

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CRESTWOOD APPALACHIA  
PIPELINE, LLC,

Plaintiff,

v.

MOUNTAINEER KEYSTONE, LLC,

Defendant.

and

MOUNTAINEER KEYSTONE, LLC,

Counterclaim Plaintiff,

v.

CRESTWOOD APPALACHIA  
PIPELINE, LLC,

Counterclaim Defendant.

Case No. 17-C-383

Judge Bloom

**ANSWER, AFFIRMATIVE DEFENSES, AND  
COUNTERCLAIM OF DEFENDANT ARSENAL RESOURCES LLC**

Defendant Arsenal Resources LLC ("Arsenal"), formerly known as Mountaineer Keystone LLC, answers the complaint filed by plaintiff Crestwood Appalachia Pipeline, LLC ("Crestwood") on or about March 20, 2017, as follows:

**I. RESPONSE TO "PARTIES, JURISDICTION, AND VENUE"**

1. Arsenal lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 1 and, therefore, denies same.

2. Arsenal admits the allegations of Paragraph 2, and avers that the entity formerly known as "Mountaineer Keystone LLC" has been renamed Arsenal Resources LLC.

3. Arsenal lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 and, therefore, denies same.

4. Arsenal admits that the Gas Gathering and Services Agreement effective November 14, 2012 (the "GGSA") provides that the "[p]arties irrevocably agree that any legal action, suit or proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts of the State of West Virginia or of the United States of America located in Charleston, Kanawha County, West Virginia," and that Arsenal has conducted certain business activity in West Virginia. The remaining allegations of Paragraph 4 contain legal conclusions to which no response is required; to the extent any response is required, Arsenal denies them.

## **II. RESPONSE TO "THE UNDERLYING FACTS"**

5. Arsenal admits that the parties entered a GGSA effective November 14, 2012, and that the parties subsequently entered a Memorandum of Understanding dated November 30, 2012 (the "MOU"), the terms of which Crestwood paraphrases: "[Arsenal] and [Crestwood] have entered into a [GGSA] dated November 14, 2012 whereby [Crestwood] has agreed to gather [Arsenal's] gas from locations in Barbour County, West Virginia and redeliver the gas to a point of interconnection with Dominion Transmission Company's Coronado Pipeline in Barbour County, West Virginia for a three (3) year term...." Arsenal denies the remaining allegations of Paragraph 5 to the extent that those allegations are inconsistent with the terms of the GGSA or MOU.

6. Arsenal admits the allegations of Paragraph 6.

7. Arsenal admits that the GGSA provided that Crestwood "shall at its own expense, commence (1) the design, construction and installation of a gathering pipeline to connect [Arsenal's] wells at the Receipt Point designated in Exhibit B to the agreed upon Delivery Point



designated in Exhibit B within the Dedication Area, (2) the design, construction and installation of dehydration facilities at the Receipt Point, and (3) the design, construction and installation of all meters and facilities necessary to measure the Gas at the Receipt Point and the Delivery Point. [Crestwood], at its own expense, shall maintain and operate the meters at the Receipt Point throughout the term of this Agreement.”

8. Arsenal admits that the GGSA provides for the payment of a gathering fee under certain circumstances. Arsenal denies the remaining allegations of Paragraph 8.

9. Arsenal admits the allegations of Paragraph 9.

10. Arsenal admits that the MOU refers to a “Memorandum of Understanding dated December 8, 2011 as amended on February 7, 2012[,] and June 14, 2012[,] ... for the construction of a pipeline” referred to as “the ‘Tygart Valley Pipeline’ or ‘TVP.’” Arsenal denies the remaining allegations of Paragraph 10 to the extent that those allegations are inconsistent with the terms of the MOU.

11. Arsenal admits that, pursuant to the MOU, “[a]t any time prior to the expiration of the GGSA, either [p]arty [could have] request[ed] any of the following: (a) [Arsenal] and Crestwood proceed with Definitive Agreements, as defined in the [December 8, 2011 Memorandum of Understanding described in the paragraph immediately above], for the construction of the TVP or a suitable alternative project; (b) [t]he GGSA be replaced by a long-term Gas Gathering Agreement ... covering 100% of [Arsenal]’s acreage in Barbour, Preston and Taylor Counties, West Virginia that would provide for the gathering of [Arsenal]’s gas production through the gathering pipelines and appurtenant facilities constructed and operated as part of the GGSA.” Arsenal denies the remaining allegations of Paragraph 11 to the extent that those allegations are inconsistent with the terms of the GGSA or MOU.

12. Arsenal admits that, pursuant to the MOU, if the parties did not enter the agreements described in the paragraph immediately above, “[Crestwood] shall have the right, but not the obligation, to sell the gas gathering pipelines and appurtenant facilities constructed and operated under the terms of the GGSA to [Arsenal] at [Crestwood]’s unreimbursed original capital investment.” Arsenal denies the remaining allegations of Paragraph 12 to the extent that those allegations are inconsistent with the terms of the GGSA or MOU.

13. Arsenal admits that gas began flowing on or about April 28, 2013. Arsenal denies the remaining allegations of Paragraph 13 including the reference to the “In-Service Date,” which is a defined term in the GGSA that means “the date that [Crestwood] has provided written notice to [Arsenal] that the Gathering System is ready to accept gas.”

14. Arsenal admits that the GGSA provides that “[a]t the end of thirty[-]six (36) Months from the In-Service Date, [Crestwood would] provide [Arsenal] a report showing (a) the expenses to build the Gathering System, (b) the revenues received from [Arsenal] from the volumes and rates as calculated in Section 10.1, and (c) the operating expenses [Crestwood] has incurred to operate the Gathering System.” Arsenal denies the remaining allegations of Paragraph 14.

15. Arsenal admits that the GGSA provides that Arsenal “agrees to pay [Crestwood] a cash true-up, if necessary, to guarantee [Crestwood] a minimum throughput volume for [Crestwood] to earn a twelve percent (12%) cash on cash return on its actual construction capital and operating expenses for the Gathering System, such payment to be made by [Arsenal] within thirty (30) days after [Arsenal’s] receipt of an invoice therefor. An example of the calculations to provide [Crestwood] with a twelve percent (12%) cash on cash return is shown in Exhibit C ... which is attached to [the GGSA].” Arsenal denies Crestwood’s characterization of Arsenal’s



“obligat[ion]” under the terms of the GGSA and denies any remaining allegations of Paragraph 15.

16. Arsenal admits that the parties did not enter into a Long Term Gas Gathering Agreement or “Definitive Agreements” as that term is used in the Memorandum of Understanding between the parties dated December 8, 2011.

17. Arsenal admits that the MOU provides that Crestwood “shall notify [Arsenal] of its election not less than sixty (60) days prior to the end of the term of the GGSA.” Arsenal denies the allegations concerning the rights, duties, and obligations owed under the MOU and denies the remaining allegations of Paragraph 17 as well.

18. Arsenal admits that it received a letter dated October 22, 2014, from Crestwood stating that the “cash true-up owed by [Arsenal] is currently estimated at \$850,000. Crestwood is willing to forego the cash true-up in exchange for [Arsenal]’s reimbursing Crestwood for all costs incurred (less revenue received) and taking assignment of all interests Crestwood holds in the system within 30 days of the date of this letter.” Arsenal lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the costs allegedly incurred or the basis upon which Crestwood requested payment from Arsenal, and, therefore, denies those allegations and any remaining allegations of Paragraph 18 as well.

19. Arsenal admits that it received a letter from Crestwood dated January 29, 2016, purporting to calculate a cash true-up and describing an intent to sell “the Mackey Wolfe gathering facilities.” Arsenal lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the costs allegedly incurred or the basis upon which Crestwood requested payment from Arsenal, and, therefore, denies those allegations and any remaining allegations of Paragraph 19 as well.

20. Arsenal admits that Crestwood is not entitled to reimbursement for unreasonable and excessive costs, and, therefore, Crestwood is not entitled to reimbursement for its original capital investment and that Arsenal has shared its views with Crestwood. Arsenal denies any remaining allegations of Paragraph 20.

21. Arsenal admits that it received an invoice from Crestwood dated January 30, 2017, claiming to be issued “[p]ursuant to Section 10.2 of the November 14, 2012 [GGSA],” for the purported cash true-up in the amount of \$1,454,767.00. Arsenal lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding the costs allegedly incurred or the basis upon which Crestwood requested payment from Arsenal, and, therefore, denies same. Arsenal denies any remaining allegations of Paragraph 21.

22. Arsenal admits that it has not made payment to Crestwood for any true-up under the GGSA. Arsenal denies that any payment was due by Arsenal to Crestwood and denies any remaining allegations of Paragraph 22 as well.

23. Arsenal admits that it has not made payment to Crestwood for any true-up under the GGSA and that it disputes the amounts that Crestwood seeks to have reimbursed. Arsenal denies Crestwood’s characterization of the “obligat[ions]” imposed by the GGSA and denies the remaining allegations of Paragraph 23 as well.

24. Arsenal admits that Crestwood is not entitled to reimbursement for unreasonable and excessive costs, and, therefore, to the extent that such costs are included in the “cash true up payment,” Crestwood is not entitled to reimbursement for same and that Arsenal has shared its views with Crestwood. Arsenal denies that the “cash true-up payment” that Crestwood seeks is “contemplated by the GGSA” and denies the remaining allegations of Paragraph 24 as well.



25. Arsenal admits that it received a letter from Crestwood dated March 10, 2017, which said, among other things: "Pursuant to Article 19 of the GGSA, [Crestwood] wishes to initiate dispute resolution with regard to the GGSA payment dispute and the MOU repurchase dispute identified above. Pursuant to Article 19.1, our respective management representatives shall meet in an attempt to resolve the dispute. I am willing to have a phone call rather than an in person meeting to expedite the resolution of this dispute and as senior executives we can agree that the set of pre-litigation dispute resolution terms of Article 19 are satisfied. Please advise if you agree and when we can have the call." Arsenal denies that this letter "again notified [Arsenal] of the aforementioned issues," Crestwood's characterization of the letter, and any remaining allegations of Paragraph 25 as well.

26. Arsenal admits that the parties did not have an in-person meeting within five days of receipt of the letter referenced in the paragraph immediately above. Arsenal denies Crestwood's characterization of its "obligation," that it "refused to meet," that it failed to comply with Section 19.1 of the GGSA (or any other provision), and the remaining allegations of Paragraph 26 as well.

27. Arsenal denies the allegations of Paragraph 27.

### **III. RESPONSE TO "COUNT I – BREACH OF CONTRACT"**

28. In response to Paragraph 28, Arsenal incorporates its responses to Paragraphs 1 through 27.

29. Arsenal admits the allegations of Paragraph 29.

30. Arsenal denies the allegations of Paragraph 30.

31. Arsenal denies the allegations of Paragraph 31.

32. Arsenal denies the allegations of Paragraph 32.

**Response to Request for Relief:** Arsenal denies that Crestwood is entitled to Judgment for Breach of Contract against Arsenal and denies that Crestwood is entitled to any of the relief specified in the “WHEREFORE” paragraph following Paragraph 32.

**IV. RESPONSE TO “COUNT II – SPECIFIC PERFORMANCE”**

33. In response to Paragraph 33, Arsenal incorporates its responses to Paragraphs 1 through 32.

34. Arsenal admits the allegations of Paragraph 34.

35. Arsenal denies the allegations of Paragraph 35.

36. Arsenal admits that it has refused to purchase the gas gathering system at Crestwood’s unreimbursed original capital investment but denies that it has any “obligation[]” under the MOU or otherwise to do so and denies the remaining allegations of Paragraph 36 as well.

37. Arsenal denies the allegations of Paragraph 37.

**Response to Request for Relief:** Arsenal denies that Crestwood is entitled to Judgment for Specific Performance against Arsenal and denies that Crestwood is entitled to any of the relief specified in the “WHEREFORE” paragraph following Paragraph 37.

**V. RESPONSE TO “COUNT III – EXPRESS INDEMNITY”**

38. In response to Paragraph 38, Arsenal incorporates its responses to Paragraphs 1 through 37.

39. Arsenal admits that paragraph 14.2 provides that Arsenal “shall indemnify, defend and hold harmless the Gatherer Indemnified Parties from and against all Losses relating to or arising out of (i) the operations of [Arsenal], and (ii) the handling or delivery of Gas while such Gas is in custody and control of [Arsenal].” Arsenal denies Crestwood’s characterization of what that provision “requires” and denies the remaining allegations of Paragraph 39 as well.



40. Arsenal denies that it has failed to comply with the “obligations” of the GGSA and MOU and is without knowledge or information to form a belief as to the truth of the remaining allegations of Paragraph 40 and, therefore, denies same.

41. Arsenal denies the allegations of Paragraph 41.

**Response to Request for Relief:** Arsenal denies that Crestwood is entitled to Judgment for Express Indemnity against Arsenal and denies that Crestwood is entitled to any of the relief specified in the “WHEREFORE” paragraph following Paragraph 41.

#### **VI. RESPONSE TO “COUNT IV – DECLARATORY JUDGMENT”**

42. In response to Paragraph 42, Arsenal incorporates its responses to Paragraphs 1 through 41.

43. Arsenal admits that Crestwood claims to be entitled to reimbursement. Arsenal denies the remaining allegations of Paragraph 43.

44. Arsenal denies the allegations of Paragraph 44.

45. Arsenal denies the allegations of Paragraph 45.

46. Arsenal denies the allegations of Paragraph 46.

47. Arsenal denies the allegations of Paragraph 47.

**Response to Request for Relief:** Arsenal denies that Crestwood is entitled to Declaratory Judgment against Arsenal and denies that Crestwood is entitled to any of the relief specified in the “WHEREFORE” paragraph following Paragraph 47.

