pursuant to the provisions of Section 9.3(c).

### 9.3. Proposed Facilities Projects

(a) Without prejudice to any Member's rights under Section 9.5, any Member that desires to pursue a potential Competitive Facilities Project shall first submit it to the Company by notifying the Board in writing of the nature of the proposed Competitive Facilities Project, including such details as are then available, and providing a detailed explanation of the reasons why such Competitive Facilities Project is being requested (the "***Competitive Facilities Project Notice***"). In addition, if any Member believes that the Company should pursue a Base Facilities Project, such Member may notify the Board in writing of the nature of the proposed Base Facilities Project, including such details as are then available, and providing a detailed explanation of the reasons why such Base Facilities Project should be pursued by the Company (the "***Base Facilities Project Notice***").

(b) As soon as reasonably practicable and in no event later than sixty (60) Days after receipt of a Competitive Facilities Project Notice or a Base Facilities Project Notice (either such notice, as applicable, a "***Facilities Project Notice***"), the Board shall vote on whether to authorize a feasibility study for the proposed Facilities Project. If the Members holding at least 70% of the Percentage Interests vote to authorize such a study, which vote shall include approval of the Capital Contributions necessary to fund the study (and shall be made pro rata by the Members voting in favor of authorizing such study), the Company shall instruct the Operator, or such other Person directed by the Board, to prepare and deliver to the Board and each Member, no later than ninety (90) Days after such direction by the Board, the findings of such feasibility study, which shall include a detailed description of the proposed Facilities Project and the preliminary estimated costs (including acquisition expenses, if applicable), projected rate information and the potential financing (the "***Facilities Project Proposal***").

(c) Within sixty (60) Days after the Facilities Project Proposal has been received by each Member, the Board shall vote on whether to proceed with the development of the proposed Facilities Project as set forth in such Facilities Project Proposal. If the Members holding at least 70% of the Percentage Interests vote to proceed with the development of the proposed Facilities Project, the Company shall proceed with such development, including the acquisition of necessary regulatory approvals and the Financing Commitment, if any. For the avoidance of doubt, any Member voting not to approve of a Facilities Project pursuant to this Section 9.3(c) may elect to become a Diluting Member in accordance with the provisions of Section 4.3.

(d) If the Members holding at least 70% of the Percentage Interests do not approve of a proposed Competitive Facilities Project pursuant to Section 9.3(c), then, subject to Section 9.5, only the Members that voted to approve the applicable Facilities Project Proposal shall be permitted to undertake such Competitive Facilities Project (or substantially similar project) without regard to the Company or the other Members.

#### 9.4. Development of Business Opportunities

Other than pursuant to Section 9.3, no Member or any of its Affiliates shall have any obligation to present any investment, acquisition or business opportunity, transaction, agreement, arrangement or other matter to the Company or the Board.

#### 9.5. Certain Opportunities

Notwithstanding anything in this Agreement to the contrary, other than with respect to (w) the Initial Facilities prior to the earlier of (i) the In-Service Date and (ii) the dissolution of the Company, (x) the PA Required Expansion Facilities prior to the earlier of such Facilities being placed in-service and (ii) the dissolution of the Company, (y) any Approved Facilities Project prior to the earlier of (i) such Approved Facilities Project being placed in-service and (ii) the dissolution of the Company and (z) the obligations set forth in Section 9.3: (a) the Members and their Affiliates may engage in or hold an interest of any nature in, directly or indirectly, independently or with others, whether as an equity owner, lender, consultant, employee, operator, manager, partner, joint venturer or otherwise, any business without regard to whether such business is directly or indirectly competitive with the Business conducted or expected to be conducted by the Company and/or its Subsidiaries and without regard to the geographic location of such business, without the consent or approval of the other Members, the Board or the Company, and without any duty or obligation to account to the other Members or the Company in connection therewith and (b) neither the Company nor any Manager, Member or Affiliate of the foregoing shall have any right or obligation, by virtue of this Agreement or otherwise, to share or participate in such other businesses, investments, or activities of a Member or its Affiliates (excluding the Company and its Subsidiaries) or to the income or proceeds derived therefrom. Notwithstanding anything contained in this Agreement to the contrary, and for the avoidance of doubt, (a) each of the Members, its Parent and/or their Affiliates may independently pursue and compete for any or all proposed Competitive Facilities Projects (but not any Base Facilities Project), extensions, expansions and facilities to serve gas and electric end users, municipal gas and electric systems serving end users and electric power plants, in each case within such Member's Parent's franchise or established service territory (as it exists at the time of the proposed opportunity), notwithstanding that such franchise or established service territory may overlap with the franchise or established service territory of another Member or its Affiliates, and (b) nothing in this Section 9.5 shall prohibit, restrict or limit in any way the ability of any Affiliate of a Member from soliciting or accepting any offer or submitting a proposal to or negotiating or entering into any agreement with any Person relating to the acquisition of transmission capacity on any existing or proposed interstate pipeline, whether or not it is competing with the Facilities or any Facilities Project.

#### 9.6. Insurance

The Company shall maintain in effect insurance consistent with the insurance contemplated in the Transaction Documents and such other insurance specified in Schedule B hereto and upon such terms and conditions, including deductibles, as decided and agreed upon at least annually by the Members.

## **ARTICLE 10** **DISPOSITION**

### 10.1. Dispositions; Exception to Application of this Article 10

(a) No Member may Dispose of all or any part of its Membership Interests or any beneficial right or interest therein, or contract to do or permit any of the foregoing, whether voluntarily or by operation of law, and any attempt to do so shall be null and void and not recognized on the Company's books and records, other than Dispositions: (i) constituting Permitted Transfers, (ii) subject to Section 10.2(a), to a Qualified Transferee or (iii) effected in accordance with this Article 10; *provided, however*, that notwithstanding anything herein to the contrary a Disposition by a Member (including a Permitted Transfer) shall be null and void ab initio if (A) following the proposed Disposition, the Company would have more than 100 members within the meaning of Section 1.7704-1(h)(1)(ii) of the Treasury Regulations (taking into account Section 1.7704-1(h)(3) of the Treasury Regulations); *provided* that such limitation shall not apply to any Disposition by any Member of all or part of its Membership Interest to an Affiliate, (B) such Disposition would cause the Company to be taxed as a corporation for federal tax purposes; (C) to the extent it would become the direct holder of a Membership Interest, the transferee fails to deliver to the Company the representations set forth in Annex A and an executed Accession Agreement, or (D) such Disposition would result in the violation of any applicable federal or state securities laws (collectively, (A) through (D), the "***Disposition Defaults***"). Members shall bear any costs the Company reasonably incurs in connection with Dispositions of any of their respective Membership Interests. The Members agree that following the In-Service Date a Member shall have the right to pledge all or any portion of such Member's Membership Interest or grant a lien or security interest in all or any portion of such Member's Membership Interest (a "***Pledged Interest***") to any bank or financial institution (a "***Lender***") that is subordinate to any lien or security interest granted with respect to such Member's Membership Interest as a result of any Financing Commitment; *provided* that it is agreed that if any Lender forecloses upon or otherwise becomes the owner of such Pledged Interest, such Lender shall, subject to none of the Disposition Defaults being applicable with respect to such foreclosure, be deemed a Defaulting Member for purposes of this Agreement.

(b) Unless a Person acquiring any Membership Interests becomes admitted as a Member in accordance with the provisions of Section 10.1(c), such Person shall not be entitled to any of the rights granted to a Member hereunder in respect of such Membership Interests, other than the right to receive only the economic benefits related thereto, including allocations of income, gain, loss, deduction, credit and similar items and distributions to which the assignor would otherwise be entitled, to the extent such items are assigned.

(c) A Person acquiring any Membership Interests shall be admitted as a Member and entitled to all of the rights of a Member in respect of such Membership Interests only if none of the Disposition Defaults are applicable with respect to such



transfer and either (i) the transfer to such Person was a Permitted Transfer or otherwise effected pursuant to the procedures set forth in this Article 10, (ii) such Person acquired the Membership Interests pursuant to Sections 4.5(d), 6.8 or 10.5 or (iii) in any other case, such Person is a Qualified Transferee.

(d) Notwithstanding any provision herein to the contrary, in no event shall any provision of this Article 10 be applicable in connection with any exchange, reclassification, or other conversion of Membership Interests or other debt or equity securities of the Company into any cash, securities, or other property pursuant to a Disposition of all or substantially all of the Company Properties.

(e) In connection with any Disposition permitted under this Article 10:

(i) each non-Disposing Member shall cooperate in good faith with the Disposing Member, and shall take no action to impede such Disposition or reduce the value of the Membership Interest subject to such Disposition, without prejudice to the rights of such non-Disposing Members to enforce in good faith the other provisions of this Article 10;

(ii) the Company shall, upon the Disposing Member's reasonable request and at the Disposing Member's sole cost and expense, cooperate fully with potential acquirers in such prospective transaction by taking all customary and other actions reasonably requested by such holders or such potential acquirers, including making the Company's properties, books and records, and other assets available for inspection by such potential acquirers and making its employees reasonably available for presentations, interviews and other diligence activities, in each case during normal business hours and upon reasonable advance notice, and subject to reasonable and customary confidentiality provisions; and

(iii) the Disposing Member shall be permitted to take all steps reasonably necessary to carry out an auction of its Membership Interest, including selecting an investment bank, providing confidential information (pursuant to confidentiality agreements), selecting the winning bidder and negotiating the requisite documentation (at its sole cost and expense).

(f) A Member entitled to acquire the Membership Interests of any other Member (whether through a Disposition or through the recalculation of the Percentage Interests) pursuant to Sections 4.5(d), 6.8 or 10.5 shall be entitled to exercise such right through an Affiliate or any Qualified Transferee designated by them; *provided* that the exercise of such right in such manner otherwise complies with Section 10.1(a).

## 10.2. Other Restrictions on Dispositions

(a) Notwithstanding anything to the contrary contained herein, for a period beginning on the Effective Date and ending on the In-Service Date, no Member shall Dispose of all or any part of its Membership Interests, or contract to do or permit any such Disposition, whether voluntarily or by operation of law, other than Permitted

Transfers. Any breach of the foregoing covenant will be deemed a Performance Default and result in such Member being treated as a Defaulting Member.

(b) Except for any Disposition to a Permitted Transferee in accordance with this Article 10 or any Disposition contemplated under Sections 4.3 and 10.5, each Disposition must comply with the following minimum size requirements: (1) if such Member's Percentage Interest is equal to or less than 10%, the Disposition must include all of the Disposing Member's Membership Interests and (2) if such Disposing Member's Percentage Interest is greater than 10%, the Disposition must be of a Membership Interest having a Percentage Interest of at least 10%.

### 10.3. [RESERVED].

### 10.4. Preemptive Right

(a) If the Company proposes to issue any Membership Interests to any Person in a transaction or transactions other than the Membership Interests attributable to the Capital Contributions made or agreed to be made by the Members pursuant to Article 4 as in effect on the date hereof, each Member (other than a Defaulting Member or a Diluting Member) shall have the right to purchase directly or through any Affiliate such portion of such Membership Interests sufficient to maintain such Member's then Percentage Interest, on the same terms and conditions as applied to all Persons purchasing Membership Interests.

(b) In the event of a proposed transaction or transactions, as the case may be, that would give rise to preemptive rights of the Members under Section 10.4(a), the Company shall provide notice (the "**Initial Notice**") to the Members no later than ten (10) Business Days prior to the expected consummation of such transaction or transactions. Each Member shall provide notice of its election to exercise such rights within five (5) Business Days after delivery of such Initial Notice from the Company (each Member electing to exercise its preemptive right in such instance is referred to as an "**Exercising Member**"). The failure of a Member to respond to the Initial Notice and affirmatively exercise its preemptive right in accordance with the terms of this Agreement and the Initial Notice shall be deemed an election not to exercise its preemptive right in connection with such proposed transaction or transactions.

(c) If a Member shall elect not to exercise its respective preemptive right, then the Exercising Members shall have the right to purchase additional Membership Interests (a "**Subsequent Purchase**"), from those securities as to which no such right was exercised, on a pro rata basis insofar as more than one such Exercising Member desires to so purchase additional securities. In the event of a situation described in the preceding sentence in which a Member elects not to exercise its respective preemptive right with respect to a proposed transaction or transactions, the Company shall provide notice (the "**Subsequent Notice**") of such fact within three (3) Business Days following the receipt of all of the notices concerning such elections from the Members

possessing such preemptive rights. Each Exercising Member shall respond to this Subsequent Notice by sending a response notice with respect thereto within three (3) Business Days after delivery of the Subsequent Notice. The failure of an Exercising Member to respond to such Subsequent Notice and affirmatively exercise its preemptive right in accordance with the terms of this Agreement shall be deemed an election not to exercise its preemptive right in connection with such Subsequent Purchase.

#### 10.5. Dominion ROFR

(a) If (a) any Member (for the purposes of this Section 10.5, the “**Proposing Member**”) (i) proposes to Dispose of all or any part of its Membership Interest to any other Member (other than Dominion or any of its Affiliates which is also a Member) including pursuant to any transaction in which the Membership Interests of more than one Member are directly or indirectly consolidated or (ii) becomes subject to a Change in Control, and (b) after giving effect to such proposed Disposition or Change in Control, the Percentage Interest of the acquiring or surviving Member would be equal to (unless after giving effect to such Disposition or Change in Control there would be only two Members) or greater than the aggregate Percentage Interest of Dominion and each of its Affiliates that is also a Member, then the Proposing Member shall first give notice (a “**ROFR Notice**”) to Dominion. The ROFR Notice shall set forth the name of the Member to whom the Disposition is proposed or Change in Control affects, Membership Interest subject to such proposed Disposition (the “**Offered Interest**”), the price payable for the Offered Interest, and details of the payment terms and all other terms and conditions of the proposed Disposition or Change in Control. Dominion shall have the right, until the date that forty-five (45) days following the date of delivery of the ROFR Notice (the “**ROFR Expiration Date**”) to deliver to the Proposing Member a written election to purchase (the “**Purchase Notice**”) that portion of the Offered Interest as shall be necessary so that no other Member will have a Membership Interest that is equal to (unless after giving effect to such Disposition or Change in Control there would be only two Members) or greater than the aggregate Membership Interests of Dominion and each of its Affiliates that is also a Member (the “**ROFR Interest**”). The delivery of the Purchase Notice shall constitute an irrevocable commitment to purchase such ROFR Offered Units.

(b) The purchase price and terms and conditions for the purchase of the ROFR Interest pursuant to this Section 10.5 shall be the price and terms and conditions set forth in the applicable ROFR Notice; *provided* that the Proposing Member shall at a minimum make customary representations and warranties concerning (i) the Proposing Member’s valid title to and ownership of the ROFR Interest, free and clear of all liens, claims and encumbrances (excluding those arising in connection with a Financing Commitment or under applicable securities laws), (ii) the Proposing Member’s authority, power and right to enter into and consummate the sale of the ROFR Interest, (iii) the absence of any violation, default or acceleration of any agreement to which the Proposing Member is subject or by which its assets are bound as a result of the agreement to sell and the sale of the ROFR Interest, and (iv) the absence of, or compliance with, any governmental or third party consents, approvals,

filings or notifications required to be obtained or made by the Proposing Member in connection with the sale of the ROFR Interest. The closing shall occur no later than sixty (60) Days after the date of delivery of the Purchase Notice, unless the Proposing Member and Dominion agree upon a different date. At the closing, the Proposing Member shall execute and deliver to Dominion (i) an assignment of the ROFR Interest, in form and substance reasonably acceptable to Dominion and (ii) any other instruments reasonably requested by Dominion to give effect to the purchase; and Dominion shall deliver to the Proposing Member in immediately available funds the purchase price.

(c) If the Purchase Notice is not delivered prior to the ROFR Expiration Date, the (i) Proposing Member may Dispose all, but not less than all, of the ROFR Interest or (ii) the Change in Control may be completed, in each case within 90 Days after the ROFR Expiration Date. If the ROFR Interest is not so Disposed or the Change in Control is not completed within such 90-day period, the Proposing Member may not sell any of the ROFR Interest without again complying in full with the provisions of this Section 10.5.

## **ARTICLE 11**

### **DISSOLUTION, LIQUIDATION, AND TERMINATION**

#### 11.1. Dissolution

The Company shall dissolve and its affairs shall be wound up on the first to occur of the following:

- (a) the consent of the Managers designated by the Members holding at least the amount of Percentage Interests as are required by Section 6.7(b)(i) to dissolve the Company;
- (b) if the PA Execution Date has not occurred by December 31, 2014, unless the Managers designated by the Members holding at least 70% of the Percentage Interests elect not to dissolve the Company;
- (c) entry of a decree of judicial dissolution of the Company under Section 18-802 of the Act; or
- (d) unless the Members otherwise agree, upon consummation of the Disposition of all or substantially all of the Company Properties.

#### 11.2. Liquidation and Termination

On dissolution of the Company, the liquidator shall be the Board or a Person selected by Managers designated by the Members holding at least 70% of the Percentage Interests. The liquidator shall proceed diligently to wind up the affairs of the Company at the direction of the Board and make final distributions as provided herein and in the Act. The costs of liquidation shall be borne as a Company expense. The steps to be accomplished by the liquidator are as follows:

(a) As promptly as possible after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made of the Company Property, liabilities, and operations through the last Day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable.

(b) The liquidator shall pay, satisfy or discharge from Company funds all of the debts (including debts owing to any Member), liabilities and obligations of the Company (including all expenses incurred in liquidation) or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine).

(c) To the extent that the Company has any remaining property:

(i) The liquidator may sell any or all of the Company's property and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members as provided in Article 5.

(ii) All remaining Company Property shall be distributed to the Members in accordance with the positive balances in their Capital Accounts, after giving effect to all contributions, distributions and allocations for all periods; *provided* that if the Company liquidates as a result of the dissolution event set forth in Section 11.1(b), then after making any distributions required to be made pursuant to Section 5.5(d) in the manner set forth in Section 4.1(d), all remaining Company Property shall be distributed to the Member that contributed such Company Property irrespective of the balances in the Member's Capital Accounts and the remaining provisions of this Section 11.2(c)(ii) shall have no effect. If the amounts of Company Property that would be distributed to the Members upon liquidation if such distributions were made pursuant to Section 5.5(b) do not correspond to the respective Capital Account balances of the Members, then income, gain, loss and deduction for the Fiscal Year in which the liquidation occurs shall be reallocated among the Members to cause, to the extent possible, the Members' Capital Accounts immediately prior to such distribution to correspond to the amounts that would be distributed to the Members if liquidating distributions were made pursuant to Section 5.5(b); *provided* that, for purposes of this Section 11.2(c)(ii), the amount otherwise distributable to a Member pursuant to Section 5.5(b) shall be reduced by such Member's Unfunded Default Amount, if any, and increased by such Member's Undistributed Deficiency Interest Amount, if any.

(iii) All distributions in kind to the Members shall be valued for purposes of determining each Member's interest therein at its Fair Market Value at the time of such distribution, and such distributions shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination, and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 11.2.

(iv) Any distribution to the Members in liquidation of the Company shall be made by the later of the end of the taxable year in which the liquidation occurs or 90 Days after the date of such liquidation. For purposes of the preceding sentence, the term “liquidation” shall have the same meaning as set forth in Treasury Regulations Section 1.704-1(b)(2)(ii). The distribution of cash and/or property or assets to a Member in accordance with the provisions of this Section 11.2 constitutes a complete return to the Member of its Capital Contribution and a complete distribution to the Member of its Membership Interest and all of the Company Properties and constitutes a compromise to which all Members have consented within the meaning of Section 18-502(b) of the Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

(v) If a sale of the Company is structured as a Disposition of Membership Interests (whether a direct sale, a merger, an exchange of interests, or other similar transaction), the amount of the aggregate purchase price to be allocated among the Members shall be determined in a manner consistent with the amounts that would have been distributed to the Members if the Company had been liquidated in accordance with this Section 11.2 and if the total liquidating distributions with respect to all Membership Interests had equaled the aggregate purchase price being paid for all the Membership Interests.

### 11.3. Deficit Capital Accounts

Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, no Member shall be obligated to restore a deficit balance in its Capital Account at any time.

### 11.4. Certificate of Cancellation

On completion of the distribution of property as provided herein, the Company shall be terminated and the Members shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to Section 1.5, and take such other actions as may be necessary to terminate the Company.

## **ARTICLE 12** **REPRESENTATIONS AND WARRANTIES**

### 12.1. Representations and Warranties of the Members

Each Member hereby represents and warrants to the Company and each other Member that (a) it is duly formed, validly existing and (if applicable) in good standing under the laws of the state of its formation, and if required by applicable law is duly qualified to do business and (if applicable) is in good standing in the jurisdiction of its principal place of business (if not formed therein); (b) it has full corporate, limited liability company, partnership, trust, or other applicable power and authority to execute and agree to this Agreement and the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder and all necessary actions by the board of directors, shareholders, managers, members, partners, trustees,

beneficiaries, or other Persons necessary for the due authorization, execution, delivery, and performance of this Agreement and the Transaction Documents to which it is a party by that Member have been duly taken; (c) it has duly executed and delivered this Agreement and the Transaction Documents to which it is a party and this Agreement and the Transaction Documents to which it is a party are enforceable against such Member in accordance with their respective terms, subject to bankruptcy, moratorium, insolvency and other applicable law generally affecting creditors' rights and general principles of equity (whether applied in a proceeding in a court of law or equity); (d) its authorization, execution, delivery, and performance of this Agreement and the Transaction Documents to which it is a party does not conflict with any material obligation under any other material agreement or arrangement to which that Member is a party or by which it is bound; and (e) it (i) has been furnished with such information about the Company and the Membership Interest as that Member has requested, (ii) has made its own independent inquiry and investigation into, and based thereon has formed an independent judgment concerning, the Company and that Member's Membership Interest therein, (iii) has adequate means of providing for its current needs and possible individual contingencies and is able to bear the economic risks of this investment and has a sufficient net worth to sustain a loss of its entire investment in the Company in the event such loss should occur, (iv) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Company, (v) is an "accredited investor" within the meaning of "accredited investor" under Regulation D of the Securities Act and (vi) understands and agrees that its Membership Interest shall not be sold, pledged, hypothecated or otherwise transferred except in accordance with the terms of this Agreement and pursuant to an applicable exemption from registration under the Securities Act and other applicable securities laws. Upon the occurrence and during the continuation of any event or condition which would cause a Member to be in breach of a representation or warranty contained in clause (e) of this Article 12, the breaching Person shall be treated as a Defaulting Member.

### **ARTICLE 13** **EFFECTIVENESS**

#### 13.1. Effectiveness

This Agreement shall become effective upon the Effective Date; *provided, however*, that, notwithstanding anything contained in this Agreement to the contrary, prior to the PA Execution Date, no Member shall have any obligation to make any Capital Contribution to the Company (including the initial Capital Contributions described in Section 4.1).

### **ARTICLE 14** **GENERAL PROVISIONS**

#### 14.1. Notices

Except as expressly set forth to the contrary in this Agreement, all notices, requests, or consents provided for or permitted to be given under this Agreement must be in writing and must be given by personal delivery, by certified or registered United States mail (postage prepaid, return receipt requested), by a nationally recognized overnight delivery service for next Day delivery, or by facsimile or other electronic transmission, to the addresses given for that Member

on Exhibit 3.1 or such other address as that Member may specify by written notice to the other Members. All notices, requests, and consents to be sent to the Company must be sent to or made at the address of the Company's principal place of business or such other address as the Company may specify by notice to the Members. All such notices, requests and other communications will be effective only upon receipt, except that if received after 5:00 p.m. (in the recipient's time zone) on a Business Day or if received on a Day that is not a Business Day, such notice, request or communication will not be effective until the next succeeding Business Day.

#### 14.2. Amendment or Modification

Provided that all Members receive no less than five (5) Business Days prior written notice, the Board, acting with the consent of the Managers designated by the Members holding at least 96% of the Percentage Interests, may amend any provision of this Agreement or the Certificate, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection therewith; *provided, however*, that any such amendment that has a material adverse effect on any Member must be approved by the express prior written consent of such Member.

#### 14.3. Entire Agreement

This Agreement, together with the Transaction Documents, and the exhibits or schedules thereto and any agreements or documents specifically referenced herein or therein, constitute the entire agreement and understanding of the Members in respect of the subject matter set forth herein and supersede all prior understandings, agreements or representations by or among the Members, written or oral, to the extent they relate in any way to the subject matter hereof or the transactions contemplated herein.

#### 14.4. Extensions; Waivers

Any Member may, for itself only, (a) extend the time for the performance of any of the obligations of any other Member under this Agreement, (b) waive any inaccuracies in the representations and warranties of any other Member contained herein or in any document delivered pursuant hereto and (c) waive compliance with any of the agreements or conditions for the benefit of such Member contained herein. Any such extension or waiver will be valid only if set forth in a writing signed by the Member to be bound thereby. No waiver by any Member of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, may be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising because of any prior or subsequent such occurrence. Neither the failure nor any delay on the part of any Member to exercise any right or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right or remedy preclude any other or further exercise of the same or of any other right or remedy.



#### 14.5. Assignment; Binding Effect

Except as expressly provided herein, no Member may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all the other Members, and any such assignment by a Member without prior written approval of all the other Members will be deemed a Performance Default and result in such Member being treated as a Defaulting Member. All of the terms, agreements, covenants, representations, warranties and conditions of this Agreement are binding upon, and inure to the benefit of and are enforceable by, the Members and their respective successors and permitted assigns.

#### 14.6. Governing Law

THIS AGREEMENT AND THE PERFORMANCE OF THE TRANSACTIONS AND OBLIGATIONS OF THE MEMBERS HEREUNDER WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW PRINCIPLES.

#### 14.7. Dispute Resolution

Should a dispute arise among the Members relating to this Agreement, any Member may seek to resolve any such dispute through negotiations among the Senior Executives by providing the other Members written notice of its intent to invoke this Section 14.7. The Senior Executives will meet at a mutually acceptable time and place within fifteen (15) Days after such notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. All negotiations and communications pursuant to this Section 14.7 will be treated and maintained by the Members as confidential information and will be treated as compromise and settlement negotiations for purposes of the federal and state rules of evidence. If the matter has not been resolved within fifteen (15) Days after the initial written notice set forth above, or such longer period as may be mutually agreed upon by all of the Members, the Members will meet to discuss the retention of a mediator for the purpose of resolving the Dispute through non-binding mediation. Participation in such mediation will be voluntary. If the Members agree to non-binding mediation, they will mutually agree upon a mediator within twenty (20) days of the initial meeting of the Members with respect to the retention of a mediator. The Members will seek to resolve the dispute in an expeditious manner, and to the extent possible, within thirty (30) days of commencement of mediation. The cost of any mediation under this Section 14.7 will be divided equally among the Members. Absent an agreement to mediate, each Member retains all rights to agree at that time to arbitration or to resort to any other means to resolve the dispute in its sole discretion.

#### 14.8. Waiver of Jury Trial

THE MEMBERS WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND ANY DOCUMENT EXECUTED IN CONNECTION HEREWITH.

#### 14.9. Affiliate Contracts

(a) As of the Effective Date, the Members anticipate that the Company will enter into each of the Affiliate Contracts specified on Exhibit 14.9.

(b) The Members intend each Affiliate Contract shall be entered into on an arm's-length basis and on terms and conditions competitive at then-prevailing market conditions. The negotiation of each Affiliate Contract or modification to any Affiliate Contract shall be conducted on behalf of the Company (or the applicable Subsidiary) by or under the direction of at least two of the Managers, acting in good faith and in the best interests of the Company (or the applicable Subsidiary), designated by the Acting Members holding collectively at least 45% of the Percentage Interests, and all decisions of the Company (or the applicable Subsidiary) concerning such Affiliate Contract relating to the commencement, termination, withdrawal or settlement of, or decision to consent to, any claim or Proceeding, or the admission of liability by the Company (or the applicable Subsidiary) arising in relation to, or any material waiver under, any Affiliate Contract, shall be approved solely by at least two of the Managers, acting in good faith and in the best interests of the Company (or the applicable Subsidiary), designated by the Acting Members holding collectively at least 45% of the Percentage Interests. Notwithstanding anything to the contrary contained in this Agreement, at least two of the Managers designated by the Acting Members holding collectively at least 45% of the Percentage Interests may cause the Company to terminate any Affiliate Contract in accordance with its terms, including the Operations Agreement.

#### 14.10. No Consequential Damages

No Member shall assert, and each Member hereby waives, any claim against any indemnifying Person on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) of any kind whatsoever, whether or not foreseeable, or for any loss of business, goodwill, opportunity or profit, whether arising directly or indirectly and whether or not foreseeable, even if the Member is actually aware of or has been advised of the likelihood of such loss or damage and regardless of whether the claim for such loss or damage is made in negligence, for breach of contract, breach of trust, breach of fiduciary obligation or otherwise arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby.

#### 14.11. Severability

The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; *provided* that if any provision of this Agreement is found to be unenforceable in accordance with its terms, the Members agree that such provisions shall be deemed modified to the minimum extent necessary consistent with its objectives to make such provision enforceable, and/or to delete specific words or phrases, and in its reduced form, such provision will then be enforceable and will be enforced, and if such provision is not capable of being so modified, it shall be deemed excised from this Agreement, and the remaining provisions of this Agreement shall in all circumstances remain in full force and effect.

#### 14.12. Further Assurances

In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

#### 14.13. Title to Company Property

All Company Property owned by the Company, whether real or personal, tangible or intangible, shall be deemed to be owned by the Company, and no Member, Officer, Manager or Person acting as an operator under any Transaction Document, individually, shall have any ownership of such Company Property. The Company shall hold all Company Properties in its own name. All Company Property shall be recorded as the property of the Company in its books and records without regard to the name in which record title to such assets is held.

#### 14.14. Intellectual Property

All Intellectual Property Rights (excluding any Intellectual Property Rights of the Operator) invented, discovered, improved or otherwise developed as part of the Facilities (the “*IP Rights*”) shall be owned by the Company. The Members shall be entitled to use, license or otherwise exploit the IP Rights, and may grant a world-wide royalty-free license to the Affiliate of any Member, only for the evaluation, pursuit, development and operation of the Facilities and for no other purpose. In the event that any IP Right is determined by the Company or a Member to be registrable, the Company shall file applications relating to such IP Rights. Each Member acknowledges the inherent risk of error in the acquisition, interpretation and use of the IP Rights, and that no representation or warranty, express or implied, is made with respect to (a) the completeness, utility or accuracy of any Intellectual Property Rights disclosed to it or (b) the merchantability or fitness for a particular purpose or the freedom from infringement of any third party Intellectual Property Rights by its use of such Intellectual Property Rights.

#### 14.15. Press Releases and Public Announcements

Neither the Company nor any Member shall (and shall use all reasonable efforts to cause its Affiliates not to) release or otherwise disseminate any press releases, public announcements or statements of a material nature regarding the Company or the Business without the consent of the Members holding at least 96% of the Percentage Interests. Notwithstanding the foregoing, the Company may issue such press releases and public announcements or statements in the normal and ordinary course of its business; *provided, however*, that if any such release, statement or other communication contains a description of, or may be of a sensitive nature to, any Member, the Company shall obtain the consent of such Member at the earliest reasonably practicable time prior to publishing such release, statement or communication.

#### 14.16. No Third Party Beneficiaries

Except as otherwise provided in Article 8, it is the intent of the Members that no third-party beneficiary rights be created or deemed to exist in favor of any Person not a party to this Agreement, unless otherwise expressly agreed to in writing by the Members.

#### 14.17. Confidentiality

Each Member agrees that all non-public information received from or otherwise relating to the Company, its Subsidiaries and businesses, their Members, or any third party who has entrusted the Company with confidential information regarding the Business, operations or prospects of the Company with the expectation that such information will be kept confidential, is confidential and will not be (i) disclosed or otherwise released to any other Person (other than (A) to another Member or to such Member's directors, managers, partners, employees, counsel, financial and tax advisors, lenders, rating agencies and analysts for a valid business purpose, (B) in the case of a Member who is also a Manager or officer of the Company, in carrying out its duties in the best interests of the Company and (C) any potential bona fide transferee of a Membership Interest; *provided* that such potential transferee agrees to maintain the confidentiality of the confidential information on terms no less restrictive than those set forth in this Section 14.17) or (ii) used for anything other than as necessary and appropriate in carrying out the Business of the Company. Any recipient of such confidential information shall be advised of its confidential status, and the disclosing Member shall be responsible for any breaches hereof by any Person to whom such Member provides confidential information. The restrictions set forth herein do not apply to (i) information that is or becomes available to such Member on a non-confidential basis from a source (other than the Company) that is not known by such Member to be bound by a confidentiality agreement, (ii) information that was known by such Member prior to disclosure by or at the direction of the Company; (iii) information that is independently developed by such Member without violating any obligations under this Agreement; or (iv) any disclosures required by a national stock exchange, the rules or regulations of the U.S. Securities and Exchange Commission, applicable law or regulatory authority with respect to a Member or its Affiliates. Notwithstanding the foregoing, neither Section 14.15 nor this Section 14.17 shall be construed to restrict a Member or its Affiliate from disclosing information with respect to its investment in the Company in the ordinary course of its business and pursuant to its customary investor relations process; *provided* the Members agree to coordinate in advance with respect to any disclosure of material non-public information pertaining to the Company or its financial or operational performance that a Member knows, or reasonably should know, would be sensitive to another Member or would otherwise trigger additional disclosures or compliance filings by another Member.

#### 14.18. Headings

The article and section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

#### 14.19. Construction

This Agreement has been freely and fairly negotiated among the Members. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Members and no presumption or burden of proof will arise favoring or disfavoring any Member because of the authorship of any provision of this Agreement. Any reference to any law will be deemed to refer to such law as amended and all rules and regulations promulgated thereunder, unless the context requires otherwise. The words "include," "includes," and "including" will be deemed to be followed by "without limitation." Pronouns in masculine,

feminine, and neuter genders will be construed to include any other gender, and words in the singular form will be construed to include the plural and vice versa, unless the context otherwise requires. The words “this Agreement,” “herein,” “hereof,” “hereby,” “hereunder,” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The Members intend that each representation, warranty, and covenant contained herein will have independent significance. If any Member has breached any representation, warranty, or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the Member has not breached will not detract from or mitigate the fact that the Member is in breach of the first representation, warranty, or covenant. Time is of the essence in the performance of this Agreement.

#### 14.20. Fair Market Value Determination

(a) If the Fair Market Value of a Membership Interest is to be determined for purposes of this Agreement, the affected Members shall first seek to determine such Fair Market Value by mutual written agreement within a reasonable time, not to exceed thirty (30) Days. If the affected Members cannot reach a mutual written agreement as set forth in the foregoing sentence, the process in Section 14.20(b) to determine such Fair Market Value shall control.

(b) Appraisal. Upon expiration of the thirty (30)-Day period set forth in Section 14.20(a) above, the affected Members seeking to determine Fair Market Value of a Membership Interest (each an “*Affected Member*,” and collectively, the “*Affected Members*”), shall request in writing (the “*FMV Notice*”) that the Board appoint an independent third party appraisal firm of nationally recognized standing having recognized expertise in the valuation of natural gas transmission pipelines (“*Appraiser*”) to make such determination. Within ten (10) Days after receipt of the FMV Notice, the Board will engage an Appraiser to determine the Fair Market Value of the Membership Interest at issue. Within thirty (30) Days of being appointed, the Appraiser will deliver to the Board and the Affected Members a detailed report (including all assumptions and relevant information employed in making such determination) setting forth its calculation of the Fair Market Value of the Membership Interest (the “*FMV Report*”) at issue, and such report and the determination of Fair Market Value set forth therein shall be final and binding on the Affected Members. The cost of such FMV Report and all fees and expenses of the Appraiser shall be paid in equal portions by the Affected Members. Each Affected Member shall cooperate in good faith with the Appraiser, and will provide the Appraiser with all information and documentation reasonably requested by it in connection with preparation of the FMV Report.

#### 14.21. Counterparts; Effectiveness

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the Members and delivered to the other Members, which delivery may be made by exchange of

copies of the signature page by facsimile or electronic transmission. For purposes of determining whether a party has signed this Agreement or any document contemplated hereby or any amendment or waiver hereof, a handwritten signature on a paper document or a facsimile or electronic transmission of a handwritten original signature will constitute a signature.

#### 14.22. Adjustment for Inflation

The amount set forth in Section 6.7(b)(i)(5) shall, without requiring any amendment to this Agreement, be automatically adjusted for inflation effective as of January 1 of each calendar year by multiplying such amount by a fraction, (i) the numerator of which is the average monthly United States Department of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics, United States Department of Labor, Washington, DC (<http://www.bls.gov/cpi>) ("**CPI**") for the twelve (12) month period immediately preceding such January 1, and (ii) the denominator of which is the average monthly CPI for the twelve (12) month period immediately preceding the Effective Date; *provided* that such adjusted amount shall in no event be less than \$200,000.

#### 14.23. Legal Representation

Each Member hereby acknowledges that the Member has been advised that the Member should seek and has had the opportunity to seek independent legal counsel to review this Agreement and the other Transaction Documents on the Member's behalf and to obtain the advice of such legal counsel relating to such documentation. Each Member further acknowledges and agrees that with respect to such documentation, unless otherwise specifically acknowledged and agreed to in writing by the Company, the Members and the applicable independent legal counsel: (a) the law firm of Locke Lord LLP is legal counsel solely to Duke and (b) the law firm of Hogan Lovells US LLP is legal counsel solely to Dominion and the Operator with respect to the Transaction Documents.

*[Signature page follows]*

IN WITNESS WHEREOF, the Members hereby duly execute and deliver this Agreement in counterparts, effective as of the Effective Date.

**DUKE ENERGY ACP, LLC**

By: /s/ Phillip C. Grigsby  
Name: Phillip C. Grigsby  
Title: President

**PIEDMONT ACP COMPANY, LLC**

By: /s/ Thomas E. Skains  
Name: Thomas E. Skains  
Title: Chairman and President

**DOMINION ATLANTIC COAST PIPELINE,  
LLC**

By: /s/ Diane Leopold  
Name: Diane Leopold  
Title: President

**MAPLE ENTERPRISE HOLDINGS, INC.**

By: /s/ Henry P. Linginfelter  
Name: Henry P. Linginfelter  
Title: Executive Vice President

**ANNEX A****TRANSFeree TAX REPRESENTATIONS**

The transferee is the sole beneficial owner of the interest in the Company to be registered in its name (the “*Membership Interest*”);

1. such transferee either (i) is not a grantor trust, partnership or S corporation for U.S. federal income tax purposes or (ii) was not formed with, and will not be used for, a principal purpose of permitting the Company to satisfy the 100 member limitation contained in Treasury Regulations Section 1.7704-1(h)(1)(ii);<sup>1</sup>

2. such transferee did not acquire, and will not transfer, its Membership Interest through (a) a national, non-U.S., regional, local or other securities exchange, (b) PORTAL or (c) over-the-counter market (including an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise);

3. such transferee did not acquire, and will not transfer, its Membership Interest from, to or through (a) a person, such as a broker or dealer, that makes a market in, or regularly quotes prices for, the Membership Interest or (b) a person that regularly makes available to the public (including customers or subscribers) bid or offer quotes with respect to the Membership Interest and stands ready to effect, buy or sell transactions at the quoted prices for itself or on behalf of others; and

4. such transferee will only transfer its Membership Interest to a buyer who provides representations similar to these. These representations may from time to time be revised by the Board on the advice of counsel.

---

<sup>1</sup> Paragraph 1 not required to be included if transferee is an Affiliate of the transferor Member.



**ANNEX B****ACCESSION AGREEMENT**

This Accession Agreement (this “*Accession*”) is executed by the undersigned (the “*Transferee*”) for the benefit of Atlantic Coast Pipeline, LLC, a Delaware limited liability company (the “*Company*”) pursuant to the terms of the Limited Liability Company Agreement of the Company, dated as of \_\_\_\_\_, 2014, and all Annexes, Exhibits and Schedules thereto, together with all amendments thereto, copies of which are attached hereto as Exhibit A and are incorporated herein by reference (collectively, the “*Agreement*”). By the execution of this Accession, the Transferee hereby agrees as follows:

1. Capitalized terms used but not otherwise defined in this Accession have the meanings assigned to such terms in the Agreement. Transferee acknowledges that Transferee is acquiring certain Membership Interests in the Company which are subject to the terms and conditions set forth in the Agreement and the certificate of formation of the Company, a copy of which certificate of formation is attached hereto as Exhibit B (the “*Certificate*”).

2. Transferee (a) agrees that the Membership Interests acquired by Transferee shall be bound by and subject to the terms of the Agreement and the Certificate and (b) accedes to and agrees to be bound by the Certificate and the Agreement with the same force and effect as if the undersigned was a party thereto. Transferee’s execution of this Accession shall not constitute admission of the Transferee as a Member of the Company unless and until Transferee has complied with all of the requirements of the Agreement.

3. This Accession may be delivered by electronic transmission, including by facsimile or in portable document format, and such delivery shall be deemed to be an original. This Accession shall be governed by the laws of the State of Delaware without regard to principles of conflicts of law.

4. This Accession shall be binding upon and inure to the benefit of Transferee and the Company and their respective heirs, executors, administrators, successors, legal representatives and permitted assigns.

5. Any notice required or permitted by the Accession or the Agreement shall be given to Transferee at the address listed under the Transferee’s signature below.

*[Remainder of page intentionally left blank. Signature page follows.]*

IN WITNESS WHEREOF, the undersigned hereby executes this Accession as of \_\_\_\_\_, 20\_\_.

TRANSFeree:

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ANNEX C**  
**FORM OF CAPITAL CALL NOTICE**

[Letterhead of the Company]

Date: \_\_\_\_\_

[The Members]

Ladies and Gentlemen:

Reference is made to that certain Limited Liability Company Agreement dated as of September 2, 2014 by and among Dominion Atlantic Coast Pipeline, LLC, Duke Energy ACP, LLC, Piedmont ACP Company, LLC and Maple Enterprise Holdings, Inc. (the “LLC Agreement”). Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the LLC Agreement.

This Capital Call Notice is delivered pursuant to Section 4.2(b) of the LLC Agreement. The aggregate amount of Capital Contributions from the Members due on the Capital Contribution Date set forth below is equal to \$\_\_\_\_\_. The amount due from each Member on such Capital Contribution Date is as follows:

- [Member]:           \$\_\_\_\_\_
- [Member]:           \$\_\_\_\_\_
- [Member]:           \$\_\_\_\_\_
- [Member]:           \$\_\_\_\_\_

and all such amounts shall be paid to the Company’s account on the Capital Contribution Date in Dollars in immediately available funds.

The purpose of such Capital Contribution is to fund [*specify purpose and relevant budget*].

The Capital Contribution Date, by which such Capital Contributions shall be made is [*specify Business Day that is at least 20 days from the date on which this instruction is given*].

Wire instructions are as follows:

For credit to the Company's account:

Account No.:

\_\_\_\_\_:

Attn:

Yours sincerely,

ATLANTIC COAST PIPELINE, LLC

By: \_\_\_\_\_

Name:

Title: Authorized Representative

**EXHIBIT 2.1****INITIAL PRECEDENT AGREEMENTS**

<b>Agreement</b>	<b>Capacity (in Dt per day)</b>
Precedent Agreement for Firm Transportation Services Atlantic Coast Pipeline, LLC to be entered into between the Company and Duke Energy Carolinas, LLC.	452,750
Precedent Agreement for Firm Transportation Services Atlantic Coast Pipeline, LLC to be entered into between the Company and Duke Energy Progress, Inc.	272,250
Precedent Agreement for Firm Transportation Services Atlantic Coast Pipeline, LLC to be entered into between the Company and Piedmont Natural Gas Company, Inc.	160,000
Precedent Agreement for Firm Transportation Services Atlantic Coast Pipeline, LLC to be entered into between the Company and Public Service Company of North Carolina, Inc.	100,000
Precedent Agreement for Firm Transportation Services Atlantic Coast Pipeline, LLC to be entered into between the Company and Virginia Natural Gas, Inc.	75,000
Precedent Agreement for Firm Transportation Services Atlantic Coast Pipeline, LLC to be entered into between the Company and Virginia Power Services Energy Corp., Inc.	300,000

**EXHIBIT 3.1****MEMBER ADDRESSES, CAPITAL CONTRIBUTIONS, AND PERCENTAGE INTERESTS**

<b><u>Name and Addresses of Members</u></b>	<b><u>Capital Contributions</u></b>	<b><u>Initial Percentage Interest</u></b>
<b>Duke Energy ACP, LLC</b> 550 South Tryon Charlotte, NC 28202 Attention: Phillip C. Grigsby Facsimile: E-mail:	\$3,684,000	40%
<b>Piedmont ACP Company, LLC</b> 4720 Piedmont Row Drive Charlotte, NC 28210 Attention: Karl W. Newlin Facsimile: E-mail:	\$911,000	10%
<b>Dominion Atlantic Coast Pipeline LLC</b> 707 East Main Street, 19th Floor Richmond, VA 23219 Attention: Anne E. Bomar Facsimile: E-mail:	0	45%
<b>Maple Enterprise Holdings, Inc.</b> 10 Peachtree Place, NE Atlanta, GA 30309 Attention: Hank Linginfelter Facsimile: E-mail:	\$460,500	5%

**EXHIBIT 4.4****PRE-EFFECTIVE EXPENDITURES**

<b>Member</b>	<b>Pre-Effective Expenditures (\$)</b>
<b>Duke Energy ACP, LLC</b>	\$0
<b>Piedmont ACP Company, LLC</b>	\$10,000
<b>Dominion Atlantic Coast Pipeline, LLC</b>	\$9,200,000
<b>Maple Enterprise Holdings, Inc.</b>	\$0

**EXHIBIT 6.3(a)**

**DESIGNATED MANAGERS**

I. Duke Manager(s)

Phillip C. Grigsby

Duke Alternate Managers

Lance C. Stotts

II. Piedmont Manager(s)

Karl W. Newlin

Piedmont Alternative Managers

Franklin H. Yoho

III. Dominion Manager(s)

Anne E. Bomar

Dominion Alternate Managers

Donald R. Raikes

IV. AGL Manager(s)

Charles Rawson

AGL Alternate Managers

Tim Sherwood

Initial Chairman: Anne E. Bomar



**EXHIBIT 6.9(c)**

**OFFICERS**

The initial officers of the Company shall be as follows:

Vice President – Phillip C. Grigsby

Vice President – Anne E. Bomar

Vice President – Karl W. Newlin

Vice President – Henry P. Linginfelter

**EXHIBIT 14.9**

**AFFILIATE CONTRACTS**

1. The Initial Precedent Agreements
2. The Operations Agreement
3. A capacity lease agreement between the Company and Piedmont or its Affiliate for the leasing of pipeline transportation capacity on Piedmont's or its Affiliate's system.
4. A firm transportation service agreement between the Company and Dominion Transmission, Inc. for up to 1,500,000 Dt per day.

## SCHEDULE A

### INITIAL FACILITIES

The Initial Facilities will consist of the following:

- a. approximately 294 miles of 42" diameter pipeline;
- b. approximately 178 miles of 36" diameter pipeline;
- c. approximately 75 miles of 20" diameter pipeline;
- d. approximately 108,275 Hp of gas fired compression;
- e. approximately eight measurement and regulation stations, as may be required to meet obligations established under precedent agreements with customers to be served by the Initial Facilities, including:
  - i. a 1,600,000 Dt/d receipt interconnection with Dominion Transmission, Inc. at Marts Junction, located in Lewis County, West Virginia;
  - ii. a 350,000 Dt/d delivery interconnection with Columbia Gas Transmission Corporation located in Randolph County, West Virginia;
  - iii. a 1,450,000 Dt/d bi-directional interconnection with Transcontinental Gas Pipe Line Corporation located in Buckingham County, Virginia;
  - iv. a 350,000 Dt/d delivery interconnection with The Virginia Electric and Power Company located in Brunswick County, Virginia;
  - v. a 350,000 Dt/d delivery interconnection with Virginia Natural Gas Company located in Chesapeake County, Virginia;
  - vi. a 1,085,000 Dt/d delivery interconnection with Piedmont Natural Gas Company, Inc. ("Piedmont") located in Johnston County NC;
  - vii. a 200,000 Dt/d delivery interconnection with Piedmont located in Cumberland County, North Carolina;
  - viii. a 985,000 Dt/d delivery interconnection with Piedmont located in Robeson County, North Carolina;
- f. a contract with Dominion Transmission, Inc. for sufficient firm transportation service to provide receipt point access and deliveries to Marts Junction, under Precedent Agreements with customers to be served by the Initial Facilities;
- g. a lease of capacity from Piedmont for sufficient quantities to provide deliveries under a Precedent Agreement with Public Service Company of North Carolina, Inc.; and
- h. such other ancillary and/or related facilities, equipment, services and/or leases authorized pursuant to the FERC Certificate for the Initial Facilities.

## **SCHEDULE B**

### **MINIMUM INSURANCE COVERAGE**

The Operator shall cause the Company to maintain at least the following types of insurance in amounts and with deductibles, terms and conditions, and effective dates as determined by the Members.

#### **General/Excess Liability Insurance**

**Commercial Automobile Insurance** – For any owned, hired, rented or non-owned automotive equipment.

#### **Umbrella Liability Insurance**

#### **Property Insurance**

**Business Interruption Insurance** – At Company's option

**Workers Compensation Insurance** – For any employees if required by law

**Directors and Officers Liability Insurance** – At Company's option

Atlantic Coast Pipeline, LLC  
Atlantic Coast Pipeline  
Docket Nos. CP15-\_\_-000, CP15-\_\_-000, and CP15-\_\_-000

EXHIBIT B

**STATE AUTHORIZATION**



# NORTH CAROLINA

## Department of the Secretary of State

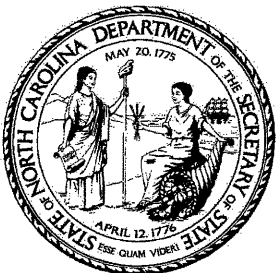
---

### CERTIFICATE OF AUTHORITY

I, Elaine F. Marshall, Secretary of State of the State of North Carolina, do hereby certify  
that

### ATLANTIC COAST PIPELINE, LLC

having filed on this date an application conforming to the requirements of the General Statutes of North Carolina, a copy of which is hereto attached, is hereby granted authority to transact business in the State of North Carolina.



Scan to verify online.

IN WITNESS WHEREOF, I have hereunto set  
my hand and affixed my official seal at the City  
of Raleigh, this 3rd day of November, 2014.

*Elaine F. Marshall*

Secretary of State

# Commonwealth of Virginia



## STATE CORPORATION COMMISSION

*Richmond, November 5, 2014*

*This certificate of registration to transact business in Virginia is this day issued for*

**Atlantic Coast Pipeline, LLC**

*a limited liability company organized under the laws of DELAWARE and the said company is authorized to transact business in Virginia, subject to all Virginia laws applicable to the company and its business.*



*State Corporation Commission*

*Attest:*

*Joel H. Beck*  
Clerk of the Commission

# State of West Virginia



## Certificate

*I, Natalie E. Tennant, Secretary of State of the State of West Virginia, hereby certify that*

**ATLANTIC COAST PIPELINE, LLC**

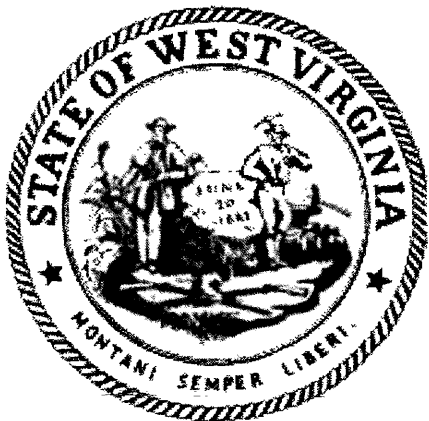
**Control Number: 9A7TZ**

a limited liability company, organized under the laws of the State of Delaware has filed its "Application for Certificate of Authority" in my office according to the provisions of West Virginia Code §31B-10-1002. I hereby declare the organization to be registered as a foreign limited liability company from its effective date of November 7, 2014, until a certificate of cancellation is filed with our office.

