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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

_____)	
In re)	Chapter 11 Case
)	
MIRANT CORPORATION, <u>et al.</u> ,)	Case No. 03-46590 (DML)
)	Jointly Administered
Debtors.)	
)	Date and Time: June 23, 2004;
_____)	10:30 a.m.

**DEBTORS' MOTION TO REJECT EXECUTORY CONTRACTS
BETWEEN DEBTOR HUDSON VALLEY GAS CORP. AND
COLUMBIA GAS TRANSMISSION CORPORATION**

TO THE HONORABLE D. MICHAEL LYNN, UNITED STATES BANKRUPTCY JUDGE:

Mirant Corporation ("Mirant") and its affiliated debtors (collectively, the "Debtors"), as debtors and debtors-in-possession, file this Motion (the "Motion") pursuant to section 365(a) of title 11, United States Code (11 U.S.C. §§ 101 et seq., as amended) (the "Bankruptcy Code") for authority to reject the FTS Service Agreement dated June 30, 2001, as amended by the Letter Agreement executed on June 30, 2001 (as amended, the "FTS Agreement"), and the Precedent Agreement (Line 10338 Service), dated December 18, 2000, as amended by the Letter Agreement dated June 30, 2001 (as amended, the "Precedent

Agreement”), each by and between Debtor Hudson Valley Gas Corp. (“Hudson”)(Case No. 03-46592) and Columbia Gas Transmission Corporation (“Columbia”) (collectively, the “Contracts”) which are described below in greater detail and attached hereto as composite Exhibit A.¹ In support thereof the Debtors represent as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This Court has jurisdiction to grant the relief requested herein. Specifically, Columbia has blanket certificate authority to enter into, and terminate, the FTS Agreement pursuant to 18 C.F.R. Part 284, Subpart G of the regulations of the Federal Energy Regulatory Commission (“FERC”), without FERC approval. These jurisdictional matters will be discussed more fully below.

II. PROCEDURAL BACKGROUND

2. The Cases. On July 14, 2003 and various dates thereafter (collectively, the “Petition Date”), the Debtors filed voluntary chapter 11 petitions. The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”).

3. The Cases are Jointly Administered. This Court has entered orders approving the joint administration of the Debtors’ chapter 11 cases.

¹ Not all parties were served with the attached Exhibits. Any party in interest may make a request upon Debtors’ counsel in writing for a copy of the Exhibits.

4. The Committees. Three official committees (collectively, the “Committees”) have been appointed by the Office of the United States Trustee for the Northern District of Texas (“UST”) in these administratively consolidated cases.

5. The Examiner. On April 7, 2004, this Court authorized the UST to appoint an examiner in these cases to analyze certain potential causes of action and act as a referee with respect to certain disputes that arise among the Debtors, the Committees, or other parties in interest. The UST appointed William K. Snyder as the examiner in these cases.

III. FACTUAL BACKGROUND

6. *The Contracts.*² Hudson and Columbia entered into the Precedent Agreement on December 18, 2000. Pursuant to the Precedent Agreement, Columbia and Hudson agreed that (a) the parties would execute a firm transportation service agreement providing for the transport of 307,000 MMBtu per day of natural gas (the “Firm Gas Transportation Capacity”) to Hudson from Ramapo, New York to Buena Vista, New York on the Columbia Gas Pipeline to service the Debtors’ Bowline Facility in West Haverstraw, New York (the “Bowline Facility”) and (b) that Columbia would design and construct new pipeline facilities (the “New Facilities”) in order to provide access to the Firm Gas Transportation Capacity. Construction of the New Facilities was completed prior to May 2003.

7. In compliance with the Precedent Agreement, the parties executed the FTS Agreement, which provides for transportation of the Firm Gas Transportation Capacity. The FTS Agreement expires on August 31, 2022. Under the FTS Agreement, the Debtors pay a

² Hudson and Columbia are also parties to the “Point of Delivery Agreement,” dated May 8, 2003, which provides for the construction of a certain delivery point off of Columbia’s pipeline to Hudson’s pipeline, and the operation and maintenance of this delivery point. The Debtors are not seeking to assume or reject the “Point of Delivery Agreement” at this time.

demand charge of approximately \$108,371 per month in addition to variable charges for commodity purchases. The Debtors have minimally used the firm capacity provided for in the FTS Agreement, but have no need for the firm capacity at any price at this time.

8. At the time the Debtors entered into the Contracts, they intended to use the Firm Gas Transportation Capacity to provide a greater supply of natural gas for a planned expansion of the Debtors' Bowline Facility, in addition to increasing the supply of natural gas to the existing facility. This planned expansion has not been completed, and the fuel supply reserved by the Contracts exceeds the maximum fuel that is needed or can be used by the Bowline Facility. The Debtors have alternative supplies of fuel sufficient to meet the needs of the Bowline Facilities.

9. Columbia is currently holding approximately \$1.8 million in cash collateral.³

IV. RELIEF REQUESTED

10. By this Motion, the Debtors hereby seek approval of the rejection of the Contracts under section 365 of the Bankruptcy Code. The Debtors specifically direct this Court's attention to the fact that the FTS Agreement is a contract over which FERC has certain jurisdictional authority. However, the Debtors submit that there is no jurisdictional impediment to this Court granting the Motion.

11. The Debtors submit that the rejection of the FTS Agreement may, and

³ Wachovia Bank issued the letter of credit in the amount of \$2,800,000 on behalf of Mirant Americas Retail Energy Marketing, LP ("MAREM"), Mirant Americas Energy Marketing, LP ("MAEM") and Hudson for the benefit of Columbia, Columbia Gulf Transmission Corporation and Crossroads Pipeline Company. The principal amount of the letter of credit was reduced to \$2,300,000 on May 16, 2003. Columbia drew down on the entire letter of credit prior to its expiration, net of various credits and applications by Columbia for amounts owed by Hudson. Columbia is currently holding \$1,791,776 as cash collateral for the Contracts and all other obligations of MAEM and MAREM.

should, be approved by this Court. Columbia has blanket certificate authority to enter into the FTS Agreement pursuant to 18 C.F. R. Part 284, Subpart G of FERC's regulations, and, as such, the agreements did not require specific FERC approval to Debtors and Columbia entering into such agreement. This blanket certificate authority granted to Columbia contains pre-granted automatic abandonment authority, and so FERC approval is also not required to "abandon" the service and terminate the FTS Agreement. 18 C.F. R. § 84.221(d). Certainly, if the parties have the authority to enter into and terminate the FTS Agreement without seeking individual FERC approval due to Columbia's blanket certificate authorization, the Debtors should be permitted to reject the FTS Agreement under the unique facts and circumstances presented here, as well as the Precedent Agreement.⁴

V. BASIS FOR RELIEF

12. Section 365(a) of the Bankruptcy Code provides that a debtor-in-possession, "subject to the court's approval, may assume or reject an executory contract of the debtor." 11 U.S.C. § 365(a). An executory contract is defined as one where material performance is due on both sides such that the failure of either party to complete performance would constitute a material breach of the contract excusing performance of the non-breaching party. *See In re Liljeberg Enterprises, Inc.*, 304 F.3d 410, 436 (5th Cir. 2002); *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62-63 (5th Cir. 1994).

13. The Contracts are executory contracts that may be rejected under section 365 of the Bankruptcy Code. *See, e.g., In re El Paso Refinery, L.P.*, 220 B.R. 37, 39 n.1 (Bankr.