#### **VII. DEFENDANT ARSENAL RESOURCES LLC’S AFFIRMATIVE DEFENSES**

Arsenal hereby pleads the following affirmative defenses as well as defenses which relate to elements of claims that Crestwood must prove in order to be entitled to recover:

**FIRST DEFENSE**  
**(Failure To State A Claim)**

The complaint fails to set forth facts sufficient to state a claim upon which relief may be granted against Arsenal and further fails to state facts sufficient to entitle Crestwood to the relief sought, or to any other relief whatsoever from Arsenal.

**SECOND DEFENSE**  
**(Failure of Substantial Performance by Crestwood)**

Crestwood failed to substantially perform under the contract by incurring unnecessary, unreasonable, and excessive costs due at least in part to its failure to effectively manage the design and construction of the project.

**THIRD DEFENSE**  
**(Failure To Mitigate Damages)**

Crestwood has failed to mitigate its damages.

**FOURTH DEFENSE**  
**(Contributory / Comparative Fault)**

Any alleged damages sustained by Crestwood were, at least in part, caused by Crestwood's own actions or Crestwood's own negligence which equaled or exceeded any alleged negligence or wrongdoing by Arsenal.

**FIFTH DEFENSE**  
**(Estoppel)**

Any damages which Crestwood may have suffered were the direct and proximate result of the conduct of Crestwood. Therefore, Crestwood is estopped and barred from recovery of any damages.



**SIXTH DEFENSE**  
**(Superseding Cause)**

Crestwood's damages are due, in full or in part, to Crestwood's failure to exercise appropriate control or oversight over third parties, to control costs, to avoid unnecessary work, and to properly plan, design, or schedule for work contemplated by the GGSA and MOU.

**SEVENTH DEFENSE**  
**(Supervening Frustration or Impracticability)**

Crestwood did not provide any meaningful support for its financial expenditures and revenues per Section 10.2 of the GGSA by which to allow Arsenal to evaluate the accuracy or validity of any sums allegedly owed to Crestwood, sums which greatly exceeded project budgets.

**EIGHTH DEFENSE**  
**(Offset and/or Deduction)**

Any damages claimed by Crestwood must be offset or reduced by the value of those damages incurred due to Crestwood's failure to exercise appropriate oversight over third parties, to control costs, to avoid unnecessary work, or to properly plan, design, or schedule for work, including sums which Arsenal incurred to account for deficiencies in Crestwood's performance.

**NINTH DEFENSE**  
**(Lack of Harm)**

Crestwood has not suffered any losses or damages resulting from Arsenal's "operations" or Arsenal's "handling or delivery of Gas while such Gas is in the custody or control" of Arsenal, and thus cannot recover for Express Indemnity.

**TENTH DEFENSE**  
**(Laches)**

Crestwood's claims are unreasonably delayed to the material prejudice of Arsenal.

**ELEVENTH DEFENSE**  
**(Unclean Hands)**

Crestwood's failure to properly manage activities conducted pursuant to the GGSA and MOU constitutes grossly inequitable or unconscionable conduct for which no relief can be granted.

**TWELFTH DEFENSE**  
**(Limitation of Liability)**

Crestwood is contractually precluded from recovering any special, indirect, consequential, punitive, exemplary, remote, or speculative damages from Arsenal.

**THIRTEENTH DEFENSE**  
**(Inappropriate Costs)**

Crestwood cannot recover costs incurred due to Crestwood's own malfeasance, wastefulness, negligence, extravagance, or failure to perform in a workmanlike manner tied to Crestwood's failure to exercise appropriate control or oversight over third parties, to control costs, to avoid unnecessary work, or to properly plan, design, or schedule work.

**FOURTEENTH DEFENSE**  
**(Unreasonable or Excessive Costs)**

Crestwood cannot recover costs which it incurred which were unreasonable due to Crestwood's own malfeasance, failure to perform in a workmanlike manner, or failure to exercise appropriate oversight or control over third parties, to control costs, to avoid unnecessary work, or to properly plan, design, or schedule work.

**FIFTEENTH DEFENSE**  
**(Res Judicata)**

To the extent Crestwood seeks any recovery related to the Tygart Valley Pipeline, such recovery is precluded.



**SIXTEENTH DEFENSE**  
**(Right To Assert Additional Defenses)**

Arsenal reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

**WHEREFORE**, Arsenal prays as follows:

- (1) that Crestwood takes nothing by virtue of the complaint herein and that this action be dismissed in its entirety;
- (2) for costs of suit and attorneys' fees herein incurred; and
- (3) for such other and further relief as the Court may deem just and proper.

**COUNTERCLAIM OF ARSENAL RESOURCES LLC AGAINST  
CRESTWOOD APPALACHIA PIPELINE, LLC**

Counterclaim plaintiff Arsenal Resources LLC ("Arsenal") submits the following counterclaim against counterclaim defendant Crestwood Appalachia Pipeline, LLC ("Crestwood") and in support thereof states as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Arsenal, formerly known as Mountaineer Keystone LLC, is a West Virginia limited liability company maintaining offices in Wexford, Pennsylvania. Arsenal is authorized to conduct business in West Virginia.
2. Crestwood purports to be a Texas limited liability company authorized to conduct business in West Virginia.
3. Jurisdiction and venue is proper in Kanawha County, West Virginia because Crestwood conducts business in West Virginia and the Gas Gathering and Services Agreement effective November 14, 2012 (the "GGSA") provides that any legal action "arising out of or

relating to [the GGSA] shall be brought exclusively in the courts of the State of West Virginia or of the United States of America located in Charleston, Kanawha County, West Virginia.”

### **FACTUAL ALLEGATIONS**

*A. The contracts.*

4. Representatives of Arsenal and Crestwood executed the GGSA effective on November 14, 2012. A copy of the GGSA is attached hereto as Exhibit A.

5. Effective November 30, 2012, representatives of Crestwood and Arsenal executed a Memorandum of Understanding (the “MOU”), pursuant to which the parties recited that they had entered the GGSA and that Crestwood “agreed to gather [Arsenal]’s gas from locations in Barbour County, West Virginia and redeliver the gas to a point of interconnection with Dominion Transmission Company’s Coronado Pipeline in Barbour County, West Virginia for a three year term as specified therein.” A copy of the MOU is attached hereto as Exhibit B.

6. The MOU provided that “prior to the expiration of the GGSA, either [p]arty may request any of the following: (a) [Arsenal] and Crestwood proceed with Definitive Agreements, as defined in the [December 8, 2011 Memorandum of Understanding], for the construction of the [Tygart Valley Pipeline] or a suitable alternative project; (b) [t]he GGSA be replaced by a long-term Gas Gathering Agreement ... covering 100% of [Arsenal]’s acreage in Barbour, Preston and Taylor Counties, West Virginia that would provide for the gathering of [Arsenal]’s gas production through the gathering pipelines and appurtenant facilities constructed and operated as part of the GGSA.”

7. The parties agreed to extend the term of the GGSA until December 31, 2016.

8. Crestwood and Arsenal did not execute a long-term Gas Gathering Agreement or other Definitive Agreements as specified in the MOU.



9. The GGSA provides that “[a]t the end of thirty six (36) [m]onths from the In-Service Date, [Crestwood] will provide [Arsenal] a report showing (a) the expenses to build the Gathering System, (b) the revenues received from [Arsenal] from the volumes and rates as calculated in [an earlier section of the GGSA], and (c) the operating expenses [Crestwood] has incurred to operate the Gathering System.”

*B. The parties' performance under the contracts.*

10. Crestwood was required to design, construct, install, and operate a gathering system and appurtenant facilities to gather gas from Arsenal's locations in Barbour County, West Virginia and redeliver it to a designated point of interconnection.

11. Crestwood completed construction and Arsenal began flowing gas through the gathering system in April 2013.

12. Crestwood's design, construction, installation, and operation of the gathering system suffered from mismanagement, lack of planning, and the expenditure of unreasonable, unnecessary, extravagant, or wasteful costs.

13. Examples of Crestwood's mismanagement include but are not limited to:

- a. exceeding the September 2012 authorization for expenditure by more than 40%;
- b. allowing contractors and/or subcontractors to exceed their authorized scope of work and/or budget;
- c. failing to properly monitor the progress or manage the time allegedly spent by contractors and/or subcontractors, including land agent days;
- d. attempting to charge Arsenal for inappropriate costs; and

- e. failing to timely or properly respond to issues that arose during operations in order to maximize production.

14. As a result, Crestwood incurred unreasonable and excessive costs.

**COUNT I – BREACH OF CONTRACT**

15. Arsenal hereby incorporates Paragraphs 1 through 14 of the Counterclaim as if fully set forth herein.

16. The GGSA constitutes a valid and binding contract between Arsenal and Crestwood.

17. The MOU constitutes a valid and binding contract between Arsenal and Crestwood.

18. Crestwood's proper management of the construction and operation of the pipeline and appurtenant facilities was essential to the purpose of the GGSA and MOU.

19. Crestwood breached the GGSA and MOU by, *inter alia*:

- a. failing to perform its design, installation, construction, and operation obligations in a workmanlike manner; and
- b. failing to comply with the implied duty of good faith and fair dealing.

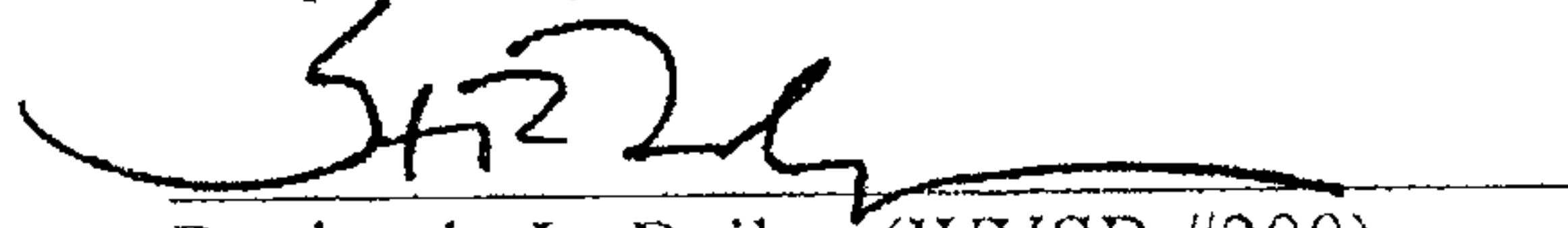
20. As a result, Arsenal suffered damages for the costs that were unreasonably incurred and lost profits or revenues or unnecessary expenses incurred in connection with operating the gathering system.

**WHEREFORE**, Arsenal Resources LLC respectfully requests that judgment be granted in its favor and against Crestwood Appalachia Pipeline LLC in an amount to be determined at trial, plus pre-judgment interest, and for its costs, fees, attorney's fees, and any other relief deemed appropriate.



Dated: May 1, 2017

Respectfully submitted,



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*Counsel for Defendant/Counterclaim Plaintiff*

*Arsenal Resources LLC formerly known as*

*Mountaineer Keystone LLC*

# Exhibit A



**GAS GATHERING AND SERVICES AGREEMENT**

**MOUNTAINEER KEYSTONE LLC**

**AND**

**CRESTWOOD APPALACHIA PIPELINE LLC**

**Tygart Valley Gathering System**

**Barbour, West Virginia**

**Effective Date: November 14, 2012**

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## **GAS GATHERING AND SERVICES AGREEMENT**

THIS GAS GATHERING AND SERVICES AGREEMENT (the "Agreement") is made and entered into as of November 14, 2012 (the "Effective Date"), by and between CRESTWOOD APPALACHIA PIPELINE LLC, a Texas limited liability company ("Gatherer"), and MOUNTAINEER KEYSTONE, LLC, a West Virginia limited liability company ("Producer"). Gatherer and Producer are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

### **WITNESSETH, THAT:**

WHEREAS, Producer owns or controls Gas production from various wells on the lands within the Dedication Area and desires to have Gatherer gather such Gas for redelivery to Producer or Producer's Transporter; and

WHEREAS, Gatherer desires to gather such Gas for Producer in the Gathering System, and deliver such Gas to Producer or Producer's Transporter, subject to the terms and conditions herein.

NOW, THEREFORE, for good and valuable consideration, the adequacy, receipt and sufficiency of which are hereby set forth and acknowledged, and for all of the representations, warranties and mutual covenants set forth herein, Gatherer and Producer agree as follows:

### **ARTICLE I DEFINITIONS; CONSTRUCTION; INTERPRETATION**

1.1 Definitions. For the purpose of this Agreement, the following terms and expressions used herein are defined as follows:

- a. "Affiliate" means any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with another Person. For purposes of this definition, the term "control" (including its derivatives and similar terms) means possessing the power to direct or cause the direction of the management and policies of a Person, whether through ownership, by contract, or otherwise. Any Person shall be deemed to be an Affiliate of any specified Person or entity if such Person or entity owns 50% or more of the voting securities of the specified Person, if the specified Person owns 50% or more of the voting securities of such Person, or if 50% or more of the voting securities of the specified Person and such Person are under common control.
- b. "Btu" shall mean one British thermal unit, which is the quantity of heat required to raise one pound avoirdupois of pure water from 58.5 degrees Fahrenheit to 59.5 degrees Fahrenheit at a constant pressure of 14.65 psia.