Therefore, I hereby issue this

### **CERTIFICATE OF AUTHORITY OF A FOREIGN LIMITED LIABILITY COMPANY**

to the limited liability company authorizing it to transact business in West Virginia



*Given under my hand and the Great Seal of the State of West Virginia on this day of November 7, 2014*

*Natalie E. Tennant*

*Secretary of State*



EXHIBIT C

COMPANY OFFICIALS

<u>Director/Officer</u>	<u>Title</u>	<u>Address</u>
Charles Rawson	Manager	Ten Peachtree Place NE Atlanta, GA 30309
Anne E. Bomar	Manager & Vice President	707 E. Main Street Richmond, VA 23219
Phillip C. Grigsby	Manager & Vice President	550 South Tryon Street Charlotte, NC 28202
Karl W. Newlin	Manager & Vice President	4720 Piedmont Row Drive Charlotte, NC 28210
Michele L. Cardiff	Vice President (Chief Accounting Officer)	701 E. Cary Street Richmond, VA 23219
G. Scott Hetzer	Vice President and Treasurer	100 Tredegar Street Richmond, VA 23219
Henry P. Linginfelter	Vice President	Ten Peachtree Place NE Atlanta, GA 30309
Carter M. Reid	Vice President and Secretary	100 Tredegar Street Richmond, VA 23219
Karen W. Doggett	Assistant Secretary	100 Tredegar Street Richmond, VA 23219
John L. Newman	Assistant Treasurer	100 Tredegar Street Richmond, VA 23219

EXHIBIT D

**SUBSIDIARIES AND AFFILIATION**

As of the date of this Application, the following companies own, control, or hold with power to vote, ten percent or more of the outstanding voting securities of Atlantic Coast Pipeline, LLC:

- Dominion Atlantic Coast Pipeline, LLC, a Delaware limited liability company, owns 45 percent.
- Duke Energy ACP, LLC, a Delaware limited liability company, owns 40 percent.
- Piedmont ACP Company, LLC, a North Carolina limited liability company, owns 10 percent.

As of the date of this Application, neither Atlantic Coast Pipeline, LLC nor any of its officers or directors, directly or indirectly, own, control, or hold with power to vote, ten percent or more of the outstanding voting securities of any person or organized group of persons engaged in production, transportation, distribution, or sale of natural gas, or of any person or organized group of persons engaged in the construction or financing of such enterprises or operations.

EXHIBIT E

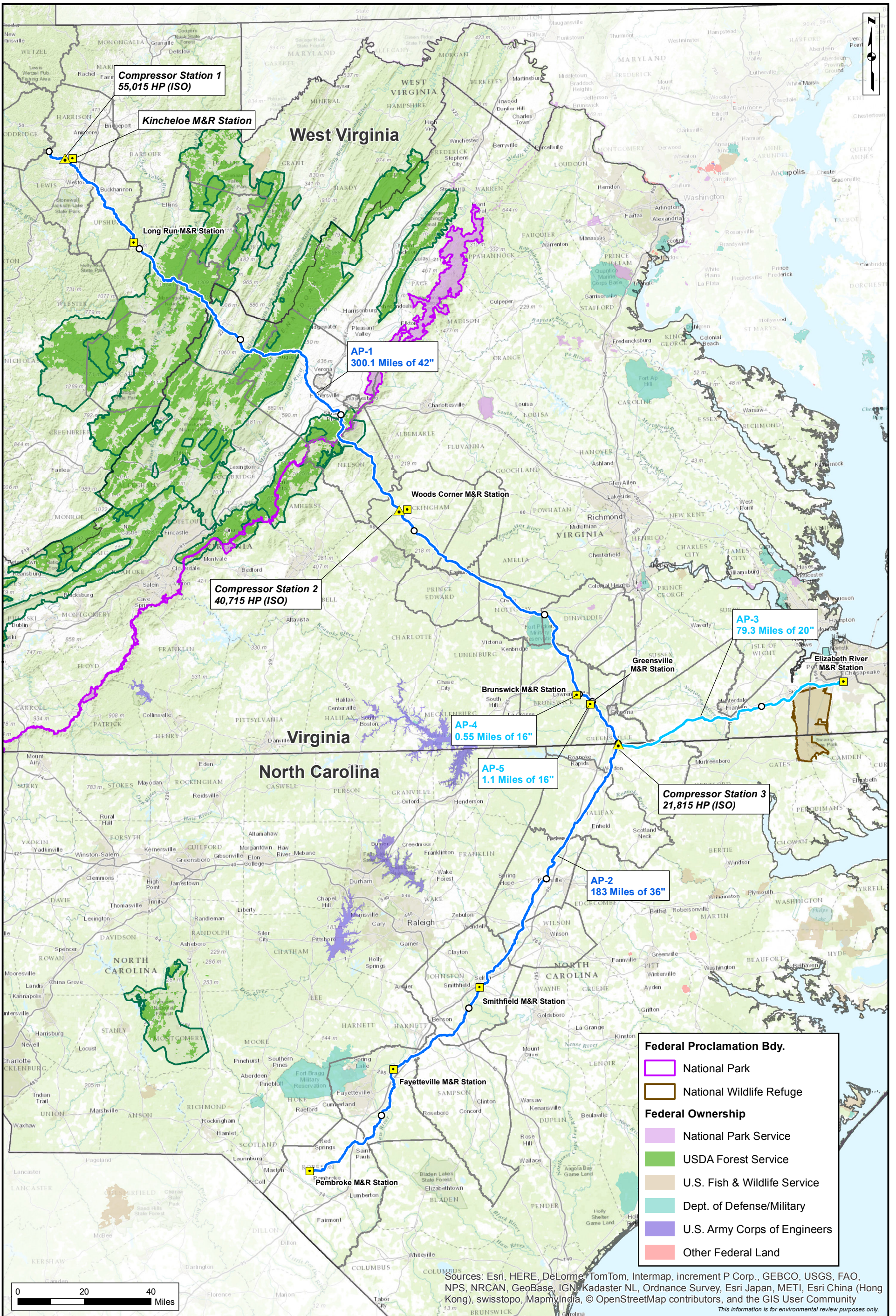
**OTHER PENDING APPLICATIONS AND FILINGS**

Concurrently with this Application being filed by Atlantic Coast Pipeline, LLC (Atlantic), Dominion Transmission, Inc. (DTI) is also filing an application for the Supply Header Project with the Commission. The two applications directly and significantly affect each other, as Atlantic has contracted for capacity created by DTI's Supply Header Project and will use this capacity, along with that of the Atlantic Coast Pipeline, to provide service to its customers. If the Commission denies this Application for the Atlantic Coast Pipeline, DTI would not proceed with the Supply Header Project. Commission denial of DTI's related application would have a significant and adverse effect on the Atlantic Coast Pipeline because it would fundamentally change the service that Atlantic proposes to provide to its customers.

In addition, Atlantic and Piedmont are also filing concurrently with this Application an application for approval of Atlantic's lease of existing Piedmont capacity. That application also directly and significantly affects this one, as Atlantic will utilize the leased capacity to provide service to its customers. If the Commission denies this Application for the Atlantic Coast Pipeline, there would be no need for the lease of Piedmont capacity. Commission denial of Atlantic-Piedmont lease also would have a significant, adverse effect on the Atlantic Coast Pipeline because it would fundamentally change the service that Atlantic proposes to provide to certain of its customers.

EXHIBIT F

**LOCATION OF FACILITIES**



- ACP Mainline
- ACP Lateral
- Compressor Station
- MR Station

## Atlantic Coast Pipeline Project



an ERM Group company

EXHIBIT F-I

**ENVIRONMENTAL REPORT**

Exhibit F-I can be found in Volume II (PUBLIC INFORMATION).

UNDER SEPARATE COVER

EXHIBITS G, G-I and G-II

**FLOW DIAGRAMS**

Exhibits G and G-I:

The following flow diagram is being submitted as Exhibits G and G-I:

- (1) Atlantic Coast Pipeline Project - Summer Design Day. This flow diagram reflects the contract receipts and deliveries Atlantic would expect on a Summer Design Day. This Summer Design Day is the design day for the required facilities for Atlantic to perform the services proposed in this Application.

Exhibit G-II:

Assumptions, bases, and formulae associated with the flow diagrams are included in Volume IV, which is considered Critical Energy Infrastructure Information (CEII).

Exhibits G, G-I, and G-II can be found in Volume IV (CONTAINS CRITICAL ENERGY INFRASTRUCTURE INFORMATION – DO NOT RELEASE).

UNDER SEPARATE COVER

EXHIBIT I

**MARKET DATA**

In its 1999 Certificate Policy Statement, the Federal Energy Regulatory Commission found that precedent agreements are “significant evidence of demand” to support the approval of natural gas pipeline construction projects. *Certification of New Interstate Natural Gas Pipeline Facilities, Policy Statement*, 88 FERC ¶ 61,227 at p. 61,748 (1999).

Accordingly, Atlantic Coast Pipeline, LLC (Atlantic) provides below a summary of the relevant terms of the precedent agreement with its Customers, to demonstrate that its Project is warranted by market need. This exhibit is supported by the sworn verification of an authorized Atlantic official.

Market Support

The Project Customers have executed precedent agreements representing approximately 96 percent market commitment for 1.44 MMDt/day of the 1.5 MMDt/day of firm transportation capacity that is created by the Project (see apportioned table below). This agreement contains conditions precedent related only to the receipt of governmental authorizations for the Project and for internal board approvals. 1/

---

1/ The Commission has found that customer agreements including such conditions are sufficient evidence of market support for a pipeline project. *See, e.g., East Tennessee Natural Gas Co.*, 98 FERC ¶ 61,331, at p. 62,398 (2002).



	<b>Duke Energy Progress, Inc.</b>	<b>Duke Energy Carolinas, LLC</b>	<b>Piedmont Natural Gas Company, Inc.</b>	<b>Virginia Power Services Energy Corp., Inc.</b>	<b>Public Service Company of North Carolina, Inc.</b>	<b>Virginia Natural Gas, Inc.</b>
<i>MDTQ (Dt per Day) 1/</i>						
<b>ACP Receipt Points 2/</b>						
Marts Junction Interconnect, Harrison County, WV	452,750	272,250	160,000	300,000	100,000	155,000
Transcontinental Gas Pipe Line Company, Buckingham County, VA	452,750	272,250	160,000	-	-	-
<b>ACP Delivery Points</b>						
Columbia Gas Transmission, Randolph County, WV	-	-	-	300,000	-	-
Transcontinental Gas Pipe Line Company, Buckingham County, VA	452,750	272,250	160,000	300,000	-	-
Brunswick County, VA	-	-	-	300,000	-	-
Greensville County, VA	-	-	-	300,000	-	-
Southern Gate 1 Interconnect - Chesapeake, VA	-	-	-	150,000	-	155,000
Johnson County Interconnect, Johnston County, NC	452,750	272,250	160,000	-	100,000	-
Fayetteville Interconnect, Cumberland County, NC	-	-	150,000	-	-	-
Junction A - Robeson Interconnect, Robeson County, NC	452,750	272,250	160,000	-	-	-
<b>DTI Supply Header Receipt Points 2/</b>						
Dominion South Point Pool, DTI Header	452,750	272,250	160,000	30,000	100,000	155,000
Clarrington - Rockies Express Pipeline, LLC in Monroe Co., OH	151,219	90,932	53,440	100,000	33,400	51,770
Oakford - Texas Eastern Transmission in Westmoreland Co., PA	90,550	54,450	32,000	60,000	20,000	31,000
Fink Kennedy – CNX Gas Co, LLC near Lightburn, WV	90,550	54,450	32,000	60,000	20,000	31,000
Crayne - Texas Eastern Transmission in Greene Co., PA	60,216	36,209	21,280	40,000	13,300	20,615
Sherwood - MarkWest in Harrison Co., WV	60,216	36,209	21,280	40,000	13,300	20,615

Notes for the table:

- 1/ Quantities (net of fuel) in aggregate cannot exceed the Contractual MDTQ.
- 2/ Does not reflect quantities for fuel gross up for ACP and DTI (where applicable) fuel retention.


The Customers will enter into service agreements commencing on or before November 1, 2018 for firm transportation service totaling 1,440,000 Dt/day for a primary term of 20 years. Service will be provided under the terms and conditions of Atlantic's proposed Rate Schedule FT.

As noted in the Application, in lieu of the base recourse rates for this Project, Customers shall pay Atlantic negotiated base recourse rates for the firm transportation service to be rendered as part of the Project that shall remain fixed for the primary term of the service agreement, subject to certain adjustments. Customers expressly acknowledge that: i) Atlantic offered Customers the base recourse rates, and, ii) the agreed negotiated fixed rates may be more or less than the initial incremental base recourse rates.

Atlantic has agreed to certain non-conforming provisions with its Customers, which are described in Section IV.F. of the Application.

**AFFIDAVIT**

I, G. Scott Hetzer, Vice President and Treasurer, affirm that the summary of information set forth in this Exhibit I is a true and correct representation of the binding market commitments Atlantic Coast Pipeline, LLC has received to support this Project.

  
 \_\_\_\_\_  
 G. Scott Hetzer

Commonwealth of Virginia )  
 )  
 City of Richmond )  
 )

Before me, the undersigned Notary Public, personally appeared G. Scott Hetzer, who being duly sworn on oath, deposes and says that he has read the foregoing statement and the facts contained therein and states that such statements and facts are true and correct to the best of his knowledge, information and belief.

Subscribed and sworn to me as of the 14<sup>th</sup> day of September, 2015.

  
 \_\_\_\_\_  
 Notary Public

My Commission Expires: April 30, 2017

My Commission Expires  
 April 30, 2017

EXHIBIT J

**FEDERAL AUTHORIZATIONS**

**Statement:**

Pursuant to 18 C.F.R. 157.14(a)(12), the attached table identifies each Federal authorization that the proposal will require; the Federal agency or officer, or State/Commonwealth agency or officer acting pursuant to delegated Federal authority, that will issue each required authorization; the date each request for authorization was submitted; why any request was not submitted and the date submission is expected; and the date by which final action on each Federal authorization has been requested or is expected.

Pursuant to the regulations, only the Federal authorizations required for this Project are included herein.

EXHIBIT J

**FEDERAL AUTHORIZATIONS**

Administering Agency	Permit/Consultation	Date Submitted	Date Received / <i>Anticipated Receipt</i>
<b>Federal</b>			
Federal Energy Regulatory Commission	Certificate of Public Convenience and Necessity under Section 7(c) of the Natural Gas Act	September 2015	<i>July 2016</i>
Federal Energy Regulatory Commission	Blanket Certificate of public convenience and necessity pursuant to Part 284, Subpart G	September 2015	<i>July 2016</i>
Federal Energy Regulatory Commission	Blanket Certificate of public convenience and necessity pursuant to Part 157, Subpart F	September 2015	<i>July 2016</i>
Bureau of Land Management	Right-of-Way Grant to cross Federal lands in the Monongahela National Forest, George Washington National Forest, and Great Dismal Swamp National Wildlife Refuge	September 2015	<i>September 2016</i>
National Oceanic and Atmospheric Administration – National Marine Fisheries Service <ul style="list-style-type: none"> <li>• Northeast Region</li> <li>• Southeast Region</li> <li>• Marine Mammals</li> </ul>	Consultation under Section 7 of the Endangered Species Act and Section 305 of the Magnuson-Stevens Act	<ul style="list-style-type: none"> <li>• August 22, 2014</li> <li>• August 22, 2014</li> <li>• September 9, 2014</li> </ul>	<ul style="list-style-type: none"> <li>• <i>September 2016</i></li> <li>• <i>September 2016</i></li> <li>• <i>September 2016</i></li> </ul>
National Park Service – Blue Ridge Parkway	Right-of-Way Grant and Special Use Permit to cross the Blue Ridge Parkway	September 2015	<i>June 2016</i>
U.S. Army Corps of Engineers <ul style="list-style-type: none"> <li>• Huntington District</li> <li>• Pittsburgh District</li> <li>• Norfolk District</li> <li>• Wilmington Districts</li> </ul>	Department of the Army Permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act	<ul style="list-style-type: none"> <li>• September 2015</li> <li>• September 2015</li> <li>• September 2015</li> <li>• September 2015</li> </ul>	<ul style="list-style-type: none"> <li>• <i>September 2016</i></li> <li>• <i>September 2016</i></li> <li>• <i>September 2016</i></li> <li>• <i>September 2016</i></li> </ul>

Administering Agency	Permit/Consultation	Date Submitted	Date Received / <i>Anticipated Receipt</i>
U.S. Fish and Wildlife Service – Great Dismal Swamp National Wildlife Refuge	Special Use Permit and Concurrence in the Right-of-Way Grant issued by the Bureau of Land Management to cross the Great Dismal Swamp National Wildlife Refuge	September 2015	<i>June 2016</i>
U.S. Fish and Wildlife Service Field Offices <ul style="list-style-type: none"> <li>• West Virginia</li> <li>• Virginia</li> <li>• North Carolina</li> </ul>	Consultation under Section 7 of the Endangered Species Act	<ul style="list-style-type: none"> <li>• August 19, 2014</li> <li>• August 19, 2014</li> <li>• August 19, 2014</li> </ul>	<ul style="list-style-type: none"> <li>• <i>June 2016</i></li> <li>• <i>June 2016</i></li> <li>• <i>June 2016</i></li> </ul>
U.S. Forest Service – George Washington National Forest and the Appalachian Trail	Special Use Permit and Concurrence in the Right-of-Way Grant issued by the Bureau of Land Management to cross the George Washington National Forest and the Appalachian Trail as well as related amendments to Forest Management Plan	September 2015	<i>September 2016</i>
U.S. Forest Service – Monongahela National Forest	Special Use Permit and Concurrence in the Right-of-Way Grant issued by the Bureau of Land Management to cross the Monongahela National Forest as well as related amendments to Forest Management Plan	September 2015	<i>September 2016</i>
<b>West Virginia</b>			
West Virginia Department of Environmental Protection – Division of Air Quality	Air Permit – New Source Review Permit (or other applicable permit)	September 2015	<i>September 2016</i>
West Virginia Department of Environmental Protection – Oil and Gas Division	General Water Pollution Control Permit – Stormwater Associated with Oil and Gas Related Construction Activities	<i>April 2016</i>	<i>July 2016</i>
West Virginia Department of Environmental Protection – Division of Water and Waste Management	Water Quality Certificate under Section 401 of the Clean Water Act	September 2015	<i>September 2016</i>
West Virginia Department of Environmental Protection – Division of Water and Waste Management	General Water Pollution Control Permit – Stormwater Associated with Oil and Gas Related Construction Activities	<i>April 2016</i>	<i>July 2016</i>
West Virginia Department of Environmental Protection – Division of Water and Waste Management	NPDES – Water Pollution Control Permit for Hydrostatic Testing Water – WV0113069	<i>May 2016</i>	<i>August 2016</i>
West Virginia Division of Culture and History	Consultation under Section 106 of the National Historic Preservation Act	June 30, 2014	<i>September 2016</i>

Administering Agency	Permit/Consultation	Date Submitted	Date Received / <i>Anticipated Receipt</i>
<b>Virginia</b>			
Virginia Department of Environmental Quality – Coastal Zone Management Program	Consistency Determination under the Virginia Coastal Zone Management Program	August 2015	<i>May 2016</i>
Virginia Department of Environmental Quality – Air Division	Air Permit – New Source Review Permit (or other applicable permit)	September 2015	<i>October 2016</i>
Virginia Department of Environmental Quality – Water Division	Water Quality Certificate under Section 401 of the Clean Water Act	September 2015	<i>September 2016</i>
Virginia Department of Environmental Quality – Water Division (or approved local government)	General Permit for Discharges of Stormwater from Construction Activities (VAR10)	<i>April 2016</i>	<i>July 2016</i>
Virginia Department of Environmental Quality – Water Division	General Permit for Discharges from Petroleum Contaminated Sites, Groundwater Remediation, and Hydrostatic Tests (VAG83)	<i>May 2016</i>	<i>September 2016</i>
Virginia Department of Historical Resources	Consultation under Section 106 of the National Historic Preservation Act	June 30, 2014	<i>September 2016</i>
<b>North Carolina</b>			
North Carolina Department of Environment and Natural Resources – Division of Air Quality	Air Permit – Stationary Source Construction and Operation Permit	September 2015	<i>September 2016</i>
North Carolina Department of Environment and Natural Resources – Division of Energy, Mineral, and Land Resources (or approved local government)	General Permit NCG 010000 to Discharge Stormwater under the NPDES	<i>May 2016</i>	<i>September 2016</i>
North Carolina Department of Environment and Natural Resources – Division of Water Resources	Water Quality Certificate under Section 401 of the Clean Water Act (including permission to use State-owned bottom lands)	September 2015	<i>September 2016</i>
North Carolina State Historic Preservation Office	Consultation under Section 106 of the National Historic Preservation Act	June 30, 2014	<i>September 2016</i>
<b>Native American Tribes or Organizations</b>			
Various Native American Group Contacts	Consultation with Federally Recognized Native American Groups	July 29, 2014	<i>February 2016</i>

EXHIBIT K

**COST OF FACILITIES**



EXHIBIT K

COST OF FACILITIES

Cost Category	ACP1	ACP2	ACP3	ACP4	ACP5	Station 1	Station 2	Station 3	Kincheloe M&R	Long Run M&R	Woods Corner M&R	Brunswick M&R	Elizabeth River M&R	Smithfield M&R	Fayetteville M&R	Pembroke M&R	Greenville M&R	Project Total
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
Site Development/Land	77,166,151	39,818,092	18,620,089	1,894,170	71,487	17,605,005	8,626,757	6,332,097	506,160	729,694	403,655	729,694	729,694	729,694	384,858	729,694	391,897	175,468,885
Right-of-Way	38,415,004	17,556,985	8,064,005	1,121,736	100,763	0	0	0	0	0	0	0	0	0	0	0	0	65,258,494
Damages	15,994,759	7,310,158	3,357,590	467,055	41,955	0	0	0	0	0	0	0	0	0	0	0	0	27,171,516
Survey	10,268,217	2,198,612	434,895	17,022	18,747	0	0	0	0	0	0	0	0	0	0	0	0	12,937,493
Engineering & Inspection	231,566,169	99,397,517	28,774,358	998,758	567,253	8,821,722	7,305,345	7,253,670	1,057,757	592,549	1,047,439	609,806	598,865	935,617	535,047	937,947	568,935	391,568,754
Materials	344,491,422	163,079,520	22,502,610	840,174	681,954	65,941,887	74,600,010	40,348,631	5,736,420	2,773,654	7,398,319	2,773,654	2,773,654	5,719,228	1,799,436	6,228,392	2,772,986	750,461,951
Construction/Contract Labor	1,498,099,754	648,108,235	216,184,650	6,591,213	2,768,896	40,293,213	38,042,198	38,042,198	5,740,092	2,318,548	5,711,956	2,318,548	2,318,548	4,586,448	2,318,548	4,586,448	2,338,436	2,520,367,931
Legal Fees	6,660,424	3,007,965	953,312	37,247	14,373	383,937	346,695	274,841	41,322	20,106	46,163	20,151	20,122	37,589	16,133	38,672	18,982	11,938,035
Other Services and Costs	34,294,210	15,684,170	4,180,120	128,077	447,700	3,340,892	3,050,141	2,236,886	393,625	234,845	429,976	235,253	234,994	366,766	204,189	280,742	180,030	65,922,615
Contingencies	311,347,241	163,729,711	64,531,914	2,267,342	829,158	17,942,041	5,439,659	14,494,561	2,830,662	1,378,099	3,156,863	1,378,099	1,378,102	2,526,913	1,147,630	2,526,912	1,258,098	598,163,004
Overheads	23,556,153	10,705,845	3,463,318	195,745	124,456	1,596,628	1,177,839	1,156,777	157,255	87,988	171,605	93,445	90,602	157,762	66,265	157,095	62,224	43,021,002
AFUDC	316,212,846	84,518,914	28,029,757	2,011,196	386,684	13,301,372	13,183,444	9,003,815	1,279,488	596,616	1,383,124	591,326	586,784	1,119,021	450,703	1,109,703	495,199	474,259,992
Total Estimated Costs	2,908,072,349	1,255,115,724	399,096,619	16,569,736	6,053,426	169,226,697	151,772,088	119,143,476	17,742,782	8,732,098	19,749,101	8,749,975	8,731,366	16,179,039	6,922,809	16,595,605	8,086,786	5,136,539,674

EXHIBIT L

**FINANCING**

EXHIBIT L  
FINANCING

Preliminary Statement

Atlantic Coast Pipeline, LLC (“Atlantic”) is a limited liability company formed by affiliates of four major, regionally-based energy companies in order to develop, own and operate the Atlantic Coast Pipeline (“ACP”). Atlantic has no other business activity at this time.

Prior to its acceptance of Commission certificates in the instant proceeding, the costs for development of ACP will be funded by the Atlantic member companies, through equity capital contributions in proportion to their respective ownership interest. This funding will be provided from each member company through its respective corporate resources.

Following its acceptance of the Commission certificates Atlantic expects to establish long-term financing. Atlantic currently plans to migrate the project capital structure to an ultimate target debt-equity ratio of 50:50 (i.e., with debt financing for 50% of total project costs, and 50% of total project costs contributed from the members as equity ownership of the project). Atlantic expects to secure such debt financing on customary terms and conditions prevailing in the relevant financial markets at the time of the financing, which may include: pricing, rate, maturity, equity contribution obligations, and/or pledges of assets and contracts as security for repayment of the debt.

For the purpose of this Exhibit L, Atlantic has assumed that any long-term debt will be secured at an overall cost of 6.8 percent and have an average tenor in excess of 10 years. Consistent with other recent Commission authorization of projects similar to ACP, Atlantic proposes a return on equity of 14%.

Summary of Outstanding and Proposed Securities and Liabilities

Atlantic has no previously issued debt and plans to initially capitalize the ACP with 100% equity from the member partners until its acceptance of Commission certificates, after which Atlantic anticipates migrating to a 60% debt capital structure (approximately \$3 billion) during construction and ultimately to a 50% debt capital structure post construction. The assumed cost of the anticipated long-term debt financing is 6.8 percent.

Disposition of Proposed Securities

It is not yet known the methodology that will be used to execute the proposed securities nor are the investors known at this time. Such decisions will be made by Atlantic at the time of financing based on financial market conditions at that time.

### Estimated Sales Price and Net Proceeds from Proposed Transactions

The estimated net proceeds from the proposed debt financing will be approximately \$3 billion. The gross proceeds will be determined by and reflective of market conditions at the time of issuance. The estimated net proceeds from the equity portion of the proposed financing plan (including capitalized return) will be approximately \$2 billion. The net sales proceeds of the equity funds will be identical to the gross proceeds as the funding will be provided without fees from the member partners.

### Estimated Expenses, Fees and Commissions in Connection with Proposed Financing

The fees associated with the debt funding will be based on market conditions and determined at the time of issuance. The fees will include, but not limited to, commissions, legal, accounting, printing and other miscellaneous charges. As noted above, no fees are expected in relation to the equity funding.

### Statement of Restrictions as to Issuance of Securities

Currently, no restrictions exist to prevent Atlantic from issuing the proposed debt financing; however, consent of all member partners would be required for any capital market activity.

### Statement of Anticipated Cash Flows

A statement of anticipated cash flows is provided in Schedule 3 of this Exhibit L, filed as privileged information.

### Statement of Income and Balance Sheet

No prior income statement or balance sheet is available for Atlantic as the entity has no prior business activity. A pro forma Statement of Income is provided in Schedule 1 and a pro forma Balance Sheet is provided in Schedule 2 of this Exhibit L, both filed as privileged information.

Atlantic Coast Pipeline, LLC  
Atlantic Coast Pipeline  
Docket Nos. CP15-\_\_-000, CP15-\_\_-000, and CP15-\_\_-000

EXHIBIT M

**CONSTRUCTION, OPERATION, AND MANAGEMENT**

## CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT

THIS CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT (this "*Agreement*"), dated as of September 2, 2014 (the "*Execution Date*"), is executed and agreed to by ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability company (the "*Company*"), and DOMINION TRANSMISSION, INC., a Delaware corporation ("*Operator*"). Each of the Company and the Operator may be referred to herein as a "*Party*" or collectively as the "*Parties*".

### RECITALS:

WHEREAS, the Company intends to develop, permit, design, engineer, finance, construct, commission, own, improve and expand an approximately 550 mile natural gas pipeline running generally between Lewis County, West Virginia and Chesapeake, Virginia and Robeson County, North Carolina, together with certain gas-fired compression stations and associated meter and regulation stations, all as more fully described and identified in the FERC Application for such facilities (as amended or modified) and as further described in the Company Agreement (the "*Initial Facilities*"); and

WHEREAS, the Company wishes to engage the Operator to oversee the construction of, and to subsequently operate and maintain, the Initial Facilities, the PA Required Expansion Facilities and any Approved Facilities Projects undertaken by the Company, on the terms and conditions set forth herein, and the Operator wishes to accept such engagement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby enter into this Agreement.

### ARTICLE 1

#### DEFINITIONS; INTERPRETATION

1.1. Definitions. As used herein, the terms below shall have the following meanings:

"*Accounting Procedure*" means the accounting procedure set forth in Schedule 2.

"*Additional Services*" has the meaning set forth in Section 2.6.

"*Affiliate*" means, with respect to any Person, any other Person directly or indirectly controlling or controlled by or under common control with such Person. For purposes of this definition, (i) "control," as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise, and (ii) the terms "controlling," "controlled by" and "under common control with" shall have correlative and synonymous meanings. For purposes of this Agreement, neither the Company nor any of its subsidiaries is an Affiliate of the Operator or any of its Affiliates.

**“Agreement”** has the meaning set forth in the preamble.

**“Annual Budget”** has the meaning set forth in the Company Agreement.

**“Applicable Law”** means all applicable laws, rules, regulations and orders of Governmental Authorities having jurisdiction over the Facilities, the Company or the Operator.

**“Approved Facilities Project”** has the meaning set forth in the Company Agreement.

**“Bankruptcy”** means, with respect to any Person, (i) such Person makes an assignment for the benefit of creditors, (ii) such Person files a voluntary petition in bankruptcy, (iii) such Person is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceedings, (iv) such Person files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation or similar relief under any statute, law or regulation, (v) such Person files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature, (vi) such Person seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator for such Person or of all or any substantial part of its properties, (vii) if one hundred twenty (120) days after the commencement of any proceeding against such Person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, such proceeding has not been dismissed, or (viii) if within ninety (90) days after the appointment, without such Person’s consent or acquiescence, of a trustee, receiver or liquidator for such Person or all or any substantial part of its properties, the appointment is not vacated or stayed, or if within ninety (90) days after the expiration of any such stay, the appointment is not vacated.

**“Business”** has the meaning set forth in the Company Agreement.

**“Business Day”** means any day, other than a Saturday or Sunday, on which commercial banks in the United States of America are open for business with the public.

**“Company”** has the meaning set forth in the preamble.

**“Company Agreement”** means the Limited Liability Company Agreement of the Company dated as of September 2, 2014 among Dominion Atlantic Coast Pipeline, LLC, Duke Energy ACP, LLC, Piedmont ACP Company, LLC and Maple Enterprise Holdings, Inc.

**“Company Indemnitees”** has the meaning set forth in Section 9.1.

**“Company Representative”** has the meaning set forth in Section 5.6(e).

**“Confidential Information”** has the meaning set forth in Section 5.3.

**“Construction Agreement”** means (i) one or more contracts entered into by the Company

in relation to the engineering, procurement and/or construction of the Initial Facilities, (ii) any contract between the Company and the owner's engineer or independent engineer, and (iii) any other contract that is entered into by the Company in connection with the development or construction of any PA Required Expansion Facilities or Approved Facilities Project, in each case which the Company (x) designates to the Operator in writing as a "Construction Agreement" and (y) provides a complete and correct copy thereof to the Operator.

**"Construction Contractor"** means any counterparty to a Construction Agreement other than the Company.

**"Direct Labor"** means the labor costs described in Sections 2.2.1, 2.2.2 and 2.2.3 of the Accounting Procedure.

**"Disputes"** has the meaning set forth in Section 13.4.

**"Emergency Event"** means an explosion, fire, storm or other emergency situation or condition in respect of which Operator reasonably believes immediate action is necessary to (a) prevent bodily injury or loss of life, damage to the environment or to property having a substantial monetary value or that is material to the operation, maintenance, repair, insurance or ownership of the Facilities or which would render the Facilities (or a substantial portion thereof) incapable of continued operation, or (b) avoid any material non-compliance with Applicable Laws or material violation of any Governmental Approval. For purposes of clarification, and without prejudice to any Emergency Event that may occur or exist during the continuance of a strike or work stoppage, a strike or work stoppage of the Operator's or the Construction Contractor's personnel does not constitute an Emergency Event.

**"Emergency Services"** means any action that is, in Operator's good faith judgment, in accordance with Prudent Industry Practices, necessary to prevent, mitigate or terminate an Emergency Event.

**"Event of Default"** has the meaning set forth in the Company Agreement.

**"Execution Date"** has the meaning set forth in the preamble.

**"Facilities"** means the Initial Facilities, the PA Required Expansion Facilities and any Approved Facilities Project undertaken by the Company.

**"Facilities Agreement"** means any contract or agreement relating to the Facilities to which the Company is a party, including any Precedent Agreement and any Transportation Service Agreement, but excluding the Construction Agreements.

**"Facilities Area"** means each area of real property along which the Facilities (or any segment or component thereof) traverses from its starting point to its end points.

**"FERC"** means the Federal Energy Regulatory Commission or any Governmental Authority succeeding to the powers of such commission.



“**FERC Application**” has the meaning set forth in the Company Agreement.

“**Financing Commitment**” has the meaning set forth in the Company Agreement.

“**Financing Entity**” has the meaning set forth in the Company Agreement.

“**Fiscal Year**” has the meaning set forth in the Company Agreement.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**GAAP**” means generally accepted accounting principles in effect in the United States of America from time to time consistently applied throughout the applicable period.

“**Governmental Approval**” means any license, permit, franchise, approval, authorization, consent or order of, or filing or registration with, any Governmental Authority necessary for the development, construction, operation, maintenance or repair of the Facilities or the marketing of the gas transportation service through the Facilities.

“**Governmental Authority**” means any federal, state or local government of the United States or any state thereof, any political subdivision thereof, whether state or local, and any agency, authority, commission, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of government.

“**Indemnified Party**” means any of the Company Indemnitees or the Operator Indemnitees, as the case may be.

“**Indemnifying Party**” means either the Operator or the Company, as the case may be.

“**Initial Facilities**” has the meaning set forth in the recitals.

“**In-Service Date**” means the initial date of the placing of the relevant Facilities in service, as notified by the Operator to the Company.

“**Interest Rate**” means, on the applicable date of determination, the Prime Rate (as published in the “Money Rates” table of *The Wall Street Journal*).

“**IP Rights**” means all (i) patents, trademarks, service marks, rights in designs, trade names, domain names, copyrights, know-how, rights in confidential information and all other intellectual property rights and similar property rights of whatever nature, in each case whether registered or not; (ii) applications and rights to apply for registrations of any of the foregoing and (iii) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

**“Liabilities”** means actions, claims, settlements, judgments, demands, liabilities, costs and expenses (including reasonable attorneys’ fees and other expenses attributable to the defense of any actions or claims).

**“Lien”** means a claim, lien, pledge, option, charge, easement, security interest, deed of trust, mortgage, right-of-way, encroachment, building or use restriction, common usage arrangement, conditional sales agreement, encumbrance or other right of third parties, whether voluntarily incurred or arising by operation of law, and includes any agreement to give any of the foregoing in the future, and any contingent sale or other title retention agreement or lease in the nature thereof.

**“Manuals”** means the operation, maintenance and repair manuals for the Facilities, which include, among other things, any operation, maintenance and repair manuals which are delivered pursuant to the Construction Agreements.

**“Member”** means a “Member” of the Company, as such term is defined in the Company Agreement.

**“Operator”** has the meaning set forth in the preamble.

**“Operator Indemnitees”** has the meaning set forth in Section 9.2.

**“Operator Representative”** has the meaning set forth in Section 4.3.

**“PA Required Expansion Facilities”** has the meaning set forth in the Company Agreement.

**“Party”** and **“Parties”** have the meaning set forth in the preamble.

**“Person”** means any natural person or any firm, partnership, limited liability partnership, association, corporation, limited liability company, joint venture, trust, business trust, sole proprietorship, Governmental Authority or other entity or any division thereof.

**“Precedent Agreement”** means an agreement between the Company and a prospective shipper of natural gas through the Facilities, including any Approved Facilities Project, that involves the commitment by such shipper, upon satisfaction of one or more conditions precedent, to execute a Transportation Service Agreement with Company.

**“Prohibited Conduct”** means the gross negligence, willful misconduct, knowing and material violation of Applicable Laws or Governmental Approvals, or intentional breach of this Agreement of or by the Operator, its Subcontractors and their respective employees and agents.

**“Prudent Industry Practices”** means those standards, practices, methods and procedures generally followed or approved by the interstate natural gas pipeline industry in the United States with respect to the development, engineering, procurement, construction, operation, and

maintenance of natural gas pipelines and compressor stations and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged, as applicable, in the development, engineering, procurement, construction, operation and maintenance of natural gas pipelines and compressor stations with characteristics comparable to the Facilities to accomplish the desired result in a manner consistent, in all cases, with the Company's FERC tariff, Applicable Law, Governmental Approvals, this Agreement, reliability, safety, environmental protection, economy, and expedition. Prudent Industry Practices are not intended to be limited to the optimum practice to the exclusion of all others, but rather to the spectrum of practices then generally accepted, having due regard for, among other things, the facts known at the time the decision was made, contractual obligations, requirements of Governmental Authorities, operating rules and procedures of natural gas pipeline operators, or other existing market conditions. For the avoidance of doubt, Prudent Industry Practices do not include any action that would result in a breach or violation by the Operator of Applicable Law or Governmental Approvals.

**"Recovery Plan"** has the meaning set forth in Section 5.2(b).

**"Services"** has the meaning set forth in Section 2.1.

**"Shipper"** means a Person that has entered into a Transportation Service Agreement.

**"Subcontractors"** has the meaning set forth in Section 4.2.

**"Taxes"** means all taxes, assessments, charges, duties, fees, levies, imposts or other similar charges imposed by a Governmental Authority, including, but not limited to, all income, franchise, profits, capital gains, capital stock, transfer, gross receipts, sales, use, transfer, service, occupation, ad valorem, property, excise, severance, windfall profits, premium, stamp, license, payroll, employment, social security, unemployment, disability, environmental, alternative minimum, add-on, value-added, withholding and other similar charges of any kind, and all estimated taxes, deficiency assessments, additions to taxes, penalties and interest (other than penalties or interest arising or resulting from Prohibited Conduct), whether disputed or not, including such items for which a liability arises as a transferee or successor-in-interest.

**"Termination Expenses"** means the actual and documented costs reasonably incurred by the Operator in connection with a termination of this Agreement to the extent such costs relate to (a) assets and/or properties (including contractual rights) that have not been assigned to the Company (either because Operator, using reasonable diligence, is unable to obtain such assignment or because the Company has declined such assignment and/or contribution) or (b) employees of the Operator that cannot be redeployed to other current projects of the Operator or its Affiliates, including severance costs relating to such employees.

**"Transportation Service Agreement"** means a gas transportation service agreement by and between the Company and a Shipper for the transportation of natural gas through the Facilities.

1.2. Interpretation. The words “herein,” “hereof” and “hereunder” and other words of similar import refer to this Agreement as a whole, and not to any particular Schedule, Article, Section, subsection or clause hereof. References herein to an Schedule, Article, Section, subsection or clause refer to the appropriate Schedule, Article, Section, subsection or clause hereof. Any definition of or reference to any agreement, instrument, other document, schedule, exhibit, statute, law or regulation herein shall be construed as referring to such agreement, instrument, other document, schedule, exhibit, statute, law or regulation as from time to time amended, supplemented, restated or otherwise modified. Any reference herein to any Person shall include its successors and permitted assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities. Any reference herein to days shall refer to calendar days unless Business Days are specified; references to weeks, months or years shall be to calendar weeks, months or years, respectively. All accounting terms used herein and not otherwise defined will have the meanings accorded them under GAAP and, except as expressly provided herein, all accounting determinations will be made in accordance with such accounting principles in effect from time to time. Any reference to “include” or “including” shall be treated as “including, without limitation”. Defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders.

## ARTICLE 2

### **DEVELOPMENT, CONSTRUCTION, OPERATION AND MAINTENANCE SERVICES**

2.1. Engagement of the Operator. Subject to the terms and conditions of this Agreement, the Company hereby engages the Operator, and the Operator hereby accepts the engagement, to perform the services as more particularly described in Sections 2.2, 2.3, 2.4, 2.5 and 2.6 (as applicable with respect to Additional Services) (collectively, the “*Services*”) during the term of this Agreement. The Operator shall perform the Services, and shall cause any of its applicable Affiliates and Subcontractors that provide or perform Services hereunder to perform such Services, in good faith, in the best interests of the Company and in accordance with (a) the terms and conditions of this Agreement, (b) Prudent Industry Practices, (c) the requirements of the Construction Agreements and the Facilities Agreements, (d) all relevant Governmental Approvals, (e) the procedures established in the Manuals, (f) all Applicable Laws, (g) the Company’s FERC tariff, and (h) the applicable Annual Budget. Without limiting the foregoing, the Operator shall develop, administer, operate and maintain the Facilities applying the same standards as it would apply to any pipeline project developed by its Affiliates that it is engaged to develop, administer, operate and maintain.

2.2. Development Services. Subject to and in accordance with the terms, conditions and limitations herein contained and the overall direction and oversight of the Company, the Operator shall, from and after the Execution Date and from time to time thereafter, provide and perform, or procure from its Affiliates or Subcontractors, all day-to-day project development and administrative Services as may be required from time to time with respect to the development of the Facilities, as more specifically described on Schedule 1.

2.3. Construction Services. Subject to and in accordance with the terms, conditions and limitations herein contained and the overall direction and oversight of the Company, the

Operator shall, during any period of construction of the Facilities, provide and perform, or procure from its Affiliates or Subcontractors, all day-to-day construction management Services as may be required from time to time with respect to the construction of the Facilities, as more specifically described on Schedule 1.

2.4. Operating Services. Subject to and in accordance with the terms, conditions and limitations herein contained and the overall direction and oversight of the Company, the Operator shall, from and after the initial In-Service Date, provide and perform, or procure from its Affiliates or Subcontractors, all day-to-day operation and maintenance Services as may be required from time to time with respect to the operation and maintenance of the Facilities, as more specifically described on Schedule 1.

2.5. Marketing Services. Subject to and in accordance with the terms, conditions and limitations herein contained and the overall direction and oversight of the Company, the Operator shall market the natural gas transportation capacity of the Facilities to third party customers, and negotiate term sheets, precedent agreements and Facilities Agreements with third party customers relating thereto, as more specifically described on Schedule 1. The Operator shall, and shall ensure that its employees shall, maintain the confidentiality of all commercially sensitive information in accordance with Section 5.3.

2.6. Additional Services. The Company may from time to time request that the Operator perform services which are outside the general scope of Services described in Sections 2.2, 2.3, 2.4 and 2.5. In such event, the Company may, by written notice to the Operator, and prior to inquiring of third parties, give to the Operator a written specification detailing such services to be performed by the Operator (the "**Additional Services**"). Upon receipt of the notice referred to in the preceding sentence, the Operator shall prepare, and no more than thirty (30) days thereafter, deliver to the Company, an estimate of the cost of performing the Additional Services described in such notice together with a proposed timetable therefor. The Company may accept or reject such estimate in its sole and absolute discretion. If the Company rejects such estimate, the Company shall be entitled to seek estimates from third parties and engage a third party to provide such services pursuant to such third party's estimate and timetable; *provided* that in any event the relevant third party shall be required to comply with the Operator's standard operating procedures notified to it in its performance of such services. If the Company accepts the Operator's estimate, the Parties shall agree on the terms and conditions upon which such Additional Services shall be supplied. The Operator shall perform such Additional Services as may be requested in writing from time to time by the Company and accepted by the Operator on such terms as to fees and otherwise as may be agreed by the Company and the Operator at the time such Additional Services are requested. All Additional Services rendered by Operator and the agreed upon terms relating thereto shall be identified in an amendment to this Agreement, and the Operator shall have no obligation to perform Additional Services until such amendment is executed by the Company and the Operator.

2.7. Change in Scope of Services. The Operator may at any time make a written request to the Company to approve any change in the Services. The Company shall promptly consider any such proposal and approve, modify or reject any proposed change to the Services

and notify the Operator, in writing, of its decision. To the extent the Company is unwilling to approve any such change to the Services, the Parties shall consult and use all reasonable efforts to reach agreement on any proposed change prior to the commencement of the period to which it relates.

### **ARTICLE 3**

#### **AUTHORITY OF OPERATOR**

3.1. Direction and Oversight by the Company. The Operator shall at all times be subject to the general direction and oversight of the Company with regard to the services to be performed hereunder, and the Operator shall act in accordance with any relevant instructions or directions given by the Company or the Company Representative from time to time; *provided, however*, that (a) the Operator will be solely responsible for directing the day-to-day activities of the Operator's personnel and shall have no obligation to follow instructions that it reasonably believes to be inconsistent with Prudent Industry Practices, (b) the Operator shall have no obligation to follow instructions or directions that would reasonably be expected to cause the Operator to be in violation of Applicable Law or any Governmental Approval or would reasonably be expected to cause the Operator (or its applicable Affiliate) to engage in Prohibited Conduct or be exposed to a third party claim, and in the event that the Company gives any such instructions or directions, the Operator shall not be deemed to be in breach hereunder to the extent it does not follow such instructions or directions, and (c) the Company shall not be entitled to increase or modify the scope of the Services to be provided by the Operator under this Agreement except in accordance with the terms set forth herein. The Operator shall notify the Company of any instruction or direction of the Company that it does not follow in accordance with clause (b) above as soon as reasonably practicable; *provided* that the failure to provide such notice shall not result in the Operator being deemed to be in breach hereunder in contravention of clause (b).

3.2. Authority of Operator. Subject to the restrictions in Section 3.3, the Operator shall have the authority to act on behalf of the Company to enforce the terms and conditions of the Construction Agreements (except with respect to the issuance of the notice to proceed under the Construction Agreements) and such other Facilities Agreements as specified by the Company and to monitor the compliance of the Construction Contractors or the relevant counterparties thereto, as applicable, with the provisions thereof. The Operator shall have authority, subject to the restrictions in Section 3.3, to monitor, supervise, direct, control and coordinate: (a) any means, methods, techniques, sequences or procedures of construction, (b) the safety precautions and programs incidental thereto of the Construction Contractors, (c) any other contractor, vendor, supplier, design professional, purchasing agent or consultant of the Company, or other Person performing work for the Company, in connection with the construction of the Facilities, and/or (d) any other duty or matter delegated to the Operator by the Company in writing (or if provided by the Company verbally, confirmed in writing by the Operator); *provided, however*, that the Company shall have the absolute right and authority (in its sole discretion) to review and approve or reject any actions or decisions taken by the Operator with respect to any of the foregoing. The Operator shall communicate with the Construction Contractors, other Persons performing work for the Company, and counterparties to any Facilities Agreements specified by the Company as

may be necessary for the Operator to perform its Services hereunder. The Company intends that the Operator will be the “operator” of the Facilities for the purposes of the U.S. Department of Transportation and the Pipeline and Hazardous Materials Safety Administration.

3.3. Restrictions on Authority. All rights, duties and responsibilities not expressly delegated to the Operator hereunder shall be retained exclusively by the Company. Notwithstanding anything contained in this Agreement to the contrary, in the absence of a written direction from the Company, the Operator shall not have the power or authority to exercise any such retained rights, duties or responsibilities, including the right or authority to do any of the following:

- (a) approve any material change order under a Construction Agreement;
- (b) amend, modify, supplement or terminate, or waive any default or obligation under, any Construction Agreement or Facilities Agreement on behalf of, or in the name of, the Company, except as expressly permitted hereby;
- (c) enter into, execute, amend, supplement or otherwise modify, or hold itself out as having the authority to do so with respect to, any Construction Agreement, Facilities Agreement or other agreement or document on behalf of, or in the name of, the Company, except as permitted by Section 3.3(a) (as to an immaterial change order under a Construction Agreement);
- (d) amend any Annual Budget;
- (e) employ any third parties or Persons on behalf of the Company;
- (f) sell, lease, pledge, mortgage, assign, transfer, convey, license, exchange or otherwise dispose of any now owned or hereafter acquired property or assets of the Company (including receivables of the Company);
- (g) settle, compromise, assign, pledge release, file or prosecute any claim, suit, debt, demand or judgment involving or in any way affecting the Company or the Facilities;
- (h) notify any Person that is party to a Construction Agreement or Facilities Agreement (other than the Company) of a force majeure event thereunder;
- (i) except as expressly permitted or required hereby, communicate with any Governmental Authority on behalf of the Company or in respect of the Facilities;
- (j) issue or countersign any acceptance certificate under any Construction Agreement;

(k) create, incur, assume or permit to exist any Lien upon the Facilities, other than any claim for payment due to it hereunder;

(l) make any expenditure that would cause any budget category in the current Annual Budget to be exceeded by more than five percent (5%), except for expenditures (i) contemplated by the then applicable Annual Budget, (ii) necessary to respond to and mitigate any Emergency Event, or (iii) otherwise permitted by this Agreement; or re-allocate amounts between budget categories in the current Annual Budget in an amount greater than five percent (5%) of the amount of such budget categories;

(m) take any action that would materially impair the warranties relating to the Facilities provided under any Construction Agreement, or (ii) take any action that would materially impair or reduce the obligations of any Construction Contractor or adversely affect Company's liability under any Facilities Agreement or any Construction Agreement;

(n) use the Facilities for any purpose other than the Business; or

(o) commit the Company in writing to be or to become directly or contingently responsible or liable for obligations of any other Person, by assumption, guarantee, endorsement or otherwise.

3.4. Emergency Events. Notwithstanding anything to the contrary in this Agreement, the Operator is expressly authorized to make and receive reimbursement for reasonable expenditures without prior authorization or approval when necessary or advisable, in Operator's good faith judgment, in accordance with Prudent Industry Practices, to prevent, mitigate or terminate an Emergency Event; *provided, however*, that the Operator will report to the Company as soon as practicable the nature of any such existing, potential or threatened Emergency Event that arises, the measures it intends to take or did take in respect of such existing, potential or threatened Emergency Event, and the estimated or actual, as the case may be, related expenditures.

#### **ARTICLE 4** **PERSONNEL**

##### 4.1. Operator Personnel.

(a) The Operator shall make available to perform the Services hereunder, so as to maintain continuity with respect to such performance, such qualified and experienced employees and individuals, including employees of Affiliates or Subcontractors of the Operator, as the Operator determines are necessary to enable it to perform the Services hereunder in an efficient, safe and economically prudent manner. In the event that any such individual is no longer employed by the Operator or its Affiliate, or is otherwise reassigned by the Operator and is not available to perform the Services, the Operator shall make available a replacement who shall possess a degree of experience and expertise sufficient to perform the Services previously



performed by the departing or reassigned employee and who is reasonably acceptable to the Company.