⁴ Although Columbia has not specifically requested termination of the Contracts pursuant to this Motion, conduct of a party (or lack thereof) may constitute consent. *See, e.g., Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 1769 (2003) (failure to object to a § 363 sale "counts as consent").

W.D. Tex. 1998) (contract requiring debtor to provide jet fuel to government held to be executory); *In re Cajun Power Cooperative, Inc.*, 230 B.R. 693, 702 (Bankr. D. La. 1999) (supply contracts entered into by debtor electric cooperative held executory).

Rejection Of the Contracts Is Within the Debtors' Business Judgment.

14. As noted previously, rejection of an executory contract requires court approval. A debtor's decision to assume or reject will be approved, provided that it meets the "business judgment" test, pursuant to which rejection of an executory contract is appropriate if such rejection would benefit the estate. *See Richmond Leasing v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("[A] bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision..."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (debtor's request to assume or reject contract should be approved where not manifestly unreasonable or made in bad faith).

15. The "business judgment" test is satisfied where the assumption or rejection of an executory contract enhances the value of the estate. *See Richmond Leasing*, 762 F.2d at 1309. Upon a finding that a debtor has exercised sound business judgment in determining whether to assume or reject an executory contract, a court should approve the decision pursuant to section 365(a) of the Bankruptcy Code. *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984). "The fundamental purpose of reorganization is to prevent a debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Bildisco*, 465 U.S. at 528 (citing H.R.Rep. No. 95-595, p. 220 (1977)).

16. There are currently two pipelines that supply the Bowline Facility.⁵ The Bowline Facility is comprised of two units, which historically have not run at or near full capacity while fueled by natural gas. Therefore, the Debtors have determined that there is a low probability that the two units will run at or near full capacity while fueled by natural gas in the future. The Debtors have alternative supplies of fuel sufficient to meet the needs of the Bowline Facilities.

17. The Debtors' reasonable business judgment is that rejection of the Contracts is necessary because the Debtors have no need for the firm pipeline capacity reserved by the Contracts at any price. At the time the Debtors entered into the Contracts, they intended to use the Firm Gas Transportation Capacity to provide a supply of natural gas for a planned expansion of the Debtors' Bowline Facility in addition to increasing the supply of natural gas to the existing facility. As the planned expansion has not occurred, and it is doubtful that this expansion will occur in the future, the fuel supply reserved by the Contracts exceeds the maximum fuel that is needed or can be used by the Bowline Facility.

⁵ The Bowline Facility may be fueled by either natural gas or oil. The design of the Bowline Facility does not allow the plant to burn gas from both pipelines simultaneously, although the plant can burn natural gas and oil simultaneously.

VI. CONCLUSION

WHEREFORE, based upon the foregoing, the Debtors request that the Court grant the relief requested herein, and any other relief that is necessary and proper.

Dated: May 28, 2004

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By: /s/ Ian T. Peck
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Judith Elkin
State Bar No. 06522200
Ian T. Peck
State Bar No. 24013306

-and-

Thomas E Lauria
State Bar No. 11998025
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State Bar No. 01451020
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Miami, Florida 33131
(305) 371-2700

**ATTORNEYS FOR THE DEBTORS AND
DEBTORS-IN-POSSESSION**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a true and correct copy of the forgoing to Bankruptcy Services, LLC and directed them to effect service upon all persons on the Limited Service List (without exhibit) via U.S. mail, and the addressees set forth below via email, facsimile or overnight mail (with exhibit) on the 28th day of May, 2004.

Eric J. Taube
Mark C. Taylor
Hohmann, Taube & Summers, L.L.P.
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Austin, TX 78701

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Thomas Rice
Cox & Smith Incorporated
112 East Pecan St., Suite 1800
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Attn: Frank Martorano, Business Manager
12801 Fair Lakes Parkway
PO Box 101463
Fairfax, VA 22030

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Columbia Gas Transmission (TCO)
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12801 Fair Lakes Parkway
PO Box 101463
Fairfax, VA 22030

/s/ Ian T. Peck

EXHIBIT A
PART I

Agreement No. _____
Control No. _____

FTS SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 30th day of June, 2001, by and between Columbia Gas Transmission Corporation ("Transporter") and Hudson Valley Gas Corp. ("Shipper").

WITNESSETH: That in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

Section 1. Service to be Rendered. Transporter shall perform and Shipper shall receive service in accordance with the provisions of the effective FTS Rate Schedule and applicable General Terms and Conditions of Transporter's FERC Gas Tariff, Second Revised Volume No. 1 ("Tariff"), on file with the Federal Energy Regulatory Commission ("Commission"), as the same may be amended or superseded in accordance with the rules and regulations of the Commission. The maximum obligation of Transporter to deliver gas hereunder to or for Shipper, the designation of the points of delivery at which Transporter shall deliver or cause gas to be delivered to or for Shipper, and the points of receipt at which Shipper shall deliver or cause gas to be delivered are specified in Appendix A, as the same may be amended from time to time by agreement between Shipper and Transporter or in accordance with the rules and regulations of the Commission. Service hereunder shall be provided subject to the provisions of Subpart G of Part 284 of the Commission's regulations. Shipper warrants that service hereunder is being provided on behalf of Shipper.

Section 2. Term. Service under this Agreement shall commence on September 1, 2001, and continue thereafter for a primary term of twenty (20) years ending on August 31, 2022; provided, however, that this Agreement shall automatically terminate prior to August 31, 2022 if Columbia abandons it Line 10338 by conveyance to Millennium Pipeline Company, L.P., as proposed in Columbia's pending application in FERC Docket No. CP98-151-000. Pre-granted abandonment shall also apply upon any other termination of this Agreement, subject to any right of first refusal Shipper may have under the Commission's regulations or Transporter's Tariff.

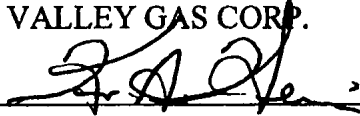
Section 3. Rates. Shipper shall pay Transporter the charges and furnish Retainage as described in the above-referenced Rate Schedule, unless otherwise agreed to by the parties in writing and specified as an amendment to this Service Agreement. Transporter may agree to discount its rate to Shipper below Transporter's maximum rate, but not less than Transporter's minimum rate. Such discounted rate may apply to: a) specified quantities (contract demand or commodity quantities); b) specified quantities above or below a certain level or all quantities if quantities exceed a certain level; c) quantities during specified time periods; d) quantities at specified points, locations, or other defined geographical areas; and e) that a specified discounted

rate will apply in a specified relationship to the quantities actually transported (i.e., that the reservation charge will be adjusted in a specified relationship to quantities actually transported). In addition, the discount agreement may include a provision that if one rate component which was at or below the applicable maximum rate at the time the discount agreement was executed subsequently exceeds the applicable maximum rate due to a change in Transporter's maximum rate so that such rate component must be adjusted downward to equal the new applicable maximum rate, then other rate components may be adjusted upward to achieve the agreed overall rate, so long as none of the resulting rate components exceed the maximum rate applicable to that rate component. Such changes to rate components shall be applied prospectively, commencing with the date a Commission order accepts revised tariff sheets. However, nothing contained herein shall be construed to alter a refund obligation under applicable law for any period during which rates which had been charged under a discount agreement exceeded rates which ultimately are found to be just and reasonable.

