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UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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OFFICE OF FOSSIL ENERGY  
U.S. DEPARTMENT OF ENERGY

TRANSALTA CHIHUAHUA S.A. DE C.V. )  
)

DOCKET NO. ~~FE03-08-NG~~

03-30-NG

APPLICATION OF TRANSALTA CHIHUAHUA S.A. DE C.V.  
FOR AUTHORIZATION TO EXPORT  
NATURAL GAS FROM THE UNITED STATES OF AMERICA INTO THE UNITED MEXICAN  
STATES

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July 10, 2003

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UNITED STATES OF AMERICA  
BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

TRANSALTA CHIHUAHUA S.A. DE C.V. )  
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DOCKET NO. FE03-08-NG

APPLICATION OF TRANSALTA CHIHUAHUA S.A. DE C.V.  
FOR AUTHORIZATION TO EXPORT  
NATURAL GAS FROM THE UNITED STATES OF AMERICA INTO MEXICO

Pursuant to Section 3 of the Natural Gas Act ("NGA"), 15 U.S.C. Section 717b, Part 590 of the Regulations of the Department of Energy ("DOE"), Office of Fossil Energy ("FE"), and Section 201 of the Energy Policy Act of 1992 ("Energy Policy Act"), TRANSALTA CHIHUAHUA S.A. DE C.V. ("TAC") hereby submits the instant application for long term blanket authorization to export natural gas from the U.S. to the United Mexican States. In support of this application, TAC respectfully shows as follows:

I.  
GENERAL

Correspondence and communications regarding this application should be addressed to the following:

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Commercial Manager  
Rocio Casielles  
Regulatory Affairs Coordinator  
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II.  
BACKGROUND

TransAlta Chihuahua. S.A. de C.V. (TAC) is a corporation organized under the laws of Mexico, with its principal place of business at Montes Urales 505 Lobby, Lomas de Chapultepec Mexico City, D.F. Mexico 11000. TAC is owned by TransAlta Corporation, with its principal place of business in Box 1900, Station M, 110, 12<sup>th</sup> Avenue S.W. Calgary, Alberta T2P 2M1, Canada. TAC is actually engaged in the business of power generation in Northern Mexico, for that purpose requires to buy

large amounts of natural gas from various United States gas producers, to be consumed at TAC's power generation plant near Ciudad Juárez, Chihuahua, Mexico, near the southern border of the US.

In early February 2003, TAC applied before the DOE/FE for a short term blanket authorization to export natural gas from the US into Mexico. Such authorization was granted under Order Number 1855, Docket Number FE03-08-NG on March 3, 2003. Such authorization is still in effect and is set to expire on March 3, 2005.

Under the above described authorization, TAC began exports of natural gas from the US into Mexico in April 2003 and also began fulfilling all report requirements pertaining to it timely before the DOE.

Shortly after natural gas exports from the US into Mexico began under the above cited authorization, TAC entered into a long term Fuel Supply Contract with Cynergy Marketing & Trading, LP (a Delaware limited partnership) that is set to expire on July 15, 2008. Such contract has the purpose to ensure the continuous supply of natural gas for TAC. A copy of such Fuel Supply Contract is attached to this application.

### III. AUTHORIZATION REQUESTED

By the instant application, TAC requests that its natural gas export authorization from the US to Mexico for a two-year period ending on March 3, 2005 to be changed for a long term authorization. The natural gas is to be consumed at TAC's power plant located in Northern Mexico. As established in the paragraphs immediately above, TAC applied previously for a blanket authorization by the DOE/FE to export natural gas from US to Mexico.

Once and if the long term authorization is granted, TAC wishes to terminate the short term authorization and to continue the natural gas exports, since the operation of TAC's power plant is of a continuous nature and long term commitments to sale the power have been established by TAC and the Federal Electricity Commission of Mexico.

TAC's original request authorization to export to Mexico a daily approximate of 49,500 Mcf shall be maintained over the long term authorization. The requested authorization will enable TAC to supply its power plant in northern Mexico, in a continuous manner. TAC requests authorization to export gas for its own account, not for the account of third parties.

TAC's negotiations with prospective suppliers in the United States are of a continuing nature. Therefore, TAC requests that such export authority be granted on a blanket basis at all existing points of export from the US and to Mexico to provide TAC with the flexibility necessary to respond quickly to these marketing opportunities. TAC cannot reliably supply its power plant if it must apply for import and export authorization for each transaction. The subject application is similar to other blanket export arrangements approved by DOE.

### IV. PUBLIC INTEREST

The Energy Policy Act provides that the importation and exportation of natural gas from or to a nation with which there is in effect a free trade agreement shall be deemed to be within the public interest and that applications for such importation or exportation shall be granted without modification or delay. Because TAC's application is for the importation and exportation of natural gas from and to US, a nation with which Mexico has a free trade agreement, TAC submits that its application is within the public interest.

V.  
ENVIRONMENTAL IMPACT

No new facilities will be constructed in the United States for the proposed importation and exportation of natural gas. Consequently, granting this application will not be a federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. § 4321, et seq. Therefore, an environmental impact statement or environmental assessment is not required.

VI.  
REPORTING REQUIREMENTS

With respects to all exports made pursuant to the authorization previously requested and the one requested herein, TAC will undertake to file with the DOE/FE in the month following the close of each calendar quarter, reports indicating by month whether imports or exports have occurred, and if so, the details of each transaction, including the total volumes of imports and exports in Mcf and the average price for the imports and exports per MMBtu at the international border. The reports shall include the name of the seller, the name of the purchaser, the estimated or actual duration of the agreements, the name of the U.S. transporter(s), the point of exit, whether the sales are made on an interruptible or firm basis, and, if applicable, the per unit (MMBtu) demand/commodity/reservation charge breakdown of the contract price. TAC will notify the DOE/FE in writing of the date of the first delivery of natural gas exported under the requested authorization within two weeks of such delivery.

VII.  
CONCLUSION

WHEREFORE, for the foregoing reasons TAC respectfully requests that the DOE/FE expeditiously consider the instant application and, pursuant to section 3 of the NGA and section 201 of the Energy Policy Act, grant its request for blanket long term export authorization. TAC submits that a grant of such authorization would not be inconsistent with the public interest.

Respectfully submitted,



TRANSALTA CHIHUAHUA S.A. DE C.V.

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Juan Carlos Collado, Esq.  
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Lomas de Chapultepec  
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(011) (52) (555) 202-7275

Attorneys for  
**TRANSALTA CHIHUAHUA S.A. DE C.V.**

July 10, 2003

July 10, 2003.

Ms. Cinthya Mintz  
Legal Counsel IPP  
TransAlta México, S.A. de C.V.  
Montes Urales # 505 PB  
Lomas de Chapultepec  
México, D.F. 11000

Dear Ms. Mintz:

As per your request, this law firm has been engaged to issue a legal opinion as to whether or not the import of natural gas from the US to Mexico<sup>1</sup> is within the corporate powers of TransAlta Chihuahua, S.A. de C.V. (TAC) and that TAC has complied with State laws and regulatory authorities, as a requirement to file an application to the US Department of Energy (DOE) to obtain a long term authorization to do so.

In order to issue the present legal opinion, this law firm reviewed the corporate documents of TAC in our files. Our finding is that the most relevant document is TAC's Articles of Incorporation (which is included in the Certificate of Incorporation) of TAC, even though the bylaws of the corporation, as well as durable powers of attorney granted by TAC to several individuals within the corporation have also been reviewed.

#### Corporate powers of TAC

The corporate purpose of TAC is set forth in the Third Article of its Articles of Incorporation. The following is a translation into English of such Third Article from its original in Spanish:

**ARTICLE THIRD.- CORPORATE PURPOSE.-** *The corporation shall carry out the following corporate purpose:*

*I.- To develop, build, own, possess, operate and maintain a power generation plant and associated installations, to generate power in no less than ONE HUNDRED NINETY-ONE (191) Megawatts, and no more than TWO HUNDRED FIFTY-NINE (291) Megawatts, and sale of associated electricity at the interconnection point located in the State of Chihuahua;*

*II.- To generate electric power as independent power producer to sale such power to the Federal Electricity Commission;*

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<sup>1</sup> Please note that exportation of natural gas from Mexico to the US, being a reserved activity under applicable Mexican Law, can not be carried out by TAC. We assume that the DOE request of TAC's power for import and/or export of natural gas refers to imports into Mexico and exports from the US.

III.- *To obtain loans and finance related to the corporate purpose set forth above, as well as to issue and draft any checks, notes or the like;*

IV.- *To obtain and to grant all kind of warranties to back obligations assumed by the Corporation in accordance with the corporate purpose set forth above;*

V.- *To acquire, to transfer, to get title to and to grant the right to use, through whatever means allowed by Law, movable goods (commodities) or real estate, as well as rights pertaining to tangible property, that may be necessary or convenient to carry out its corporate purpose;*

VI.- *To obtain, acquire, use, take advantage of and grant, through whatever means allowed by Law, patents, invention certificates, trademarks, commercial names, registered trademarks, options and preferences, copyrights, as well as any rights pertaining to them, either in the Republic of Mexico or abroad;*

VII.- *In general, to carry out, execute all deeds and contracts and any transactions related thereto, incidental or accessories to them, that may be necessary or convenient to accomplish the corporate purpose set forth above.*

*The above stated corporate purpose is lawful, in accordance with § 2.1.b of the Regulation of the Foreign Investment Law and with the National Foreign Investment Registry.*

As you can see, under subsections I, V and VII of such Third Article, can be inferred that TAC has the power to import natural gas from the US to Mexico, even though it is not expressly set forth therein.

Being the generation of power the main corporate purpose of TAC under subsection I, and being natural gas an indispensable commodity necessary to generate power, as provided in subsection V, TAC has the corporate power to acquire such commodity, if it is necessary or convenient to carry out its corporate purpose.

Further, under subsection VII, TAC has the power to execute all incidental or accessory contracts and/or transactions necessary or convenient to accomplish its main corporate purpose. In such fashion, the import of natural gas into Mexico by TAC can be regarded as a transaction necessary or convenient for TAC to generate power.

A different issue relates as to whom, acting on behalf of TAC, has the corporate authority to file to the appropriate Mexican authorities an import permit for the importation of natural gas into Mexico. In a nutshell, any TAC representative that has been granted a durable power of attorney for administrative acts and deeds, is legally capable to request any such permit.

In these law firm files there is evidence that several individuals within TAC's corporate structure have been granted such kind of durable powers of attorney.

Compliance with State laws and regulatory authorities.

In order to be able to import natural gas into Mexico, previous to filling any import permit application, TAC had apply for and is recorded at the General Importers' Registry and Itemized Importers' Registry of the Secretaría de Hacienda y Crédito Público (Ministry of the Treasury) of Mexico, authority in charge of the Mexican Customs Administration.

Import duties shall be paid to the Ministry of the Treasury on a case by case basis, based on the value of the volume of imported natural gas, at the time of importation.

Being the natural gas industry regulated by Mexican Federal Law, there are not specific Chihuahua State's Law requirements. However, related issues such as environmental or safety regulations are being addressed as provided by State Law. Other Federal Regulatory requirements were filled in Mexico, concurrently with TAC's application to the DOE for a long term export authorization.

Regards,

A handwritten signature in black ink that reads "Jc COLLADO". The signature is written in a cursive style with a large initial "Jc" and the name "COLLADO" in all caps.

Juan Carlos Collado, Esq.  
Professional ID number 1564411

**FUEL SUPPLY AGREEMENT**

**BETWEEN**

**TRANSALTA CHIHUAHUA, S.A. de C.V.**  
**As Buyer**

**AND**

**CINERGY MARKETING & TRADING, LP**  
**As Seller**

**Dated as of April 15, 2003**

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## FUEL SUPPLY AGREEMENT

This Fuel Supply Agreement (this "Agreement") is entered into by and between Cinergy Marketing & Trading, LP, a Delaware limited partnership ("Seller"), and TransAlta Chihuahua, S.A. de C.V., a Mexican business organization, a wholly owned subsidiary of TransAlta Corporation ("Buyer"). Seller and Buyer shall each be referred to herein as a "Party" and, together, as the "Parties".

### RECITALS:

WHEREAS, on April 10, 2001, Buyer entered into a power purchase agreement (the "PPA") number PIF-003/2001 with the Mexican Comisión Federal de Electricidad ("CFE") pursuant to which it will be obligated, inter alia, to construct Chihuahua III power plant, which will be located at kilometer 166 of the Panamerican highway Sueco-Juarez on highway 45 Chihuahua-Jimenez, in the Samalayuca town, Ciudad Juarez, Chihuahua, Mexico with an electric power generation capacity comprised between 191 MW and 317.9 MW at summer design conditions (the "Facility") and to sell the electrical power associated with such capacity to the CFE for a projected period of 25 years from the COD.

WHEREAS, the fuel for the Facility is to be natural gas and Seller is willing and able to sell and deliver to Buyer at the Delivery Point(s) natural gas of such quality and in such quantities as more fully described herein which will allow Buyer to supply the Facility.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties mutually agree as follows:

### ARTICLE I DEFINITIONS

1.1 **Definitions** Whenever the following capitalized terms appear in this letter of intent, whether in the singular or in the plural, or in the present, future, or past tense, they shall have the meanings stated below:

"Affiliate" shall mean any entity that directly or indirectly controls, or is under common control with, or is controlled by, a Party. As used in this definition "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of securities having more than fifty percent (50%) of the voting power for the election of directors or other governing body of a corporation or more than fifty percent (50%) of the partnership or other ownership interests of any other entity (other than as a limited partner of such other entity).

"Baseload Gas" shall have the meaning ascribed to such term in Section 2.6.

"Baseload Monthly Option" shall have the meaning ascribed to such term in Section 3.3.

"Baseload Sales Price" shall have the meaning ascribed to such term in Section 3.1.

"Btu" shall mean British Thermal Units, meaning the amount of energy needed to raise the temperature of one pound of water one degree Fahrenheit (1°F) at a standard pressure of fourteen point seventy three dry pounds per square inch absolute (14.73 dry psia) at sixty degrees Fahrenheit (60°F). Any conversion from Btus to decatherms under this Agreement shall be calculated such that one (1) MMBtu equals one (1) decatherm.