- l. "Electrical Power" shall mean the electricity consumed for Gas compression, conditioning, and treating in connection with the operation of the Gathering System, which shall be allocated to Producer in accordance with ARTICLE X and Invoiced to Producer in accordance with ARTICLE XI.
- m. "Electronic Measurement" means that form of measurement consisting of flow computers or computerized Remote Terminal Units (RTUs), electronic transducers, and associated power, data communications, and other electronic equipment to accomplish the measurement of gas and transfer of data without the use of charts or other paper recordings.
- n. "Fuel" shall mean the total MMBtus of (i) Gas received from Producer at Receipt Point(s) and consumed for Gas compression, conditioning and treating, and (ii) Gas that is consumed or lost through piping, equipment, operations, measurement losses or inaccuracies, or variations in temperature or pressure, or is vented, flared or lost in connection with the operation of the Gathering System, which amounts shall be determined in accordance with ARTICLE X, and retained by Gatherer on a Monthly basis at no cost.
- o. "Gas" means any mixture of gaseous hydrocarbons, or of hydrocarbons and other gases, in a gaseous state, consisting primarily of methane, which is owned or controlled by Producer or its successors or assigns and delivered by Producer to Gatherer into the Gathering System at the Receipt Points, including casinghead gas produced with crude oil, gas from gas wells produced in association with crude oil (associated gas), gas from condensate wells (non-associated gas), Components, and shall include any inerts or impurities contained therein.
- p. "Gatherer Indemnified Parties" shall mean Gatherer, its successors and permitted assigns, and their respective Affiliates, subsidiaries, shareholders, members, partners, officers, directors, employees, and agents.
- q. "Gathering System" shall mean, but shall in no way be limited to, the gas gathering pipelines, fuel gas pipelines, dehydration facilities, compression facilities, junctions, heaters, meters, separators, electric power lines, communications cables, roads, and other related facilities and equipment, including all applicable easements, located in Barbour, County West Virginia, that are necessary and used to gather and transport Gas from the Receipt Points to the Delivery Points, and shall include any expansion of the Gathering System as provided in Section 4.3.
- r. "In-Service Date" means the date that Gatherer has provided written notice to Producer that the Gathering System is ready to accept gas. Gatherer shall provide written notice to Producer 30 Days in advance of the In-Service Date, and shall update the same promptly if the In-Service Date changes.



- s. "Interest" means any right, title, or interest in lands, wells, or leases and the right to produce oil and/or gas therefrom whether arising from fee ownership, working interest ownership, mineral ownership, leasehold ownership, farm-out or arising from any pooling, unitization or communitization of any of the foregoing rights.
- t. "Law" means any federal, state, or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, statute, order, rule, regulation, judgment, decree, injunction, ruling or other similar requirement enacted, adopted, promulgated or applied by a governmental authority, court, agency, commission, or official having competent authority and jurisdiction applicable to the Parties, the Gathering System, or the facilities of Producer.
- u. "Loss" means any actual loss, cost, expense, liability, damage, demand, suit, sanction, cause of action of every kind and character (including damage to property, personal injury or death), claim, judgment, lien, encumbrance, fine or penalty, including reasonable attorneys' fees, investigation expenses, and court costs.
- v. "MAOP" means, with respect to the Gathering System, the maximum allowable operating pressure of the Gathering System, as adjusted from time to time by Gatherer. The MAOP as of the In-Service Date is expected to be 1480 psig.
- w. "Mcf" shall mean 1,000 standard cubic feet of gas.
- x. "MMBtu" shall mean 1,000,000 Btus.
- y. "MMcf" shall mean 1,000,000 standard cubic feet of gas.
- z. "MMcfd" shall mean 1,000,000 standard cubic feet of gas per day.
- aa. "Month," "billing month," "period," and "accounting period" shall mean the period beginning at 10:00 AM Eastern Clock Time on the first day of the calendar month and ending at 10:00 AM Eastern Clock Time on the first day of the next succeeding calendar month.
- bb. "Nomination" shall mean a nomination of Dedicated Gas to the Gathering System for the provision of Services hereunder which nomination meets the requirements of Section 6.2.
- cc. "Person" means any individual, firm, corporation, trust, partnership, limited liability company, association, joint venture, other business enterprise, or governmental authority.
- dd. "psia" shall mean pounds per square inch absolute.

- ee. "psig" shall mean pounds per square inch gauge.
- ff. "Receipt Point" shall mean each of the inlet flanges where Gas is delivered into the Gathering System, all as listed on Exhibit B which may be amended from time to time to reflect the addition or deletion of a Receipt Point.
- gg. "SCF" or "standard cubic foot of gas" shall mean the volume of Gas necessary to fill a cubic foot of space when the Gas is at a pressure of 14.73 psia and a temperature of 60 degrees Fahrenheit.
- hh. "Services" shall mean the gathering and dehydration of Dedicated Gas under this Agreement.
- ii. "Taxes" shall mean all gross production, severance, conservation, ad valorem and similar or other taxes measured by or based upon production, together with all taxes on the right or privilege of ownership of the Dedicated Gas, or upon the gathering, transportation, handling, transmission, compression, processing, treating, conditioning, distribution, sale, use, receipt, delivery or redelivery of the Dedicated Gas, including all of the foregoing now existing or in the future imposed or promulgated.
- jj. "Term" shall have the meaning set forth in ARTICLE XVI of this Agreement.
- kk. "Transporter" shall mean the receiving pipeline(s) downstream of the Gathering System into which the Gas gathered hereunder is to be delivered at the Delivery Point(s).

1.2 Rules of Construction and Interpretation. In construing this Agreement, the following principles shall be followed:

- a. no consideration shall be given to the fact or presumption that one Party had a greater or lesser hand in drafting this Agreement;
- b. the word "includes" and its syntactical variants mean "includes, but is not limited to" and corresponding syntactical variant expressions;
- c. the plural shall be deemed to include the singular and vice versa, as applicable; and
- d. reference to any Person includes such Person's permitted successors and assigns (or in relation to a Party, such Party's successors and permitted assigns), and reference to any Law, document, instrument or agreement means such Law, document, instrument or agreement as modified, supplemented, renewed or replaced from time to time.



## ARTICLE II COMMITMENT OF GAS

2.1 Dedication. Producer for itself and its successors and/or assigns, hereby dedicates for gathering under this Agreement and shall deliver, or cause to be delivered, to Gatherer, at the Receipt Points, (i) all Gas produced from all well(s) now or hereafter located within the Dedication Area or on lands pooled or unitized therewith which is attributable to Interests now owned or hereafter acquired by Producer and/or its Affiliates and their respective successors and assigns and (ii) with respect to such wells in which Producer and/or any of its Affiliates is the operator, Gas produced from such wells which is attributable to the Interests in such wells owned by other working interest owners and royalty owners which is not taken "in-kind" by such working interest owners and royalty owners and for which Producer and/or its Affiliates has the right or obligation to deliver such Gas, but only for the period that Producer and/or its Affiliates has such right or obligation (the "Dedication," and the Gas that is the subject of the Dedication being referred to as "Dedicated Gas").

2.2 No Prior Dedication. Producer represents and warrants to Gatherer that as of the Effective Date and the In-Service Date, none of the Interests within the Dedication Area owned by Producer and/or its Affiliates are subject to, or will be subject to, a prior dedication or commitment for gathering Services.

2.3 Covenant Running With the Land. So long as this Agreement is in effect, this Agreement shall (i) be a covenant running with the Interests now owned or hereafter acquired by Producer and/or its Affiliates within the Dedication Area and (ii) be binding on and enforceable by Gatherer and its successors and assigns against Producer and/or its successors and assigns.

2.4 Memorandum of Agreement. Upon the request of either Party, the Parties agree to execute, acknowledge, deliver and record a "short form" Memorandum of this Agreement suitable for recording in the counties in which the Dedication Area is located.

2.5 Transfer by Producer. Any transfer by Producer of its right, title, or interest in the Dedicated Gas to a third party, whether by farmout, contract, or otherwise, shall be made specifically subject to this Agreement. Producer will notify any person to whom Producer transfers all or a portion of its right, title, or interest in the Dedicated Gas that such Gas is dedicated pursuant to the terms of this Agreement to be gathered and processed in the Facilities, and Producer shall obtain such third party's agreement to continue delivering such Gas to Gatherer during the term of and in accordance with this Agreement. Producer will notify Gatherer of any such transfer within 10 days of the effective date. Failure of Producer to so notify Gatherer will not impair Gatherer's rights under this Agreement.



ARTICLE III  
SERVICES; CONVEYANCE; RESERVATIONS OF PRODUCER

3.1 Tender of Gas and Gathering Services. Producer shall tender all Dedicated Gas to the Receipt Points for the provision of Services hereunder. Gatherer shall, subject to the available capacity of the Facilities, receive and accept Dedicated Gas delivered by Producer at the Receipt Points. Producer acknowledges that upon receipt of Dedicated Gas into the Gathering System such Gas may be commingled with other gas in the Gathering System, and that as a result, MMBtus of Gas delivered by Gatherer for Producer's account at the Delivery Point(s) may not be the same Gas as the Gas received at the Receipt Point(s).

3.2 Conveyance of Rights to Gatherer. Producer hereby grants to Gatherer the right to consume up to three percent (3%) of the total quantity of Dedicated Gas, stated in MMBtus, delivered to the Gathering System each Month by Producer, as Fuel in connection with the provision of the Services hereunder.

3.3 Producer Reservations. Producer reserves the right to withhold from delivery such Gas as may be required for cycling, recycling, repressuring, pressure maintenance, and gas lift operations with respect to the Dedicated Gas; provided, however, that the Gas used in such operations but not consumed shall be subject to the terms of this Agreement and delivered to Gatherer following the cessation of such operations.

ARTICLE IV  
RECEIPT POINT(S), DELIVERY POINT(S),  
AND PRESSURE

4.1 Producer Facilities. Producer, at its own expense, shall construct, equip, maintain, and operate all facilities (including, but not limited to, all necessary taps on pipelines, separation, and/or compression equipment) necessary to deliver Dedicated Gas to Gatherer at the Receipt Point(s) at such pressure as is required and sufficient to enter the Gathering System. Producer shall install and maintain sufficient pressure regulating equipment upstream of the Receipt Points in order to keep the pressure of the Gas delivered to Gatherer from interfering with the accurate measurement of such Gas at such Receipt Points.

4.2 Gatherer Facilities. After the Effective Date, Gatherer, shall at its own expense, commence (1) the design, construction and installation of a gathering pipeline to connect Producer's wells at the Receipt Point designated in Exhibit B to the agreed upon Delivery Point designated in Exhibit B within the Dedication Area, (2) the design, construction and installation of dehydration facilities at the Receipt Point and (3) the design, construction and installation of all meters and facilities necessary to measure the Gas at the Receipt Point and the Delivery Point. Gatherer, at its own expense, shall maintain and operate the meters at the Receipt Point throughout the term of this Agreement.



4.3 Additional Facilities. Producer may request, in writing, that Gatherer expand facilities or add a new Receipt Point at the Harshberger pad and/or the Haudershelt pad, or provide additional services. Gatherer shall determine, in its sole discretion, whether it will construct the facilities necessary to provide such requested services. In the event Gatherer agrees to provide such services, then Gatherer shall have the right to re-determine the fees to be charged hereunder and/or to establish the fees for such additional services; provided however, for the design, construction and installation of a gathering pipeline to connect Producer's wells at the Harshberger pad and/or the Haudershelt pad to the Delivery Point specified in Exhibit B, and Gatherer providing gathering services on such gathering pipeline, the fees specified in Section 10.1 shall apply, along with the cash true-up obligations of Producer set forth in Section 10.2. To the extent Gatherer declines to construct facilities as part of this agreement, at Producer's option, Gatherer will construct and operate facilities at Producer's sole cost and expense. Producer shall install and operate or cause the installation and operation of all facilities necessary to deliver Dedicated Gas to Gatherer at the Receipt Points.

4.4 Drilling and Well Information. Producer agrees to work in good faith with Gatherer to keep Gatherer apprised on an on-going basis of Producer's and its Affiliates drilling plans and drilling and completion schedule within the Dedication Area. Producer agrees to provide Gatherer with forward-looking 18 month well and volume forecasts each month. In conjunction with the foregoing, the Parties shall determine the expected date when first Gas flows will occur for each well involving Gas committed to Gatherer. Producer shall also provide Gatherer with reasonable advance notice of scheduled well shut-ins.

## ARTICLE V REGULATION OF PRODUCTION

5.1 Producer to Regulate Production. It is understood and agreed by the Parties that in order for Gatherer to maintain maximum efficiency in the Gathering System, and in order to prevent flaring and/or bypassing of Gas, it will be necessary to maintain a uniform rate of flow of Gas to the Gathering System from all sources during each twenty-four (24) hour period. Therefore, Producer agrees that it will cooperate with Gatherer in regulating the flow rate of the Gas and in establishing a producing schedule to deliver on a best efforts basis the Gas at a uniform and continuous flow rate.

5.2 Transporter Requirements. The Parties acknowledge that the Gathering System is connected to the facilities of Transporter(s) and other third party pipelines and, as a result, Gatherer shall be, from time to time, subject to certain requirements imposed by those pipelines. Accordingly, Gatherer shall have the right under this Agreement to require Producer to comply with the same third party pipeline requirements with which Gatherer must comply. PRODUCER AGREES TO INDEMNIFY, DEFEND AND HOLD GATHERER INDEMNIFIED PARTIES HARMLESS FROM PRODUCER'S FAILURE TO COMPLY WITH TRANSPORTER'S OR SUCH THIRD PARTY PIPELINE REQUIREMENTS.



