

GAS PURCHASE AGREEMENT

Between

YATES PETROLEUM CORPORATION

And

TRANSWESTERN PIPELINE COMPANY

BEFORE EXAMINER UTZ	
OIL CONSERVATION COMMISSION	
<i>Appl</i>	EXHIBIT NO. <u>3</u>
CASE NO.	<u>2587</u>

Atoka Field
Eddy County, New Mexico

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GAS PURCHASE AGREEMENT

THIS AGREEMENT, made and entered into as of the 6th day of December, 1960, by and between YATES PETROLEUM CORPORATION hereinafter referred to as "Seller", and TRANSWESTERN PIPELINE COMPANY, hereinafter referred to as "Buyer",

WHEREAS, Buyer owns and operates a natural gas pipeline system generally extending from the gas producing areas of West Texas, the Panhandle of Texas and Oklahoma, and New Mexico to California; and

WHEREAS, Seller owns or controls oil, gas and mineral leaseholds and/or lands in Atoka Field, Eddy County, New Mexico, which leaseholds and/or lands are described in Exhibit "A" attached hereto and made a part hereof, and from which Seller desires to sell natural gas, and Buyer desires to purchase same for a portion of the requirements of its natural gas pipeline transmission system; and

WHEREAS, the parties hereto have agreed that, except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used herein and shall be construed to have meanings as follows:

1. The term "day" shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock a.m. Central Standard Time.

2. The term "month" shall mean a period beginning at seven o'clock a.m. on the 1st day of a calendar month and ending at seven o'clock a.m. on the 1st day of the next succeeding calendar month.

3. The term "year" shall mean a period of twelve (12) months beginning on the day on which the delivery of gas to Buyer is commenced hereunder or any anniversary of such date.

4. The term "gas" shall mean natural gas, including both gas well gas and casinghead gas, and the residue has therefrom, of merchantable quality as described in Article VIII hereof.

5. The term "MCF" shall mean one thousand (1,000) cubic feet.

6. The term "Seller's Gas Reserve" shall mean the estimated total quantity of economically recoverable gas which will be available for delivery to Buyer hereunder, contained in the formations or reservoirs which underlie the leaseholds and/or lands owned or controlled by Seller, described in Exhibit "A" hereof, on the date of any estimate or determination of Seller's Gas Reserve, plus the total quantity of gas theretofore delivered by Seller to Buyer under this Agreement.

7. The term "Seller's Delivery Capacity" shall mean the maximum quantity of gas which can be withdrawn (subject to any valid rules, orders and regulations of any State or Federal regulatory body) daily from the leaseholds and/or lands of Seller covered by this Agreement and which is available for delivery to Buyer at the point or points of delivery hereunder at the pressure provided for in Article V hereof.

8. The term "Daily Contract Quantity" shall mean the quantity of gas per day, averaged over each year, which Buyer is required, by the provisions of Paragraph 1 of Article III hereof, to purchase from Seller hereunder.

NOW THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

I. PRECEDENT CONDITIONS AND SCOPE OF AGREEMENT

1. This Agreement is subject to the following precedent conditions:

(a) The obtaining by Buyer on or before March 31, 1961, of such Certificate of Public Convenience and Necessity from the Federal Power Commission as may be required for the construction and operation of the additions to Buyer's natural gas pipeline system, so that Buyer may extend such facilities into Eddy County, New Mexico, for the volumes of gas to be purchased from Seller hereunder, such Certificates of Public Convenience and Necessity to be in form and on terms and conditions satisfactory to Buyer.

(b) The obtaining by Seller on or before March 31, 1961, of such Certificates of Public Convenience and Necessity from the Federal Power Commission as may be required in form and on terms and conditions satisfactory to Seller.

If any of the conditions set forth in Subparagraphs (a) and (b) above shall not have been complied with by the time specified for such condition, then either party hereto shall have the right at any time thereafter and prior to the time such condition has been complied with to terminate this Agreement by serving written notice of such termination upon the other party and if such condition or conditions are not satisfied within thirty (30) days after the receipt of said notice, then this Agreement shall terminate and both parties shall be relieved of any liability hereunder.

In securing authorizations, permits, consents, approvals, or any other action required to be taken by any regulatory body pursuant to the conditions set forth above, each party hereto shall have the right to file and prosecute any such applications in such manner as such party deems, in its own good faith judgment, to be in its best interest and, to that end, may file whatever petitions, pleadings, motions (including motions for dismissal) and appeals as it may consider desirable.

2. Subject to all of the terms, conditions and limitations herein set forth, Seller agrees to sell and deliver or cause to be delivered to Buyer, and Buyer agrees to purchase and receive from Seller, gas in the quantities hereinafter provided, which may be produced from the reservoirs underlying the oil and gas leaseholds and/or lands which Seller now owns or controls as described in Exhibit "A" attached hereto.