"Business Day" shall mean any Day, except Saturday, Sunday, or a Day that is an official holiday in the State of Texas, U.S.

"Buyer" shall mean TransAlta Chihuahua, S.A. de C.V., together with its successors or permitted assigns.

"CFE" shall have the meaning ascribed to such term in the first Recital.

"Contract Value" shall have the meaning ascribed to such term in Section 4.2.3.

"Central Clock Time" or "CCT" shall mean the time zone in the State of Texas, U.S., known as "Central Time".

"Commercial Operation Date" or "COD" shall mean the Day following the date on which CFE issues its certification that Plant Owner has satisfied the requirements set forth in the PPA for achieving commercial operation of the Facility.

"CSA" shall mean the Credit Support Annex attached hereto.

"Day" shall mean a period of twenty-four (24) consecutive hours.

"Default Start Date" shall have the meaning ascribed to such term in Section 2.3.

"Deficient Delivery Gas" shall have the meaning ascribed to such term in Section 2.7.

"Deficient Receipt Gas" shall have the meaning ascribed to such term in Section 2.6.

"Delivery Point" shall mean the point where the Gas is delivered from Seller to Buyer (or from Buyer to Seller in the case of Repurchase Gas), and shall include the Primary Delivery Point and any applicable Secondary Delivery Point.

"Dollar" or "US\$" shall mean the lawful currency of the U.S. of America.

"Early Termination Date" shall have the meaning ascribed to such term in Section 4.2.2.

"Effective Date" shall mean the date on the cover page of this Agreement.

"EPNG" shall mean El Paso Natural Gas Pipeline Company.

"Facility" shall have the meaning ascribed to such term in the Recitals.

"Facility Event" shall mean the full or partial destruction of the Facility that restricts the output of the Facility by more than 50% for at least one hundred eighty (180) consecutive days.

"FERC" shall mean the U.S. Federal Energy Regulatory Commission (or its successor).

"Force Majeure" shall have the meaning ascribed to such term in Section 8.1.

"Gas" shall mean Baseload Gas, Swing Gas, Test Gas, or Repurchase Gas, as applicable.

"Gas Day" shall mean a day for the supply and purchase of Gas, beginning and ending at the times specified by EPNG for a gas day in its tariff.

"Independent Expert" shall have the meaning ascribed in Section 12.2.

"Law" shall mean (i) any constitution, law, secondary law, legislation, statute, act, rule, ordinance, decree, treaty, regulation, executive order, judgment, or other similar legal requirement or (ii) any legally binding announcement, directive, or published practice or interpretation thereof, enacted, issued, or promulgated by any governmental authority.

"Market Value" shall have the meaning ascribed to such term in Section 4.2.3.

"MDQ" shall mean the Maximum Daily Quantity and shall equal 48,000 MMBtu's per Gas Day.

"Mexican Business Day" shall mean any Day, except Saturday, Sunday, or a Day that is an official holiday in Mexico.

"MinDQ" shall mean the Minimum Daily Quantity and shall equal to 40,000 MMBtu's per Gas Day, plus any additional amount of Gas for which the Swing Gas Reservation Fee is waived for a month in accordance with Section 3.3., plus any increase in the MinDQ pursuant to Section 2.4.

"MMBtu" shall mean one million (1,000,000) Btu's.

"Month" shall mean a month for the supply and purchase of Gas, beginning and ending at the times specified by EPNG for a month in its tariff (generally beginning on the first Gas Day of the Month).

"Nationalization Event" shall mean the nationalization and assumption of control of the Facility by the Mexican government in a process that includes the nationalization and assumption of control of similar privately owned power plants in Mexico.

"Net Settlement Amount" shall have the meaning ascribed to such term in Section 4.2.4

"New Price Period" shall have the meaning ascribed to such term in Section 3.4

"Nomination Deadline" shall have the meaning ascribed to such term in Section 2.2.

"NYMEX Contract" shall mean the natural gas futures contract traded on the New York Mercantile Exchange.

"Party" and "Parties" shall have the meaning ascribed to such terms in the Preamble.

"Permits" shall have the meaning ascribed to such terms in Section 16.1.

"Pipeline Event" shall mean the failure of EPNG or its successor to allocate any portion of the nominated Gas to the account of Seller or Buyer for delivery at the Delivery Point(s) on a Gas Day due to a pipeline capacity constraint or other pipeline operational issue to the extent such constraint or issue affects firm pipeline capacity being utilized by Buyer, provided such failure to allocate does not arise directly as a result of the actions or inactions of Seller or Buyer.

"PPA" shall have the meaning ascribed to such term in the Recitals.

"Price" shall mean the Baseload Sales Price, Swing Sales Price, Test Sales Price, PSP Repurchase Price, or the TP Repurchase Price, as applicable.

"Pricing Criteria" shall have the meaning ascribed to such term in Section 3.4.

"Primary Delivery Point" shall have the meaning ascribed to such term in Section 5.1.

"Primary Sales Period" shall mean the period of time commencing on the earlier of the COD or the Default Start Date and continuing until the Term End Date, as further discussed in Section 2.3.

"PSP Repurchase Price" shall have the meaning ascribed to such term in Section 2.6.

"Replacement Gas" shall have the meaning ascribed to such term in Section 2.7(a).

"Replacement Price" shall mean the weighted average price at which the Buyer effects a purchase of Replacement Gas. Absent any purchase of Replacement Gas, "Replacement Price" shall mean the market price of the Deficient Delivery Gas that shall be equal to the average of three market quotes from third party dealers selected by Buyer for an equivalent quantity of gas to replace the Deficient Delivery Gas on the same Gas Day on which the deliveries were not made. The Replacement Price may include, without limitation, any and all costs incurred by Buyer in obtaining gas from transporters under any applicable transportation, balancing, or OBA agreements, as such cost may be modified by any related transactions that Buyer may reasonably enter into within a reasonable time to repay or otherwise rebalance such agreements.

"Repurchase Gas" shall have the meaning ascribed to such term in Section 2.6.

"Requested Quantity" shall have the meaning ascribed to such term in Section 2.2.

"Secondary Delivery Point(s)" shall have the meaning ascribed to such term in Section 5.1.

"Seller" shall mean Cinergy Marketing & Trading, LP, together with its successors or permitted assigns.

"Specific Event of Default" shall have the meaning ascribed to such term in Section 4.2.1.

"Swing Gas" shall have the meaning ascribed to such term in Section 2.6.

"Swing Gas Reservation Fee" shall have the meaning specified in Section 3.3.

"Swing Sales Price" shall have the meaning ascribed to such term in Section 3.1.

"Term End Date" shall mean the date, falling between July 15, 2008 and July 1, 2009, for the expiry of this Agreement, as provided for under Section 2.3.

"Termination Event" shall have the meaning ascribed to such term in Section 4.2.2(b).

"Test Gas" shall have the meaning ascribed to such term in Section 2.5.

"Test Period" shall have the meaning ascribed to such term in Section 2.5.

"Test Sales Price" shall have the meaning ascribed to such term in Section 3.2.

"Texas Business Day" shall mean any Day, except Saturday, Sunday, or a Day that is an official holiday in the State of Texas.

"TP Repurchase Price" shall have the meaning ascribed to such term in Section 2.5.

"U.S." shall mean the United States of America.

**1.2 Interpretation.** Unless otherwise provided, all references to "Articles," "Sections," "Exhibits," and the like are to the corresponding portions of this Agreement, each of which is made a part of this Agreement for all purposes. All references to the words "hereof," "herein," "hereinafter," "hereunder," "hereby," "hereto," and similar words refer to this entire Agreement and not to any particular Article, Section, or Exhibit. "Includes" or "including" shall mean "including, but not limited to."

## **ARTICLE II SALE AND PURCHASE OBLIGATION**

**2.1 Service Description.** During each Gas Day of the Primary Sales Period Seller will make available and sell to Buyer and Buyer will purchase from Seller the Facility's Gas requirements for each Gas Day, of at least the MinDQ and up to the MDQ, based on Buyer's Requested Quantity for the Gas Day. Prior to the Primary Sales Period, sales of Test Gas will be made in accordance with Section 2.5.

**2.2 Gas Nomination Procedures.** On each Gas Day during the Test Period and the Primary Sales Period, Seller will sell and Buyer will purchase the Gas (Baseload Gas, Swing Gas, or Test Gas, as applicable), based on Buyer's final request for Gas (Baseload Gas, Swing Gas or Test Gas, as applicable), up to the MDQ, to be received by Seller not later than 8:00 a.m., C.C.T. on the calendar Day before each Gas Day on which Buyer requires delivery of Gas to the Delivery Point(s), except that if the request is for Baseload Gas, Test Gas, or Swing Gas to be delivered on a Gas Day that begins on a Saturday, Sunday, Monday, and holiday in the U.S., and any Gas Day that follows a holiday in the U.S. Buyer's final request must be received by Seller no later than 8:00 a.m., C.C.T., on the immediately preceding Business Day (the quantity of Gas (including Baseload Gas, Swing Gas or Test Gas, as applicable) requested by Buyer by such times for a Gas Day will be referred to herein as the "Requested Quantity" and each deadline described above for a Gas Day is referred to as the "Nomination Deadline"). Any such nomination may be given by any means from which a written record shall be created, including electronic e-mail or facsimile. The Gas to be delivered at the Delivery Point(s) on a Gas Day will be delivered and taken rateably over the Gas Day in accordance with EPNG's FERC tariff standards. The Gas (Baseload Gas, Swing Gas, Test Gas, or Repurchase Gas, as applicable) quantities shall be ratable for deliveries on weekends and holidays, unless the parties mutually agree otherwise. Example: On each Friday, Buyer shall nominate for Saturday, Sunday, and Monday, and the quantity of Gas shall be the same for each such Gas Day. Should Friday be a holiday, then Buyer shall nominate on Thursday the quantity of Gas needed for Friday, Saturday, Sunday, and Monday, and the quantity of Gas shall be the same for each such Gas Day, unless the parties mutually agree otherwise.

**2.3 Establishment of Primary Sales Period.** For purposes of establishing the Primary Sales Period, the COD is anticipated to be July 15, 2003 and the Term End Date is anticipated to be July 15, 2008. To the extent that the COD is earlier than July 15, 2003, Seller will use its best efforts to accelerate commencement of Gas sales on the date specified by Buyer (which such date shall be the COD and the first day of the Primary Sales Period) up to a maximum of a hundred and twenty (120) Days in advance of July 15, 2003, in which case the Term End Date shall remain set at July 15, 2008. Should the COD be postponed beyond July 15, 2003, and subject to Buyer providing Seller reasonable prior notice of such postponement and the COD commencing no later than July 1, 2004, the Primary Sales Period shall commence on such postponed COD and this Agreement will be extended so that its Term End Date shall be the fifth (5<sup>th</sup>) anniversary of the actual COD. Buyer will give Seller as much prior written notice of the anticipated COD as Buyer reasonably can, and Buyer will endeavor to give Seller such notice at least five (5) days in advance. Notwithstanding the foregoing, if the COD has not occurred by July 1, 2004, then the Primary Sales Period shall commence on July 1, 2004 (the "Default Start Date") with Buyer having the obligation to pay Seller for at least the MinDQ on each Gas Day commencing on the Default Start Date, irrespective of whether Buyer is ready to take the Gas at the Facility by the Default Start Date, and the Term End Date shall be July 1, 2009. For the avoidance of doubt, the postponement of the COD shall not in and of itself constitute an event of Force Majeure, unless such postponement is due to an independent event which meets the criteria of Force Majeure set out in Section 8.1 hereof.

**2.4 Buyer's Option to Increase the MinDQ.** As its option from time to time upon giving Seller at least 30 days' advance written notice, and effective upon any anniversary of the COD during the term of this Agreement, Buyer may request that the MinDQ be increased, but not by more than the difference between the MDQ and the then effective MinDQ, in which case (i) the MinDQ shall be increased by the daily quantity specified in Buyer's notice, and (ii) the Swing Gas Reservation Fee shall no longer be due and payable on the daily quantity by which the MinDQ is increased.

**2.5 Test Gas.** Seller will supply Gas for the Facility's commissioning, start-up, and testing period, commencing on the Effective Date and up to first day of the Primary Sales Period (the "Test Period"), and up to the MDQ ("Test Gas"). Buyer shall provide Seller written notice of Buyer's desire to begin taking Test Gas at least five (5) Business Days prior to the date on which Buyer desires to begin taking Test Gas. Buyer shall not have any minimum quantity requirements for Test Gas, and the MinDQ shall not apply. Buyer shall request Test Gas for a Gas Day in the same manner and in accordance with the same Nomination Deadline as provided in Section 2.2 for Gas to be purchased during the Primary Sales Period. Like Buyer's obligation under Section 2.6(a) for Gas to be purchased during the Primary Sales Period, Buyer shall be obligated to pay Seller for the Requested Quantity of Test Gas regardless of whether Buyer actually takes the Requested Quantity of Test Gas. Upon Buyer's request received by Seller on or before the Nomination Deadline for the Gas Day in question, Seller will repurchase the portion of the Requested Quantity of Test Gas that Buyer does not desire to take in the manner and under the same conditions described in Section 2.6(b) at a price (the "TP Repurchase Price")

equal to the daily price index, expressed in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as reported in Gas Daily, under the Daily Price Survey, for the corresponding Gas Day, less US\$0.03 per MMBtu. Buyer shall have the same rights and obligations as specified in Sections 2.6(c) and (d) with respect to any Requested Quantity of the Test Gas which Buyer decides after the Nomination Deadline for the Gas Day in question to not take on a Gas Day, and the affected Test Gas shall remain the property of Seller even though Buyer has paid Seller for same unless Buyer resells the affected Test Gas on the same Gas Day in accordance with the terms, conditions, and limitations of Sections 2.6(c) and (d). Buyer's obligation to take and pay for or pay for if not taken any quantity of Gas shall be subject to Section 2.8.1.