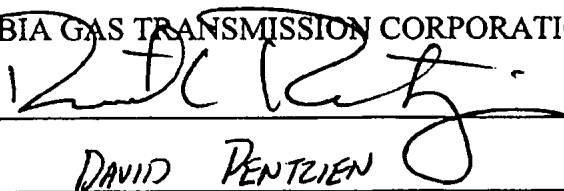
Section 4. Notices. Notices to Transporter under this Agreement shall be addressed to it at: Columbia Gas Transmission Corporation, Post Office Box 1273, Charleston, West Virginia 25325-1273, Attention: Manager–Customer Services; and notices to Shipper shall be addressed to it at: Hudson Valley Gas Corp., c/o Suffern Energy New York, LLC, 400 Rella Boulevard, Suite 157, Suffern, New York 10901, Attention: Don Gray; until changed by either party by written notice.

Section 5. Superseded Agreements. This Service Agreement supersedes and cancels, as of the effective date hereof, the following Service Agreements: N/A.

HUDSON VALLEY GAS CORP.

By: 
Name: Kim A. Herz KRE
Title: V.P.
Date: 6/25/01

COLUMBIA GAS TRANSMISSION CORPORATION

By:  KRE
S.S.
Name: DAVID PENTZIEN
Title: V.P. MARKET DEVELOPMENT
Date: 6/30/01

Appendix A to Service Agreement No. _____

Under Rate Schedule FTS

Between Columbia Gas Transmission Corporation (Transporter)

and

Hudson Valley Gas Corp. (Shipper)

Transportation Demand: 307,000 Dth/day

Primary Delivery Point

Scheduling Point No.	Scheduling Point Name	Measuring Point No.	Measuring Point Name	Maximum Daily Delivery Obligation
	Buena Vista			307,000 Dth

Primary Receipt Point

Scheduling Point No.	Scheduling Point Name	Measuring Point No.	Measuring Point Name	Maximum Daily Delivery Obligation
	Ramapo		Ramapo	307,000 Dth

EXHIBIT A
PART II

May 29, 2001

Don Gray
c/o Southern Energy New York, LLC
400 Rella Boulevard
Suite 157
Suffern, New York 50901

Re: Amendment to FTS Service Agreement No. _____; Discounted
Rate Arrangement Letter

Dear Mr Gray:

This Letter Agreement will serve as an amendment to the above referenced service agreement between Hudson Valley Gas Corp. ("Shipper") and Columbia Gas Transmission Corp. ("Transporter").

Shipper and Transporter hereby agree that Section 3 of the above-referenced service agreement shall be amended to read as follows:

"During the primary term of this Agreement commencing September 1, 2001, for service rendered on any day under this Agreement when using the Ramapo Station as the receipt point and the Buena Vista Station as the delivery point, the following rate arrangement shall apply:

Reservation Charge Rate: Shipper shall pay Transporter a discounted reservation charge rate per Dth per month, as permitted under Section 3(e) of this Agreement ("that the reservation charge will be adjusted in a specified relationship to quantities actually transported" for that month) in accordance with Schedule A attached hereto, which shall be adjusted upward or downward from time to time to reflect changes in any applicable FERC-approved reservation surcharges.

Commodity Rate: Shipper shall pay Transporter a discounted base commodity rate per Dth equal to the minimum total effective commodity rate (including surcharges) set forth in Transporter's tariff, which shall be adjusted upward or downward from time to time to reflect changes thereto, including changes to any applicable FERC-approved commodity surcharges.

Retainage: Shipper shall pay Transporter the applicable maximum retainage factor as set forth in Transporter's tariff, which shall be adjusted upward or downward from time to time to reflect changes thereto.

The then-effective maximum total effective FTS Rate Schedule rates and retainage factors, as such rates may be changed from time to time, shall apply to

all other service rendered under this Agreement in excess of the Transportation Demand or using any other receipt and delivery point combinations.

All other terms and conditions of the above-referenced service agreement shall remain in full force and effect.

Notwithstanding the foregoing, the charges to be paid by Shipper to Transporter shall be no lower than the applicable total effective minimum charges set forth in Transporter's tariff. Shipper shall pay all applicable then-effective maximum overrun charges.

If you are in agreement with the foregoing, please execute both originals of this Agreement and return one to Transporter at the above address.

Agreed to this 30th day of June, 2001.

COLUMBIA GAS TRANSMISSION CORP.	HUDSON VALLEY GAS CORP.
By: <u>DAVID PENTLIEN</u> ^{2/17/01}	By: <u>Tim A. HEWZ</u> ^{KH}
Title: <u>V.P. MARKET DEVELOPMENT</u>	Title: <u>V.P.</u>

EXHIBIT A
PART III

EXECUTION VERSION

Exhibit A to Natural Gas Facilities Agreement

PRECEDENT AGREEMENT

(Line 10338 Service)

This PRECEDENT AGREEMENT ("**Agreement**") is made and entered into as of the 18th day of December, 2000, by and between COLUMBIA GAS TRANSMISSION CORPORATION ("**Columbia**") and HUDSON VALLEY GAS CORP. ("**Customer**") (each of Columbia and Customer being sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**").

WITNESSETH:

WHEREAS, Customer's affiliate requested and was awarded a firm natural gas transportation service as more fully described below (the "**FT Service**") as a result of an open season conducted by Columbia, which FT Service is to be made available through Columbia's construction of certain new pipeline facilities (the "**New Facilities**");

WHEREAS, Columbia desires to design the New Facilities, obtain all necessary regulatory approvals for the construction and operation of the New Facilities, construct, own and operate the New Facilities and provide the FT Service to Customer; and

WHEREAS, Customer desires to make certain commitments to Columbia in order to support Columbia's undertaking the design, regulatory certification, construction and operation of the New Facilities and to contract with Columbia for an FT Service on Columbia's Line 10338 from its origin at Columbia's interconnection with Algonquin Gas Transmission Company in Ramapo, New York (the "**Ramapo Station**") to its terminus at Buena Vista, New York (the "**Buena Vista Station**"), to which terminus Customer proposes to construct its own downstream pipeline facilities consisting of approximately 4.2 miles of 24-inch diameter pipeline from the Buena Vista Station to Customer's affiliate's natural gas-fired electric generating facilities in West Haverstraw, New York ("**Customer's Facilities**");

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

1. Allocated Levels of Service and Rates for Service.

(a) The level of FT Service allocated to Customer as a result of Columbia's open season is 307,000 Dekatherms ("Dth") per day (the "Transportation Demand"). Such FT Service shall be provided through Columbia's existing pipeline system from the **Ramapo** Station to the Buena Vista Station. Columbia agrees to provide and Customer agrees to accept and pay for FT Service equivalent to the Transportation Demand pursuant to the terms and provisions of the service and rate agreements to be executed in the form set forth in Attachments A and B hereto, the applicable rate schedules of Columbia's Federal Energy Regulatory Commission ("FERC") Natural Gas Tariff, Second Revised Volume No. 1, as amended and in effect from time to time ("Columbia's Tariff"), and this Agreement.

(b) Customer is responsible for obtaining transportation arrangements on pipelines upstream of the Ramapo Station.

(c) The applicable rate for service during the primary term of the FTS Service Agreement shall be as set forth in Attachments A and B hereto.