3. Subject to the provisions of Paragraph 1 of this Article I, each of the parties hereto agrees to proceed with due diligence in a good faith effort to obtain such governmental authorizations and Certificates of Public Convenience and Necessity as may be required to permit the performance of this Agreement. Upon receipt and acceptance by both parties of the governmental authorizations and certificates referred to in Paragraph 1 of this Article I, Seller agrees to commence and prosecute with due diligence the construction of such facilities that may be necessary to enable Seller to deliver at the point or points of delivery hereinafter specified the quantities of gas contemplated by this Agreement

and Buyer agrees to commence and prosecute with due diligence the construction of Buyer's system and such facilities as are necessary to enable Buyer to receive such deliveries of gas at said point or points of delivery. The delivery of gas hereunder shall commence on the date on which both the facilities of Seller and the system and facilities of Buyer are completed and ready for operation.

4. Seller shall furnish Buyer with complete data regarding the productive status of each leasehold or tract of land described in said Exhibit "A", and Seller agrees to keep Buyer informed as to any additions to or reductions of the leaseholds and/or lands covered by this Agreement and any substantial changes in the productive status of any such leaseholds and/or lands.

5. Prior to the date of initial delivery of gas hereunder, Buyer and Seller will agree on the total quantity of recoverable gas originally in place under the leaseholds and/or lands covered by this Agreement. Not less than thirty (30) days prior to each anniversary date of the initial delivery of gas under this Agreement, Seller shall furnish Buyer with a written estimate of Seller's Gas Reserve as of such anniversary date. If Buyer fails to give Seller written notice that Buyer questions any such estimate within thirty (30) days after Buyer's receipt of same, it shall be conclusively presumed that Buyer concurs therein. If Buyer and Seller are unable to agree upon the initial estimate or if Buyer questions any subsequent estimate by giving written notice to Seller within

said thirty (30) day period, and Buyer and Seller are unable to agree upon the quantity of Seller's Gas Reserve, then the determination of the quantity of such reserve shall be submitted to and determined by arbitration in the manner provided in Article XVI hereof. Each such estimate or determination, as the case may be, shall be effective as of the anniversary date for which it is made or the date the same is concurred in by Buyer or determined by arbitration, whichever shall occur later, and shall remain in effect until superseded by a later estimate concurred in by Buyer or by a determination by arbitration.

6. Seller shall, with due diligence, develop the lands and leaseholds subject to this Agreement in a skillful and reasonably prudent manner to the end that Seller's Delivery Capacity shall be maintained at a volume not less than one hundred fifty per cent (150%) of the Daily Contract Quantity in effect from time to time under the provisions of Article III hereof.

II. RESERVATIONS OF SELLER

1. Seller hereby expressly reserves unto Seller and unto Seller's successors and assigns the following rights with respect to the gas reserves committed by Seller to Buyer, together with sufficient gas produced from such gas reserves to satisfy such rights:

(a) To operate Seller's oil and gas producing properties free from any control by Buyer in such manner as Seller, in Seller's sole discretion, may deem advisable, including without limitation the right, but never the obligation, to drill new wells, to repair and rework old wells,

renew or extend, in whole or in part, any oil and gas lease dedicated to Buyer, and to abandon any well or surrender any such oil and gas lease, in whole or in part, when no longer deemed by Seller to be capable of producing gas in paying quantities under normal methods of operation. Seller shall not be liable for or by reason of any title failure, subject, however, to Seller's warranty of title covering gas delivered and paid for under this Agreement.

(b) Seller or others permitted by Seller shall have the right to process, or to have processed for it, by conventional separation, compression, absorption or other means gas produced from the oil and gas leases covered by this Agreement prior to delivery hereunder and to remove any constituent other than methane, and shall also have the right to remove such methane as is necessarily removed from the gas in the process of removing other constituents together with sufficient gas for fuel for such processing; Provided, further, that Seller shall not by such processing reduce the total heating value per cubic foot below one thousand (1,000) BTU's and provided that thereby the gas will not be rendered incapable of meeting any of the quality specifications hereof. Any liquids or other constituents removed prior to the delivery of gas to Buyer shall be the sole property of Seller.

(c) To use gas produced from the oil and gas leases for developing and operating Seller's oil and gas leases committed hereto in the field in which the gas is produced for the operation of Seller's pipelines, water stations, camps and other miscellaneous uses incident to the operation of such leases, and to fulfill obligations to Seller's Lessors therein.

(d) To use gas produced from the oil and gas leases in any particular field covered hereby for cycling, repressuring or pressure maintenance for such leases covered hereunder; provided, however, if as a result of such use Seller is thereby rendered unable to deliver to Buyer the then applicable Daily Contract Quantity hereunder, the term of this Agreement shall be extended beyond its primary term until Buyer has thereafter purchased from Seller the total quantity of gas which would have been sold and delivered hereunder during the primary term hereof at a rate of withdrawal in

accordance with Paragraph 1 of Article III hereof in the absence of such uses of gas as reserved by Seller in this Subsection (d).