**2.6 Minimum Take Requirements of Buyer.** (a) On each Gas Day during the Primary Sales Period, Buyer shall request, take, and pay for, or pay for if not taken, at least the MinDQ per Gas Day (the "Baseload Gas"). Additionally, Buyer shall take and pay for, or pay for if not taken, an additional quantity of Gas on a Gas Day equal to the positive difference, if any, between the Requested Quantity for such Gas Day minus the MinDQ for such Gas Day (the "Swing Gas"). If Buyer fails to take at the Delivery Point(s) any of the Baseload Gas and/or Swing Gas for which it is obligated to pay for whether taken or not on a Gas Day and such failure is not excused pursuant to Section 2.8.1 (such Gas not taken by Buyer and not excused under Section 2.8.1 will be referred to herein as the "Deficient Receipt Gas"), then, the Deficient Receipt Gas will remain the property of Seller even though Buyer has paid Seller for same unless Buyer resells the Deficient Receipt Gas on the same Gas Day in accordance with Sections 2.6(b), (c), and (d). The parties acknowledge and agree that the Swing Gas shall be deemed to be the first quantities of Deficient Receipt Gas until the Swing Gas for the specific Gas Day is fully allocated, and the remaining Deficient Receipt Gas shall be deemed to be Baseload Gas.

(b) At Buyer's option, Buyer shall have the right to resell the Deficient Receipt Gas to Seller on the same Gas Day if Buyer has notified Seller by the Nomination Deadline for the respective Gas Day that Buyer desires to resell the respective Gas to Seller on the respective Gas Day (the Gas to be resold to Seller by Buyer is referred to herein as the "Repurchase Gas"). The price per MMBtu of the Repurchase Gas (the "PSP Repurchase Price"), which such Repurchase Gas shall be delivered at the same Delivery Point at which Seller was to deliver the Gas to Buyer unless the Parties then agree otherwise, shall be the daily price index, expressed in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as reported in Gas Daily, under the Daily Price Survey, for the corresponding Gas Day, less US\$0.02 per MMBtu.

(c) If Buyer notifies Seller of its desire to not take and consume the Deficient Receipt Gas on a Gas Day after the Nomination Deadline for a Gas Day, then Buyer may either, at Buyer's option, (i) resell all or a portion of the Deficient Receipt Gas to Seller if Buyer and Seller are able to mutually agree on a price for such Deficient Receipt Gas to be resold to Seller and Buyer's notice of the need to resell the Gas was received prior to the last intraday nomination deadline for the applicable Gas Day on Seller's or its supplier's transporter transporting the gas to the Delivery Point(s) (if no such transporter, then prior to the last nomination deadline for the

applicable Gas Day on EPNG's pipeline), (ii) request and have Seller resell the Deficient Receipt Gas to third parties on behalf of Buyer for delivery on the same Gas Day subject to the disclaimer set forth in Section 2.6(d) below, or (iii) resell the Deficient Receipt Gas to a third party for delivery at the Delivery Point(s) on the same Gas Day. If Buyer has not elected any of the foregoing options timely so as to allow the Deficient Receipt Gas or any portion thereof to be disposed of in an orderly fashion on the same Gas Day, Buyer shall remain obligated to pay Seller for the Deficient Receipt Gas and Seller shall have no obligation to repurchase the Deficient Receipt Gas from Buyer or resell the Deficient Receipt Gas to a third party, in which case the Deficient Receipt Gas will remain the property of Seller. In no event shall Seller be obligated to arrange for any storage of the Deficient Receipt Gas or any delayed or deferred delivery of any of the Deficient Receipt Gas on another Gas Day.

(d) If, pursuant to Section 2.6(c)(ii) above, Buyer timely requests that Seller resell the Deficient Receipt Gas to a third party for Buyer, then, Seller shall, upon Buyer's request received by Seller on or before the last intraday nomination deadline for the applicable Gas Day on Seller's or its supplier's transporter transporting the gas to the Delivery Point(s) (if no such transporter, then prior to the last nomination deadline for the applicable Gas Day on EPNG's pipeline) (which request must specify the exact quantity that Buyer wants Seller to resell), resell the specified quantity of such Deficient Receipt Gas for Buyer on the same Gas Day at the highest reasonable price under the circumstances. Seller hereby advises Buyer and Buyer hereby acknowledges, (i) that the Deficient Receipt Gas that Buyer asks Seller to resell will be more difficult to resell and may obtain a lesser price or no price at all the later in time that Buyer waits before requesting Seller to make the resale and especially if the request is made after the start of the Gas Day for which the Deficient Receipt Gas had been originally requested, (ii) that Seller is not guaranteeing Buyer any minimum price, but Seller will use the same degree of care to resell the Deficient Receipt Gas as it would for its own gas if Seller were trying to sell like quantities of its own gas at the same time and under the same, potentially distressed, circumstances, and (iii) Seller will not be expected to allocate the Deficient Receipt Gas to any of Seller's existing markets. With respect to any resale of the Gas by Seller for Buyer to a third party, Buyer shall bear all credit risk and risk that the third party does not actually take the Gas. To the extent that Buyer has paid or will pay Seller for the Deficient Receipt Gas not taken and Seller has resold the Deficient Receipt Gas for Buyer pursuant to a timely request of Buyer as described above, Seller will retain the resale proceeds and credit to Buyer on its next invoice to Buyer the resale proceeds, less an Administrative Fee for Seller's services in reselling the Deficient Receipt Gas for Buyer determined in accordance with the table set forth below. If the resell price per MMBtu that Seller receives for reselling the Deficient Receipt Gas at the Delivery Point(s) for delivery on the same Gas Day is equal to or greater than the specified percentage of the price that Buyer pays Seller for such Deficient Receipt Gas, then the Administrative Fee per MMBtu of Gas resold by Seller to a third party shall equal the amount in US\$ set forth opposite such percentage in the following table:

| TABLE OF ADMINISTRATIVE FEES  |                                       |
|---|---------------------------------------|
| If the resell price is the following percentage of the price to be paid by Buyer for the Deficient Receipt Gas, | Then the Administrative Fee shall be: |
| More than 125%  | US\$0.10 per MMBtu                    |
| More than 100% but equal to or less than 125%:  | US\$0.07 per MMBtu                    |
| More than 80% but equal to or less than 100%  | US\$0.06 per MMBtu                    |
| More than 70% but equal to or less than 80%   | US\$0.05 per MMBtu                    |
| More than 60% but equal to or less than 70%   | US\$0.04 per MMBtu                    |
| More than 50% but equal to or less than 60%   | US\$0.03 per MMBtu                    |
| 50% or less   | US\$0.02 per MMBtu                    |

**2.7 Seller Failure to Supply Gas.**

(a) If, before or after the COD, Seller fails to deliver the Requested Quantity on any Gas Day in accordance with the terms of this Agreement (including failure to deliver Gas at the Delivery Point(s) in conformity with the quality and pressure requirements set forth under Section 10.1) and such failure is not excused pursuant to Section 2.8.3 hereunder (such Gas not delivered by Seller and not excused under Section 2.8.3 will be referred to herein as the "Deficient Delivery Gas"), then Buyer shall be entitled to secure alternate supplies of Gas to replace the Deficient Delivery Gas at the lowest reasonable price under the circumstances (the "Replacement Gas"). Replacement Gas shall include any and all gas obtained by Buyer from transporters under any applicable transportation, balancing, or OBA agreements that replaces the Deficient Delivery Gas. Seller shall be liable to Buyer for the product of (i) the positive difference, if any, between (A) the Replacement Price plus US\$0.15 per MMBtu minus (B) the Price per MMBtu provided for under Article III that would have been paid hereunder if the Gas had been delivered for the same Gas Day, multiplied by (ii) the quantity of such Deficient Delivery Gas (for the purposes of determining the Price hereunder it will be deemed that the first Gas not delivered is Swing Gas and then Baseload Gas).

(b) The collection of the amounts specified under this Section 2.7 shall be Buyer's sole remedy for Seller's failure to deliver any Gas. The Parties agree that the actual damages which will be incurred as a result of Seller's failure to deliver nominated Gas in accordance with the terms hereof would be extremely difficult to ascertain accurately due to the complexity of the multiple contract structures necessary to achieve performance spanning two (2) sovereign nations and their respective currencies and that the liquidated damages specified herein are a fair and reasonable estimate of the damages to be borne by the non-defaulting Party in the event of such failure to deliver nominated Gas. The Parties agree that the liquidated damages specified in this Agreement are intended to compensate Buyer for the specific loss referred to in the applicable provision and are intended to be a total compensation for any damages and losses relating to or

arising from Seller's failure to perform. Any liquidated damages payable hereunder shall be paid in Dollars.

**2.8 Exceptions to Buyer's Obligation to Take or Pay For if Not Taken, and Seller's Obligation to Deliver, the Gas.**

**2.8.1** During the Test Period and the Primary Sales Period, Buyer shall be excused from its obligation to take and pay for or pay for if not taken the affected Gas that Buyer did not take on a Gas Day in the event of and during (1) a scheduled maintenance of the Facility, within the limits provided for in Section 11.2, (2) a Force Majeure affecting Buyer, (3) maintenance on a pipeline segment used for transportation of the Gas from the Delivery Point(s) that effectively prevents Buyer from transporting the Gas under firm transportation capacity downstream of the Delivery Point(s), (4) full or partial destruction of the Facility which restricts the output of the Facility by more than 50%, (5) Seller's failure to deliver the Requested Quantity except when such failure is due to Buyer's failure to request and take the Gas, (6) a Pipeline Event, (7) the interruption or curtailment of firm transportation of the Gas by a transporter transporting the Gas at the Delivery Point(s) or from the Delivery Point(s) to the Facility, when due to an event of force majeure complying with the transporter's definition of force majeure in its tariff regardless of whether the transporter issues formal notice of force majeure, (8) a Nationalization Event; or (9) a critical alert and/or operational flow order (OFO) on the pipeline system of Gasoductos de Chihuahua, S. de R.L. de C.V. that prevents Buyer from transporting the Gas under firm transportation from the Delivery Point to the Facility; provided that:

- (i) in the cases under (1) and (2) above, Buyer gives notice of such events in accordance with Section 11.2 and 8.3 respectively,
- (ii) in the case under (3) or (9) above, Buyer gives notice of such event to Seller, as soon as reasonably practical and at the latest within four (4) hours of Buyer's learning of such event,
- (iii) in the case under (4), (7), or (8) above, Buyer gives notice of such event to Seller, as soon as reasonably practical after Buyer's learning of such event,
- (iv) in the case of (4) above, Buyer will only be excused from its obligations for one hundred eighty (180) days after which Buyer's obligations will resume unless this Agreement has been terminated pursuant to Article IV, and
- (v) in the case of (6) above, Buyer must have been nominating the Gas under firm transportation capacity on EPNG's pipeline at the Delivery Point(s) and Buyer must provide upon request by Seller a copy of Report 86P (or its successor) from EPNG or such similar documentation verifying such fact.

**2.8.2** To the extent that Buyer is excused from its obligation to take and pay for or pay for if not taken any quantity of Gas due to a Pipeline Event, Buyer shall pay Seller for the applicable Gas Day, in addition to the amounts otherwise due under this Agreement, the product of (i) \$0.02 per MMBtu times (ii) the quantity of such Gas (expressed in MMBtu's) that Buyer was excused from taking and paying for or paying for if not taken, provided that, clause (ii) shall be limited to the greater of (A) fifteen (15) percent of the MinDQ for such Gas Day, or (B) fifteen (15) percent of the Requested Quantity for such Gas Day.

**2.8.3** During the Test Period and the Primary Sales Period, Seller shall be excused from its obligation to deliver the Requested Quantity of Gas that Seller did not deliver on a Gas Day in the event of and during (1) a Force Majeure affecting Seller, (2) Buyer's failure to request or take the Gas except when such failure is due to Seller's failure to deliver the Gas, (3) a Pipeline Event, or (4) the failure of EPNG or its successor to allocate any portion of the nominated Gas to the account of Seller or Buyer for delivery at the Delivery Point(s) on a Gas Day due to a pipeline capacity constraint or other pipeline operational issue to the extent such constraint or issue affects interruptible or other non-firm pipeline capacity being utilized directly or indirectly by Buyer, provided such failure to allocate does not arise directly as a result of the actions or inactions of Seller; provided in the case under (1) above, Seller gives notice of such events in accordance with Section 8.3.

### **ARTICLE III PRICE**

**3.1 Price During the Primary Sales Period.** During the Primary Sales Period, Buyer shall pay Seller a Price for each MMBtu of the Baseload Gas delivered at the Delivery Point on a Gas Day and any portion of the MinDQ not actually taken by Buyer at the Delivery Point on the same Gas Day (the "Baseload Sales Price") equal to the sum of the daily price index, expressed in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as reported in Gas Daily, under the Daily Price Survey, for the corresponding Gas Day, plus US\$0.02 per MMBtu. Buyer shall pay Seller a Price for each MMBtu of Swing Gas delivered at the Delivery Point on a Gas Day and any portion of the Swing Gas that constitutes a part of the Requested Gas and is not actually taken by Buyer on the same Gas Day (the "Swing Sales Price") equal to the sum of the daily price index, expressed in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as reported in Gas Daily, under the Daily Price Survey, for the corresponding Gas Day, plus US\$0.02 per MMBtu.

**3.2 Price During the Test Period.** During the Test Period, Buyer shall pay Seller a Price for each MMBtu of Test Gas requested by Buyer on each Gas Day during the Test Period (even if not taken by Buyer) (the "Test Sales Price") equal to the daily price index, expressed in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as reported in Gas Daily, under the Daily Price Survey, for the corresponding Gas Day, plus US\$0.03 per MMBtu.