(b) The Operator shall pay all reasonable and customary expenses in connection with the personnel described in Section 4.1(a), including compensation, salaries, wages, overhead and administrative expenses incurred by the Operator, and if applicable, social security taxes, workers' compensation insurance, retirement and insurance benefits and other such expenses, subject, in all cases, to the applicable Annual Budget. The compensation for the Operator's employees shall be determined by the Operator; *provided* that the amount and terms of such compensation shall be comparable to those prevailing in the general industry for energy services and/or natural gas industry, where appropriate, where Operator's employees are located for similar work, subject, in all cases, to the applicable Annual Budget. Any compensation paid pursuant to the terms of a collective bargaining agreement between Operator and its employees shall be deemed acceptable to the Company for all purposes of this Agreement, subject, in all cases, to the applicable Annual Budget. Subject to the other provisions of this Agreement, including the provision of this Agreement relating to the relevant Annual Budget, all authorized expenses pursuant to this Section 4.1 shall be reimbursed to the Operator by the Company as provided in the Accounting Procedure.

4.2. Subcontractors. The Operator shall be entitled to engage other contractors, vendors, service providers, suppliers and consultants, including Operator's Affiliates in the performance of the Services ("Subcontractors") as Operator reasonably deems necessary or appropriate; *provided* that the Operator shall be solely responsible for the performance, non-performance or other actions or inactions of such Subcontractors as if such performance, non-performance, actions or inactions were that of the Operator itself; and *provided, further*, that the services of the Operator's Affiliates must be on terms that are no less favorable to the Company than those prevailing in the industry at the time for comparable services of non-affiliated third parties. Without limiting the generality of the foregoing, in the performance of the Services, the Operator may, in its sole judgment in the ordinary course of business consistent with past practice (whether actual practice or such practice as would have been followed by the Operator in any given situation) and Prudent Industry Practices, retain outside consultants or its Affiliates to perform discrete aspects of the Services, including accounting, tax, legal, engineering, technology, payroll and other services, and/or subcontract the provision of any of the Services covered by this Agreement, as Operator reasonably deems necessary to provide the Services.

4.3. Operator Representative. The Operator shall appoint an individual (the "Operator Representative") not later than thirty (30) days following the Execution Date who shall be authorized and empowered to act as the authorized representative of the Operator on all matters concerning this Agreement and the Operator's obligations hereunder for the term of this Agreement and, in the event that such individual is no longer employed by or authorized to represent the Operator, promptly appoint a replacement individual to act as the authorized representative of the Operator. The Operator Representative may, in his reasonable discretion consistent with Prudent Industry Practices, appoint one or more appropriate personnel of the Operator to serve as Operator Representative's designee(s) with respect to particular Services

and/or time periods, and any such appointment shall be effective upon the Company's receipt of written notice pursuant to Section 13.1.

## **ARTICLE 5**

### **ADDITIONAL AGREEMENTS**

#### 5.1. Accounting; Budgets.

(a) The Operator shall keep a full and complete account of all costs, expenses and expenditures incurred by it in connection with the performance by the Operator of its obligations hereunder in the manner set forth in the Accounting Procedure.

(b) Not later than November 1 of each Fiscal Year commencing with the Fiscal Year ending December 31, 2014, the Operator shall prepare and deliver to the Company an Annual Budget for the next following Fiscal Year. Each such Annual Budget shall be prepared in sufficient detail to satisfy the reasonable requirements of the Company, including the requirements set forth in Section 7.2 of the Company Agreement. In addition, if requested by the Company, the Operator shall also prepare and deliver to the Company an explanation of any proposed expenditure in excess of \$250,000. The Annual Budget for the period from the Execution Date through December 31, 2014 shall be the Annual Budget approved for such period pursuant to the Company Agreement.

(c) Not later than December 15 of each Fiscal Year commencing with the Fiscal Year ending December 31, 2014, the Company shall consider and if acceptable, approve the Annual Budget for the next following Fiscal Year; *provided* that the Operator shall cooperate and meet with the Company and make changes to the draft Annual Budget as requested by the Company. If in reviewing such an Annual Budget the Company identifies any third party cost therein which the Company reasonably believes can be reduced through utilizing an alternative third party service provider, the Company may, promptly following its receipt of such Annual Budget, notify the Operator thereof, such notice to include details of the relevant third party service provider and expected savings. The Operator shall reasonably consider the recommendations of the Company in good faith; *provided* that retaining such third party service provider would reduce costs and impose no additional risk on the Company or the Operator, the Operator shall include such third party service provider in its competitive bidding process for such services.

(d) If the Company does not approve the Annual Budget in respect of any Fiscal Year on or prior to the commencement of such Fiscal Year, the Annual Budget for such Fiscal Year shall be the indicative budget applicable to such Fiscal Year that was included with the most recently approved Annual Budget.

(e) If, during a Fiscal Year covered by an Annual Budget, the Operator determines that an adjustment or addition to, or deferral or acceleration of, the estimated costs, expenses or Capital Expenditures of any line items in such Annual Budget is necessary or appropriate, then Operator shall submit (or cause to be submitted) to the Company for consideration and, if

applicable, approval such adjustments or additions, or deferrals or accelerations, as are necessary or required.

## 5.2. Reports.

(a) During the term of this Agreement, the Operator shall prepare and submit to the Company the written reports described in Schedule I. In addition, the Operator shall prepare and submit to the Company a monthly written report comparing the costs incurred by it to the date of such report to the budget estimate for such costs set forth in the relevant Annual Budget. The Operator shall prepare and submit to the Company such additional reports related to the Services which are required pursuant to the Construction Agreements, Facilities Agreements or reasonably requested by the Company, each such report to be in a form reasonably acceptable to the Company.

(b) If any Construction Contractor fails to achieve any milestone set forth in a Construction Agreement to which it is a party by the relevant deadline therefor and such failure could reasonably be expected to result in a delay in the completion of the work under such Construction Agreement, then the Company may direct the Operator in writing to prepare and deliver to the Company a sufficiently detailed recovery plan describing such actions that are, in the Operator's best judgment, necessary in order for such Construction Contractor to resume compliance with the then applicable construction schedule for such work, including any key schedule milestone dates (a "**Recovery Plan**"). Within ten (10) Business Days of any such request, the Operator shall submit to the Company for review a Recovery Plan. The Parties shall thereafter consult in good faith to mutually determine what measures to include in such Recovery Plan, which Recovery Plan must be approved by Company in its reasonable discretion.

## 5.3. Confidentiality.

(a) The Operator agrees that it will utilize all data and other information pertaining to the Facilities, the Company or any Member supplied by the Company and marked or designated as "confidential" or which by its nature or under the circumstances should reasonably be considered proprietary or confidential ("**Confidential Information**") solely in connection with the performance of the Services and that it will not disclose such Confidential Information except and to the extent that:

(i) its disclosure is reasonably necessary to carry out the Services, in which case, the Operator may furnish or otherwise disclose Confidential Information to a third party to the extent reasonably necessary to carry out the Services provided that such third party has signed a confidentiality agreement containing, or has otherwise agreed to be bound by, confidentiality obligations with respect to such Confidential Information that are at least as restrictive as those contained herein;

(ii) such Confidential Information is otherwise in the public domain;

(iii) such Confidential Information is disclosed to the Operator's Affiliates, advisors and representatives who need to know such Confidential Information for the

performance of the Services; *provided* that such Persons are subject to confidentiality obligations no less restrictive than those set forth herein;

(iv) the Parties agree in writing to disclose such Confidential Information; or

(v) the Operator is legally compelled to disclose such Confidential Information to a Governmental Authority in the proper exercise of its jurisdiction.

(b) The Operator shall not make any press release relating to the Facilities or this Agreement or the arrangements contemplated hereby to the media without the prior written approval of the Company.

(c) Upon termination of this Agreement, the Operator shall either (i) return all Confidential Information (and cease all further use and disclosure of such Confidential Information) that has been provided to it, together with all reproductions thereof in the Operator's possession, to the Company, or (ii) certify to the Company that such Confidential Information and reproductions have been destroyed; *provided, however*, the Operator shall have the right to retain copies of any such information and records that relate to its performance of the Services to the extent necessary (x) to comply with its audit and document retention policies or (y) in connection with any Dispute arising under this Agreement, and all such copies and the information reflected thereon shall be held subject to the terms and conditions of this Agreement, including the obligations of confidentiality and use in this Section 5.3. The provisions of this Section 5.3 shall survive termination or expiration of this Agreement and continue to be binding on the Operator.

(d) The Parties acknowledge and agree that the Company and the Operator shall treat as confidential and not disclose, and that the Company and the Operator shall be permitted to take such actions as it deems reasonably necessary to prevent or limit disclosure by the Company of, non-public operational information and non-public customer-specific information, the disclosure of which would violate Applicable Law.

5.4. Representations and Warranties of the Operator. The Operator represents and warrants to the Company that, as of the Execution Date:

(a) it is duly organized and existing and in good standing under the laws of the State of Delaware, with all the requisite corporate power and authority to execute this Agreement and perform all of its obligations hereunder;

(b) all corporate acts required to be taken by it to authorize the execution, delivery and performance by it of this Agreement have been obtained;

(c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors'

rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in law or at equity;

(d) the execution, delivery and performance of this Agreement by it: (i) do not, and its performance of the terms and conditions hereof will not, conflict with or violate its constitutive documents or any resolution of its board of directors; (ii) do not require any consent or approval from any other Person or any Governmental Approval from any Governmental Authority (other than any Governmental Approvals not yet obtained but obtainable in the ordinary course of business); and (iii) do not violate any provision of Applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject its property and assets to any Lien (other than Liens created hereunder);

(e) to the best knowledge of the Operator, no actions, suits, investigations, or proceedings are pending or threatened against or affecting the Operator or any of its assets, at law or in equity, by or before any Governmental Authority, and there is no basis for any such action, suit, investigation or proceeding, and there are presently no outstanding judgments, decrees or orders of any Governmental Authority against or affecting the Operator or any of its businesses or assets, except for such judgments, decrees and orders which, individually or in the aggregate, could not reasonably be expected (i) to have material adverse effect on the ability of the Operator to perform its obligations hereunder or (ii) to adversely affect the legality, validity or enforceability of this Agreement; and

(f) the Operator has the requisite skills and experience to perform the Services in a timely and professional manner, and in accordance with the standard of performance set forth in Section 2.1 and the other terms and conditions of this Agreement.

5.5. Representations and Warranties of the Company. The Company represents and warrants to the Operator that, as of the Execution Date:

(a) it is duly organized and existing and in good standing under the laws of the State of Delaware, with all the requisite limited liability company power and authority to execute this Agreement and perform all of its obligations hereunder;

(b) all limited liability company acts required to be taken by it to authorize the execution, delivery and performance by it of this Agreement have been obtained;

(c) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in law or at equity;

(d) the execution, delivery and performance of this Agreement by it: (i) do not, and its performance of the terms and conditions hereof will not, conflict with or violate its constitutive documents or any resolution of its board of directors; (ii) do not require any consent or approval from any other Person or any Governmental Approval from any Governmental Authority (other than any Governmental Approvals not yet obtained but obtainable in the ordinary course of business); and (iii) do not violate any provision of Applicable Law or any agreement, judgment, injunction, order, decree or other instrument binding upon it, or subject its property and assets to any Lien (other than Liens created hereunder); and

(e) to the best knowledge of the Company, no actions, suits, investigations, or proceedings are pending or threatened against or affecting the Company or any of its assets, at law or in equity, by or before any Governmental Authority, and there is no basis for any such action, suit, investigation or proceeding, and there are presently no outstanding judgments, decrees or orders of any Governmental Authority against or affecting the Company or any of its businesses or assets, except for such judgments, decrees and orders which, individually or in the aggregate, could not reasonably be expected (i) to have material adverse effect on the ability of the Company to perform its obligations hereunder or (ii) to adversely affect the legality, validity or enforceability of this Agreement.

5.6. Company Obligations. The Company shall:

(a) act promptly (subject to any limitations in the Company Agreement) in granting or withholding its approval or consent as required herein in respect of any decisions or acts relating to the Facilities on which the Operator must rely in performing the Services under this Agreement; *provided* that if the Company does not provide to the Operator any such approval or consent, the Operator will not be liable for any failure by it to perform its obligations to the extent such failure is directly attributable to the Operator not receiving such approval or consent from the Company;

(b) grant, or cause to be granted, access to the Facilities Areas and the Facilities located thereon for the Operator and its Subcontractors and their respective personnel as may be necessary or appropriate for the performance by the Operator of its obligations hereunder; *provided* that the Company and its invitees shall retain the right at any reasonable time and upon reasonable advance notice to inspect the Facilities and to audit the books and records of the Operator that relate to the Facilities, as provided in Section 8.2;

(c) grant access, or cause access to be granted, to the Operator to all documentation and information in its possession or to which it has access necessary in order for the Operator to perform its obligations, covenants and responsibilities pursuant to the terms hereof (subject to any confidentiality restrictions binding on the Company; *provided* that if the Company is not able to provide to the Operator any such documentation and information due to such confidentiality restrictions, the Operator will

not be liable for any failure by it to perform its obligations to the extent such failure is attributable to the Operator not having access to such documentation and information);

(d) provide, or cause to be provided, all documentation and information in its possession or to which it has access as may be reasonably requested by the Operator, and promptly notify the Operator of any material facts or information of which the Company is aware, which are in relation to and which reasonably could be expected to affect the performance by the Operator of its obligations, covenants or responsibilities under this Agreement, including any known pending or threatened suits, actions, claims, proceedings or orders by or against the Company or relating to the Facilities before any Governmental Authority;

(e) appoint an individual (the "*Company Representative*") not later than thirty (30) days following the Execution Date who shall be authorized and empowered to act as the authorized representative of the Company on all matters concerning this Agreement and the Company's obligations hereunder for the term of this Agreement and, in the event that such individual is no longer employed by or authorized to represent the Company, promptly appoint a replacement individual to act as the authorized representative of the Company;

(f) cooperate with the Operator in its efforts to obtain Governmental Approvals on behalf of or for the benefit of the Company, including attending meetings with relevant Governmental Authorities and causing its Members to provide information regarding related assets or activities, as reasonably required by Governmental Authorities in connection with securing Governmental Approvals for the Facilities;

(g) use reasonable efforts to inform any counterparty to a Construction Agreement or Facilities Agreement of the function of the Operator and, as necessary, require each such counterparty to cooperate with and take direction, to the extent applicable to the effective performance of the Services, from the Operator; and

(h) deliver to the Operator the Manuals promptly after the Company receives the Manuals from the applicable Construction Contractor.

5.7. Intellectual Property. The Company hereby grants to the Operator an irrevocable, royalty-free, non-exclusive and non-assignable license to use, during the term of this Agreement, any IP Rights. As a condition precedent to the effectiveness of such license to use, the Operator hereby expressly agrees that it will utilize such IP Rights solely in connection with the performance of its duties hereunder. Upon termination of this Agreement, such license shall automatically terminate and, upon the request of the Company, the Operator shall either (i) return all information relating to the IP Rights that has been provided to it, together with all reproductions thereof in the Operator's possession, pursuant to such license to use, to the Company or (ii) certify to the Company that such information and reproductions have been destroyed. To the extent not provided by the Company or held by the Operator, the Operator will use reasonable commercial efforts to secure and maintain, at the Company's sole cost and

expense, all licenses for the Operator to use, during the term of this Agreement, any IP Rights that may be necessary or expedient to perform the Services on behalf of Company.

5.8. Title; Documents; Data. Title to all materials, equipment, supplies, consumables, spare parts and other items purchased or obtained by the Operator for or on behalf of the Facilities or the Company shall pass immediately to and vest in the Company free and clear of all Liens upon delivery to the Facilities Areas, and the Operator hereby transfers and conveys title in and ownership of such materials, equipment, supplies, consumables, spare parts and other items to the Company upon such delivery. All materials, data and documents prepared or developed by the Operator, its Affiliates or their respective employees, representatives or Subcontractors, during the term of this Agreement, for the Company in connection with the performance of the Services, including all manuals, data, designs, drawings, plans specifications, reports and accounts shall belong to the Company. Promptly after the Effective Date, Operator will transfer to Company and convey title in and ownership of all such materials developed prior to the Effective Date that Operator deems relevant or necessary to the Initial Facilities. All such materials in whatever form, including electronic copies and databases, shall be provided promptly to the Company upon any termination of this Agreement, or at such other times as the Company may direct; *provided* that the Operator may retain a copy of the same in connection with the enforcement of its rights and remedies hereunder.

5.9. Warranties.

(a) The Operator shall use diligent efforts, on behalf of the Company, to secure from its Subcontractors, and from any contractor, vendor or supplier of the Company, for the Company's benefit such warranties and guarantees as may reasonably be available regarding supplies, materials, equipment and services purchased for use in the Facilities and, subject to Section 3.3, to enforce such warranties and guarantees on behalf of the Company. As regards any equipment, materials, supplies or services obtained (i) by the Operator from its Subcontractors or (ii) by the Company from vendors, suppliers and contractors of the Company, the only warranties, if any, applicable thereto and available to the Company shall be those made available by such Subcontractors, vendors, suppliers and contractors. THE OPERATOR MAKES NO EXPRESS OR IMPLIED WARRANTY, GUARANTY OR REPRESENTATION, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE, SUITABILITY OR MERCHANTABILITY, REGARDING THE DESIGN OR ANY OTHER CHARACTERISTICS OF THE FACILITIES OR ANY SUCH EQUIPMENT, MATERIALS, SUPPLIES OR SERVICE, ALL OF WHICH ARE SPECIFICALLY DISCLAIMED AND NEGATED.

(b) THE COMPANY'S EXCLUSIVE REMEDIES WITH RESPECT TO EQUIPMENT, MATERIALS, SUPPLIES OR SERVICES OBTAINED BY THE OPERATOR FROM ITS SUBCONTRACTORS OR BY THE COMPANY FROM VENDORS, SUPPLIERS OR CONTRACTORS OF THE COMPANY SHALL BE THOSE UNDER THE RELEVANT SUBCONTRACTOR, VENDOR, SUPPLIER AND CONTRACTOR WARRANTIES REFERENCED IN SECTION 5.9(a), AND THE OPERATOR'S ONLY OBLIGATION, ARISING OUT OF OR IN CONNECTION WITH ANY SUCH WARRANTY OR BREACH



THEREOF, SHALL BE TO USE DILIGENT EFFORTS, SUBJECT TO SECTION 3.3, TO ENFORCE SUCH WARRANTIES ON THE COMPANY'S BEHALF. THE COMPANY SHALL HAVE NO OTHER REMEDIES AGAINST THE OPERATOR WITH RESPECT TO EQUIPMENT, MATERIALS, SUPPLIES OR SERVICES OBTAINED BY THE OPERATOR FROM SUCH SUBCONTRACTORS OR BY THE COMPANY FROM SUCH VENDORS, SUPPLIERS AND CONTRACTORS.

(c) The Operator's release of liability associated with its Subcontractors, or the Company's vendors, suppliers, and contractors described in Sections 5.9(a) and 5.9(b), is only applicable to the extent such Subcontractors, vendors, suppliers, and contractors are (i) specifically approved by the Company in an Annual Budget pursuant to the terms of this Agreement or (ii) utilized in connection with any expense permitted to be incurred by the Operator pursuant to Section 3.4.

## **ARTICLE 6** **REMUNERATION**

6.1. Reimbursement of Expenses. The Operator shall be reimbursed by the Company at the rate and in the manner set forth in the Accounting Procedure for all costs and expenses of the Operator subject only to Operator's demonstration that such costs and expenses were incurred in accordance with this Agreement or as contemplated by the Company Agreement and in connection with the performance of the Services under this Agreement; *provided, however*, that the Company will not be required to reimburse the Operator for costs or expenses arising out of (a) acts or omissions that violate this Agreement (other than immaterial acts or omissions that are waived in writing by the Company); (b) Prohibited Conduct; (c) Liabilities associated with claims for non-payment of any and all contributions, withholding deductions or Taxes measured by the wages, salaries or compensation paid to Persons employed by the Operator or any of its Affiliates in connection herewith; (d) the Operator's indemnification obligations to the Company and Company Indemnitees under this Agreement; or (e) except as provided in Section 6.3, income Taxes incurred or resulting from the Operator's performance of the Services. The fact that such costs and expenses exceed any Annual Budget shall not be sole grounds to deny reimbursement otherwise required under this Agreement; *provided* that the Operator can demonstrate such costs are or were, at the time incurred, reasonably necessary.

6.2. Payment Procedures. The Operator shall charge the Company on a monthly basis in the manner set forth in the Accounting Procedure only to the extent such costs are included within an approved Annual Budget or are otherwise permitted pursuant to Section 3.3(1). The Company may take written exception to any statement or supporting document rendered by the Operator for any expenditure or any part thereof on the ground that the same was not appropriate for reimbursement under the terms of Section 6.1. The Company shall nevertheless pay in full when due the amount of all charges submitted by the Operator. Such payment shall not be deemed a waiver of the right of the Company to recoup any contested portion of any charge or statement; *provided, however*, that if the amount as to which such written exception is taken or any part thereof is ultimately determined not to be appropriate for reimbursement under the terms

of Section 6.1, such amount or portion thereof (as the case may be) shall be refunded by the Operator to the Company, together with interest thereon at the Interest Rate for the period from the date such amount was first paid to the Operator until the date refunded to the Company in full.

6.3. Taxes. The Operator shall be liable for (a) all income taxes and other Taxes based on the income of the Operator (provided that any franchise Taxes imposed on the Operator in North Carolina solely as result of the performance of the Services shall be reimbursed to the Operator by the Company in accordance with the Accounting Procedure), and (b) subject to the Company's obligation to reimburse the Operator for the Operator's costs, all Taxes associated with payments by the Operator to the Operator's personnel or Subcontractors, agents or representatives. All other Taxes relating to this Agreement shall be the responsibility of the Company. The Company shall be entitled to withhold Tax from payments due to the Operator (including any of its Subcontractors) if the Company reasonably determines such withholding to be required under Applicable Law or take any other action required by Applicable Law in respect of the gross receipts or income of the Operator. Any amount so withheld by the Company shall be deemed to have been paid to the Operator for purposes of this Agreement. To the extent that any amounts withheld pursuant to this Section 6.3 are refunded to the Operator or to the Company by any Governmental Authority, the Operator shall be entitled to such refunded amount; *provided, however*, that the Operator shall be responsible (at its sole expense) for securing any such refunds. In all cases, the Company shall reasonably cooperate with the Operator to secure any such refunds. Each Party shall reasonably cooperate with the other Party to perform its obligations hereunder so as to minimize, to the extent reasonably practical, the Taxes to be paid by the other Party.

6.4. Payments Generally.

(a) If any payment is required to be made hereunder on any day that is not a Business Day, such payment shall not be due and payable hereunder until the next following Business Day.

(b) If any amount due and payable hereunder is not paid when due, interest on such amount shall accrue at the Interest Rate from and including the due date until such amount is paid in full. Interest shall be calculated on the basis of the actual number of days elapsed and a year consisting of 365 days.

**ARTICLE 7**  
**INSURANCE**

7.1. Insurance.

(a) Prior to commencing construction activities, the Operator shall purchase and maintain, on behalf of and in the name of the Company and at the Company's expense, at least the following insurance policies in the form, and with dedicated limits, deductibles, terms, conditions and effective dates as approved by the Company:

(i) “All risk” builder’s risk policy, which, as directed by the Company, may be obtained by the Construction Contractor, in the name of the Company or the Construction Contractor, under which the Company (if in the name of the Construction Contractor) and Operator will be included as additional named insureds, as their respective interests may appear; *provided, however*, (x) any such policy shall be subject to the Company’s approval, and (y) unless the Company otherwise designates, the Company shall be the first named insured on such policy. Such policy shall provide coverage, to the amount of the total value of the compressor stations identified in the Construction Agreement for the relevant Facilities, for loss or damage to the relevant Facilities;

(ii) General/Excess Liability Insurance;

(iii) Automobile Insurance for any vehicles owned, hired, rented or non-owned by the Company; and

(iv) Workers’ Compensation Insurance for any Company employees and as required by the workers’ compensation law of any state in which operations are conducted; and employer’s liability insurance.

(b) From and after the date that the builder’s risk coverage specified in Section 7.1(a)(i) above ends, or, if earlier, from and after the In-Service Date of the Facilities (e.g., for periods of operation and maintenance), the Operator shall purchase and maintain, on behalf of and in the name of the Company and at the Company’s expense, at least the following insurance policies in the form, and with dedicated limits, deductibles, terms, and conditions and effective dates as approved by the Company:

(i) Property Insurance and at the Company’s option, Business Interruption Insurance;

(ii) General/Excess Liability Insurance;

(iii) Automobile Insurance for any vehicles owned, hired, rented or non-owned by the Company; and

(iv) Workers’ Compensation Insurance for any Company employees and as required by the workers’ compensation law of any state in which operations are conducted; and employer’s liability insurance.

(c) The following shall apply with respect to the insurance policies described in Section 7.1(a) and (b) above:

(i) With the exception of workers’ compensation and employer’s liability insurance, the Operator shall be a named insured under the Company’s insurance policies. General/excess liability and automobile liability coverage will provide for claims by one

insured against another such that, except for the limits of such insurance policies, the insurance will apply separately to each insured against whom a claim is made or suit is brought. The Company's insurance shall be primary and non-contributing with any similar insurance or self-insurance maintained by the Operator or Company's Affiliates; and

(ii) The Operator shall cause the Company's insurers to waive all rights of subrogation against the Operator, its Affiliates and the directors, officers and employees of each of them, other than for claims or liabilities arising from or otherwise caused by Prohibited Conduct.

(d) Prior to commencing construction activities, the Operator shall purchase and maintain the following insurance:

(i) Workers' Compensation Insurance as required by the workers' compensation law of any state in which operations are conducted;

(ii) Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence; and

(iii) Automobile Liability Insurance for all vehicles owned, hired, rented, or non-owned, covering injuries to or death of Persons and damage to property, with a combined single limit of not less than \$1,000,000 per occurrence.

The Operator shall cause its insurers to waive all rights of subrogation against the Company, its Affiliates and the directors, officers and employees of each of them. Notwithstanding the foregoing, the Operator shall have the option to self-insure for the workers' compensation, employer's liability and automobile liability insurance required above.

(e) All policies of insurance shall be written with carriers holding a current Best's rating of at least A- (or if not so rated, having a creditworthiness comparable to such an A- rated carrier), and shall afford at least thirty (30) days' written notice in the event of cancellation or non-renewal of the coverage required hereunder. Prior to the commencement of the performance of the Services and annually thereafter, the Operator will deliver to the Company certificate(s) of insurance issued evidencing the insurance required to be carried by the Operator hereunder. The Operator agrees to provide the Company at least thirty (30) days written notice in the event of cancellation or non-renewal of the coverage required hereunder. The costs for premiums, deductibles and self-insured retentions for the insurance that the Operator maintains with respect to itself pursuant to this Agreement shall be reimbursable costs pursuant to Article 6.

## **ARTICLE 8**

### **BOOKS AND RECORDS**

8.1. Books and Records. The Operator shall maintain appropriate books, records and documents with respect to the Facilities (including drawings, specifications and manuals), the Construction Agreements, the Facilities Agreements and the Services in conformity in all material respects with GAAP (if applicable), Title 18 of the Code of Federal Regulations (if

applicable), and all applicable requirements of Applicable Law, Governmental Approvals, the Construction Agreements and the Facilities Agreements, and such other books, records, and documents as the Company may require from time to time, including support for costs charged by the Operator's Subcontractors relating to the performance of the Services. All such operating books and records shall be maintained, or made available for examination by the Company, at the Operator's office at 445 West Main Street, Clarksburg, West Virginia 26301. All accounting books and records shall be maintained, or made available for examination by the Company, at the Operator's office at 701 East Cary Street, Richmond, Virginia 23219.

8.2. Audit; Examination of Records. Upon at least thirty (30) days' prior written notice by the Company to the Operator, the Operator shall make available to the Company and the Company's authorized representatives for examination during normal business hours on any Business Day, the books and records maintained by the Operator pursuant to this Agreement, including Section 8.1; *provided, however*, that the total number of full audits commenced in any calendar year pursuant to this Section 8.2 shall not exceed one (1). In addition, the Operator shall make available to such Persons such financial and other information in respect of the performance of the Services under this Agreement as any of such Persons shall from time to time reasonably request, including for the purposes of conducting any audit in respect of expenses of the Company or other matters necessary or advisable to be audited in order for the Company to conduct an audit of its financial affairs. Any examination of the Operator's books and records shall be conducted in a manner which will not unduly interfere with the performance of the Services or of the Operator's business in the ordinary course. The right to audit or examination shall include the right to meet with both the Operator's internal and external auditing personnel to discuss matters relevant to any audit or examination that has been performed by such personnel.

## ARTICLE 9 INDEMNIFICATION

9.1. Operator's Indemnification Obligations. Operator agrees to release, indemnify, hold harmless and defend the Company and its Affiliates and their respective former and current members, partners, officers, directors, employees and agents (collectively, the "*Company Indemnitees*"), from and against any and all Liabilities incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of the Company Indemnitees (a) by or with respect to any of the Operator's, its Affiliates' or Subcontractors' employees or other personnel (including the personal injury or death of any of the foregoing persons), except to the extent arising out of or otherwise with respect to any of the Company Indemnitee's intentional breach of this Agreement or the gross negligence or willful misconduct of any Company Indemnitee or (b) to the extent arising out of or otherwise with respect to any Prohibited Conduct. The foregoing indemnities shall be effective to the maximum extent permitted by Applicable Law.

9.2. Company's Indemnification Obligations. Company agrees to release, indemnify, hold harmless and defend the Operator and its Affiliates and their respective former and current members, partners, officers, directors, employees and agents (collectively, the "*Operator*

**Indemnitees**”), from and against any and all Liabilities incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any of the Operator Indemnitees (a) by or with respect to any of the Company’s, its Affiliates’ or contractors’ (other than the Operator and its Affiliates and their respective Subcontractors) employees or other personnel (including the personal injury or death of any of the foregoing persons), except to the extent arising out of or otherwise with respect to any of the Operator Indemnitee’s Prohibited Conduct or (b) to the extent arising out of or otherwise with respect to the Company’s intentional breach of this Agreement or gross negligence or willful misconduct. Subject to the immediately preceding sentence, the Company agrees to indemnify, hold harmless and defend the Operator Indemnitees from and against any and all Liabilities (except to the extent arising out of or otherwise with respect to any of the Operator Indemnitee’s Prohibited Conduct) incurred, suffered, sustained or required to be paid, directly or indirectly, by, or sought to be imposed upon, any Operator Indemnitee arising out of or otherwise with respect to (i) the performance of the Services by the Operator or (ii) any breach of this Agreement or Applicable Law by the Company or its agents, employees, officers, directors, subcontractors, contractors or suppliers (other than the Operator and its Affiliates and their respective Subcontractors, agents, employees, officers, directors, contractors and suppliers). The foregoing indemnities shall be effective to the maximum extent permitted by Applicable Law, and shall be without regard to and without any right to contribution from any insurance maintained by any Party.

9.3. Procedures. If any Indemnified Party shall receive notice or have knowledge of any Liability that may result in a claim for indemnification by such Indemnified Party against the Indemnifying Party pursuant to this Agreement, such Indemnified Party shall, as promptly as possible, give the Indemnifying Party notice of such Liability, including a reasonably detailed description of the facts and circumstances relating to such Liability, and a complete copy of all notices, pleadings and other papers related thereto, and the basis for its potential claim for indemnification with respect thereto in reasonable detail; provided that failure to promptly give such notice or provide such information and documents shall not relieve the Indemnifying Party from the obligation hereunder to respond to or to defend the Indemnified Party failing to give such notice against such Liability, unless and to the extent that the Indemnifying Party has been actually prejudiced by such failure. The Indemnifying Party, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party with respect to a Liability, shall be entitled to assume the defense or to represent the interests of the Indemnified Party in respect of such Liability, which shall include the right to select and direct legal counsel and other consultants, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost. In such circumstances the Indemnified Party shall provide the Indemnifying Party with such information and assistance as the Indemnifying Party shall reasonably request. In all cases, the Indemnified Party shall be under a duty to take all reasonable measures to mitigate the loss which has occurred.

9.4. Exclusions. Notwithstanding anything contained in this Article 9, the obligations of the Indemnifying Party shall not extend to: (a) any Liabilities to the extent the same arise from or are related to the intentional breach of this Agreement, gross negligence, willful misconduct or Prohibited Conduct (in the case of the Operator Indemnitees) of the Indemnified Party; (b) any losses or damages which may result from (i) the settlement or compromise by the Indemnified

Party of any Liability or action brought against it without first obtaining the consent of the Indemnifying Party, (ii) the admission of the Indemnified Party of any Liability, other than as may be directed by the Indemnifying Party, or (iii) the taking by the Indemnified Party of any action (unless required by law or applicable legal process) which would materially prejudice the successful defense of the Liability without the prior written consent of the Indemnifying Party (such consent not to be unreasonably withheld in a case where the Indemnifying Party has not, at the time such consent is sought, assumed the defense of the Liability); or (c) legal expenses or similar losses which may result from the employment by the Indemnified Party of its own legal advisors in connection with any Liability against it after the defense of such Liability has been assumed by the Indemnifying Party, except that the Indemnified Party shall be reimbursed by the Indemnifying Party if (1) the Indemnifying Party, in its discretion, authorizes the employment of such legal advisors in writing or (2) there are legal defenses available to the Indemnified Party that are not available to the Indemnifying Party and the legal advisors representing the Indemnified Party and the Indemnifying Party, under applicable ethical rules and opinions, would be required to seek consent to such joint representation for the Indemnified Party and the Indemnifying Party.

## **ARTICLE 10**

### **FORCE MAJEURE**

10.1. Definition of Force Majeure. In this Agreement, “*Force Majeure Event*” shall mean any event or circumstance or combination of events or circumstances that materially and adversely affects the performance by either Party of its obligations in accordance with the terms of this Agreement, but only if and to the extent that such events and circumstances are not within the reasonable control of the affected Party, occur only after the Execution Date, and could not have been prevented, overcome or remedied in whole by the affected Party through the exercise of diligence and reasonable care. Notwithstanding anything in the immediately preceding sentence, Force Majeure Events shall expressly exclude the following conditions, except and to the extent that they result from a Force Majeure Event: (a) unavailability of funds; or (b) economic hardship or any changes in price or market conditions.

#### 10.2. Notification Obligations.

(a) If by reason of a Force Majeure Event a Party is wholly or partially unable to carry out its obligations under this Agreement, the affected Party shall (i) give the other Party notice of the Force Majeure Event as soon as practicable, but in any event not later than forty-eight (48) hours after the affected Party becomes aware of the occurrence of the Force Majeure Event (unless the Force Majeure Event delays the affected Party’s ability to give notice, in which case not later than eight (8) hours after the resumption of any reasonable means of providing notice), and (ii) give the other Party a second notice, describing the Force Majeure Event in reasonable detail and, to the extent that such information can reasonably be determined at the time of the second notice, providing a preliminary evaluation of the obligations affected, any changes to this Agreement, the Annual Budget or the manner of performing the Services which would be needed to provide for the orderly performance of the Services and operation of the Facilities during the continuation of the effects of the Force Majeure Event and/or after such effects have been

overcome, a preliminary estimate of the actions needed to be taken to overcome the effects of the Force Majeure Event and an estimate of the period of time that the affected Party will be unable to perform the obligations, and other relevant matters, as soon as practicable, but in any event, not later than seven (7) days after the initial notice of the occurrence of the Force Majeure Event is given by the affected Party. When appropriate or when reasonably requested to do so by the other Party, the affected Party shall provide further notices to the other Party more fully describing the Force Majeure Event and the causes therefor, providing or updating information relating to the efforts of the affected Party to avoid and/or to mitigate the effects thereof, and estimating, to the extent practicable, the time that the affected Party reasonably expects it will be unable to carry out any of its affected obligations due to the Force Majeure Event. Subject to Section 10.4, the Company and the Operator will negotiate in good faith and attempt to reach agreement on any adjustment to the remuneration of the Operator hereunder which may be necessitated by the occurrence of the Force Majeure Event or the effects thereof.

(b) The affected Party also shall provide notice to the other Party of (i) the cessation of the Force Majeure Event and (ii) the affected Party's ability to recommence performance of its obligations under this Agreement, as soon as possible after becoming aware but in any event not later than forty-eight (48) hours after becoming so aware.

(c) Failure by the affected Party to give notice of a Force Majeure Event to the other Party within the forty-eight (48) hour period or eight (8) hour period required by Section 10.2(a) shall not prevent the affected Party from giving such notice at a later time; *provided, however*, that in such case, the affected Party shall not be excused pursuant to this Article 10 for any failure or delay in complying with its obligations under or pursuant to this Agreement until the notice has been given. If such notice is given within the forty-eight (48) hour period or eight (8) hour period, as the case may be, the affected Party shall be excused for such failure or delay from the date of commencement of the relevant Force Majeure Event.

10.3. Duty to Mitigate. The affected Party shall use all reasonable efforts to mitigate the effects of a Force Majeure Event, and shall continue to perform its obligations under this Agreement insofar as they are not so affected.

10.4. Delay Caused by Force Majeure Events. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof:

(a) subject to Section 10.2, the affected Party shall not be liable for any failure or delay in performing its obligations (other than an obligation to make a payment) under or pursuant to this Agreement to the extent that such failure or delay in performance has been caused or contributed to by such Force Majeure Events, or its effects or by any combination thereof; and

(b) the time limits and deadlines for the performance by the affected Party of its obligations under this Agreement which are affected by such Force Majeure Event shall be extended for as long as the affected Party is unable to comply, or is delayed in complying, with its obligations hereunder because of the occurrence of such Force



Majeure Event, or its effects or by any combination thereof (provided the Operator shall be given reasonable time for demobilization and mobilization related to the suspension); *provided* that no relief, including the extension of performance deadlines and the term of this Agreement, shall be granted to the affected Party pursuant to this Article 10 to the extent that such failure or delay in performance arises as a result of a failure by the affected Party to comply with its obligations under Section 10.3 or would have nevertheless been experienced by the affected Party had the Force Majeure Event not occurred.

## **ARTICLE 11**

### **TERM; TERMINATION**

11.1. Term. This Agreement shall be effective as of the Execution Date and shall, unless earlier terminated in accordance with this Agreement, shall continue in full force and effect for the term of the Company as provided in the Company Agreement.

11.2. Termination by Company. This Agreement may be terminated by the Company by delivery of at least thirty (30) days (except in the case of Section 11.2(b) or (h)) prior written notice to the Operator:

(a) subject to Section 11.4(a), if the Operator breaches or fails to observe or perform any of the Operator's material obligations (including any payment obligation), covenants or responsibilities under this Agreement and fails to cure such breach or failure within thirty (30) days after its receipt of notice from the Company specifying the nature of such breach or failure and demanding the cure thereof; *provided* that if such breach or failure cannot reasonably be remedied within such thirty (30) day period, the Operator shall be permitted additional time (but in no event more than ninety (90) days following the date of its receipt of such notice) to remedy such breach or failure so long as the Operator has and continues to diligently pursue such cure;

(b) upon the Bankruptcy, dissolution, liquidation or termination of the existence of the Operator, or if an order is made by a court or an effective resolution is passed for the dissolution, liquidation, winding up or reorganization of the Operator;

(c) the extension of a Force Majeure Event beyond six (6) consecutive months;

(d) at any time for convenience in the event that the Operator or any of its Affiliates (including, for the purposes of this Section 11.2, any "Affiliate" (as such term is defined in the Company Agreement)) do not have any ownership interest in the Company;

(e) if Operator or any of its Affiliates is a Member of the Company, an Event of Default with respect to such Member under the Company Agreement occurs and is continuing;

- (f) upon the sale or other disposal by the Company of all or substantially all of the Facilities;
- (g) if the Company abandons or shuts down permanently the Facilities; or
- (h) if the Company dissolves pursuant to the Company Agreement.

11.3. Termination by Operator. This Agreement may be terminated by the Operator by delivery of at least thirty (30) days (except in the case of Section 11.3(b)) prior written notice to the Company:

(a) if the Company breaches or fails to observe or perform any of the Company's material obligations (including any payment obligation), covenants or responsibilities under this Agreement and fails to cure such breach or failure within thirty (30) days after its receipt of notice from the Operator specifying the nature of such breach or failure and demanding the cure thereof; *provided* that if such breach or failure cannot reasonably be remedied within such thirty (30) day period, the Company shall be permitted additional time (but in no event more than ninety (90) days following the date of its receipt of such notice) to remedy such breach or failure so long as the Company has and continues to diligently pursue such cure;

(b) upon the Bankruptcy, dissolution, liquidation or termination of the existence of the Company, or if an order is made by a court or an effective resolution is passed for the dissolution, liquidation, winding up or reorganization of the Company;

(c) the extension of a Force Majeure Event beyond six (6) consecutive months;

(d) for convenience at any time if the Operator or any of its Affiliates (including, for the purposes of this Section 11.3, any "Affiliate" (as such term is defined in the Company Agreement)) do not have any ownership interest in the Company; or

(e) subject to Section 11.4(b), if the Company persistently and materially interferes with, obstructs and/or impedes the implementation of the Operator's recommended compliance program (*provided* the same is consistent with Prudent Industry Practice, Applicable Laws, Governmental Approvals and this Agreement).

11.4. Performance Evaluation.

(a) Prior to exercising any right of termination pursuant to Section 11.2(a), the Company shall first request, by written notice to the Operator, a meeting of the senior executives of the Company and the Operator to discuss the Company's concerns relating to the Operator's performance of this Agreement (as well as whether the Operator disagrees with such concerns). If following the meeting described in the immediately preceding sentence such senior executives are unable to resolve the Company's concerns

to its reasonable satisfaction, the Operator shall be permitted to retain, at Operator's sole cost and expense, within thirty (30) days of such meeting, an independent qualified firm reasonably acceptable to the Company to supervise and assess the development, construction, operation and/or maintenance of the Facilities to the extent necessary to evaluate the Company's concerns. The Company shall (i) cooperate in the performance of any such assessment and (ii) permit any such firm designated by the Operator to have reasonable access to the Facilities Areas or the Facilities at reasonable times and after reasonable notice to the Company of the plans to conduct such an assessment. The Operator shall use all reasonable efforts to implement, within ninety (90) days of its receipt thereof, any written recommendations developed by such firm to address any identified inadequacies in the construction, operations and/or maintenance of the Facilities relating to the Company's concerns. If the Operator fails to substantially adopt the written recommendations so developed by such firm within the time period provided therefor, the Company shall be permitted to (x) immediately terminate this Agreement by written notice to the Operator or (y) perform the applicable obligation or Service or retain one or more third parties to perform such obligation or Service, in each case at its sole expense. The fact that any such obligation or Service has been performed or caused to be performed by the Company or such third parties shall not operate to preclude the Operator from disputing the validity of any such claim of failure or breach; *provided* that the Operator provides the Company with a written protest notice that it protests the performance of such obligation or Service by the Company or third parties.

(b) Prior to exercising any right of termination pursuant to Section 11.3(e), the Operator shall first request, by written notice to the Company, a meeting of the senior executives of the Company and the Operator to discuss the Operator's concerns relating to the Company's performance of this Agreement (as well as whether the Company disagrees with such concerns). If following the meeting described in the immediately preceding sentence such senior executives are unable to resolve the Operator's concerns to its reasonable satisfaction, the Company shall be permitted to retain, at the Company's sole cost and expense, within thirty (30) days of such meeting, an independent qualified firm reasonably acceptable to the Operator to independently assess and evaluate Operator's concerns. The Operator shall cooperate in the performance of any such assessment and evaluation. The Company shall use all reasonable efforts to implement, within ninety (90) days of its receipt thereof, any written recommendations developed by such firm to address the Operator's concerns. If the Company fails to substantially adopt the written recommendations so developed by such firm within the time period provided therefor, the Operator shall be permitted to immediately terminate this Agreement by written notice to the Company.

11.5. General Obligations. Upon the effective termination or expiration of this Agreement, the Operator shall:

(a) deliver and make available to the Company or as the Company may direct all documents, information, property, Manuals and materials of the Company and all documents, information, property, Manuals and materials which are in the ownership,

possession, custody or control of the Operator or any of its respective employees, agents or delegates and which relate to all or any part of the Services or the Facilities (but excluding the proprietary and confidential information of the Operator which is not reasonably required by the Company or any successor Operator for the purpose of advising, consulting and assisting the Company or any successor Operator in a manner and to a standard which is no less than that required of the Operator under or pursuant to the provisions of this Agreement); and

(b) assign to the Company all subcontracts and other agreements relating to the performance of Services as may be designated by the Company (to the extent such subcontracts and agreements permit the assignment thereof to the Company), it being understood the Operator shall use reasonable efforts to ensure that all such subcontracts and agreements are assignable to the Company under such circumstances.

11.6. Transition Obligations. At the request of the Company, made explicit and in writing with regard to both scope and term at the time of the notice of termination, including mutual agreement regarding adjustments to the Annual Budget, for a period of one hundred eighty (180) days following the effective termination of this Agreement, the Operator shall:

(a) continue to provide such Services as are requested by the Company and to advise, consult and assist the Company in accordance with the terms of this Agreement and the Company shall pay the Operator for such Services in accordance with the provisions of Article 6, up to the end of such one hundred eighty (180) day period;

(b) cooperate with the Company in the planning and implementation of the transition of the Services to any successor Operator (as directed by the Company); and

(c) agree to a schedule for the orderly removal of the Operator from its responsibilities for the provision of the Services under this Agreement.

11.7. Payments on Termination. Upon the termination of this Agreement by the Company pursuant to Section 11.2 or termination of this Agreement by the Operator pursuant to Section 11.3, the Company (without prejudice to its rights and remedies) shall pay to the Operator (a) any amounts then properly due under Article 6 in respect of the Services performed by the Operator in accordance with this Agreement up to the date of such termination, subject to deduction of any amount then due from the Operator to the Company; (b) such costs as are reasonably incurred by the Operator in providing the Services during the transition period (if any) described in Section 11.6 and in demobilizing its employees in a manner consistent with the provisions of this Agreement; and (c) in the event of any termination of this Agreement by the Company pursuant to Section 11.2(d), an amount equal to the Operator's Termination Expenses.

11.8. Effect of Termination. Following the termination of this Agreement and the making of the payments described in Section 11.7, no Party shall have any further liability to the other Party hereunder; *provided* that the termination of this Agreement shall not relieve any Party from any liability in respect of any breach or non-performance of this Agreement arising prior to

the date of such termination; and *provided, further*, that Section 5.9 and Articles 9, 11, 12 and 13 shall survive any termination or expiration of this Agreement.

11.9. Non-Solicitation. The Company covenants and agrees that it will not directly recruit or otherwise directly solicit or induce any employee of the Operator or its Affiliate providing Services hereunder to terminate their employment with, or otherwise cease their relationship with, the Operator or such Affiliate or hire away from the Operator or such Affiliate any employee of the Operator or its Affiliate providing Services hereunder within one (1) year after the termination or expiration of this Agreement, unless agreed by the Operator in writing.

## **ARTICLE 12**

### **LIMITATION ON LIABILITY**

12.1. Limited Liability of Operator. Notwithstanding anything in this Agreement to the contrary, the maximum aggregate liability of the Operator to the Company in connection with this Agreement or the performance or non-performance of Services hereunder by the Operator shall be limited to an amount equal to the aggregate amount of costs that the Company reimbursed to the Operator pursuant to Section 6.1 in respect of the immediately preceding twelve-month period (or, prior to the first anniversary of the Execution Date, the average monthly costs reimbursed to the Operator multiplied by twelve); *provided* that such limitation shall not apply with respect to any Liability resulting from, or arising out of, any Prohibited Conduct. Without limiting the generality of the foregoing, in no event shall the Operator be liable for, and the Company hereby waives all rights to recover, any loss or damage to the extent, and only to the extent, that such loss or damage is covered by insurance proceeds (i) actually received by Company or (ii) received by any of its other contractors retained in connection with the Facilities the benefit of which is received by the Company. Company hereby waives all rights, claims and demands of whatsoever nature that it may have against Operator on account of any loss or damage of Company or its other contractors or the Facilities resulting from the performance by Operator of any of its obligations under this Agreement to the extent insurance proceeds are actually received by Company under an applicable policy to cover such loss or damage.

12.2. No Consequential Damages. Notwithstanding anything contained in this Agreement to the contrary, no Party shall assert, and each Party hereby waives, any claim against any Party or Indemnified Party on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) of any kind whatsoever, whether or not foreseeable, or for any loss of business, goodwill, opportunity or profit, whether arising directly or indirectly and whether or not foreseeable, even if the Party is actually aware of or has been advised of the likelihood of such loss or damage and regardless of whether the claim for such loss or damage is made in negligence, for breach of contract, breach of trust, breach of fiduciary obligation or otherwise arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby.

12.3. Duty Only to Company. Neither the Operator's authority nor its responsibility under this Agreement, nor any decision made by the Operator in good faith either to exercise or

not to exercise such authority or responsibility, nor the undertaking, exercise or performance of any authority or responsibility by the Operator shall create, impose or give rise to any duty owed by the Operator to any person or entity (other than the Company), including the Construction Contractors and/or any other contractor, subcontractor, vendor, supplier, design professional, purchasing agent of the Company or any other Person (other than the Operator's Subcontractors) or to any surety for or employee or agent of any of them.

12.4. Limitation on Recourse. To the extent allowed under Applicable Law, no recourse for the payment of any sums or the performance of any obligations hereunder, or for any claim based hereon or otherwise in respect hereof or relating hereto, shall be had against any employee, incorporator, shareholder, officer or director (or the limited liability company equivalent of any of the foregoing positions), past, present or future, of any Party. In no event shall this Agreement be construed to modify or amend the Company Agreement or to impose any obligation on any parties thereto who are not Parties. Nothing contained in this Section 12.4 shall be construed to limit the exercise or enforcement by any Party, in accordance with the terms hereof, of rights and remedies against the other Party or the assets of such other Party.

12.5 Overruns. Notwithstanding the foregoing, but subject to Section 12.1, the Operator agrees to reimburse the Company for an amount equal to the amount of any cost overrun incurred by the Company in the construction of the Facilities to the extent such cost overrun is solely and directly the result of the Operator's breach of this Agreement.

### **ARTICLE 13** **MISCELLANEOUS**

13.1. Notices. Notices and other communications permitted or required to be given hereunder shall be in writing and shall be delivered by hand or sent by certified mail (return receipt requested), overnight courier service, or by fax or electronic mail, as follows:

If to the Operator:

Dominion Transmission, Inc.  
701 East Cary Street, 5th Floor  
Richmond, VA 23219  
Attention: Jeffrey L. Keister  
Telephone: 804-771-4459  
Facsimile: 804-771-4804  
E-mail: Jeffrey.L.Keister@dom.com

If to the Company:

Atlantic Coast Pipeline, LLC  
DEC 18A  
550 South Tryon Street  
Charlotte, NC 28202  
Attention: Phillip C. Grigsby  
Telephone No.: 704-382-2091  
Facsimile No.: 980-373-9954  
Email: Phillip.grigsby@duke-energy.com

Any such notice or other communication given hereunder shall be conclusively deemed to have been given or made and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by same-day or overnight courier, on the date of delivery if delivery is on a Business Day and made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (iii) if sent by facsimile or electronic mail, on the day of facsimile or electronic mail transmittal if it occurs prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day following the day of transmittal. The Parties may give from time to time written notice of change of address in the manner aforesaid. In the event that any notice under this Agreement is required to be made on or as of a day which is not a Business Day, then such notice shall not be required to be made until the next proceeding Business Day.

13.2. Binding Effect. The terms and provisions of this Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

13.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any conflicts of laws principles thereof that would otherwise require the application of the law of any other jurisdiction.

13.4. Disputes. Any and all claims, disputes, controversies or other matters in question arising out of or relating to this Agreement (all of which are referred to herein as "*Disputes*") will be submitted to senior executives of each Party who shall meet within fifteen (15) days of a request for such meeting and attempt to resolve the dispute within thirty (30) days of their initial meeting. If the senior executives fail to resolve the Dispute within that period, the Parties will meet to discuss the possible retention of a mediator to resolve the Dispute through non-binding mediation, but participation in such mediation shall be voluntary. Absent an agreement upon the terms of mediation, each Party retains all rights, in its sole discretion, to agree at that time to arbitration or to resort to any other means to resolve the Dispute. The Parties hereby agree to continue to perform their respective obligations under this Agreement while any Dispute is pending.