2. Service and Rate Agreements. The Parties agree to execute service and rate agreements for the FT Service in the forms attached hereto as Attachments A and B, respectively, after all of the conditions precedent set forth in Sections 5 and 6 hereof have been satisfied or waived.

3. **Approvals.** Promptly following the effectiveness of this Agreement, Columbia shall seek FERC authorizations to construct and operate facilities to (a) interconnect its pipeline facilities with Customer's Facilities and (b) upgrade Columbia's Ramapo Station to permit the flow of 350 MDth/day from Algonquin Gas Transmission Company to Columbia's Ramapo Station. The New Facilities shall have interstate grade gas odorization facilities. Columbia shall use its commercially reasonable best efforts to complete the design of the New Facilities and to obtain all approvals necessary for the financing, construction and operation of the New Facilities, including but not limited to any necessary FERC approvals. Columbia shall also seek any necessary FERC authorizations to waive application of the retainage factor for the FT Service. This Agreement and the Attachments hereto may be filed with the FERC to obtain such approvals and authorizations. Customer agrees to exert its commercially reasonable best efforts to cooperate with and provide to Columbia, on a timely basis, all information and data requested by Columbia which Columbia deems necessary to obtain the required FERC approvals and authorizations, including any information requested by the FERC or its staff.

4. **Construction** of New Facilities. Upon satisfaction or waiver of all of the conditions precedent set forth in Sections 5 and 6 hereof and the Parties' execution of service and rate agreements pursuant to Section 2 hereof, Columbia shall promptly commence and diligently prosecute the construction of the New Facilities and exert its commercially reasonable best efforts to complete the New Facilities and place them in service by September 1, 2001.

5. **Conditions Precedent.** Subject to the provisions of the second sentence of Section 7.1 of the Natural Gas Facilities Agreement among the Parties and Millennium Pipeline Company, L.P. of even date herewith, the obligations of the Parties to execute service and rate

agreements pursuant to Section 2 hereof are subject in all respects to the satisfaction of all of the following conditions precedent:

- (i) Customer having satisfied Columbia with respect to Customer's **creditworthiness** by January 5, 2001;
- (ii) Columbia having received all necessary final and **nonappealable** regulatory approvals and authorizations from the FERC to construct and operate the New Facilities, upon terms and conditions acceptable to the Parties, by July 1, 2001.
- (iii) **Columbia** having received all necessary final and nonappealable authorizations from the FERC to waive application of the **retainage** factor for the FT Service, upon terms and conditions acceptable to the Parties, by July 1, 2001; and
- (iv) Customer having received all necessary final and nonappealable regulatory approvals and authorizations from the Public Service Commission of the State of New York to construct and operate Customer's Facilities, upon terms and conditions acceptable to the Parties, by April 30, 2001.

6. Further Condition Precedent; Term and Termination; Satisfaction and

Waiver of Certain Conditions Precedent.

(a) Neither this Agreement, nor the rights and obligations of the Parties under this Agreement, shall take effect unless the board of directors of Southern Energy, Inc. votes to approve the execution of this Agreement by Customer or Customer obtains such other authorizations or approvals as may be necessary (the "Board Approval") on or before January 5, 2001. Customer shall promptly provide Columbia with written notice of the Board Approval.

(b) This Agreement shall become effective upon the date of the Board Approval and shall remain in full force and effect until terminated in accordance with the provisions of this Section 6. This Agreement may only be terminated as provided in this Section 6.

(c) A Party may waive satisfaction of any condition precedent set forth in Section 5 hereto, prior to the date by which such condition precedent must be **satisfied**, by giving written notice of such waiver to the other Party. In **addition**, each Party agrees to notify the other Party upon the satisfaction of any such condition precedent so that the Parties may be mutually informed thereof; **provided**, however, that the failure of a Party to provide such notice shall not constitute grounds for the termination of this Agreement by the other Party.

(d) A Party may terminate this Agreement if any condition precedent in Section 5 hereof is not satisfied by the date specified for the satisfaction of such condition precedent in Section 5 hereof, which termination shall be effective upon ten (10) days written notice to the other Party. Unless a Party gives written notice to the other Party of the termination of this Agreement for failure to satisfy a condition precedent in Section 5 hereof within fifteen (15) days after the date specified for satisfaction of such condition precedent in Section 5 hereof, the Party's right to terminate this Agreement as a result of such failure to timely satisfy such condition precedent shall be irrevocably waived, but any such waiver shall not affect such Party's right to terminate this Agreement as a result of a failure to satisfy any other condition precedent in Section 5 hereof for which the time for satisfaction has not expired. A Party's notice of the termination of this Agreement for failure to satisfy a condition precedent in Section 5 hereof shall

not become **effective** if such condition precedent is satisfied prior to the expiration of the 10-day notice period.

(e) This Agreement shall automatically terminate for all purposes upon the execution of the service and rate agreements set **forth** in Attachments A and B hereto, and thereafter the rights and obligations of the Parties shall be as provided for in such service and rate agreements, as amended and in effect from time to time; provided, however, that Columbia's obligation to construct the New Facilities pursuant to Section 4 hereof and Customer's obligation to reimburse Columbia for ~~the~~ costs of such construction pursuant to Section 6(f) hereof shall survive and remain in full force and effect.

(f) If this Agreement is terminated pursuant to this Section 6, such termination shall be without liability, damages, costs or expenses of either Party to the other Party or to any of the other Party's shareholders, directors, officers, employees, agents, consultants or representatives; and the Parties shall have no further rights or obligations whatsoever pursuant to this Agreement; provided, however, that if Customer terminates this Agreement pursuant to this Section 6 on the ground that the condition precedent in Section 5(iv) of this Agreement has not been satisfied, then Customer shall reimburse Columbia for all costs incurred by Columbia in connection with the design, procurement and construction of the New Facilities for the period through and including the date of such termination.

7. **Authorization.** Each of the persons executing this Agreement represents and warrants that he or she has authority to act for and bind the Party on whose behalf he or she purports to act.

8. **Customer's Support for FERC Authorizations.** Customer agrees to exert reasonable efforts to support and not take any adverse action with respect to Columbia's requests for any FERC approvals and authorizations that are necessary to implement this Agreement, including those set forth in Section 5 hereof.

9. **Parties In Interest** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any entity other than the Parties, to relieve or discharge the obligation or liability of any third person to a Party or to give any third person any right of subrogation or action over or against a Party.

10. **Effect of Agreement and Amendment** This Agreement shall inure to the benefit of and be binding upon the Parties. The Parties agree that this Agreement does not supersede, and is without prejudice to any rights or obligations the Parties have to each other under, separate and distinct written agreements. This Agreement may only be amended, modified or supplemented by a written agreement of the Parties.

11. **Waivers.** The waiver by a Party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach thereof.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of New York without reference to conflicts of law provisions, and except as to any matters subject to federal law and the exclusive jurisdiction of the FERC.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

14. **Assignment** This Agreement may not be assigned without first obtaining the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

IN WITNESS **WHEREOF**, the duly authorized representatives of the Parties have executed this Agreement as of the date and year first above written.

~~COLUMBIA GAS TRANSMISSION CORPORATION~~

By: 

MPW

Name: David C. Pentzien

Its: Vice President Market Development

HUDSON VALLEY GAS CORP.