**3.3 Reservation Fee on Swing Gas.** Subject to clause (ii) of Section 2.4, for each Gas Day of the Primary Sales Period, Buyer shall pay to Seller a reservation fee of US\$0.02 per MMBtu on 8,000 MMBtu's per Gas Day of Swing Gas (the "Swing Gas Reservation Fee") irrespective of whether Buyer purchases any Swing Gas. However, if Buyer nominates in increments of 1,000 MMBtu's per Gas Day, up to 8,000 MMBtu's per Gas Day, of Swing Gas at least four Business Days before the closing day of trading for the NYMEX Contract for the respective month of Gas flow (the "Baseload Monthly Option"), then Seller will waive the Swing Gas Reservation Fee on the quantities of Swing Gas nominated under this option, and such additional quantities shall become part of the MinDQ and Baseload Gas for each Gas Day during the respective month. Such amounts shall be due and payable on the same due date for Gas deliveries for a month. Notwithstanding anything herein to the contrary, Seller will waive the Swing Gas Reservation Fee associated with quantities of Swing Gas that are either (i) Deficient Delivery Gas, or (ii) not delivered or taken due to an event of Force Majeure.

**3.4 Cessation of Publication of Indices.** The Price specified herein shall be subject to adjustment to the extent that the applicable indices comprising the Price cease to be published, in which case a new price or pricing formula shall be selected by mutual agreement of Buyer and Seller. If the Parties are unable to agree on a replacement price or pricing formula by the end of the first month following the month in which the applicable indices comprising the Price ceased to be published, either party may request for an independent expert to be appointed to determine a replacement price or pricing formula that reflects (a) the fair market value of the Gas at the Delivery Point(s) plus Seller's average net margin on the Gas for the most recent twelve (12) month period, (b) the relevant market conditions at the Delivery Point(s), and (c) the economic value of this transaction to each Party (the factors in clauses (a), (b), and (c) are referred to herein as the "Pricing Criteria"). The independent expert shall be selected, and the process shall be conducted, as provided for under Section 12.2 (without the right to appeal the decision to arbitration). If either Party is not satisfied with the expert's determination with respect to the new price or pricing formula, then it may terminate this Agreement upon giving forty-five (45) Days' prior written notice to the other Party which must be given within thirty (30) days of the decision by the expert. During the period between the time the original pricing information ceased to be published and the date of termination (the "New Price Period"), the Gas shall be priced based on the substitute index or pricing formula determined by the expert, with Seller having the right during the New Price Period to bill Buyer based on a reasonable and justified estimate of a new price which shall be adjusted retroactively to the beginning of the New Price Period when the substitute index or pricing formula is finally determined. Notwithstanding anything herein to the contrary and for purposes of clarification, the original Prices set forth herein shall apply at all times prior to the first Day of the New Price Period.

## ARTICLE IV TERM

**4.1 Term of Agreement.** This Agreement shall become effective on the Effective Date and shall remain in full force and effect through the Term End Date, unless terminated earlier in accordance with the provisions hereof.

### **4.2 Termination for Specific Events of Default.**

**4.2.1** In the event (each a "Specific Event of Default") either Party (the "Defaulting Party") or its credit support provider (i.e., a guarantor or issuer of a letter of credit) shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent; (iv) be unable to pay its debts as they fall due; (v) have a receiver, provisional liquidator, conservator, custodian, trustee, or other similar official appointed with respect to it or substantially all of its assets; (vi) fail to perform any payment obligation under a guarantee or a letter of credit issued under Section 13.1 which is not remedied within five (5) Days of receiving a notice thereof; (vii) shall not have paid any undisputed amount due the other Party hereunder on or before the fifth (5<sup>th</sup>) Business Day following written notice that such payment is due, (viii) be the Affected Party with respect to a Credit Support Default under the CSA, or (ix) in the case of Seller and provided the failure to deliver is not excused pursuant to Section 2.8.3, fail to deliver the Requested Quantity for five (5) consecutive Gas Days or fail to deliver fifteen (15) percent of the aggregated Requested Quantity in a calendar month; then the other Party (the "Non-Defaulting Party") shall have the right, at its sole election, to withhold immediately and/or suspend payments and/or to terminate and liquidate this Agreement, in the manner provided hereinbelow. In addition, in the event a payment owed by Buyer to Seller in consideration for Gas deliveries is not made within two (2) Business Days after Buyer's receipt of Seller's notice of non-payment (the notice may be sent by fax) or a Credit Support Default has occurred under the CSA with respect to Buyer and such has not been cured within two (2) Business Days after Buyer's receipt of Seller's notice of such event (the notice may be sent by fax), then Seller may immediately suspend deliveries.

**4.2.2 (a)** If a Specific Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right, by notice to the Defaulting Party, to designate a Day, no earlier than five (5) Days and no later than thirty (30) Days after such notice is given, as an early termination date (the "Early Termination Date"), provided the Specific Event of Default is continuing, for the liquidation and termination of this Agreement pursuant to Section 4.2.3 below.

**(b)** If a Nationalization Event or a Facility Event (in either case a "Termination Event") has occurred and is continuing, then either Party, in the case of a Nationalization Event, or Buyer only, in the case of a Facility Event, shall have the right, by notice to the other Party, to designate an Early Termination Date and liquidate and terminate this Agreement pursuant to Section 4.2.3

below. For purposes of calculating the Final Settlement Amount, the terminating Party shall be deemed to be the "Non-Defaulting Party". If an event or circumstance that would otherwise constitute or give rise to a Specific Event of Default also constitutes a Termination Event, it will be treated as a Termination Event and will not constitute a Specific Event of Default.

**4.2.3** As of the Early Termination Date, the Non-Defaulting Party shall determine, in good faith and in a commercially reasonable manner, (i) the amount owed (whether or not then due) by each Party under this Agreement with respect to the period on and before the Early Termination Date (including without limitation any liquidated damages owed), for which payment has not yet been made, and (ii) the Market Value, as defined below, of this Agreement. The Non-Defaulting Party shall (x) liquidate and accelerate this Agreement at its Market Value, so that each amount equal to the difference between such Market Value and the Contract Value, as defined below, of this Agreement shall be due to the Buyer if such Market Value exceeds the Contract Value and to the Seller if the opposite is the case; and (y) discount the amount then due under subclause (x) above to present value using a discount rate of six percent (6%) as of the Early Termination Date (to take account of the period between the date of liquidation and the date on which such amount would have otherwise been due pursuant to this Agreement). "Contract Value" means the amount of Gas remaining to be delivered or purchased under this Agreement (assumed to be an amount equal for each remaining Gas Day to the higher of (1) the average actual daily deliveries and consumption for the last 12 Months, or (2) the MinDQ), multiplied by the contract price for Baseload Gas, and "Market Value" means the amount of Gas remaining to be delivered or purchased under this Agreement (calculated based on the same assumption set forth above in this sentence) multiplied by the market price for a similar transaction at the Delivery Point(s) determined by the Non-Defaulting Party in a commercially reasonable manner. To ascertain the Market Value, the Non-Defaulting Party may consider, among other valuations, any or all of the settlement prices of NYMEX Gas futures contracts, quotations from leading dealers in energy swap contracts or physical gas trading markets, similar sales or purchases, and any other bona fide third-party offers, all adjusted for the length of the term and differences in transportation costs. A Party shall not be required to enter into a replacement transaction(s) in order to determine the Market Value. Any extension(s) of the term to which Parties are not bound as of the Early Termination Date (including but not limited to "evergreen" provisions and options to extend) shall not be considered in determining the Contract Value and the Market Value.

**4.2.4** The Non-Defaulting Party shall net or aggregate, as appropriate, any and all amounts owing between the Parties under Section 4.2.3 above, so that all such amounts are netted or aggregated to a single liquidated amount payable by one Party to the other (the "Net Settlement Amount"). At its sole option, the Non-Defaulting Party may setoff (i) any Net Settlement Amount owed to the Non-Defaulting Party against any cash margin or other collateral held by it in connection with any credit support obligation (as per Article XIII) relating to this Agreement or (ii) any Net Settlement Amount payable to the Defaulting Party against any amount(s) payable by the Defaulting Party to the Non-Defaulting Party under any other agreement or arrangement between the Parties, with the net amount calculated being referred as the "Final Settlement Amount." If the Defaulting Party disagrees with the Final Settlement Amount or any elements

thereof, it may dispute the amount and seek a resolution in accordance with the provisions of Article XII.

4.2.5 As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the Final Settlement Amount, and whether the Final Settlement Amount is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Final Settlement Amount shall be paid by the close of business on the thirtieth (30<sup>th</sup>) Business Day following such notice, which date shall not be earlier than the Early Termination Date. In case any portion of any Final Settlement Amount is in dispute, the entire amount shall be paid when due. The owing Party upon determination of the correct amount shall return any excess amount that, through inadvertent errors or as a result of a dispute, may have been overpaid, with interest calculated in the manner set forth in Section 7.1.

4.2.6 The Parties agree that this Agreement as terminated and liquidated under the above section shall constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the United States Bankruptcy Code.

4.2.7 The Non-Defaulting Party's remedies under this section are the sole and exclusive remedies of the Non-Defaulting Party with respect to the occurrence of any Early Termination Date. Each Party reserves to itself all other rights, setoffs, counterclaims, and other defenses that it is or may be entitled to arising from this Agreement.

4.3 **Cooperation Upon Termination.** Upon the termination or expiration of this Agreement, each party shall return all documents and data belonging to the other party and shall cooperate fully to ensure that the termination of this Agreement and the transition is accomplished in an efficient and businesslike manner.

## ARTICLE V DELIVERY POINTS

5.1 **Delivery Points.** The Gas to be sold and purchased hereunder shall be delivered to the paper delivery point where Gas is delivered from Seller's Keystone Permian Basin Pool to Buyer's Keystone Permian Basin Pool on EPNG's pipeline (the "Primary Delivery Point"), unless both parties agree to delivery at another point or points (each a "Secondary Delivery Point") for a period and appropriate price adjustments, if any. Each Party shall use reasonable efforts to accommodate a request from the other Party for a Secondary Delivery Point provided the requestee does not incur any additional costs or the loss of flexibility. Buyer acknowledges that Seller may wish to request the paper delivery point where Gas is delivered from Seller's Waha Permian Basin Pool to Buyer's Waha Permian Basin Pool on EPNG's pipeline as a Secondary Delivery Point from time to time. In the event of such a request Buyer shall use

reasonable efforts to accommodate such a request, including arranging for the capability of receiving Gas at such Secondary Delivery Point, provided that Buyer will not incur any additional cost in accommodating such request. Unless the Parties agree otherwise at the time, Gas to be resold by Buyer to Seller hereunder shall be deemed to have been delivered from Buyer's pool to Seller's pool at the same Delivery Point(s) as for the corresponding deliveries from Seller to Buyer.

**5.2 Title and Risk of Loss.** Except as provided to the contrary in Sections 2.5 and 2.6 with respect to Gas for which Buyer does not take delivery, title to the Baseload Gas, Swing Gas, and Test Gas, and risk of loss and responsibility therefore, shall pass from Seller to Buyer at the Delivery Point(s). Title to the Repurchase Gas and any other Gas to be sold by Buyer to Seller hereunder, and the risk of loss and responsibility therefore, shall pass from Buyer to Seller at the Delivery Point(s) or other delivery location agreed to by the Parties at the time.

**5.3 Transportation Upstream and Downstream of Delivery Point(s).** Seller shall contract for, pay for, and manage all transportation and transportation capacity needed by Seller to deliver gas to the Delivery Point(s). Seller will be responsible for securing and maintaining any permits required in order to deliver gas to the Delivery Point(s). Buyer or its designee shall contract for, pay for, and manage all transportation and transportation capacity needed by Buyer to receive gas at the Delivery Point(s) and have same transported to the Facility. Buyer shall be solely responsible for all permits (including any required export or import permits needed to export the Gas from the U.S. or import the Gas into Mexico) necessary to transport or sell gas to the Facility.

**5.4 Imbalance Penalties.** As between the parties, Seller shall bear, pay, and be responsible for (or reimburse Buyer if Buyer has already paid) all imbalance, overrun, scheduling, cash-out (but only the portion constituting a loss to a party), or other penalties and charges assessed by a pipeline transporting the Gas to or from the Delivery Point(s) ("Imbalance Penalties") as a result of Seller's actions or inactions including, but not limited to, Seller's delivery of more or less than the scheduled quantities at the Delivery Point(s), and Buyer shall bear, pay, and be responsible for (or reimburse Seller if Seller has already paid) all such Imbalance Penalties that are assessed as a result of Buyer's actions or inactions including, but not limited to, Buyer taking more or less than the scheduled quantities at the Delivery Point(s). The parties will cooperate and use their reasonable efforts to determine the cause and validity of, and to mitigate, any such imbalances or Imbalance Penalties.

## ARTICLE VI TAXES

**6.1 Responsibility for Taxes.** (a) With respect to sales by Seller to Buyer hereunder, the Prices specified herein are inclusive of all costs, taxes, and fees upstream of the Delivery Point(s). Buyer shall be responsible for and pay any and all costs, taxes, and fees due on such Gas or the

sale hereunder at or after the Delivery Point(s) including Texas sales and use taxes. If Buyer claims an exemption from any such taxes, Buyer will provide Seller with an appropriate exemption certificate or valid exportation documentation evidencing exemption from taxation under applicable statute or regulation.

(b) With respect to sales by Buyer to Seller hereunder, the Prices specified herein are inclusive of all costs, taxes, and fees upstream of the Delivery Point(s). Seller shall be responsible for and pay any and all costs, taxes, and fees due on such Gas or the sale hereunder at or after the Delivery Point(s) including Texas sales and use taxes. If Seller claims an exemption from any such taxes, Seller will provide Buyer with an appropriate exemption certificate.

(c) If a Party is required to remit or pay taxes that are the other Party's responsibility hereunder, the Party responsible for such taxes shall indemnify and promptly reimburse the other Party for such taxes and associated fines and penalties.