## ARTICLE VI QUANTITY

6.1 Operation of Facilities. Producer shall deliver 100% of the Dedicated Gas exclusively to Gatherer during the Term of this Agreement, and subject to the then-existing Gathering System physical capacity, operating constraints, and the terms of this Agreement, Gatherer shall endeavor to take that volume of Gas delivered by Producer at the Receipt Points. Gatherer shall regulate the flow of Gas in the Gathering System in the quantities and at the times required to prudently operate the same and/or to meet the fluctuating condition of Gatherer's and Producer's markets. Gatherer may, from time to time, find it necessary to shut off entirely or restrict the flow of Gas to the Gathering System; notwithstanding anything herein to the contrary, in such event, Gatherer shall not be liable to Producer for the resulting effect thereof. Gatherer shall provide Producer prior notice of any shut down due to routine maintenance and shall prudently work to minimize the amount of such downtime. Gatherer shall be entitled to rely on information (including statements and allocations) from the operator of any well or central delivery point delivering Gas into the Gathering System, in determining the quantities of Gas received, or to be received, hereunder from such well or central delivery point.

### 6.2 Nominations.

- a. Producer (or its agent) shall nominate to Gatherer in writing, not less than five (5) Business days prior to the first day of each Month during the Term of the Agreement the daily quantity of Gas (expressed in Mcfs and MMBtus) that Producer shall deliver to Gatherer at the Receipt Points for gathering during such Month.
- b. Producer (or its agent) shall nominate to Gatherer in writing, not less than five (5) Business days prior to the first day of each Month during the Term of the Agreement the daily quantity of Residue Gas (expressed in Mcfs and MMBtus) that Producer or Producer's nominee shall receive at the Delivery Points.
- c. Gatherer and Producer shall designate Gas schedulers who shall be continuously on call for nomination purposes, and shall notify each other in writing of such Gas schedulers and their telephone numbers.
- d. Producer's Gas schedulers shall notify Gatherer's Gas schedulers in advance of any anticipated increase or decrease in delivery rate below the daily nominated quantity. Producer's Gas schedulers must obtain the prior written approval from Gatherer's Gas schedulers for any delivery rate in excess of the daily quantity rate. Gatherer's Gas schedulers shall notify Producer's Gas schedulers, by email, of any anticipated inability to receive the Gas at a delivery rate less than (a) the daily nominated quantity rate; or (b) a previously authorized (by email) delivery rate in excess of the daily nominated quantity rate.



- e. Gatherer shall have the right to refuse receipt of volumes of Dedicated Gas from Producer to the extent they exceed Nominations for any cycle. In that regard, Gatherer may require that Producer cease or curtail deliveries of Dedicated Gas to match production with Nominations.

6.3 Imbalances. Producer shall use its best efforts to achieve, on a daily basis, an operational balance between deliveries of Gas at the Receipt Point(s) and MMBtus attributable to such Gas to be delivered at the Delivery Points. In the event that Gatherer enters into an operational balancing agreement with a third party pipeline, Producer hereby agrees to be bound by the terms set forth therein. Producer shall monitor and correct imbalances between Producer and its Transporters, and as between Producer and Gatherer, Producer shall be solely responsible for, and indemnify and hold the Gatherer Indemnified Parties harmless from any imbalances, penalties, cash-out payments, or other consequences of any failure to submit timely and proper nominations in accordance with the requirements herein or of Transporter(s), or the failure to deliver or receive quantities of Gas in accordance with Producer's nominations.

## ARTICLE VII QUALITY

7.1 Gas Specifications. Producer warrants that the Gas delivered at the Receipt Points will meet the following quality specifications, and Gatherer shall not be obligated to receive, gather and process (as the case may be) Gas delivered hereunder that is not merchantable or fails to meet (i) the quality specifications of Gather or any downstream pipeline(s) or (ii) the following specifications (collectively, the "Specifications"):

- a. The Gas must be commercial in quality and free from any foreign materials such as dirt, dust, iron particles, crude oil, dark condensate, and other impurities; and substances which may be harmful, hazardous, toxic or Injurious to the Gathering System or pipelines or which may interfere with the gathering, transmission, or commercial utilization of gas;
- b. The Gas shall contain no free water or hydrocarbons in liquid form;
- c. The Gas delivered hereunder shall not exceed a temperature of 120 degrees Fahrenheit at the Receipt Point(s);
- d. The Gas delivered hereunder shall not contain more than:
  - (i) one-fourth grain of hydrogen sulfide, or two grains of sulfur or sulfur compounds per one hundred (100) SCF;
  - (ii) two hundredths percent (0.02%) by volume of oxygen;
  - (iii) one and twenty-five hundredths percent (1.25%) by volume of carbon dioxide; or



- (iv) two percent by volume of nitrogen; or
  - (v) four percent by volume of a combined total of Inerts, including, but not limited to, carbon dioxide, oxygen, helium and nitrogen Components.
- e. No diluents such as carbon dioxide, air, or nitrogen shall be added to the Gas;
  - f. The Gas shall contain no carbon monoxide, halogens, or unsaturated hydrocarbons, and no more than 0.1 parts per million of hydrogen;
  - g. The Gas shall not have a cricondenthem hydrocarbon dewpoint of greater than twenty-five degrees Fahrenheit (25°F). The hydrocarbon dewpoint will be determined in accordance with approved methods in use in the natural gas industry; and
  - h. The Gas shall contain no less than 950 Btu per SCF.

In the event of any conflict as between a Transporter's specifications and those set out in this Section 7.1, the most stringent or restrictive specifications shall be applicable to the Gas proffered under this Agreement.

**7.2 Failure to Meet Specifications.** If any of the Gas delivered by Producer hereunder should fail to meet the Specifications, Gatherer may, in its sole discretion, elect to (i) accept such Gas, (ii) accept, but treat and/or condition such Gas prior to gathering at an additional cost, or (iii) refuse to accept such Gas. **ACCEPTANCE BY GATHERER OF GAS THAT DOES NOT CONFORM TO THE SPECIFICATIONS SHALL NOT CONSTITUTE A WAIVER OF THE SPECIFICATIONS WITH RESPECT TO SUCH GAS OR ANY CLAIM FOR DAMAGES DUE TO SUCH FAILURE TO CONFORM, UNLESS GATHERER HAS AGREED IN WRITING TO ACCEPT SUCH NON-CONFORMING GAS AND EXPRESSLY WAIVES ITS CLAIMS FOR DAMAGE RESULTING THEREFROM. ACCEPTANCE BY GATHERER OF GAS THAT DOES NOT CONFORM TO THE SPECIFICATIONS SHALL NOT CONSTITUTE A WAIVER OF THE SPECIFICATIONS WITH REGARD TO GAS DELIVERED UNDER THIS AGREEMENT IN THE FUTURE. PRODUCER AGREES TO INDEMNIFY, DEFEND AND HOLD GATHERER INDEMNIFIED PARTIES HARMLESS FROM PRODUCER'S FAILURE TO COMPLY WITH TRANSPORTER'S OR SUCH THIRD PARTY PIPELINE REQUIREMENTS.**

**7.3 Non-Conforming Gas.** If Gatherer elects to accept but treat and/or condition the non-conforming Gas prior to gathering, Gatherer shall advise the Producer of such election and associated fees. Producer shall then have a maximum of thirty (30) Days to advise Gatherer if it will treat and/or condition such non-conforming Gas. If Producer does not elect to treat and/or condition such non-conforming Gas or fails to make such election within the specified time period, then Gatherer shall have the right to (a) proceed with gathering such non-conforming Gas and Producer shall pay to Gatherer all costs associated with such actions or (b) cease to accept such non-conforming Gas.



7.4 Indemnification for Non-Conforming Gas. PRODUCER AGREES TO DEFEND, INDEMNIFY AND HOLD THE GATHERER INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ALL LOSSES ARISING OUT OF, RESULTING FROM OR CAUSED BY THE DELIVERY OF GAS TO THE RECEIPT POINTS THAT DOES NOT CONFORM TO THE SPECIFICATIONS, UNLESS GATHERER HAS AGREED IN WRITING TO ACCEPT SUCH NON-CONFORMING GAS AND EXPRESSLY WAIVES ITS CLAIMS FOR DAMAGE RESULTING THEREFROM AS PROVIDED IN SECTION 7.2 ABOVE.

7.5 Producer's Carbon Dioxide.

- a. Producer shall at all times retain title to all carbon dioxide removed from Gas tendered by Producer under this Agreement ("Producer's Carbon Dioxide"), whether removed by Producer or Gatherer. To the extent Gatherer removes Producer's Carbon Dioxide from such Gas and Producer has not made arrangements to utilize, market, or dispose of Producer's Carbon Dioxide, Gatherer shall dispose of Producer's Carbon Dioxide by venting. If (i) venting Producer's Carbon Dioxide is ever disallowed for any reason or is deemed to be uneconomic by Gatherer, or (ii) additional costs are required to vent, dispose of, or handle Producer's Carbon Dioxide due to new Laws, then Producer shall make alternate arrangements to utilize, market, and/or dispose of Producer's Carbon Dioxide at Producer's sole cost and expense and shall reimburse Gatherer for any costs incurred by Gatherer for delivering Producer's Carbon Dioxide. PRODUCER SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE GATHERER INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES ARISING FROM INJURY TO AND DEATH OF PERSONS, PROPERTY DAMAGE, OR PENALTIES FOR ENVIRONMENTAL DAMAGE, POLLUTION, AND CONTAMINATION, CAUSED OR RESULTING FROM PRODUCER'S CARBON DIOXIDE, INCLUDING, WITHOUT LIMITATION, THE UTILIZATION, MARKETING, OR DISPOSAL THEREOF.
- b. Notwithstanding anything contained in this Agreement to the contrary, in the event there is an enactment of, or change in, any Law after the Effective Date of this Agreement which, in Gatherer's sole determination, results in a governmental authority requiring Gatherer to hold or acquire emission allowances or their equivalent related to the carbon dioxide content or emissions or the greenhouse gas content or emissions attributable to Producer's Gas and/or the gathering or transportation of such Gas (collectively, "Producer's GHG Emissions"), then Producer will provide those allowances to Gatherer in a timely manner (or indemnify and hold harmless the Gatherer Indemnified Parties for any Losses arising out of Producer's failure to do so). If Producer fails to provide such emission allowances and Gatherer incurs an expense to acquire such allowances in the marketplace, or incurs any costs or expenses for disposal or treating of carbon dioxide, or otherwise, or if any other additional economic burden is placed on Gatherer in connection with or related to Producer's GHG Emissions, including but not limited to any tax, assessment, or other cost or expense (collectively, "Emissions Charges"), such Emissions Charges shall be fully the responsibility of Producer. Should Gatherer incur any such Emissions



Charges, Producer shall reimburse Gatherer for same within ten (10) Days of receipt of Gatherer's invoice.

## ARTICLE VIII TESTS

8.1 Testing. Producer and Gatherer hereby agree as follows:

- a. Gatherer shall procure or cause to be procured a sample of Gas at each Receipt Point and analyze the samples by chromatographic analysis to determine the Component content (mole percent), specific gravity, the Btu content thereof. These determinations shall be made utilizing the following standards: (i) Gas Processors Association *Obtaining Natural Gas Samples for Analysis by Gas*, Publication No. 2166 as amended or supplemented from time to time and (ii) Gas Processors Association *Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography*, Publication No. 2161 as amended or supplemented from time to time, or (iii) any other tests that are mutually agreed by Producer and Gatherer.
- b. Tests provided for in Subparagraph (a) of this Section 8.1 shall be made by Gatherer, at its sole cost, using its own equipment or by an independent testing service, at reasonable intervals, but not more often than once in each six Month period. Gatherer may test more frequently in its sole discretion. Such tests shall be made in accordance with approved engineering practices. Gatherer shall give Producer ten (10) Days' notice in advance of such test so that the latter may, at its election, be present in person or by its representative to observe adjustments, if any are made.

8.2 Physical Standards. Physical constants required for making calculations hereunder shall be taken from the Gas Processors Association *Table of Physical Properties for Hydrocarbons and Other Compounds of Interest to the Natural Gas Industry*, Constants Publication No. 2145 as amended or supplemented from time to time. Physical constants for the hexanes and heavier hydrocarbons portion of hydrocarbon mixtures shall be assumed to be the same as the physical constants for hexane.

## ARTICLE IX MEASUREMENT AND METER TESTING

9.1 Unit of Measurement. The unit of volume for measurement of Gas delivered hereunder shall be one Mcf at a base temperature of 60 degrees Fahrenheit and at an absolute pressure of 14.73 psia and saturated with water vapor. All fundamental constants, observations, records, and procedures involved in determining the quantity of Gas delivered hereunder shall be in accordance with the standards prescribed in Report Nos. 3 and 8 of the American Gas Association, as amended or supplemented from time to time, respectively. It is agreed that for the purposes of measurement and computations hereunder, (a) the atmospheric pressure shall be based on the



atmospheric pressure determined and used by Transporters at the Delivery Point(s) regardless of the atmospheric pressure at which the Gas is measured, (b) the Gas obeys the Ideal Gas Laws as to variations of volume with pressure and specific gravity, including the deviation from Boyle's law, and (c) all measurements and testing performed hereunder shall all be made by Gatherer in accordance with applicable rules, regulations, and orders. Gatherer may apply a uniform correction factor for water vapor if it deems necessary in its sole and absolute discretion.

9.2 Measurement Stations. Gatherer shall install, maintain, and operate, or cause to be maintained and operated, a measuring station located at each Receipt Point(s), and the Delivery Point(s). Said measuring station(s) shall be so equipped with orifice meters, recording gauges, or other types of meter or meters of standard make and design commonly acceptable in the industry, and of suitable size and design, as to accomplish the accurate measurement of Gas delivered hereunder.

