



NON-PRIORITY ONE POOLING AGREEMENT

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between PEOPLES NATURAL GAS COMPANY LLC, a Pennsylvania limited liability company, with its main office at 375 North Shore Drive, Suite 600, Pittsburgh, PA 15212, hereinafter called “PNG,”

AND

\_\_\_\_\_, a \_\_\_\_\_ corporation, with its main office at \_\_\_\_\_, hereinafter called “Pool Operator.”

WHEREAS, PNG, pursuant to the terms and conditions under its “Rates and Rules Governing the Furnishing of Service to Natural Gas Suppliers” (“Suppliers Tariff”) filed with the Pennsylvania Public Utility Commission, PA PUC No. S-1, offers a Non-Priority One (“NP-1”) Pooling Service to certain eligible pool operators on PNG’s system for the purpose of enabling customers to satisfy all of their natural gas requirements through the use of transportation service provided by PNG;

WHEREAS, the NP-1 pooling service will permit customers or their agents to accumulate various privileges accorded individual transportation customers for the benefit of a group of transportation customers; and

WHEREAS, Pool Operator desires to contract for such service from PNG.

NOW, THEREFORE, for and in consideration of mutual covenants and promises contained herein, PNG agrees to permit pooling and Pool Operator hereby agrees to pool natural gas supplies in accordance with the following terms and conditions:

**ARTICLE I - Definitions**

For purposes of interpreting this contract, the following definitions shall apply:

1. **Pooling.** Pooling is a service provided by PNG whereby brokers, marketers, or producers of natural gas may aggregate natural gas supplies needed to satisfy the full requirements of one or more transportation customers of PNG which customer or customers have assigned their rights to advancing, banking, storage services and other rights under PNG’s then current tariffs to said broker, marketer, or producer.
2. **The Pool.** The pool referred to herein shall mean that pool which Pool Operator establishes under this Agreement.
3. **Ratepayer(s).** Ratepayer(s) means a recipient of transportation service provided by PNG which procures its supply of gas from the pool. Each account number designated by PNG shall be considered a ratepayer.

Provided further, any definition as defined in PNG's then-effective Suppliers Tariff shall also be used for purposes of interpreting this contract.

#### **ARTICLE II - Term**

The term of this Agreement shall be for an initial term commencing \_\_\_\_\_, 20\_\_\_\_ and ending \_\_\_\_\_, 20\_\_\_\_, and shall continue thereafter for successive annual periods unless either party notifies the other party sixty days prior to the beginning of the next annual term that it does not intend to renew this Agreement. This provision may, however, be altered by operation of certain provisions under the Suppliers Tariff.

#### **ARTICLE III - Compliance with Suppliers Tariff**

Pool Operator agrees to comply with all the terms and conditions described in PNG's Suppliers Tariff, including but not limited to all of the applicable Rules and Regulations of the Suppliers Tariff, and the rates and terms described in PNG's Rate NP-1, Non-Priority One Pooling Service in its Suppliers Tariff.

#### **ARTICLE IV - Ratepayer Information**

To the extent not inconsistent with PUC regulations or customer authorizations, PNG shall provide Pool Operator with the following:

1. Actual or estimated monthly consumption usage for the Residential, Commercial and Industrial Accounts included in the pool;
2. Actual daily consumption retrieved from the automated meter reading devices for the Industrial Accounts included in the Pool, to the extent such devices are installed; and
3. A 12-month total ratepayer consumption history upon ratepayer sign-up and confirmation.

#### **ARTICLE V - Fees**

The fee for the pooling service provided herein shall be as stated in PNG's then-effective Suppliers Tariff. Pool Operator shall be subject to all other fees described herein (including any other fees/charges described in the Suppliers Tariff such as the Ratepayer switching fee and fuel retention charges) and any other fees charged for other services provided by PNG to Pool Operator, including, but not limited to the Rate Schedule ST and ST-SW storage fees (if applicable) as set forth in PNG's Retail tariff; end user meter readings fee; and off System transportation fee, as negotiated by Pool Operator and PNG.