## **ARTICLE VII PAYMENTS**

**7.1 General Payment Terms and Interest.** Amounts due under this Agreement shall be invoiced on any day of the month following the month of service and shall be payable by automated clearinghouse or wire transfer on the later of ten (10) days from the date of receipt of the invoice or the 25<sup>th</sup> day of the month following the month of service. Should the due date fall on a day that is not a business day in the United States, such payment shall be due on the next business day. Invoices may be based on estimates if actual quantities for the preceding month are not available by the time Seller desires to issue an invoice, and corrections to actual quantities shall be made on the next Month's invoice. Except as expressly provided to the contrary herein, if either Party shall fail to make any required payment hereunder when due, or if any refund to Buyer shall become due hereunder, or the subsequent payment of a disputed invoice is made, such outstanding amount shall bear interest, from the due date thereof to the date of payment, at an annual rate equal to overnight USD Libor plus two hundred (200) basis points.

**7.2 Netting and Setoff.** Where amounts are due to one party from the other party, the creditor shall have the right to net or setoff such amounts against any amounts which are due and payable hereunder by it to the other party.

## **ARTICLE VIII FORCE MAJEURE**

**8.1 Definition of Force Majeure.** "Force Majeure" will mean any act or event that (a) renders the affected Party unable to perform its obligations under this Agreement, (b) is beyond such

Party's reasonable control, (c) is not due to such Party's fault or negligence, and (d) cannot be avoided by the exercise of due diligence, including, but not limited to, the expenditure of any reasonable sum of money in light of the circumstances and taking into account the economic value of this Agreement to the Parties and all insurance proceeds available to the Parties. Subject to the satisfaction of the conditions set forth in (a) through (d) above, Force Majeure shall include, without limitation: (i) natural phenomena, such as storms, floods, lightning, freezes, hurricanes, and earthquakes; (ii) wars, civil disturbances, revolts, insurrections, sabotage, and commercial embargoes; (iii) transportation disasters, whether by pipeline, ocean, rail, land, or air; (iv) strikes or other labor disputes that are not due to the breach of any labor agreement by the affected Party; (v) fires; (vi) actions or omissions of a U.S. or Mexican (excluding the CFE) governmental authority (including any denial or revocation of a permit to operate a pipeline relevant to this Agreement) that were not voluntarily induced or promoted by the affected Party, or brought about by the breach of its obligations under this Agreement or any laws, but excluding a Nationalization Event; (vii) a Party's inability, despite best efforts, to secure in an appropriate manner any permits (including without limitation any export permits or authorizations) required to perform its obligations hereunder; and (viii) the interruption or curtailment of firm transportation of the Gas by a transporter transporting the Gas at the Delivery Point(s) or from the Delivery Point(s) to the Facility when due to an event of force majeure complying with the transporter's definition of force majeure in its tariff regardless of whether the transporter issues formal notice of force majeure. Force Majeure shall not include any of the following events: (A) economic hardship, or (B) changes in market conditions.

**8.2 Exemption from Liability.** Neither Party shall be liable for the failure to comply, in all or part, with any of its obligations to the extent, and for the period, that the affected Party is prevented from complying as a result of Force Majeure. The Party claiming Force Majeure shall use commercially reasonable efforts to cure, mitigate, or remedy the effects of Force Majeure; provided, that neither Party shall have any obligation hereunder to settle a strike or labor dispute.

**8.3 Notification Obligations.** The Party alleging Force Majeure shall notify the other Party of (a) the occurrence of the event of Force Majeure and (b) the moment when the event of Force Majeure no longer renders it impossible for such Party to perform hereunder. In both cases the notification shall be made verbally as quickly as reasonably possible and in writing no later than ten (10) Business Days after the date on which such Party learned of the occurrence of the events described in (a) or (b) above. In the event that either Party fails to notify the other Party of the occurrence of the event of Force Majeure in writing within the specified period set forth in this Section 8.3, such Party shall forfeit its right to claim such event of Force Majeure as a reason for failing to comply with its obligations under this Agreement. The Party alleging Force Majeure shall have the burden of proving its existence.

**8.4 Non-exempt Payments.** Nothing set forth in this Article 8 shall release the Parties from the obligations that by their nature are not affected by Force Majeure, including the payment obligations owed (i) by Buyer to Seller for Gas delivered or to be paid for whether taken prior to

the event of Force Majeure, or (ii) by Seller to Buyer for failure to supply Gas prior to the event of Force Majeure.

**8.5 Extension of the Agreement.** The occurrence of an event of Force Majeure shall not act to extend the term of this Agreement.

## **ARTICLE IX LIABILITY AND INDEMNIFICATION**

**9.1 Indemnification by Seller.** Seller shall indemnify, hold harmless, and defend Buyer and its employees, officers, directors, affiliates, and agents from and against any and all claims, liabilities, actions, suits, judgments, and losses including, without limitation, third party claims arising in connection with deaths, personal injury, or property damages caused by any acts or omissions of Seller or by the Gas while it is upstream of the Delivery Point(s).

**9.2 Indemnification by Buyer.** Buyer shall indemnify, hold harmless, and defend Seller and its employees, officers, partners, directors, affiliates, and agents from and against any and all claims, liabilities, actions, suits, judgments, and losses including, without limitation, third party claims arising in connection with deaths, personal injury, or property damages caused by any acts or omissions of Buyer or by the Gas while it is downstream of the Delivery Point(s).

## **ARTICLE X QUALITY, PRESSURE, AND MEASUREMENT**

**10.1 Specifications for Quality and Pressure.** All Gas delivered at the Delivery Point by Seller or Buyer shall meet the pipeline quality standards of EPNG, as such quality standards exist on the date this Agreement is executed or may be modified after that date. Seller and Buyer will deliver all Gas at the Delivery Point(s) at the prevailing pressure as in effect from time to time for deliveries into the system of EPNG.

**10.2 Measurement.** Measurement and testing of metering facilities and quality testing for Gas delivered hereunder shall be determined at the Delivery Point(s) in accordance with the provisions of EPNG's FERC tariff. The unit of measurement for purposes of this Agreement shall be one (1) MMBtu, which shall equal one (1) decatherm.

## **ARTICLE XI MAINTENANCE**

**11.1 Maintenance.** The Parties agree to work together to minimize any curtailment or interruption of either Party's ability to deliver or take delivery of Gas due to maintenance on facilities that affect the Parties' ability to deliver and receive Gas hereunder.

**11.2 Maintenance Affecting Buyer.** Buyer shall inform Seller thirty (30) Days in advance of scheduled maintenance activities at the Facility. Buyer shall be exempt from its MinDQ take or pay obligation during a maximum of twenty-one (21) Gas Days per calendar year of scheduled maintenance at the Facility provided the prior notice referred to above has been given.

## **ARTICLE XII GOVERNING LAW AND DISPUTE RESOLUTION**

**12.1 Governing Law.** THIS AGREEMENT AND ALL DISPUTES ARISING HEREUNDER SHALL BE SUBJECT TO, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AS IF EXECUTED AND TO BE PERFORMED WHOLLY WITHIN THE STATE OF TEXAS.

**12.2. Independent Expert.** All disputes under this Agreement relating to technical, operational, or payment matters shall be finally resolved by PIRA Energy Group ("PIRA" or the "Independent Expert"), subject to appeal to the arbitration panel provided under Section 12.3 below in case of manifest error, fraud, or bad faith in connection with the Independent Expert determination. If the Defending Party (as defined below) considers that the issue is not one to be decided by the Independent Expert, then it will so notify the other Party within ten (10) Days of receiving the notice of the commencement of the expertise procedure, in which case the issue in dispute will be determined by arbitration in accordance with the provisions under Section 12.3 below in lieu of being determined by an Independent Expert. If PIRA is out of business or cannot serve as Independent Expert for any reason, either temporarily or indefinitely at any time, and unless the Parties can agree within fifteen (15) Days on either one individual or firm to act as a replacement Independent Expert, the selection of the Independent Expert shall be made in accordance with the provisions of Article 4 of the International Chamber of Commerce's ("ICC") Rules for Expertise and the Parties shall be obligated to accept the Independent Expert so proposed by the ICC. Each Party shall pay its own costs in connection with this procedure, and the services of the Independent Expert shall be covered by the Parties in equal parts. Within thirty (30) Days following the selection or designation of the Independent Expert, each Party shall provide such expert with the information in its possession regarding the disputed matter. The Independent Expert may convene one or more meetings of the Parties, whether jointly or separately, in order to establish the specific points in controversy and may request necessary supplementary information. The Independent Expert shall issue its decision within thirty (30) Days following the conclusion of the proceeding, which proceeding may not exceed sixty (60) Days from the date of its initiation, unless otherwise agreed by the Parties. The decision of the Independent Expert shall be final and binding on the Parties (except in the case of fraud, bad faith, or manifest error) provided that it refers only and exclusively to the matter posed to the Independent Expert.

**12.3 Arbitration.** All disputes relating to (i) matters under this Agreement other than those described in Section 12.2, (ii) an appeal of the Independent Expert's decision as provided above, or (iii) a referral to arbitration pursuant to the last sentence of the of Section 12.2 above, shall be finally resolved by binding arbitration conducted in Houston, Texas, pursuant to the Federal Arbitration Act. The arbitration may be initiated by either party by providing to the other a written notice of arbitration specifying the dispute(s) to be arbitrated. If a party refuses to honor its obligations to arbitrate, the other party may seek to compel arbitration in either federal or state court. The arbitration proceeding shall be conducted in Houston, Texas or other location mutually agreed upon by the parties. Within thirty (30) days of the notice initiating the arbitration procedure, each party shall designate one arbitrator, who need not be impartial. If a party fails to designate an arbitrator, the other party may have an arbitrator appointed by applying to the senior, active United States District Judge for the Southern District of Texas. The two arbitrators shall select a third arbitrator. If the two arbitrators chosen by the parties fail to agree upon the third arbitrator, both or either of the parties may apply to the senior, active United States District Judge for the Southern District of Texas for the appointment of a third arbitrator. The third arbitrator shall take an oath of neutrality. The three arbitrators shall make all of their decisions by majority vote. The enforcement of this agreement to arbitrate, the validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the proceeding pursuant to this agreement to arbitrate, including, without limitation, the issues subject to arbitration, the scope of the arbitrable issues, allegations of "fraud in the inducement" to enter into this Agreement or to enter into this agreement to arbitrate, allegations of waiver, delay or defenses to arbitrability, and the rules governing the conduct of the arbitration, shall be governed by and construed pursuant to the Federal Arbitration Act. In deciding the substance of the parties' disputes, the arbitrators shall apply the substantive laws of the state specified herein under the choice-of-law provision of this Agreement. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA"), except as modified in this Agreement; provided, however, the arbitration proceeding will be self-administered by the parties so that no fees will be paid to the AAA unless the parties mutually agree otherwise. In determining the extent of discovery, the number and length of depositions, and all other pre-hearing matters, the arbitrators shall endeavor to the extent possible to streamline the proceedings and minimize the time and cost of the proceedings. There shall be no transcript of the hearing. The final hearing shall be conducted within sixty (60) days of the selection of the third arbitrator. The final hearing shall not exceed ten (10) Business Days, with each Party to be granted one-half of the allocated time to present its case to the arbitrators. All proceedings conducted hereunder and the decision of the arbitrators shall be kept confidential by the parties. Only damages allowed pursuant to this Agreement may be awarded. It is expressly agreed that the arbitrators shall have no authority to award treble, indirect, exemplary, consequential, special, or punitive damages of any type under any circumstances regardless of whether such damages may be available under applicable law, the parties hereby waiving their right, if any, to recover such damages in connection with any dispute. The arbitrators shall render their final decision within twenty (20) days of the completion of the final hearing fully resolving all of the disputes that are the subject of the arbitration proceeding. The arbitrators' decision shall be in writing and shall be final and non-appealable to the maximum extent

permitted by law. Any and all of the arbitrators' orders and decisions may be enforceable in, and judgment upon any award rendered in the arbitration proceeding may be confirmed and entered by, any federal or state court having jurisdiction. Each party shall pay its own attorneys fees, all of the fees and expenses of the arbitrator selected by (or for) it, one-half of the fees and expenses of the third arbitrator, and all of its other costs and expenses related to the arbitration. However, the arbitrators may award the prevailing party its attorneys' fees and other costs of the arbitration.

### ARTICLE XIII SECURITY

**13.1 Guaranty.** During the term of this Agreement, Buyer shall cause Buyer's parent, TransAlta Corporation, to issue a guaranty in the amount of US\$20,000,000 for the benefit of Buyer. Buyer shall have the right to replace this guaranty at any time with a guaranty or letter of credit, in a form reasonably acceptable to Seller and issued by any financial institution that Buyer engages to provide financing for the Facility provided such institution meets the definition of "Qualified Institution" set forth in the CSA. During the term of this Agreement, Seller shall cause Seller's parent, Cinergy Corp., to issue a guaranty in the amount of US\$6,000,000 for the benefit of Buyer.

**13.2 Provision of Credit Support.** The Credit Support Annex attached hereto as Exhibit "A" is incorporated herein and is binding on the Parties.

**13.3 Financial Statements.** Unless publicly available on SEDAR or EDGAR, upon request, each party shall furnish the other party with audited annual financial statements of its Credit Support Provider within 90 days after each calendar year and unaudited quarterly financial statements within 60 days after each calendar quarter, but in each case no earlier than the date that the financial statements are made public.

### ARTICLE XIV COOPERATION WITH LENDERS

**14.1 Cooperation.** Seller shall cooperate with the financial institution that Buyer engages to provide financing for the Facility (i) to supply such information and documentation, (ii) to grant such written consents to the assignment of this Agreement, as may be reasonably required in connection with the execution and delivery of the agreements and documents executed and delivered in connection with such financing and the performance by the obligors of their obligations thereunder, and (iii) to agree to amendments to this Agreement requested by the Buyer's lenders to the extent such amendments do not materially increase Seller's obligations under this Agreement in Seller's reasonable opinion.

**ARTICLE XV  
NOTICES**

**15.1 Addresses for Notices.** All notices, demands, and statements to be given hereunder shall be given in writing to the parties at the addresses appearing herein below and will be effective upon actual receipt:

To Buyer:  
TransAlta Chihuahua, S.A. de C.V.  
Montes Urales 505 PB  
Lomas de Chapultepec  
11000, Mexico D.F.  
Attention: Contract Administrator  
Phone: (011) 525-552-027060  
Fax: (011) 525-552-027043

To Seller:  
Cinergy Marketing & Trading, LP  
1100 Louisiana Street, Suite 4900  
Houston, Texas 77002  
Attn: Contract Administration  
Fax: 713-890-3129

Each Party shall have the right to change its address at any time and/or designate that copies of all such notices be directed to another person at another address, by giving written notice thereof to the other Party.