- a. Where measurement is by orifice meter, all fundamental constants, observations, records, and procedures involved in the determination and/or verification of the quantity and other characteristics of the Gas delivered hereunder shall be in accordance with the standards prescribed in the latest edition of A.G.A. Report No. 3 (ANSI/API 2530) "Orifice Metering of Natural Gas" with any revisions, amendments or supplements as may be mutually acceptable to the parties to this Agreement.
- b. Where measurement is by ultrasonic meter, all fundamental constants, observations, records, and procedures involved in the determination and/or verification of the quantity and other characteristics of the Gas delivered hereunder shall be in accordance with the standards prescribed in the latest edition of A.G.A. Report No. 9 "Measurement of Gas by Multi Path Ultrasonic Meters" with any revisions, amendments or supplements as may be mutually acceptable to the parties to this Agreement.
- c. Gatherer shall have the right to utilize Electronic Measuring Equipment to record the Gas through the Delivery Point(s). The changing and integration of the charts (if utilized for measurement purposes hereunder) and calibrating and adjusting of meters shall be performed by Gatherer.

9.3 Check Meters. Producer may, at its option and expense, install check meters for checking Gatherer's metering equipment at each Receipt Point, and the same shall be so installed and operated as not to interfere with the operation of the Gathering System.

9.4 Temperature. The temperature of the Gas flowing through the meter shall be determined by the continuous use of a recording thermometer or device installed by Gatherer so that it will properly record the temperature of the Gas flowing through the meter.

9.5 Supercompressibility. The deviation of the Gas from Ideal Gas Laws shall be determined in accordance with the A.G.A. Par Research Project NX-19 Report "Manual



for the Determination of Supercompressibility Factors for Natural Gas", Reprinted 1976, if the composition of the Gas is such to render this procedure applicable.

9.6 Specific Gravity. The specific gravity of the Gas flowing through the meter shall be determined by methods commonly accepted in the industry. Specific gravities so determined will be used in calculating Gas deliveries until the next specific gravity test is made.

9.7 Inspection Rights. Each Party shall have the right to be present at the time of any installing, reading, sampling, 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 subject to return within thirty (30) Days after receipt thereof. Each Party, during each of the first three production months, and after that at least semi-annually, or more often if necessary, shall calibrate the meters and instruments installed by it or cause the same to be calibrated. Each Party shall give the other Party at least (10) Days' advance notice of such installing, reading, sampling, cleaning, changing, repairing, inspecting, testing, calibrating, or adjusting so that the other Party may, at its election, be present in person or by its representative to observe the process.

9.8 Measurement Corrections. If the metering equipment is found to be inaccurate by two percent (2%) or more, registration thereof and any payment based upon such registration shall be corrected at the rate of such inaccuracy for any period of inaccuracy which is definitely known or agreed upon, or if not known or agreed upon, then for a period extending back one-half of the time elapsed since the last day of the most recent calibration. Unless conclusively determined that either Gatherer's measurement equipment is inaccurate by two percent (2%) or more, Gatherer's measurement shall be deemed to be correct for all purposes hereunder, and no adjustment shall be made to the previous volumes. Following any test, any metering equipment found to be inaccurate to any degree shall be adjusted immediately to measure accurately. If for any reason any meter is out of service or out of repair so that the quantity of Gas delivered through such meter cannot be ascertained or computed from the readings thereof, the quantity of Gas so delivered during such period shall be estimated and agreed upon by the Parties hereto upon the basis of the best available data using the first of the following methods which is feasible:

- a. By using the registration of any check measuring equipment of Producer, if installed and registering accurately;
- b. By correcting the error if the percentage of error is ascertainable by calibration, test, or mathematical calculation; or
- c. By estimating the quantity of deliveries during preceding periods under similar conditions when the meter was registering accurately.



9.9 Meter Testing. If Producer shall notify Gatherer, or if Gatherer shall notify Producer, at any time that a special test of any Receipt Point meter is desired, the Parties shall cooperate to secure an immediate verification of the accuracy of such meter and joint observation of any adjustments. All tests of Gatherer's measuring equipment at any Receipt Point shall be made at Gatherer's expense, except that the Producer shall bear the expense of tests made at its request if the inaccuracy found is less than two percent (2%). Expense as used in this Section 9.9 shall be limited to actual costs of Gatherer as the result of testing and shall not include any costs incurred by Producer as the result of witnessing said testing.

9.10 Substitution of Measurement Equipment. The Parties hereto recognize and acknowledge that technological advances may occur over the term of this Agreement which may render certain measurement devices obsolete, or less accurate, or less efficient than that which may be available. In such event, Gatherer may, with Producer's approval, substitute or utilize such available measurement equipment in lieu of any measurement equipment described above in this ARTICLE IX.

9.11 Pulsation. If for any reason the Gas is delivered to Gatherer at a Receipt Point, with pulsations that affect the accuracy of the measurement, Producer shall be responsible for installing necessary pulsation dampeners, or other devices, to eliminate or reduce the pulsations to an acceptable level determined by Gatherer.

## ARTICLE X FEES AND ALLOCATION PROCEDURE

10.1 Gathering Fee. Gatherer shall charge, and Producer shall pay, a gas gathering fee of:

- a. thirty cents (\$0.30) per MMBtu for the first 12 months of service starting from the In-Service Date,
- b. thirty five cents (\$0.35) per MMBtu for the term starting from the first day of the 13th month from the In-Service Date for the next 12 months, and
- c. thirty seven and one half cents (\$0.375) per MMBtu for the term starting from the first day of the 25th month from the In-Service Date for the remainder of the Term defined in section 16.1.

The gas gathering fee shall be applied to all Gas received and measured hereunder at the Receipt Point(s) during each Accounting Month based on the daily quantity of Gas received and measured at the Receipt Point(s) into the Gathering System during such Accounting Month.

10.2 Return Guarantee. At the end of thirty six (36) Months from the In-Service Date, Gatherer will provide Producer a report showing (a) the expenses to build the Gathering System, (b) the revenues received from Producer from the volumes and rates as calculated in Section 10.1, and (c) the operating expenses Gatherer has incurred to operate the Gathering System. Producer agrees to pay Gatherer a cash true-up, if necessary, to guarantee Gatherer a minimum throughput volume for Gatherer to earn a twelve percent (12%) cash on cash return on its actual construction capital and



operating expenses for the Gathering System, such payment to be made by Producer within thirty (30) days after Producer's receipt of an invoice therefor. An example of the calculations to provide Gatherer with a twelve percent (12%) cash on cash return is shown in Exhibit C (Examples of True-up Calculations) which is attached to this Agreement.

10.3 CO<sub>2</sub> Treating. In the event the Gas delivered by Producer hereunder fails to meet the CO<sub>2</sub> requirements of this Agreement or of the pipelines receiving Gas from Gatherer at the Delivery Point(s), the parties may enter into a separate treating agreement containing mutually agreeable terms to bring the Gas delivered hereunder into compliance with such requirements.

10.4 Allocation Procedure. Gatherer shall use general industry care in transporting Producer's Gas from the Receipt Point(s) to the Delivery Point(s) for Producer's account; provided, however, the Parties understand and agree that certain volumetric gains or losses in the Gas will occur and shall be shared by and among Producer and other third parties whose gas is gathered and transported by Gatherer, in the proportion that the gas of each party who delivers gas into the Gathering System bears to the total gas received at the respective receipt point. In determining the quantity of Gas delivered by Producer at each Receipt Point hereunder during a Month, Gatherer shall allocate to Producer at each Receipt Point a quantity of gas equal to (i) the total quantities (expressed in MMBtus) reported for such Month by the Transporter at the Delivery Point(s) (the "Total Delivered Quantities") times a fraction, the numerator of which is the number of MMBtus of Gas delivered by Producer during such Month at said Receipt Point, and the denominator of which is the number of MMBtus of all gas delivered into the Gathering System from all receipt points, minus (ii) Producer's applicable Fuel. In making the determinations under this ARTICLE X, Gatherer may rely on, and shall be fully protected in relying on, any determination, report or statement received by Gatherer from any Transporter regarding the number of MMBtus delivered at the Delivery Point(s).

10.5 Fuel. The volume of Fuel, stated in MMBtus, that is utilized, consumed, or incurred in gathering of the Gas from each Receipt Point during a Month shall be determined by multiplying the total volume of gas used to operate the Gathering System and other related equipment by a fraction, the numerator of which is the Mcfs of Gas delivered at each Receipt Point and the denominator is the Mcfs of the gas of all parties delivering gas into the Gathering System.

10.6 Electrical Power. Producer's pro rata share of Electrical Power used in the operation of the Gathering System shall equal the product of the total dollar amount paid by Gatherer for such Electrical Power multiplied by a fraction, the numerator of which is the number of Producer's Mcfs of Gas delivered at each Receipt Point and the denominator is the Mcfs of the gas of all parties delivering gas into the Gathering System.

10.7 Additional Gatherer Facilities. If Gatherer installs or operates additional facilities downstream from Gatherer's Gathering System at Producer's request to provide resale



markets or to meet changing specifications of Gatherer's resale purchasers or Transporters as noted in Section 5.2, Gatherer may deduct the reasonable cost (including return on and of investment) of installation and operation of those added facilities.

## ARTICLE XI ACCOUNTING AND PAYMENTS

11.1 Invoicing. Gatherer shall invoice Producer by the twenty-fifth Day of each Month for all services provided by Gatherer during the preceding Month. Producer shall pay such invoice by wire transfer on or before ten (10) Days from the date of receipt of such statement. If Producer receives Gatherer's invoice after the 15<sup>th</sup> day of the Month, the due date for payment of the invoice shall be extended by the same number of Days that the invoice was received after the 15<sup>th</sup> day of the Month. If a default in payment continues after ten (10) days written notice from Gatherer to Producer, Gatherer may suspend receipt and delivery of Gas hereunder without prejudice to any other available remedies at law or equity.

11.2 Statements. Gatherer shall furnish to Producer on or before the twenty-fifth (25<sup>th</sup>) day of each Month a report or statement disclosing information necessary to enable Producer to make reasonable and accurate statistical and accounting entries upon its books concerning all phases of this Agreement related to the preceding Month, including an allocation statement setting out imbalances and the amount of any Taxes applicable to Gas or this Agreement that are actually paid by Gatherer.

11.3 Audit Rights. Either Party, on thirty (30) Days prior written notice, shall have the right at its expense, at reasonable times during normal business hours, to audit the books and records of the other Party to the extent necessary to verify the accuracy of any statement, allocation, measurement, computation, charge, or payment made under or pursuant to this Agreement. The scope of any audit shall be limited to transactions affecting the Dedicated Gas hereunder and shall be limited to the twenty-four (24) Month period immediately prior to the Month in which the notice requesting an audit was given. However, no audit may include any time period for which a prior audit hereunder was conducted, and no audit may occur more frequently than once each twelve (12) months. All statements, allocations, measurements, computations, charges, or payments made in any period prior to the twenty-four (24) Month period immediately prior to the Month in which the audit is requested, or made in any twenty-four (24) Month period for which the audit is requested but for which a written claim for adjustments is not made within ninety (90) Days after the audit is requested shall be conclusively deemed true and correct and shall be final for all purposes. To the extent that the foregoing varies from any applicable statute of limitations, the Parties expressly waive all such other applicable statutes of limitations.

11.4 Notices. Notwithstanding any change in ownership of Producer's properties, Gatherer shall never be required to make payments or to give notices required under the provisions of this Agreement to more than one party, and, in the event that the Producer's properties subject to this Agreement shall ever be owned by more than one



party, Gatherer may withhold (without interest) further payments and notices until all of the owners of Producer's properties have designated one party to act for them in all respects relating to said properties and this Agreement, including the rendering of bills, the submission of charts, and the receipt of payments and notices hereunder.

11.5 No Netting. Except in the event of a payment default by the other Party, neither Party may net amounts owed to it under this Agreement against amounts owed under any other agreements between the Parties.

11.6 Payment Disputes. In the event of any dispute with respect to any payment hereunder, Producer shall make timely payment of all undisputed amounts.

11.7 Interest on Late Payments. In the event that Producer shall fail to make timely payment of any sums, except those contested in good faith or those in a good faith dispute, when due under this Agreement, interest will accrue at an annual rate equal to the prime rate as published in the "Money Rates" section of *The Wall Street Journal* plus two percent (2%) from the date payment is due until the date payment is made.

11.8 Credit Assurance. Gatherer from time to time throughout the term of this Agreement shall have the right to conduct reviews of Producer's credit standing. Provided however, Gatherer agrees that as of the Effective Date of this Agreement, Producer's credit shall be deemed satisfactory. Gatherer may request an Adequate Assurance of Performance if there is or has been a material change in Producer's credit following the execution of this Agreement. In the event Gatherer determines Producer's credit to be unsatisfactory in Gatherer's reasonable opinion, then Gatherer may demand an "Adequate Assurance of Performance", which shall mean sufficient security in a form reasonably specified by Gatherer, subject further to the limitations described in this ARTICLE XI. This security will be provided to Gatherer after Producer has been given three (3) Business days written notice. Producer at its sole discretion may thereafter provide one of the following forms of security:

- a. Post an irrevocable standby letter of credit from a financial institution rated at least A- by S&P or at least A3 by Moody's in a form and substance satisfactory to Gatherer;
- b. Deliver cash collateral to be deposited in an escrow account as designated by Gatherer. Gatherer is hereby granted a security interest in and right of set-off against all cash collateral, which is or may hereafter be delivered or otherwise transferred to such escrow account in connection with this Agreement; or
- c. Provide a guaranty reasonably acceptable to Gatherer.
- d. The term of any security provided under this Section 11.8 shall be as reasonably determined by Gatherer, but it shall never exceed 60 Days, after which the security shall terminate (or in the case of cash collateral, be immediately returned by Gatherer to Producer without further action by either Party). Nothing shall prohibit Gatherer, however, from requesting



additional Adequate Assurance of Performance following the end of any such term, so long as the conditions triggering such a request under this Section 11.8 exist.