PNG shall render to Pool Operator an invoice for services provided pursuant to this Agreement as described in the "Billing and Payment" provisions of the "Suppliers Tariff". If Pool Operator also operates a Priority One Pool on PNG's system and Pool Operator has a balance due PNG on one pool bill with a credit balance on the other bill, PNG may offset the balance due with the credit, thus "netting" both bills.

## **ARTICLE VI - Pennsylvania Production Allocations**

Because of the difference in PNG's rates for transportation of Pennsylvania-produced gas and for gas not produced in Pennsylvania, Pool Operator and PNG agree that Pennsylvania-produced gas will be transported first to all industrial customers, then to commercial customers, and finally to residential customers. PNG may, at its sole discretion, change this order of gas upon 30 days' written notice to Pool Operator. Upon each customer's entry into the Pool, Pool Operator hereby agrees to designate whether the supply source for the customer is Pennsylvania-produced gas or gas not produced in Pennsylvania. This designation may not change during a calendar year. PNG shall compare actual customer consumption with actual Pennsylvania production entering the Pool on a quarterly basis. In the event the Pool Operator "over-allocates" its Pennsylvania-produced gas to customers included in its pool, then PNG shall bill the Pool Operator the applicable difference in PNG's rates for transportation of Pennsylvania produced gas and for gas not produced in Pennsylvania.

## **ARTICLE VII - Force Majeure**

1. The term "Force Majeure," as used herein, and as applied to PNG or Pool Operator, shall mean acts of law including governmental bodies acting pursuant to law, acts of God, strikes, lockouts or other labor disturbances, acts of a public enemy, war, blockades, insurrections, riots, epidemics, lightning, fires, floods, washouts, arrests, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, freezing pipelines, or any other cause, whether of the kind enumerated or otherwise, not reasonably within the control of the affected party. The settlement of strikes, lockouts or labor disturbances by acceding to the demands of an opposing party when such course is inadvisable is at the discretion or judgment of the affected party.

2. In the event PNG or Pool Operator is rendered unable, wholly or in part, by Force Majeure, to carry out its obligations other than the obligation to make payment of amounts accrued and due under this Agreement, and after notice of the Force Majeure condition is given to the other party in writing or by facsimile, the obligation of both parties, so far as they are affected by such Force Majeure, shall be suspended during the continuance of any inability so caused except the obligation to continue delivery of Local Gas Volumes during curtailment periods, and the Force Majeure condition shall be remedied with all reasonable dispatch.

3. Neither PNG nor Pool Operator shall be liable in damages to the other for any act, omission or circumstances occasioned by, or in consequence of, Force Majeure.

4. Such causes or contingencies affecting the performance of this Agreement by PNG or the Pool Operator shall not relieve the affected party of liability unless such party shall give notice and full particulars of such cause or contingency in writing or by facsimile to the other party as soon as reasonably practical after the occurrence of the cause relied upon, nor shall such causes or contingencies affecting this Agreement by either party relieve it of liability in the event of its concurring negligence, nor shall such causes or contingencies affecting the performance of this Agreement relieve either party

from its obligations to make payments of amounts for services rendered under the Agreement for gas already allocated to Pool Operator's Customers.

**ARTICLE VIII - Billing Options**

Prior to the commencement date of this Agreement, Pool Operator shall elect one of the following billing options:

OPTION 1

PNG shall bill the ratepayer for transportation service, standby service, and related charges. Pool operator shall bill its customer for gas supplies.

OPTION 2

PNG shall bill the ratepayer for transportation service, standby service (if applicable), related charges and gas supplies sold by the Pool Operator. PNG agrees to bill on behalf of Pool Operator for gas supplies, subject to the terms and conditions described in the "Rate SBS Supplier Billing Service" of the "Suppliers Tariff". Nothing contained herein shall preclude PNG from adjusting the billing methodology, including but not limited to the billing fee, currently \$.15 per bill. If, in PNG's sole judgment, PNG is unable to perform billing functions for Pool Operator, then Pool Operator must select Option 1.