**15.2 Notices under CSA.** Notices to be given pursuant to the CSA shall be given as specified therein.

**ARTICLE XVI  
PERMITS**

**16.1 Various Permits.** Each Party shall be responsible for obtaining, maintaining, and complying with the terms of all such permits, rights of way, and other governmental approvals (both in Mexico and the U.S.) as may be necessary or advisable in connection with their respective performance of their obligations hereunder (the "Permits"). Seller will be responsible for securing and maintaining any permits required in order to deliver Gas to the Delivery Point(s). Buyer will be responsible for all Permits to receive the Gas at and after the Point(s) of Sale and deliver the Gas to the Facility. Buyer shall also be solely responsible for securing and maintaining all export/import authorizations required to take the Gas out of the U.S. Each Party

shall use its best efforts to assist reasonably the other Party in obtaining and maintaining such Permits.

## **ARTICLE XVII REPRESENTATIONS AND WARRANTIES**

**17.1 Representations.** Each Party represents and warrants to the other Party that (a) it possesses all power, authority, and applicable approvals (if any) necessary for it under its entity charter or by-laws to enter into this Agreement, (b) this Agreement constitutes the valid and binding obligation of such Party enforceable against it in accordance with the terms hereof, (c) the execution, delivery, and performance hereof will not cause such Party to be in violation of any other agreement or law, regulation, order, or court process or decision to which it is a Party or by which it or its properties are bound or affected, (d) it has, or will have when necessary for the performance of the Parties hereunder, and will maintain all regulatory authorizations, certificates, and documentation as may be necessary and legally required for it to transport, buy, sell, or make sales for resale of Gas sold or purchased under this Agreement, (e) it is a producer, processor, buyer, seller, or commercial user of, or a merchant handling, Gas and has entered into this Agreement solely for purposes related to its business as such, (f) it is not relying upon any representations (whether written or oral) of the other Party other than the representations expressly set forth in this Agreement, and (g) it is acting as principal, and not as agent, fiduciary, or any other capacity.

**17.2 Specific Representations by Seller.** Seller represents and warrants that: (i) it is a limited partnership organized under the laws of the State of Delaware, United States of America; (ii) it is resident in the United States of America for tax purposes; (iii) it is a non-resident of Mexico for tax purposes; and (iv) the sale of the Gas and corresponding services hereunder will occur inside the United States of America and outside of Mexico, and (v) to the best of Seller's knowledge, no amounts paid to Seller or Buyer hereunder will constitute "royalties" under Mexican or United States tax law.

**17.3 Specific Representations by Buyer.** Buyer represents and warrants that: (i) it is a Sociedad Anonima de Capital Variable organized under the laws of Mexico; (ii) it is resident of Mexico for tax purposes; (iii) the sale of the Gas and corresponding services hereunder will occur inside the United States of America and outside of Mexico, (iv) it is qualified to do business in the State of Texas, United States of America, and (v) to the best of Buyer's knowledge, no amounts paid to Seller hereunder will constitute "royalties" under Mexican or United States tax law.

**ARTICLE XVIII  
MISCELLANEOUS**

**18.1 Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, except that (a) Buyer may assign this Agreement without such consent to an Affiliate of Buyer or any Qualified Institution(s) (as defined in the CSA) that Buyer engages to provide financing for the Facility; provided the assignee posts security equivalent to that provided by Buyer in accordance with Article XIII and the CSA; (b) Buyer may assign this Agreement without such consent to a party that acquires the Facility or substantially all the assets of Buyer, provided the assignee either meets Seller's then credit standards or posts security from a Qualified Institution equivalent to that provided by Buyer in accordance with Article XIII and further provided that the assignee can post any security then required under the CSA, and (c) Seller may assign this Agreement without such consent to an Affiliate of Seller, provided the assignee posts security equivalent to that provided by Seller in accordance with Article XIII and the CSA.

**18.2 Entire Agreement; Amendments.** Except for additional agreements between the parties expressly referenced herein, this Agreement contains the entire understanding and agreement of the parties. This Agreement may be modified, altered, or amended only by an agreement in writing, signed by the party against whom enforcement of any modification, alteration, or amendment is sought.

**18.3 Waiver.** No waiver of any provision of this Agreement shall be valid or enforceable unless in writing and signed by the party against whom enforcement of the waiver is sought. The waiver of any provision of this Agreement, at any time, by either party, shall not constitute a waiver of future compliance with such provision or a waiver of compliance with any other provision of this Agreement.

**18.4 Severability.** In the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, all other provisions shall remain enforceable to the fullest extent permitted by law.

**18.5 Good Faith and Further Assurances.** The parties expressly accept their respective responsibility of good faith and for fair dealing with regard to their obligations under this Agreement and agree to take such further actions and execute such further documents as may be reasonably necessary or appropriate to complete the transactions contemplated hereunder.

**18.6 Survival.** The duties and obligations of the parties to pay money or perform any obligations hereunder relating to the payment of money to the other party or relating to any purchase or sale obligations entered into during the term of this Agreement shall survive the termination or expiration of this Agreement.

**18.7 No Partnership.** This Agreement is not intended to create and shall not be construed to create any relationship of partnership, joint venture, or association for profit between the parties hereto. Neither of the parties hereto shall have any fiduciary obligations or duties to the other by virtue of this Agreement.

**18.8 No Third Party Beneficiary.** There is no third party beneficiary to this Agreement, and the provisions of this Agreement shall not impart rights enforceable by any person, firm, or organization not a party or not bound as a party, or not a successor or assignee of a party bound to this Agreement.

**18.9 LIMITATION ON DAMAGES.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES ARISING FROM ANY BREACH OR DEFAULT UNDER THIS AGREEMENT OR FROM ANY ACT OR OMISSION UNDER OR IN CONNECTION WITH THIS AGREEMENT.

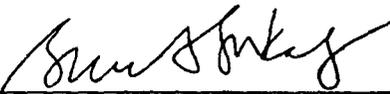
**18.10 Joint Preparation.** This Agreement was prepared jointly by the parties hereto and not by either party to the exclusion of the other.

**18.11 Confidentiality.** The terms and provisions of this agreement shall be confidential and shall not be disclosed by the parties to any third parties except CFE and the parties' affiliates, employees, agents, attorneys, accountants, and lenders.

**18.12 Prohibited Payments.** The Parties and their respective officers, directors, employees, or agents shall use only legitimate business and ethical practices in commercial operations and in promoting their positions on issues before governmental authorities. Neither the Parties nor their respective officers, directors, employees, or agents shall pay, offer, promise, or authorize the payment, directly or indirectly, of any monies or anything of value to any government official or employee or any political party or candidate for political office in contravention of applicable law.

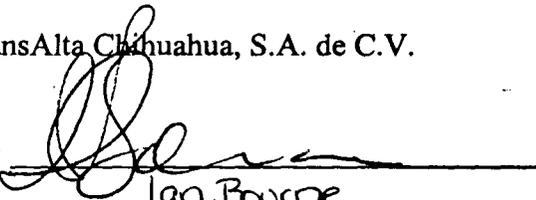
IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals.

Cinergy Marketing & Trading, LP

By:   
Its: Bruce A. Sukaly  
Sr. Vice President

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1A  
AM

TransAlta Chihuahua, S.A. de C.V.

By:   
Its: Ian Bourne  
EVP & CFO

By:   
Title: DIRECTOR GENERAL



## EXHIBIT A

### CREDIT SUPPORT ANNEX

This Credit Support Annex ("CSA") constitutes an Annex to that certain Fuel Supply Agreement between TransAlta Chihuahua, S.A. de C.V. ("Buyer") and Cinergy Marketing & Trading, LP ("Seller") (each a "Party" and collectively the "Parties") ("FSA"), and supplements and amends the transaction(s) thereunder. Unless amended herein, the FSA continues to apply. Capitalized terms used in this CSA, which are not herein defined, will have the meanings ascribed to them in the FSA. In the event of a conflict between the terms of this CSA and the FSA, the terms of this CSA shall apply.

This CSA sets forth the conditions under which a Party, in connection with the FSA, will be required to transfer Credit Support as well as the conditions under which a Party will release such Credit Support.

I. Definitions. The terms set forth below shall have the meaning ascribed to them below:

"Buyer's Physical Exposure" shall mean for each transaction (without duplication):

- (a) in respect of transaction(s) for which a payment pursuant to the FSA has been determined and is due and owed to Buyer but not yet paid; plus
- (b) the amount equal to the quantity of Gas delivered by Buyer to Seller (which is not otherwise included in the previous subparagraph (a)) multiplied by the Price for such Gas.

"Calculation Date" shall mean any Business Day.

"Cash" shall mean United States Dollars.

"Collateral Requirement" shall mean with respect to a Party, either the Physical Collateral Requirement, the Mark-to-Market Collateral Requirement, or both, as the context requires.

"Collateral Threshold" shall mean with respect to a Party, the Physical Collateral Threshold, the Mark-to-Market Collateral Threshold, or both, as the context requires.

"Collateral Value" shall mean (a) with respect to Cash, the face amount thereof; and (b) with respect to all other Posted Collateral, the Valuation Percentage multiplied by the stated amount thereof.

"Credit Elections Attachment" shall mean the Credit Elections Attachment attached hereto and incorporated herein setting forth certain elections governing this CSA.

"Credit Rating" shall mean, with respect to a Party or Credit Support Provider, on any date of determination, the respective rating then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third-Party credit enhancement) by S&P or Moody's. If no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by such agency, then

"Credit Rating" shall mean the general corporate credit rating or long-term issuer rating, as applicable, assigned by such rating agency to such entity.

"Credit Support" shall mean Eligible Collateral and/or Eligible Credit Support.

"Credit Support Default" shall mean that a Specific Event of Default will exist with respect to a Party (the "Affected Party") if:

- (a) a Party fails (or fails to cause its Custodian, as herein defined) to make, when due, any transfer of Eligible Collateral required to be made by it;
- (b) a Party fails (or fails to cause its Custodian, as herein defined) to make, when due, any transfer of the Interest Amount, required to be made by it, within 3 business days of notification from the Pledging Party that such payment was not made when due;
- (c) a Party fails to comply with or perform any material agreement or obligation provided for in this CSA; or
- (d) a Letter of Credit Default shall apply with respect to such Defaulting Party.

"Credit Support Provider" shall have the meaning set forth on the Credit Elections Attachment and shall be pursuant to a guaranty provided by each Party's Credit Support Provider, if specified as applicable, in form and substance reasonably acceptable to the other Party.

"Currency" shall mean United States Dollars for all purposes under this Agreement and all dollar amounts are in the Currency.

"Eligible Collateral" shall have the meaning as set forth on the Credit Elections Attachment.

"Eligible Credit Support" shall have the meaning as set forth on the Credit Elections Attachment.

"Independent Amount" shall have the meaning specified on the Credit Elections Coversheet.

"Interest Amount" shall mean with respect to an "Interest Period" (as defined herein), the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows: (x) the amount of Cash on that day; multiplied by (y) the Interest Rate (as defined herein) for that day; divided by (z) 360.

"Interest Period" shall mean the period from (and including) the last Business Day on which an Interest Amount was Transferred (or if no Interest Amount has yet been Transferred, the Business Day on which Cash was Transferred to the Secured Party) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" shall mean a per annum rate of interest equal to the Federal Funds Effective Rate. "Federal Funds Effective Rate" means, for any Business Day, an interest rate per annum equal to the Federal Funds Rate as published by the Federal Reserve Bank in the H.15 Release.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution, which letter of credit is in the form of Attachment "A" and is reasonably acceptable to the beneficiary.

"Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and is not designated on the Credit Elections Attachment as a Specified Letter of Credit Issuer; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the FSA; or (v) any event analogous to an event specified in Section 4.2.1 of the FSA shall occur with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Pledging Party in accordance with the terms of this CSA.

"Mark-to-Market Collateral Threshold" shall mean, with respect to a Party, the amount set forth in the Credit Elections Attachment for such Party; provided, however, that the Mark-to-Market Collateral Threshold for a Party shall be zero upon the occurrence and during the continuance of a Specific Event of Default or Material Adverse Change with respect to that affected Party.

"Mark-to-Market Exposure" shall mean an amount owed to a Party (the "Secured Party") pursuant to Section 4.2.3(ii) of the FSA as if an Early Termination Date had been declared on the Calculation Date but without consideration of the current month (the other Party shall be deemed to be the "Pledging Party").

"Material Adverse Change" shall mean with respect to Buyer, (i) that the Credit Rating of Buyer or, if a Credit Support Provider is listed with respect to Buyer on the Credit Elections Coversheet, its Credit Support Provider, is below investment grade; that is, below BBB- as defined by S & P's or its successor, or below Baa3 as defined by Moody's or its successor or (ii) that neither Buyer nor its Credit Support Provider has a Credit Rating.

"Minimum Transfer Amount" shall mean the amount, if any, set forth in the Credit Elections Attachment for such Party.

"Moody's" shall mean Moody's Investors Services, Inc. or its successor.

"Net Physical Exposure" shall mean the net of the Seller's Physical Exposure and the Buyer's Physical Exposure such that the Party owed the greater amount (the "Secured Party") shall have a Net Physical Exposure (the other Party shall be deemed to be the "Pledging Party").

"Notification Time" shall be as set forth on the Credit Elections Attachment.

"Physical Collateral Threshold" shall mean, with respect to a Party, the amount set forth in the Credit Elections Attachment for such Party; provided, however, that the Physical Collateral Threshold for a Party shall be zero upon the occurrence and during the continuance of a Specific Event of Default or Material Adverse Change with respect to that affected Party.

"Pledging Party" shall have the meaning attributed to it in the definition of Mark-to-Market Exposure or Net Physical Exposure, or both, as appropriate in the context.