By: 

Name: Kim A. Hertz

Its: VICE PRESIDENT

ATTACHMENTS TO PRECEDENT AGREEMENT

Attachment A - FTS Service Agreement

Attachment B - Amendment to FTS Service Agreement: Discounted Rate Arrangement Letter Agreement

ATTACHMENT A

FTS SERVICE AGREEMENT

Appendix A to Service Agreement No.

Under Rate Schedule **FTS**

Between (Transporter) Columbia Gas Transmission Corporation
and (Shipper) Hudson Valley Gas Corp.

Transportation Demand: 307,000 Dth/day

Primary Receipt Points

Scheduling Point No.	Scheduling Point Name	Measuring Point No.	Foot- note	Measuring Point Name	Maximum Daily Quantity (Dth/Day)
	Ramapo			Ramapo	307,000 Dth

Agreement No. _____

Control No. _____

FTS SERVICE AGREEMENT

THIS AGREEMENT" is made and entered into this _____ day of _____, 2001, by and between COLUMBIA GAS TRANSMISSION CORPORATION ("TRANSPORTER") and HUDSON VALLEY GAS CORP. ("SHIPPER").

WITNESSETH: That in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

Section 1. Service to be Rendered. Transporter shall perform and Shipper shall receive service in accordance with the provisions of the effective FTS Rate Schedule and the applicable General Terms and Conditions of Transporter's FERC Gas Tariff, Second Revised Volume No. 1 (**Tariff**), on file with the Federal Energy Regulatory Commission (Commission), as the same may be amended or superseded in accordance with the rules and regulations of the Commission. The maximum obligation of Transporter to deliver gas hereunder to or for Shipper, the designation of the points of delivery at which Transporter shall deliver or cause gas to be delivered to or for Shipper, and the points of receipt at which Shipper shall deliver or cause gas to be delivered, are specified in Appendix A, as the same may be amended from time to time by agreement between Shipper and Transporter, or in accordance with the rules and regulations of the Commission. Service hereunder shall be provided subject to the provisions of Subpart G of Part 284 of the Commission's regulations. Shipper warrants that service hereunder is being provided on behalf of SHIPPER.

Section 2. Term. Service under this Agreement shall commence on September 1, 2001 and continue thereafter for a primary term of twenty (20) years ending on August 31, 2022; provided, however, that this Agreement shall automatically terminate prior to August 31, 2022 if Columbia abandons its Line 10338 by conveyance to Millennium Pipeline Company, L.P., as proposed in Columbia's pending application in FERC Docket No. CP98-151-000. Pre-granted abandonment shall also apply upon any other termination of this Agreement, subject to any right of first refusal Shipper may have under the Commission's regulations or Transporter's Tariff.

Section 3. Rates. Shipper shall pay Transporter the charges and furnish Retainage as described in the above-reference Rate Schedule, unless otherwise agreed to by the parties in writing and specified as an amendment to this Service Agreement. Transporter may agree to discount its rate to Shipper below Transporter's maximum rate, but not less than Transporter's minimum rate. Such discounted rate may apply to (a) specified quantities (contract demand or commodity quantities); (b) specified quantities above or below a certain level or all quantities if quantities

exceed a certain level; (c) quantities during specified time periods; (d) quantities at specified points, locations, or other defined geographical areas; and (e) a specified relationship to the quantities actually transported (i.e., that the reservation charge will be adjusted in a specified relationship to quantities actually transported).

Section 4. Notices. Notices to Transporter under this Agreement shall be addressed to it at: Columbia Gas Transmission Corporation, Post Office Box 1273, **Charleston**, West Virginia 25325-1273, Attention: Manager — Commercial Services; and notices to Shipper under this Agreement shall be addressed to it at: HUDSON VALLEY GAS CORP., c/o Southern Energy New York, LLC, 400 Rella Boulevard, Suite 157, Suffern, NY 10901, Attention: Eddie Dorsett, until changed by either party by written notice.

Section 5. Superseded Agreements. This Service Agreement supersedes and cancels, as of the effective date hereof, the following Service Agreements: N/A.

HUDSON VALLEY GAS CORP .

By: _____

Name: _____

Title: _____

Date: _____

COLUMBIA GAS TRANSMISSION CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

Revision No.
Control No.

Appendix A to Service Agreement No.

Under Rate Schedule **FTS**

Between (Transporter) Columbia Gas Transmission Corporation
and (Shipper) Hudson Valley Gas Corp.

Transportation Demand: 307,000 Dth/day

Primary Delivery Points

Scheduling Point No.	Scheduling Point Name	Measuring Point No.	Foot-note	Measuring Point Name	Maximum Daily Delivery Obligation
	Buena Vista				307,000 Dth

ATTACHMENT B

Amendment to **FTS** Service Agreement:
Discounted Rate Arrangement Letter Agreement

_____, 2001

Hudson Valley Gas Corp.

**RE: Amendment to FTS Service Agreement No. _____;
Discounted Rate Arrangement/Negotiated Retainage Letter Agreement**

Year _____:

This letter agreement will serve as an amendment to the above referenced service agreement between Hudson Valley Gas Corp. ("Shipper") and Columbia Gas Transmission Corporation ("Transporter").

Shipper and Transporter hereby agree that the Section 3 of the above-referenced agreement shall be amended to read as follows:

"During the primary term of this Agreement commencing September 1, 2001, for service rendered on any day under this Agreement when using the **Ramapo Station** as the receipt point and the Buena Vista Station as the delivery point, the following rate arrangement shall **apply**:

Reservation Charge Rate: Shipper shall pay Transporter a discounted reservation charge rate per Dth per **month**, as permitted under Section 3(e) of this Agreement ("that the reservation charge will be adjusted in a specified relationship to quantities actually transported" for that month), in accordance with Schedule A attached hereto, which shall be adjusted upward or downward from time to time to reflect changes in any applicable FERC-approved reservation surcharges.

Commodity Rate: Shipper shall pay Transporter a discounted base commodity rate per Dth equal to the **minimum** total effective commodity rate (includes surcharges) set forth in Transporter's **tariff**, which shall be adjusted upward or downward from time to time to reflect changes thereto, including changes to any applicable FERC-approved commodity surcharges.

Retainage: Shipper shall not be obligated to furnish company-use, lost or unaccounted-for gas ("Retainage") for quantities transported from Ramapo to Buena Vista under this Agreement

The then effective maximum total effective FTS Rate Schedule rates, and Retainage, as such rates may be revised from time to time, shall apply to all other service rendered under this Agreement in excess of the Transportation Demand or using any other receipt and delivery point combinations."

all other terms and conditions of the above-referenced service agreement shall remain in full force and effect

Notwithstanding the foregoing, the charges to be paid by Shipper to Transporter shall be no lower than the applicable **total** effective minimum charges set forth in **Transporter's** Federal Energy Regulatory Commission ("FERC") Gas **Tariff**. Shipper shall pay all applicable then effective maximum overrun charges.

If you are in agreement with the above amendment, please execute both originals of this letter agreement and return me to Transporter at the above address.

Agreed to this _____ day of _____, 2000.

Columbia Gas Transmission Corporation Hudson Valley Gas Corp.