(e) To pool, combine, and unitize any of Seller's oil and gas leases with other properties of Seller and of others in the same field, and to alter such pooling, combination or units, in which event this Agreement will cover Seller's allocated interest in unitized production insofar as such interest is attributable to the oil and gas leases committed hereunder. Seller shall give notice in writing to Buyer of any change contemplated by this subparagraph as is deemed material to this Agreement, and Exhibit "A" hereof shall be considered as having been amended accordingly.

2. Seller shall not be required to retain or keep in good standing by payment of delay rentals or otherwise oil and gas leases covered hereunder which in its judgment have been condemned by development, and Seller may abandon any well or surrender any oil and gas lease when it so desires.

3. Seller agrees not to sell to any other party or parties any gas produced from the committed reserves during the term hereof without the written consent of Buyer.

4. Any assignment or sublease by Seller of any oil and gas lease or any gas rights hereunder committed hereto shall be made expressly subject to the provisions of this Agreement to the extent that such oil and gas lease or gas rights are committed hereunder.

III. QUANTITY OF GAS

1. (a) Subject to the provisions of this Agreement, Seller agrees to sell and deliver to Buyer and Buyer agrees to take and pay

for, or pay for if available and not taken, the Daily Contract Quantity hereinafter provided for, averaged over each year of the term of this Agreement. Except when increased or decreased pursuant to the provisions of Subparagraphs (b) and (c) of this Paragraph 1 of Article III, the Daily Contract Quantity shall be a quantity equal to one thousand (1,000) MCF for each ten million (10,000,000) MCF of gas contained in Seller's Gas Reserve as same shall be from time to time mutually agreed upon by Buyer and Seller, as provided in Paragraphs 4 and 5 of Article I of this Agreement. The Daily Contract Quantity thus initially determined is hereinafter referred to as the "Original Daily Contract Quantity."

(b) If at any time during the term hereof the quantity of gas in Seller's Gas Reserve on the last previous anniversary of the date of initial delivery of gas under this Agreement, as shown by the estimate or determination thereof then in effect in accordance with the provisions of Paragraph 5 of Article I hereof, shall exceed or shall be less than a quantity equal to ten million (10,000,000) MCF of gas for each one thousand (1,000) MCF of the Daily Contract Quantity of gas then in effect under the provisions of this Paragraph 1 of Article III, then the Daily Contract Quantity of gas shall be increased or decreased, as the case may be, to a quantity of gas equal to one thousand (1,000) MCF for each ten million (10,000,000) MCF of gas so estimated or determined to be contained in Seller's

Gas Reserve on such anniversary date of this Agreement; provided that

(i) If Seller's Delivery Capacity (unless Reduced by force majeure as hereinafter defined) is then less than one hundred fifty per cent (150%) of the Daily Contract Quantity of gas thus determined, such Daily Contract Quantity of gas shall be reduced to a quantity equivalent to two-thirds (2/3rds) of Seller's Delivery Capacity, and

(ii) the Daily Contract Quantity shall never, without the mutual consent of the parties hereto, exceed two hundred per cent (200%) of the Original Daily Contract Quantity.

(c) If at any time Seller's Delivery Capacity shall be less than one hundred fifty per cent (150%) of the Daily Contract Quantity of gas then in effect hereunder (and such condition shall not be the result of cause force majeure as hereinafter defined), then at the option of Buyer the Daily Contract Quantity of gas then in effect hereunder shall be reduced in proportion to the reduction in Seller's Delivery Capacity below a quantity equal to one hundred fifty per cent (150%) of such Daily Contract Quantity of gas; and thereafter such reduced Daily Contract Quantity of gas shall be in effect unless and until further reduced or increased in accordance with the provisions of this Paragraph 1 of Article III.

2. Seller's Delivery Capacity shall be determined at least twice each year by actual measurements and calculations and shall

be estimated or calculated for each month in the months in which no actual tests were made, using the result of the last actual test as the basis of the estimation.

3. Seller recognizes that due to operating conditions, varying market demands and the difficulty of apportioning receipts of gas from various sources, Buyer may not be able to take gas from Seller during any definite period at exactly constant rates. Buyer shall, however, to the best of its ability maintain as nearly a constant rate of takings of the quantities provided for in Paragraph 1 of this Article III as practicable and shall balance deficient takings from Seller under this Agreement by an excess of takings from Seller hereunder as soon as practicable after such variations shall have occurred and shall have been ascertained, and Buyer may balance excess takings from Seller hereunder by curtailed takings from Seller hereunder. Nothing herein contained shall prevent Buyer from purchasing from Seller hereunder at any time and from time to time quantities of gas greater than the Daily Contract Quantity then in effect hereunder; provided that Seller shall not be obligated to deliver in any day a quantity of gas in excess of one hundred fifty per cent (150%) of such Daily Contract Quantity then in effect hereunder.