"Posted Collateral" shall mean all Credit Support, other property, and all proceeds thereof that have been Transferred to or received by the Secured Party hereunder and not Transferred to the Pledging Party pursuant to Section III or released by the Secured Party. Any Interest Amount or portion thereof not Transferred pursuant to Section VII(c) and any Cash received and held by the Secured Party after drawing on any Letter of Credit will constitute Posted Collateral in the form of Cash.

"Potential Event of Default" shall mean any event which, with the giving of notice or the lapse of time or both, would constitute a Specific Event of Default.

"Qualified Institution" shall mean a commercial bank or trust company organized under the laws of the United States or Canada or a political subdivision thereof, (i) that has a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, (ii) having a capital and surplus of at least \$1,000,000,000, (iii) is not affiliated with the Pledging Party, and (iv) that has an office or branch office in the United States.

"Reference Market Maker" shall mean a leading dealer in the relevant market that is not an Affiliate of either Party selected by a Party determining any Disputed Calculation in a commercially reasonable manner from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" shall have the meaning set forth on the Credit Elections Attachment.

"S&P" shall mean the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

"Secured Party" shall have the meaning attributed to it in the definition of "Mark-to-Market Exposure" or "Net Physical Exposure", or both, as appropriate in the context.

"Seller's Physical Exposure" shall mean for each transaction (without duplication):

- (a) in respect of transaction(s) for which a payment pursuant to the FSA has been determined and is due and owed to Seller but not yet paid; plus
- (b) an amount equal to the sum of (i) the product of the quantity of Gas delivered by Seller to Buyer (which is not otherwise included in the previous subparagraph (a)) multiplied by the Price for such Gas; plus (ii) the product of the MinDQ multiplied by the remaining number of Days in the current Month, multiplied by the most recent daily Baseload Sales Price.

"Substitute Posted Collateral" shall have the meaning attributed to it in Section IX(b).

"Transfer" shall mean, with respect to any Credit Support, Posted Collateral, or Interest Amount, and in accordance with the instructions of the appropriate Party:

- (i) in the case of Cash, payment or delivery by wire transfer in immediately available federal funds into one or more bank accounts specified by the recipient;
- (ii) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient, and
- (iii) as otherwise specified by the Parties on the Credit Elections Attachment.

"Valuation Percentage" shall be the face amount thereof with respect to Cash and shall be 100% of the value of the Eligible Credit Support unless (i) a Letter of Credit Default shall apply with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in either of which case the Valuation Percentage shall be zero (0).

## II. Calculation of Collateral Requirement.

### (a) "Physical Collateral Requirement":

On any Calculation Date, the Physical Collateral Requirement for the Pledging Party means the Net Physical Exposure minus the sum of:

- (i) the Pledging Party's Physical Collateral Threshold; plus
- (ii) the Collateral Value of all Posted Collateral held by the Secured Party pursuant to this Physical Collateral Requirement, and any accrued Interest Amount that has not yet been Transferred to the Pledging Party.

### (b) "Mark-to-Market Collateral Requirement":

On any Calculation Date, the Mark-to-Market Collateral Requirement for the Pledging Party means such Party's Mark-to-Market Exposure minus the sum of:

- (i) the Pledging Party's Mark-to-Market Collateral Threshold; plus
- (ii) the Collateral Value of all Posted Collateral held by the Secured Party pursuant to this Mark-to-Market Collateral Requirement.

- (c) Notwithstanding the foregoing, whenever the calculation of such Pledging Party's Collateral Requirement yields a number less than zero (0), the Collateral Requirement of the Pledging Party will be deemed to be zero (0).
- (d) The Parties acknowledge, that the Physical Collateral Requirement and the Mark-to-Market Collateral Requirement are separate and distinct and shall be calculated independently of each other.

### III. Delivery of Credit Support.

On any Calculation Date on which (i) no Specific Event of Default with respect to the Secured Party has occurred and is continuing, (ii) no Early Termination Date has occurred or been designated by the Pledging Party, (iii) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, and (iv) no Potential Event of Default has occurred and is continuing with respect to the Secured Party, the Secured Party may demand, by Notice to the Pledging Party, that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall Transfer or cause to be Transferred to the Secured Party, Credit Support for the benefit of the Secured Party having a Collateral Value on the date of Transfer at least equal to the Pledging Party's Collateral Requirement. The amount of Credit Support required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed to in writing by the Parties, (A) Credit Support demanded of a Pledging Party on or before the Notification Time on a Business Day shall be provided to the Secured Party or its Custodian by 5:00 p.m. New York time on the second Business Day and (B) Credit Support demanded of a Pledging Party after the Notification Time on a Business Day shall be provided to the Secured Party or its Custodian by 5:00 p.m. New York time on the third Business Day thereafter. Any Letter of Credit or other type of Credit Support (other than Cash) shall be Transferred to such address as the Secured Party shall specify in its demand pursuant to this Section III, and any such demand made by the Secured Party pursuant to this Section III shall specify wire transfer information for the account(s) to which Credit Support in the form of Cash shall be Transferred. Notwithstanding anything to the contrary in this CSA, in the event of a Specific Event of default with respect to the Pledging Party which gives rise to an obligation to Transfer Credit Support, the Pledging Party shall have no obligation to provide such Credit Support if such event is cured or otherwise no longer exists prior to the time that such Credit Support is required to be provided hereunder.

### IV. Reduction and Substitution of Credit Support.

(a) On any Calculation Date (but no more frequently than weekly), a Pledging Party may demand, by Notice to the Secured Party, a reduction in the amount of Credit Support previously provided by the Pledging Party for the benefit of the Secured Party, and the Secured Party shall comply with said demand, provided that after giving effect to the demanded reduction in Credit Support, (i) the Pledging Party shall have a Collateral Requirement of zero as of the date of such compliance; (ii) no Specific Event of Default with respect to the Pledging Party has occurred and is continuing; (iii) no Early Termination Date has occurred or been designated by the Secured Party; and (iv) no Potential Event of Default has occurred and is continuing with respect to the Pledging Party. The amount of the Credit Support reduction hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. In all cases, the cost and expense of reducing Credit Support shall be borne by the Pledging Party. If a permitted reduction in Credit Support is to be effected by the Transfer of Cash to the Pledging Party, then unless otherwise agreed in writing by the Parties, (x) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall effect a permitted reduction in Credit Support by 5:00 p.m. New York time on the third Business Day thereafter and (y) if the Pledging Party's

reduction demand is made after the Notification Time on a Business Day, then the Secured Party shall effect a permitted reduction in Credit Support by 5:00 p.m. New York time on the fourth Business Day thereafter. If a permitted reduction in Credit Support is to be effected by a reduction in the amount that may be drawn under an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to cooperate with the Pledging Party to effectuate such reduction.

(b) Except when (i) a Specific Event of Default with respect to the Pledging Party has occurred and is continuing, (ii) an Early Termination Date has occurred or been designated by the Secured Party, or (iii) no Potential Event of Default has occurred or is continuing with respect to the Pledging Party, the Pledging Party may substitute new Credit Support for existing Credit Support of equal Collateral Value on the Business Day following the Secured Party's receipt of written Notice thereof (provided that, if such Notice is made after the Notification Time, the Pledging Party may not substitute Credit Support until the second Business Day thereafter; and provided further, however, that if such substitute Credit Support is of a type not designated as Eligible Collateral or Eligible Credit Support in the Credit Elections Attachment, then the substitution may not occur unless the Secured Party consents to such substitution). Upon the Transfer to the Secured Party or its Custodian of the substitute Credit Support, the Secured Party or its Custodian shall Transfer the relevant replaced Credit Support to the Pledging Party by 5:00 p.m. New York time on the second Business Day after such Transfer has been effected. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (x) the substitute Credit Support is Transferred to the Secured Party or its Custodian simultaneously with, or has been Transferred to the Secured Party or its Custodian prior to, the release of the Credit Support to be returned to the Pledging Party and the security interest in, and lien upon, such substituted Credit Support granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (y) after giving effect to such substitution, the Collateral Value of such substitute Credit Support shall equal the Collateral Value of the Credit Support which is being substituted. Each substitution of Credit Support shall constitute a representation, warranty and agreement by the Pledging Party that the substituted Credit Support shall be subject to and governed by the terms and conditions of this CSA, including without limitation, the security interest in, general first lien on and right of offset against, such substituted Credit Support granted pursuant to Section IX(a) in favor of the Secured Party.

(c) The Transfer of any Credit Support by the Secured Party and/or its Custodian to the Pledging Party in accordance with this Section IV shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Section IX(a) hereof only with respect to such returned Credit Support. In connection with each Transfer of any Credit Support to the Pledging Party pursuant to this Section IV, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Credit Support Transferred to it.

V. Letters of Credit. Posted Collateral provided in the form of a Letter of Credit shall be subject to the following provisions.

(a) Unless otherwise agreed in writing by the Parties, each Letter of Credit shall be provided in accordance with Section IV, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of

Credit or other Eligible Collateral, in each case at least twenty (20) Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within two (2) Business Days after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (i), (ii), or (iii) above, the Pledging Party's Collateral Requirement would be greater than zero.

(b) As one method of providing Posted Collateral, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(c) Upon or at any time after the occurrence of a Specific Event of Default with respect to the Pledging Party, the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit in accordance with the specific requirements of the Letter of Credit. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Posted Collateral as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Section VIII(a) with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash under the Letter of Credit, the Pledging Party shall remain liable (i) for any failure to Transfer sufficient Posted Collateral or (ii) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(d) A Pledging Party may substitute a Letter of Credit for one or more other outstanding Letter(s) of Credit issued for the benefit of the Secured Party, provided that the Collateral Value of such substitute Letter of Credit shall be at least equal to the Collateral Value of the Letter(s) of Credit being replaced (determined in good faith and in a commercially reasonable manner by the Secured Party), and provided further that no Letter of Credit shall be canceled unless and until the Letter of Credit to be substituted therefor shall have been validly executed, issued and delivered for the benefit of the Secured Party in accordance with applicable law.

(e) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to deliver to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the second Business Day after the occurrence thereof (or the fifth (5th) Business Day after the occurrence thereof if only clause (i) under the definition of Letter of Credit Default applies).

(f) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees incurred by the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of (as the case may be) a Letter of Credit shall be borne by the Pledging Party.

VI. Cash. Posted Collateral provided in the form of Cash shall be subject to the following provisions.

(a) Eligibility to Hold Cash.

(i) The Secured Party will be entitled to hold Cash provided that the following conditions are satisfied: (1) it is not a Defaulting Party, (2) its Credit Support Provider has a Credit Rating from S&P and/or Moody's and the lowest Credit Rating for its Credit Support Provider is BBB- or

higher by S&P and/or Baa3 or higher by Moody's; and (3) Cash shall be held only in any jurisdiction within the United States. A Party shall appoint a Qualified Institution (a "Custodian") in the event such Party is not eligible or becomes ineligible to hold Cash in accordance with this Section VI(a)(i).

(ii) Upon Notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(b) Use of Cash. Notwithstanding the provisions of applicable law, if the Secured Party is not a Defaulting Party, no Potential Event of Default has occurred and is continuing with respect to the Secured Party, and no Early Termination Date has occurred or been designated as a result of a Specific Event of Default with respect to the Secured Party, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Cash it holds, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party.

(c) Interest Payments on Cash. So long as no Specific Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date (for which any unsatisfied payment obligations of the Pledging Party exist) has occurred or been designated as the result of a Specific Event of Default with respect to the Pledging Party and to the extent that an obligation to deliver Posted Collateral would not be created or increased by the Transfer, the Secured Party will Transfer to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to the Cash (all of which may be retained by the Secured Party), the Interest Amount (as defined below) on the third Business Day of each calendar month. On or after the occurrence of a Specific Event of Default with respect to the Pledging Party or an Early Termination Date as a result of a Specific Event of Default or a Potential Event of Default with respect to the Pledging Party, the Secured Party shall retain any such Interest Amount as additional Eligible Collateral hereunder until the obligations of the Pledging Party under the FSA have been satisfied.

(d) Care of Cash. Without limiting the Secured Party's rights under Section VII(b), the Secured Party will exercise reasonable care to assure the safe custody of all Cash held by it as Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Cash, including, without limitation, any duty to enforce or preserve any rights pertaining thereto.

VII. Representations. Each Party continuously represents and warrants to the other Party that: (a) it has the power and authority under the law of the jurisdiction of its organization or incorporation and under its organizational and constituent documents to grant to the Secured Party a valid, enforceable, first-priority security interest in, and lien on, all Posted Collateral (other than Letters of Credit) that it provides as the Pledging Party, and has taken all necessary actions to authorize the granting and perfection of that security interest and lien; (b) as of each date on which it, as the Pledging Party, delivers Posted Collateral

to the Secured Party or to any agent of the Secured Party for the benefit of the Secured Party (or, in the case of after-acquired Posted Collateral, at the time the Secured Party or its agent acquires rights therein), it will have title to, and will be the sole owner of such Posted Collateral, free and clear of any security interest, lien, pledge, charge, encumbrance, or other interests or restrictions other than the security interest granted to the Secured Party hereby; (c) the Secured Party will have a valid and perfected first-priority security interest in, and lien on, all Posted Collateral (other than Letters of Credit) upon receipt thereof; (d) the performance by it of its obligations under this CSA will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted pursuant to this CSA; and (e) on each occasion that it, as the Pledging Party, causes the issuance, renewal, substitution, or increase (as the case may be) of a Letter of Credit, such Letter of Credit will be the legal, valid, and binding obligation of the issuer thereof, enforceable in accordance with its terms.

#### VIII. Certain Rights and Remedies.

(a) Secured Party's Rights and Remedies. If at any time (i) a Specific Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of a Specific Event of Default with respect to the Pledging Party, then the Secured Party may do any one or more of the following: (x) exercise any of the rights and remedies of a secured Party with respect to the Posted Collateral, including any such rights and remedies under law then in effect; (y) exercise its rights of setoff against any and all property of the Pledging Party in the possession of the Secured Party or its agent; and (z) draw on any outstanding Letter of Credit issued for its benefit. The Secured Party shall either (y) apply the proceeds of the Posted Collateral realized upon the exercise of any such rights or remedies to reduce the Pledging Party's obligations under the FSA or this CSA (the Pledging Party remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full or (z) hold such proceeds as collateral security for the Pledging Party's obligations under the FSA or this CSA.