11.9 Substitute Collateral. Producer may substitute the cash collateral provided under Section 11.8(b) above at any time with any of the other forms of security described in Sections 11.8(a) and 11.8(c). Once the substituted collateral is received by Gatherer, Gatherer shall return the cash collateral to Producer within five (5) Business days of receipt of the substitute collateral, provided however there is no past due payment due Gatherer.

11.10 Excused Performance. Gatherer will not be required to perform or continue to perform services hereunder in the event:

- a. Producer has voluntarily filed for bankruptcy protection under any chapter of the Bankruptcy Code;
- b. Producer is the subject of an involuntary petition of bankruptcy under any chapter of the Bankruptcy Code, and such involuntary petition has not been settled or otherwise dismissed within 90 Days of such filing; or
- c. Producer otherwise becomes insolvent, whether by an inability to meet its debts as they come due in the ordinary course of business or because its liabilities exceed its assets on a balance sheet test; and/or however such insolvency may otherwise be evidenced

11.11 Failure to Provide Adequate Assurance. Should Producer fail to provide Adequate Assurance of Performance within three (3) Business days after receipt of written demand for such assurance (which shall include reasonable particulars for the demand and documentation supporting the calculation of such amount demanded), then Gatherer shall have the right (notwithstanding any other provision of this Agreement) to suspend performance under this Agreement until such time as Producer furnishes Adequate Assurance of Performance.

11.12 Creditworthiness Requirements. The creditworthiness requirements set forth in this ARTICLE XI shall apply to any permitted assignment (in whole or in part) of this Agreement by Producer. Gatherer shall apply consistent evaluation practices to all similarly situated producers to determine Producer's financial ability to perform its payment obligations under this Agreement.

## ARTICLE XII WARRANTY AND TITLE

12.1 Title Warranties. Producer warrants that it has good and marketable title to the Dedicated Gas and all Components delivered by Producer to Gatherer at the Receipt Points, and that such Gas is free from all liens, encumbrances and adverse claims of every nature and kind. PRODUCER AGREES TO INDEMNIFY, DEFEND AND HOLD THE GATHERER INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES



ARISING FROM OR OUT OF ANY CLAIM AS TO PRODUCER'S TITLE OR WARRANTY ABOVE, INCLUDING BUT NOT LIMITED TO, ANY ADVERSE CLAIM BROUGHT BY OR THROUGH A MINERAL INTEREST OR ROYALTY OWNER WITH RESPECT TO THE GAS. Producer agrees to make settlement for all royalties, overriding royalty interests, and/or production payments due and payable on the Gas delivered to Gatherer hereunder, any Components of the Gas extracted or saved therefrom, and the disposition of the Gas thereof, all in accordance with the terms of the leases, interests, and/or agreements under which Gas is produced, applicable instruments of title, and all amendments thereto. In addition to Gatherer's rights of defense and indemnity, if Producer's title or the right to deliver hereunder is questioned or involved in any action, Gatherer may suspend receipts and deliveries of Gas until title or the right to deliver same hereunder is free from such questions, such action is fully determined, or until Producer has furnished a bond with a surety satisfactory to Gatherer conditioned to save Gatherer Indemnified Parties harmless from such claims.

## 12.2 Warranties.

a. Producer covenants, represents, and warrants to Gatherer that:

- (i) Organization, Standing, and Qualification. Producer is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of West Virginia and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting.
- (ii) Enforceable Contract. This Agreement has been duly authorized, executed and delivered by or on behalf of Producer and is, upon execution and delivery, the legal, valid, and binding obligation of Producer, enforceable against Producer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.
- (iii) No Conflict. The execution, delivery and performance by Producer of this Agreement will not conflict with or cause any default under, (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Producer is a party or by which it or its properties may be bound or affected; or (c) any Laws.
- (iv) No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to Producer's knowledge, threatened against it at law or in equity before any court (whether in the United States or otherwise) or before any governmental authority (whether or not covered by



insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Producer or in any impairment of its ability to perform its obligations under this Agreement. Producer has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any governmental authority that may result in any such materially adverse effect or such impairment.

b. Gatherer covenants, represents, and warrants to Producer that:

- (i) Organization, Standing, and Qualification. Gatherer is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Texas and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting.
- (ii) Enforceable Contract. This Agreement has been duly authorized, executed and delivered by or on behalf of Gatherer and is, upon execution and delivery, the legal, valid, and binding obligation of Gatherer, enforceable against Gatherer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.
- (iii) No Conflict. The execution, delivery and performance by Gatherer of this Agreement will not conflict with or cause any default under; (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Gatherer is a party or by which it or its properties may be bound or affected; or (c) any Laws.
- (iv) No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to Gatherer's knowledge, threatened against it at law or in equity before any court (whether in the United States or otherwise) or before any governmental authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Gatherer or in any impairment of its ability to perform its obligations under this Agreement. Gatherer has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any governmental authority that may result in any such materially adverse effect or such impairment.



12.3 Division of Interest. If required by Gatherer, Producer shall provide to Gatherer a division of interest in the Dedicated Gas delivered to Gatherer hereunder.

### ARTICLE XIII ROYALTIES; TAXES

13.1 Proceeds of Production. Producer shall have the sole and exclusive obligation and liability for the payment of all Persons due any proceeds derived from the Dedicated Gas delivered under this Agreement, including, without limitation, royalties, overriding royalties, and similar interests, in accordance with the provisions of the leases or agreements creating those rights to proceeds. In no event will Gatherer have any obligation to those Persons due any of those proceeds of production attributable to Dedicated Gas under this Agreement.

13.2 Taxes. Producer shall pay and be responsible for all Taxes levied against or assessed with respect to Dedicated Gas delivered or Services provided under this Agreement. Gatherer shall not become liable for such Taxes, unless designated to remit those Taxes on behalf of Producer by any duly constituted jurisdictional agency having authority to impose such obligations on Gatherer, in which event the amount of such Taxes remitted on Producer's behalf shall be (i) reimbursed by Producer upon receipt of invoice, with corresponding documentation from Gatherer settling forth such payments, or (ii) deducted from amounts otherwise due Producer under this Agreement.

13.3 Indemnification. PRODUCER HEREBY AGREES TO DEFEND AND INDEMNIFY AND HOLD THE GATHERER INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, ARISING FROM THE PAYMENTS MADE BY PRODUCER IN ACCORDANCE WITH SECTIONS 13.1 AND 13.2, ABOVE, INCLUDING, WITHOUT LIMITATION, LOSSES ARISING FROM CLAIMS FOR THE NONPAYMENT, MISPAYMENT, OR WRONGFUL CALCULATION OF THOSE PAYMENTS.

### ARTICLE XIV INDEMNITY

14.1 Custody and Control. As between the Parties, and as to liability, if any accruing to a Party hereto, or to any third party:

- a. Producer shall be deemed to be in exclusive control and custody of Gas at and upstream of the Receipt Points.
- b. Gatherer shall be deemed to be in exclusive control and custody of the Gas until the Gas is delivered to Producer or the Transporter on Producer's behalf at the Delivery Point(s), whereupon Producer shall again be in exclusive control and custody thereof and bear the risk of loss of the Gas.

14.2 Indemnity. As between Producer and Gatherer, Producer shall indemnify, defend and hold harmless the Gatherer Indemnified Parties from and against all Losses relating to or arising out of (i) the operations of Producer, and (ii) the handling or delivery of Gas while such Gas is in custody and control of Producer. Gatherer shall



indemnify, defend and hold harmless the Producer Indemnified Parties from and against all Losses relating to or arising out of (i) the operations of Gatherer, and (ii) the handling or delivery of Gas while same is in possession and control of Gatherer. Notwithstanding the foregoing, neither Party shall be obligated to indemnify, defend or hold the other Party harmless from and against Losses to the extent such Losses result from the negligence, gross negligence or willful misconduct of the other Party.

14.3 Limitation of Liability. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES SUFFERED BY SUCH PARTY RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR THE BREACH THEREOF UNDER ANY OTHER THEORY OF LIABILITY, WHETHER TORT, NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, WARRANTY, INDEMNITY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, INCREASED COST OF OPERATIONS, LOSS OF PROFIT OR REVENUE, OR BUSINESS INTERRUPTIONS. IN FURTHERANCE OF THE FOREGOING, EACH PARTY RELEASES THE OTHER PARTY AND WAIVES ANY RIGHT OF RECOVERY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES SUFFERED BY SUCH PARTY REGARDLESS OF WHETHER ANY SUCH DAMAGES ARE CAUSED BY THE OTHER PARTY'S NEGLIGENCE (AND REGARDLESS OF WHETHER SUCH NEGLIGENCE IS SOLE, JOINT, CONCURRENT, ACTIVE, OR PASSIVE), FAULT, OR LIABILITY WITHOUT FAULT; PROVIDED, HOWEVER, THE FOREGOING SHALL NOT BE CONSTRUED AS LIMITING AN OBLIGATION OF A PARTY HEREUNDER TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY AGAINST CLAIMS ASSERTED BY UNAFFILIATED THIRD PARTIES, INCLUDING, BUT NOT LIMITED TO, THIRD PARTY CLAIMS FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES.

14.4 Survival. The indemnification rights and obligations herein, and Producer's payment obligation as set forth in Section 10.2, shall survive any expiration or termination of this Agreement.

#### ARTICLE XV FORCE MAJEURE

15.1 Suspension of Obligations. In the event either Party is rendered unable, either wholly or in part, by Force Majeure to carry out its obligations under this Agreement, other than the obligation to make payments due hereunder, it is agreed that on such Party giving notice and full particulars of such inability by telephone and in writing to the other Parties 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 the Party claiming Force Majeure shall remedy such cause, as far as possible, with all reasonable dispatch.

15.2 Events of Force Majeure. The term "Force Majeure" as employed herein shall mean any act or event which wholly or partially prevents or delays the performance of obligations arising under this Agreement if such act or event is not reasonably within the control of the Party claiming force majeure and which by the exercise of due diligence such Party is unable to prevent or overcome, including, without limitation, by the



following enumeration: acts of God; strikes; lockouts; or other industrial disturbances; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of governments and people; civil disturbances; explosion, breakage, or accidents to machinery, pipeline facilities, or lines of pipe; the necessity for making repairs to or alterations of machinery, plant facilities, or lines of pipe; freezing of wells or lines of pipe; partial or entire failure of wells; and the inability of either Producer or Gatherer to acquire, or the delays on the part of either Producer or Gatherer in acquiring, at reasonable cost and after the exercise of reasonable diligence: (a) any servitude, rights-of-way grants, permits, or licenses; (b) any materials or supplies for the construction or maintenance of facilities; and (c) any permits or permissions from any governmental agency if such are required; provided that Force Majeure shall not include lack of financing or funds. 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 the opposing party when such course is inadvisable in the sole discretion of the Party having the difficulty.

#### ARTICLE XVI TERM

16.1 Term. This Agreement shall be effective from the Effective Date and, subject to the other provisions hereof, shall continue in full force and effect for a primary term of three (3) Contract Years from and after the In-Service Date.

#### ARTICLE XVII REGULATORY BODIES

17.1 Jurisdictional Matters. This Agreement and the provisions hereof shall be subject to all valid applicable Laws. Producer and Gatherer have entered into this Agreement with the understanding, and in reliance on the fact that this Agreement and/or performance of this Agreement are not and will not be subject to the jurisdiction or regulation of the Federal Energy Regulatory Commission ("FERC") or the Public Service Commission of West Virginia. If this Agreement and/or performance of this Agreement becomes subject to such jurisdiction and/or regulation, this Agreement shall automatically terminate unless Producer and Gatherer agree, in writing, within thirty (30) days of the effective date of the attachment of any such jurisdiction and/or regulation, that this Agreement shall continue after such effective date.

#### ARTICLE XVIII RIGHTS OF WAY

18.1 Use of Easements and Rights of Way. To the extent that it may lawfully do so, Producer hereby assigns and grants to Gatherer easements and rights-of-way, including surface locations, in, to and across the lands and leases dedicated hereunder for the purpose of installing, using, inspecting, repairing, operating, replacing, and



removing Gatherer's pipelines, meters, and other equipment used or useful in the performance of this Agreement. Any property of Gatherer placed in or upon any of such lands shall remain the personal property of Gatherer, subject to removal by it at any time for any reason, but in any event within a reasonable time after the termination of this Agreement. Gatherer shall fully enjoy the rights of ingress and egress across the lands and leases dedicated hereunder for the purposes herein.

## ARTICLE XIX DISPUTES

19.1 Disputes. With respect to all disputes under or relating to this Agreement (a "Dispute"), any Party wishing to initiate dispute resolution with respect to such a Dispute shall give written notice of the Dispute to the other Party (a "Dispute Notice"). Within five (5) Days after receipt of the Dispute Notice, the Parties' management representatives shall meet in an attempt to resolve the Dispute. If such representatives cannot resolve the dispute within fifteen (15) Days of receipt of the initial Dispute Notice, the Dispute shall be referred to the Parties' respective senior executives. Such senior executives shall meet or confer by conference call within five (5) Days after referral of the dispute to them, and shall have ten (10) Days thereafter to attempt to fully resolve the Dispute. In the event that the Parties are unable to resolve any Dispute within the periods provided in this Section 19.1, then any Party may, at its sole discretion, commence litigation as provided herein.

19.2 Venue. The Parties Irrevocably agree that any legal action, suit or proceeding arising out of or relating to this Agreement shall be brought exclusively in the courts of the State of West Virginia or of the United States of America located in Charleston, Kanawha County, West Virginia. By the execution and delivery of this Agreement, the Parties irrevocably submit to the exclusive jurisdiction of any such court in any such action, suit or proceeding.