4. In the event Buyer is required by the provisions of this Agreement to pay Seller for a quantity of gas which Buyer shall not have actually taken during any year of the term hereof, then Buyer may make up for such deficient takings during the next succeeding year or years of the term hereof by applying against such deficiency the gas taken during such succeeding year or years in excess of the average daily quantity of gas Buyer is obligated to take or pay for during such year. Buyer shall not be required to pay Seller for gas applied in any year against a deficiency which shall have arisen during the previous year and for which payment shall already have been made, provided that Buyer shall pay Seller any differential in price between that upon which payments were made and that applicable at the time of taking the gas.

5. Buyer agrees that if at any time or times during the term of this Agreement the Daily Contract Quantity provided for in Paragraph 1 of Article III hereof shall be sufficient to enable Seller to protect Seller's oil and gas leases covered by this Agreement from drainage by other operators producing gas from the same common reservoir or reservoirs, then during the period of time such condition exists the Daily Contract Quantity shall be increased by such additional

quantity of gas as is necessary to enable Seller to prevent such drainage; provided, however, that in no event shall such Daily Contract Quantity be increased to a quantity in excess of the allowable rate of production for the wells covered by this Agreement as established by the regulatory board or agency having jurisdiction, and provided further that this shall not be construed as obligating Buyer to protect Seller against any drainage occurring prior to the initial delivery of gas hereunder.

6. It is understood and agreed that nothing in this Agreement shall be construed to require Seller to sell and deliver to Buyer or to require Buyer to purchase and receive from Seller or pay Seller for a quantity of gas in excess of the total quantity of gas per day which the wells on the oil and gas leaseholds and/or lands covered by this Agreement are capable of producing into Buyer's line, when produced at their respective rates of flow under the applicable rules, regulations and orders of regulatory bodies having jurisdiction and in accordance with good engineering practices.

IV. POINT OF DELIVERY

1. The point of delivery of the gas to be delivered by Seller to Buyer hereunder shall be at the inlet of Buyer's facilities at or near each of Seller's wells covered by this Agreement.

2. As between the parties hereto, Seller shall be in control and possession of the gas deliverable hereunder and responsible for any injury or damage caused thereby until the same shall have been delivered to Buyer, after which delivery Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

V. PRESSURE

1. The gas to be delivered hereunder shall be delivered by Seller at the point of delivery specified in Article IV hereof at such pressure as may be requested by Buyer, but not in excess of eight hundred fifty (850) pounds per square inch gauge, so long as Seller's wells are capable of delivering gas at such requested pressure.

Neither Seller nor Buyer shall be obligated to install or operate compression facilities in order to deliver or receive gas hereunder, but either Seller or Buyer may do so at its option.

2. Seller shall make reports to Buyer, as often as may be necessary in practice, of the pressure at which the gas is being delivered hereunder and the rate of such deliveries. Seller shall have agents or employees available at all times to receive from Buyer's dispatchers advices and requests for changes in the rates of delivery of gas hereunder as required by Buyer from time to time.

VI. MEASURING STATIONS

1. Buyer shall install, maintain and operate, at Buyer's own expense, at or near the point of delivery, measuring facilities by which the volume of gas delivered hereunder shall be measured. Seller, in so far as Seller's leasehold rights enable it to do so, will furnish Buyer sites for its measuring facilities. Orifice meters shall be installed, maintained and operated and volumes computed in accordance with Gas Measurement Committee Report No. 3, including the Appendix thereto, dated April, 1955, of the American Gas Association. Seller shall have access to such metering equipment at reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Buyer.

2. Seller may install, maintain and operate, at its own expense, such pressure regulators and check measuring equipment as it shall desire and Seller, to the extent that Seller has the right to do so, hereby grants to Buyer the right to install, maintain and operate Buyer's measuring equipment in the area of Seller's check measuring station or stations, provided that such equipment shall be so installed as not to interfere with the operation of Seller's check measuring equipment. Buyer shall have access to such check measuring equipment at reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by Seller.

3. Each party shall have the right to be present at the time of any installing, reading, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting done in connection with the other's measuring equipment used in measuring deliveries hereunder. The records from such measuring equipment shall remain the property of their owner, but upon request each will submit to the other its records and charts, together with calculations therefrom, for inspection and verification, subject to return within ten (10) days after receipt thereof.

4. In the event a meter is out of service, or registering inaccurately, the volume of gas delivered hereunder shall be estimated:

(a) By using the registration of any check meter or meters if installed and accurately registering, or in the absence of (a);

(b) By correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or, in the absence of both (a) and (b), then;

(c) By estimating the quantity of delivery by deliveries during periods under similar conditions when the meter was registering accurately.

5. At least once each month Buyer shall verify the accuracy of Buyer's measuring equipment and Seller shall verify the accuracy of its check measuring equipment. If either party shall notify the other that it desires a special test of any measuring equipment, the parties shall cooperate to secure a prompt verification of the accuracy of such equipment. If either party at any time observes a variation between the delivery meter and the check meter, it will promptly notify the

other party thereof and both parties will then cooperate to secure an immediate verification of the accuracy of such equipment. Each party shall give to the other notice of the time of all tests of meters reasonably in advance of the holding of such tests in order that the other party may conveniently have its representative present.