13.5. Relationship of the Parties. The Parties are not and shall not be deemed to be partners or joint venturers with one another and nothing herein shall be construed so as to impose any liability as such on any of them or to create any principal-agent relationship. The Parties agree that the Operator shall perform its duties and obligations under this Agreement as an independent contractor (with its duties and obligations as expressly provided herein) for and on behalf of the Company. Neither the Operator nor its Affiliates nor their respective employees shall be deemed to be the servants or employees of the Company. In no circumstances shall the Operator be, or be deemed to be, a fiduciary or trustee for any Person in connection with the discharge by the Operator of such duties and obligations.

13.6. No Third Party Beneficiaries. Except as expressly provided in this Agreement, nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract. Except for the Indemnified Parties, no Person other than the Parties shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

13.7. Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party; *provided, however*, that such consent shall not be unreasonably withheld, conditioned or delayed; *provided, further*, that this Agreement may be pledged by the Company in favor of any Financing Entity without the consent of the Operator in connection with any financing undertaken pursuant to any Financing Commitment. Unless the assignee agrees in writing to assume all obligations assigned to it hereunder, any assignment of this Agreement shall not relieve the assigning Party of any of its obligations hereunder.

13.8. Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

13.9. Amendment. No provision of this Agreement may be amended, modified or supplemented except by the written agreement of the Parties.

13.10. Severability. In the event any one or more of the provisions contained herein should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

13.11. Further Assurances. Each Party shall, and shall use its reasonable efforts to cause its Affiliates to, take such further actions as are reasonably requested by the other Party, including the execution and delivery of documents, as are necessary or expedient to carry out the intent of this Agreement.



13.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original of this Agreement and all of which together shall constitute one and the same instrument.

13.13. Facsimile Execution. Execution and delivery of this Agreement may be effected by any Party by facsimile transmission or PDF electronic copy of the execution page hereof to the other Parties. A Party delivering this Agreement by facsimile transmission or PDF electronic copy shall thereafter forthwith deliver to each of the other Parties an original signed copy of the signature page of this Agreement; *provided, however*, that any failure by a Party to so deliver the original signed signature page shall not affect the validity or enforceability of this Agreement by or against that Party.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

OPERATOR:

DOMINION TRANSMISSION, INC.

By: *Diane Leopold*  
Name: *Diane Leopold*  
Title: *President*

COMPANY:

ATLANTIC COAST PIPELINE, LLC

By: \_\_\_\_\_  
Name:  
Title: *Authorized Representative*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

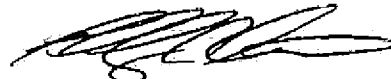
OPERATOR:

DOMINION TRANSMISSION, INC.

By: \_\_\_\_\_  
Name:  
Title:

COMPANY:

ATLANTIC COAST PIPELINE, LLC

By:   
Name: Phillip C. Grigsby  
Title: Vice President

Schedule 1 to  
Construction, Operation  
and Maintenance Agreement

Scope of Services

The Operator shall provide the following Services:

***Development Related Services***

- (1) Develop the Initial Facilities, including the preparation of necessary engineering studies; retaining consultants, owner's/operator's engineers, legal support, and other necessary experts;
- (2) Perform or have performed real estate surveys, negotiate and acquire real estate rights and interests necessary for the relevant Facilities;
- (3) Develop and negotiate and any Facilities Agreements and Construction Agreements;
- (4) Prepare and submit applications for any Governmental Approval;
- (5) Prepare financial studies and reports reasonably necessary, and negotiate any external financing commitments;
- (6) Manage a competitive RFP for the selection of, and recommend to the Company, the Construction Contractor(s); and
- (7) Where the Operator deems reasonably necessary, perform a "constructability review" of the construction drawings and specifications to assess whether the Facilities can be built in accordance with the design requirements.

***Construction Related Services***

- (1) Supervise the performance of the Construction Agreements, and advise and assist the Company in monitoring whether Construction Agreements are being performed in accordance with all terms and provisions thereof, promptly reporting any deviation therefrom to the Company;
- (2) Supervise:
  - (i) the coordination among the Construction Contractors in the performance of their obligations under the Construction Agreements; and

- (ii) the Construction Contractors' coordination with any other contractors, agents or advisors engaged by the Company to perform work in connection with the Facilities;
- (3) Obtain and maintain in good standing all Governmental Approvals required for the Facilities which are the Company's responsibility under the Construction Agreements and enforce the Construction Contractors' respective obligations to obtain and maintain in good standing all Government Approvals for which the Construction Contractors are, respectively, responsible under the Construction Agreements;
- (4) Where the Operator deems reasonably necessary, perform a "constructability review" of the construction drawings and specifications to assess whether the Facilities can be built in accordance with the design requirements;
- (5) Perform quality assurance to assess that Facilities are being built to design requirements;
- (6) Review and recommend for approval any change order under the Construction Agreements, including calculating any price or schedule impact arising out of such change order;
- (7) Review with the Construction Contractors, any relevant owner's engineer, independent engineer and the Company, requests for payment made by the Construction Contractors, and recommending payments in respect of invoices to the Company;
- (8) Take all steps reasonably necessary or appropriate to mitigate the impact of any delay in the performance of any work by the Construction Contractors under the Construction Agreements.
- (9) Pursue each Construction Contractor to perform its obligations under the relevant Construction Agreement in relation to ensuring that any construction lien that is registered against the Facilities Areas or the Facilities, or of which the Company or the Operator receives written notice, is discharged and vacated or such notice is withdrawn, as the case may be, in accordance with the provisions of the Construction Agreements;
- (10) Supervise and coordinate the completion of the construction punch list;
- (11) Review and comment on draft Manuals received under the Construction Agreements;
- (12) Determine the adequate spare parts and rolling stock for the Facilities and assist the Company in negotiating for the procurement of such spare parts from the applicable Construction Contractor or any other contractor, vendor or supplier of the Company (including the Operator);
- (13) Supervise the commissioning and testing of the Facilities; and

- (14) Maintain traceable, verifiable and complete design and construction records for the Facilities, in accordance with all Applicable Laws, including those of the U.S. Department of Transportation and the Pipeline and Hazardous Materials Safety Administration, for transfer to the Company at the In-Service Date.

***Operation and Maintenance Services***

- (1) Operate and maintain the Facilities in good operating condition, in a safe and efficient manner and in compliance with (i) Prudent Industry Practices, (ii) the Facilities Agreements, (iii) all relevant Governmental Approvals, (iv) the procedures established in the Manuals and (v) all Applicable Laws;
- (2) Perform all routine, scheduled, unscheduled, predictive and preventive maintenance work, adhere to maintenance plans in accomplishing all scheduled predictive and preventive maintenance work, and accomplish all routine maintenance for the equipment at the Facilities (align, lubricate, adjust, calibrate, make minor repairs, all as required);
- (3) Keep all repair, calibration, test, and measuring equipment in good repair;
- (4) Maintain adequate supply of spare parts;
- (5) Provide custodial services in buildings and the upkeep of grounds, and manage removal of wastes within the Facilities Areas;
- (6) Review operating and maintenance schedules with the purpose of reducing operating downtime, maintaining Facility reliability and optimizing economic returns. Analyze operating results daily and report as necessary. Based upon these analyses, develop operating plans and maintenance schedules to assure optimum timing of procedures to maximize performance;
- (7) Develop a program, including procedures for tracking and evaluation of equipment inspection and maintenance records, and for predictive maintenance of Facility equipment. Monitor and evaluate new procedures or techniques that may be used to improve component or overall Facility operating performance and reduce downtimes;
- (8) Coordinate with any independent contractors appointed by the Company to assist in the performance of the operation, maintenance or repair of the Facilities;
- (9) To the extent practicable, carry out of any and all activities necessary to respond appropriately to and mitigate any Emergency Event, including the development of emergency procedures for a safe and orderly shutdown of the Facilities in the event of an Emergency Event;
- (10) Organize maintenance activities with a computerized maintenance management system for work order generation, equipment history, bill of materials, inventory control,

scheduled maintenance, scheduling, backlog control, reporting, productivity analysis, calibration records and cost tracking;

- (11) Administer and recommend plans for enforcement of all warranties, warranty claims and insurance claims of the Company arising out of or in connection with the Facilities;
- (12) Negotiate for its own account or on behalf of the Company contracts or purchase orders for the purchase of materials, equipment and supplies necessary for the operation and maintenance of the Facilities;
- (13) Prepare and distribute to counterparties to each Facilities Agreement all nominations, scheduling notices, confirmations, curtailment notices, invoices and billing correspondence required to be prepared and distributed by the Company under each Facilities Agreement, as and when required thereunder;
- (14) Monitor and report on gas quality and quantity and reject any non-specification gas as necessary; and
- (15) Maintain traceable, verifiable and complete operation and maintenance records for the Facilities for the life thereof, including with respect to the integrity of the Facilities, in accordance with all Applicable Laws, including those of the U.S. Department of Transportation and the Pipeline and Hazardous Materials Safety Administration.

#### *Marketing and Customer Services*

- (1) Perform commercial, marketing and business development activities on behalf of the Company, including negotiation of customer contracts and maintenance of customer relationships; this particular function is to be performed in frequent consultation with the Company and its Members and consistent with all strategies and plans developed by and with the Company;
- (2) Create and maintain a FERC Gas Tariff on behalf of the Company, in accordance with Commission policies and regulations as those may change from time to time;
- (3) Provide customer support services, including nominations, scheduling, confirmations, allocations, balance management and other activities, pursuant to contracts, tariff terms and applicable regulations;
- (4) Operate a FERC- and NAESB-compliant internet website to support communication and routine transactions with customers and interconnecting parties and the public, as applicable; provide related training and outreach services;
- (5) Perform system planning and optimization services to support the Company's commercial projects and efficient operations. Use analytical models to evaluate capacity, maintain or improve system reliability, and study feasibility of proposed projects;

- (6) Administer contracts pursuant to appropriate procedures and controls, including invoicing and collection of customer accounts; and
- (7) Maintain customer data including custody transfer volumes, perform estimates and provide efficient external and internal communication.

***General Administrative Services***

- (1) Provide such general business services including business development activities, due diligence and feasibility studies, provision of specialist taxation, corporate finance, legal, health, safety and environment services, and marketing services and advice and support;
- (2) Develop, communicate and monitor compliance with Company standards and policies;
- (3) Report to the Company on legislative developments affecting the Company's business;
- (4) Maintain accurate and itemized accounting records and project controls and reporting in preparation for the construction of the Facilities, together with any information reasonably required by the Company relating to such records and reporting, consistent with the applicable provisions of Article 7 of the Company Agreement;
- (5) Provide information technology and telecommunication services;
- (6) On behalf of the Company, maintain the books and records of the Company and manage the preparation of the financial and other reports described in Article 7 of the Company Agreement;
- (7) On behalf of the Company, maintain and administer bank and investment accounts and arrangements for receipt of Company funds, draw checks and other orders for the payment of money, and designate individuals to which the Company shall grant authority to sign or give instructions with respect to those accounts and arrangements; provided that the Company's funds shall not be commingled with funds belonging to the Operator;
- (8) Provide or obtain, as necessary, legal services in relation to the development, construction or operation of the Facilities, including in connection with any litigation or claims arising by reason of the development, construction or operation of the Facilities;
- (9) Assist the Company in its compliance with all Governmental Approvals and other Applicable Laws, including (i) preparing, maintaining and periodically updating a regulatory compliance program covering Applicable Laws and (ii) preparing necessary filings or communications with the FERC and other Governmental Authorities;
- (10) Secure, maintain and administer insurance and risk management services;



- (11) Develop policies and procedures necessary for the efficient operation of the Facilities;
- (12) Provide or obtain, as necessary, legal services in relation to the construction of the Facilities, including in connection with any litigation or claims arising by reason of the construction of the Facilities, or any land acquisition activities;
- (13) Assist the Company in obtaining and maintaining in good standing all Governmental Approvals required for the Facilities and for which the Company is responsible;
- (14) Develop for the Company's approval, and implement, each Annual Budget;
- (15) Develop and implement an environmental, health and safety program in respect of the operation and maintenance of the Facilities;
- (16) Develop and maintain an integrated project schedule related to the construction of the Facilities; and
- (17) Make informational filings and website postings as required under Applicable Laws

***Reporting Services***

- (1) Keep the Company informed as soon as practicable with respect to important or significant matters relating to the Facilities of which the Operator becomes aware from time to time, including:
  - (i) any event or occurrence relating to the Facilities which is reasonably likely to give rise to any breach of Applicable Laws, Governmental Approvals, the Construction Agreements or the Facilities Agreements;
  - (ii) any violation or likely violation of Applicable Laws or notice thereof relating to the Facilities by any Person at the Facilities Areas including any non-routine investigation, inspection or inquiry by any Governmental Authority;
  - (iii) any proposed change order;
  - (iv) any deviation in required materials or manufacturing process in the manufacture of the equipment for the Facilities that is likely to have an adverse impact on the performance, operations or safety of the Facilities;
  - (v) the failure or, in the opinion of the Operator, the likely failure of any Construction Contractor to meet any material deadlines or milestones in respect of the Construction Agreements, including the actual or anticipated duration and effects of any resulting delay in the performance of the work under the Construction Agreements;
  - (vi) the occurrence or, in the opinion of the Operator, the likely occurrence of any event that gives rise to the obligation of any Construction Contractor to pay liquidated damages under the terms of the Construction Agreements;

- (vii) the occurrence or, in the opinion of the Operator, the likely occurrence of a material default by any Construction Contractor (which notice will include a report by the Operator as to the effect of the default and the proposed remedies therefor);
  - (viii) the registration or receipt of notice of a construction lien in respect of the construction activities;
  - (ix) the occurrence or, in the opinion of the Operator, the likely occurrence of any material dispute or issue relating to coordination among the Construction Contractors and/or any other Person performing services at the Facilities Areas or in respect of the Facilities;
  - (x) the occurrence of the In-Service Date;
  - (xi) any event or occurrence relating to the operations or maintenance of the Facilities which is reasonably likely to give rise to any breach of Applicable Laws or Governmental Approvals;
  - (xii) the occurrence of a force majeure event (as defined under any Construction Agreement or Facilities Agreement);
  - (xiii) the occurrence or, in the opinion of the Operator, the likely occurrence of a material default by any counterparty to a Construction Agreement or Facilities Agreement (which notice will include a report by the Operator as to the effect of the default and the proposed remedies therefor);
  - (xiv) any event or occurrence which, in the opinion of the Operator, is likely to result in a material delay or a material cost overrun in construction; and
  - (xv) any significant environmental, health or safety event or occurrence which requires notice to be provided to any Governmental Authority.
- (2) On or before the fifteenth (15<sup>th</sup>) day of each month during any period of construction of the Facilities, prepare and submit to the Company a report on the progress of the construction of the Facilities as of the end of the immediately preceding month (each a "**Construction Report**"). The Construction Report will be prepared and submitted in accordance with the reasonable requirements of the Company; and
- (3) On or before the fifteenth (15<sup>th</sup>) day of each month after the initial In-Service Date, prepare and submit to the Company a report on the operation and maintenance of the Facilities during the immediately preceding month (each an "**Operating Report**"). The Operating Report will be prepared and submitted in accordance with the reasonable requirements of the Company.

Accounting Procedure

**1. General Provisions**

- 1.1 Statements and Billings. The Operator shall charge the Company not later than the tenth (10<sup>th</sup>) day of each month or as soon as practicable thereafter for the costs and expenses in respect of the immediately preceding month. If requested by the Company, the Operator will promptly provide reasonably sufficient support for the costs and expenses incurred and such other supporting documentation as the Company may reasonably request.
- 1.2 Payment by Company. The Company shall settle all charges presented by the Operator in any month as provided in the Agreement on or before the twenty-seventh (27<sup>th</sup>) day of such month, unless such twenty-seventh (27<sup>th</sup>) day is not a Business Day, in which event all charges shall be settled on or before the Business Day immediately preceding such twenty-seventh (27<sup>th</sup>) day.
- 1.3 Financial Records. The Operator shall maintain accurate books and records in accordance with GAAP covering all of the Company's activities and the Operator's actions under the Agreement.
- 1.4 Purchase of Materials. It is contemplated that most material, equipment and supplies will be owned by the Company and purchased or furnished for its account. So far as is reasonably practical and consistent with efficient, safe and economical operation as determined by the Operator, only such material shall be obtained for the Facilities as may be required for immediate use, and the accumulation of surplus stock shall be avoided. To the extent reasonably practical, the Operator shall take advantage of discounts available by early payment and shall pass such benefits on the Company.

**2. Costs and Expenses**

Subject to the limitations hereafter prescribed and the provisions of the Agreement, the Operator shall charge the Company for all costs and expenses provided for in Section 6.1 of the Agreement, including the following items:

- 2.1 Rentals. All rentals paid by the Operator.
- 2.2 Labor Costs. All applicable personnel generating the following labor costs shall keep time sheets so that the portion of their salaries and wages chargeable under the Agreement may be supported and calculated, and only such proportionate part of such labor costs shall be charged pursuant to this Section 2.2:

- 2.2.1 Salaries and wages of employees of the Operator and its Affiliates, engaged in connection with the construction, operation and maintenance of the Facilities or the performance of Services and, in addition, amounts paid as salaries and wages of others temporarily employed in connection therewith. Charges for such salaries and wages shall be calculated on the basis of individual activity rates that are based on average salary per job title/category, and shall be loaded to include the Operator's or its Affiliate's, as applicable, actual costs of bonuses, holiday, vacation, sickness and jury service benefits and other customary allowances for time not worked paid to Persons whose salaries and wages are chargeable pursuant to this Section 2.2.1. Direct labor charges shall be charged so far as costs can be identified and related to the performance of the Operator's duties under the Agreement.
- 2.2.2 Expenditures or contributions made pursuant to assessments imposed by a Governmental Authority that are applicable to salaries, wages and costs chargeable under Section 2.2.1, including FICA taxes and federal and state unemployment taxes.
- 2.2.3 Without duplication of the expenses and charges set forth in any other provision of this Section 2.2, the costs of plans incurred by or on behalf of the Operator or its Affiliate, as applicable, for workers' compensation, employers' group life insurance, hospitalization, disability, pension, retirement, savings and other benefit plans, that are applicable to salaries and wages chargeable under Section 2.2.1. Such costs shall be charged on the basis of a percentage assessment to be set forth in each proposed Annual Budget on the amount of salaries and wages chargeable under Section 2.2.1.
- 2.2.4 Without duplication of the expenses and charges set forth in any other provision of this Section 2.2, all other administrative and general expenditures, including salaries and wages, bonuses, related benefits and expenses of personnel of the Operator and/or its Affiliates (excluding the personnel who have direct billed in Section 2.2.1) who render services for the benefit of the Operator and/or its Affiliates (in the performance of its obligations hereunder) or the Company, shall be charged at fifteen percent (15%) of Direct Labor costs.
- 2.3 Reimbursable Expenses of Employees. Reasonable personal expenses of the Operator's or its Affiliate's, as applicable, employees reasonably incurred in connection with the performance of the Operator's duties under the Agreement. As used herein, "*personal expenses*" shall mean out-of-pocket expenditures incurred by the Operator's or its Affiliate's employees in the performance of their duties and for which such employees are reimbursed. The Operator shall maintain documentation for such expenses in accordance with the standards of the Internal Revenue Service.

- 2.4 Material, Equipment and Supplies. Material, equipment and supplies purchased or furnished from the warehouse or other properties of the Operator or its Affiliates, priced at cost plus the Operator's or its Affiliate's appropriate purchasing and storage overhead ordinarily applied by the Operator or its Affiliate and approved in the applicable Annual Budget.
- 2.5 Transportation. Transportation of employees, equipment and material and supplies reasonably necessary for the performance of the Services.
- 2.6 Services. The cost of contract services and utilities procured from external sources.
- 2.7 Legal Expenses and Claims. All costs and expenses of handling, investigating and settling litigation or claims arising by reason of the performance of the Services or necessary to protect or recover any Facilities or property, including attorneys' fees, court costs, costs of investigation or procuring evidence and any judgments paid or amounts paid in settlement or satisfaction of any such litigation or claims. All judgments received or amounts received in settlement of litigation with respect to any claim asserted on behalf of the Company shall be for the benefit of and shall be remitted to the Company.
- 2.8 Taxes. All taxes (except taxes (other than franchise taxes assessable in North Carolina relating solely to the performance of the Services) measured by income of the Operator) of every kind and nature assessed or levied upon or incurred in connection with the Services or on the Facilities or other property of the Company and which taxes have been paid by the Operator or its Affiliate for the benefit of the Company, including charges for late payment arising from extensions of the time for filing that are caused by the Company, or that result from the Operator's good faith efforts to contest the amount or application of any tax.
- 2.9 Insurance. Net of any returns, refunds or dividends, all premiums, deductibles and self-insured retentions paid and expenses incurred for insurance that the Operator is required to be obtain and maintain under the Agreement; *provided, however,* that the insurance required to be carried under Section 7.1(d) of the Agreement shall be deemed to be reimbursed through the fifteen percent (15%) charge referred to in Section 2.2.4.
- 2.10 Governmental Approvals, Licenses and Bond. Cost of Governmental Approvals, licenses and bond premiums necessary in the performance of the Operator's duties.

EXHIBIT N

**REVENUES, EXPENSES, AND INCOME**

**Revenues, Expenses, and Income**

Page 2 shows the revenue, expenses, and income for the proposed firm transportation service.

**Total Transportation Revenues, Expenses, and Income**

<b>Line No.</b>	<b>Particulars</b>	<b>Notes</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>
	Column (1)		(2)	(3)	(4)
1	<b>Annual Transportation Revenue</b>	1/, 2/	\$590,934,696	\$590,934,696	\$590,934,696
	Expenses:				
2	Operation & Maintenance		25,452,406	26,241,431	26,825,459
3	Depreciation		127,241,813	127,241,813	127,241,813
4	Taxes Other Than Income		47,263,439	58,511,548	58,656,889
5	Interest		171,737,955	164,493,025	156,115,140
6	<b>Total Transportation Expenses</b>		<u>\$371,695,613</u>	<u>\$376,487,817</u>	<u>\$368,839,301</u>
7	Income Before Income Taxes	3/	\$219,239,083	\$214,446,879	\$222,095,395
8	State & Federal Income Tax		<u>86,599,438</u>	<u>84,706,517</u>	<u>87,727,681</u>
9	<b>Transportation Income</b>	4/	\$132,639,645	\$129,740,362	\$134,367,714

---

1/ The annual transportation revenue is the product of the proposed firm reservation negotiated rate and the firm transportation reservation determinants, plus the product of the proposed firm usage negotiated rate and the firm transportation usage determinants.

2/ The proposed service will incur all other rates, charges, surcharges, penalties, and fuel retention applicable to firm transportation service. The revenue associated with such other charges is not reflected in Line 1 above.

3/ Line 1 - Line 6.

4/ Line 7 - Line 8.



EXHIBIT P

**TARIFF**

### **Cost of Service, Rate Base, Return, and Rates**

Page 2 of Exhibit P shows the monthly firm transportation base reservation rate (see Line 7), the firm transportation base usage rate (see Line 9), and the interruptible transportation usage rate (see Line 10). Atlantic Coast Pipeline, LLC (ACP) firm transportation customers will pay these firm base reservation and usage rates in addition to all other rates, charges, surcharges, penalties, and fuel retention applicable to firm transportation service.

Page 3 shows the cost of service for ACP. ACP is basing its rates on the average first year cost of service. ACP proposes to use a system depreciation rate of 2.5% for the transmission facilities.

Page 4 of Exhibit P shows the calculation of annual rate base and return for the first three years of service. The pretax return of 15.0% is based on a capital structure comprised of 50% debt and 50% equity. The proposed debt rate is 6.8%. The proposed return on equity is 14.0%.

**Transportation Rates**

Line No.	Particulars	Notes	Amounts
	Column (1)		(2)
<b>Transportation Billing Determinant Summary</b>			
1	Firm Transportation Reservation Determinants (Dt/d)		1,500,000
2	Annual Firm Transportation Reservation Determinants (Dt/d)	1/	18,000,000
3	Annual Firm Transportation Usage Determinants (Dt)	2/	465,375,000
<b>Transportation Rate Derivation</b>			
4	First Year Cost of Service	3/	\$957,625,105
<b>Cost of Service Classification</b>			
5	Variable Costs		\$1,786,226
6	Fixed Costs		\$955,838,879
7	Monthly Firm Reservation Rate	4/	\$53.1022
8	100% Load Factor Firm Reservation Rate	5/	\$1.7458
9	Firm Usage Rate	6/	\$0.0038
10	Interruptible Usage Rate	7/	\$1.7496

1/ Line 1 \* 12.

2/ Contracted Capacity of 1,500,000 Dt \* 365 \* 85% load factor.

3/ Exhibit P, Page 3 of 4, Column 2, Line 9.

4/ Line 6 / Line 2.

5/ ((Line 7 \* 12) / 365).

6/ Line 5 / Line 3.

7/ Line 8 + Line 9.

**Total Cost of Service - Transportation**

<b>Line No.</b>	<b>Particulars</b>	<b>Notes</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>
	Column (1)		(2)	(3)	(4)
	O&M Expenses:	1/			
1	Field Operations		\$12,471,545	\$13,018,994	\$13,354,650
2	Administrative and General (A&G)		10,243,361	10,484,937	10,733,309
3	Lease		2,737,500	2,737,500	2,737,500
4	Other		0	0	0
5	<b>Total Transportation O&amp;M Expenses</b>		<b>\$25,452,406</b>	<b>\$26,241,431</b>	<b>\$26,825,459</b>
6	DD&A	2/	127,241,813	127,241,813	127,241,813
7	Other Taxes	3/	47,263,439	58,511,548	58,656,889
8	Pretax Return		757,667,447	725,704,522	688,743,263
9	<b>Total Cost of Service</b>	4/	<b>\$957,625,105</b>	<b>\$937,699,314</b>	<b>\$901,467,424</b>

1/ O&M Expense is based on estimated expenses. Estimated labor expenses are escalated at approximately 3.0% per year. Material and other expenses are escalated at approximately 2.0% per year.

2/ Depreciation is based on a rate of 2.5%.

3/ Other Taxes, including property tax, on the proposed facilities are calculated at a rate of approximately 1.0%.

4/ Line 5 + Line 6 + Line 7 + Line 8

**Transportation Rate Base and Return**

<b>Line No.</b>	<b>Particulars</b>	<b>Notes</b>	<b>1st Year</b>	<b>2nd Year</b>	<b>3rd Year</b>
	Column (1)		(2)	(3)	(4)
	Rate Base				
1	Gross Plant		\$5,136,539,674	\$5,136,539,674	\$5,136,539,674
2	Accumulated DD&A		(63,620,906)	(190,862,719)	(318,104,532)
3	Net Plant		5,072,918,768	4,945,676,955	4,818,435,142
4	Accumulated Deferred Taxes		(21,802,455)	(107,646,808)	(226,813,387)
5	Total Rate Base	1/	5,051,116,312	4,838,030,147	4,591,621,755
6	Pretax Return Rate	2/	15.00%	15.00%	15.00%
7	Pretax Return	3/	\$757,667,447	\$725,704,522	\$688,743,263

---

1/ Line 3 + Line 4.

2/ Return is based on the proposed capital structure and a return on equity of 14.0%.

3/ Line 5 \* Line 6.

### ***Pro Forma Tariff***

It should be noted that certain placeholders have been inserted in the proforma tariff when the information is not currently available. The placeholders include:

1. Pro Forma Tariff Record No. 3 – System Map

**URL for System Map will be provided 30-60 days prior to in-service date.**

2. Pro Forma Tariff Record No. 10.10 – Fuel Retention Percentages

**ACP plans to make a Section 4 filing that will set forth the basis for the maximum transportation fuel retention percentage. All interested parties will have an opportunity to participate in such proceeding.**

3. Pro Forma Tariff Record No. 10.20 – Off-System Capacity Charges

**Rates will be provided with tariff 30-60 days prior to in-service date.**

4. Pro Forma Tariff Record No. 40.2 – GT&C Section 1 – Definitions  
Pro Forma Tariff Record No. 40.17 – GT&C Section 16 – Website  
Pro Forma Tariff Record Nos. 70 and 70.4 – Form of Service Agreement

**Name of Pipeline’s Customer Activities site will be provided 30-60 days prior to in-service date.**

5. Pro Forma Tariff Record No. 40.13 – GT&C Section 12 –Nomination & Confirmation

**Nomination Cycle Timelines will be updated in accordance with FERC Order No. 809.**

6. Pro Forma Tariff Record No. 40.16 – GT&C Section 15 – Capacity Release

**Capacity Release Timelines will be updated in accordance with FERC Order No. 809.**

7. Pro Forma Tariff Record No. 40.18 – GT&C Section 17 – Incorporation of NAESB Standards

**Table will be provided with tariff 30-60 days prior to in-service date.**

FERC GAS TARIFF

***pro forma* ORIGINAL VOLUME NO. 1**

of

ATLANTIC COAST PIPELINE, LLC

Filed with

The Federal Energy Regulatory Commission

Communications Concerning This Tariff  
Should Be Addressed to:

Machelle F. Grim  
Director, Gas Regulation  
Dominion Resources Services, Inc.  
On Behalf of Atlantic Coast Pipeline, LLC  
701 East Cary Street  
Richmond, VA 23219

Phone 804-771-3805  
Facsimile 804-771-4763

TABLE OF CONTENTS

Volume No. 1	Tariff Record No.
Table of Contents	1
Preliminary Statement	2
System Map	3
Statement of Applicable Rates	10
Rate Schedules:	20
FT                      Firm Transportation Service	20.1
IT                      Interruptible Transportation Service	20.2
General Terms and Conditions	40
Statement of Nonconforming Agreements	50
Statement of Negotiated Rates	60
Forms of Service Agreement:	70
Rate Schedule FT	70.1
Rate Schedule IT	70.2
Capacity Release Program	70.3
Access to the _____ System	70.4



## PRELIMINARY STATEMENT

The Atlantic Coast Pipeline, LLC is a natural gas company subject to the jurisdiction of the Federal Energy Regulatory Commission that is primarily engaged in the transportation of natural gas in interstate commerce. Atlantic Coast Pipeline, LLC facilities include a natural gas transmission pipeline originating in Harrison County, West Virginia and terminating in Robeson County, North Carolina; three gas-fired compression stations - one located in West Virginia, one in Virginia and one in North Carolina; and several transmission pipeline delivery laterals located in Virginia and North Carolina.

The Atlantic Coast Pipeline, LLC provides transportation of natural gas through its facilities for all Customers eligible for service under this Tariff on an open access basis.

This Tariff includes the currently effective Rates, Rate Schedules, General Terms and Conditions and Forms of Service Agreement applicable to services performed by the Atlantic Coast Pipeline, LLC.

## SYSTEM MAP

The Atlantic Coast Pipeline, LLC system map(s) can be displayed and downloaded using the hyperlink below. If the hyperlink does not work, please copy and paste the entire URL below into your browser's address bar and press enter.

**(URL for System Map will be provided 30-60 days prior to in-service date)**

STATEMENT OF APPLICABLE RATES

<u>Rate Type</u>		<u>Tariff Record No.</u>
FT	Firm Transportation Service	10.1
IT	Interruptible Transportation Service	10.1
Fuel Retention Percentages		10.10
Off-System Capacity Charges		10.20
Overruns and Penalties		10.30

RATES APPLICABLE TO RATE SCHEDULES IN FERC GAS TARIFF, VOLUME NO. 1  
 (\$ per Dt)

Rate Schedule	Rate Component	Base Tariff Rate [1] [4]	FERC ACA
(1)	(2)	(3)	(4)
FT [2], [3]:	RESERVATION CHARGE: (Maximum Rate) (Minimum Rate)	\$53.1022 \$0.0000	
	USAGE CHARGE: (Maximum Rate) (Minimum Rate)	\$0.0038 \$0.0038	[5] [5]
IT [2][3]:	Usage Charge: (Maximum Rate) (Minimum Rate)	\$1.7496 \$0.0038	[5] [5]

[1] The Base Tariff Rate is the effective rate on file with the FERC, excluding adjustments approved by the Commission, and payable each month.

[2] To the extent applicable pursuant to GT&C Section 29, Customer will be assessed any transportation charges applicable to Off-System Capacity. The off-system charges are set forth on Tariff Record No. 10.20.

[3] The Transportation Fuel Retention Percentage is set forth on Tariff Record No. 10.10.

[4] The Base Tariff Rate shall be increased for the Annual Charge Adjustment (ACA) as applicable.

[5] The applicable ACA rate is set forth on the FERC website. (<http://www.ferc.gov/industries/gas/annual-charges.asp>)

TRANSPORTATION FUEL RETENTION PERCENTAGE  
 APPLICABLE TO RATE SCHEDULES IN FERC GAS TARIFF, VOLUME NO. 1

Rate Schedule	Component	Maximum	Minimum
(1)	(2)	(3)	(4)
FT, IT [1]			
	Transportation Fuel Retention Percentage	TBD	0.0 %

[1] To the extent applicable pursuant to GT&C Section 29, Customer will be assessed any transportation fuel retention requirements applicable to Off-System Capacity. The off-system fuel retention percentages are set forth on Tariff Record No. 10.20.

**NOTE: ACP plans to make a Section 4 filing that will set forth the basis for the maximum transportation fuel retention percentage. All interested parties will have an opportunity to participate in such proceeding.**

OFF-SYSTEM CAPACITY CHARGES  
 APPLICABLE TO RATE SCHEDULES IN FERC GAS TARIFF, VOLUME NO. 1  
 (Rate per Dt)

Rate Schedule	Component	Charge
(1)	(2)	(3)
	Pipeline: Dominion Transmission, Inc. (DTI)	
FT	DTI Reservation Charge [1]	\$X.XXXX
	DTI Usage Charge [1] [2] [3]	\$X.XXXX
	DTI Transportation Fuel Retention Percentage [1]	X.XX%
IT	DTI Usage Charge [1] [2] [3]	\$X.XXXX
	DTI Transportation Fuel Retention Percentage [1]	X.XX%

**(Rates will be provided with tariff 30-60 days prior to in-service date)**

[1] See GT&C Section 29.2.

[2] This charge shall be increased for the Annual Charge Adjustment (ACA), as applicable.

[3] The applicable ACA rate is set forth on the FERC website.  
 (<http://www.ferc.gov/industries/gas/annual-charges.asp>)

RATES APPLICABLE TO RATE SCHEDULES IN FERC GAS TARIFF, VOLUME NO. 1  
 (\$ per Dt)

Overruns and Penalties

Rate Schedule	Rate [6]	Notes
FT		
Authorized Overrun Charge	\$1.7496	[1] [7]
Unauthorized Overrun Penalty (Non-Critical)	\$3.4992	[2][4] [7]
Unauthorized Overrun Penalty (Critical)	\$25.0000	[2] [5]
Scheduling Penalty	\$1.7496	[3] [7]
IT		
Authorized Overrun Charge	\$1.7496	[1] [7]
Unauthorized Overrun Penalty (Non-Critical)	\$3.4992	[2] [4] [7]
Unauthorized Overrun Penalty (Critical)	\$25.0000	[2] [5]
Scheduling Penalty	\$1.7496	[3] [7]

[1] This rate is equal to the currently effective IT rate. See GT&C Section 37.1.

[2] For a Non-Critical Period, add the Gas Price Index for each Dt as described in GT&C Section 37.2B;  
 For a Critical Period, add three times the Gas Price Index for each Dt as described in GT&C Section 37.2A.

[3] This rate is equal to the currently effective IT rate. See GT&C Section 37.3.

[4] This rate is equal to twice the currently effective IT rate. See GT&C Section 37.2B.

[5] See GT&C Section 37.2A.

[6] The Rate shall be increased for the Annual Charge Adjustment (ACA) as applicable.

[7] The applicable ACA rate is set forth on the FERC website.

(<http://www.ferc.gov/industries/gas/annual-charges.asp>)

Rate Schedule

Applicable Gas Price Index

FT, IT

See GT&C Section 1.1.

TARIFF RATE SCHEDULES

<u>Rate Schedule</u>	<u>Service</u>	<u>Tariff Record No.</u>
FT	Firm Transportation Service	20.1
IT	Interruptible Transportation Service	20.2



RATE SCHEDULE FT  
FIRM TRANSPORTATION SERVICE

1. AVAILABILITY

1.1 This Rate Schedule is available for transportation service by Atlantic Coast Pipeline, LLC (Pipeline) through Pipeline's facilities, without undue discrimination or preference, to any Person (Customer) or Customer's assignee(s), where:

- A. Customer has requested firm transportation service pursuant to Sections 11, 25 and/or 26 of the General Terms and Conditions of Pipeline's Tariff (GT&C);
- B. After review and acceptance of such request by Pipeline, and after acceptance of Customer's bid, if applicable, Customer has entered into a Service Agreement with Pipeline for transportation service under this Rate Schedule that conforms to the Form of Service Agreement contained in this Tariff;
- C. Customer is willing and able to pay the recourse rate hereunder, or such other rate to which Pipeline and Customer mutually agree in accordance with the GT&C; and
- D. Customer complies with the provisions of this Rate Schedule and with all other applicable provisions of this Tariff.

1.2 Except as provided in GT&C Section 22, Pipeline is not required to provide any requested transportation service for which capacity is not available or that would require the construction or acquisition of any new facilities or the modification or expansion of existing facilities.

2. APPLICABILITY AND CHARACTER OF SERVICE

2.1 Service provided under this Rate Schedule is performed under Part 284 of the Commission's regulations. This Rate Schedule shall apply to all Gas transported by Pipeline for Customer under an executed Service Agreement that conforms to the Form of Service Agreement contained in this Tariff or such other agreement as approved pursuant to GT&C Section 34.

2.2 Pipeline has no obligation to provide transportation service hereunder until after Customer has nominated service in advance in accordance with GT&C Section 12 and Pipeline schedules such service in accordance with GT&C Section 13. As such, service under this Rate Schedule shall constitute "notice service." Within the Delivery limitations of the executed Service Agreement, service under this Rate Schedule shall be firm and is not subject to curtailment, interruption or discontinuance, except as provided herein or in GT&C Sections 9, 10, 12 and 14.

2.3 Pipeline shall Receive Gas and Deliver Gas in accordance with the executed Service Agreement and the terms of this Tariff.

3. DAILY QUANTITIES

The executed Service Agreement shall specify:

- A. An MDTQ (Maximum Daily Transportation Quantity) applicable to transportation service under this Rate Schedule; and
- B. An MPQ (Maximum Pack Quantity) applicable to transportation service under this Rate Schedule.

#### 4. RATES, CHARGES AND FUEL RETENTION

- 4.1 For service under this Rate Schedule, Customer shall pay Pipeline monthly the sum of the following charges:
- A. A Reservation Charge. The applicable charge per Dt of MDTQ as set forth in the Statement of Applicable Rates in this Tariff;
  - B. A Usage Charge. A charge per Dt for all Gas Delivered during the billing month as set forth in the Statement of Applicable Rates in this Tariff;
  - C. Off System Capacity Charges, as described in GT&C Section 29, if applicable;
  - D. Cost of facilities as described in GT&C Section 22, if applicable;
  - E. All other applicable rates, charges, surcharges and penalties as set forth in this Rate Schedule and the GT&C.
- 4.2 Each Gas Day, Pipeline shall retain the percentage of Receipts set forth in the Statement of Applicable Rates in this tariff as the Transportation Fuel Retention Percentage. Upon Customer's request Pipeline shall review a transaction specified by Customer to determine whether such transaction causes Pipeline to use Fuel Gas. If the transaction does not cause Pipeline to use Fuel Gas, Pipeline shall not retain the Fuel Gas component for that transaction and shall post on the Website such transaction's exemption from retention of the Fuel Gas component.
- 4.3 The recourse rate for service under this Rate Schedule shall be the total rate comprised of the applicable recourse reservation charges, usage charges and surcharges.
- 4.4 Pipeline may elect to offer to transport at a rate that is below the maximum but not less than the minimum rates set forth in the Statement of Applicable Rates in this tariff as applicable to this Rate Schedule. However, Pipeline is not obligated to offer to transport Gas at any rates less than the applicable recourse rate.
- 4.5 Notwithstanding the general provision of Sections 4.1 and 4.2 of this Rate Schedule, as provided by GT&C Section 35, if Pipeline and Customer mutually agree to negotiated rates for service hereunder, such negotiated rates may apply in lieu of the otherwise applicable charges identified in Sections 4.1.A, 4.1.B and 4.2 of this Rate Schedule, subject to any required regulatory approval.
- 4.6 The monthly bill shall reflect credits for capacity release reservation charges and associated surcharges as provided in GT&C Section 15.4.B.2, and any reservation charge adjustment owed to Customer as provided in GT&C Section 39.

#### 5. RECEIPTS AND DELIVERIES

- 5.1 Customer's entitlement to Tender Gas at any Point of Receipt shall not exceed Customer's MDTQ plus applicable fuel for service under this Rate Schedule, subject to Section 5.3.C.2. Customer's entitlement to Take Gas at any Point of Delivery shall not exceed Customer's MDTQ for service under this Rate Schedule, subject to Section 5.3.C.2.
- 5.2 Each executed Service Agreement shall specify:
- A. Pipeline's Maximum Daily Receipt Obligation (MDRO) at each Primary Point of Receipt, if applicable. The sum of the MDROs shall not exceed the MDTQ unless Pipeline and Customer agree otherwise in the executed Service Agreement.
  - B. Pipeline's Maximum Daily Delivery Obligation (MDDO) at each Primary Point of Delivery, if applicable. The sum of the MDDOs shall not exceed the MDTQ, unless Pipeline and Customer agree otherwise in the executed Service Agreement.
- 5.3 In addition to its entitlement to service at the Primary Points specified in the Service Agreement, Customer shall have the right to nominate service utilizing: (a) segmentation rights; (b) alternative Points of Receipt and Delivery located within its Capacity Path, (c) alternative Points of Receipt and Delivery located outside of its Capacity Path, or (d) Reverse Path transportation to the extent available on Pipeline's facilities.
- A. Customer shall have the right to use an alternative point at any Point of Receipt or Delivery specified on the most current master point list applicable to service under this Rate Schedule, as published on the Website.
  - B. Service at Primary and alternative Points of Receipt and Delivery, Reverse Path transportation and segmentation shall be made available to Customer subject to the nomination and scheduling provisions of GT&C Sections 12 and 13.
  - C. Segmentation shall also be made available to Customer subject to the following:
    - 1. Customer's entitlement to transportation on any Capacity Path shall not exceed Customer's MDTQ for service under this Rate Schedule subject to Section 5.3(C)(2). Customer's Capacity Path shall be defined as follows: The furthest upstream Primary Point of Receipt listed in Customer's Service Agreement to the furthest downstream Primary Point of Delivery listed in Customer's Service Agreement. If the furthest upstream Point of Receipt is located on DTI's system, the Capacity Path's Point of Receipt shall be considered Dominion South Point.
    - 2. Customer may not exceed the MDRO at a specific Point of Receipt or the MDDO at a specific Point of Delivery, except the MDDO at a specific physical Point of Delivery on Pipeline's system may be exceeded so long as the nominations at that point consist of a Forward Path nomination(s) that does not exceed the Customer's MDTQ and a Reverse Path nomination(s) that does not exceed Customer's MDTQ.
    - 3. Customer may not exceed, in aggregate, its contract MDTQ associated with DTI Point(s) of Receipt stated in Customer's Service Agreement. Provided further, any delivery of Gas to a point on DTI's system must be received from a DTI Point(s) of Receipt.

4. Customer shall also have the right to segment its capacity by nominating service using separate segments or through the release of capacity within its Capacity Path in accordance with GT&C Section 15.

- D. The service flexibility to segment and to use alternative Points and Reverse Path transportation, made available to Customer by this Section 5.3, is subject to the operating limitations of Pipeline, including the provisions of GT&C Section 29, the capabilities of the upstream or downstream entities at Points of Receipt and Delivery, respectively, and to the availability of capacity after performance by Pipeline of its primary firm service obligations. Service flexibility under this Section 5.3 shall not be made available to Customer if Pipeline determines that such transportation (a) is operationally infeasible, (b) will impair Pipeline's ability to provide reliable service to any other customer of a higher priority as set forth in GT&C Section 13, or (c) will impair the safe operation of Pipeline's system.

#### 5.4 Hourly Flow Rate

- A. In any hour, Customer shall Tender and Pipeline shall Deliver at a uniform flow rate equal to 1/24<sup>th</sup> of the scheduled quantity.
- B. Notwithstanding the foregoing limitation, on any Gas Day that Pipeline has operational capability, Pipeline may grant Customer the flexibility, for that Gas Day, to vary its hourly Tenders and/or Takes. Pipeline shall endeavor to give priority in granting such hourly variations to any Customer under this Rate Schedule that submits a written request to Pipeline, on a first-in-time basis. Such requests shall be submitted to Pipeline's Transportation Services Department on the form provided on the Website, shall be submitted no more than 48 hours and no less than four hours in advance of flow, and shall set forth Customer's anticipated hourly flow variations, by hour, for the time period requested. As soon as practicable but no later than within two hours of the receipt of a request, Pipeline shall respond and inform Customer whether the requested flexibility will be granted. In evaluating Customer's request for hourly variations, Pipeline may consider any relevant factors, including but not limited to Pipeline's current operating conditions, the level of variation requested by all customers, the level of other scheduled services, and Customer's demonstrated ability to Tender and/or Take Gas in a timely fashion.
- C. Any hourly flexibility granted by Pipeline pursuant to this Section 5.4 shall not constitute a firm entitlement. Pipeline retains the right to rescind flexibility granted under this Section 5.4 at any time and enforce the hourly limitation described in this Section 5.4 as may be necessary for Pipeline to meet its firm obligations, to avert the issuance of an operational flow order, or to provide service to any Interruptible Transmission Rate Schedule Customer whose service was scheduled by Pipeline prior to the receipt of a request pursuant to this Section 5.4. If such flexibility is rescinded, Pipeline shall give Customer as much notice as is reasonable under the circumstances.

- 5.5 Upon request by Pipeline, any Customer that is an electric power generator or its Agent shall provide a Daily Burn Profile, in the current form of Burn Profile maintained on the Website.

#### 6. EQUALIZATION OF RECEIPTS AND DELIVERIES

Except as expressly provided by GT&C Section 41, Deliveries by Pipeline to Customer shall be approximately equal to Tenders to Pipeline from Customer for transportation, less any Gas

retained by Pipeline in providing such transportation service. Pipeline shall have no obligation to Receive Gas if Customer fails to Take equivalent quantities Delivered by Pipeline, and Pipeline shall have no obligation to Deliver Gas to Customer on any Gas Day that Customer fails to Tender equivalent quantities to Pipeline; provided, however, that this Section 6 shall authorize Pipeline to take all necessary actions available to Pipeline to the extent that Customer's Tenders and Takes are not equivalent.

7. GENERAL TERMS AND CONDITIONS.

The General Terms and Conditions of Pipeline's FERC Gas Tariff, and any revisions thereof that may be proposed and made effective from time to time hereafter, to the extent not inconsistent with provisions of this Rate Schedule, shall apply to and are made a part of this Rate Schedule.

RATE SCHEDULE IT  
INTERRUPTIBLE TRANSPORTATION SERVICE

1. AVAILABILITY

- 1.1 This Rate Schedule is available for transportation service by Atlantic Coast Pipeline, LLC (Pipeline) through Pipeline's facilities, without undue discrimination or preference, on behalf of any Person (Customer) or Customer's assignees, where:
- A. Customer has requested interruptible transportation service pursuant to Section 11.1.A of the General Terms and Conditions of Pipeline's Tariff (GT&C); and
  - B. After review and acceptance of such request by Pipeline, Customer has entered into a Service Agreement with Pipeline for transportation service under this Rate Schedule that conforms to the Form of Service Agreement contained in this Tariff; and,
  - C. Customer is willing and able to pay the rate hereunder, or such other rate to which Pipeline and Customer mutually agree in accordance with the GT&C; and
  - D. Customer complies with the provisions of this Rate Schedule and with all other applicable provisions of this Tariff.
- 1.2 Service under this Rate Schedule shall be made available in accordance with the scheduling provisions of the GT&C; provided, however, that Pipeline is not required to provide any requested transportation service for which capacity is not available on the requested Pipeline facilities or that would require the construction or acquisition of any new facilities or the modification or expansion of existing facilities.

2. APPLICABILITY AND CHARACTER OF SERVICE

Service provided under this Rate Schedule is performed under Part 284 of the Commission's regulations. This Rate Schedule shall apply to all Gas transported by Pipeline for Customer under an executed Service Agreement that conforms to the Form of Service Agreement contained in this Tariff or such other agreement as approved pursuant to GT&C Section 34. Pipeline shall receive Gas Tendered for transportation hereunder, at times when system capacity is available, and deliver equivalent quantities in accordance with the executed Service Agreement and the terms of this Tariff. Service under this Rate Schedule shall be rendered on an interruptible basis and shall be subject to nomination, confirmation, scheduling, and curtailment, as provided for in the GT&C. Service under this Rate Schedule shall at all times be subordinate to service under Rate Schedule FT.

3. DAILY QUANTITIES

The executed Service Agreement shall specify an MDTQ (Maximum Daily Transportation Quantity) applicable only to interruptible transportation service under this Rate Schedule.

4. RATE, CHARGES AND FUEL RETENTION

- 4.1 For service under this Rate Schedule, Customer shall pay Pipeline monthly the sum of the following:

- A. A Usage Charge. A charge per Dt for all Gas Delivered during the billing month as set forth in the Statement of Applicable Rates in this Tariff;
  - B. Off System Capacity Charges, as described in GT&C Section 29, if applicable;
  - C. Cost of facilities as described in GT&C Section 22, if applicable; and
  - D. All other applicable rates, charges, surcharges and penalties as set forth in the GT&C.
- 4.2 Each Gas Day, Pipeline shall retain the percentage of receipts set forth in the Statement of Applicable Rates in this tariff as the Transportation Fuel Retention Percentage. Upon Customer's request, Pipeline shall review a transaction specified by Customer to determine whether such transaction causes Pipeline to use Fuel Gas. If the transaction does not cause Pipeline to use Fuel Gas, Pipeline shall not retain Fuel Gas for that transaction and shall post on the Website such transaction's exemption from retention of Fuel Gas component.
- 4.3 The recourse rate for service under this Rate Schedule shall be the maximum rate stated in the Statement of Applicable Rates in this tariff, applicable to this Rate Schedule and Customer shall pay Pipeline such maximum rate per Dt or service rendered except as provided for in Sections 4.4 and 4.5 of this Rate Schedule.
- 4.4 Pipeline may elect to offer to transport at a rate that is below the maximum but no less than the minimum rates set forth in the Statement of Applicable Rates in this Tariff as applicable to this Rate Schedule. However, Pipeline is not obligated to offer to transport Gas at any rates less than the applicable recourse rate.
- 4.5 Notwithstanding the general provisions of Sections 4.1 through 4.3 of this Rate Schedule, as provided by GT&C Section 35, if Pipeline and Customer mutually agree to negotiated rates for service hereunder, such negotiated rates shall apply in lieu of the otherwise applicable charges identified in Sections 4.1.A and 4.2 of this Rate Schedule.
5. RECEIPTS AND DELIVERIES
- 5.1 Customer shall Tender Gas up to Customer's MDTQ, plus applicable fuel, to Pipeline and shall take equivalent quantities from Pipeline, as agreed upon in the executed Service Agreement.
- 5.2 Customer may nominate service at any Point of Receipt or Delivery specified on the most current master point list, as applicable to this Rate Schedule, as published on the Website.
- 5.3 Hourly Flow Rate
- A. In any hour, Customer shall Tender and Pipeline shall Deliver at a uniform flow rate equal to 1/24<sup>th</sup> of the scheduled quantity.
  - B. Notwithstanding the foregoing limitation, on any Gas Day that Pipeline has operational capability, Pipeline may grant Customer the flexibility, for that Gas Day, to vary its hourly Tenders and/or Takes. To request such hourly flexibility, Customer shall submit a request to Pipeline's Transportation Services Department on the form provided on the Website, no more than 48 hours and no less than four hours in advance of flow. Such request shall include

Customer's anticipated hourly flow variations, by hour, for the time period requested. As soon as practicable, but no later than within two hours of the receipt of a request, Pipeline shall respond and inform Customer whether the requested flexibility will be granted. In evaluating Customer's request for hourly variations, Pipeline may consider any relevant factors, including but not limited to Pipeline's current operating conditions, the level of variation requested by all customers, the level of other scheduled services, and Customer's demonstrated ability to Tender and/or Take Gas in a timely fashion.