19.3 WAIVER TO OBJECT. THE PARTIES IRREVOCABLY WAIVE TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW: (I) ANY OBJECTION WHICH EITHER OF THEM MAY HAVE NOW OR IN THE FUTURE TO THE LAYING OF THE VENUE OF ANY SUCH ACTION, SUIT OR PROCEEDING IN ANY COURT REFERRED TO IN SECTION 19.2, AND (II) ANY CLAIM THAT ANY SUCH ACTION, SUIT OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

19.4 WAIVER OF TRIAL BY JURY. EACH OF THE PARTIES HEREBY WAIVES, TO THE FULLEST PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT IT MAY HAVE TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

## ARTICLE XX NOTICES AND PAYMENTS

20.1 Notices. Any notice, request, demand, statement, or bill provided for in this Agreement shall be in writing and delivered by hand, mail, or facsimile (with receipt of answerback confirmation), or via email; provided, if sent by email after normal business

hours or if receipt of a facsimile transmission is confirmed after normal business hours, receipt shall be deemed to be the next business Day. Except as otherwise provided herein, all such written communications shall be effective upon receipt by the other Party at the address of the Party hereto as follows:

Producer:

Statements: Mountaineer Keystone LLC  
6031 Wallace Road Ext., Suite 300  
Wexford, PA 15090  
Attn: Steve Onufrak Email:  
sonufrak@mkeystone.com

Contractual: Mountaineer Keystone LLC  
6031 Wallace Road Ext., Suite 300  
Wexford, PA 15090  
Attn: Paul Herzing  
Email: pherzing@mkeystone.com

Gatherer:

Statements: Crestwood Appalachia Pipeline LLC  
801 Cherry Street, Suite 3400 Unit 20  
Fort Worth, TX 76102  
Attn: Revenue Accounting  
Email: smcdowell@crestwoodlp.com

Payments: Crestwood Appalachia Pipeline LLC  
801 Cherry Street, Suite 3400 Unit 20  
Fort Worth, TX 76102  
Attn: Accounting  
Email: kandersen@crestwoodlp.com

ACH Payments:

ABA 111 000 025  
ACCT 4427596944

Contractual: Crestwood Appalachia Pipeline LLC  
700 Louisiana St, Suite 2060  
Houston, TX 77002  
Attn: Marketing  
Email: bblount@crestwoodlp.com

Each Party may designate a further or different address by giving written notice to the other Party.



## ARTICLE XXI ASSIGNMENT

21.1 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors, assigns and legal representatives of the Parties; provided, however, no Party may assign this Agreement, or any portion hereof, or any of its rights and obligations hereunder, without first securing the prior written consent of the other Party, which consent will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing:

- a. either Producer or Gatherer may assign this Agreement to any of its Affiliates, to a successor entity (whether by merger, by consolidation, or by sale of substantially all the assets of such Party) or to the purchaser of substantially all the assets of such Party without the consent of the other Party, but any such assignment (i) shall be expressly made subject to the terms and conditions of this Agreement, and (ii) shall not relieve the assigning Party of any of its liabilities, obligations or duties hereunder incurred prior to such assignment;
- b. Gatherer, without the consent of Producer, may assign this Agreement to any Person to whom Gatherer has assigned all or substantially all of its interest in the Gathering System, but any such assignment shall be subject to the requirements in Section 22.1(a)(i) and (ii) above.
- c. Gatherer may pledge this Agreement and/or its rights hereunder as collateral security to its lenders or an agent acting on their behalf in connection with any financing.

## ARTICLE XXII MISCELLANEOUS

22.1 Order of Precedence; Exhibits. Unless specifically otherwise provided, if any term or condition expressed or implied in any Exhibit to this Agreement conflicts or is at variance with any term or condition of this Agreement, this Agreement shall prevail. All Exhibits attached to this Agreement are incorporated herein and made a part of this Agreement by this reference.

22.2 No Waiver. No waiver by any Party of any one or more defaults in the performance of any provision of this Agreement shall operate or be construed as a waiver of any default or future defaults, whether of a like or different character.

22.3 Modifications. No modification of the terms and provisions of the Agreement shall be made except by the execution of written agreements by the Parties hereto. This Agreement contains the entire agreement between the Parties and there are no oral promises, agreements, or warranties affecting it.



22.4 Headings. The descriptive headings of the provisions of these general provisions are formulated and used for convenience only and shall not be deemed to affect the meaning or construction of any such provisions.

22.5 Entire Agreement. This Agreement, including, without limitation, all Exhibits hereto, integrates the entire understanding between the Parties with respect to the subject matter covered and supersedes all prior understandings, drafts, discussions, or statements, whether oral or in writing, expressed or implied, dealing with the same subject matter.

22.6 No Partnership. Nothing in this Agreement is intended to create a partnership or joint venture under state law or to render the Parties hereto jointly and severally liable to any third party. Each of the Parties elects to be excluded from the provisions of Subchapter K, Chapter 1 of Subtitle A, of the Internal Revenue Code of 1986 pursuant to the provisions of Article 761(a) of such code and from any similar provisions of state law.

22.7 Severability. Should any section, paragraph, subparagraph, or other portion of this Agreement be found invalid as a matter of law in a duly authorized court, or by a duly authorized government agency, then only that portion of the Agreement shall be invalid. The remainder of the Agreement which shall not have been found invalid shall remain in full force and effect.

22.8 Governing Law. THIS AGREEMENT, AND ALL QUESTIONS RELATING TO ITS VALIDITY, INTERPRETATION, PERFORMANCE AND ENFORCEMENT (INCLUDING PROVISIONS CONCERNING LIMITATIONS OF ACTIONS) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WEST VIRGINIA, NOTWITHSTANDING ANY CONFLICT-OF-LAWS DOCTRINES OF SUCH STATE OR OTHER JURISDICTION TO THE CONTRARY.

22.9 Interconnecting Pipelines; Third Party Gatherers. Gatherer may from time to time become subject to new requirements imposed by interconnecting pipelines or a third party gatherer. Gatherer shall provide written notice to Producer of any such new requirements. Thereafter, Producer shall comply with such new requirements.

22.10 Joint Drafting. This Agreement was prepared jointly by the Parties hereunder and not by any Party to the exclusion of the other.

22.11 Confidentiality. Each Party agrees to (i) maintain the confidentiality of any information which a Party provides to the other Party, and (ii) disclose such information only to those of its or its Affiliates, and their respective directors, members, officers, employees, representatives and consultants who have a need to know such information and who have agreed to maintain the confidentiality of such information.

22.12 No Third Party Beneficiaries. Except for parties indemnified hereunder, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and shall not inure to the benefit of any other person or entity whomsoever or whatsoever, it being the intention of the Parties that no third person shall be deemed a third party beneficiary of this Agreement.



22.13 Producer Forms. Upon request, Producer shall make available to Gatherer, copies of any and all forms filed by Producer with any state or federal regulatory body exercising jurisdiction over production delivered into the Gathering System.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple counterpart originals as of the Effective Date.

PRODUCER:

MOUNTAINEER KEYSTONE LLC

By: 

Name: PAUL M. HERBIN

Title: CHIEF OPERATING OFFICER

GATHERER:

CRESTWOOD APPALACHIA PIPELINE LLC

By: 

Name: JOSEPH D. MOXLEY

Title: SE. VICE PRESIDENT + COO



EXHIBIT A  
DEDICATION AREA

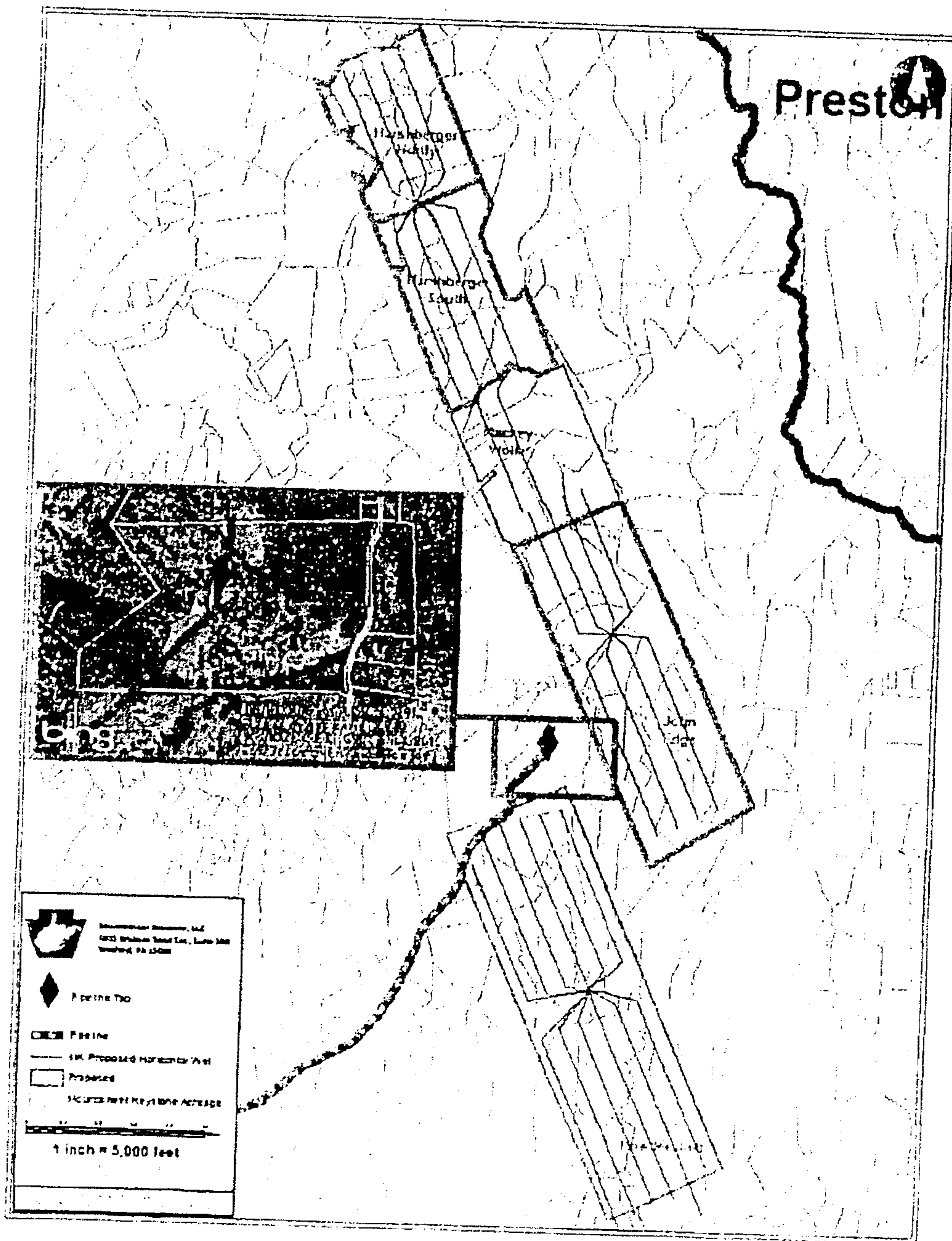


EXHIBIT B

RECEIPT POINTS AND DELIVERY POINTS

Receipt Point(s)

Receipt Point	Survey	Meter #
Mackey Wolfe Pad		

Delivery Point(s)

Delivery Point	Survey	Meter #
Coronado Pipeline		



**EXHIBIT C**  
**EXAMPLES of TRUE-UP CALCULATIONS**

Illustrative LTA Scenarios - Breakeven With Only Mackey-Wolfe Pad				
	Year 0	Year 1	Year 2	Year 3
	12/31/12	12/31/13	12/31/14	12/31/15
Actual Throughput (Mcf/d)		365.0	365.0	365.0
Gathering Rate		5,000	5,500	5,951
Gathering Revenues (\$000s)		\$0.3000	\$0.3500	\$0.3750
Less: O&M (\$000s)		\$547.5	\$702.6	\$814.5
EBITDA (\$000s)		(135.0)	(138.4)	(141.8)
		\$412.5	\$564.3	\$672.7
Total Capital Expenditures (\$000s)	(\$4,500.0)			
EBITDA				
Acquisition of Gathering Assets at Cost Basis		412.5	564.3	672.7
True Up Payment				4,500.0
Net Cash Flows	(\$4,500.0)	\$412.5	\$564.3	\$5,172.7
IRR	12.000%			
NPV	12.0%	(0.0)		

Illustrative LTA Scenarios - Shortfall With Only Mackey-Wolfe Pad				
	Year 0	Year 1	Year 2	Year 3
	12/31/12	12/31/13	12/31/14	12/31/15
Actual Throughput (Mcf/d)		365.0	365.0	365.0
Gathering Rate		1,500	2,000	2,500
Gathering Revenues (\$000s)		\$0.3000	\$0.3500	\$0.3750
Less: O&M (\$000s)		\$164.3	\$255.5	\$342.2
EBITDA (\$000s)		135.0	138.4	141.8
		\$299.3	\$393.9	\$484.0
Total Capital Expenditures (\$000s)	(\$4,500.0)			
EBITDA				
Acquisition of Gathering Assets at Cost Basis		299.3	393.9	484.0
True Up Payment				4,500.0
Net Cash Flows	(\$4,500.0)	\$299.3	\$393.9	\$5,505.6
IRR	12.000%			
NPV	12.0%	(0.0)		

Illustrative LTA Scenarios - Outperformance With Only Mackey-Wolfe Pad				
	Year 0	Year 1	Year 2	Year 3
	12/31/12	12/31/13	12/31/14	12/31/15
Actual Throughput (Mcf/d)		365.0	365.0	365.0
Gathering Rate		7,000	8,000	9,000
Gathering Revenues (\$000s)		\$0.3000	\$0.3500	\$0.3750
Less: O&M (\$000s)		\$766.5	\$1,022.0	\$1,231.9
EBITDA (\$000s)		(135.0)	(138.4)	(141.8)
		\$631.5	\$883.6	\$1,090.0
Total Capital Expenditures (\$000s)				
EBITDA	(\$4,500.0)	-	-	-
Acquisition of Gathering Assets at Cost Basis	-	631.5	883.6	1,090.0
True Up Payment	-	-	-	4,500.0
Net Cash Flows	(\$4,500.0)	\$631.5	\$883.6	\$5,590.0
IRR		18.716%		
NPV	12.0%	747.1		