6. If, upon test, any measuring equipment, including recording calorimeter, is found to be in error not more than two per cent (2%), previous records of such equipment shall be considered accurate in computing deliveries hereunder but such equipment shall be adjusted at once to record accurately. If, upon test, any measuring equipment shall be found to be inaccurate by an amount exceeding two per cent (2%), at a recording corresponding to the average hourly rate of flow for the period since the last preceding test, then any previous recordings of such equipment shall be corrected to zero error for any period which is known definitely or agreed upon, but in case the period is not known definitely or agreed upon, such correction shall be for a period extending over one-half ($1/2$) of the time elapsed since the date of last test, not exceeding a correction period of sixteen (16) days.

7. Each party shall preserve for a period of at least five (5) years all test data, charts and other similar records.

VIII. MEASUREMENTS

1. The sales unit of the gas deliverable hereunder shall be one (1) MCF of gas.

2. The volume of the gas delivered hereunder shall be determined as follows:

(a) The unit of volume for the purpose of measurement shall be one (1) cubic foot of gas at a base temperature of sixty degrees (60°) Fahrenheit and at a base pressure of fourteen and sixty-five hundredths (14.65) pounds per square inch absolute with correction for deviation from Boyle's Law. Computation of volumes, including the deviation from Boyle's Law, shall be made in accordance with applicable law.

(b) The average absolute atmospheric pressure shall be assumed to be thirteen and one tenth (13.1) pounds to the square inch, irrespective of actual elevation or location of the point of delivery above sea level or variations in such atmospheric pressure from time to time.

(c) The temperature of the gas passing the meters shall be determined by the continuous use of a recording thermometer so installed that it may properly record the temperature of the gas flowing through the meters. The arithmetical average of the temperature recorded each twenty-four (24) hour day shall be used in computing gas volumes for that date.

(d) The specific gravity of the gas delivered hereunder shall be determined by spot test method made with an Edwards type of gas balance, or by such other method as shall be agreed upon between the parties. The specific gravity of the gas delivered hereunder shall be determined once monthly, or as much oftener as is found necessary in practice. The regular monthly test shall determine the specific gravity to be used in computation for the measurement of natural gas delivered, until the end of such month or until changed by special test; the special test to be applicable from the day made through remaining days in such month.

VIII. QUALITY OF GAS

1. Seller agrees that:

(a) The gas delivered hereunder shall have a total heating value of not less than one thousand (1,000) British thermal units per cubic foot. In the event that the total heating value of the gas tendered for delivery hereunder falls below one thousand (1,000) British thermal units per cubic foot, Buyer shall have the option (i) to refuse to accept said gas so long as said heating value remains below one thousand (1,000) British thermal units per cubic foot, or (ii) to continue to accept delivery of said gas, in which case a reduction shall be made in the total amount which Buyer would otherwise pay for gas delivered hereunder during such month if the total heating value were one thousand (1,000) British thermal units or above. The amount to be deducted shall be determined by multiplying said amount so otherwise payable by a fraction, the numerator of which is the deficiency in total heating value per cubic foot below one thousand (1,000) British thermal units and the denominator of which is one thousand (1,000). Such deduction shall be reflected on the bill rendered for such month and the net amount is the total amount to be paid by Buyer for that month.

(b) The total heating value of the gas in British thermal units per cubic foot shall be determined by Seller at intervals of not more than ninety (90) days by means of some approved method of general use in the gas industry. Buyer shall have the right to determine, at such time or times as it may desire, the total heating value of the gas in British thermal units per cubic foot by means of some approved method of general use in the gas industry. Each party shall conduct at its expense the test or tests made by it. Each party shall give to the other notice of the time of all tests for determining the British thermal unit content of the gas to be conducted by such party reasonably in advance of making the test in order that the other party may conveniently have its representative present. Should there be any material variance between tests by Buyer and by Seller, a joint test will be run and will be controlling, effective from the first day of the calendar month preceding such joint test. The British thermal unit content per cubic foot shall be determined for a cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and at an absolute pressure equivalent to thirty inches (30") of mercury at thirty-two degrees (32°) Fahrenheit.

2. Seller agrees that the gas delivered hereunder:

(a) Shall be practically free of water, hydrocarbons in the liquid phase, impurities and other objectionable substances, and Seller agrees to use every reasonable effort to keep the gas entirely free from such liquids and objectionable substances through utilization of drips and conventional mechanical separators installed by Seller adjacent to the wellhead and upstream from the delivery point.

(b) Shall be commercially free from hydrogen sulphide and shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet of gas as determined by quantitative test after the presence of hydrogen sulphide has been indicated by qualitative test, which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water to be exposed to the gas for one and one-half (1-1/2) minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five (5) cubic feet per hour, the gas from the jet not impinging upon the test paper, and which qualitative test shall be deemed to be satisfactory, if, after this exposure, the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas.

(c) Shall not contain more than twenty (20) grains of total sulphur per one hundred (100) cubic feet of gas.