By: _____ By: _____

Its: _____ Its: _____

COLUMBIA GAS TRANSMISSION CORPORATION

SCHEDULE A
SUMMARY OF RATES

LINE	COMMODITY LOAD FACTOR	DEMAND	COMMODITY LOAD FACTOR	DEMAND RESERVATION CHARGE			COMMODITY CHARGE		
				TOTAL EFFECTIVE	APPLICABLE	TOTAL	TOTAL EFFECTIVE	APPLICABLE	TOTAL
0.	PERCENTAGE	DETERMINANTS	DETERMINANTS	MONTHLY RATE	SURCHARGES	BASE RATE	RATE	SURCHARGES	BASE RATE
		(1) Dth/d	(2) Dth/d	(3) \$	(4) \$	(5) \$	(6) \$	(7) \$	(8) \$
				1/	2/				
1	0%	307,000	0	0.353	0.019	0.334	0.0156	0.0052	0.0104
2	1%	307,000	3,070	0.348	0.019	0.329	0.0156	0.0052	0.0104
3	2%	307,000	6,140	0.343	0.018	0.325	0.0156	0.0052	0.0104
4	3%	307,000	9,210	0.339	0.018	0.321	0.0156	0.0052	0.0104
5	4%	307,000	12,280	0.334	0.018	0.316	0.0156	0.0052	0.0104
6	5%	307,000	15,350	0.329	0.018	0.311	0.0156	0.0052	0.0104
7	6%	307,000	18,420	0.324	0.017	0.307	0.0156	0.0052	0.0104
8	7%	307,000	21,490	0.320	0.017	0.303	0.0156	0.0052	0.0104
9	8%	307,000	24,560	0.315	0.017	0.298	0.0156	0.0052	0.0104
10	9%	307,000	27,630	0.310	0.017	0.293	0.0156	0.0052	0.0104
11	10%	307,000	30,700	0.305	0.016	0.289	0.0156	0.0052	0.0104
12	11%	307,000	33,770	0.301	0.016	0.285	0.0156	0.0052	0.0104
13	12%	307,000	36,840	0.296	0.016	0.280	0.0156	0.0052	0.0104
14	13%	307,000	39,910	0.291	0.016	0.275	0.0156	0.0052	0.0104
15	14%	307,000	42,980	0.286	0.015	0.271	0.0156	0.0052	0.0104
16	15%	307,000	46,050	0.282	0.015	0.267	0.0156	0.0052	0.0104
17	16%	307,000	49,120	0.277	0.015	0.262	0.0156	0.0052	0.0104
18	17%	307,000	52,190	0.272	0.015	0.257	0.0156	0.0052	0.0104
19	18%	307,000	55,260	0.267	0.015	0.252	0.0156	0.0052	0.0104
20	19%	307,000	58,330	0.263	0.014	0.249	0.0156	0.0052	0.0104
21	20%	307,000	61,400	0.258	0.014	0.244	0.0156	0.0052	0.0104
22	21%	307,000	64,470	0.253	0.014	0.239	0.0156	0.0052	0.0104
23	22%	307,000	67,540	0.248	0.014	0.234	0.0156	0.0052	0.0104
24	23%	307,000	70,610	0.244	0.013	0.231	0.0156	0.0052	0.0104
25	24%	307,000	73,680	0.239	0.013	0.226	0.0156	0.0052	0.0104
26	25%	307,000	76,750	0.234	0.013	0.221	0.0156	0.0052	0.0104
27	26%	307,000	79,820	0.230	0.012	0.218	0.0156	0.0052	0.0104
28	27%	307,000	82,890	0.225	0.012	0.213	0.0156	0.0052	0.0104
29	28%	307,000	85,960	0.220	0.012	0.208	0.0156	0.0052	0.0104
30	29%	307,000	89,030	0.215	0.012	0.203	0.0156	0.0052	0.0104
31	30%	307,000	92,100	0.211	0.011	0.200	0.0156	0.0052	0.0104
32	31%	307,000	95,170	0.206	0.011	0.195	0.0156	0.0052	0.0104
33	32%	307,000	98,240	0.201	0.011	0.190	0.0156	0.0052	0.0104
34	33%	307,000	101,310	0.196	0.011	0.185	0.0156	0.0052	0.0104
35	34%	307,000	104,380	0.192	0.010	0.182	0.0156	0.0052	0.0104
36	35%	307,000	107,450	0.187	0.010	0.177	0.0156	0.0052	0.0104
37	36%	307,000	110,520	0.182	0.010	0.172	0.0156	0.0052	0.0104
38	37%	307,000	113,590	0.177	0.010	0.167	0.0156	0.0052	0.0104
39	38%	307,000	116,660	0.173	0.009	0.164	0.0156	0.0052	0.0104
40	39%	307,000	119,730	0.168	0.009	0.159	0.0156	0.0052	0.0104
41	40%	307,000	122,800	0.163	0.009	0.154	0.0156	0.0052	0.0104
42	41%	307,000	125,870	0.158	0.009	0.149	0.0156	0.0052	0.0104

COLUMBIA GAS TRANSMISSION CORPORATION

SCHEDULE A
SUMMARY OF RATES

LINE NO.	COMMODITY LOAD FACTOR PERCENTAGE	DEMAND DETERMINANTS (1) Dth/d	COMMODITY LOAD FACTOR DETERMINANTS (2) Dth/d	DEMAND RESERVATION CHARGE			COMMODITY CHARGE		
				TOTAL EFFECTIVE MONTHLY RATE (3) \$	APPLICABLE SURCHARGES (4) \$	TOTAL BASE RATE (5) \$	TOTAL EFFECTIVE RATE (6) \$	APPLICABLE SURCHARGES (7) \$	TOTAL BASE RATE (8) \$
43	42%	307,000	128,940	0.154	0.008	0.146	0.0156	0.0052	0.0104
44	43%	307,000	132,010	0.149	0.008	0.141	0.0156	0.0052	0.0104
45	44%	307,000	135,080	0.144	0.008	0.136	0.0156	0.0052	0.0104
46	45%	307,000	138,150	0.139	0.008	0.131	0.0156	0.0052	0.0104
47	46%	307,000	141,220	0.135	0.008	0.127	0.0156	0.0052	0.0104
48	47%	307,000	144,290	0.130	0.007	0.123	0.0156	0.0052	0.0104
49	48%	307,000	147,360	0.125	0.006	0.119	0.0156	0.0052	0.0104
50	49%	307,000	150,430	0.120	0.006	0.114	0.0156	0.0052	0.0104
51	50%	307,000	153,500	0.116	0.006	0.110	0.0156	0.0052	0.0104
52	51%	307,000	156,570	0.111	0.006	0.105	0.0156	0.0052	0.0104
53	52%	307,000	159,640	0.106	0.006	0.100	0.0156	0.0052	0.0104
54	53%	307,000	162,710	0.101	0.005	0.096	0.0156	0.0052	0.0104
55	54%	307,000	165,780	0.097	0.005	0.092	0.0156	0.0052	0.0104
56	55%	307,000	168,850	0.092	0.005	0.087	0.0156	0.0052	0.0104
57	56%	307,000	171,920	0.087	0.005	0.082	0.0156	0.0052	0.0104
58	57%	307,000	174,990	0.082	0.004	0.078	0.0156	0.0052	0.0104
59	58%	307,000	178,060	0.078	0.004	0.074	0.0156	0.0052	0.0104
60	59%	307,000	181,130	0.073	0.004	0.069	0.0156	0.0052	0.0104
61	60%	307,000	184,200	0.068	0.004	0.064	0.0156	0.0052	0.0104
62	61%	307,000	187,270	0.068	0.004	0.064	0.0156	0.0052	0.0104
63	62%	307,000	190,340	0.068	0.004	0.064	0.0156	0.0052	0.0104
64	63%	307,000	193,410	0.068	0.004	0.064	0.0156	0.0052	0.0104
65	64%	307,000	196,480	0.068	0.004	0.064	0.0156	0.0052	0.0104
66	65%	307,000	199,550	0.068	0.004	0.064	0.0156	0.0052	0.0104
67	66%	307,000	202,620	0.068	0.004	0.064	0.0156	0.0052	0.0104
68	67%	307,000	205,690	0.068	0.004	0.064	0.0156	0.0052	0.0104
69	68%	307,000	208,760	0.068	0.004	0.064	0.0156	0.0052	0.0104
70	69%	307,000	211,830	0.068	0.004	0.064	0.0156	0.0052	0.0104
71	70%	307,000	214,900	0.068	0.004	0.064	0.0156	0.0052	0.0104
72	71%	307,000	217,970	0.068	0.004	0.064	0.0156	0.0052	0.0104
73	72%	307,000	221,040	0.068	0.004	0.064	0.0156	0.0052	0.0104
74	73%	307,000	224,110	0.068	0.004	0.064	0.0156	0.0052	0.0104
75	74%	307,000	227,180	0.068	0.004	0.064	0.0156	0.0052	0.0104
76	75%	307,000	230,250	0.068	0.004	0.064	0.0156	0.0052	0.0104
77	76%	307,000	233,320	0.068	0.004	0.064	0.0156	0.0052	0.0104
78	77%	307,000	236,390	0.068	0.004	0.064	0.0156	0.0052	0.0104
79	78%	307,000	239,460	0.068	0.004	0.064	0.0156	0.0052	0.0104
80	79%	307,000	242,530	0.068	0.004	0.064	0.0156	0.0052	0.0104
81	80%	307,000	245,600	0.068	0.004	0.064	0.0156	0.0052	0.0104
82	81%	307,000	248,670	0.068	0.004	0.064	0.0156	0.0052	0.0104