In the event Pool Operator fails to notify PNG of its election under this article, the bills shall be rendered based on Option 1. PNG's offer to provide Option 2 is subject to the limitations described in PNG's Rate SBS – Supplier Billing Service in its Suppliers Tariff.

**ARTICLE IX - Full Requirements Service**

Pool Operator agrees to satisfy its ratepayer's full requirements for natural gas. Pool Operator's ability to satisfy all customers' needs for natural gas in any month shall be determined by subtracting the customers' actual consumption in that month from the total volumes available for delivery from the pool from the following sources:

- gas produced directly into PNG's facilities;
- actual deliveries received in that month on the pool's account;
- gas transferred from another pool into this pool (as either a pool-to-pool transfer or as an imbalance trade);
- gas available from banking and advancing (up to 3.5% of deliveries); and
- gas in storage.

In the event that the pool has insufficient gas supplies available to satisfy the actual needs of its customers in any month during the year ("Monthly Delivery Shortfall"), PNG, acting as pool operator's agent, shall procure such quantity of gas to meet the Monthly Delivery Shortfall through the "Monthly Balancing" stated in the "Suppliers Tariff". In the event Pool Operator makes gas supplies available in excess of

the actual needs of its customers in any month (“Monthly Delivery Excess”), PNG shall purchase the Monthly Delivery Excess pursuant to the terms of the “Monthly Balancing” stated in the “Suppliers Tariff”. Pool Operator hereby appoints PNG as its agent for the purpose set forth in this paragraph. The bill for these supplies will be included with the bill for any pooling fees for the shortfall month as part of PNG’s pooling invoice, and will be subject to the same “Billing and Payment” provisions as provided in the “Suppliers Tariff”.

#### **ARTICLE X - Advance Purchases**

Before the 25th of the month, Pool Operator may notify PNG of its request to purchase spot gas from PNG subject to availability and at a price to be determined by PNG.

#### **ARTICLE XI - Pool-to-Pool Transfers**

Pursuant to the provisions of the “Suppliers Tariff,” Pool Operator agrees to comply with all the terms and conditions, including any applicable fees, with respect to pool-to-pool transfers. Upon request of both Pool Operators involved in the pool-to-pool transfer, PNG agrees to accept and hold deposits from the Pool Operator acquiring the gas until PNG confirms the transfer of gas has actually occurred, at which time PNG shall transfer the money so held to the transferring Pool Operator.

#### **ARTICLE XII - Imbalance Trades**

Pool Operator is required to comply with the balancing provisions described in PNG’s Suppliers Tariff. Monthly imbalances are defined as the difference between the Pool’s Aggregate Monthly Consumption Volume, as defined in the Suppliers Tariff and the total confirmed Monthly Available Volumes, as defined in the Suppliers Tariff, and for the purposes of this Agreement shall be referred to as “Imbalance Trading Volume”. Pool Operator may trade all or a portion of its positive or negative imbalance trading volumes with one or more other Non-Priority One Pool Operators, subject to the provisions described in this section.

Nominations must conform, in content and format, with PNG’s specifications for Imbalance Trading Volume nominations, which shall include, at a minimum: Pool Operator’s name and PNG Non-Priority One contract number; requested Imbalance Trading Volume, Source of Imbalance Trade Volume (Local Pa. Produced, Pa. Produced via Interstate, Interstate), receiving Pool Operator’s name(s) and PNG Non Priority One contract number(s); and the name and telephone number of Pool Operator’s nominations contact.

Subject to the reasonableness of Pool Operator’s nomination as determined solely by PNG, PNG will either confirm, in total or in part, or reject Pool Operator’s Imbalance Trading Volume nomination. Confirmed Imbalance Trading Volumes will be posted on PNG’s Electronic Nominations System.