(d) Shall not contain in excess of:

- (i) Three per cent (3%) by volume of carbon dioxide;
- (ii) One per cent (1%) by volume of oxygen; or
- (iii) Two-tenths (0.2) gallons per MCF of gas, of those certain liquefiable hydrocarbons commonly referred to as natural gasoline, as determined by absorption methods as prescribed from time to time by the Natural Gasoline Association of America.

3. Except as otherwise specifically provided to the contrary in this Article VIII, all measurements of gas required in determining quality specifications in this Article VIII shall be at a temperature of sixty degrees (60°) Fahrenheit and at an absolute pressure of fourteen and seventy-three hundredths (14.73) pounds per square inch. In addition to meeting the above specifications, the gas delivered hereunder shall be commercially free from dust, gums, gum forming constituents, or other liquid or solid matter which might become separated from the gas in the course of transportation through pipelines.

IX. PRICE

1. Subject to the provisions of Paragraph 2 below, the price to be paid by Buyer to Seller for gas delivered to Buyer hereunder shall be as follows:

16.0¢ per MCF from the date of initial delivery of gas hereunder to September 1, 1963;

21.8¢ per MCF from September 1, 1963, to September 1, 1969;

27.2¢ per MCF from September 1, 1969, and thereafter.

2. Any sales, transactions, occupations, service, production, severance, gathering, transmission, export and excise tax, assessment or fee levied, assessed or fixed by the United States or any State or

other governmental authority and taxes of a similar nature or equivalent in effect (not including income, excess profits, capital stock, franchise or general property taxes) in addition to or greater than those, if any, being levied, assessed or fixed on the date hereof, in respect of or applicable to the gas to be delivered by Seller to Buyer hereunder and which Seller may be liable for during any month either directly or indirectly through any obligation to reimburse others, are hereinafter collectively referred to as an "additional tax". It is expressly understood and agreed between the parties that there shall be added to the prices provided for in this Article IX, so long as the additional tax shall be in effect, an amount per MCF sufficient to reimburse Seller for seven-eighths (7/8ths) of such additional tax. In the event all or any part of such liability of Seller is not determined or not determinable by the end of any month, then such additional amount per MCF required in respect of such liability not determined or determinable shall be set forth for all such months in the billing for any month in which such amount or amounts are determined.

X. BILLING

1. Buyer shall render to Seller, on or before the tenth (10th) day of each month, a statement showing the volume of gas delivered hereunder by Seller, or for which payment is due hereunder, during the preceding month. Buyer agrees to make payment to Seller on or before the

twenty-fifth (25th) day of each calendar month for all gas delivered or for which payment is due hereunder.

2. Each party shall have the right at reasonable hours to examine the books, records and charts of the other party to the extent necessary to verify the accuracy of any statement, charge or computation made pursuant to the provisions of any article hereof. If any such examination reveals any inaccuracy in any billing theretofore made, the necessary adjustment in such billing and payments shall be promptly made; provided that no adjustment for any billing or payment shall be made after the lapse of one (1) year from the rendition thereof.

3. If after commencement of deliveries hereunder Buyer shall fail in any year of the term of this Agreement to take the quantity of gas Buyer is obligated to take under the provisions of Article III of this Agreement, then Buyer shall, within ninety (90) days after the end of such year, send a statement to Seller showing the amount due Seller by reason of such deficient takings and Buyer shall make payment to Seller within fifteen (15) days after delivery of such statement, in the manner set forth in Paragraph 1 of this Article X, at the weighted average price per MCF in effect hereunder during the year in which such deficiency arose, computed on the volumes delivered during the year and at the price applicable to such volumes at the time of delivery thereof. In computing the amount due Seller for any deficiency in takings by Buyer occurring during any year, the following

Quantities shall be deducted from such deficiency:

(a) The total of the quantities of gas which Buyer requests (up to a daily maximum of one hundred fifty per cent (150%) of the Daily Contract Quantity) and which Seller fails to deliver on any day or days during such year.

(b) The total of the quantities of gas which Buyer is unable to take on any day or days during such year by reason of force majeure as defined in Article XI hereof.

(c) The total of any deficiency in Seller's allowable for the wells covered hereby below the Daily Contract Quantity on any day or days during such year. This Subparagraph (c) shall not become effective unless the Buyer has nominated for the period in question the contract quantity or a greater amount.

XI. FORCE MAJEURE

L. In the event of either party hereto being rendered unable, wholly or in part, by force majeure to carry out its obligations under this Agreement, other than to make payments due hereunder, it is agreed that on such party's giving notice and full particulars of such force majeure in writing or by telegraph to the other party as soon as possible after the occurrence of the cause relied on, then the obligations of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused but for no longer period, and such cause shall as far as possible be remedied with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades,

insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, arrests and restraints of governments and people, civil disturbances, explosions, breakage or accidents to machinery or lines of pipe, the necessity for making repairs to or alterations of machinery or lines of pipe, freezing of wells or lines of pipe, partial or entire failure of wells or sources of supply of gas, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome; such term shall likewise include (a) in those instances where either party hereto is required to obtain servitudes, right of way grants, permits or licenses to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such servitudes, right of way grants, permits or licenses, and (b) in those instances where either party hereto is required to furnish materials and supplies for the purpose of constructing or maintaining facilities or is required to secure permits or permissions from any governmental agency to enable such party to fulfill its obligations hereunder, the inability of such party to acquire, or the delays on the part of such party in acquiring, at reasonable cost and after the exercise of reasonable diligence, such materials and supplies, permits and permissions. It is understood and

agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirements that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts by acceding to the demands of opposing party when such course is inadvisable in the discretion of the party having the difficulty.