COLUMBIA GAS TRANSMISSION CORPORATION

SCHEDULE A
SUMMARY OF RATES

LINE	COMMODITY LOAD FACTOR	DEMAND	COMMODITY LOAD FACTOR	DEMAND RESERVATION CHARGE			COMMODITY CHARGE		
				TOTAL EFFECTIVE	APPLICABLE	TOTAL	TOTAL EFFECTIVE	APPLICABLE	TOTAL
MO.	PERCENTAGE	DETERMINANTS	DETERMINANTS	MONTHLY RATE	SURCHARGES	BASE RATE	RATE	SURCHARGES	BASE RATE
		(1) Dth/d	(2) Dth/d	(3) \$	(4) \$	(5) \$	(6) \$	(7) \$	(8) \$
				1/	27				
83	82%	307,000	251,740	0.068	0.004	0.064	0.0156	0.0052	0.0104
84	83%	307,000	254,810	0.068	0.004	0.064	0.0156	0.0052	0.0104
85	84%	307,000	257,880	0.068	0.004	0.064	0.0156	0.0052	0.0104
86	85%	307,000	260,950	0.068	0.004	0.064	0.0156	0.0052	0.0104
87	86%	307,000	264,020	0.068	0.004	0.064	0.0156	0.0052	0.0104
88	87%	307,000	267,090	0.068	0.004	0.064	0.0156	0.0052	0.0104
89	88%	307,000	270,160	0.068	0.004	0.064	0.0156	0.0052	0.0104
90	89%	307,000	273,230	0.068	0.004	0.064	0.0156	0.0052	0.0104
91	90%	307,000	276,300	0.068	0.004	0.064	0.0156	0.0052	0.0104
92	91%	307,000	279,370	0.068	0.004	0.064	0.0156	0.0052	0.0104
93	92%	307,000	282,440	0.068	0.004	0.064	0.0156	0.0052	0.0104
94	93%	307,000	285,510	0.068	0.004	0.064	0.0156	0.0052	0.0104
95	94%	307,000	288,580	0.068	0.004	0.064	0.0156	0.0052	0.0104
96	95%	307,000	291,650	0.068	0.004	0.064	0.0156	0.0052	0.0104
97	96%	307,000	294,720	0.068	0.004	0.064	0.0156	0.0052	0.0104
98	97%	307,000	297,790	0.068	0.004	0.064	0.0156	0.0052	0.0104
99	98%	307,000	300,860	0.068	0.004	0.064	0.0156	0.0052	0.0104
100	99%	307,000	303,930	0.068	0.004	0.064	0.0156	0.0052	0.0104
101	100%	307,000	307,000	0.068	0.004	0.064	0.0156	0.0052	0.0104

1/ REFLECTS THE MONTHLY RESERVATION CHARGE RATE PER Dth BASED ON THAT MONTH'S COMMODITY USAGE LOAD FACTOR.

2/ AS STATED IN THE LETTER AGREEMENT TO WHICH THIS SCHEDULE A IS ATTACHED, THE DISCOUNTED RESERVATION CHARGE RATE PER Dth PER MONTH SHALL BE ADJUSTED UPWARD OR DOWNWARD FROM TIME TO TIME TO REFLECT CHANGES IN ANY APPLICABLE FERC-APPROVED RESERVATION SURCHARGES. THIS COLUMN SETS FORTH THE FERC-APPROVED RESERVATION SURCHARGE PORTION OF THE ABOVE CALCULATED RESERVATION CHARGE RATES BASED UPON THE CURRENTLY EFFECTIVE RESERVATION SURCHARGE LEVELS, AND BASED UPON THE ATTRIBUTION FORMULA SET FORTH IN GTC SECTION 20 OF TRANSPORTER'S TARIFF.

EXHIBIT A
PART IV

AMENDMENT NO. 1 TO PRECEDENT AGREEMENT

This Amendment No. 1 to Precedent Agreement is made and entered into as of this 30th day of June, 2001, by and between COLUMBIA GAS TRANSMISSION CORPORATION ("Columbia") and HUDSON VALLEY GAS CORP. ("Customer") (each of Columbia and Customer being sometimes referred to individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, Columbia and Customer entered into a Precedent Agreement dated as of the 18th day of December, 2000 (the "Precedent Agreement");

WHEREAS, pursuant to Section 3 of the Precedent Agreement, Columbia filed a request with the Federal Energy Regulatory Commission ("FERC") to waive application of the retainage factor for firm transportation service to be provided by Columbia pursuant to the FTS Service Agreement (Attachment A to the Precedent Agreement) and the Discounted Rate Arrangement Letter Agreement (Attachment B to the Precedent Agreement) to be executed in accordance with Section 2 of the Precedent Agreement;

WHEREAS, on May 4, 2001, the FERC denied Columbia's waiver request, see Columbia Gas Transmission Corp., 95 FERC ¶ 61,171 (2001);

WHEREAS, the Parties desire to amend the Precedent Agreement to provide that Hudson Valley shall pay to Columbia the applicable maximum retainage factor for firm transportation service to be provided pursuant to the FTS Service Agreement (Attachment A to the Precedent Agreement);

WHEREAS, this Agreement evidences the binding, good faith commitments of the Parties;

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

1. The third sentence of Section 1(a) of the Precedent Agreement is deleted in its entirety and is replaced with the following provision:

Columbia agrees to provide and Customer agrees to accept and pay for FT Service equivalent to the Transportation Demand pursuant to the terms and provisions of the FTS Service Agreement attached to the Precedent Agreement as Attachment A, the Discounted Rate Arrangement Letter attached to this Amendment No. 1 to the Precedent Agreement as Amended Attachment B, and the applicable rate schedules of Columbia's Federal Energy Regulatory Commission ("FERC") Natural Gas Tariff, Second Revised Volume No. 1, as amended and in effect from time to time ("Columbia's Tariff").