(b) Pledging Party's Rights and Remedies. If at any time an Early Termination Date has occurred or been designated as the result of a Specific Event of Default with respect to the Secured Party, then: (i) the Secured Party will be obligated immediately to Transfer all Posted Collateral (other than Letters of Credit) and the Interest Amount, if any, to the Pledging Party; and (ii) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Posted Collateral (other than Letters of Credit), including any such rights and remedies under law then in effect; (y) to the extent that the Posted Collateral (other than Letters of Credit) or the Interest Amount is not Transferred to the Pledging Party as required in (i) above, setoff amounts payable to the Secured Party against the Posted Collateral (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Posted Collateral (other than Letters of Credit) held by the Secured Party, until the Posted Collateral (other than Letters of Credit) is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit.

IX. General.

(a) Security Interest. To secure its obligations under the FSA and all outstanding transactions, each Party hereby grants to the other Party a present and continuing first-priority security interest in, and lien on (and right of setoff against), all Posted Collateral (other than Letters of Credit) whether now or hereafter held by, on behalf of, or for the benefit of, such other Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect or maintain the other Party's first-priority continuing security interest in, and lien on (and right of setoff against), such Posted Collateral.

(b) Substitutions.

(i) Upon Notice to the Secured Party specifying the items of Posted Collateral to be exchanged, the Pledging Party may, on any Business Day, Transfer to the Secured Party Substitute Posted Collateral (the "Substitute Posted Collateral"); and

(ii) Provided that no Specific Event of Default has occurred and is continuing with respect to the Pledging Party and that no Early Termination Date has occurred or been designated as the result of a Specific Event of Default with respect to the Pledging Party, the Secured Party will Transfer to the Pledging Party the items of Posted Collateral specified by the Pledging Party in its Notice not later than the Business Day following the date on which the Secured Party receives the Substitute Posted Collateral; provided that the Secured Party will only be obligated to Transfer Posted Collateral with a Collateral Value as of the date of Transfer of that Posted Collateral equal to the Collateral Value as of that date of the Substitute Posted Collateral.

(c) Expenses.

(i) Except as expressly set forth in this FSA, each Party will pay its own costs and expenses in connection with performing its obligations under this CSA and neither Party will be liable for any costs or expenses incurred by the other Party in connection herewith.

(ii) The Pledging Party will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Collateral held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Collateral is subsequently disposed of under Section IX(b), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Section IX(b).

(iii) All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledging Party in connection with the liquidation and/or application of any Posted Collateral under Section IX will be payable, on demand and pursuant to the FSA, by the Defaulting Party or, if there is no Defaulting Party, equally by the Parties.

(d) This CSA has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other entity shall acquire or have any right under or by virtue of this CSA.

(e) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration, or other documentary taxes), assessments, or charges that may become payable by reason of the security interest, general first

lien, and right of offset granted under this CSA or the execution, delivery, performance, or enforcement of this CSA, as well as any penalties with respect thereto (including, without limitation, costs and reasonable fees and disbursements of counsel).

(f) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(g) The headings in this CSA are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

TRANSALTA CHIHUAHUA, S.A. de C.V.

BY: [Signature]  
NAME: Ian Bourne  
TITLE: VP: CFO

CINERGY MARKETING & TRADING, LP

BY: [Signature]  
NAME: Bruce A. Svkaly  
TITLE: Sr. Vice President

LB  
SM

By: Anna Reptis  
Title: DIRECTOR GENERAL

ATTACHMENT "A"  
FORM OF LETTER OF CREDIT

BENEFICIARY:  
[CINERGY MARKETING & TRADING, LP]  
[1100 Louisiana , Suite 4900]  
[Houston Texas, 77002]  
[ATTN: Chuck Kaufman]

APPLICANT:  
Name:  
Address

AMOUNT:  
USD 0,000,000  
Amount in words

EXPIRATION:  
Month 00, 200-

We hereby establish in your favor our irrevocable standby letter of Letter of Credit Number ----- which is available with (Financial Institution), by payment against your drafts at sight drawn on (Financial Institution), bearing the clause, "Drawn under irrevocable letter of credit No.-----", accompanied by the following documents:

Copy (ies) of commercial invoice (s) marked "unpaid"

A written statement purportedly signed by an authorized representative of [Cinergy Marketing & Trading, LP, or TransAlta Chihuahua, S.A. de C.V.], stating that "The undersigned certifies that a Specific Event of Default under our Fuel Supply Agreement with Applicant has occurred and is continuing."

Special Conditions:

Partial drawings/shipments are permitted.

Commercial invoice (s) referenced above in excess of the USD amount of this Letter of Credit is/are acceptable, however, total drawings will not exceed the amount of this Letter of Credit.

All banking charges are for the account of the Applicant.

We hereby engage with you that draft (s) drawn under and in compliance with the terms of the Letter of Credit will be duly honored upon presentation, as specified herein.

Except as otherwise expressly stated herein, this credit is subject to the International Standby Practices 1998, international Chamber of commerce publication No.590.

If you require any assistance or have any questions regarding this transaction, please call 000 000-0000.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

**Credit Elections Attachment  
to the  
Credit Support Annex ("CSA")  
to the  
Fuel Supply Agreement ("FSA")**

**between  
TransAlta Chihuahua, S.A. de C.V. ("Buyer")  
and  
Cinergy Marketing & Trading, LP ("Seller")**

**Buyer:**

**Seller:**

**Notices:**

TransAlta Chihuahua, S.A. de C.V.  
Montes Urales 505 PB  
Lomas de Chapultepec  
11000, Mexico D.F.  
Attn: Credit Manager  
Phone: (011) 525-552-027060  
Fax: (011) 525-552-027043

Cinergy Marketing & Trading, LP  
1100 Louisiana, Suite 4900  
Houston, Texas 77002

Attn: Credit Manager  
Phone: (713) 393-6858  
Fax: (713) 890-3129

**Wire Transfer or ACH Numbers (if applicable):**

Bank: Bank of America  
ABA#: 111 000 012  
ACCT#: 3751870997  
Address: Dallas, TX

Bank: Bank One, NA  
ABA#: 071-000-013  
ACCT#: 55-59340  
Address: Chicago, IL

**CREDIT ELECTIONS AND VARIABLES:**

| <b>Term:</b>                         | <b>Election:</b>  |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
|--------------------------------------|---|--------------|-------------|-------|--------|------|---------------|--------------|-------------|-----|------|--------------|-------------|------|------|-----------|-----------|------------|------------|-----|-----|
| Credit Support Provider(s):          | Buyer: TransAlta Corporation<br>Seller: Cinergy Corp.   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Eligible Collateral:                 | Buyer: Cash<br>Seller: Cash   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Eligible Credit Support:             | Buyer: Letter(s) of Credit<br>Seller: Letter(s) of Credit   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Independent Amount:                  | Buyer: Not Applicable<br>Seller: Not Applicable   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Mark-to-Market Collateral Threshold: | Buyer: \$3,000,000<br>Seller: \$3,000,000   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Minimum Transfer Amount:             | Buyer: \$0<br>Seller: \$0   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Notification Time:                   | 2:00 p.m., C.P.T. (in Texas)  |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Physical Collateral Threshold        | Shall be the amount set forth in the following table opposite the lowest Credit Rating assigned to its Credit Support Provider by either S&P or Moody's.  |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
|                                      | <table border="1"> <thead> <tr> <th>S&amp;P</th> <th>Moody's</th> <th>Buyer</th> <th>Seller</th> </tr> </thead> <tbody> <tr> <td>BBB+</td> <td>Baa1 or above</td> <td>\$15,000,000</td> <td>\$2,000,000</td> </tr> <tr> <td>BBB</td> <td>Baa2</td> <td>\$10,500,000</td> <td>\$2,000,000</td> </tr> <tr> <td>BBB-</td> <td>Baa3</td> <td>\$500,000</td> <td>\$500,000</td> </tr> <tr> <td>Below BBB-</td> <td>Below Baa3</td> <td>\$0</td> <td>\$0</td> </tr> </tbody> </table> | S&P          | Moody's     | Buyer | Seller | BBB+ | Baa1 or above | \$15,000,000 | \$2,000,000 | BBB | Baa2 | \$10,500,000 | \$2,000,000 | BBB- | Baa3 | \$500,000 | \$500,000 | Below BBB- | Below Baa3 | \$0 | \$0 |
| S&P                                  | Moody's   | Buyer        | Seller      |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| BBB+                                 | Baa1 or above   | \$15,000,000 | \$2,000,000 |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| BBB                                  | Baa2  | \$10,500,000 | \$2,000,000 |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| BBB-                                 | Baa3  | \$500,000    | \$500,000   |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Below BBB-                           | Below Baa3  | \$0          | \$0         |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |
| Rounding Amount:                     | \$100,000   |              |             |       |        |      |               |              |             |     |      |              |             |      |      |           |           |            |            |     |     |

IN WITNESS WHEREOF, the parties hereto have executed this Credit Elections Attachment in duplicate.

**TransAlta Chihuahua, S.A. de C.V.**

Buyer

By: [Signature]  
Name: Yan Bourne  
Title: VP & CFO

**Cinergy Marketing & Trading, LP**

Seller

By: [Signature]  
Name: Bruce A. Sukaly  
Title: Sr. Vice President

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By: Anna Reptis  
Title: DIRECTOR GENERAL

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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U.S. DEPARTMENT OF ENERGY

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TRANSALTA CHIHUAHUA S.A.DE C.V. )  
\_\_\_\_\_ )

FE DOCKET NO. 03-30-NG

ORDER GRANTING LONG-TERM AUTHORIZATION  
TO EXPORT NATURAL GAS  
TO MEXICO

DOE/FE ORDER NO. 1877

July 15, 2003

I. DESCRIPTION OF REQUEST

On July 11, 2003, TransAlta Chihuahua S.A. de C.V. (TAC) filed an application with the Office of Fossil Energy of the Department of Energy (DOE), under section 3 of the Natural Gas Act (NGA),<sup>1/</sup> for authorization to export up to 49,500 thousand cubic feet (Mcf) per day of natural gas to Mexico. TAC is a Mexican corporation with its principal place of business in Lomas de Chapultepec Mexico City, Mexico. TAC is owned by TransAlta Corporation whose principal place of business is in Calgary, Alberta, Canada. TAC will purchase the gas under a Fuel Supply Contract (supply contract) with Cynergy Marketing & Trading, LP (CMT) beginning on July 15, 2003, and extending through July 15, 2008. The exported natural gas will be used as fuel for TAC's natural gas-fired power facility near Ciudad Juárez, Chihuahua, Mexico.

The exported natural gas will be delivered by El Paso Natural Gas Pipeline Company to TAC's Keystone Permian Basin Pool or at other delivery points agreed to by both parties. The price paid under the supply contract consists of the daily price index, in US\$/MMBtu, of the Midpoint posting for El Paso Natural Gas Permian Basin, as published in the *Gas Daily*, under the Daily Price Survey, for the corresponding gas day, plus US\$0.02 per MMBtu. In addition, TAC shall pay CMT a reservation fee of US\$0.02 per MMBtu on 8,000 MMBtu's per gas day on swing gas, unless TAC nominates swing gas in increments of 1,000 MMBtu up to the 8,000 MMBtu's per gas day, in which case the fee shall be waived on those amounts nominated.

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<sup>1/</sup> 15 U.S.C. § 717b. This authority is delegated to the Assistant Secretary for Fossil Energy pursuant to Redlegation Order No. 00-002.4 (January 8, 2002).

TAC also requests that its blanket export authority granted in DOE/FE Order No. 1855 (Order 1855), dated March 3, 2003, be vacated upon issuance of its requested long-term authority. Order 1855 shall be vacated by separate order.

II. FINDING

The application filed by TAC has been evaluated to determine if the proposed export arrangement meets the public interest requirement of section 3 of the NGA, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486). Under section 3(c), the export of natural gas from or to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, is deemed to be consistent with the public interest and must be granted without modification or delay. The authorization sought by TAC to export natural gas to Mexico, a nation with which a free trade agreement is in effect, meets the section 3(c) criterion and, therefore, is consistent with the public interest. This blanket order authorizes transactions under contracts with terms of no longer than two years.

ORDER

Pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. TransAlta Chihuahua S.A. de C.V. (TAC) is authorized to export up to 49,500 thousand cubic feet (Mcf) of natural gas per day to Mexico, under a Fuel Supply Contract with Cynergy Marketing & Trading, LP dated April 15, 2003. The term of the authority shall begin on July 15, 2003, and extend through July 15, 2008.

B. This natural gas may be exported at any point on the border between the United States and Mexico.

C. With respect to the natural gas exports authorized by this Order, TAC shall file with the Office of Natural Gas & Petroleum Import & Export Activities, within 30 days following each calendar quarter, reports indicating whether exports of natural gas have been made. Quarterly reports must be filed whether or not initial deliveries have begun. If no exports of natural gas have been made, a report of "no activity" for that calendar quarter must be filed. If exports have occurred, TAC must report the following: (1) total monthly volumes Mcf; (2) the average monthly purchase price of gas per British thermal units (MMBtu) at the international border; (3) the name of the seller(s); (4) the name of the purchaser(s); (5) the name of the U. S. transporter(s); and (6) the point(s) of exit.

D. The first quarterly report required by this Order is due not later than October 30, 2003, and should cover the period from July 15, 2003, until the end of the third calendar quarter, September 30, 2003.

E. The quarterly reports required by this Order shall be filed with the Office of Natural Gas & Petroleum Import & Export Activities, Fossil Energy, Room 3E-042, FE-34, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585.

Issued in Washington, D.C., on July 15, 2003.



Clifford P. Tomaszewski  
Manager, Natural Gas Regulation  
Office of Natural Gas & Petroleum  
Import & Export Activities  
Office of Fossil Energy