- C. Pipeline shall retain the right to rescind flexibility granted under this Section 5.3 at any time and enforce the hourly limitation described in this Section 5.3. If such flexibility is rescinded, Pipeline shall give Customer as much notice as is reasonable under the circumstances.

- 5.4 Upon request by Pipeline, any Customer that is an electric power generator or its Agent shall provide a Daily Burn Profile, in the current form of Burn Profile maintained on the Website.

## 6. EQUALIZATION OF RECEIPTS AND DELIVERIES

Deliveries by Pipeline to Customer, hereunder, shall be approximately equal to Tenders to Pipeline from Customer for transportation hereunder, less any Gas retained by Pipeline in providing such transportation service. Pipeline shall have no obligation to Receive Gas if Customer fails to Take equivalent quantities of Gas Tended by Customer, and Pipeline shall have no obligation to Deliver Gas to Customer on any Gas Day that Customer fails to Tender equivalent quantities to Pipeline; provided, however, that this Section 6 shall authorize Pipeline to suspend service only to the extent that Customer's Tenders and Takes are not equivalent.

## 7. GENERAL TERMS AND CONDITIONS

The General Terms and Conditions of Pipeline's effective FERC Gas Tariff, and any revisions thereof that may be proposed and made effective from time to time hereafter, to the extent not inconsistent with the provisions of this Rate Schedule, shall apply to and are made a part of this Rate Schedule, provided, however, if the GT&C are inconsistent with this Rate Schedule, the terms of this Rate Schedule shall apply



GENERAL TERMS AND CONDITIONS  
(GT&C)

GENERAL TERMS AND CONDITIONS  
INDEX TO PROVISIONS

<u>GT&amp;C SECTION</u>	<u>PROVISION</u>	<u>TARIFF RECORD</u>
1	Definitions	40.2
2	Quality	40.3
3	Measurement and Measurement Equipment	40.4
4	Pressure	40.5
5	Billing and Payments	40.6
6	Creditworthiness	40.7
7	Possession of Gas	40.8
8	Warranty of Title	40.9
9	Force Majeure Limitation on Obligation to Provide Service	40.10
10	Curtailment and Interruption	40.11
11	Requesting and Contracting for Service	40.12
12	Nomination and Confirmation of Receipts and Deliveries	40.13
13	Scheduling and Scheduling Priorities	40.14
14	Allocation of Receipts and Deliveries	40.15
15	Capacity Release	40.16
16	Website	40.17
17	Incorporation of NAESB Standards by Reference	40.18
18	Operational Flow Orders	40.19
19	Compliance with Certain FERC Regulations	40.20
20	FERC Annual Charge Adjustment	40.21
21	Miscellaneous Conditions	40.22
22	Construction of Facilities	40.23
23	Incorporation in Rate Schedules and Service Agreements	40.24
24	Descriptive Headings	40.25
25	Pregranted Abandonment and Right of First Refusal	40.26
26	Allocation of Available Firm Capacity	40.27
27	Capacity Reserved for Expansion Projects	40.28
28	Indemnification	40.29
29	Off-System Capacity	40.30
30	Unauthorized Gas	40.31
31	Transportation Fuel Retention Percentage	40.32
32	Discount Terms	40.33
33	Notices	40.34
34	Nonconforming Service Agreements	40.35

GENERAL TERMS AND CONDITIONS  
INDEX TO PROVISIONS

<u>GT&amp;C SECTION</u>	<u>PROVISION</u>	<u>TARIFF RECORD</u>
35	Negotiated Rates	40.36
36	Periodic Rate Adjustments	40.37
37	Overruns and Penalties	40.38
38	Revenue Credits	40.39
39	Reservation Charge Adjustment	40.40
40	Pooling	40.41
41	Foundation/Anchor Shipper Pack Account	40.42
42	Imbalance Resolution Procedures	40.43
43	Operational Sales and Purchases of Natural Gas	40.44

## GENERAL TERMS AND CONDITIONS

### Definitions Section 1

1. Definitions. When used in this Tariff or in any executed Service Agreement for service under a Rate Schedule contained herein, the terms contained in this Section 1 have the meanings described below.
  - 1.1 Definitions.
    - A. "Agent" means an individual or an entity who is authorized to act on behalf of a Customer and to conduct certain transactions on Pipeline's system. In order to designate an agent to act on behalf of Customer, Customer shall submit to Pipeline a completed "Customer Designation of Agency" form which shall be located on Pipeline's Website.
    - B. "Anchor Shipper" means a member of the class of firm transportation service Customers that was established at the inception of the Pipeline based on their commitments to sponsor the initial Pipeline construction project.
    - C. "Business Day" means any day except Saturdays, Sundays and Federal Banking holidays.
    - D. "Capacity Path" means a transportation path established from a Primary Point of Receipt to a Primary Point of Delivery as defined in Section 5.3.C. of Rate Schedule FT.
    - E. "Citygate" means a physical point(s) where (i) a local distribution company (LDC) connects directly with Pipeline's system, (ii) the LDC operates such point as either a single Point of Delivery (or multiple points subject to the limitations set forth in GT&C Section 14.2), (iii) such point(s) is used primarily to serve the retail end-use customers of an LDC, and (iv) such point(s) is used to facilitate scheduling and allocations.
    - F. "Commission" or "FERC" means the Federal Energy Regulatory Commission or any successor regulatory authority having jurisdiction over Pipeline under the Natural Gas Act or supervening legislation.
    - G. "Critical Day" means a Day in which a Critical Notice is issued.
    - H. "Critical Notice" means the system alert issued by Pipeline which provides notice of critical condition(s) on Pipeline's system, as further defined in GT&C Section 16.4.
    - I. "Customer" means a party that executes a Service Agreement with Pipeline for transportation service under any Rate Schedule of Pipeline's Tariff.
    - J. "Dekatherm" or "Dt" means the quantity of heat energy that is equivalent to one million British Thermal Units (MMBtu). One "Dekatherm" or "Dt" of Gas means the quantity of Gas that contains one Dekatherm of heat energy.
    - K. "Deliver" or "Delivery" means the physical delivery, or its equivalent, of Gas by Pipeline at a Point of Delivery to or for the account of a Customer.
    - L. "Designated Replacement Customer" means the Person designated by Releasing Customer prior to the released capacity being posted on the Website.
    - M. "DTI" means Dominion Transmission, Inc.
    - N. "DTI Point of Receipt" means a receipt point located on the DTI system.

- O. "Evergreen Clause" means a contract provision that allows the term of service in a Service Agreement to be extended for an additional term after the expiration of the primary term, if the required notice of termination is not given to the other party to the Service Agreement.
- P. "Forward Path" means the transportation path that is in the same direction of flow in relation to a given Capacity Path.
- Q. "Foundation Shipper" means a member of the class of firm transportation service Customers that was established at the inception of the Pipeline based on their commitments to sponsor the initial Pipeline construction project.
- R. "Gas" means any mixture of hydrocarbons, consisting essentially of methane, and inert or noncombustible gases that are extracted from the subsurface of the earth in their natural state (whether or not subsequently processed) meeting the quality and pressure specifications set forth in GT&C Sections 2 and 4.
- S. "Gas Day" means a 24-hour period that begins at 9 a.m. Central Clock Time (CCT).
- T. "Gas Price Index" means the highest of the following three midpoint prices reported each day as published in "Platts Gas Daily" or, if no longer published, an equivalent index or indicator, which substitution shall be posted on the Website: (i) Transco, zone 5 del.; (ii) Columbia, App.; and (iii) Dominion, South Point.
- U. "GT&C" means the General Terms and Conditions of Pipeline's FERC Gas Tariff, as revised and effective from time to time.
- V. "Interest" or "Interest Rate" means the effective FERC interest rate as prescribed by the Commission under 18 C.F.R. Part 154.501(d).
- W. "Maximum Daily Delivery Obligation" or "MDDO" means the maximum quantity of Gas that Pipeline is obligated to Deliver to Customer at a specific Primary Point of Delivery on any Gas Day, as set forth on Exhibit A to Customer's Service Agreement.
- X. "Maximum Daily Receipt Obligation" or "MDRO" means the maximum quantity of Gas that Pipeline is obligated to Receive for transportation from Customer at a specific Primary Point of Receipt on any Gas Day, as set forth on Exhibit A to Customer's Service Agreement. Pipeline shall also Receive quantities of Gas applicable to the Transportation Fuel Retention Percentages at each specific Point of Receipt.
- Y. "Maximum Daily Transportation Quantity" or "MDTQ" means the maximum daily quantity of Gas that Pipeline is required to transport for Customer or for the account of Customer under a Service Agreement. Customer's MDTQ shall be set forth on Exhibit A to Customer's Service Agreement.
- Z. "Maximum Pack Quantity" or "MPQ" means the maximum quantity that Pipeline is required to retain for an applicable Foundation/Anchor Shipper pursuant to the provisions set forth in GT&C Section 41.
- AA. "Month" means the period beginning at 9 a.m. CCT on the first Gas Day of the calendar month and ending immediately before 9 a.m. CCT on the first Gas Day of the next succeeding calendar month.
- BB. "Non-Critical Day" means a Day in which a Critical Notice is not issued.

- CC. "Notice Service" means a pipeline service which requires the nomination by Customer and the scheduling and confirmation by Pipeline of all volumes to be Received and Delivered under each Service Agreement.
- DD. "Off System Capacity" shall be the meaning set forth in GT&C Section 29.1.
- EE. "Out-of-Cycle" shall be the meaning set forth in GT&C Section 12.1.
- FF. "Person" means an individual or any corporation, joint venture, limited liability company, partnership, association, business trust, or organized group of persons, whether incorporated or not.
- GG. "Pipeline" means Atlantic Coast Pipeline, LLC.
- HH. "Point of Delivery" means a point where Pipeline Delivers Gas to or for the account of Customer, which may include a Citygate.
- II. "Point of Receipt" means the point, including a DTI Point of Receipt, where Pipeline Receives Gas from or for the account of Customer to be transported pursuant to Customer's Service Agreement with Pipeline.
- JJ. "Point Operator" means "the upstream or downstream party at the respective Point of Receipt or Delivery, as described in GT&C Section 14."
- KK. "Primary Point" means the Primary Point of Receipt and/or the Primary Point of Delivery.
- LL. "Primary Point of Delivery" means a Point of Delivery set forth on Exhibit A to Customer's Firm Transportation Rate Schedule Service Agreement.
- MM. "Primary Point of Receipt" means a Point of Receipt set forth on Exhibit A to Customer's Firm Transportation Rate Schedule Service Agreement.
- NN. "Psig" means pounds per square inch gauge.
- OO. "Receipt" or "Receive" means the physical receipt or custody, or its equivalent, of Gas by Pipeline at a Point of Receipt from or for the account of a Customer.
- PP. "Releasing Customer" means a Customer receiving service pursuant to a Service Agreement under a Firm Transportation Rate Schedule of Pipeline's Tariff that releases firm capacity in accordance with Pipeline's capacity release program.
- QQ. "Replacement Customer" means any Person who obtains released capacity in accordance with Pipeline's capacity release program.
- RR. "Reverse Path" means the transportation path that is in the opposite direction of flow in relation to a given Capacity Path.
- SS. "Service Agreement" means the agreement executed by the Customer and Pipeline under any Rate Schedule of Pipeline's Tariff and any exhibits, attachments, and/or amendments thereto.
- TT. "Take" means the physical receipt, or its equivalent, of Gas by (or for the account of) a Customer at a Point of Delivery, including a Citygate, from Pipeline's facilities.

- UU. "Tariff" means Pipeline's FERC Gas Tariff, including but not limited to Tariff Records, Rate Schedules, General Terms & Conditions, and Forms of Service Agreement, as may be revised and effective from time to time.
- VV. "Tender" means the physical delivery, or its equivalent, of Gas to Pipeline at a Point of Receipt by (or for the account of) a Customer.
- WW. "Website" means Pipeline's Internet site through which Pipeline's electronic communication service is accessible. Pipeline's Website consists of two components -- Informational Postings and Customer Activities, which is available to [REDACTED] System Users, as set forth in GT&C Section 16.

**(Name of Pipeline's Customer Activities site will be provided 30-60 days prior to in-service date)**

GENERAL TERMS AND CONDITIONS

Quality  
Section 2

2. QUALITY

2.1 Quality Specifications Applicable to All Deliveries of Gas. All Gas Delivered shall have a total heating value of not less than 980 Btu per cubic foot and not more than 1100 Btu per cubic foot. The Gas Delivered shall be commercially free from objectionable odors, dust or other solid or liquid matters that might interfere with the merchantability of the Gas or cause injury to or interference with proper operation of the lines, regulators, meters or other appliances through which the Gas flows.

2.2 Quality Specifications Applicable To All Receipts of Gas.

All Gas Tendered shall conform to the following specifications:

- A. Hydrogen Sulfide and Total Sulfur: The Gas shall contain no more than three tenths (0.30) grain of hydrogen sulfide per one hundred cubic feet and not more than twenty (20) grains total sulfur or sulfur compounds per one hundred cubic feet.
- B. Carbon Dioxide and Nitrogen: The Gas shall not contain more than three (3) percent by volume of carbon dioxide, not more than four (4) percent by volume nitrogen, and shall not contain more than five (5) percent by volume of combined nonhydrocarbon gases including, but not limited to, carbon dioxide, nitrogen, and oxygen.
- C. Oxygen: The Gas shall not contain in excess of two-tenths of one percent by volume of oxygen and the parties agree to exercise every reasonable effort to keep the Gas completely free of oxygen.
- D. Dust, Gums, and Other Impurities: The Gas shall be free of objectionable odors, dust, gum, dirt, impurities and other solid or liquid or hazardous matter which might interfere with its merchantability or cause injury to or interfere with proper operation of the facilities, lines, regulators, meters or other appliances through which it flows; provided, however that the Gas may contain odorant at the Point of Delivery and, if necessary, may be odorized at an agreed-upon injection point to obtain adequate intensity, as defined at 49 C.F.R. Part 192.625, as amended from time to time, except where Delivery by Pipeline of Gas that has not been odorized is permitted by law, rule or regulation and where Customer has agreed, in writing, that the Gas delivered to Customer shall not be odorized.
- E. Bacteria: Gas Tendered shall not contain any active bacteria or bacterial agent capable of contributing to or causing operational problems. Bacteria or bacterial agents include, but are not limited to, sulfate reducing bacteria (SRB) and acid producing bacteria (APB). If evidence of bacteria is discovered, Customer shall, upon Pipeline's request, test for bacteria or bacterial agents. Such tests shall be conducted on samples taken from the meter run or other appurtenant piping using American Petroleum Institute (API) test method API-RP38 or any other alternative test method acceptable to Pipeline which is then available.
- F. Water and Liquids: Gas Tendered shall be free of water and hydrocarbons in liquid form at the temperature and pressure at which the Gas is Tendered. The Gas shall not contain more than seven pounds of water in vapor phase per one million cubic feet and, in no case, shall the Gas contain any hydrocarbons that might condense to free liquids in Pipeline's system under normal operating conditions.



- G. The Gas Tendered shall be at a temperature consistent with GT&C Section 2.2.F and in no event shall the temperature be greater than 120 degrees Fahrenheit or less than 40 degrees Fahrenheit.
- H. The BTU limit for Gas Tendered shall be not less than 980 Btu per cubic foot and not more than 1100 Btu per cubic foot.

2.3 Processing.

- A. Pipeline may remove moisture, impurities, helium, natural gasoline, butane, propane, and any other hydrocarbons except methane prior to Delivery of Gas. Pipeline may subject, or permit the subjection of, the Gas to compression, cooling, cleaning and other processes.
- B. At all times, any and all liquid or liquefiable hydrocarbons, or any other constituent or by-product recovered from the Gas by Pipeline, after Receipt shall be and remain the exclusive property of Pipeline.

2.4 Waiver. Nothing in this Section 2 shall limit Pipeline's right, to be exercised on a not unduly discriminatory basis, to waive any quality specifications set forth in this Section 2, where the acceptance of non-conforming Gas will not, in the reasonable judgment of Pipeline, adversely impact Pipeline's facilities or operations or its ability to Deliver Gas in conformance to GT&C Section 2.1.

2.5 Non-Conformance. If gas Tendered by Customer fails at any time to conform to any of these quality provisions, then Pipeline shall notify Customer, and Pipeline may, at its option, refuse to accept such Gas pending correction. In such event Customer shall not be relieved of its obligation to pay any reservation charges under any firm transportation Rate Schedule. Upon Customer's failure promptly to remedy any deficiency in quality as specified in GT&C Sections 2.1 or 2.2, then Pipeline at its option, on a not unduly discriminatory basis, may Receive such Gas and may make changes necessary to bring such Gas into conformity with such specifications, and Customer shall reimburse Pipeline for any reasonable expense incurred by it in effecting such changes.

GENERAL TERMS AND CONDITIONS  
Measurement and Measurement Equipment  
Section 3

3. MEASUREMENT AND MEASUREMENT EQUIPMENT

- 3.1 Measurement Unit. The unit of energy measurement for all Gas deliverable hereunder shall be one Dt, measured as provided in this Section 3.
- 3.2 Quantity and Heating Value Determination. The quantity and heating value of Gas Received or Delivered by Pipeline shall be determined as follows:
- A. The unit of volume for the purpose of measurement shall be one cubic foot of Gas at 60 degrees Fahrenheit and dry and an absolute pressure of 14.73 pounds per square inch.
  - B. The average absolute atmospheric pressure shall be assumed to be fourteen and four-tenths pounds to the square inch (14.4 psi), irrespective of actual elevation or location of the Point of Delivery above sea level or variations in such atmospheric pressure from time to time.
  - C. The temperature of the Gas flowing through meters, when necessary for computing Gas quantities, shall be determined for any Gas Day by use of instantaneous temperature measurements applied to measuring equipment, by use of a properly installed temperature transmitter, or by assuming 60 degrees Fahrenheit for low volume meters. All electronic flow measurement shall meet current American Gas Association (AGA) recommendations and practices.
  - D. The specific gravity and quality of the Gas shall be determined for any one Gas Day: by use of Gas Chromatography, or by approved sampling and analysis methods with such reasonable frequency as is found expedient in practice. The method of test used to determine specific gravity and Gas quality, in the absence of continuous recording or instantaneous devices, shall be by use of an approved gravity instrument or fractional analysis.
  - E. The deviation of Gas from Ideal Gas Laws shall be calculated according to the recommendations of the AGA Transmission Measurement Committee Report No. 8 "Compressibility Factor of Natural Gas and Related Hydrocarbon Gases," (1994) as may be amended or modified from time to time, or by other mutually agreed upon methods.
    - 1. Turbine and displacement meters shall be calculated according to AGA Report No. 7 (2006) as may be amended or modified from time to time, or by other mutually agreed upon methods.
    - 2. Ultrasonic meters shall be calculated according to AGA Report No. 9 (2007), as may be amended or modified from time to time, or by other mutually agreed upon methods.
    - 3. Orifice meters shall be calculated according to AGA Report No. 3 (2013) as may be amended from time to time, or by other mutually agreed upon methods.
    - 4. Coriolis meters shall be calculated according to AGA Report No. 11 (2013) as may be amended from time to time, or by other mutually agreed upon methods.
  - F. The total heating value shall be determined by Gas Chromatography or by methods outlined in AGA Transmission Measurement Committee Report No. 5 "Natural Gas Energy Measurement" (2009) as may be amended or modified from time to time, or by other mutually agreed upon methods.

- G. The Dt delivered shall be calculated by multiplying the Mcf delivered by the total heating value (BTU per cubic foot) and dividing the result by 1,000.

3.3 Ownership and Operation of Measurement Equipment.

- A. Unless otherwise agreed in writing, Pipeline shall install at Customer's expense, and shall be responsible for the required measuring station including all necessary appurtenances, at or near Points of Delivery or Receipt. The quantity of Gas Delivered hereunder shall be measured in accordance with the published recommendations of the AGA as amended or superseded from time to time. Pipeline shall install at its own expense and it shall own, operate, and maintain meters at its compressor stations to measure Gas used at such facilities. Measurement at compressor stations will be made using meter technologies approved by the AGA.
- B. Pipeline, in its reasonable discretion and on a not unduly discriminatory basis, may install (or cause to be installed) and operate flow control devices to regulate the flow of Gas on Pipeline's facilities and at Points of Receipt and Delivery. Customer's control devices shall not be located in a position that will impair the ability for Pipeline to operate flow control devices and regulate pressure.

3.4 Check Measurement. Customer may install, maintain and operate, at its own expense, check measuring equipment, provided that such equipment shall not to interfere with the operation of Pipeline's measuring equipment at or near the Points of Delivery.

3.5 Access to Tests and Records. Pipeline and Customer shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done in connection with the other's equipment used in measuring or checking the measurement of Gas hereunder. The records from such equipment shall remain the property of their operator, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within thirty days after receipt thereof.

3.6 Accuracy. All installations of measuring equipment applying to or affecting Gas transported hereunder shall be made in such manner as to permit an accurate determination of the quantity of Gas and ready verification of the accuracy of measurement. Care shall be exercised in the installation, maintenance and operation of pressure regulating equipment so as to prevent any inaccuracy in the determination of the quantity of Gas Received or Delivered hereunder.

3.7 Failure of Meters. In the event a meter is out of service or registering inaccurately, the quantity of Gas Received or Delivered hereunder shall be determined:

- A. By using the registration of any check meter or meters installed in accordance with industry practice, and accurately registering; or in the absence of A:
- B. By correcting the error if the percentage of error is ascertainable by calibration test or mathematical calculation; or in the absence of A & B then:
- C. By estimating the quantity of Gas Received or Delivered during periods under similar conditions when the meter was registering..

3.8 Meter Testing. Pipeline shall verify the accuracy of its measuring equipment at reasonable intervals, and, if requested, in the presence of representatives of Customer, but Pipeline shall not be required to verify the accuracy of equipment more frequently than once in any 90-day period. In the event either party notifies the other that it desires a special test of any measuring

equipment, the parties shall cooperate to secure a prompt verification, at the expense of the requesting party.

- 3.9 Meter Correction. If, upon test, any measuring equipment is found to be in error by not more than two percent, then previous recordings of such equipment shall be considered accurate in computing Receipts or Deliveries hereunder, but such equipment shall be adjusted at once to record correctly. If, upon test, any measuring equipment is found to be inaccurate by an amount exceeding two percent at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings of such equipment shall be corrected to zero error for the period that is definitely known; where the period is not known definitely or agreed upon, such correction shall be for a period of one-half the time elapsed since the date of the last test, not to exceed a correction period of six months.
- 3.10 Metering Record Preservation. Pipeline shall preserve for a period of at least three years all test data, charts and other similar records.
- 3.11 Pipeline shall process measurement data corrections within six months of the production month, with a three-month rebuttal period. This provision shall not apply in the case of deliberate omission or misrepresentation or mutual mistake of fact. The parties' other statutory or contractual rights shall not otherwise be diminished by this provision.
- 3.12 Electronic Gas Measurement. Pipeline shall have the right to require and may install or cause to be installed electronic Gas measurement and control equipment at all points.
- A. Accuracy. Where electronic Gas measurement is used, the system shall use instruments designed to provide overall measurement accuracy of +/-1 percent of flow, taking into account all the sources of error, including calibrated span of instruments, linearity, hysteresis, repeatability, ambient temperature, stability, vibration, and power supply fluctuations.
- B. Computation. The electronic Gas measurement equipment shall, at a minimum, perform flow calculations per AGA-3, AGA-5, AGA-7, AGA-8, AGA-9, AGA-10, and AGA-11 requirements, as appropriate. As the flow calculation methods are revised from time to time, new releases shall be implemented within twelve months from the release date.
- C. Calibration and Testing. All test and calibration equipment shall be certified and maintained pursuant to Pipeline's published standard operating procedures, as revised from time to time.
- 3.13 New Measurement Methods. If at any time a new method or technique is developed with respect to Gas measurement or the determination of the factors used in such Gas measurement, such new method or technique may be used by Pipeline provided that it is generally accepted within the industry.
- 3.14 Pressure Protection. Pressure regulation, pressure override and pressure valve or other pressure or flow limiting devices installed and operated by Pipeline at the measuring station or at or near each interconnection of Pipeline's facilities with facilities of third parties shall only be for the purpose of operation and protection of Pipeline's system, including its measurement equipment. In no event shall Pipeline be responsible for over-pressure protection on Customer's facilities.
- 3.15 Measurement by Third Parties. If any measuring equipment is owned or operated by a party other than Pipeline, such measuring equipment and measurement shall be operated either in a manner consistent with the operator's own tariff, in a manner consistent with the terms of this Section 3, or as agreed to by Pipeline on a not unduly discriminatory basis. Pipeline shall specify and approve the measuring equipment and facility design for any third party interconnects.

Pipeline shall have the option to operate and maintain third party measurement that is owned by a party other than Pipeline.

GENERAL TERMS AND CONDITIONS

Pressure  
Section 4

4. PRESSURE

- 4.1 Receipt Pressure Obligations. Customer shall Tender or cause to be Tendered Gas to Pipeline at pressures sufficient to enter Pipeline's facilities at such working pressures maintained by Pipeline at the Point of Receipt, unless a minimum or maximum pressure is otherwise agreed to in the executed Service Agreement; provided, however, that such pressure shall not exceed the maximum allowable operating pressure (MAOP) at such Point of Receipt.
- 4.2 Delivery Pressure Obligations. Pipeline shall Deliver Gas hereunder to Customer or for Customer's account at the Point of Delivery at the prevailing line pressure in Pipeline's facilities as such prevailing line pressure may vary from time to time, unless a minimum or maximum pressure is otherwise agreed to in the executed Service Agreement.

GENERAL TERMS AND CONDITIONS  
Billing and Payments  
Section 5

5. BILLING AND PAYMENTS

- 5.1 Pipeline shall render bills and imbalance statements on or before the ninth Business Day of each month for all services. Such billing and imbalance statements may be transmitted electronically and shall be calculated consistent with the measurement and rate provisions set forth in this Tariff, and shall include credits as described in Section 4.6 of the Firm Transportation Rate Schedule.
- 5.2 Both Pipeline and Customer shall have the right to examine, at reasonable times, books, records and charts of the other to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of the executed Service Agreement or this Tariff.
- 5.3 When Pipeline is providing service to Customer under more than one Service Agreement or when Pipeline is also Receiving or Delivering Gas for other customers at the same point and no operational balancing agreement is in effect to ensure that scheduled quantities and physically Received or Delivered quantities are equal, then Pipeline shall determine Customer's monthly bill based upon the predetermined allocation that is in effect for such point, or, if no predetermined allocation is in effect, then Pipeline shall prorate any difference between physical quantities and scheduled quantities among all nominations Received or Delivered at such point.
- 5.4 Customer agrees to pay Pipeline for all services hereunder by wire transfer of federal funds as directed by Pipeline from time to time in writing to Customer unless Pipeline and Customer mutually agree upon an alternative payment method that will result in timely receipt of payment by Pipeline. All payments shall include reference to the related invoice numbers, and are due within ten days of the date Pipeline renders its bill, except when such day is a Saturday, Sunday or Federal bank holiday, in which case payment is due the following Business Day.
- 5.5 Failure to Make Full Payment.
- A. If Pipeline fails to receive full payment of any portion of any bill for services hereunder, as herein provided when such amount is due, Pipeline shall charge Interest each month on the unpaid portion of the bill, from the due date until the date that full payment is received by Pipeline. If Customer makes a partial payment it must submit supporting documentation and Pipeline shall apply the partial payment in accordance with the details in the supporting documentation. If Customer's payment differs from the invoiced amount, a detailed description of the remittance must be provided with the payment. The statement of account shall report outstanding balances by invoice.
- B. If Customer fails to pay for services, Pipeline, in addition to any other remedy it may have hereunder, shall notify Customer in writing of its nonpayment, allowing Customer 15 days to make payment of any unpaid amount and to provide written assurances satisfactory to Pipeline that such non-payment will not recur. If after 15 days Customer has not yet paid Pipeline or has not provided written assurances as required by GT&C Section 6.5, then Pipeline shall be authorized to suspend service. In addition to suspension, Pipeline may terminate Customer's Service Agreement if Customer fails to remedy a delinquency in payment. Any such termination requires 30 days' prior notice to Customer and to the Commission. To avoid termination, Customer must remedy the deficiency within this notice period. Such notice may be provided contemporaneously with the initial notice of nonpayment.

- C. If Customer in good faith disputes the amount of a bill or any part thereof, Customer shall provide written notice of its dispute to Pipeline, including documentation identifying the basis of dispute and shall either: (1) pay the full amount of such bill, subject to refund under the provisions of GT&C Section 5.6, or (2) pay such amount as it concedes to be correct, and at any time thereafter within ten days of a demand made by Pipeline, shall furnish good and sufficient surety bond from a surety on the U.S. Treasury approved list guaranteeing payment to Pipeline of the amount finally determined to be due. If, under option (2) of the immediately preceding sentence, Customer posts a surety bond and the amount finally determined to be due is that amount that Customer asserted in its written notice of its dispute as being the correct amount, then Pipeline shall reimburse Customer for the premium paid by Customer for the surety bond. Upon (1) payment of such bill in full in the manner herein described or (2) the furnishing of bond by Customer (unless and until default is made in the conditions of such bond), Pipeline shall not be entitled to suspend service pending a final determination of the amount due. If Customer provides notice of its dispute and fails to (1) pay all or any part of such bill or (2) furnish a bond, then Pipeline may take action to suspend service. A final determination of the amount due may be reached; by agreement between the parties, by arbitration, or by final non-appealable judgment of a court.
- D. Notwithstanding any remedies that may otherwise be available, Pipeline and Customer may resolve disputes through use of a complaint proceeding at the FERC pursuant to 18 C.F.R Section 385.206.
- 5.6 Over or Under Charges. If within six months from the date of the initial invoice (and, if necessary, an additional three-month rebuttal period), it is found that Customer has been over- or under-charged in any form whatsoever under the provisions hereof, and Customer shall have actually paid the bills containing such over- or under-charge, then within 30 days after the final determination thereof, as defined in GT&C Section 5.5, Pipeline shall refund the amount of any such over-charge with Interest from the date of payment until the date that full refund is made by Pipeline, and Customer shall pay the amount of any under-charge but without Interest.
- 5.7 If there is a delay in the rendition of a bill, it does not excuse Customer from its obligation to pay for services provided by Pipeline under this Tariff. If rendition of a bill to Customer by Pipeline is delayed after the ninth Business Day of the month, then the time of payment shall be extended accordingly, unless Customer is responsible for such delay.



GENERAL TERMS AND CONDITIONS  
Creditworthiness  
Section 6

6. CREDITWORTHINESS

6.1 Pipeline is not required to provide service under any Rate Schedule to any Customer that fails to meet Pipeline's standards for creditworthiness as determined by Section 6.2 below. In this regard, upon request by Pipeline, Customer shall provide, within three Business Days, the information requested by Pipeline which may include all or part of the following:

- A. Current audited financial statements (to include a balance sheet, income statement and statement of cash flow), annual reports, most recent filed statements with the Securities and Exchange Commission or such other publicly available information, a list of all corporate affiliates, parent companies and subsidiaries and any reports from credit, reporting, and bond rating agencies that are publicly available. If audited financial statements are not available, then Customer shall provide unaudited financial statements along with an attestation by its chief financial officer that the information shown in the unaudited statements is true, correct and a fair representation of Customer's financial condition
- B. A bank reference and at least three trade references;
- C. A written attestation from Customer that it is not operating under any chapter of the bankruptcy laws and is not subject to liquidation or debt reduction procedures under state laws, such as an assignment for the benefit of creditors, or any informal creditor's committee agreement. An exception can be made for a Customer who is a debtor in possession operating under Chapter XI of the Federal Bankruptcy Act but only with adequate assurances that the transportation billing will be paid promptly as cost of administration under the federal court's jurisdiction; and
- D. A written attestation from Customer that no significant collection lawsuits or judgments are outstanding that would seriously reflect upon the business entity's ability to remain solvent.
- E. Such other information as may be mutually agreed to by Pipeline and Customer.

6.2 Evaluation Criteria

- A. Pipeline shall apply consistent evaluation practices to all similarly situated Customers to determine the Customer's financial ability to satisfy the payment obligations due to Pipeline over the term of the requested service agreement. A Customer will be deemed creditworthy if (i) its long-term unsecured debt securities are rated at least BBB by Standard & Poor's Corporation (S&P) or Baa2 by Moody's Investor Service (Moody's), (ii) Customer's short term and long term outlook opinion is Stable or Positive from S&P or Moody's and (iii) the net present value of the sum of reservation fees, utilization fees and any other associated fees, for the contract term is less than 15% of Customer's tangible net worth. As used herein, tangible net worth shall be the sum of the capital stock, paid-in capital in excess of par or stated value, and other free and clear equity reserve accounts less goodwill, parent's unamortized loan costs or restructuring costs and other intangible assets. In the event Customer is rated by multiple agencies, the low rating applies. A Customer that is not rated by S&P or Moody's may use its parent's rating if a guarantee acceptable to Pipeline is provided. If the Customer has multiple Service Agreements with Pipeline the total of all such Service Agreements shall be considered in determining creditworthiness.
- B. If a Customer is determined to be not-creditworthy, upon request by the Customer, Pipeline shall provide the Customer a written explanation of its determination within five days of such determination.

- 6.3 If Customer has an ongoing business relationship with Pipeline, no uncontested delinquent balances should be outstanding for bills previously rendered by Pipeline and Customer must have paid its past due accounts according to the established terms and only made deductions or withheld payment for claims authorized by the Customer's Service Agreement or this Tariff.
- 6.4 Customer shall furnish Pipeline at least annually, and at such other time as is requested by Pipeline, updated credit information as specified in GT&C Section 6.1 to enable Pipeline to perform an updated credit appraisal. Pipeline may request such information at any time if Pipeline is not reasonably satisfied with Customer's creditworthiness or ability to pay based on information available to Pipeline at that time. Pipeline may re-evaluate Customer's creditworthiness at any time, including, but not limited to the following circumstances: the insolvency of Customer, the lowering of Customer's credit rating, an adverse change in Customer's payment practices, a reorganization of Customer's business structure, an assignment of Customer's contracts, or a request by Customer for increased service.
- 6.5 In the event Customer becomes insolvent or loses its creditworthiness status subsequent to the commencement of service on Pipeline's system, Pipeline will notify Customer via e-mail and facsimile stating that the Customer has lost its creditworthiness status. If Customer is a Replacement Customer, simultaneous notice will be sent to the Releasing Customer via e-mail and facsimile. Within ten days of such notice, if requested by the Customer, Pipeline will provide the non-creditworthy Customer a detailed written explanation of the basis for its loss of credit and provide a recourse for Customer to challenge such determination. Regardless of whether Customer is insolvent, has lost its creditworthy status or does not desire to continue service with Pipeline, Customer shall continue to be liable for all charges due under its service agreement and associated rate schedule. If the Customer desires to continue service with Pipeline, Pipeline will require the Customer to pay any outstanding balances due Pipeline for services rendered and provide adequate credit assurance in one of the forms set forth below. The credit assurance elected must equal the value of three months of payments under Customer's service agreement(s) with Pipeline, with one month's payment to be provided to Pipeline within five Business Days from the day Pipeline notifies the Customer that Customer has lost its creditworthiness status, and the remainder of the payments, an amount necessary to equal the value of three months of payments, to be provided within thirty (30) days from the day Pipeline notified the Customer that the customer has lost its creditworthiness status. The credit assurance may take one of the following forms, at Customer's election:
- A. an irrevocable letter of credit to Pipeline, satisfactory to Pipeline, verifying the Customer's creditworthiness;
  - B. an estimate of its transportation requirements in advance and a prepayment in advance for this service on Pipeline's system into an escrow account established by Customer and acceptable to Pipeline (which shall be considered as security and not advance payments for services);
  - C. a grant to Pipeline of a security interest in collateral, the value of which is mutually agreed upon by Pipeline and Customer;
  - D. a guarantee by another person or entity which satisfies Pipeline's credit appraisal; or
  - E. other mutually agreeable forms and value of credit assurances.

Unless otherwise agreed, the credit assurances must at all times maintain a value specified above equal to the highest estimated charges during the term of service agreement.

If Customer fails to pay any outstanding balances and/or provide the credit assurance within the specified time period, Pipeline may immediately suspend service to Customer without waiver of any

rights Pipeline may otherwise have under any and all service agreements with Customer including, but not limited to, the right to sue Customer for unmitigated damages resulting from Customer's breach of contract. Pipeline will not bill Customer for service during the period of suspension of service.

To the extent that Pipeline suspends or terminates the service of a Replacement Customer, Pipeline shall provide simultaneous notice to the Replacement Customer and Releasing Customer via e-mail and facsimile.

- 6.6 Termination. If Customer fails to furnish security under GT&C Section 6.5, Pipeline may, upon 30 days prior written notice to the Customer and the Commission, terminate service. In no event will a Service Agreement be terminated with less than 30 days notice. Termination of the Service Agreement pursuant to this Section shall not waive any other rights or remedies Pipeline may have.
- 6.7 Reevaluation. Customer shall have the right to request that its credit status be reevaluated by Pipeline at any time. Within five Business Days of such request, Pipeline shall provide a written response to Customer. If, as a result of the reevaluation, the security requirements are terminated and the Customer previously had provided Pipeline a prepayment as collateral, Pipeline shall provide notice to the applicable escrow agent.
- 6.8 Bankruptcy Code. Pipeline may not take any action under this Section 6 which conflicts with any order of the U.S. Bankruptcy Court.

GENERAL TERMS AND CONDITIONS  
Possession of Gas  
Section 7

7. POSSESSION OF GAS

- 7.1 As between Pipeline and Customer, Customer shall be deemed to control and possess Gas prior to Receipt and after Delivery. Subject to the provisions of GT&C Section 28.3, Pipeline shall have no responsibility on account of anything that may be done, happen or arise with respect to Gas either before its Receipt, or after its Delivery.
- 7.2 As between Pipeline and Customer, Pipeline shall be deemed to control and possess Gas upon Receipt, until such Gas is Delivered and Pipeline shall indemnify and hold Customer harmless from any damage or injuries caused thereby, except for loss of Gas or damages and injuries caused by the sole negligence of Customer.

GENERAL TERMS AND CONDITIONS  
Warranty of Title  
Section 8

8. WARRANTY OF TITLE

- 8.1 Customer warrants that Customer or its principal will at the time of Receipt have good and merchantable title to Tender Gas, free and clear of all liens, encumbrances and claims whatsoever.
- 8.2 If Pipeline learns that Customer's title or right to Tender Gas is subject to a claim or legal action, Customer shall not qualify for, and shall be ineligible to continue to receive, service until such time as Customer has the title or right to Tender Gas; provided, however, Pipeline shall allow Customer to qualify for or continue receiving service under this Tariff if Customer furnishes a bond satisfactory to Pipeline or otherwise satisfies Pipeline of its right to Tender. Title to the Gas Received by Pipeline shall not pass to Pipeline except that title to Gas retained in kind by Pipeline as Customer's Transportation Fuel Retention Percentage shall pass to Pipeline at the Point(s) of Receipt.

GENERAL TERMS AND CONDITIONS  
Force Majeure  
Section 9

9. FORCE MAJEURE

- 9.1 In the event of either party being rendered unable in whole or in part by a Force Majeure to carry out its obligations, other than the obligation to make payment of amounts accrued and due hereunder at the time thereof, it is agreed that on such party's giving notice and full particulars of such Force Majeure to the other party by written notice, electronic transmission, telephone, Pipeline's information system, or other means, within a reasonable time after the occurrence of the cause relied on, the obligations of the party giving such notice, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied with all reasonable dispatch. Neither party shall be liable in damages to the other for any act, omission, or circumstances occasioned by or in consequence of Force Majeure. Provided, however, the party claiming existence of Force Majeure shall use all reasonable efforts to remedy any situation that may interfere with the performance of its obligations hereunder, and the existence of Force Majeure shall not relieve a party from its obligations to make payments as then due or becoming due under a Service Agreement, including the obligation to pay reservation or other fixed charges during the period of Force Majeure, except as provided in GT&C Section 10.
- 9.2 The term "Force Majeure" or "Force Majeure Event" as employed herein shall include, but not be limited to, acts of God, strikes (the settlement of which shall be at the discretion of the affected party's management), lockouts or other industrial disturbances, acts of the public enemy, acts of terrorism, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, inclement weather that necessitates extraordinary measures and expense to maintain operations, arrests and priority limitation or restraining orders of any kind of the government of the United States or a State or of any civil or military entity, acts of civil disobedience, civil or military disturbances, explosions, breakage, accidents or unscheduled emergency repairs to machinery or lines or pipe, freezing of wells or lines or pipe, inability to obtain or unavoidable delay in obtaining material and equipment, and any other causes, whether of the kind herein enumerated or otherwise, not reasonably within the control of the party claiming suspension, which by due diligence such party is unable to overcome. A Force Majeure Event shall not include a lack of finances.

GENERAL TERMS AND CONDITIONS  
Curtailment and Interruption  
Section 10

10. CURTAILMENT AND INTERRUPTION

10.1 If, due to Force Majeure conditions, as defined in GT&C Section 9.2, or due to necessary but unplanned modifications, tests or repairs to Pipeline's system, Pipeline is unable to Receive or Deliver Gas or customers are unable to Tender or Take Gas at scheduled points, then Pipeline, upon providing as much notice to Customers as is reasonable under all of the circumstances, shall have the right to order immediate reduction of its customers' transportation entitlements to the extent necessary depending upon the type and location of the occurrence. Reduction of service under this Section 10 shall not be permitted for routine maintenance during normal periods of peak demand, where such maintenance was required due to Pipeline's gross negligence, undue discrimination, or willful misconduct.

10.2 Reductions of service under this Section 10 shall be performed in accordance with the following procedures:

A. In cases where Pipeline's ability to Receive, transport, or Deliver is affected, Pipeline shall first order interruption or, where sufficient transportation supplies are available, allocation of transportation quantities to customers based upon scheduled nominations, in the following order:

1. Scheduled service pursuant to GT&C Section 13.3.G.
2. Scheduled service pursuant to GT&C Section 13.3.F.
3. Scheduled service under all Firm Transportation Service Agreements pursuant to GT&C Sections 13.3.A through E.

In the event that sufficient capacity is available to provide partial service in any of the above curtailment categories, then Pipeline shall allocate available capacity within each curtailment category on a pro rata basis.

B. Where Pipeline's ability to render service is impaired in a particular segment of Pipeline's system, then interruption or allocation shall be imposed only in that segment of Pipeline's system where its capability has been impaired.

C. In the event of an allocation under GT&C Section 10.2.A, each Customer's allocated entitlement shall be utilized for purposes of calculating unauthorized overruns in accordance with GT&C Section 37.2. Pipeline shall provide Customer notice of such reduced contract quantity entitlement by telephone, facsimile, or e-mail. Such notice shall be confirmed in writing as soon as reasonably possible.

D. In cases where Customer is unable to Tender Gas, Customer's entitlement shall be reduced to the quantity Tended, as independently verified and confirmed by Pipeline based on the best information available to Pipeline. If, however, Pipeline is unable to determine which customers are responsible for deficient Tenders at a particular Point of Receipt, Pipeline shall reduce the entitlement of all customers Tendering Gas at such point on a pro-rata basis based upon daily nominations. In the event of an occurrence under this Section 10.2.D, each Customer's reduced entitlement shall be utilized for purposes of the overrun provisions of GT&C Section 37.2.

- 10.3 Reverse Path Transactions. Reverse Path transportation service scheduled by Customer pursuant to Section 5.2.A of any Firm Transportation Rate Schedule shall be reduced or interrupted on a case-by-case basis on a not unduly discriminatory basis depending upon Pipeline's system operations.
- 10.4 Curtailment Compliance. Without regard to any other remedy provided by law or by the provisions hereof, Pipeline shall be entitled to seek an order from the Commission or any other appropriate court or governmental agency requiring compliance with curtailment or interruption ordered by Pipeline in compliance with this Section 10 or any directive from any governmental authority having jurisdiction in the premises.
- 10.5 Situation Reports and Notices:
- A. Pipeline shall provide Customer with notice of curtailment or interruption pursuant to this Section 10 using the procedures described in GT&C Section 18.1.D.2.
  - B. Customer shall have the responsibility to inform its suppliers, other transporters and all others involved in the transaction, as to any curtailment or interruption.
- 10.6 Routine Maintenance. Pipeline shall have the right to interrupt, or discontinue service in whole or in part on all or a portion of its system from time to time to perform routine repair and maintenance on Pipeline's system as necessary to maintain the operational capability on Pipeline's system or to comply with applicable regulatory requirements. Pipeline shall exercise due diligence to schedule routine repair and maintenance so as to minimize disruptions of service to customers and shall provide reasonable notice of the same. In any such disruption, quantities of Gas deliverable on a firm basis shall take priority over quantities of Gas deliverable by Pipeline to Customer on an interruptible basis. Customer is entitled to receive a reservation charge adjustment, as provided for in GT&C Section 39, for any reduction in service.
- A. No later than each March 31, Pipeline shall provide a projection of routine maintenance scheduled for the upcoming year, from April 1 through March 31. Pipeline may in good faith modify the projected schedule in any manner, at any time, and will provide notice of any such change in the schedule as soon as possible. Pipeline will have no liability if actual maintenance does not conform to the projected annual schedule.
  - B. By the 20th of each month, Pipeline shall provide a schedule of maintenance for the next month, by posting it on the Website. Such notice shall include an estimate of the duration of the maintenance. Pipeline shall have no liability if it must modify the schedule or perform additional unscheduled maintenance during the month.



GENERAL TERMS AND CONDITIONS  
Requesting and Contracting for Service  
Section 11

11. REQUESTING AND CONTRACTING FOR SERVICE

11.1 Requests for Firm or Interruptible Transportation.

- A. All potential Customers requesting new transportation under any applicable Rate Schedule contained in this Tariff must make a valid request for such service pursuant to the terms of this Section 11, and/or GT&C Sections 25 or 26, or enter into a Precedent Agreement with Pipeline for service on expansion facilities.
- B. The following requests by Customer shall be deemed "new transportation service":
  - 1. Requests for Pipeline to commence transportation service for Customer under any Firm Transportation Rate Schedule or Interruptible Transportation Rate Schedule.
  - 2. Requests for an increase in Customer's MDTQ, or its MDRO or MDDO at any point.
  - 3. Requests by Customer to increase its entitlement at any point, or to add a new or change a Primary Point of Receipt or Delivery under an existing Firm Transportation Service Agreement, , except for a request to change to a Point of Receipt or Delivery that is within Customer's Capacity Path .
  - 4. Requests by Customer to extend or renew a Service Agreement not eligible for a right of first refusal (ROFR) as described in GT&C Section 25 that has or will expire and terminate by its own terms.
- C. The following requests shall not be deemed "new transportation service":
  - 1. Requests by Customer to extend the term of a Service Agreement that contains an "Evergreen Clause" or that otherwise provides for automatic renewal or extension of service, or that is eligible for ROFR protections as described in GT&C Section 25.
  - 2. Requests by Customer to amend its Service Agreement in respects not identified in GT&C Section 11.1.B.
- D. A valid request for transportation service shall include the following information:
  - 1. The name, address, and telephone number of the Person requesting service and the Person to contact for additional information;
  - 2. The type of service requested, whether firm or interruptible;
  - 3. The facilities identified in the Preliminary Statement, on which service is requested;
  - 4. The requested MDTQ;
  - 5. The Primary Point(s) of Receipt into Pipeline's system, stated with such specificity that Pipeline may identify them, and the maximum daily quantities at each such point (the sum of which may not exceed the requested MDTQ unless Pipeline otherwise agrees);

6. The Primary Point(s) of Delivery from Pipeline's system, stated with such specificity that Pipeline may identify them, and the maximum daily quantity at each such point (the sum of which may not exceed the requested MDTQ unless Pipeline otherwise agrees);
  7. The requested Capacity Path;
  8. The dates that service is requested to commence and terminate;
  9. Certification by the Person requesting service that it or its principal will have title to Tender Gas to Pipeline for service and that all necessary arrangements on upstream and/or downstream transporters will be made;
  10. The specific affiliation of the Person requesting service with Pipeline, and the extent of Pipeline's affiliation, if any, with the Person to be provided service;
  11. The identity of the Person requesting service, including whether such Person is a local distribution company, interstate pipeline, intrastate pipeline, end-user, producer, or marketer; and
  12. Whether the Person requesting service authorizes Pipeline to consider its request as a binding offer to contract pursuant to GT&C Sections 25 and/or 26, in the event that firm capacity becomes available, and the term and rate to be applied in considering such offer.
- E. Valid requests for service shall be made by submitting to Pipeline a fully completed request for service form as published on the Website and by complying with all provisions of this Section 11. The completed request for service shall be forwarded to Pipeline through the Website or such other method approved by Pipeline. All valid requests for transportation service under Rate Schedules in Pipeline's Tariff shall be logged, in the order received, in a firm-service queue maintained in Pipeline's main office, open to public inspection.
- F. Points of Receipt and Delivery
1. Requests for interruptible transportation service shall be deemed to include Points of Receipt and Delivery specified on the most current master point list applicable to the Rate Schedule for Customer's service unless otherwise mutually agreed.
  2. In reviewing requests for firm transportation service, Pipeline shall evaluate the capacity available at all requested Primary Points and on the Capacity Path before executing a Service Agreement for the service requested. If Pipeline determines that capacity does not exist at one or more of the Primary Points or on the Capacity Path sought by Customer, Pipeline may deny or recommend modifications to Customer's request.
- G. Customer's Service Agreement shall not be altered by any request by Customer for new service under this Section until such request is approved by Pipeline and a new Service Agreement or Exhibit A to the Service Agreement is executed by both Customer and Pipeline.

## 11.2 Contracting for Service

- A. Upon approval of a valid request for interruptible service, Pipeline shall offer the requesting Customer a contract for service that conforms to the Form of Service Agreement contained in Pipeline's Tariff. Customer shall execute the Service Agreement and return it to Pipeline within ten Business Days from the date Pipeline sends the Service Agreement to Customer.

If Customer fails to return an executed Service Agreement within the deadline, Pipeline's offer shall be withdrawn, and Customer's request shall be deemed denied.

- B. Requests for firm service shall be processed in accordance with GT&C Sections 25 and/or 26, including the provisions of GT&C Section 26.5 regarding pre-arranged deals and Contingent Service Agreements.
- 11.3 A Customer request to add a new Primary Point or change an existing Primary Point under a firm Service Agreement may not affect the priority of existing customers using such point as a Primary Point. Pipeline shall be entitled to reasonably reserve point capacity associated with unsold segment capacity. Therefore, Pipeline shall not be obligated to add a new Primary Point or change an existing Primary Point if such point is associated with unsold segment capacity. A Customer may add or change a Primary Point only if the requested point is within Customer's Capacity Path entitlements.