2. Section 1(c) of the Precedent Agreement is deleted in its entirety and is replaced with the following provision:

The applicable rate for service during the primary term of the FTS Service Agreement shall be as set forth in Attachment A and Amended Attachment B .

3. Section 2 of the Precedent Agreement is deleted in its entirety and is replaced with the following provision:

Service and Rate Agreements. The Parties agree to execute the FTS Service Agreement attached to the Precedent Agreement as Attachment A and the Discounted Rate Arrangement Letter attached to this Amendment No. 1 to the Precedent Agreement as Amended Attachment B after all of the conditions


precedent set forth in Sections 5 and 6 of the Precedent Agreement have been satisfied or waived.

4. Attachment B of the Precedent Agreement is deleted in its entirety, and Amended Attachment B to this Amendment No. 1 shall be substituted therefor.

5. Section 5(iii) of the Precedent Agreement is deleted in its entirety.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Amendment No. 1 to the Precedent Agreement as of the date first above written.

COLUMBIA GAS TRANSMISSION CORPORATION

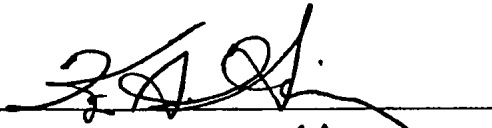
By: 

KOK
J.S.

Name: DAVID PENTZIEN

Title: V.P. MARKET DEVELOPMENT

HUDSON VALLEY GAS CORP.

By: 

KR

Name: Kim A. Herz

Title: V.P.

AMENDED ATTACHMENT B
DISCOUNTED RATE ARRANGEMENT LETTER

May 29, 2001

Don Gray
c/o Southern Energy New York, LLC
400 Rella Boulevard
Suite 157
Suffern, New York 50901

Re: Amendment to FTS Service Agreement No. _____; Discounted
Rate Arrangement Letter

Dear Mr Gray:

This Letter Agreement will serve as an amendment to the above referenced service agreement between Hudson Valley Gas Corp. ("Shipper") and Columbia Gas Transmission Corp. ("Transporter").

Shipper and Transporter hereby agree that Section 3 of the above-referenced service agreement shall be amended to read as follows:

"During the primary term of this Agreement commencing September 1, 2001, for service rendered on any day under this Agreement when using the Ramapo Station as the receipt point and the Buena Vista Station as the delivery point, the following rate arrangement shall apply:

Reservation Charge Rate: Shipper shall pay Transporter a discounted reservation charge rate per Dth per month, as permitted under Section 3(e) of this Agreement ("that the reservation charge will be adjusted in a specified relationship to quantities actually transported" for that month) in accordance with Schedule A attached hereto, which shall be adjusted upward or downward from time to time to reflect changes in any applicable FERC-approved reservation surcharges.

Commodity Rate: Shipper shall pay Transporter a discounted base commodity rate per Dth equal to the minimum total effective commodity rate (including surcharges) set forth in Transporter's tariff, which shall be adjusted upward or downward from time to time to reflect changes thereto, including changes to any applicable FERC-approved commodity surcharges.

Retainage: Shipper shall pay Transporter the applicable maximum retainage factor as set forth in Transporter's tariff, which shall be adjusted upward or downward from time to time to reflect changes thereto.

The then-effective maximum total effective FTS Rate Schedule rates and retainage factors, as such rates may be changed from time to time, shall apply to

all other service rendered under this Agreement in excess of the Transportation Demand or using any other receipt and delivery point combinations.

All other terms and conditions of the above-referenced service agreement shall remain in full force and effect.

Notwithstanding the foregoing, the charges to be paid by Shipper to Transporter shall be no lower than the applicable total effective minimum charges set forth in Transporter's tariff. Shipper shall pay all applicable then-effective maximum overrun charges.

If you are in agreement with the foregoing, please execute both originals of this Agreement and return one to Transporter at the above address.

Agreed to this 30th day of June, 2001.

COLUMBIA GAS TRANSMISSION CORP.	HUDSON VALLEY GAS CORP.
By: <u>DAVID PENTLIEN</u> ^{2/17/01}	By: <u>Tim A. HEWZ</u> ^{KH}
Title: <u>V.P. MARKET DEVELOPMENT</u>	Title: <u>V.P.</u>

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ATTORNEYS FOR THE DEBTORS AND DEBTORS-IN-POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re)	
)	Chapter 11 Case
MIRANT CORPORATION, <u>et al.</u> ,)	
)	Case No. 03-46590 (DML)
Debtors.)	Jointly Administered
)	
)	
)	

**ORDER GRANTING DEBTORS' MOTION TO REJECT EXECUTORY
CONTRACTS BETWEEN DEBTOR HUDSON VALLEY GAS CORP. AND
COLUMBIA GAS TRANSMISSION CORPORATION**

Upon the motion,¹ dated May 28, 2004 (the "Motion") of Mirant Corporation ("Mirant") and its affiliated debtors, as debtors and debtors-in-possession (collectively, the "Debtors"), for authority to reject the FTS Service Agreement dated June 30, 2001, as amended by the Letter Agreement executed on June 30, 2001 (as amended, the "FTS Agreement"), and the Precedent Agreement (Line 10338 Service), dated December 18, 2000, as amended by the Letter

¹ Unless otherwise defined herein, capitalized terms have the same meaning ascribed to them in the Motion.

Agreement dated June 30, 2001 (the "Precedent Agreement" together with the FTS Agreement, the "Contracts"), each by and between Debtor Hudson Valley Gas Corp. and Columbia Gas Transmission Corporation, pursuant to section 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the "Bankruptcy Code"); and it appearing that the Court has jurisdiction over this matter; and it appearing that due notice of the Motion has been provided, and that no other or further notice need be provided; upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY:

ORDERED, that the Motion is hereby GRANTED; it is further

ORDERED, that the Contracts are rejected effective as of the date this Order is entered; it is further

ORDERED that, pursuant to the *Order Pursuant To Bankruptcy Rule 3003(c) For Entry Of An Order (I) Establishing A Bar Date For Filing Certain Proofs Of Claim; (II) Establishing Ramifications For Failure To Comply Therewith; (III) Approving Proof Of Claim Form And Consolidated Notice Of (A) Case Commencement, (B) Bar Date, and (C) Meeting Of Creditors Under Section 341(a) of the Bankruptcy Code; And (IV) Approving Notice And Publication Procedures*, entered on August 21, 2003, the last date to file a timely proof of claim against the Debtors arising from the rejection of the Contracts is the first business day that is at least thirty (30) calendar days after the mailing of the notice of entry of this Order.

IT IS SO ORDERED.

Dated: June __, 2004

D. Michael Lynn,
United States Bankruptcy Judge