XII. DEFAULT

It is covenanted and agreed that if either party hereto shall fail to perform any of the covenants or obligations imposed upon it under and by virtue of this Agreement, then in such event the other party hereto may, at its option, terminate this Agreement by proceeding as follows: The party not in default shall cause a written notice to be served on the party in default stating specifically the cause for terminating this Agreement and declaring it to be the intention of the party giving the notice to terminate the same; whereupon, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating the Agreement, and if within said period of thirty (30) days the party in default does so remedy or remove said cause or causes and fully indemnify the party not in default for any and all consequences of such breach, then such notice shall be withdrawn and this Agreement shall continue in full force and effect. In case the party

in default does not so remedy or remove the cause or causes or does not indemnify the party giving the notice for any and all consequences of such breach, within said period of thirty (30) days, then, at the option of the party giving the notice, this Agreement shall become null and void from and after the expiration of said period. Any cancellation of this Agreement pursuant to the provisions of this Article XII shall be without prejudice to the right of Seller to collect any amounts then due Seller for natural gas delivered prior to the time of cancellation and shall be without prejudice to the right of Buyer to receive any gas for which it has paid but has not received, although entitled thereto, prior to the time of cancellation, and without waiver of any remedy to which the party not in default may be entitled for violations of this Agreement.

XIII. TERM

This Agreement shall be effectife from the date hereof and shall continue and remain in full force and effect for a primary term of twenty (20) years (subject to being extended pursuant to the provisions of Article II, 1 (d) hereof), from the date upon which Seller commences the delivery of gas to Buyer hereunder, and shall continue in force and effect thereafter for successive periods of one (1) year each unless or until terminated either by Seller or by Buyer upon twelve (12) months' prior written notice to the other party hereto specifying a termination date at the end of such primary term, or of any yearly period there after.

XIV. WARRANTY OF TITLE

Seller hereby warrants the title to all gas delivered by Seller to Buyer hereunder, the right to sell the same and that it is free from all liens and adverse claims, and agrees, if notified thereof by Buyer, to indemnify Buyer against all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of any adverse legal claims of any and all persons to or against said gas. Seller agrees to pay or cause to be paid all taxes and assessments levied on the gas prior to its delivery to Buyer, and to pay or cause to be paid to the parties entitled thereto all royalties, overriding royalties or like charges against said gas or the value thereof. In the event any adverse claim of any character whatsoever is asserted in respect to any of said gas, Buyer may retain the purchase price thereof up to the amount of such claim without interest until such claim has been finally determined, as security for the performance of Seller's obligations with respect to such claim under this Article XIV, or until Seller shall have furnished bond to Buyer, in an amount and with sureties satisfactory to Buyer, conditioned for the protection of Buyer with respect to such claim.

XV. REGULATORY BODIES

This Agreement is subject to all present and future valid orders, rules, and regulations of any regulatory body having jurisdiction.

XVI. ARBITRATION

Any dispute arising between Seller and Buyer out of this Agreement shall be determined by a board of three (3) arbitrators to be selected for each such controversy so arising as follows: Either Seller or Buyer may, at the time such board of arbitration is desired, notify the other of the name of an arbitrator, and such other party shall, within ten (10) days thereafter, select an arbitrator and notify the party desiring arbitration of the name of such arbitrator. If such other party shall fail to name a second arbitrator within ten (10) days, then the party who first served the notice may, on reasonable notice to the other party, apply to the person who is then Senior Judge of the United States District Court for the Federal Judicial District in which such field is located for the appointment of such second arbitrator for and on behalf of the other party, and in such case the arbitrator appointed by the person who is such Judge shall act as if named by the other party. The two (2) arbitrators chosen as above provided for shall, within ten (10) days after the appointment of the second arbitrator, choose the third arbitrator, and in the event of their failure so to do within said ten (10) day period, either of the parties hereto may in like manner, on reasonable notice to the other party, apply to the person who is such Judge for the appointment of a third arbitrator and in such case the arbitrator appointed by the person who is such Judge shall act as the third arbitrator. The board so constituted shall fix a reasonable time

and place for the hearing, at which time each of the parties hereto may submit such evidence as it may see fit. Such board shall determine the matters submitted to it pursuant to the provisions of this Agreement. The action of a majority of the members of such Board shall govern and their decision in writing shall be final and binding on the parties hereto. Each party shall pay the expense of the arbitrator selected by or for it and all other costs of the arbitration shall be equally divided between the parties hereto.