GENERAL TERMS AND CONDITIONS  
Nomination and Confirmation  
Section 12

**(Nomination Cycle Timelines will be updated in accordance with FERC Order No. 809)**

12. NOMINATION AND CONFIRMATION

- 12.1 Customer shall nominate the total daily quantities to be Received and Delivered under each Service Agreement, at the Points of Receipt and Delivery available to Customer under the terms of this Tariff.
- A. All nominations shall include Customer-defined begin dates and end dates. Timely nominations shall have roll-over options. Specifically, Customers may nominate for several Gas Days, Months, or years, provided the nomination begin and end dates are within the term of Customer's Service Agreement. Overrun quantities must be requested in a separate transaction. Nominations have prospective effect only.
  - B. All nominations are considered original nominations, and must be replaced to be changed. When a nomination for a date range is received, such nomination is considered an original nomination for each Gas Day within that range. When a subsequent nomination is received for one or more Gas Days within that range, the previous nomination is superseded by the subsequent nomination only to the extent of the Gas Days specified. The Gas Days of the previous nomination outside the range of the subsequent nomination are unaffected.
  - C. Unless notified through the Website of a later nomination deadline, whether Customer's or a third party's electronic communication mechanism is used, and except for intra-day nominations permitted by GT&C Section 12.12, timely nominations must leave control of the nominating party at or before 11:30 a.m. CCT on the day prior to Gas flow. Pipeline must receive such nominations at or before 11:45 a.m. CCT; Pipeline will provide indication of its receipt of such nomination by noon CCT (for nominations submitted by facsimile, the facsimile transmittal confirmation will serve as Pipeline's quick response); Pipeline will receive completed confirmation from upstream and downstream connected parties by 3:30 p.m. CCT; and Pipeline will give Customer scheduled quantity data, including available scheduled intra-day nominations and known scheduling changes, through a report that will be issued by 4:30 p.m. CCT.
  - D. Notwithstanding the nomination deadlines set forth in this Section 12, Pipeline shall accept Out-of-Cycle nominations for service from Customer at any time during the Gas Day unless there are operational limitations or it would cause bumping. Subject to Pipeline's ability to confirm as described in Section 12.2, Pipeline will schedule such Out-of-Cycle nominations as soon as reasonably practical under the circumstances. To the extent Pipeline is unable to confirm Out-of-Cycle nominations for the reasons stated herein, such Out-of-Cycle nominations shall be treated as received in the next available standard nomination cycle.
- 12.2 Prior to scheduling service, Pipeline must confirm all nominations with both the upstream and downstream entities that are responsible for accounting for and/or handling the Gas prior to Receipt and after Delivery, respectively. Pipeline and the upstream or downstream connecting party, and not Customer, shall be responsible for initiating confirmations.
- 12.3 In the event that Pipeline is unable to confirm Customer's nomination, Pipeline shall reduce it to the level, if any, that is confirmed. Pipeline shall not be obligated to Receive or Deliver quantities of Gas in excess of the lowest level of confirmed quantities at either the Point of Receipt or Point of Delivery.

- 12.4 Customer's nominations are subject to the scheduling provisions of GT&C Section 13. Unless otherwise specifically agreed to by Pipeline and Customer, Pipeline shall not accept any nomination to the extent it is inconsistent with Customer's Service Agreement or if the quantities nominated exceed Customer's entitlement under that Service Agreement; however, Customer may correct any excess nominations under a firm Service Agreement if time permits prior to Pipeline's scheduling of its system pursuant to GT&C Section 13.
- 12.5 Pipeline is not required to schedule any Receipts or Deliveries until it has received:
- A. an executed Service Agreement from Customer; and
  - B. an accurate, complete, and valid nomination.
- 12.6 Each Customer is solely responsible for the accuracy of its nominations; Pipeline makes no representation or guarantee that nominations are correct.
- 12.7 Customer's nomination, submitted in accordance with Pipeline's Tariff, shall represent the maximum quantity of Gas eligible for service by Pipeline during the period for which the nomination was submitted or until Customer submits a new nomination, subject to:
- A. confirmation by both the upstream and downstream entities;
  - B. adjustments for scheduling and allocation pursuant to GT&C Sections 13 and 14; and
  - C. the curtailment provisions of GT&C Section 10.
- 12.8 Subject to the terms of GT&C Sections 12.9 through 12.12, an intra-day nomination may be used to request an increase or decrease in total flow or to change Points of Receipt or Delivery, within Customer's entitlements under its Service Agreement and Rate Schedule.
- 12.9 An intra-day nomination submitted to Pipeline shall take effect as indicated below, and shall run through the end of the affected Gas Day only.
- 12.10 An intra-day nomination must be based on a daily quantity within Customer's available contract entitlement and must reflect a quantity:
- A. not less than the quantity of Gas that will have already flowed for the Gas Day as of the time that the intra-day nomination becomes effective, and
  - B. not more than
    - 1. the quantity of Gas that Customer nominated during each of the previous nomination cycles on that Gas Day (each of which is expressed on a daily basis) divided by 24 and multiplied by the number of hours that each such nomination cycle was or will be in effect as of the time that the intra-day nomination becomes effective, plus
    - 2. the MDTQ divided by 24 and multiplied by the number of hours remaining from the time that the nomination becomes effective to the end of the Gas Day.
- 12.11 For communications outside the Business Day, Pipeline shall post contact information on its Website at all times.
- 12.12 Customers may submit nominations as follows:

- A. Timely Cycle: 11:30 a.m. for nominations leaving control of the nominating party; 11:45 a.m. for receipt of nominations by Pipeline; noon to send Quick Response; 3:30 p.m. for receipt of completed confirmations by Pipeline from upstream and downstream connected parties; 4:30 p.m. for receipt of scheduled quantities by Customer and point operator (CCT on the Day prior to flow).
- B. Evening Cycle: 6 p.m. for nominations leaving control of the nominating party; 6:15 p.m. for receipt of nominations by Pipeline; 6:30 p.m. to send Quick Response; 9 p.m. for receipt of completed confirmations by Pipeline from upstream and downstream connected parties; 10 p.m. for Pipeline to provide scheduled quantities to affected Customers and point operators, and to provide notice of scheduled quantities to bumped parties (CCT on the Day prior to flow).

Scheduled quantities resulting from an Evening Nomination that do not cause Pipeline to bump another Customer should be effective at 9 a.m. on the next Gas Day; when an Evening Nomination causes another Customer of Pipeline to receive notice that it is being bumped, the scheduled quantities should be effective at 9 a.m. on Gas Day.

- C. Intraday 1 Cycle: 10 a.m. for nominations leaving control of the nominating party; 10:15 a.m. for receipt of nominations by Pipeline; 10:30 a.m. to send Quick Response; 1 p.m. for receipt of completed confirmations by Pipeline from upstream and downstream connected parties; 2 p.m. for Pipeline to provide scheduled quantities to affected Customers and point operators, and to provide scheduled quantities to bumped parties (notice to bumped parties), (CCT on the Gas Day). Scheduled quantities resulting from Intraday 1 Nominations should be effective at 5 p.m. on Gas Day.
  - D. Intraday 2 Cycle: 5 p.m. for nominations leaving control of the nominating party; 5:15 p.m. for receipt of nominations by Pipeline; 5:30 p.m. to send Quick Response; 8 p.m. for Pipeline's receipt of completed confirmations from upstream and downstream connected parties; 9 p.m. for Pipeline to provide scheduled quantities to affected Customers and point operators (CCT on the Gas Day). Scheduled quantities resulting from Intraday 2 Nominations should be effective at 9 p.m. on Gas Day. Bumping is not allowed during the Intraday 2 Cycle.
  - E. At any time during the Gas Day pursuant the provisions of GT&C Section 12.1.D. ('Out-of-Cycle')
- 12.13 For purposes of GT&C Section 12.12, "provide" shall mean, for transmittals pursuant to NAESB standards 1.4.x, receipt at the designated site, and for purposes of other forms of transmittal, it shall mean send or post.

GENERAL TERMS AND CONDITIONS  
Scheduling and Scheduling Priorities  
Section 13

13. SCHEDULING AND SCHEDULING PRIORITIES

- 13.1 Service is deemed scheduled after (1) Customer submits a nomination in accordance with GT&C Section 12; (2) Pipeline confirms the nominated Receipt and Delivery; (3) Pipeline applies the priorities set forth in GT&C Sections 13.2, 13.3 and 13.4; and (4) Pipeline informs Customer via the Website. Unless and until Gas is scheduled, Pipeline shall have no obligation to Receive or Deliver Gas.
- 13.2 MDTQ Entitlement Limitation applicable to a family of Service Agreements. After Pipeline confirms, and, if necessary, reduces Customer's nomination pursuant to GT&C Section 12.3, Pipeline shall further reduce such nomination to the extent the combined nominations of Releasing Customers and Replacement Customers on any segment exceed or are inconsistent with the entitlement of the original firm capacity holder. To determine the total quantities nominated on any segment, nominations for Forward Path service shall be added to nominations for Reverse Path service. If excess quantities are nominated in any segment, customers that have Capacity Path rights in that segment shall receive the highest priority under this GT&C Section 13.2 and other nominations for firm service shall be reduced on a pro rata basis.
- 13.3 Point Priorities. After any adjustments to Customer nominations based upon service priorities on segments as described in GT&C Section 13.4, Pipeline shall schedule remaining nominations for Gas flow through each Point of Receipt and Delivery in the following order:
- A. Among customers nominating firm service within their Primary Point entitlements.
  - B. Among customers nominating firm service at points within their Capacity Path entitlements, provided however, when nominations exceed available capacity at any point, Pipeline shall pro rate such capacity among customers nominating firm service within their Capacity Path entitlements based upon quantities actually nominated by such customers.
  - C. Among customers nominating Receipts or Deliveries within their contract MDTQ at a Primary Point for the purpose of resolving imbalances under Firm Transportation Service Agreements.
  - D. Among customers nominating firm service at points outside of their Capacity Path entitlements, provided however, when nominations exceed available capacity at any point, Pipeline shall pro rate such capacity among customers nominating firm service outside of their Capacity Path entitlements based upon quantities actually nominated by such customers.
  - E. Among customers nominating Receipts or Deliveries within their contract MDTQ at an alternate point for the purpose of resolving imbalances under Firm Transportation Service Agreements.
  - F. Among customers nominating interruptible service, including authorized overrun quantities under Firm Transportation Rate Schedules, starting with the Customer agreeing to pay the highest rate; provided that a Customer with an agreement to pay less than the maximum rate may request Pipeline at the time of its nomination to automatically increase its rate as necessary to preserve the highest priority in the category. When nominations for interruptible service at the same rate, including authorized overrun quantities under Firm Transportation Rate Schedules, exceed available capacity at the point, Pipeline shall adjust nominations pro rata among any customers that are paying the same rate per Dt, based on each customer's nominated quantities remaining for service at the point.

- G. Among customers nominating Receipts or Deliveries under Interruptible Transportation Service Agreements and authorized overrun quantities nominated under Firm Transportation Rate Schedules for the purpose of resolving imbalances.
- 13.4 Segment Priorities. After any adjustments to Customer nominations for the MDTQ limitation described in GT&C Section 13.2, Pipeline shall schedule remaining nominations for Gas flow through each segment of its system in the following order:
- A. Among customers requesting firm service using the segment and the segment is within their Capacity Path entitlements.
  - B. Among customers requesting firm service using the segment and the segment is outside of their Capacity Path entitlements, provided however, when such nominations exceed the available capacity on the segment, Pipeline shall pro rate such capacity among Customers nominating firm service outside of their Capacity Path entitlements on the segment based upon the quantities actually nominated by such customers.
  - C. Among customers nominating interruptible service using the segment, including authorized overrun quantities under Firm Transportation Rate Schedules, starting with the customer agreeing to pay the highest rate; provided however, that a customer taking service pursuant to an agreement requiring the payment of less than the maximum rate may request Pipeline at the time of its nomination to automatically increase its rate as necessary to preserve to Customer the highest level in the sequence. When nominations for interruptible service at the same rate, including authorized overrun quantities under Firm Transportation Rate Schedules, exceed available capacity on the segment, Pipeline shall adjust such nominations pro rata among any customers that are paying an equivalent rate per Dt, based on each customer's nominated quantities remaining for service using that segment.
  - D. In prioritizing nominations on each segment of Pipeline's system, Pipeline shall give Reverse Path transportation nominations secondary priority for purposes of this GT&C Section 13.3 and Pipeline shall net Reverse Path nomination against nominations for Forward Path service in determining available segment capacity, unless Pipeline has reason to believe that the Reverse Path transportation service will not be performed on a continuous basis throughout the Gas Day.
- 13.5 Customer shall be responsible for monitoring information provided by Pipeline in accordance with GT&C Section 12 and this Section 13, to determine whether its nominations have been confirmed and scheduled. After nominations have been confirmed and scheduled, if Pipeline is informed of a change that affects Customer's scheduled quantities, Pipeline will post such change on its Website. Customer will be solely responsible for making alterations in Customer's supply and transportation arrangements, which may be necessary as a result of such changes in Customer's service.
- 13.6 Bumping Scheduled Service.
- During Evening and Intra-Day 1 nomination cycles, a firm transportation Customer may nominate and bump quantities of Gas scheduled by any Interruptible Transportation Customer, upon compliance with all other requirements of the scheduling provisions of this Tariff. Affected customers shall be notified of reductions, and whether penalties will apply on the Gas Day that volumes are reduced, using the same procedures described in GT&C Section 18.1.D.2. Bumping is not allowed during the intra-day nomination 2 cycle.
- 13.7 Scheduled quantities shall also be subject to the provisions of GT&C Section 10.



- 13.8 If, after the Gas Day commences, Pipeline determines that inadequate Gas quantities are being Tendered or Taken, Pipeline shall immediately notify Customer and may take all available actions necessary, as appropriate, to the extent necessary to bring Customer into balance.

GENERAL TERMS AND CONDITIONS  
Allocation of Receipts and Deliveries  
Section 14

14. ALLOCATION OF RECEIPTS AND DELIVERIES

- 14.1 Prior to the end of the Gas Day, Pipeline must receive a predetermined allocation (PDA) for all Points of Receipts and Deliveries from the upstream or downstream custody transfer party (Point Operator) for flowing gas supply. The Point Operator shall be responsible for providing Pipeline all measurement and/or allocations at or behind the Point of Delivery on a daily basis. Where a PDA applies, only one PDA methodology is to be applied per Gas Day,
- 14.2 For Gas Received and Delivered at points of interconnection with other interstate pipelines, Pipeline shall determine the flow of Gas in accordance with Operational Balancing Agreements (OBAs). There is no need to submit a PDA where Pipeline has an operational balancing agreement in effect for a point.
- 14.3 For those Point Operators holding rights to a Pack Account pursuant to GT&C Section 41, any PDA must be consistent with this subsection GT&C 14.3. Pipeline shall have the unilateral right to first resolve daily imbalances, if any, at Point Operator's Primary Point of Delivery (or Citygate) by a corresponding adjustment to the Point Operator's Pack Account balance. To the extent the Point Operator's Pack Account balance is insufficient to resolve the daily imbalance at the Point of Delivery, any remaining imbalance shall be the responsibility of the Point Operator which shall be handled through Rate Schedule FT and IT Service Agreements the Point Operator holds with Pipeline. For positive imbalances (allocated receipt quantity is greater than the allocated delivery quantity), Pipeline reserves the right to reduce the allocated receipt quantities to all available services of the Point Operator on a pro-rata basis (or other basis provided by the Point Operator to Pipeline pursuant to a PDA that is in effect and known to Pipeline) until the total allocated quantity is equal to the total measured quantity.
- 14.4 For all other Points of Receipts and Deliveries, Pipeline shall determine the flow of Gas on a daily basis in accordance with the provisions of a PDA among Customers behind such points, as provided by the Point Operator of such points. PDAs will be either ranked, pro rata, percentage, swing, operator provided value, or other mutually agreeable methodology. These determinations shall be made to the extent that such PDAs are in effect and made known to Pipeline prior to the end of the Gas Day. Based on scheduled nominations, Pipeline will adjust receipts from the party designated by the PDA, who shall be subject to applicable imbalance provisions of this Tariff. If the Point Operator provides no PDA, Pipeline will resort to pro rata allocation of variations between scheduled nominations and actual gas flow.
- 14.5 Absent deliberate omission or misrepresentation or mutual mistake of fact, the time limit for disputes of allocations shall be six months from the production month, with a three-month rebuttal period; provided, however, that parties' statutory or contractual rights shall not be diminished by this Section 14.
- 14.6 Pipeline will consider requests from a Point Operator that is a LDC to operate multiple Points of Delivery as a single Citygate Point of Delivery to the extent the individual points are in the sole physical control of the requesting party for both operations and measurement purposes.
- 14.7 A Point Operator (Requesting Point Operator) may designate a Customer (Designee) the rights to operate Designee's portion of such Point of Delivery (or Citygate) as a separate virtual Point of Delivery (or Citygate) so long as Designee holds both: (i) a Pack Account pursuant to GT&C Section 41, and (ii) primary rights at the same Point of Delivery (or Citygate) in which the Requesting Point Operator provides further downstream transportation to the Designee,. Provided further, the Requesting Point Operator must provide to Pipeline the downstream

measurement of the Designee on a timely basis, and the Designee agrees to operate and manage such virtual Point of Delivery (or Citygate) consistent with the provisions of GT&C Section 14.3. To the extent these provisions are effective, Designee imbalances will be excluded in resolving Requesting Point Operator imbalances at such Point of Delivery (or Citygate) for purposes of GT&C Section 14.3.

GENERAL TERMS AND CONDITIONS  
Capacity Release  
Section 15

**(Capacity Release Timelines will be updated in accordance with FERC Order No. 809)**

15. CAPACITY RELEASE

15.1 Availability.

- A. This Section 15 is available to Pipeline's Firm Transportation Customers ("Releasing Customers"), authorized by Part 284 of the Commission's regulations.
- B. Customer may release capacity under this Section 15 only to the extent that it pays a reservation charge for such entitlements, except for releases by an Asset Manager defined in 18 C.F.R. Part 284.8(h)(3) which are consistent with the regulations set forth in 18 C.F.R. Part 284.
- C. Eligible Bidders.
  1. Any party desiring to submit a bid under this Section must first pre-qualify by demonstrating that it meets the creditworthiness standards of GT&C Section 6. Upon a Releasing Customer's request Pipeline will waive this pre-qualification requirement on a non-discriminatory basis. Depending on whether the Releasing Customer waives the requirement, the following conditions apply:
    - a. In the event that the requirement for pre-qualification applies, Replacement Customer must satisfy the creditworthiness provisions, including the posting of collateral, prior to the awarding of the bid. All collateral posted must include the necessary instructions for Pipeline to effectuate the release of the collateral, as provided in Section 15.3.G, below. For cash collateral, bidders must provide all information necessary for Pipeline to return cash collateral by wire transfer. For non-cash collateral, bidders must provide all information necessary for Pipeline to return relevant documents via overnight delivery.
    - b. In the event Releasing Customer waives the pre-qualification requirement for a Replacement Customer that does not meet the creditworthiness standards of GT&C Section 6, Releasing Customer shall either:
      - (i) Require Replacement Customer to satisfy the creditworthiness provisions, including posting of collateral, prior to service being provided to Replacement Customer, or
      - (ii) Prior to the commencement of service to Replacement Customer, assume liability for the usage charges or post a bond or other form of credit assurance for the usage charges with respect to the capacity being released by Releasing Customer either for the entire duration of the release or until such time as Replacement Customer satisfies the collateral requirements.
  2. Notwithstanding the creditworthiness provisions of GT&C Section 6, in no event shall Pipeline require collateral to be posted based on a period corresponding to a time period longer than the duration of the release.

3. An agent may be used to bid for capacity; however, a potential bidder who desires to act as agent must disclose the identity of its principal on whose behalf it will participate under this Section, and provide proof of its authority to act on behalf of its principal.
  4. Upon satisfying the above conditions, a potential bidder must enter into a Service Agreement in the Form of Service Agreement applicable to capacity release as contained in this Tariff.
  5. Upon prequalification and execution of a Capacity Release Shell Agreement, the bidder will be on Pipeline's approved bidder list, and will be eligible to post bids on the Website. A bidder will remain on Pipeline's approved bidder list until such bidder: (1) notifies Pipeline to the contrary, (2) in Pipeline's sole judgment, no longer meets the credit qualifications of GT&C Section 6, or (3) is suspended for failure to pay part or all of the amount of any bill for service from Pipeline. Bids will legally bind the bidder to the terms of the bid if Pipeline chooses such bid as the best bid, as provided in GT&C Section 15.3.
  6. Pipeline's affiliates may bid for capacity on equal terms with all other Customers.
- D. No bidder shall have any specific right to capacity on Pipeline's system until Pipeline has executed the Bid Agreement, as set forth in GT&C Section 15.4.

15.2 Bidding Procedure.

- A. Releasing Customer will post complete release information on the Website, in the most current form of Release Notice. Releasing Customer may pre-build an offer and delay its actual posting.
- B. If all information provided by parties to the transaction is valid and Replacement Customer has met the requirements described in Section 15.1.C.1 before its bid is posted, then the following timeline will apply to a transaction under this Section 15.
  1. For biddable releases with a term of one year or less:
    - a. Offers must be posted by 12 p.m. CCT on the day nominations are due or on the day Gas is flowing;
    - b. The open season ends at 1 p.m. CCT on the day nominations are due or on the day Gas is flowing;
    - c. During the evaluation period from 1 p.m. CCT until 2 p.m. CCT, Pipeline must determine the best bid or bids, break any ties, and communicate the match or award to each matching or winning bidder, and the Releasing Customer and/or the potential Replacement Customer must eliminate any contingencies;
    - d. Any potential Replacement Customer that is required to match a competing bid must communicate its response to Pipeline by 2:30 p.m. CCT;
    - e. Pipeline posts all awards no later than 3 p.m. CCT;
    - f. For a non-match award, Pipeline shall issue a contract and a contract number no later than 3 p.m. CCT;
    - g. For a match award, Pipeline shall issue a contract and contract number no later than 4 p.m. CCT.

h. The Replacement Customer may begin nominating service at the next available nomination cycle for the effective date of the contract.

2. This table recaps the timeline of GT&C Section 15.2.B.1:

	<u>Biddable Release Term ≤ One Year</u>
Offers Posted	noon CCT
Open Season Ends	1 p.m. CCT
Award Or Match Posted	2 p.m. CCT
Non-match Award Contract Number	3 p.m. CCT
Match Response	2:30 p.m. CCT
Award Posted	3 p.m. CCT
Match Award Contract Number	4 p.m. CCT
Nomination Possible	Timely, Evening, Intra-Day 1, or Intra-Day 2
Gas Flow	9 a.m. CCT Next Gas Day; or 5 p.m. CCT or 9 p.m. CCT Current Gas Day

3. For biddable releases of a term greater than one year the timeline of GT&C Section 15.2.B.1 shall apply, except offers must be posted: by 12 p.m. CCT, at least four Business Days before the award is made for timely, evening, Intra-Day 1 or Intra-Day 2 nominations.

4. For any prearranged deals not subject to bid, Releasing Customer must post the deal with effective date and time, and Replacement Customer must post its bid, prior to the start of the chosen nomination cycle deadline for the offer begin date. Upon Replacement Customer's posting of the bid, Pipeline will issue a contract and contract number in a manner that will allow the Replacement Customer to submit a nomination by the chosen nomination cycle deadline.

C. Provisions of the posted notice of a release, including all criteria to be considered in the evaluation of competing offers and any recall terms, must be objective, nondiscriminatory and applicable to all bidders.

1. Such conditions may include contract quantity, duration and price; however, Releasing Customer is not required to specify a minimum acceptable quantity, duration or price.

2. Releasing Customer cannot tie bidders to compensation that is not related to the release transaction, unless otherwise provided by the Commission's regulations.

3. Such conditions may not conflict with the Pipeline's Tariff or the Commission's regulations, but may add provisions that are specific to the release transaction.

- D. **Withdrawal of Offers or Bids.** Releasing Customer may withdraw its offer during the bid period, where unanticipated circumstances justify and no minimum bid has been made. Offers are binding until written or electronic notice of withdrawal is received by Pipeline. After such a withdrawal, the bidder may not subsequently submit a lower bid for the same posted offer of released capacity. Bids are binding until written or electronic notice of withdrawal is received by Pipeline; provided, however, that bids cannot be withdrawn after the bid period ends.
- E. **Exemptions from Bidding Procedure.**
1. **Prearranged Deals.** If a potential Replacement Customer, identified by Releasing Customer prior to posting under this Section 15.2 ("Designated Replacement Customer"), agrees to pay the maximum tariff rate for a term greater than one year and agrees to meet all other terms and conditions proposed by Releasing Customer, then the release is not subject to bid but will be posted in accordance with GT&C Section 15.3.E and as required in Section 15.2.B.4.
  2. **Releases For 31 Days or Less.** Releases of 31 days or less are not required to be posted for bid. Releasing Customer may not re-release all or part of the subject capacity to the same Replacement Customer until 28 days after the first release has ended, unless (a) Releasing Customer posts the re-release for bidding or (b) the re-release is otherwise exempt pursuant to GT&C Section 15.2.E.
  3. **Asset Management Agreements.** Releases to an asset manager as defined in 18 C.F.R. Part 284.8(h)(3) are not subject to bidding, but will be posted in accordance with GT&C Section 15.3.E and as required in Section 15.2.F.14, below.
  4. **State Mandated Retail Unbundling Programs.** Releases to marketers participating in state-regulated retail access programs as defined in 18 C.F.R. Part 284.8(h)(4) are not subject to bidding, but will be posted in accordance with GT&C Section 15.3.E and as required in Section 15.2.F.15, below.
- F. **The Releasing Customer's posted notice of release shall include:**
1. Identification of Releasing Customer, including a contact person for communications regarding the posted notice.
  2. Identification of Releasing Customer's Service Agreement with Pipeline (Pipeline's Service Agreement number).
  3. The date and time of posting, and the date and time by which all bidders must have submitted their bids to the Website. Releasing Customer may not specify an extension of the original bid period or the pre-arranged deal match period, without posting a new release.
  4. The quantity to be released expressed as a numeric quantity, including any minimum or maximum acceptable packages, or whether bids for less than the full quantity released are acceptable.
  5. The daily contract entitlement for partial-day releases shall be allocated to Releasing Customer and Replacement Customer pro rata, based on the effective time of the capacity release. This allocated daily contract entitlement shall be used for purposes of nominations, billing and, if applicable, for overrun calculations.

6. The location of the capacity to be released (Capacity Path, Points of Receipt and Delivery and any Primary Point entitlements associated with such points), and an express description of the rights, if any, that Replacement Customer shall have to change Primary Points. Unless such rights are specified in the posted notice, Replacement Customer may not change Primary Points.
7. For purposes of bidding and awarding, the maximum/minimum charges, including any recourse reservation charges and any surcharges, as a total number or as stated separately, any minimum acceptable price (as a nominal value or percentage of the applicable maximum rate or recourse reservation charge), and whether such charges shall be payable as a monthly reservation charge or on a volumetric basis. Notwithstanding any discounts granted under the Service Agreement between Releasing Customer and Pipeline, the Replacement Customer may bid (and pay rates based upon) the applicable Firm Transportation Rate Schedule recourse reservation charge. The posted notice must specify whether Releasing Customer will consider bids on a volumetric basis; if so, the maximum applicable reservation charge shall be the 100% load factor derivative of the applicable reservation charges. The usage portion of the rate will not be taken into consideration when determining the best bid. Unless Pipeline and Replacement Customer subsequently negotiate different usage charge components as permitted by the applicable Rate Schedule, Replacement Customer shall pay the maximum applicable usage charges. The recourse reservation charge under the applicable Firm Transportation Rate Schedule shall be the maximum recourse charge to be used for purposes of bidding under this Section 15.
  - a. Releases may exceed the maximum tariff rate for the applicable service provided that the release is for one year or less and the release takes effect on or before one year from the date on which the Pipeline is notified of the release.
8. Duration of the release, and any minimum acceptable term, including the specific starting dates and times and ending dates and times. Releases may commence at any time of the month.
9. Whether the release is to be permanent or temporary. Permanent releases are subject to pre-granted abandonment, as provided under 18 C.F.R. Part 284.221.
10. Criteria for evaluating bids, and for breaking ties among equivalent bids. If no criteria are specified, Pipeline's default standards of GT&C Section 15.3 shall apply.
11. Whether the release is firm and not subject to full-day or partial-day recall, or subject to recall on an objective, not unduly discriminatory basis (by Releasing Customer), and conditions under which any recall right would be exercised, and any applicable reput rights.
12. Whether Releasing Customer has identified a Designated Replacement Customer.
13. Whether Releasing Customer will entertain contingent bids, and if so, whether, and for what time period, the next-highest bidder will be obligated to acquire the capacity if the winning bidder declines the released capacity.
14. Whether Replacement Customer is an asset manager as defined in 18 C.F.R Section 284.8(h)(3) and whether the offer is to be exempt from bidding pursuant to Section 15.2.E.3, above. If the offer is to be exempt from bidding, Releasing Customer must disclose the asset manager's obligation to deliver gas to, or purchase from, Releasing Customer.



15. Whether Replacement Customer is a marketer participating in a state-regulated retail access program as defined in 18 C.F.R. Part 284.8(h)(4) and whether the offer is to be exempt from bidding pursuant to Section 15.2.E.4, above.
- G. Within the posted bid period, a bidder seeking capacity at terms that meet or exceed minimum terms of the release must post its complete bid on the Website.
  1. Bids must be in the most current form of Bid Agreement, as posted on the Website, which when executed by Pipeline will constitute a binding contract.
  2. The name of the bidder will not be revealed on the Website unless the bidder submits a winning bid.

### 15.3 Evaluating Bids.

- A. Pipeline shall determine the best bid, in accordance with the nondiscriminatory criteria posted by Releasing Customer in the Release Notice; provided, however, that Pipeline shall reject any bid that does not match any single minimum specification of the posted notice. If there are multiple bids meeting all minimum conditions, Pipeline will award the bids, best bid first, until all offered capacity is awarded.
- B. Evaluation Criteria. In its posted notice, Releasing Customer must specify one of the following bid evaluation mechanisms:
  1. NPV Method. Net present value of the bid quantity, multiplied by the bid price, discounted over the bid term by the Interest Rate.
  2. Net Revenue Method. The value of the bid quantity, multiplied by the bid price.
  3. If Releasing Customer does not designate an evaluation standard in the posted notice of the release, the best bid shall be determined as the bidder submitting the highest bid rate, within the minimum and maximum rates, if applicable, and in accordance with Section 15.2.F.7, above.
- C. Tie-Breaking Method. If more than one bidder wins under the applicable evaluation criteria, the capacity must be released in accordance with the tie-breaking method specified in Releasing Customer's posted notice. If Releasing Customer does not designate a tie-breaking method, then the capacity will be allocated first to the winning bidder who submits a non-contingent bid, as opposed to bids on a contingent basis. If more than one winning bid is non-contingent, then to the bidder that is currently using the subject capacity, or if no winning bidder is currently using the subject capacity, then to the bidder that submitted its winning bid first in time; provided that if a Designated Replacement Customer submits a winning bid, then Pipeline must contract with such Designated Replacement Customer.
- D. Matching Period. If a Designated Replacement Customer under GT&C Section 15.2.F.12 does not submit a winning bid, then Pipeline must give the Designated Replacement Customer an opportunity to match the terms and conditions of the winning bid.
- E. Pipeline shall post the winning Bid Agreement on the Website, immediately after the bid is awarded, including the name of the winning bidder.
- F. A posted offer of release shall expire without award if Pipeline is unable to contract with a bidder before the commencement of the term for the offered capacity.

- G. Prior to the next nomination opportunity after the bid is awarded, Pipeline will release any posted collateral to a non-winning non-creditworthy bidder unless otherwise requested by such bidder. Pipeline will release cash forms of collateral by wire transfer of Federal Funds in accordance with the instructions provided by bidder pursuant to Section 15.1.C.1. Pipeline will release non-cash forms of collateral by depositing such documentation for delivery by overnight courier in accordance with the instructions provided by bidder pursuant to Section 15.1.C.1.

15.4 Contracting.

- A. Pipeline must contract directly with the bidders who make the best bids, as determined above. Subject to agreement by the winning bidders to pay at least the maximum applicable usage and fuel charges, Pipeline must accept the bids and contract to provide the released capacity to the winning bidders, by executing the winning bidders' Bid Agreements upon the award. Each executed Bid Agreement shall become an Exhibit to the Capacity Release Agreement between each winning bidder, as Replacement Customer, and Pipeline. Replacement Customer, like any other Customer, is subject to all applicable provisions of this FERC Gas Tariff.
- B. Unless Pipeline expressly agrees otherwise, Releasing Customer's Service Agreement with Pipeline shall remain in effect until the normal expiration of the contract term, notwithstanding any capacity release transaction.
  - 1. Releasing Customer shall remain liable on its contract with Pipeline, and shall pay all applicable reservation charges, and related surcharges and Interest, for released capacity, directly to Pipeline; provided, however, that Pipeline and Customer may, in connection with their agreement to a Negotiated Rate, agree upon Releasing Customer payment obligations and procedures and crediting mechanisms in the event of a capacity release that varies from or has terms in addition to those set forth herein. Provisions of this Section 15.4.B.1 do not authorize Pipeline to negotiate terms and conditions of service. In the case of permanent releases, Pipeline will not unreasonably refuse to relieve Releasing Customer from liability under its Service Agreement.
  - 2. Unless otherwise agreed under GT&C Section 15.4.C, Releasing Customer will receive a contingent credit for reservation charges and associated surcharges actually paid to and received by Pipeline, attributable to capacity rights released by Releasing Customer.
    - a. Pipeline will grant Releasing Customer a contingent credit for the reservation charges and reservation-related surcharges attributable to capacity rights released by such customer. In the event Pipeline is not paid the applicable reservation charges for the released capacity, Pipeline shall have the right to reverse such contingent credit and to charge applicable interest to Releasing Customer.
    - b. Pipeline shall fully credit Releasing Customer for Reservation Charges and reservation-related surcharges paid by Replacement Customer, even if such revenues exceed the rate contractually payable by Releasing Customer for the released capacity.
    - c. Reservation Charge credits to Releasing Customer shall be reduced by any fees applicable to releases where Pipeline actively markets the capacity, as negotiated between Pipeline and Releasing Customer.

- d. In the event of partial payments by Replacement Customer, funds will first be used to pay reservation charges and related surcharges, whether owed to Pipeline or to Releasing Customer.
3. For release transactions with a term greater than one year that provide for a rate between the applicable minimum and maximum rates, refunds shall be allocated first to Replacement Customer, to the extent required. If Pipeline owes refund amounts attributable to the release transaction in excess of the amounts refunded to Replacement Customer, then Pipeline shall make such refunds to Releasing Customer.
4. For release transactions with a term of one year or less that are not subject to the maximum rate cap, the rate paid by the Replacement Customer will be deemed a final rate and will not be subject to refund.

#### 15.5 Replacement Customers.

- A. Replacement Customers hold the rights granted by Releasing Customer for service by Pipeline to nominate quantities of service within the Capacity Path, and, if applicable, the Primary Points identified by Releasing Customer, at the first available nomination opportunity upon consummation of the release transaction for the effective date and time of contract. Replacement Customers may also use alternative points to the extent such points would otherwise be available to Releasing Customer. After a permanent release, Replacement Customer may request Primary Point changes under the applicable procedures of Pipeline's Tariff. If a release is not permanent, Replacement Customer may seek to change Primary Points under its Service Agreement, and thereby permanently alter the applicable Service Agreement of Releasing Customer, only to the extent expressly authorized by Releasing Customer in the posted notice. Requests to change Primary Points must comply with all applicable procedures of Pipeline's FERC Gas Tariff. In any event, Primary Point changes are subject to the risk that either party will not be able to return to the original Primary Point(s). All Primary Point changes are subject to Pipeline's determination that firm capacity is available.
- B. A creditworthy Replacement Customer may continue an existing capacity release Service Agreement by notifying Pipeline prior to the termination of Releasing Customer's service that it agrees to pay a rate that is the lesser of:
  1. The applicable maximum rate, or
  2. The same rate as is in the Service Agreement between Pipeline and Releasing Customer, or
  3. A mutually agreed upon rate.
- C. Replacement Customers may release the capacity entitlements that were obtained under this Section, subject to the terms of the original release provided, however, that Replacement Customers that obtain capacity on a volumetric basis shall not be entitled to re-release such capacity.
- D. Replacement Customers are subject to all applicable provisions of:
  1. Pipeline's FERC Gas Tariff,
  2. The Service Agreement between Pipeline and Releasing Customer, and

3. Each and every preceding release of the subject capacity.

15.6 Other Provisions.

- A. Any Party may post offers to acquire capacity on Pipeline's Customer Activities component of its Website. Pipeline will also post offers on the Informational Postings component of its Website. Offers will be posted for a period not to exceed thirty (30) days.
- B. Recall Provisions.
  1. Releasing Customer's rights to recall capacity on a partial-day or full-day basis shall be stated clearly in the posted notice of a release. The purchase of Gas by Releasing Customer from Replacement Customer at the city gate shall not be deemed an exercise of a recall provision.
  2. To the extent permitted as a condition of the capacity release, Releasing Customer may recall released capacity (scheduled or unscheduled) by providing notice to Pipeline as follows: by 8 a.m. CCT for the Timely cycle, by 3 p.m. or 5 p.m. CCT for the Evening cycle, by 7 a.m. CCT for the Intra-Day 1 cycle, or by 2:30 p.m. CCT for the Intra-Day 2 cycle. For recall notice provided to Pipeline prior to the recall notification deadline and received between 7:00 a.m. and 5 p.m. CCT, Pipeline will notify affected Replacement Customer(s) within one hour of receipt of a recall notice. For recall notification provided to Pipeline after 5 p.m. and prior to 7 a.m. CCT, Pipeline will notify affected Replacement Customer(s) no later than 8 a.m. CCT after receipt of a recall notice. Releasing Customer shall notify Pipeline and the first Replacement Customer of its decision to recall capacity no later than the timeline outlined below. Further, the daily contract entitlement for partial-day recalls shall be allocated to Releasing Customer and Replacement Customer pro rata based on the effective time of the recall. This allocated daily contract entitlement shall be used for purposes of nominations, billing, and, if applicable, overrun calculations. Partial-day recalls shall not be available for capacity released on a partial day. After exercise of a recall, subject to agreement by Releasing and Replacement Customers in accordance with any provisions of the posted notice, Releasing Customer may repute the recalled capacity to the original Replacement Customer, upon the same advance notice to Pipeline that was required for the recall. When capacity is recalled, it may not be repute for the same day. Replacement Customers that re-release capacity shall also be responsible for notifying any later Replacement Customers.

	<u>Timely</u>	<u>Early Evening</u>	<u>Evening</u>	<u>Intra-Day 1</u>	<u>Intra-Day 2</u>
Recall Notice To Pipeline and First Replacement Customer	8 a.m. CCT	3 p.m. CCT	5 p.m. CCT	7 a.m. CCT	2:30 p.m. CCT
Pipeline Notice to Replacement Customer	9 a.m. CCT	4 p.m. CCT	6 p.m. CCT	8 a.m. CCT	3:30 p.m. CCT
Nomination Possible	11:30 a.m. CCT	6 p.m. CCT	6 p.m. CCT (Evening Cycle)	10 a.m. CCT	5 p.m. CCT
Gas Flow	9 a.m. CCT Next Gas Day	9 a.m. CCT Next Gas Day	9 a.m. CCT Next Gas Day	5 p.m. CCT Current Gas Day	9 p.m. CCT Current Gas Day

3. Pipeline shall notify the Replacement Customer, via the Website, to revise its nominations under the Bid Agreement within the period provided for change of nominations in order to implement the recall. Replacement Customer(s) will be solely responsible for adjusting its supply and transportation arrangements, which may be necessary as a result of such recall.
4. Any Releasing Customer may recall capacity released under this Section, subject to compliance with the nomination and scheduling provisions of this Tariff, in the event that its Replacement Customer fails to pay all or part of the amount of any bill for service under the applicable Bid Agreement.
5. Unless otherwise stated in Releasing Customer's posted notice, Replacement Customer's minimum throughput commitment for a release transaction conducted on a volumetric basis is waived, in the event that Releasing Customer exercises a recall.
6. Replacement Customer must give Pipeline a minimum of one but no more than two Internet E-Mail addresses for recall notices; until Replacement Customer provides at least one address, Pipeline's obligation to provide notice is waived.
7. In order to use the shortened recall provisions of this Section 15.6.B, Releasing Customer must provide written notice to Pipeline, by facsimile or otherwise, including the following information:
  - a. Releasing Contract number;
  - b. Replacement Contract number;
  - c. Effective Date and Time of recall;
  - d. Contract Quantity;
  - e. Capacity Path, and, if applicable, Primary Receipt and Delivery Points; and

- f. Certification signed by an official of Releasing Customer authorized to make nomination and scheduling changes on Pipeline, that: "[Releasing Customer] hereby certifies that the conditions stated in GT&C Section 15.6.B have been satisfied, to permit the above-captioned recall."
8. Releasing Customer may recall the full released volume or a partial volume for the full Gas Day or a partial Gas Day. The volume recalled must correspond to the elapsed pro rata capacity.
9. The daily contract entitlement for partial day recalls shall be allocated to Releasing Customer and Replacement Customer pro rata based on the effective time of the recall. This allocated daily entitlement shall be used for purposes of nominations, billing and, if applicable, overrun calculations.
10. Partial day recalls shall not be available for capacity released on a partial day.
11. After exercise of a recall, subject to agreement by Releasing and Replacement Customers in accordance with any provision of the posted notice, Releasing Customer may repute the recalled capacity to the original Replacement customer, upon the same advance notice to Pipeline that was required for the recall. Recalled capacity may not be repute for the first recalled Gas Day.

GENERAL TERMS AND CONDITIONS  
Website  
Section 16

**(Name of Pipeline's Customer Activities site will be provided 30-60 days prior to in-service date)**

16. WEBSITE

16.1 Access.

- A. Pipeline shall maintain the Customer Activities component of its Website as a part of Pipeline's [REDACTED] System. Access to the [REDACTED] System shall be provided in an interactive, nondiscriminatory basis to all parties that have: (1) executed an [REDACTED] System Agreement; (2) been assigned an [REDACTED] System user ID and password; and (3) agreed to comply with all procedures for access and use of Pipeline's [REDACTED] System and any other applicable provisions of Pipeline's Tariff.
- B. Persons complying with all applicable procedures for access as set forth in the [REDACTED] System Agreement shall become [REDACTED] System Users. However, to participate in the capacity release program described in GT&C Section 15, the [REDACTED] System User must also satisfy all additional requirements of that Section.

16.2 Contents. Pipeline shall post NAESB and other information as required by this Tariff on the Informational Postings component of its Website. Website user access to information shall be on a timely, equal basis.

16.3 Other Conditions.

A. Procedures to Back-Up, Archive, and Retrieve Data.

1. After the end of each month, Pipeline shall remove all completed transactions from the Website. Current notices shall not be purged.
2. Pipeline shall retain daily back-up files of the data displayed on the Website, for a minimum of 36 months for audit purposes. This data retention requirement only applies to the ability to recover or regenerate electronic records for a period of three years, in accordance with regulatory record retention requirements. Capacity Release historical data will be made available on a consistent basis from Pipeline, which should provide for retrieval of open and closed offers during the FERC archival period. This data shall be maintained in an electronic media of Pipeline's choosing.
3. Upon request, Pipeline shall provide such data for review by [REDACTED] System Users. Pipeline shall not be required to provide such information online. For a reasonable fee, negotiated between Pipeline and the [REDACTED] System User at the time of a request, Pipeline shall provide such data in electronic form.
4. [REDACTED] System Users wishing to review archived Website data must submit requests, in writing, to Pipeline.

B. Pipeline shall comply with the Commission's regulations regarding Standards of Conduct, as described in GT&C Section 19, with appropriate Website notices and information postings.

16.4 System Alerts. Pipeline may issue a "System Alert" to notify Customers of operating conditions on its system, changes in operating conditions, and other system developments that may affect

scheduling. A System Alert is an informal notice of possible future conditions or developing conditions on the system: by itself, a System Alert does not change any Customer's penalty position. To the extent that reliable information relevant to possible issuance of an operational flow order (OFO) or other status of the system is available, Pipeline shall publish it on the Website. If Pipeline believes, in its sole discretion, that the system (or portions of the system) is operating at critical levels and that an OFO may be imminent, Pipeline shall issue a "Critical Notice" that advises Customers of the situation, and advise its Customers what action is requested as well as what future actions may be mandated if voluntary steps are not taken. Under such circumstances, Customers are asked to comply as quickly as possible with the System Alert, to reduce the need for future action by Pipeline. Customers should be prepared to act on short notice. System Alerts may be directed to all Customers, or to specific Customers on a not unduly discriminatory basis. By issuing a System Alert, Pipeline shall not be precluded from issuing an OFO, if circumstances ultimately require. The System Alert is intended to give Customers the opportunity for voluntary compliance, rather than requiring mandatory action under the OFO provisions of this Tariff. To the extent Pipeline does not issue a System Alert prior to the issuance of an OFO, such OFO will provide Customer at least two hours' notice to comply with the OFO.



GENERAL TERMS AND CONDITIONS  
Incorporation of NAESB Standards  
Section 17

17. INCORPORATION OF NAESB STANDARDS

**(Table will be provided with tariff 30-60 days prior to in-service date)**

GENERAL TERMS AND CONDITIONS  
Operational Flow Orders  
Section 18

18. OPERATIONAL FLOW ORDERS

18.1 Operational Flow Orders.

- A. Pipeline has established the operational flow orders (OFOs) set forth in this Section 18, in order to maintain system reliability. If Pipeline determines at any time that these OFO-related terms and conditions are inadequate to ensure Pipeline's system integrity, Pipeline reserves the right to file for and establish additional conditions under which Pipeline may issue OFOs as Pipeline deems necessary to preserve its system reliability and maintain service to its Customers.
- B. Pipeline shall operate its system in a reasonable manner, based upon conditions known to or forecast by Pipeline at the time, maintaining line pack, scheduling maintenance, coordinating Receipts and Deliveries, and issuing OFOs as needed to maintain system reliability and meet firm service obligations. Once an OFO has been issued, Pipeline shall cooperate with the affected Customers to accomplish the results intended by the OFO.
- C. An OFO shall be an announcement by Pipeline that shall advise Customer of operating conditions that affect its services or direct a Customer or class of Customers to take specific action. Each OFO shall contain the following information:
  - 1. time and date of issuance;
  - 2. time that OFO is effective;
  - 3. duration of OFO (if not specified, the OFO remains effective until further notice);
  - 4. the Customer(s) or class of Customers affected by the OFO;
  - 5. the action, if any, that Customer(s) must take; and
  - 6. any other information required by the terms of this Tariff.
- D. How Pipeline May Issue OFOs.
  - 1. Pipeline shall issue an OFO by posting a notice of the OFO on the Website and by e-mailing the flow order to all affected Customers that have provided Pipeline with an e-mail address. Customer shall monitor the Website for any OFO applicable to Customer's service and shall be solely responsible for compliance with each OFO.
  - 2. When the OFO is applicable on a Customer-specific basis or otherwise directly affects such Customer, Pipeline shall directly communicate the OFO to one of Customer's designated contact person(s) via e-mail unless Pipeline and Customer have agreed upon other commercially reasonable means of communication. Each firm Customer shall provide Pipeline with the name, e-mail address, facsimile number, and telephone number of at least one designated contact person available on a twenty-four hour basis and it shall be Customer's responsibility to keep this information current.
  - 3. The factors resulting in the issuance of an OFO shall be posted on the Website within seven Gas Days after issuance.

4. An OFO shall be cancelled when the conditions that created the need for the OFO have been resolved.
  5. Within 14 days of rescinding any OFO issued hereunder, Pipeline shall post on the Website a report containing information regarding the factors that caused the OFO to be issued and then lifted. In any report, Pipeline shall describe in detail the circumstances that caused the issuance of the OFO, the steps taken to alleviate the circumstances, and the changes that occurred to resolve the conditions that created the need for the OFO.
- E. Pipeline may issue an OFO under this Section to apply to Pipeline's system in whole or in part.

#### 18.2 Notice

- A. Except to the extent conditions and operations require a shorter notice period or alternative methods of notice, Pipeline shall provide prior notice of the issuance of an OFO by posting the issuance on its Website at least two hours prior to the time for Customer action.
- B. Pipeline shall provide prompt notice of the termination of an OFO or a decrease in required quantities under any effective OFO.
- C. Prior to issuing an OFO affecting firm transportation service at a Primary Point, Pipeline shall take all other remedial actions and shall issue any other OFO permitted under this Tariff which, in Pipeline's judgment, could alleviate, in whole or in part, the operational limitations that Pipeline is experiencing.

#### 18.3 When Pipeline May Issue an OFO.

- A. Pipeline may issue an OFO to maintain or restore a balance on Pipeline's system, to protect Pipeline's system integrity, and to allow Pipeline to satisfy its firm service obligations.
- B. Specific Instances. A Customer receiving service under Firm Transportation Rate Schedules or Interruptible Transportation Rate Schedules may be subject to OFOs issued by Pipeline:
  1. to alleviate conditions that threaten the operational integrity of Pipeline's system; or
  2. to maintain pressures and line pack necessary for Pipeline's operations; or
  3. to ensure adequate flowing supplies are Tendered at any Point of Receipt; or
  4. to alleviate operational problems arising from over- or under-deliveries by a Customer in violation of its Service Agreement or applicable Rate Schedule; or
  5. when Pipeline experiences or forecasts substantially increased requirements due to changes in weather that could create an operational need for additional Deliveries; or
  6. when Pipeline experiences or forecasts substantially decreased requirements due to changes in weather or other conditions that could create an operational need for reduced Receipts; or
  7. when hourly Takes by a Customer(s) at any Point of Delivery are in excess of Tariff or contract maximums or are otherwise in excess of quantities that Pipeline can handle; or

8. when segmentation has resulted in unanticipated operational problems that jeopardize Pipeline's system integrity or its ability to meet primary firm service obligations.
- C. Pipeline may issue such OFOs when excess Tenders or insufficient Takes by one or more Customers:
1. cannot be tolerated operationally because Pipeline is operating at maximum allowable operating pressures and/or Pipeline's facilities are full; or
  2. jeopardize Pipeline's ability to perform firm services as required by Pipeline's Service Agreements and this Tariff; or
  3. cannot be tolerated operationally because markets directly connected to a Point of Receipt cannot accept the quantities nominated for Delivery for any reason, including changes in weather.
- D. Pipeline may issue such OFOs when insufficient Tenders or excess Takes by one or more Customers:
1. may cause Pipeline to issue an OFO to another Customer; or
  2. cannot be tolerated operationally because Pipeline's line pack is depleted below the levels required for Pipeline to manage such insufficient Tenders without jeopardizing Pipeline's ability to perform services as required by Pipeline's Service Agreements and this Tariff, without limiting firm services or pressures to other Customers, or without imposing additional OFOs on Pipeline's system; or
  3. cannot be tolerated operationally because one or more Customers have failed to comply with an OFO issued under this section; or
  4. cannot be tolerated operationally because markets directly connected to such Point of Receipt require Deliveries of additional quantities for any reason, including changes in weather.
- 18.4 Customer Actions. Upon the issuance of an order under this Section, Customer must take the actions stated in the OFO. These actions may include, but are not limited to, the actions listed below.
- A. Customer may be required to Tender Gas to Pipeline under Customer's firm transportation Service Agreement, including Tenders to cure imbalances;
  - B. Customer may be required to conform its Receipts and/or Deliveries to Customer's scheduled nominations within the Customer's MDTQ and hourly flow entitlement in accordance with the applicable Rate Schedule;
  - C. Customer may be required to equalize its Tenders and its Takes;
  - D. Customer may be required to Take Gas from Pipeline under Customer's firm transportation Service Agreement, including Takes of Gas to cure imbalances;
  - E. Customer may be required to limit hourly Takes from Pipeline;
  - F. Customer may be required to immediately cease its Takes under an interruptible transportation agreement; and/or

G. Segmented contract rights may be reduced or constrained.

18.5 OFO Penalties.

- A. During the period that the OFO is in effect, Customer shall pay a penalty equal to \$25.00 per Dt plus three times the Gas Price Index per Dt:
1. for each Dt Received by Pipeline for Customer's account in excess of Customer's scheduled quantities, daily entitlement or hourly flow entitlement in cases where the OFO prohibits excess Tenders to Pipeline; and
  2. for each Dt Delivered by Pipeline to Customer in excess of Customer's scheduled quantities, daily entitlement or hourly flow entitlement in cases where the OFO prohibits excess Takes from Pipeline.
- B. Customer shall not be liable for OFO penalties if and to the extent its failure to comply with an OFO is due to Customer's own Force Majeure, as defined in GT&C Section 9, or due to Pipeline issuing an OFO pursuant to Section 18.3.B that changes Customer's scheduled quantities during the affected Gas Day..
- C. Payment of any penalties established in this GT&C Section 18.5 shall be in lieu of the penalties established in GT&C Sections 37.2 and 37.3.
- D. Provided that Customer has designated a contact person pursuant to GT&C Section 18.1.D.2, and has provided relevant related information to Pipeline, Pipeline shall not assess the penalties established in this Section 18.5 unless Pipeline has directly communicated the OFO to one of Customer's designated contact person(s). Pipeline shall communicate such OFOs to Customer via e-mail, unless Pipeline and Customer have agreed upon another means of communication.