Such imbalance trades must be nominated by 5:00 p.m. on the fourth full business day after the Company provides actual consumption volumes to the Pool Operator. The

imbalance trading fee is stated in PNG's then-effective Suppliers Tariff and shall be assessed to the pool which supplies the volumes of gas to another Non-Priority pool that balances monthly and shall be billed as part of PNG's pooling invoice. Upon request of both Pool Operators involved, PNG agrees to accept and hold deposits from the Pool Operator acquiring the gas until PNG confirms the transfer of gas has actually occurred, at which time PNG shall transfer the money so held to the transferring Pool Operator.

### **ARTICLE XIII - Gas Measurement and Gas Quality**

1. All quantities of natural gas delivered by PNG to its Customers at points of delivery shall be measured as described under Rule 2 - Measurement of Gas under PNG's Suppliers Tariff.
2. All quantities of natural gas received by PNG at upstream interstate pipeline receipt points shall be measured at Upstream Pipeline Transportation Receipt Points listed in the Agreement in accordance with the terms of PNG's agreement with the Upstream Pipeline and shall be conclusive for purposes of this Agreement.
3. Local Gas Volumes.
  - (a) All quantities of local gas received by PNG at production receipt points on PNG's system ("Local Gas Volumes") shall be measured in accordance with the Measurement Operating Agreement between PNG and the applicable producer.
  - (b) Pool Operator shall arrange for the operation and maintenance of measuring stations necessary to receive Pool Operator's gas into the facilities of PNG hereunder in accordance with the terms of a Measurement Operating Agreement, a copy of which is attached as Appendix "A". PNG agrees to enter into said Measurement Operating Agreement with the producer(s) who own and operate the wells from which gas is delivered directly into PNG's facilities. PNG shall design, construct, own, operate and maintain the taps and any appurtenant facilities necessary for installation equipment installed by Pool Operator or its agents. Pool Operator agrees to reimburse PNG for all costs, including reasonable administrative and general overheads, incurred by PNG in the construction and installation of such interconnecting facilities. Such costs shall be billed as part of PNG's pooling invoice, and will be subject to the same billing and payment provisions as provided in the "Suppliers Tariff"
  - (c) Pool Operator shall warrant that all Local Gas Volumes received and delivered by PNG hereunder shall be free from oil, water, salt, gum, dust, and other foreign substances.
4. Pool Operator shall warrant that the gas delivered shall contain not less than 1,000 Btu per cubic foot (as determined by calorimeter tests at 60 degrees Fahrenheit and saturated with water vapor) and a Utilization Factor of 1,300 plus or

minus 6 percent (U.F. = Heating Value (Btu) divided by the square root of the specific gravity). The gas delivered shall not contain more than the following:

- (a) Five (5) pounds of water per million cubic feet measured at 14.73 psia.
- (b) Three (3) percent by volume of carbon dioxide.
- (c) Twenty-five hundredths (0.25) grains of hydrogen sulfide per 100 cubic feet.
- (d) Ten (10) grains of total sulfur per 100 cubic feet.

Should any of the above substances enter PNG's facilities and cause damage to metering, regulating, or other equipment, or interruption of service, Pool Operator shall reimburse PNG for the costs to repair such damage and for any related costs which PNG may incur to restore service to or repair facilities of its Customers, including payments made by PNG to Customers in settlement of claims arising out of interruption of gas service.

#### **ARTICLE XIV - Miscellaneous**

1. Service under this contract is conditioned upon the availability of capacity sufficient to provide such service without detriment or disadvantage to PNG's existing customers who are dependent on PNG's general system supply.

2. No modification of the terms and provisions of this Agreement shall be or become effective except by the execution of written contracts or by modification of PNG's tariff.