XVII. ADDRESSES

Until Buyer is otherwise notified in writing by Seller, the address of Seller is and shall remain as follows:

Yates Petroleum Corporation
309 Carper Building
Artesia, New Mexico,

and unless Seller is otherwise notified in writing by Buyer, the address of Buyer is and shall remain:

Transwestern Pipeline Company
P. O. Box 1502
Houston 1, Texas.

All notices required to be given in writing hereunder shall be given to the respective parties at such address or such other addresses as the parties respectively shall designate by written notice, and such notice, required to be given in writing, shall not be deemed to have been given until actual receipt thereof by Buyer or Seller at the address herein provided.

XVIII. MISCELLANEOUS

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

2. This Agreement shall be binding upon and inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto and shall constitute a real right and covenant running with the lands and leasehold estates covered hereby, and shall be binding upon any purchaser of Buyer's transmission system and upon any purchaser of the properties of Seller which are subject to this Agreement. It is agreed, however, that nothing contained in this paragraph shall in any way prevent either party hereto from pledging or mortgaging its rights hereunder for security of its indebtedness.

3. It is agreed that this Agreement may be ratified and adopted by any owner of an interest in any lands or leases subject hereto or any lands or leases with which any lands or leases subject hereto may be pooled or unitized, by execution and delivery to Buyer of a special instrument in writing, ratifying and adopting this Agreement insofar as said owner's interest in any such land, lease, or leases is concerned, whereupon such owner shall become a party Seller to this Agreement with like force and effect and to the same extent as though such owner had executed this Agreement at the time of its execution and delivery, and all of the terms and provisions of this Agreement shall thereupon become

binding upon Buyer and any such other owner. Seller's Gas Reserve and the Daily Contract Quantity, as variously calculated and mentioned herein, contemplate the execution or the ratification and adoption of this Agreement by all parties owning working interests in the lands and/or leases described in Exhibit "A" attached hereto, and, in the event of the failure of all such parties to execute or ratify and adopt this Agreement, Seller's Gas Reserve and such Daily Contract Quantity shall be proportionately reduced to reflect such failure.

4. In the event there are two or more parties Seller to this Agreement, each such party Seller agrees that all parties Seller will appoint one of their number to serve as their representative hereunder for giving and receiving notices and requests, making and witnessing tests, delivering the quantities of gas deliverable, and receiving payments therefor, allocating, prorating and distributing such payments among the various parties Seller, and for doing and receiving all things provided for concerning Seller in this Agreement. Buyer may act, and shall be fully protected in acting, in reliance upon any and all acts and things done or performed by, or agreements with respect to all matters dealt with herein made by such representative in behalf of the parties Seller as fully and effectively as though each had done, performed, made or executed the same. The parties Seller may change their representative and designate one of their number as the new representative from time to time by delivery of written notice of change and designation to Buyer. It is understood and agreed that each party

Seller executing or ratifying this Agreement is selling its gas severally, and not jointly with other Sellers, to Buyer, that the parties Seller are not acting as partners, joint adventurers or otherwise jointly in this transaction and that nothing herein contained or provided for shall operate to, or be construed as creating any such relationship.

IN WITNESS THEREOF, the parties hereto have executed this Agreement in three (3) originals on the day and year first above written.

ATTEST:

/s/ Loraine Stratton
Asst. Secretary

TRANSWESTERN PIPELINE COMPANY

By /s/ Mills Cox
President
BUYER

ATTEST:

/s/ Hugh W. Parry
Secretary

YATES PETROLEUM CORPORATION

By /s/ S. P. Yates
President
SELLER

THE STATE OF TEXAS)
)
COUNTY OF HARRIS)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared MILLS COX, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said TRANSWESTERN PIPELINE COMPANY, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 20th day
of December, 1960.

/s/ Shirley Taber
Notary Public in and for Harris
County, Texas

THE STATE OF NEW MEXICO)
)
COUNTY OF EDDY)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared S. P. Yates, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the act of the said YATES PETROLEUM CORPORATION, a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 6th day
of December, 1960.

/s/ Jack W. McCaw
Notary Public in and for Eddy County,
New Mexico.

EXHIBIT "A"

To be attached to Gas Purchase Agreement, dated the 6th day of December, 1960, between YATES PETROLEUM CORPORATION, referred to as "Seller", and TRANSWESTERN PIPELINE COMPANY, referred to as "Buyer", showing oil and gas leases covered by said Agreement and described as follows:

<u>Lease Name</u>	<u>Description</u>	Gross <u>Acres</u>	YATES <u>Interest</u>	Net <u>Acres</u>	Recordation <u>Date</u>
Yates Petroleum Corporation Len Mayer No. 1	N $\frac{1}{4}$ Sec. 28, T. 18 S., R. 26 E.	320	.307459363	98.39	
Yates Petroleum Corporation Bob Gushwa No. 1	S $\frac{1}{4}$ Sec. 21, T. 18 S., R. 26 E.	320	.46286535	148.12	