18.6 Indemnification and Waiver of Penalties.

- A. In addition to any other remedies or penalties available to Pipeline, in the event that Customer fails to comply with any OFO issued by Pipeline, and Pipeline is directly or indirectly rendered unable to provide firm service as a result of Customer's failure to comply with an OFO as required by any of its firm Service Agreements, Customer shall indemnify and hold harmless Pipeline for all damages, or liability arising from Pipeline's failure to provide such service; provided that Pipeline will not be indemnified to the extent of its own negligence, willful misconduct, or fraud in causing such damage or liability, or to the extent that Pipeline breaches Customer's Service Agreement.
- B. Pipeline may waive any penalty otherwise applicable under this Section or in Section 37.4 if, in Pipeline's reasonable discretion, Customer's action(s) did not cause or contribute to the circumstances that required Pipeline to issue an OFO.

GENERAL TERMS AND CONDITIONS  
Compliance with Certain FERC Regulations  
Section 19

19. COMPLIANCE WITH CERTAIN FERC REGULATIONS

19.1 In accordance with 18 C.F.R. Part 358, Pipeline shall comply with the Commission's regulations regarding Standards of Conduct.

- A. Independent Functioning Rule. Pipeline's transmission function employees must function independently of its marketing function employees. Pipeline shall not permit its marketing function employees to conduct transmission functions and shall not permit its transmission function employees to conduct marketing functions, except as permitted by 18 C.F.R. Part 358.
- B. Transparency Rule. All information required to be posted on Pipeline's Website pursuant to 18 C.F.R. Part 358 including, but not limited to, identification of Pipeline's transmission function employees, information on affiliates that employ or retain marketing function employees, information on shared facilities, information or notice of disclosure of transmission function information, waivers, transfers of certain employees, potential mergers, voluntary consent information, and written procedures implementing compliance with the Standards of Conduct. All information will be provided under "Informational Postings" and will be updated as required by applicable regulation(s) issued by the Commission.

19.2 Requirements For A Valid Transportation Request. For a service request to be considered valid, it must contain the items set forth in GT&C Section 11. A service request form may be obtained by writing Atlantic Coast Pipeline, LLC, Transportation Requests, 707 East Main Street, Richmond, VA 23219 or by calling 1-800-895-8899.

19.3 Complaint Procedures.

- A. Customers or potential Customers wishing to complain or inquire about matters concerning requests for transportation should contact Pipeline's ombudsman, as identified on the Website. Callers should be prepared to state with specificity the nature of the complaint, what actions or procedures of Pipeline gave rise to the complaint, and the remedy sought.
- B. Pipeline shall promptly investigate the complaint and shall explain the actions or procedures giving rise to the complaint, initially, within 48 hours and in writing, within 30 days.
- C. If any complaint is not resolved, the matter shall be referred to Pipeline's ombudsman, who will attempt to resolve the complaint within 15 days of the date of referral.
- D. Complaints not resolved by the ombudsman shall be referred to Pipeline's legal staff.

19.4 Information on Availability And Pricing Of Transportation Service.

- A. Pipeline Delivers Gas on an open access basis at the rates set forth in this Tariff. Customers and potential Customers may determine the availability of service by submitting valid requests for such service in accordance with GT&C Section 11, or by monitoring the Website. Customers may determine the availability of a discounted rate for service by requesting such rate from Pipeline in writing (including facsimile). Documentation supporting the need for the discount must accompany all such requests.

- B. All information pertaining to any offer of a discount for any transmission service made by Pipeline will be maintained as required by 18 C.F.R. Part 250.16(d) and subpart D of 18 C.F.R. Part 358.

19.5 Customer Information on Available Capacity.

- A. Customers that have valid service contracts with Pipeline may determine the capacity available for service by submitting nominations to Pipeline in accordance with GT&C Section 12.
- B. General information regarding capacity on Pipeline's system will be made available from time to time via the Website. Customers and potential Customers may also obtain information by contacting the Atlantic Coast Pipeline, LLC's Marketing Department, at 707 East Main Street, Richmond, VA 23219, or at 1-800-895-8899.

19.6 Access to Transportation Service

- A. Pipeline will provide nondiscriminatory access to all sources of supply in accordance with Part 284 of the Commission's regulations, and will not give Customers of its affiliates undue preference over Customers of non-affiliates or other Customers in scheduling, transportation or curtailment priority.
- B. Pipeline will not condition or tie its agreement to provide transportation service to an agreement by the producer, end-user, or Customer relating to any service by an affiliate, any services by Pipeline on behalf of its affiliate, or any services which its affiliate is involved.

GENERAL TERMS AND CONDITIONS  
FERC Annual Charge Adjustment  
Section 20

20. FERC ANNUAL CHARGE ADJUSTMENT

- 20.1 Purpose. For the purpose of funding the Commission's costs incurred in any fiscal year, Pipeline shall apply an annual charge adjustment to its transportation Rate Schedules, as set forth in the Statement of Applicable Rates in this Tariff.
- 20.2 Basis of the Annual Charge Adjustment. The Rate Schedules contained in this Tariff shall include an increment for an Annual Charge Adjustment (ACA) for Commission costs. Such adjustment shall be the ACA unit charge, adjusted to the Pipeline's pressure base and heating value, if required, which is specified by the Commission each year to recover its costs for its previous fiscal year. The applicable ACA rate, which is revised annually for effectiveness on October 1, is set forth on the FERC website (<https://www.ferc.gov/industries/gas/annual-charges.asp>). The ACA shall be referenced in the Statement of Applicable Rates in this Tariff. By electing the FERC ACA unit charge method of recovery, Pipeline hereby acknowledges its intent not to recover any annual charges recorded in FERC Account No. 928 in any general rate proceeding filed under Section 4(e) of the Natural Gas Act.



GENERAL TERMS AND CONDITIONS  
Miscellaneous Conditions  
Section 21

21. MISCELLANEOUS CONDITIONS

- 21.1 Upon request by Pipeline, Customer shall make reasonable efforts to submit estimates to Pipeline of the hourly, average day, peak-day monthly, and annual quantities to be transported under the Rate Schedules in this Tariff by Points of Receipt and Delivery and such other operating data as Pipeline may require in order to plan its operations, to meet its requirements, to respond to Force Majeure and to render reliable service to its Customers.
- 21.2 If Customer fails to comply with any material provisions of this Tariff, Pipeline, upon notice to Customer, may refuse to Receive Gas and/or may refuse to Deliver Gas, until Customer has fully complied with the terms of this Tariff.
- 21.3 Pipeline may, at its reasonable discretion, waive any rate, penalty, charge, or other term contained in this Tariff, provided that such waiver is not unduly discriminatory, and provided further that such waiver will not impede Pipeline's performance of its firm service obligations.

GENERAL TERMS AND CONDITIONS  
Construction of Facilities  
Section 22

22. CONSTRUCTION OF FACILITIES

- 22.1 Except as to this Section 22, Pipeline shall have no obligation to construct, modify, improve, or alter any facilities in order to provide service under this Tariff. Nothing in this Tariff shall require Pipeline to file an application for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act ("NGA"). Further, nothing in this Tariff shall prevent Pipeline from contesting an application for service filed pursuant to Section 7(a) of the NGA.
- 22.2 For the purposes of this Section 22, "Requested Facilities" shall mean Taps, M&R Equipment and Laterals. Requested Facilities shall not include major expansion of transmission facilities. Tap shall mean a Delivery or Receipt tap and shall include, but shall not be limited to, flanges and block valves and sufficient pipeline from Pipeline's existing transmission facilities to the edge of Pipeline's right-of-way. M&R Equipment shall include miscellaneous connecting pipeline to the Tap, meters, flow and pressure regulators, filters/separators, gas heaters, flanges, check valves, electronic gas measurement, communication equipment and gas conditioning and odorization equipment other than Tap equipment. Lateral shall mean any transmission pipeline extension (other than a mainline extension) built by Pipeline from an existing transmission pipeline facility or new Tap to Receive or Deliver Gas to or on behalf of one or more Customers, including new Points of Receipt or Delivery and enlargements or replacements of existing laterals. Construction shall mean the construction, modification, rearrangement or installation by Pipeline or its designee of Requested Facilities to perform any service, including any Requested Facilities necessary for Pipeline to Receive or Deliver Gas, or measure any Gas Received from or Delivered to or on behalf of any Customer requesting Pipeline's construction of such facilities.
- 22.3 A party shall submit a request for facilities under GT&C Section 11 requesting Pipeline to construct Requested Facilities in conjunction with a request for transportation services (Requesting Customer). Pipeline will respond to each request for interconnect facilities within 60 days after receiving the request. Pipeline shall receive and process all such requests for construction of Requested Facilities in a manner that is not unduly discriminatory.
- 22.4 Pipeline shall construct Requested Facilities under the conditions provided below:
- A. Requested Facilities shall be established at a location that does not (i) adversely affect Pipeline's operations; (ii) diminish service to existing Customers; (iii) cause Pipeline to be in violation of any applicable environmental or safety laws or regulations; (iv) cause Pipeline to be in violation of its right-of-way agreements or any contractual obligations; and (v) cause Pipeline to expand its pipeline facilities or construct any facilities leading up to the point of interconnection;
  - B. Pipeline and Requesting Customer shall cooperate to provide in a cost-effective manner the evidence and analysis necessary to obtain governmental approvals for their respective facilities from any government agency having jurisdiction including, but not limited to, all exhibits required by an application for FERC authorization;
  - C. Terms and conditions of the construction, ownership, operation and maintenance of Requested Facilities shall be mutually agreed to by Pipeline and Requesting Customer and set forth in a facilities agreement (unless Pipeline has agreed to pay for the cost of all Requested Facilities); and

- D. Requesting Customer shall reimburse or agree to reimburse Pipeline for the cost of construction as provided for in GT&C Section 22.5 below or agree to construct the Requested Facilities in compliance with Pipeline's technical requirements.
- 22.5 Subject to GT&C Sections 11 and 22.4, Pipeline shall construct, modify or rearrange Requested Facilities for any Requesting Customer that agrees to fully reimburse Pipeline for the cost of such Requested Facilities and their Construction as set forth in a facilities agreement. Pipeline may condition its Construction of Requested Facilities on payment from the Requesting Customer of (1) any or all costs of the Requested Facilities and their Construction and (2) other Related Costs incurred prior to the in-service date of the Requested Facilities, which shall be defined to include, but are not limited to, operating and maintenance expenses, administrative and general expenses, employee salaries on a time-devoted basis and related expenses, taxes other than income taxes, depreciation costs and the time value of money, as set forth in a facilities agreement, and (3) a gross-up for state and federal income taxes, if applicable. Unless Pipeline agrees to allow the Requesting Customer to pay such costs at some other time or in installments, any agreement for Construction of Requested Facilities shall provide that the Requesting Customer shall pay Pipeline the costs of Construction and Related Costs prior to the commencement of Construction. If actual costs are not known, Pipeline shall be entitled to bill the Requesting Customer based upon estimated costs and the Requesting Customer shall be required to pay such estimated costs, provided however, upon determining its actual costs, Pipeline shall have 30 days to either refund any over-collections or bill for any under-collections, as appropriate, to provide for Pipeline's collection of its actual costs, including the time value of money. If Pipeline fails to use due diligence in pursuing the Construction of Requested Facilities or the filing of the necessary governmental permits and such failure delays the commencement of service beyond 60 days of the agreed in-service date, Pipeline shall reimburse Requesting Customer the time value of money advanced for each day beyond the agreed in-service date at the FERC approved Interest Rate.
- 22.6 Pipeline may agree to pay all or part of the costs of the Requested Facilities and their Construction, Related Costs and tax gross up if the Construction is economically or operationally beneficial to Pipeline. In determining economic or operational benefit, Pipeline may consider, among factors: costs of the Requested Facilities and their Construction; estimated incremental throughput and/or revenues attributable to the Requested Facilities; the Related Costs and tax gross up attributable to the Requested Facilities; the marketability of the capacity associated with the Requested Facilities; the location of the markets associated with the Requested Facilities; the interruptible or firm nature of the transportation service; the availability of capital funds on terms and conditions acceptable to Pipeline; the time value of money; increased system or operational reliability or flexibility; and increased access to new supplies or markets.
- 22.7 Subject to Section 22.4 above, Requesting Customer may construct its own interconnecting facilities at its sole expense, which shall meet all of Pipeline's technical and engineering requirements; provided that only Pipeline shall construct the tap, at Requesting Customer's sole cost, to complete the interconnection.
- 22.8 Pipeline shall have the right to operate and maintain any facilities constructed pursuant to this Section 22 regardless of ownership of such facilities. Customer shall fully reimburse Pipeline for all costs related to Pipeline's operation of such facilities including operating and maintenance expenses.

GENERAL TERMS AND CONDITIONS  
Incorporation of Provisions  
Section 23

23. INCORPORATION OF PROVISIONS

- 23.1 Service rendered to Customer shall be in accordance with the provisions of a Service Agreement executed in the form of the applicable Service Agreement contained in this Tariff, or such other agreement as is approved pursuant to GT&C Section 34.
- 23.2 The GT&C are incorporated in and are a part of the Rate Schedules contained in this Tariff and executed Service Agreements relating thereto.
- 23.3 The following provisions are hereby incorporated in all executed Service Agreements hereunder:
- A. No waiver by any party of any one or more defaults by the other in the performance of any provisions of any Service Agreement executed hereunder shall operate or be construed as a waiver of any other default or defaults, whether of a like or of a different character.
  - B. Pipeline may, without relieving itself of its obligations under the Service Agreement, assign any of its rights thereunder to a company with which it is affiliated. Otherwise, no assignment of the Service Agreement, or of any of the rights or obligations thereunder, shall be made unless the assigning party first obtains the written consent of the other party. Consent shall not be unreasonably withheld.
  - C. Any Service Agreement executed hereunder, and the respective obligations of the parties thereunder, are subject to all present and future valid laws, orders, rules and regulations of duly constituted authorities, having jurisdiction over the parties, their facilities or gas supply, the Service Agreement or any provision thereof. Neither party shall be held in default for failure to perform the Service Agreement if such failure is due to compliance with laws, orders, rules or regulations of any such duly constituted authorities, provided however, that nothing herein shall excuse Customer's obligation to pay reservation charges it has agreed to pay.
  - D. The interpretation and performance of any Service Agreement executed hereunder shall be in accordance with the laws of the State of Delaware, without recourse to the law regarding conflict of laws.

GENERAL TERMS AND CONDITIONS  
Descriptive Headings  
Section 24

24. DESCRIPTIVE HEADINGS

Subject headings of the provisions of this FERC Gas Tariff and any Service Agreements executed hereunder, are inserted for the purpose of convenient reference and are not intended to become a part of or to be considered in any interpretation of such provisions.

GENERAL TERMS AND CONDITIONS  
Right of First Refusal  
Section 25

25. RIGHT OF FIRST REFUSAL

25.1 Pregranted Abandonment. Upon expiration and/or termination of any Service Agreement for services rendered pursuant to Part 284 of the Commission's regulations, Pipeline is entitled to pre-granted abandonment of service under the expired and/or terminated Service Agreement, without further application to the Commission for abandonment authority, subject to any right of first refusal (ROFR) Customer may have pursuant to this Section 25.

25.2 Right of First Refusal.

- A. Customer shall have a ROFR as set forth in this Section 25 only where Customer's Service Agreement or amendment thereto provides for services rendered pursuant to Part 284 of the Commission's regulations and under Firm Transportation Rate Schedules: (A) with a term of twelve or more consecutive months of service; or (B) provides for services under Firm Transportation Rate Schedules that are not available for twelve consecutive months, with a multiyear term. Furthermore, unless otherwise agreed between Pipeline and Customer, no ROFR shall apply to any such Service Agreement, or amendment thereto, that includes a negotiated or discounted rate. Customer's ROFR gives it the right to continue service under Customer's existing Rate Schedule and service rights, except as modified by this Section, to the extent that Customer matches competing bids as set forth hereunder. Pipeline and Customer may also agree to expressly provide for a ROFR in a Service Agreement not otherwise described in this Section 25.
- B. Customer shall notify Pipeline in writing of its intent to exercise its ROFR within one month from the date that either party gives notice of termination relating to all or portion of the quantities under the service agreement. When providing notice of its intent, Customer may elect to exercise its ROFR with respect to a portion of its capacity and to have pre-granted abandonment apply to the remainder. For any eligible Service Agreement that terminates by its own terms, with no prior notification required by either party, Customer shall be presumed to have elected to retain the right to exercise its ROFR for the entire amount of the capacity, unless Customer has informed Pipeline otherwise in writing.
- C. If a Customer elects to exercise the ROFR as to only a portion of its capacity, its rights under its contracts shall be reduced as follows: (1) Customer's maximum entitlement shall be reduced in the same proportion on each Day that Customer is entitled to receive service during the year; (2) to the extent that Customer had rights at Points of Receipt and Delivery (including MDDOs) in excess of its maximum transportation entitlements, the aggregate point rights shall be reduced in proportion to the reduction in transportation capacity; and (3) Customer shall retain the same Points of Receipt and Delivery with a proportionate reduction in its rights at each Point unless Customer requests a disproportionate reduction, which Pipeline will honor unless Customer's request is operationally infeasible or would adversely affect system operations.
- D. To the extent that Customer elects not to exercise its option to exercise its ROFR or waives its ROFR pursuant to GT&C Section 25.2.G, or fails to give timely notice to Pipeline, Pipeline shall post the availability of such capacity in accordance with the provisions of this Section 25.
- E. In the event that a Service Agreement is permanently released pursuant to GT&C Section 15, Replacement Customer shall succeed to all of the elements of the ROFR originally held by Releasing Customer. In the event that a Service Agreement is released on a temporary

basis, Releasing Customer's ROFR shall not be affected and the Replacement Customer shall have no ROFR.

F. Posting and Bidding Procedures for ROFR Capacity

1. When Customer retains its right to exercise its ROFR, Pipeline shall post such capacity for bidding no earlier than one year prior to the expiration of the Service Agreement, and the bidding period for the capacity shall be completed no later than 60 days prior to the expiration of the Service Agreement. The capacity shall be posted on Pipeline's Website for no less than five Business Days. Such postings shall include the information described in GT&C Section 26.2.B.
2. Eligible bidders shall be identified in accordance with the bidding procedures of GT&C Section 26.3, and shall comply with and be bound by such procedures. Pipeline shall entertain bids for all or any part of the posted ROFR capacity.
3. Pipeline shall reject any invalid bids and evaluate and determine the best bid, if any, for the posted ROFR capacity in accord with GT&C Section 26.4.
4. Pipeline shall notify Customer and the winning bidder in writing of the best bid(s), within five Business Days after the close of the bid period. The notice to Customer shall include an executable copy of a Service Agreement in the Form of Service Agreement set forth in this Tariff and containing the matching terms. If a competing bidder or bidders submits a bid for only a portion of Customer's capacity subject to the ROFR, Customer must match that bid to retain the amount of capacity to which the bid applies. To retain capacity, Customer must match the competing bids up to the recourse rate applicable to the service currently being provided under the subject Service Agreement, for the term bid by the best bidder. In determining whether the existing Customer's bid matches the best third party bid, Pipeline shall use the evaluation criteria specified in its posted notice pursuant to GT&C Section 26.2, as applied to the quantity of service that Customer elects to retain. The executed Service Agreement must be received by Pipeline within 15 Business Days of the date of Pipeline's best bid notice.
5. If Customer elects not to match the best bid, such election shall constitute an irrevocable waiver of Customer's ROFR and Pipeline shall deliver a Service Agreement to the winning bidder for execution pursuant to GT&C Section 26.
6. If no competing bidder submits an acceptable bid for all or part of the posted capacity, Pipeline shall notify Customer that no acceptable bid was submitted within five Business Days after the close of the bid period. Customer may exercise its ROFR for all or a part of the capacity by notifying Pipeline, in writing, that Customer agrees to continue to receive service under the current Rate Schedule and to pay the effective maximum rates applicable to the service. If Customer retains only part of its capacity, its rights shall be reduced in accordance with GT&C Section 25.2.C above. Customer's notice to Pipeline must be made within ten Business Days of the date when Customer receives Pipeline's notification and shall also include the level of service and length of term that Customer elects. Nothing in this paragraph shall preclude Pipeline and Customer from agreeing to extend the Service Agreement on mutually agreeable terms.
7. Within ten Business Days after receipt of such further notice from Customer, Pipeline shall deliver an executable copy of a Service Agreement in the Form of Service Agreement set forth in this Tariff to Customer containing the terms described above. Within ten Business Days of receipt of such Service Agreement from Pipeline, Customer shall execute the agreement and return a copy to Pipeline, as directed.

- G. Customer's failure to abide in a timely manner to the applicable notice requirements of GT&C Section 25.2.B and, if applicable, GT&C Section 25.2.F.6, or to the applicable deadline for Service Agreement execution set forth in GT&C Sections 24.2.F.4 and F.7, shall constitute an irrevocable waiver of Customer's ROFR.
- H. Limitations
1. The ROFR provisions of this Section 25 are intended to permit Customer to continue to receive service in substantially the same form as provided under the expiring Service Agreement. The ROFR rights described in this Section shall apply solely to the original terms of the expiring Service Agreement and shall not be expanded to include changes that would be considered requests for new service under GT&C Section 11.
    - a. If Customer's expired or terminated Service Agreement provided for service on a seasonal basis then Pipeline shall not be required to provide transportation service to Customer under a new Service Agreement executed pursuant to an exercise of a ROFR on a year-round basis or for a different season.
    - b. If Customer's expired or terminated Service Agreement provided for year-round service then Pipeline shall not be required to provide transportation service to Customer under a new Service Agreement executed pursuant to an exercise of a ROFR on a seasonal or less than continuous basis.
  2. Notwithstanding anything to the contrary in this Tariff, Pipeline shall not be obligated to accept any bid or execute any Service Agreement to provide service at a rate that is less than the recourse rate.
  3. Pipeline shall not be obligated to include an evergreen or rollover provision in any new firm Service Agreement executed pursuant to GT&C Section 25.2.F.6.
  4. Notwithstanding anything to the contrary in this Tariff, Pipeline may agree with any Customer, on a not unduly discriminatory basis, to extend the term of a long-term Service Agreement for an additional term to be negotiated on a case-by-case basis.



GENERAL TERMS AND CONDITIONS  
Allocation of Available Firm Capacity  
Section 26

26. ALLOCATION OF AVAILABLE FIRM CAPACITY

26.1 This Section 26 sets forth procedures for allocating existing firm capacity that becomes available on Pipeline's system. It shall not apply to capacity that is: (a) offered through GT&C Section 15 – Capacity Release; or (b) subject to a ROFR under GT&C Section 25; or (c) reserved for future expansion projects, as defined in GT&C Section 27.

26.2 Posting of Available Firm Capacity

- A. Pipeline shall undertake to post for bidding known available capacity on the Website no less than 30 days prior to the date that it is to become available. Capacity that will be available for less than five months shall be posted for no less than one Business Day. All other capacity shall be posted for no less than five Business Days.
- B. The posting shall include the following information, as applicable: (1) Points of Receipt and Delivery, (2) total quantities subject to bid, (3) the date when the capacity will become available or service will commence, (4) the recourse rate applicable to the service offered, (5) the applicable rate schedule, (6) the posting period, including any deadline for bids, (7) any limitations on availability of service, (8) whether the capacity is subject to any reserve rate or formula, (9) the criteria by which Pipeline will evaluate bids, (10) whether Pipeline will entertain contingent bids, and (11) any other conditions applicable to the capacity offered.

26.3 Bidding Procedures

A. Eligible Bidders

- 1. Any party desiring to submit a bid under this Section must first pre-qualify by demonstrating that it meets the creditworthiness standards of GT&C Section 6 for the value of its bid.
- 2. Upon successful pre-qualification, the bidder shall be placed on Pipeline's approved bidder list, and shall be eligible to bid for capacity. An approved bidder shall remain on Pipeline's approved bidder list until such bidder: (1) notifies Pipeline to the contrary; (2) in Pipeline's judgment no longer meets the credit qualifications of GT&C Section 6; or (3) is suspended for failure to pay part or all of the amount of any bill for service from Pipeline.

B. All bids must be submitted by facsimile, using the Form of Bid posted on Pipeline's Website, or by requesting firm service in accordance with GT&C Section 11. A service request under Section 11 that remains in the queue, and that includes authorization under Section 11, shall be considered by Pipeline to be a timely and valid bid under this Section 26.

C. All bids must state the reservation charge or other form of revenue that will be guaranteed over the term of the Service Agreement. Unless otherwise specifically provided in the bid posting, the bidder shall pay all applicable usage charges, surcharges, and any other applicable charges and penalties, as adjusted from time to time, in addition to the bid price.

D. Withdrawals of Offers or Bids. Bids for capacity are legally binding on the bidder until written notice of withdrawal is received by Pipeline; provided, however, bids cannot be withdrawn after the close of the bid period, and, provided further, a bidder may not withdraw a bid and resubmit a bid with a lesser value.

#### 26.4 Evaluation Criteria and Award of Capacity

- A. Pipeline may establish a reserve rate or formula that shall establish the minimum rate or value that Pipeline would accept for capacity being posted, and that may vary over the term for which the posted capacity is available. The reserve rate or formula shall not exceed the applicable maximum rate, and shall be established prior to posting capacity for the bid. Pipeline shall not be required to disclose the reserve rate or formula at the time of posting, but shall record and maintain such reserve rate or formula for a period of three years for validation purposes. In the event that a participating bidder challenges in writing Pipeline's failure to award the capacity to it, Pipeline will reveal the reserve rate to the FERC office of Administrative Dispute Resolution, or another mutually agreeable neutral third party, on a confidential basis to confirm that the capacity was awarded in accordance with the Tariff.
- B. Pipeline may establish objective and non-discriminatory factors determined by Pipeline to be relevant to the granting of the request, including the treatment of contingent bids, which shall be considered in evaluating bids for capacity. Notice of any such factors to be considered shall be posted on the Website at the time Pipeline posts the notice of available capacity under this Section 26.
- C. Pipeline shall have the right to reject any bid that: (1) does not meet minimum requirements or conditions specified in the posting, (2) if accepted, may detrimentally impact the operational integrity of Pipeline's system, (3) is for less than the Pipeline's recourse rate applicable to the service, (4) contains terms and conditions inconsistent with any part of this Tariff, (5) is made by an ineligible bidder, (6) includes conditions or contingencies not specifically allowed in the posting, or (7) purports to alter the bidder's obligation to pay all applicable usage charges, surcharges, and any other applicable charges and penalties.
- D. To the extent that a bidder offers to pay rates in excess of any then-applicable maximum rate component, Pipeline shall consider that bid to be equivalent to the applicable maximum rate component for purposes of awarding capacity. Pipeline shall evaluate valid bids based on one of the following methods, as identified in the posted notice:
  - 1. The highest net present value of the reservation charges or other source of guaranteed revenue to be received by Pipeline over the term of service; or,
  - 2. The highest reservation charge bid, or other source of guaranteed revenue, provided that such bid meets Pipeline's stated terms. A bid may be higher than the recourse rate, but Pipeline shall not consider that portion of such bid in its bid evaluation process.
  - 3. An alternate objective method chosen by Pipeline, posted at least three days before the capacity is posted for bid. Such method must be applicable to all bidders, and not unduly discriminatory. The method shall be objectively stated, with sufficient specificity to reasonably determine and apply the method or formula and to rank all bids received, using the elements contained in the bid.
- E. Pipeline shall award the capacity to the qualifying bidder or bidders, if any, that produce the best bid result determined in accordance with this Section 26, provided, however, that where Pipeline agrees to a discounted rate, Pipeline shall not be required to offer a term greater than one month unless the discounted rate exceeds Pipeline's reserve rate or formula.
- F. Tie-Breakers

1. A bid that offers to pay the maximum authorized rate applicable to the offered service shall be considered superior to a bid to pay a specified dollar rate that is equal to the currently-effective maximum tariff rate.
  2. For equal tying bids, capacity shall be allocated to the bidder that submitted its winning bid first in time, unless Pipeline specifies another objective, non-discriminatory method of addressing equal tying bids in its posting.
- G. Pipeline shall post the material terms of the winning bid(s) on its Website, immediately after the bid is awarded.
- H. Contracting. Pipeline shall notify the successful bidder in writing of any capacity award and shall deliver a Service Agreement that confirms the terms of the accepted bid for the available capacity, within five Business Days of the close of the bidding period. The successful bidder shall sign and return the executed Service Agreement to Pipeline within ten Business Days of receipt of the Service Agreement. In the event the winning bidder fails to execute the Service Agreement in a timely fashion, Pipeline shall either: (1) offer the capacity to the next highest bidder or bidders, if any, that submitted an acceptable bid or bids; or (2) post the capacity for bid again.
- 26.5 Pre-arranged Deal. Pipeline may enter into a contingent Service Agreement with any party (pre-arranged Customer) for capacity that remains uncommitted after posting pursuant to this Section 26 or GT&C Section 25, provided that Pipeline posts the terms of the Service Agreement on its Website for no less than 48 Hours. During such time, any approved bidder may submit a bid in accordance with the bidding procedures established in this Section 26. Pipeline shall evaluate and award the capacity in accordance with this Section 26, except that Pipeline shall not be limited to the use of maximum rates when evaluating the bids. In the event of a tie, the pre-arranged Customer shall be awarded the capacity. The pre-arranged Customer shall have a one-time right to match a higher bid or combination of bids in order to obtain the capacity. If the pre-arranged Customer fails to match the higher bid within 48 Hours, then Pipeline shall award the capacity to the highest bidder.
- 26.6 If any capacity remains uncommitted after posting in accordance with the provisions of this Section 26 or GT&C Section 25, Pipeline may hold such capacity for Pipeline's own use, re-post the capacity pursuant to Sections 26.3 and 26.4, sell the capacity on a pre-arranged deal basis pursuant to Section 26.5 or reserve such capacity for expansion projects pursuant to Section 27.

GENERAL TERMS AND CONDITIONS  
Capacity Reserved for Expansion Projects  
Section 27

27. CAPACITY RESERVED FOR EXPANSION PROJECTS

- 27.1 Notwithstanding any other provision of this Tariff, Pipeline reserves the right to reserve for expansion projects any unsubscribed capacity or capacity under expiring or terminating Service Agreements where such Agreements do not have a ROFR or Customer does not exercise its ROFR pursuant to the terms of this Section 27.
- 27.2 Prior to reserving capacity under this Section 27, Pipeline shall post for bidding and award the capacity using the procedures of GT&C Section 26. Capacity will be posted for at least five Business Days before it is reserved. As part of its posting, Pipeline shall have the right to establish minimum terms and conditions equivalent to those applicable to the open season that Pipeline has held or will hold in connection with a future expansion project. In the event that the open season held in connection with the future expansion project imposes minimum terms and conditions that are materially different than those stated in the posting for reserving capacity, Pipeline shall re-post for bidding and award the reserved capacity using the same minimum terms and conditions as were imposed in the expansion project open season.
- 27.3 Pipeline may continue to reserve capacity under this Section 27 until the expansion project is placed in service; provided, however, that the reservation of capacity shall terminate one year from the date that the notice was posted if Pipeline has not filed a certificate application for an expansion project or projects or if the expansion project for which the capacity is reserved does not go forward for any reason.
- 27.4 Pipeline shall maintain on its Website a notice describing the capacity that Pipeline has reserved under this Section 27. Pipeline's notice shall include: (1) a brief description of its expansion projects; (2) the quantity of capacity to be reserved; (3) the location of the proposed reserved capacity, including Receipt and Delivery Points and associated quantities at those points; (4) the projected in-service date of the expansion project; (5) information regarding the timing of the open season or other process for participation in the expansion project; and (6) the amount of reserved capacity that has been sold on an interim basis. The posted notice shall be updated from time to time, to reflect sales of reserved capacity on an interim basis, expansion projects that have been placed in service, and material changes in the scope of any future expansion project affecting the level or nature of reserved capacity.
- 27.5 If unsubscribed capacity that has been posted for bid remains unsubscribed after posting, and if such unsubscribed capacity is insufficient to serve the expansion project, the reservation posting or open season will include a non-binding solicitation for turned back capacity from Pipeline's existing Customers to serve the expansion. Pipeline shall post on its Website a non-binding solicitation for expansion project related to turned back capacity no later than ninety (90) days after the close of an expansion project's open season specifying the minimum term for a response to the solicitation.
- 27.6 Any capacity reserved under this Section 27 shall be made available pursuant to GT&C Section 26 for a limited term or terms calculated to end no later than the in-service date of the expansion project(s). For such limited-term agreements, Pipeline reserves the right to limit any roll-over or renewal rights provided in the Service Agreement and any ROFR, and shall state these limitations in its capacity posting. Any capacity reserved for a project that does not go forward for any reason shall be re-posted as generally available within 30 days of the date the capacity becomes available, with the exception of capacity committed to in contracts entered into on an interim limited term basis until the in-service date of any expansion facilities during the period the capacity was reserved.

GENERAL TERMS AND CONDITIONS  
Indemnification  
Section 28

28. INDEMNIFICATION

- 28.1 Except as provided for in GT&C Section 28.3, GT&C Section 18.4.A. or expressly agreed to otherwise in writing between the parties, each party to an executed Service Agreement shall bear responsibility for all of its own breaches, tortious acts, or tortious omissions connected in any way with the executed Service Agreement. In the event such breach, tortious act, or tortious omission proximately causes damage or injuries of any kind to the other party or to any third party, the offending party shall hold harmless and indemnify the non-offending party against any costs, claims or damages of any kind. As used in this Section 28, the term party shall mean a corporation or partnership entity or individual with whom Pipeline has a contractual relationship; the phrase "costs, claims or damages of any kind" shall include without limitation, costs, claims, damages, suits, actions, proceedings, debts, accounts, losses, expenses, liabilities, payment of royalties, taxes, license fees or charges, actual or punitive damages, litigation expenses, court costs, and/or attorneys' fees; and the phrase "tortious acts or tortious omissions" shall include, without limitation, sole or concurrent simple negligence, gross negligence, recklessness, and intentional acts or omissions.
- 28.2 Except insofar as one Customer's acts in violation of its Service Agreement or this Tariff may result in another Customer's costs, claims, or damages of any kind, neither this Tariff nor any of the Service Agreements executed for services hereunder contemplate any third party beneficiaries to any service, term, or condition of this Tariff or any applicable Service Agreement.
- 28.3 Except for costs, claims or damages of any kind resulting from Pipeline's gross negligence, undue discrimination, or willful misconduct, Pipeline shall not have liability to Customer, and Customer shall indemnify and hold Pipeline harmless from costs, claims or damages of any kind resulting from:
- A. Customer's Tender of Gas that does not conform to quality specifications of GT&C Section 2;
  - B. Customer's Tender of Gas that does not meet the title requirements of GT&C Section 8;
  - C. Customer's failure to comply with a curtailment or interruption order made by Pipeline under GT&C Section 10 or any court or agency having jurisdiction;
  - D. Customer's failure to comply with GT&C Section 12, including any failure to make correct nominations, or to monitor scheduled quantities on Pipeline's Website;
  - E. Pipeline's reliance upon an allocation method at a Point of Receipt or Delivery such as those described in GT&C Section 14;
  - F. Pipeline's administration of capacity releases in accordance with Customer's instructions, as described in GT&C Section 15;
  - G. Customer's use of or failure to properly use Pipeline's Website including the \_\_\_\_\_ System, which Website is maintained pursuant to GT&C Section 16; or
  - H. Customer's failure to provide current contact information required by GT&C Section 18.1.D.2

GENERAL TERMS AND CONDITIONS  
Off-System Capacity  
Section 29

29. OFF-SYSTEM CAPACITY

29.1 From time to time, Pipeline may enter into transportation and/or storage agreements with other interstate or intrastate pipeline companies. If Pipeline acquires capacity on an off-system pipeline, Pipeline will only render service to Customers on the acquired capacity pursuant to Pipeline's FERC Gas Tariff and subject to approved and/or negotiated rates, as such tariff and rates may change from time to time. For transactions entered into under this Section 29, such capacity shall be referred to as "Off System Capacity", and further, the "shipper must have title" requirement is waived.

29.2 DTI Capacity:

- A. For Customers with primary firm transportation rights at a DTI Point of Receipt set forth in the Customer's Service Agreement, Customer shall also pay, to Pipeline,
1. DTI Reservation Charge - The DTI Reservation Charge for FT set forth in the Statement of Applicable Rates on Tariff Record 10.20, which is the currently effective reservation charge reflected in DTI's FERC Gas Tariff for the Supply Header Project. If Customer and Pipeline have agreed to a negotiated rate relating to the DTI Capacity pursuant to GT&C Section 35, then the negotiated rate shall be used in lieu of the rate set forth in the Statement of Applicable Rates.
  2. DTI Usage Charge – The DTI Usage Charge for FT set forth in the Statement of Applicable Rates on Tariff Record 10.20, which is the currently effective usage charge reflected in DTI's FERC Gas Tariff for its Supply Header Project. If Customer and Pipeline have agreed to a negotiated rate relating to the DTI Capacity pursuant to GT&C Section 35, then the negotiated rate shall be used in lieu of the rate set forth in the Statement of Applicable Rates.
  3. Other Charges - Customer also shall pay Pipeline all other applicable charges and surcharges paid by Pipeline to DTI pursuant to the terms of DTI's FERC Gas Tariff.
  4. Modification of Charges - These charges will be updated periodically to reflect any change in the charges for service provided pursuant to Pipeline's firm transportation service agreement with DTI. The effective date of any change in the DTI rates. Pipeline shall file with the Commission no later than fifteen (15) days following the issuance date of a Commission order that accepts and makes effective a DTI rate change. Pipeline may, at its discretion, submit such filing while the applicable DTI filing is pending before the Commission. If Pipeline submits the filing while the applicable DTI filing is pending, Pipeline must state that the filing is subject to the Commission's approval of the applicable DTI filing.
  5. Refunds and Surcharges – Within sixty (60) days of receipt of a refund from DTI, Pipeline shall refund to Customers the portion of the refund, including any Interest, attributable to Pipeline's firm transportation service agreement pursuant to which Customers have been charged. The amount refunded to Customers will also include Interest accrued by Pipeline during the time between receipt of the refund and the distribution of the refund to Customers. Pipeline shall bill Customers for any charges or surcharges paid by Pipeline, including interest paid by Pipeline, for amounts charged pursuant to Pipeline's firm transportation service agreement with DTI that

were not otherwise recovered from Customer. Customer's portion of any refund or surcharge shall be determined in a manner consistent with the manner in which the refund or surcharge was received or incurred.

6. In addition, Customers holding primary DTI Points of Receipt entitlements may request in writing that Pipeline request a primary receipt point change, and if DTI so grants subject to the terms of DTI's FERC Gas Tariff, Pipeline shall reflect such change in Customer's Service Agreement.
  7. Prior to the expiration of the firm transportation service agreement with DTI, Pipeline shall give Customer the right to elect to extend its entitlement to the primary DTI Points of Receipt. In the event that Customer elects to not maintain the DTI Point(s) of Receipt, those receipt points shall be eliminated from Customer's Service Agreement.
- B. For all other Customers using DTI Points of Receipt, the Customer shall pay, to Pipeline, the DTI Usage Charges for IT set forth in the Statement of Applicable Rates on Tariff Record No. 10.20, which is the currently effective IT usage reflected in DTI's FERC Gas Tariff for the Supply Header Project. Customer also shall pay Pipeline all other applicable charges and surcharges paid by Pipeline to DTI pursuant to the terms of DTI's FERC Gas Tariff.
- C. DTI Fuel shall be assessed as set forth in GT&C Section 31.7.
- D. Subject to operational availability and the other provisions set forth in the underlying Rate Schedule and these GT&C, Customer also may utilize any points of receipt or delivery on the DTI system, provided however, Customer's rights shall not exceed the rights of Pipeline under its firm transportation service agreement with DTI or DTI's FERC Gas Tariff, including the following: (i) Customer may not exceed, in aggregate, its contract MDTQ associated with DTI Point(s) of Receipt stated in Customer's Service Agreement; and, (ii) any delivery of Gas to a point on DTI's system must be received from a DTI Point(s) of Receipt. Pipeline will allow Customer's nominating gas using both a DTI Point of Receipt and Delivery to use the nomination cycles set forth in DTI's FERC Gas Tariff.

GENERAL TERMS AND CONDITIONS  
Unauthorized Gas  
Section 30

30. UNAUTHORIZED GAS

- 30.1 For purposes of this Section 30, Unauthorized Gas shall mean all Gas introduced, whether intentionally or otherwise, into any of Pipeline's facilities without express authorization from Pipeline, which is not otherwise subject to any Service Agreement under Pipeline's Tariff that authorizes the introduction of such Gas.
- 30.2 Upon the detection of Unauthorized Gas on any of Pipeline's facilities, Pipeline shall issue notice on its Website, directing all responsible parties to either obtain authority for the introduction of such Gas or to remove it from the pipeline system, within 72 hours. Pipeline shall make reasonable efforts to provide direct written notice or notice via facsimile to the suspected owner or Customer of such Unauthorized Gas.
- 30.3 Upon the expiration of the 72-hour notice period, any Unauthorized Gas volumes that have not been attributed to an effective Service Agreement or removed from Pipeline's facilities shall be confiscated, at no cost to Pipeline or Pipeline's Customers.
- 30.4 Pipeline shall continue to confiscate any additional quantities of Unauthorized Gas from the detected source on a monthly basis, until such Gas is attributed to an effective Service Agreement.
- 30.5 Quantities of Unauthorized Gas shall be classified as Retention, as described in GT&C Section 31.2.B, and used in the calculation of Pipeline's Transportation Fuel Retention Percentage pursuant to Section 31.



GENERAL TERMS AND CONDITIONS  
Transportation Fuel Retention Percentage  
Section 31

31. TRANSPORTATION FUEL RETENTION PERCENTAGE

31.1 Pipeline shall use the procedures described in this Section 31, to adjust the Transportation Fuel Retention Percentage applicable to all firm and interruptible transportation services provided under this FERC Gas Tariff.

31.2 Definitions

- A. "Fuel" shall mean the natural gas used in Pipeline's operations, including without limitation (1) the fuel used at compressor stations and for other utility purposes ("Fuel Gas"); and (2) lost and unaccounted for gas ("LAUF Gas").
- B. "Retention" shall mean the quantity of Gas that Customer shall provide and Pipeline shall retain from quantities of Gas received by Pipeline under all Rate Schedules for Pipeline's Fuel use. If applicable, Retention shall also include Unauthorized Gas pursuant to GT&C Section 30.5.
- C. "Applicable Quarter" shall mean the calendar quarter during which a particular Transportation Fuel Retention Percentage is in effect.
- D. "Measurement Quarter" shall mean the calendar quarter prior to the Applicable Quarter and may include estimated quantities.
- E. "Accumulated Imbalances" shall mean any gas which has been over- or under-collected prior to the Measurement Quarter.

31.3 Calculation of Transportation Fuel Retention Percentage

- A. The Transportation Fuel Retention Percentage shall be the applicable percentage, determined on a quarterly basis pursuant to this Section 31, to account for and recover Pipeline's Fuel requirements. At least ten (10) days prior to the beginning of each Applicable Quarter, Pipeline will publish the Transportation Fuel Retention Percentage via its Electronic Bulletin Board.
- B. The quarterly Transportation Fuel Retention Percentage shall be calculated in the following manner:

[Accumulated LAUF Imbalance + (Measurement Quarterly LAUF Incurred -  
Measurement Quarterly LAUF Recovered) + LAUF Gas Requirements for Applicable Quarter]

-----  
Forecasted Systemwide Deliveries for Applicable Quarter

Plus

[Accumulated Fuel Gas Imbalance + (Measurement Quarter Fuel Gas Used -  
Measurement Quarter Fuel Gas Recovered) + Fuel Gas Requirements for Applicable  
Quarter]

-----  
Forecasted Systemwide Deliveries for Applicable Quarter

31.4 Pipeline shall file with the Commission by January 31 of each year the calculations supporting the

Transportation Fuel Retention Percentages that were charged in the preceding twelve (12) months ending December 31.

- 31.5 Pipeline may adjust the minimum or maximum Transportation Fuel Retention Percentages set forth on Tariff Record No. 10.10 of this FERC Gas Tariff from time to time based upon Pipeline's determination of changes in its Fuel requirements.
- 31.6 Prior period adjustments included in the calculation of a particular quarterly Transportation Fuel Retention Percentage shall be limited to the thirty-six (36) month period immediately prior to the Applicable Quarter for which the Transportation Fuel Retention Percentage is being calculated.
- 31.7 DTI Transportation Fuel Retention Percentage

Pipeline shall retain the then-applicable maximum fuel retention assessed to Pipeline by DTI on the quantities received at a DTI Point of Receipt, as set forth on the Statement of Applicable Rates on Tariff Record No. 10.20, which is the currently effective fuel retention percentage reflected in DTI's FERC Gas Tariff for the Supply Header Project. If Customer and Pipeline have agreed to a negotiated fuel retention percentage relating to the DTI Capacity pursuant to GT&C Section 35, then the negotiated rate shall be used in lieu of the rate set forth in the Statement of Applicable Rates.

GENERAL TERMS AND CONDITIONS  
Discount Terms  
Section 32

32. DISCOUNT TERMS

- 32.1 In the event that Pipeline agrees to discount its maximum rates for service under the Rate Schedules contained in this Tariff, then Pipeline and Customer may agree to the types of discounts specified herein without such discounts constituting a material deviation from Pipeline's Form of Service Agreement. Pipeline and Customer may agree that a specified discounted rate will apply: (1) only to specified quantities under the Service Agreement; (2) only if specified quantities are achieved or only with respect to quantities below a specified level; (3) only during specified periods of time; (4) only to specified points, combination of points, markets, or other defined geographical areas; (5) only to reserves committed by Customer; and/or (6) only in a specified relationship to the quantities Delivered (i.e. that the maximum rate will be adjusted in a specified relationship to quantities Delivered). Notwithstanding the foregoing, no discounted rate shall be less than the applicable minimum rate.

GENERAL TERMS AND CONDITIONS  
Notices  
Section 33

33. NOTICES

Unless otherwise provided in this Tariff, all communications and notices shall be via the Website and/or through internet e-mail to Customer's internet address(es). If notice or communication is made in writing, it shall be considered as duly presented, rendered, submitted, transmitted or delivered when received.

GENERAL TERMS AND CONDITIONS  
Nonconforming Service Agreements  
Section 34

34. NONCONFORMING SERVICE AGREEMENTS

Pipeline shall have no obligation to enter into a Service Agreement that does not conform to the Forms of Service Agreement in this Tariff. If Pipeline agrees to deviate from the Forms of Service Agreement in effect at the time a Service Agreement is executed, then it shall file with the Commission any Service Agreement that does not materially conform to the Form of Service Agreement. A list of Nonconforming Service Agreements shall be included in the Statement of Nonconforming Agreements in this Tariff.

GENERAL TERMS AND CONDITIONS  
Negotiated Rates  
Section 35

35. NEGOTIATED RATES

- 35.1 Notwithstanding anything to the contrary in this Tariff, Pipeline may charge a Negotiated Rate for service under any Rate Schedule, including service that applies to DTI Points of Receipt, to any Customer that has access to service at the applicable recourse rate and nonetheless agrees to pay such Negotiated Rate.
- 35.2 A Negotiated Rate shall mean a rate calculated pursuant to a rate formula, or any rate for service where, for at least some portion of the contract term, one or more of the rate components may: exceed the maximum charge, be less than the minimum charge for such component, or be within the maximum and minimum recourse rate thresholds, be based upon a rate design other than Straight Fixed Variable, and/or include a minimum volume. Negotiated Rates shall be mutually agreed to and set forth in writing.
- 35.3 A Customer paying for service under a Negotiated Rate higher than the maximum rate is deemed to have paid the maximum rates for purposes of scheduling, curtailment or interruption of service.
- 35.4 To make a Negotiated Rate effective, Pipeline shall file at its option at least one day prior to the effective date of such Negotiated Rate either the agreement or a numbered tariff record in this Tariff, stating: Customer's exact legal name, the Negotiated Rate or rate formula, applicable Rate Schedule, Points of Receipt and Delivery, contract quantities, contract duration and an affirmation that the affected Service Agreement(s) does not deviate in any material aspect from the Form of Service Agreement in this Tariff. Pipeline shall file these descriptions in the Statement of Negotiated Rates in this Tariff.
- 35.5 Pipeline shall record each volume transported, billing determinant, rate component, surcharges, and revenue associated with its negotiated rates, so that these may be filed and separately identified and separately totaled for reporting purposes.

GENERAL TERMS AND CONDITIONS  
Periodic Rate Adjustments  
Section 36

36. PERIODIC RATE ADJUSTMENTS

Pipeline may, from time to time propose and file with FERC, in accordance with Section 4 of the Natural Gas Act changes, amendments, revisions, and modification to (i) Pipeline's rates and Rate Schedules, and/or (ii) the General Terms and Conditions of this Tariff, provided, however, that Customers shall have the right to intervene in and/or protest any such changes before FERC or other authorities and to exercise any other rights that Customers may have with respect thereto.