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

4. Any company which shall succeed by purchase, merger, or consolidation to the properties, substantially as an entirety, of PNG' or of Pool Operator, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement. Without relieving itself of its obligations under this Agreement, any party may assign any of its rights hereunder to a company with which it is affiliated; provided however, such affiliate shall meet all the requirements in the Suppliers Tariff, but otherwise no assignment of this Agreement or any of the rights or obligations hereunder shall be made unless there first shall have been obtained the consent thereto in writing of the other party. PNG agrees it will not unreasonably withhold consent to the assignment of this Agreement to any successor to Pool Operator.

5. Except as herein otherwise provided, any notice, request, or demand provided for in this Agreement, or any notice which any party may desire to give to the other, shall be in writing and shall be considered as duly delivered when mailed by

registered or certified mail to the Post Office address of the parties hereto, as the case may be, as follows:

**PNG:  
PEOPLES NATURAL GAS COMPANY LLC  
375 North Shore Drive, Suite 600  
Pittsburgh, PA 15212  
Attention: Legal Department**

**Pool Operator:**

or at such other address as either party shall designate by formal written notice. Routine communications, including monthly statements, bills and payments, shall be considered as duly delivered when mailed by either registered, certified, or ordinary mail.

6. In the event any tax is imposed on natural gas, or the production, severance, gathering, transportation, sale, delivery or use of natural gas, or if such tax is imposed in any other manner so as to constitute directly or indirectly a charge upon the gas delivered to PNG for redelivery hereunder, the amount of such tax shall be borne by Pool Operator so far as it affects or relates to or is apportionable to the gas delivered to PNG hereunder. In the event PNG is required to pay such tax, the amount of the tax shall be billed directly to Pool Operator.

7. This Agreement and the respective obligations of the parties hereunder are subject to valid laws, orders, rules, and regulations of duly constituted authorities having jurisdiction.

8. The subject headings of the articles of this Agreement are inserted for the purpose of convenient reference and are not intended to be a part of the Agreement nor considered in any interpretation of the same.

9. The interpretation and performance of this contract shall be in accordance with the laws of the Commonwealth of Pennsylvania.

10. PNG's Retail tariff, as amended from time-to-time, is incorporated herein by reference. In the event of a conflict between the provisions of this Agreement and PNG's Retail tariff, the latter shall control. Nothing in this Agreement shall be interpreted as affecting PNG's rights to file for changes to its Retail Tariff. The liability provisions of PNG's transportation tariffs are hereby specifically incorporated by reference.

11. PNG's "Suppliers Tariff," as it may be amended from time-to-time, is herein incorporated by reference. In the event of a conflict between the provisions of this Agreement and PNG's "Suppliers Tariff", the latter shall control. Nothing in this Agreement shall be interpreted as affecting PNG's rights to file for changes to its Suppliers Tariff.

12. Except as otherwise provided herein, this Agreement shall constitute the entire agreement between the Pool Operator and PNG covering the subject matter hereof, and there are no agreements, modifications, conditions or understandings, written or oral,

expressed or implied, pertaining to the subject matter hereof which are not contained herein.

13. In addition to any liability for imbalances or other changes as required in this Agreement, the sole and exclusive remedy shall be actual damages; and all other remedies or damages at law or in equity, except anticipatory repudiation claims, are expressly waived. Neither party is liable for incidental, consequential, punitive, exemplary or indirect damages, lost profits or any other business interruption damages, in tort, contract or otherwise under any indemnity provision or otherwise. Indemnities and limitations of liability are without regard to cause, including a party's sole, joint, concurrent active or passive negligence but neither party is liable for any claims resulting from the other party's gross negligence, willful misconduct or bad faith.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and witnessed, or their respective corporate seals to be hereto affixed and attested, the day and year first above written.

ATTEST:

PEOPLES NATURAL GAS COMPANY LLC

\_\_\_\_\_  
Secretary

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

ATTEST:

(Pool Operator)

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

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