GENERAL TERMS AND CONDITIONS  
Overruns and Penalties  
Section 37

37. OVERRUNS AND PENALTIES

- 37.1 Authorized Overrun Service. If, on any Gas Day, Customer requests from Pipeline, prior to Gas flow, Delivery of Gas in excess of its applicable MDTQ, MDDO, MDRO or segment entitlement and Pipeline agrees to provide such transportation service, Customer shall be subject to an overrun charge for all quantities of Gas Delivered in excess of 102% of Customer's applicable MDTQ, MDDO, MDRO or segment entitlement in addition to the applicable reservation and usage charges, and any other applicable charges and penalties. The authorized maximum overrun charges shall be published on Tariff Record No. 10.30.
- 37.2 Unauthorized Overrun Penalty.
- A. If, on any Gas Day that is a Critical Day Customer exceeds its applicable MDTQ without the approval of Pipeline, Customer, whether or not it causes operational problems, shall be subject to the Unauthorized Overrun Penalty - Critical set forth on Tariff Record No. 10.30 for all quantities Delivered in excess of 102% of its applicable MDTQ, MDDO, MDRO or segment entitlement in addition to the applicable reservation and usage charges, and any other applicable charges and penalties. The Unauthorized Overrun Penalties - Critical shall equal: \$25.00 per Dt plus three times the Gas Price Index for each Dt of Gas taken in excess of 102% of Customer's MDTQ, MDDO, MDRO or segment entitlement or any revised entitlement established by the allocation procedures of GT&C Section 10; or
- B. If on any Gas Day that is not a Critical Day (Non-Critical) Customer exceeds its applicable MDTQ without the approval of Pipeline, Customer, whether or not it causes operational problems, shall be subject to the Unauthorized Overrun Penalty – Non-Critical set forth on Tariff Record No. 10.30 for all quantities Delivered in excess of 102% of its applicable MDTQ, MDDO, MDRO or segment entitlement in addition to the applicable reservation and usage charges, and any other applicable charges and penalties. The Unauthorized Overrun Penalties – Non-Critical shall equal: twice the currently effective IT rate plus the Gas Price Index for each Dt of Gas taken in excess of 102% of Customer's MDTQ, MDDO, MDRO or segment entitlement or any revised entitlement established by the allocation procedures of GT&C Section 10.
- C. For purposes of this Section, any day on which Pipeline has issued a "Critical Notice" System Alert pursuant to GT&C Section 16.4 shall be considered a "Critical Day", and all other days shall be considered a "Non-Critical Day".
- 37.3 Scheduling Penalty. If Deliveries by a Customer to a Point of Delivery on any Gas Day deviate from the scheduled quantity by more than 5%, then Customer shall be subject to a scheduling penalty. The scheduling penalty shall equal the rate published on Tariff Record No. 10.30 for each Dt of deficiency below 95% of scheduled quantities and each Dt of excess above 105% of scheduled quantities. Customer shall pay the Scheduling Penalty in addition to any other applicable charges and penalties. However, for purposes of determining the Scheduling Penalty applicable to Customer, any available Section 41 Pack Account Balance shall be used to reduce the deficiency, and any available Customer's Section 41 MPQ shall be used to reduce the excess before a Scheduling Penalty is calculated.
- 37.4 Customer shall be responsible for any charges that are incurred by Pipeline pursuant to the operational balancing agreements (OBA) between Pipeline and the upstream and downstream interconnecting pipelines to the extent such charges are not recovered or offset through any other sources. Upon determination that certain OBA charges are not recoverable from such sources



and to the extent such charge incurred by Pipeline is caused by Customer(s), Pipeline shall promptly bill such Customer(s) in the next billing invoice for such charges pro rata based on the Customers' scheduled quantities for the applicable month. Upon request of the Customer, Pipeline shall provide documentation in support of any charges billed pursuant to this Section.

37.5 Crediting of Unauthorized Overrun and Penalty Revenues.

- A. Pipeline shall credit each month a sub-account of Account No. 254 by the penalty revenues, net of Related Costs, received by Pipeline from its customers pursuant to GT&C Sections 18.5, 37.2 and 37.3. The credited monthly penalty revenues shall be identified by Customer and by Rate Schedule, so that Pipeline can determine the identity of Offending and Non-Offending Customers under each Firm Transportation Rate Schedule. On July 31 of each year, Pipeline shall credit the April 30 balance of the sub-account, including Interest, to the appropriate customers by means of a separately-identified credit to that customer's bill, or a cash payment via wire transfer. If there is no Non-Offending Customer in a particular month, Pipeline shall carryover any penalty revenue to the following month to be credited to non-offending customers of the subsequent month.
- B. Pipeline shall allocate penalty revenues received each month from transportation customers among eligible Non-Offending Customers in proportion to transportation reservation revenues received.
- C. Within 30 days of the annual crediting of the amounts required under this Section, Pipeline shall file a report with the Commission setting forth, by month, the amount of penalty revenues received from Offending Customers, Related Costs that Pipeline netted against such revenues and the penalty revenues allocated to each Non-Offending Customer. The report shall detail the nature of Related Costs and the nexus between the incurrence of Related Costs and the action that resulted in a penalty. To the extent that the Commission finds that Pipeline has not demonstrated that the "Related Costs" reported by Pipeline qualify as such under the definition set forth in GT&C Section 37.5.D, Pipeline shall return any such amounts to the relevant sub-account with Interest.
- D. The following definitions shall apply to this Section 37.5:
  1. "Related Costs" are all out-of-pocket costs incurred as a direct result of an Offending Customer's imbalance, unauthorized overrun, failure to abide by an OFO, or other misconduct, to the extent that Pipeline demonstrates that the costs are not already recovered in rates, other than costs described in Section 37.4.
  2. "Non-Offending Customers" are Pipeline's Customers, including Customers paying Negotiated Rates, that were not assessed a penalty by Pipeline in the applicable month.
  3. "Offending Customers" are Pipeline's Customers that were assessed a penalty by Pipeline in the applicable month.

37.6 The payment of an authorized overrun charge or overrun penalty shall not under any circumstances be construed as giving Customer the right to take such overruns; nor shall payment be construed as a substitute for any other remedies available to Pipeline or to any other Customer against the Customer receiving the unauthorized overrun for failure to adhere to its obligations under the provisions of the Rate Schedule, the Service Agreement or the GT&C. Pipeline shall post on the Website the options available to Customer to minimize or avoid the overrun service charges described in this Section 37. Such posting shall include alternative services, if any, offered by Pipeline.

GENERAL TERMS AND CONDITIONS  
Revenue Credits  
Section 38

38. REVENUE CREDITS

38.1 For each Dekatherm of interruptible transportation service rendered for Customer (Interruptible Customers) and authorized overrun charges under firm rate schedules, Pipeline shall accrue a revenue credit in the amount charged pursuant to the applicable rates schedules, net of applicable surcharges and variable costs incurred in providing the service.

38.2 For each Dekatherm of short-term (term of less than one year-), firm transportation service rendered for Customer (Short-Term Customers), Pipeline shall accrue a revenue credit in the amount charged pursuant to Section 4 of Rate Schedule FT, net of applicable surcharges and variable costs incurred in providing the service.

38.3 Pipeline shall credit one hundred percent of the revenue credits accrued during the calendar year, as described in this Section 38, to Customers paying recourse or Negotiated Reservation Rates under contracts with terms of one year or greater (Long-Term Customers), and to Interruptible Customers and Short-Term Customers. Such credits shall be allocated based on each respective Customer's actual base reservation revenue contribution as a percentage of the total base reservation contribution of all eligible Customers during the annual revenue crediting period (or portion thereof, if applicable).

Only those Customers assessed Off-System Capacity charges will be eligible for revenue credits attributable to Off-System Capacity. The Off-System revenue credits will be allocated consistent with the above methodology to eligible Customers.

38.4 Revenue credits shall be paid to Customers via a credit on the invoices sent to Customer for services provided during March (or the next available month) of each year. Pipeline shall accrue Interest for the period January 1 through March 1 of the year in which Customer invoices are credited.

GENERAL TERMS AND CONDITIONS  
Reservation Charge Adjustment  
Section 39

39. RESERVATION CHARGE ADJUSTMENT

39.1 General.

- A. If on any Gas Day Pipeline does not Deliver quantities of Gas under a firm service for which Pipeline is obligated to Deliver to Customer from its Primary Receipt Point to its Primary Delivery Point, then Customer shall receive a credit toward the applicable reservation charge for such Gas Day, except as provided in Section 39.2 below.
- B. Such credit shall be applied to:
1. quantities nominated by Customer, not to exceed Customer's MDTQ (for services under Rate Schedule FT, for the Day at such Primary Delivery Point; less the quantity delivered to Customer at Customer's Primary Delivery Point for such Day;
  2. if quantities are nominated on a Day in which Pipeline has provided Customer with advance notice of the unavailability of service prior to the Timely Nomination Cycle deadline set forth in GT&C Section 12 and Pipeline does not deliver such quantities, an average of the previous seven Days daily firm quantities delivered to such Primary Delivery Point (excluding any quantities outside of Customer's entitlements or quantities in excess of Customer's MDTQ) immediately preceding the service interruption, less the quantity delivered to Customer at Customer's Primary Delivery Point for such Day; or
  3. if quantities are nominated on a Day in which Pipeline has provided Customer with more than seven (7) Days advance notice of the unavailability of service, an average of the daily firm quantities delivered to such Primary Delivery Point (excluding any quantities outside of Customer's entitlements or quantities in excess of Customer's MDTQ) in the previous calendar year for the same calendar days as the outage or other event that results in Pipeline not delivering nominated quantities to such Primary Delivery Point, less the quantity delivered to Customer at Customer's Primary Delivery Point for such Day; provided however, if Customer's MDTQ is different from the MDTQ on the same calendar days in the previous calendar year, Customer's average daily firm quantities calculated in accordance with this Section 39.1.B.3. will be adjusted up or down pro-rata based on any increase or decrease in the Customer's MDTQ at the applicable Primary Delivery Point(s) and provided further, if Customer's contract was not in effect in the previous calendar year for the same calendar days as the outage, then Pipeline will utilize the calculation set forth in Section 39.1.B.2.
- C. Applicable Reservation Charge Adjustment
1. For firm transportation service customers, the Customer's reservation charge credit, except as provided in Section 39.1.C.2 or 39.1.C.3 below, shall be the Customer's applicable reservation charge, calculated on a 100% load factor basis, multiplied by the applicable quantities, as determined in Section 39.1.B. above.
  2. Negotiated or Discounted Customers – For Customers receiving a discounted or negotiated reservation charge credit, the applicable Reservation Charge shall be based on the discounted or negotiated rate, as applicable, calculated on a 100% load factor basis or based on the formula set forth in Section 39.1.C.1 above.
  3. Capacity Releases.

- a. If the Replacement Customer's reservation charge is equal to or lower than the Releasing Customer's reservation charge, the reservation charge used in deriving any applicable credit will be based on the reservation charge of the Replacement Customer.
  - b. If the Replacement Customer's reservation charge is higher than the Releasing Customer's reservation charge, the reservation charge used in deriving any applicable credit will be based on the reservation charge of the Releasing Customer.
  - c. If the Replacement Customer is paying a volumetric rate, no credit will be provided.
  - d. The Releasing Customer will continue to receive a credit for the reservation charges billed to the Replacement Customer without adjustment for any reservation charge credit provided to the Replacement Customer.
- D. Reservation Charge credits due to a Customer when a contract expires or terminates will be reflected on the final invoice to the Customer.

39.2 Exceptions.

- A. Pipeline shall not be obligated to provide reservation charge credits on any Day for quantities not delivered to Customer under the following circumstances:
1. Due to a Force Majeure Event called by Pipeline pursuant to the provisions set forth in GT&C Section 9, and such Day occurs within the first through tenth Day of such Force Majeure Event. After the tenth Day of a Force Majeure Event, any reservation charge credit will be based on the applicable provisions set forth above in Section 39.1. The reservation charge credit shall be the sole remedy for Pipeline's failure to provide service during a Force Majeure Event.
  2. Due solely to the conduct or operations of Customer or others not reasonably within the control of Pipeline, including Customer's failure to comply with an OFO that is in effect during an outage;
  3. Due to the conduct of the upstream point operator at the firm Primary Receipt Point or the downstream point operator of the facilities at the firm Primary Delivery Point, not controlled by Pipeline, including, but not limited to, damage or malfunction of the upstream or downstream point operator's facilities or the inability of the upstream or downstream point operator to deliver or receive gas at Customer's contract pressure or Pipelines' mainline pressure; or,
  4. When Customer re-nominates and Pipeline subsequently delivers such quantities at another primary or secondary point during the Gas Day, provided that Customer will not be obligated to submit nominations to another Delivery Point.
- B. On a not unduly discriminatory basis, Pipeline may agree with customer to a different reservation charge crediting methodology which shall be reflected in the Service Agreement between Pipeline and Customer. Pipeline shall file such a provision as a material deviation that requires FERC's approval.

GENERAL TERMS AND CONDITIONS  
Pooling  
Section 40

40. POOLING

Pipeline will offer at least one pool. In accordance with NAESB WGQ Standard Number 1.3.18, deliveries from Receipt Points should be able to be delivered directly into at least one pool, and Delivery Points should be able to receive quantities from at least one pool.

GENERAL TERMS AND CONDITIONS  
Foundation/Anchor Shipper Pack Account  
Section 41

41. FOUNDATION/ANCHOR SHIPPER PACK ACCOUNT

- 41.1 As part of the initial design of Pipeline's Facilities, Pipeline identified a system-wide capability to retain specified quantities of Gas in addition to the line pack required by Pipeline for day-to-day operations. In recognition of this capability, Pipeline offered to Foundation/Anchor Shippers the right to establish an account on Pipeline's system that allows access to these quantities ("Pack Account"). The maximum quantity that such Customer, or an asset manager designated by Customer and acting on Customer's behalf for all of Customer's contract entitlements rights, may nominate for retention by Pipeline within a Pack Account shall be designated Customer's Maximum Pack Quantity, or MPQ, as specified in Customer's Rate Schedule FT Service Agreement.
- 41.2 On any Gas Day, Customer may Tender quantities of Gas to Pipeline within its MDTQ that are to be retained in Customer's Pack Account, rather than Delivered by Pipeline to a Point of Delivery. Pipeline will accept such nominated Pack Account quantities up to Customer's MPQ, and such quantities shall be added to Customer's Pack Account. Quantities Tendered by Customer for this purpose will be available for Customer's use as early as the next Gas Day.
- 41.3 On any Gas Day, Customer may opt to have Pipeline Deliver quantities of Gas from Customer's Pack Account balance at the beginning of such Gas Day within Customer's MDTQ hereunder, to a Primary Point of Delivery by providing to the extent possible at least one (hour) advance notice to Pipeline. The quantities delivered from Customer's Pack Account shall be assumed to be received at the discharge side of Pipeline's Buckingham Compressor Station. Pipeline shall Deliver from Customer's Pack Account, at a uniform flow rate equal to 1/24<sup>th</sup> of Customer's MDDO at the requested Delivery Point, , which rights shall be granted in a not unduly discriminatory manner. For deliveries to a Primary Point of Delivery not operated by the Customer, Pipeline, Customer, and the Point Operator, as defined in GT&C Section 14, shall coordinate the deliveries of any requested Pack Account balances.
- 41.4 Notwithstanding the foregoing limitation, on any Gas Day that Pipeline has operational capability, Pipeline may grant Customer the flexibility, for that Gas Day, to vary its hourly Tenders and/or Takes from Customer's Pack Account. Pipeline shall endeavor to give priority in granting such hourly variations to any Customer under this Section that submits a written request to Pipeline, on a first-in-time basis.
- 41.5 Quantities Delivered upon Customer's request shall be deducted from Customer's Pack Account effective immediately; Customer shall be entitled to Tender Gas to Pipeline in order to refill its drawn-down Pack Account balance pursuant to Section 41.2, as early as the next Gas Day.
- 41.6 Pipeline shall have no obligation to Receive quantities of Gas under Section 41.2 in excess of Customer's MPQ. Nor shall Pipeline have any obligation to Deliver quantities of Gas beyond the Customer's available Pack Account balance on any Day.
- 41.7 On any Gas Day, Customer's Pack Account shall be adjusted in accordance with Rate Schedule FT Section 6, GT&C Section 14.4, and GT&C Section 42.2.
- 41.8 The provisions of this GT&C Sections 41.2 through 41.6 shall not apply during any period in which 100% of the contract entitlements of the underlying Rate Schedule FT Service Agreement attached to the Pack Account are released. During such period, any available Pack Account balance held by such Customer shall only be used to manage daily imbalances at the furthest

downstream primary Delivery Point (or Citygate, if applicable) on such Foundation/Anchor Shipper's FT Service Agreement.

GENERAL TERMS AND CONDITIONS  
Imbalance Resolution Procedures  
Section 42

42. IMBALANCE RESOLUTION PROCEDURES

42.1 Subject to the applicable provisions of the Rate Schedule, daily deliveries of gas by Pipeline to Customer shall be approximately equal to receipts of gas by Pipeline from Customer for transportation hereunder less any gas retained by Pipeline in providing such transportation service. Pipeline shall have no obligation to take receipt of gas on any Day that Customer fails to take delivery of equivalent quantities of gas tendered by Customer at the Delivery Points, and Pipeline shall have no obligation to deliver gas to Customer on any Day that Customer fails to deliver equivalent quantities to Pipeline at the Receipt Points. Each Customer is responsible for eliminating its end-of-month imbalances under each transportation service agreement.

42.2 On or before the ninth Business Day of each Month, Pipeline will provide Customer a statement of its imbalance quantities. At Customer's request, Pipeline shall post on its Website Customer's end of the Month imbalance position. Customers will have until the 17th Business Day of the Month to resolve any imbalance provisions. All trades shall be requested and confirmed via Pipeline's Website. For purposes of this statement:

- A. A Positive Imbalance occurs when the allocated receipt quantity is greater than the allocated delivery quantity.
- B. A Negative Imbalance occurs when the allocated receipt quantity is less than the allocated delivery.

For those Customers holding rights to a Pack Account pursuant to GT&C Section 41, Pipeline shall have the unilateral right to first resolve imbalances, if any, by corresponding adjustment to the Customer's Pack Account balance. Any net imbalance remaining may be resolved through the imbalance resolution method, including netting and trading, described in this Section.

42.3 Netting and Trading between Transportation Contracts.

- A. In the event that Pipeline has a Receipt Point or Delivery Point on its system without an OBA in effect, Pipeline shall allow Customer to net imbalances or trade imbalances with another Customer, where such transaction would result in all contracts involved in the trade having an imbalance quantity that is closer to zero or where such transaction results in the net quantity being closer to zero.
- B. The Customer owing imbalance quantities to Pipeline prior to the netting/trading transaction shall be responsible for reimbursing Pipeline for any loss of potential transportation revenue that may result from such transaction. When a firm Customer is responsible for a transportation charge for imbalance netting/trading, the Customer shall only be responsible for paying the Maximum Usage Rate, unless the monthly MDTQ of the firm contract is exceeded as a result of the net or trade transaction.

42.4 A Customer who is long one month and short the next month cannot offset the two months with its own contracts or another Customer's contracts. Each month's imbalance can only be offset with an opposite imbalance incurred for the same month's activity.

42.5 Customer may correct such net imbalance within seventeen (17) business days after Customer receives such notification of the month-end imbalance from Pipeline. If an imbalance is not (i) corrected within seventeen business days or, to the extent not cured in-kind, either (ii) traded in accordance with this Section, or (iii) resolved through any other imbalance management options



offered by Pipeline and others, then Pipeline shall have the right to correct an imbalance by immediately suspending deliveries to Customer or, if that does not cure the imbalance, purchasing gas to make up deficiencies in receipts and charging Customer for the verifiable cost of such gas; or immediately suspending receipts from Customer or, if that does not cure the imbalance, treating excess receipts as unauthorized gas under GT&C Section 30. Pipeline shall not impose fees otherwise applicable under this Section that result from in-kind cures and imbalance trades undertaken by Customer in good faith reliance on monthly imbalance data that Pipeline has reported in error.

- 42.6 Customer must nominate and schedule any receipts or deliveries of Gas intended to cure imbalances under the Service Agreement, in accordance with GT&C Sections 12 and 13. Such scheduled Receipts or Deliveries of Gas shall be deemed to be the last Gas through the meter for purposes of calculating Customer's monthly bill and the determination of imbalances.

GENERAL TERMS AND CONDITIONS  
Operational Sales and Purchases  
Section 43

43. OPERATIONAL SALES AND PURCHASES

43.1 Pipeline may from time to time:

- A. purchase Gas for operational reasons consistent with these General Terms and Conditions, effective Rate Schedules or Commission orders; and
- B. may make operational sales and purchases: (1) to balance fuel and lost and unaccounted for quantities; (2) to maintain system pressure and line pack; (3) to manage imbalance quantities; (4) to perform other operational functions of Pipeline in connection with its services; and (5) otherwise to protect the operational integrity of its system.

43.2 Sales and/or purchases shall be made on an unbundled basis. The point of any purchase/sale shall be at Pipeline's Receipt Point(s), at the points of interconnection with upstream pipelines prior to receipt into Pipeline's system, at any point prior to receipt of such quantities on Pipeline's system, or at any other mutually acceptable point. Transportation of operational sales or purchases shall have a lower priority than firm services. Other terms and conditions of the sale shall be the subject of negotiation between Pipeline and the prospective purchaser(s).

43.3 Posting and Bidding:

- A. Prior to making any sales or purchases pursuant to this Section 28, Pipeline shall post a notice on its Website seeking bids for operational sales or purchases. Pipeline's posting shall include at a minimum: (1) the daily quantities to be sold or purchased and whether the quantities are firm or interruptible; (2) the date(s) on which the quantities are to be sold or purchased; (3) the point(s) of receipt or delivery; (4) the method for communicating bids to Pipeline; and (5) any additional requirements as determined by Pipeline.
- B. Each bid shall contain the following information: (1) bidder's legal name and the name, title, address and phone number of the individual authorized to sell or purchase Gas; (2) bidder's price; (3) a completed bid form addressing all criteria requested by Pipeline in its posting; (4) and any conditions on the bid submission.
- C. Pipeline shall evaluate bids and shall award the purchase or sale to the bidder having a bid containing the lowest price (if a purchase by Pipeline) or the highest price (if a sale by Pipeline) and otherwise matching the conditions set forth in the posting.
- D. Pipeline reserves the right, in its sole discretion, (1) to withdraw its posting; (2) reject all bids due to operational changes; and (3) reject any bid that is not complete, contains modifications of the conditions set forth in the posting or contains conditions that are unacceptable to Pipeline.

43.4 Pipeline will file an annual report on or before July 1 of each year reflecting the operational sales and purchases for the twelve month period ending the preceding March 31. The report will state: (1) the source of the Gas sold and/or purchased; (2) the date of the sale and/or purchase; (3) the quantity sold or purchased; (4) the unit price; (5) the revenues and costs from the sale or purchase; and (6) the disposition of the associated costs and revenues.

**STATEMENT OF NONCONFORMING AGREEMENTS**

(Placeholder for Nonconforming Agreements)

**STATEMENT OF NEGOTIATED RATES**

(Placeholder for Negotiated Rates)

**FORM OF SERVICE AGREEMENTS  
(FOSA)**

SERVICE TYPE	TARIFF RECORD
Firm Transportation (FT)	70.1
Interruptible Transportation (IT)	70.2
Capacity Release	70.3
Access to the Atlantic Coast Pipeline <span style="background-color: yellow;">          </span> System	70.4

**(Name of Pipeline's Customer Activities site will be provided 30-60 days prior to in-service date)**

FORM OF SERVICE AGREEMENT  
APPLICABLE TO FIRM TRANSPORTATION UNDER RATE SCHEDULE FT

AGREEMENT made as of this \_\_\_\_\_, by and between Atlantic Coast Pipeline, LLC, a Delaware Limited Liability Corporation, hereinafter called "Pipeline," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter called "Customer," for firm transportation service through Pipeline's facilities designated as \_\_\_\_\_ in the Preliminary Statement of Pipeline's FERC Gas Tariff and the terms of Rate Schedule FT.

WITNESSETH: That, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I**  
**Quantities**

- A. During the term of this Agreement, Pipeline will transport for Customer, on a firm basis, and Customer may furnish, or cause to be furnished, to Pipeline natural gas for transportation, and Customer will accept, or cause to be accepted, delivery from Pipeline of the quantities Customer has tendered for transportation.
- B. The maximum quantities of Gas that Pipeline shall transport for Customer shall be as set forth on Exhibit A, attached hereto. Exhibit A is hereby incorporated as part of this Agreement for all intents and purposes, as set forth herein.

**ARTICLE II**  
**Rate**

- A. Unless otherwise mutually agreed in a written amendment to this Agreement, during the term of this Agreement, Customer shall pay Pipeline for transportation services rendered pursuant to this Agreement, the maximum rates and charges provided under Rate Schedule FT set forth in Pipeline's effective FERC Gas Tariff, including applicable surcharges, penalties and the Transportation Fuel Retention Percentage.
- B. Customer agrees that Pipeline shall have the unilateral right to file with the appropriate regulatory authority and make changes effective in: (i) the rates and charges applicable to service pursuant to Pipeline's Rate Schedule FT; (ii) Pipeline's Rate Schedule FT; and/or (iii) any provision of the GT&C under Pipeline's Tariff. Such changes made effective shall apply to and part of this Service Agreement. Customer shall have the right to take any position before the appropriate regulatory authority in response to any filing contemplated in this paragraph, unless Customer has otherwise agreed not to take a particular position.

**ARTICLE III**  
**Term of Agreement**

- A. Subject to all the terms and conditions herein, this Agreement shall be effective as of \_\_\_\_\_, and shall continue in effect for a primary term of \_\_\_\_\_, and for an extended term of \_\_\_\_\_ [state a period of time] thereafter, until either party terminates this Agreement by giving written notice to the other at least \_\_\_\_\_ months prior to the start of the next extended term.
- B. Any portions of this Agreement necessary to correct imbalances or to make payment under this Agreement or as required by the GT&C will survive the other parts of this Agreement until such time as such balancing or payment has been accomplished. To the extent that Customer desires to terminate this Agreement early and Pipeline agrees to such termination, Pipeline will collect as part of the exit fee all (or such lesser portion as Pipeline agrees to) of the capacity Reservation Charges otherwise recoverable by Pipeline from Customer for the balance of the contractual term, absent such early termination.

**ARTICLE IV  
Points of Receipt and Delivery**

The Primary Points of Receipt and Delivery, the maximum quantities for each point for all Gas that may be Received and Delivered by Pipeline shall be as set forth on Exhibit A. Customer shall also be entitled to utilize additional points in accordance with applicable provisions of Pipeline's then-effective FERC Gas Tariff.

**ARTICLE V  
Incorporation By Reference of Tariff Provisions**

To the extent not inconsistent with the terms and conditions of this Agreement or the associated Negotiated Rate Agreement, if applicable, the following provisions of Pipeline's effective FERC Gas Tariff, and any revisions thereof that may be made effective hereafter are hereby made applicable to and a part hereof by reference:

1. All of the provisions of Rate Schedule FT, or any effective superseding rate schedule or otherwise applicable rate schedule; and
2. All of the provisions of the General Terms and Conditions, as they may be revised or superseded from time to time.

**ARTICLE VI  
Agency Arrangement**

Customer shall have the right to designate an agent or person to provide nomination and scheduling information, to receive invoices and make payments, to take actions necessary to release capacity and to handle imbalance resolutions for Customer on Customer's behalf. The agent may be the same as used for similar purposes with respect to transportation on Pipeline or other third-party pipeline. Customer must provide Pipeline with 30 days advance written notice of its agent, the scope of agent's authority, and the effective date after which Pipeline is to act in accordance with the directions of the agent. Pipeline shall be entitled to rely on the representations, actions, and other directions of the agent on behalf of Customer within the designated scope of agent's authority and will be fully protected in relying upon such agent with respect to such authorized actions. Customer indemnifies and holds Pipeline harmless with respect to actions taken by Pipeline in reliance on Customer's agent acting within the scope of agent's authority.

**ARTICLE VII  
Nonrecourse Obligation of Limited Liability Corporation and Pipeline's Operator**

Customer acknowledges and agrees that: (a) Pipeline is a Delaware limited liability corporation that may be operated by a third party entity (Pipeline's Operator); (b) Customer shall have no recourse against any member of Pipeline with respect to Pipeline's obligations under this Agreement; (c) no claim shall be made against any member of Pipeline under or in connection with this Agreement. and (d) this representation is made expressly for the benefit of the members in Pipeline.

**ARTICLE VIII  
Miscellaneous**

- A. No change, modification or alteration of this Agreement shall be or become effective until executed in writing by the parties hereto; provided, however, that the parties do not intend that this Article VIII.A requires a further written agreement either prior to the making of any request or filing permitted under Article II hereof or prior to the effectiveness of such request or filing after Commission approval.
- B. Any notice, request or demand provided for in this Agreement, or any notice that either party may desire to give the other, shall be in writing or by email (if followed promptly by U.S. First Class Mail delivery) and sent to the following addresses:

Pipeline: Atlantic Coast Pipeline, LLC  
707 East Main Street  
Richmond, VA 23219  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

or at such other address as either party shall designate by formal written notice.

- C. No presumption shall operate in favor of or against either party hereto as a result of any responsibility either party may have had for drafting this Agreement.
- D. The subject headings of the provisions of this Agreement are inserted for the purpose of convenient reference and are not intended to become a part of or to be considered in any interpretation of such provisions.
- E. Capitalized terms used herein, to the extent not otherwise defined, shall have the meanings attributed to them in Pipeline’s approved FERC Gas Tariff.
- F. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

{If applicable:}

**ARTICLE IX  
Prior Contract**

This Service Agreement shall supersede and cancel, as of its effective date, the Service Agreement for transportation service between Customer and Pipeline dated \_\_\_\_\_.]

IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have caused this Agreement to be signed by their duly authorized officials as of the day and year first written above.

Atlantic Coast Pipeline, LLC \_\_\_\_\_  
(Pipeline) (Customer)

By: \_\_\_\_\_ By: \_\_\_\_\_  
Its: \_\_\_\_\_ Its: \_\_\_\_\_  
(Title) (Title)



EXHIBIT A  
To The Firm Transportation Rate Schedule Agreement  
Dated \_\_\_\_\_  
Between Atlantic Coast Pipeline, LLC  
And \_\_\_\_\_

A. Quantities

1. Customer may tender and Pipeline shall receive for Customer's account for transportation hereunder the following maximum quantities:
  - a. A Maximum Daily Transportation Quantity (MDTQ) of \_\_\_\_\_ Dt, plus the applicable DTI and Pipeline Transportation Fuel Retention Percentages, at the DTI Point(s) of Receipt and the applicable Pipeline Transportation Fuel Retention Percentages at the other Point(s) of Receipts.
  - b. *(if applicable)* A Maximum Pack Quantity (MPQ) of \_\_\_\_\_ Dt

B. Primary Points of Receipt and Delivery

1. Points of Receipt:
  - a. The Primary Point(s) of Receipt under this Agreement shall be:  
  
*For each Point of Receipt the following will be included:*
    - 1) Name and brief description of point of receipt;
    - 2) Maximum Daily Receipt Obligation
    - 3) The maximum and minimum pressure requirements for the Point(s) of Receipt *(if agreed to pursuant to GT&C Sections 4.1 and 4.2)*
    - 4) The maximum hourly flow rate *(if agreed to pursuant to Rate Schedule FT, Section 5.4B)*
2. Points of Delivery:
  - a. The Primary Point(s) of Delivery under this Agreement shall be:  
  
*For each Point of Delivery, the following will be included:*
    - 1) Name and brief description of Point of Delivery;
    - 2) Maximum Daily Delivery Obligation
    - 3) The maximum and minimum pressure requirements for the Point(s) of Delivery *(if agreed to pursuant to GT&C Sections 4.1 and 4.2)*
    - 4) The maximum hourly flow rate *(if agreed to pursuant to Rate Schedule FT, Section 5.4B)*

C. Other Provisions Agreed to by the Parties Consistent with the GT&C:

1. Description of any Contractual ROFR Rights Agreed to Pursuant to GT&C Section 25:
2. Description of credit provisions related to the initial or other new or expansion projects authorized by the Commission pursuant to a certificate or related proceeding, which may include the following language:

“The credit requirements applicable to this Agreement are set forth in that certain Precedent Agreement dated \_\_\_\_\_ between Pipeline and Customer”.

- 3. \_\_\_\_\_
- 4. \_\_\_\_\_

D. *Negotiated Rate [If applicable] – May be reflected as a separate letter agreement*

[Description of rate or mechanism.]

Signed and dated for identification and/or amendment:

Effective Date: \_\_\_\_\_

Pipeline: \_\_\_\_\_

Customer: \_\_\_\_\_

FORM OF SERVICE AGREEMENT  
APPLICABLE TO INTERRUPTIBLE TRANSPORTATION UNDER RATE SCHEDULE IT

AGREEMENT made as of this \_\_\_\_\_, by and between Atlantic Coast Pipeline, LLC, a Delaware limited liability corporation, hereinafter called "Pipeline," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter called "Customer." For interruptible transportation through Pipeline's facilities designated as \_\_\_\_\_ in the Preliminary Statement of Pipeline's FERC Gas Tariff and the terms of Rate Schedule IT.

WITNESSETH: That, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I**  
**Quantities**

The maximum quantities of Gas that Pipeline shall transport for Customer on the above-identified Pipeline facilities shall be as set forth on Exhibit A, attached hereto. Exhibit A is hereby incorporated as part of this Agreement for all intents and purposes as if fully copied and set forth herein at length.

**ARTICLE II**  
**Rate**

- A. Unless otherwise mutually agreed in a written amendment to this Agreement, beginning on \_\_\_\_\_, Customer shall pay Pipeline for transportation services rendered pursuant to this Agreement, the applicable maximum rates and charges provided under Rate Schedule IT set forth in Pipeline's effective FERC Gas Tariff, including applicable surcharges and the Transportation Fuel Retention Percentage.
- B. Customer agrees that Pipeline shall have the unilateral right to file with the appropriate regulatory authority and make changes effective in: (i) the rates and charges applicable to service pursuant to Pipeline's Rate Schedule IT; (ii) and/or any provision of the GT&C under Pipeline's tariff. Customer shall have the right to take any position before the appropriate regulatory authority in response to any filing contemplated in this paragraph, unless Customer has otherwise agreed not to take a particular position.

**ARTICLE III**  
**Term of Agreement**

- A. Subject to all the terms and conditions herein, this Agreement shall be effective as of \_\_\_\_\_, and shall continue in effect for a primary term of \_\_\_\_\_, and for an extended term of \_\_\_\_\_ [state a period of time] thereafter, until either party terminates this Agreement by giving one written notice to the other at least \_\_\_\_\_ months prior to the start of the next extended term.
- B. Any portions of this Agreement necessary to correct or cash-out imbalances or to make payment under this Agreement or as required by the GT&C will survive the other parts of this Agreement until such time as such balancing or payment has been accomplished.

**ARTICLE IV**  
**Points of Receipt and Delivery**

The Points of Receipt and Delivery for all gas that may be Received and Delivered by Pipeline shall be as specified on the most current master point lists applicable to Rate Schedule IT.

**ARTICLE V**  
**Incorporation By Reference of Tariff Provisions**

To the extent not inconsistent with the terms and conditions of this Agreement, the following provisions of Pipeline's effective FERC Gas Tariff, and any revisions thereof that may be made effective hereafter are hereby made applicable to and a part hereof by reference:

1. All of the provisions of Rate Schedule IT, or any effective superseding rate schedule or otherwise applicable rate schedule; and
2. All of the provisions of the General Terms and Conditions, as they may be revised or superseded from time to time.

**ARTICLE VI**  
**Agency Arrangement**

Customer shall have the right to designate an agent or person to provide nomination and scheduling information, to receive invoices and make payments, to take actions necessary to release capacity and to handle imbalance resolutions for Customer on customer's behalf. The agent may be the same as used for similar purposes with respect to transportation on Pipeline or other third party pipeline. Customer must provide Pipeline with 30 days, advance written notice of its agent and the effective date after which Pipeline is to act in accordance with the directions of the agent. Pipeline shall be entitled to rely on the representations, actions, and other directions of the agent on behalf of Customer and will be fully protected in relying upon such agent. Customer indemnifies and holds Pipeline harmless with respect to actions taken by Pipeline in reliance on Customer's agent.

**ARTICLE VII**  
**Nonrecourse Obligation of Limited Liability Corporation and Pipeline's Operator**

Customer acknowledges and agrees that: (a) Pipeline is a Delaware limited liability corporation that may be operated by a third party entity (Pipeline's Operator); (b) Customer shall have no recourse against any member of Pipeline with respect to Pipeline's obligations under this Agreement; (c) no claim shall be made against any member of Pipeline under or in connection with this Agreement. and (d) this representation is made expressly for the benefit of the members in Pipeline.

**ARTICLE VIII**  
**Miscellaneous**

- A. No change, modification or alteration of this Agreement shall be or become effective until executed in writing by the parties hereto; provided, however, that the parties do not intend that this Article VIII.A. requires a further written agreement either prior to the making of any request or filing permitted under Article II hereof or prior to the effectiveness of such request or filing after Commission approval.
- B. Any notice, request or demand provided for in this Agreement, or any notice which either party may desire to give the other, shall be in writing and sent to the following addresses:

Pipeline: Atlantic Coast Pipeline, LLC  
707 East Main Street  
Richmond, Virginia 23219  
Attention: \_\_\_\_\_  
Officer / Title

Customer:

or at such other address as either party shall designate by formal written notice.

- C. No presumption shall operate in favor of or against either party hereto as a result of any responsibility either party may have had for drafting this Agreement.
- D. The subject headings of the provisions of this Agreement are inserted for the purpose of convenient reference and are not intended to become a part of or to be considered in any interpretation of such provisions.
- E. Capitalized terms used herein, to the extent not otherwise defined, shall have the meanings attributed to them in Pipeline's approved FERC Gas Tariff.
- F. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

{Where applicable:}

**ARTICLE IX  
Prior Contract**

This Service Agreement shall supersede and cancel, as of its effective date, the Service Agreement for transportation service between Customer and Pipeline dated \_\_\_\_\_.]

IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have caused this Agreement to be signed by their duly authorized officials as of the day and year first written above.

Atlantic Coast Pipeline, LLC  
(Pipeline)

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Customer)

By: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT A  
To The IT Service Agreement  
Dated \_\_\_\_\_  
Between Atlantic Coast Pipeline, LLC  
And \_\_\_\_\_

A. Quantities

1. The maximum quantities of gas which Pipeline shall deliver and which Customer may tender shall be as follows:

- a. A Maximum Daily Transportation Quantity (MDTQ) of \_\_\_\_\_ Dt.
- b. A Maximum Annual Transportation Quantity (MATQ) of \_\_\_\_\_ Dt.

B. Points of Receipt and Delivery

1. The Point(s) of Receipt and the maximum quantities for each point shall be as follows:

*[Pursuant to Section 5.2 of Rate Schedule IT, if the most current master receipt point list is used, the following language will be used: "The receipt points specified on Atlantic Coast Pipeline, LLC's electronic bulletin board. The combined maximum daily quantity shall be \_\_\_\_\_ Dt/Day."]*

2. The Point(s) of Delivery and the maximum quantities for each point shall be as follows:

*[Pursuant to Section 5.2 of Rate Schedule IT, delivery points may be agreed upon between Pipeline and Customer. If the most current master delivery point list is agreed upon, in lieu of a stated delivery point, the following language will be used: "The delivery points specified on Atlantic Coast Pipeline, LLC's master delivery point list as posted on Pipeline's electronic bulletin board 1/. The combined maximum daily quantity shall be \_\_\_\_\_ Dt/Day."]*

Signed and dated for identification and/or amendment:

Effective Date: \_\_\_\_\_

Pipeline: \_\_\_\_\_

Customer: \_\_\_\_\_

FORM OF SERVICE AGREEMENT  
APPLICABLE TO THE CAPACITY RELEASE PROGRAM

AGREEMENT made as of this \_\_\_\_\_, by and between Atlantic Coast Pipeline, LLC, a Delaware Limited Liability Corporation, hereinafter called "Pipeline," and \_\_\_\_\_, a \_\_\_\_\_, hereinafter called "Customer."

WHEREAS, Pipeline's Tariff provides that Pipeline's Customers may release capacity contracted for under a firm transportation service agreement; and

WHEREAS, Customer desires to obtain released capacity as a Replacement Customer under Pipeline's Capacity Release Program, at the terms set forth in the Bid Agreement(s) submitted electronically by Customer via Pipeline's Website in accordance with Pipeline's FERC Gas Tariff;

WITNESSETH: That, in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

**ARTICLE I**  
**Quantities, Receipt and Delivery Points and Other Terms**

A. Subject to the execution of a Bid Agreement(s) which shall be electronically submitted via Pipeline's Website and upon award shall be incorporated as part of this agreement, during the term of this Agreement, Pipeline will transport for Customer, and Customer may furnish, or cause to be furnished, to Pipeline natural gas for such transportation, and Customer will accept, or cause to be accepted, delivery from Pipeline of the quantities Customer has tendered for transportation, all as set forth in the effective electronic Bid Agreement(s).

B. The maximum quantities of gas which Pipeline shall deliver and which Customer may tender shall be as set forth on the effective electronic Bid Agreement(s), subject to any limitations imposed under Section 6 of the General Terms and Conditions of Pipeline's Tariff; provided, however, that at no time may Customer tender quantities in excess of the quantities specified in the Bid Agreement(s) unless otherwise authorized (e.g., to make up imbalances).

C. The quantity released, Receipt and Delivery Points, character of service, Rate Schedule and duration of the release shall be specified in the Bid Agreement(s).

**ARTICLE II**  
**Rate**

A. Customer shall pay Pipeline the Reservation Charges specified in each Bid Agreement. Unless Pipeline has specifically agreed in writing to provide a discounted usage charge for transportation services rendered pursuant to this Agreement, Customer shall pay Pipeline the maximum usage rates and charges provided under the Rate Schedule applicable to the Service Agreement under which Customer has received released capacity, which rates are set forth in Pipeline's effective FERC Gas Tariff, including applicable surcharges and the Fuel Retention Percentage.

B. Customer agrees that Pipeline shall have the unilateral right to file with the appropriate regulatory authority, revisions to any applicable rate schedule, or to propose, file, and make effective superseding rate schedules for the purpose of changing the rate, charges, and other provisions thereof effective as to Customer; provided, however, that (i) the section regarding the "Applicability and Character of Service" of the firm service rate schedules under which Customer has obtained capacity through this Agreement, and (ii) term shall not be subject to unilateral change under this Article. Such changes made effective shall apply to and part of this Service Agreement. Customer shall have the right to take any

position before the appropriate regulatory authority in response to any filing contemplated in this paragraph, unless Customer has otherwise agreed not to take a particular position.

### **ARTICLE III Term of Agreement**

Subject to all the terms and conditions herein, this Agreement shall be effective as of \_\_\_\_\_, and shall continue in effect for a primary term through \_\_\_\_\_, and from year to year thereafter, until either party terminates this Agreement by giving written notice to the other at least twelve months prior to the start of the next contract year.

*For Agreements with terms of less than one year or for Agreements not subject to a right of first refusal as defined in Section 24 of the GT&C, Article III will read:*

Subject to all the terms and conditions herein, this Agreement shall be effective as of \_\_\_\_\_, and shall continue in effect for a primary term through \_\_\_\_\_ [, and from month to month thereafter, until either party terminates this Agreement by giving written notice to the other at least \_\_\_\_\_ (choose one, two, three, or twelve) month(s) prior to the expiration of the Agreement].

### **ARTICLE IV Regulatory Approval**

Performance under this Agreement by Pipeline and Customer shall be contingent upon Pipeline and Customer receiving all necessary regulatory or other governmental approvals upon terms satisfactory to each. Should Pipeline and Customer be denied such approvals to provide or continue the service contemplated or to construct and operate any necessary facilities therefor upon the terms and conditions requested in the application, the Pipeline's and Customer's obligations hereunder shall terminate.

### **ARTICLE V Incorporation By Reference of Tariff Provisions**

To the extent not inconsistent with the terms and conditions of this Agreement, the following provisions of Pipeline's effective FERC Gas Tariff, and any revisions thereof that may be made effective hereafter are hereby made applicable to and a part hereof by reference:

1. All of the provisions of the Rate Schedule applicable to the Service Agreement under which Customer has received released capacity, or any effective superseding rate schedule or otherwise applicable rate schedule; and
2. All of the provisions of the General Terms and Conditions, as they may be revised or superseded from time to time.

### **ARTICLE VI Miscellaneous**

A. No change, modification or alteration of this Agreement shall be or become effective until executed in writing by the parties hereto; except otherwise as provided, however, that the parties do not intend that this Article VI.A requires a further written agreement either prior to the making of any request or filing permitted under Article II.B hereof or prior to the effectiveness of such request or filing after Commission approval.

B. Any notice, request or demand provided for in this Agreement, or any notice which either party may desire to give the other, shall be in writing and sent to the following addresses:



Pipeline: Atlantic Coast Pipeline, LLC  
707 East Main Street  
Richmond, Virginia 23219  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Customer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

or at such other address as either party shall designate by formal written notice.

C. No presumption shall operate in favor of or against either party hereto as a result of any responsibility either party may have had for drafting this Agreement.

D. The subject headings of the provisions of this Agreement are inserted for the purpose of convenient reference, and are not intended to become a part of or to be considered in any interpretation of such provisions.

E. Capitalized terms used herein, to the extent not otherwise defined, shall have the meanings attributed to them in Pipeline's approved FERC Gas Tariff.

F. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have caused this Agreement to be signed by their duly authorized officials as of the day and year first written above.

Atlantic Coast Pipeline, LLC  
(Pipeline)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Customer)

By: \_\_\_\_\_

Its: \_\_\_\_\_  
(Title)

FORM OF SERVICE AGREEMENT  
Access to the \_\_\_\_\_ System

**(Name of Pipeline's Customer Activities site will be provided 30-60 days prior to in-service date)**

AGREEMENT made as of this \_\_\_\_\_, by and between Atlantic Coast Pipeline, LLC, a Delaware Limited Liability Corporation, hereinafter called "Pipeline," and \_\_\_\_\_, a \_\_\_\_\_ hereinafter called "Subscriber."

WITNESSETH: That, for and in consideration of the mutual covenants and provisions herein contained and subject to the terms and conditions set forth below, Pipeline and Subscriber agree as follows:

**ARTICLE I  
Scope of Agreement**

Pipeline shall make available to Subscriber Pipeline's computerized electronic communication service (the \_\_\_\_\_ *TM*<sup>1/</sup> System or any subsequent system) for use by Subscriber, subject to the terms and conditions set forth below and identified in the Subscriber Profile<sup>2/</sup>. Subscriber may use the \_\_\_\_\_ System, as available: (1) to request new services under applicable Rate Schedules; (2) to request and execute amendments of existing Service Agreements; (3) to nominate quantities for receipt and delivery by Pipeline pursuant to an existing Service Agreement under any Pipeline Rate Schedule; and (4) to participate in Pipeline's capacity release program. Subscriber may also use the \_\_\_\_\_ System to request and receive such other information as Pipeline may make available to Subscriber from time to time through the \_\_\_\_\_ System.

**ARTICLE II  
Terms and Conditions**

A. Use of the \_\_\_\_\_ System by Subscriber shall be limited only to those persons who have been duly authorized by Subscriber to use the \_\_\_\_\_ System ("Authorized Personnel"), as indicated in an executed \_\_\_\_\_ System New User Request Form<sup>3/</sup> submitted from time to time. Pipeline will provide each Authorized Personnel with an individual user identification code ("User ID") and password.

Authorized Personnel may access information through the \_\_\_\_\_ System regarding: (1) Subscriber's requests for new services under applicable Rate Schedules; (2) Subscriber's existing Service Agreements; (3) nominations pursuant to Subscriber's existing Service Agreement(s) under any Pipeline Rate Schedule; and (4) Pipeline's capacity release program. Authorized Personnel's access to such information shall be defined by Subscriber in the executed \_\_\_\_\_ System New User Request Form. The number and type of User IDs and passwords to be issued shall be subject to the sole discretion of Pipeline.

B. Subscriber shall also designate one or more Authorized Personnel (collectively, "Designated Personnel") who are additionally authorized to transmit information to Pipeline through the \_\_\_\_\_ System, and/or to propose and execute contracts using the \_\_\_\_\_ System, and thereby legally bind Subscriber to any service agreement or amended service agreement entered into with Pipeline, as if the same were executed by written instrument. Designated Personnel shall be further able to (1) request new services under applicable Rate Schedules; (2) request and execute amendments of existing Service Agreements on behalf of Subscriber; (3) tender nominations for receipts and deliveries pursuant to Subscriber's existing Service Agreement(s) under any Pipeline Rate Schedule; and (4) participate in Pipeline's capacity release program. Designated Personnel's authorization to perform these functions shall be defined by Subscriber in the executed \_\_\_\_\_ System New User Request Form. For all purposes of this \_\_\_\_\_ System Agreement, Pipeline shall be entitled to rely upon Subscriber's

representation that any and all Designated Personnel authorized to perform the \_\_\_\_\_ System contracting function have been duly authorized by Subscriber to enter into one or more service agreements or amended service agreements on behalf of Subscriber.

C. Subscriber shall not disclose to persons other than Authorized Personnel, and shall otherwise keep completely confidential, all User Ids and passwords issued to Subscriber by Pipeline.

D. Subscriber shall immediately inform Pipeline in writing whenever Subscriber desires to terminate access to the \_\_\_\_\_ System previously granted to any Authorized Personnel, or desires to terminate the status of any Designated Personnel. Subscriber shall not permit unauthorized or otherwise improper use of User IDs and passwords issued to Subscriber by Pipeline, including but not limited to the use of such User IDs and passwords by Authorized Personnel who at some point are no longer within Subscriber's employment or control. Pipeline shall have the right, for due cause or upon request of Subscriber, to invalidate any User ID or password issued to Subscriber. If possible, Pipeline will give prior notice and an opportunity for Subscriber to respond before invalidating a User ID or password.

E. Use of the \_\_\_\_\_ System is expressly subject to the General Terms and Conditions and all provisions of any Rate Schedule and/or Service Agreement which may be applicable to any transaction performed by Subscriber and Pipeline by means of the \_\_\_\_\_ System, which are set forth in Pipeline's FERC Gas Tariff as amended from time to time, and are hereby incorporated by reference. In the event of a conflict between the provisions of this agreement and any other applicable provisions of Pipeline's then-effective FERC Gas Tariff, such tariff provisions shall govern Subscriber's use of the \_\_\_\_\_ System.

**ARTICLE III**  
**Term of Agreement**

This Agreement shall be and continue in full force and effect from the date of execution hereof, until terminated only for due cause as determined solely by Pipeline or at Subscriber's request.

**ARTICLE IV**  
**Miscellaneous**

A. Any notice, request or demand provided for in this Agreement, or any notice which either party may desire to give the other, shall be in writing and sent to the following addresses:

ATLANTIC COAST PIPELINE, LLC  
707 East Main Street  
Richmond, VA 23219  
Attention: \_\_\_\_\_

Subscriber: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

or at such other address as either party shall designate by formal written notice.

B. Subscriber agrees that Pipeline shall have the unilateral right to file with the appropriate regulatory authority and make changes effective in (a) the rates and charges applicable to service pursuant to this \_\_\_\_\_ System Agreement or (b) any provisions of the General Terms and Conditions applicable to this Agreement. Pipeline agrees that Subscriber may protest or contest the aforementioned filings, and Subscriber does not waive any rights it may have with respect to such filings.

C. Except as provided in Article IV.B, above, no change, modification or alteration of this Agreement shall be or become effective until executed in writing by the parties hereto.

**ARTICLE V**  
**Interpretation**

A. The interpretation and performance of this \_\_\_\_\_ System Agreement shall be in accordance with the laws of the State of Delaware, without recourse to the law regarding the conflict of laws.

B. This \_\_\_\_\_ System Agreement and the obligations of the parties hereto are subject to all present and future valid laws with respect to the subject matter, either State or Federal, and to all valid present and future orders, rules, and regulations of duly constituted authorities having jurisdiction.

C. No presumption shall operate in favor of or against either party hereto as a result of any responsibility either party may have had for drafting this Agreement.

D. The subject headings of the provisions of this Agreement are inserted for the purpose of convenient reference and are not intended to become a part of or to be considered in any interpretation of such provisions.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound, have caused this Agreement to be signed by their respective Presidents, Vice Presidents, or other duly authorized officials or agents, as of the day and year first written above.

SUBSCRIBER:

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

PIPELINE:

Atlantic Coast Pipeline, LLC

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

<sup>1/</sup> \_\_\_\_\_ (TM) is a trademark of \_\_\_\_\_.

<sup>2/</sup> Subscriber should complete and return a Subscriber Profile to Pipeline. The Subscriber Profile is found on the Pipeline's Website.

<sup>3/</sup> Subscriber should complete and return a System New User Request Form to Pipeline. The System New User Request Form is found on the Pipeline's Website.