Illustrative LTA Scenarios - Breakeven With 2 Pads				
	Year 0	Year 1	Year 2	Year 3
	12/31/12	12/31/13	12/31/14	12/31/15
Actual Throughput (Mcf/d)		365.0	365.0	365.0
Gathering Rate		6,000	7,000	7,097
Gathering Revenues (\$000s)		\$0.3000	\$0.3500	\$0.3750
Less: O&M (\$000s)		\$657.0	\$894.3	\$971.4
EBITDA (\$000s)		(135.0)	(138.4)	(141.8)
		\$522.0	\$755.9	\$829.6
Total Capital Expenditures (\$000s)				
EBITDA	(\$4,500.0)	(\$2,000.0)	-	-
Acquisition of Gathering Assets at Cost Basis	-	522.0	755.9	829.6
True Up Payment	-	-	-	6,500.0
Net Cash Flows	(\$4,500.0)	(\$1,478.0)	\$755.9	\$7,329.6
IRR		12.000%		
NPV	12.0%	(0.0)		



Illustrative LTA Scenarios - Shortfall With 2 Pads				
	Year 0	Year 1	Year 2	Year 3
	12/31/12	12/31/13	12/31/14	12/31/15
Actual Throughput (Mcf/d)		365.0	365.0	365.0
Gathering Rate		1,500	2,000	2,500
Gathering Revenues (\$000s)		\$0.3000	\$0.3500	\$0.3750
Less: O&M (\$000s)		\$164.3	\$255.5	\$342.2
EBITDA (\$000s)		135.0	138.4	141.8
		\$299.3	\$393.9	\$484.0
Total Capital Expenditures (\$000s)				
EBITDA	(\$4,500.0)	(\$2,000.0)	-	-
Acquisition of Gathering Assets at Cost Basis	-	299.3	393.9	484.0
True Up Payment	-	-	-	6,500.0
Net Cash Flows	(\$4,500.0)	(\$1,700.8)	\$393.9	\$8,014.5
IRR				
NPV	12.0%	12.000%		
		0.0		

Illustrative LTA Scenarios - Outperformance With 2 Pads				
	Year 0	Year 1	Year 2	Year 3
	12/31/12	12/31/13	12/31/14	12/31/15
Actual Throughput (Mcf/d)		365.0	365.0	365.0
Gathering Rate		8,000	9,000	10,000
Gathering Revenues (\$000s)		\$0.3000	\$0.3500	\$0.3750
Less: O&M (\$000s)		\$876.0	\$1,149.8	\$1,368.8
EBITDA (\$000s)		(135.0)	(138.4)	(141.8)
		\$741.0	\$1,011.4	\$1,226.9
Total Capital Expenditures (\$000s)				
EBITDA	(\$4,500.0)	(\$2,000.0)	-	-
Acquisition of Gathering Assets at Cost Basis	-	741.0	1,011.4	1,226.9
True Up Payment	-	-	-	6,500.0
Net Cash Flows	(\$4,500.0)	(\$1,259.0)	\$1,011.4	\$7,726.9
IRR				
NPV	12.0%	16.900%		
		682.0		

# Exhibit B



## MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (the "MOU") is made and entered into as of November 30, 2012 (the "Effective Date"), by and between Crestwood Appalachia Pipeline LLC, a Delaware limited liability company ("CAP"), and Mountaineer Keystone LLC, a West Virginia limited liability company ("MK"). CAP and MK are referred to herein collectively as the "Parties" and individually as a "Party."

### RECITALS

WHEREAS, MK is developing certain natural gas properties located in and around Barbour, Preston and Taylor Counties, West Virginia;

WHEREAS, MK and CAP have entered into a Gas Gathering and Services Agreement ("GGSA") dated November 14, 2012 whereby CAP has agreed to gather MK's gas from locations in Barbour County, West Virginia and redeliver the gas to a point of interconnection with Dominion Transmission Company's Coronado Pipeline in Barbour County, West Virginia for a three (3) year term as specified therein;

WHEREAS, MK and Crestwood Midstream Partners LP ("Crestwood") have entered into a Memorandum of Understanding dated December 8, 2011 as amended on February 7, 2012 and June 14, 2012 (the "MK-Crestwood MOU") for the construction of a pipeline (the "Tygart Valley Pipeline" or "TVP") to gather MK's gas from a mutually agreed central location in Barbour County, West Virginia and redeliver the gas to a point of interconnection with the WB Pipeline owned by Columbia Gas Transmission in Randolph County, West Virginia;

NOW, THEREFORE, the Parties hereby agree as follows:

#### 1. Agreement of the Parties.

In order to allow MK to begin the development of its acreage in Barbour County, West Virginia prior to the construction of the TVP, the Parties have entered into the GGSA. At any time prior to the expiration of the GGSA, either Party may request any of the following:

- (a) MK and Crestwood proceed with Definitive Agreements, as defined in the MK-Crestwood MOU, for the construction of the TVP or a suitable alternative project;
- (b) The GGSA be replaced by a long-term Gas Gathering Agreement ("LTGGA") covering 100% of MK's acreage in Barbour, Preston and Taylor Counties, West Virginia that would provide for the gathering of MK's gas production through the gathering pipelines and appurtenant facilities constructed and operated as part of the GGSA.

If the Parties do not reach agreement on the agreements contemplated in (a) and/or (b) above prior to the termination of this MOU, CAP shall have the right, but not the obligation, to sell the gas gathering pipelines and appurtenant facilities constructed and operated under the terms of the GGSA to MK at CAP's unreimbursed original capital investment. CAP shall notify MK of its election not less than sixty (60) days prior to the

end of the term of the GGSA. If CAP elects to sell the gas gathering pipelines and appurtenant facilities, MK shall be obligated to purchase such facilities at CAP's unreimbursed original capital investment, prior to the termination of the term of the GGSA.

2. Term.

This MOU shall terminate upon the earlier of (i) the termination of the term of the GGSA, (ii) the execution by the MK and Crestwood of the Definitive Agreements as defined in the MK-Crestwood MOU, or (iii) the execution and delivery by the Parties of a mutual consent to terminate this MOU.

3. No Partnership or Joint Venture.

Nothing in this MOU shall be construed to place the Parties in the relationship of legal representatives, partners or participants in a joint venture or in any trust or other fiduciary relationship, and each Party stipulates that no such relationships exist. Neither Party shall have the power to obligate or bind the other Party in any manner whatsoever.

4. Nondisclosure.

The Parties acknowledge and agree that they are bound by the provisions of that certain Reciprocal Nondisclosure Agreement dated as of November 29, 2011 by and between Mountaineer Keystone LLC and Crestwood Midstream Partners LP, and further that this MOU shall constitute "Confidential Information" for all purposes under that agreement.

5. Binding Nature of MOU.

This terms and provisions of this MOU shall be binding on MK and CAP, and Sections 4, 5, 7 and 8 shall survive the termination of this MOU.

6. Limited Exclusivity.

During the term of this MOU, MK agrees it will not, and it will cause its controlled affiliates' directors, officers, affiliates, employees, consultants, and other agents and representatives not to engage in any negotiations with third parties concerning any other potential midstream gathering venture with respect to natural gas produced from the Dedicated Acreage described in the GGSA.

7. Governing Law; Venue.

THIS MOU SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF WEST VIRGINIA WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICT OF LAWS. THE PARTIES AGREE AND CONSENT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF WEST VIRGINIA OR OF THE UNITED STATES OF AMERICA LOCATED IN CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA, IN ANY SUIT, ACTION OR PROCEEDING SEEKING TO ENFORCE ANY PROVISION OF, OR BASED ON ANY MATTER ARISING OUT OF OR IN CONNECTION WITH, THIS MOU. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH SUIT,



ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED MAIL ADDRESSED AND SENT TO THE CHIEF EXECUTIVE OFFICER OF SUCH PARTY AT SUCH PARTY'S MAIN OR CENTRAL OFFICE.

8. Limitation of Liability.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE PARTIES EXPRESSLY AGREE THAT (A) CAP SHALL NOT BE LIABLE TO MK FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL, CONSEQUENTIAL, REMOTE, OR SPECULATIVE DAMAGES, SAVE AND EXCEPT IN EACH CASE SUCH DAMAGES PAYABLE WITH RESPECT TO THIRD PARTY CLAIMS, AND (B) MK SHALL NOT BE LIABLE TO CAP FOR ANY EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL, CONSEQUENTIAL, REMOTE, OR SPECULATIVE DAMAGES, SAVE AND EXCEPT IN EACH CASE SUCH DAMAGES PAYABLE WITH RESPECT TO THIRD PARTY CLAIMS.

9. Assignment; Counterparts.

This MOU and the rights and obligations hereunder may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. This MOU may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

10. Successors and Assigns.

The provisions of this MOU which expressly bind either or both Parties shall be binding upon the Parties, as applicable, and their respective successors and permitted assigns.

11. Further Assurances.

Each Party shall take such acts and execute and deliver such documents as may be reasonably required to effectuate the purposes of this MOU.

12. No Third Party Beneficiaries.

This MOU is for the sole benefit of the Parties and their respective successors and permitted assigns, and shall not inure to the benefit of any other Person whomsoever, it being the intention of the Parties that no third Person shall be deemed a third party beneficiary of this MOU.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Crestwood Appalachia Pipeline LLC

By: [Signature]  
Name: William L. Morris  
Title: VP, Legal, Compliance & Ethics

Mountaineer Keystone LLC

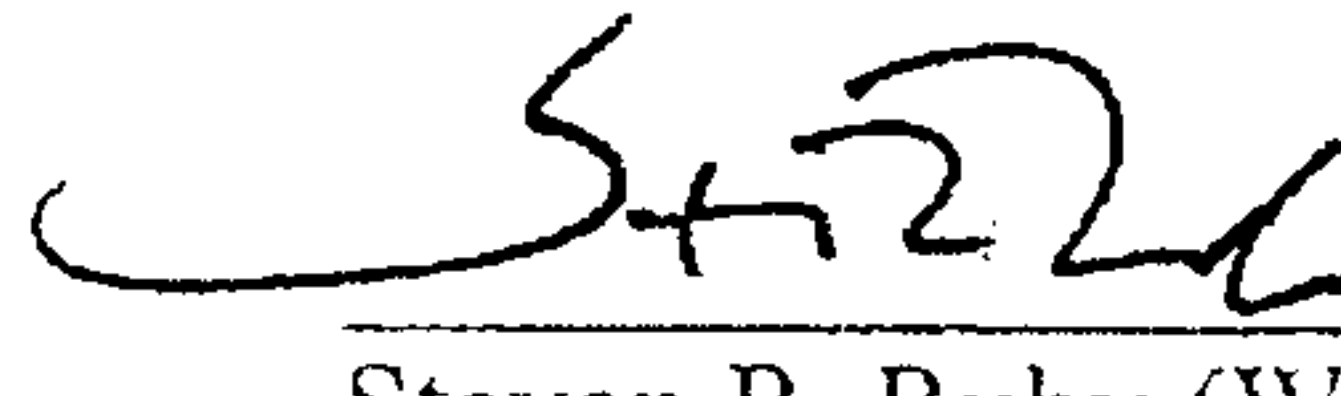
By: [Signature]  
Name: David W. Herring  
Title: Chief Operating Officer



**CERTIFICATE OF SERVICE**

I hereby certify that on May 1, 2017, the foregoing document was served upon the following persons by United States First-Class Mail, postage prepaid:

Gene W. Bailey, Esq.  
Carl L. Fletcher, Jr., Esq.  
John H. Tinney, Jr., Esq.  
Hendrickson & Long PLLC  
214 Capitol Street  
Charleston, WV 25301



---

Steven R. Ruby (WVSB #10752)  
Counsel for Defendant/Counterclaim Plaintiff  
Arsenal Resources LLC formerly known as  
Mountaineer Keystone LLC

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CRESTWOOD APPALACHIA  
PIPELINE, LLC,

Plaintiff,

Case No.: 17-C-383

v.

Judge Bloom

MOUNTAINEER KEYSTONE, LLC,

Defendant.

and

MOUNTAINEER KEYSTONE, LLC

Counterclaim Plaintiff,

v.

CRESTWOOD APPALACHIA  
PIPELINE, LLC,

Counterclaim Defendant.

PLAINTIFF'S AND COUNTERCLAIM DEFENDANT'S ANSWER TO  
COUNTERCLAIM

COMES NOW the Plaintiff and Counterclaim Defendant, Crestwood Appalachia Pipeline, LLC ("Crestwood"), by and through their undersigned counsel, and submits the following ANSWER and response to the counterclaim of Defendant Arsenal Resources, LLC ("Arsenal"), formerly known as Mountaineer Keystone, LLC.

PARTIES, JURISDICTION, AND VENUE

1. Crestwood admits the allegations contained in Paragraph 1 of Arsenal's counterclaim.
2. Crestwood admits the allegations contained in Paragraph 2 of Arsenal's counterclaim.
3. Crestwood admits the allegations contained in Paragraph 3 of Arsenal's counterclaim.



- c. "Business Day" means any day other than a Saturday, Sunday or other day on which banks are authorized by Law to close in the State of West Virginia.
- d. "Component" shall mean those hydrocarbon and non-hydrocarbon molecular constituents which are definable by Industry standards and procedures. Such Components as used in this Agreement shall be:
  - N2 - Nitrogen
  - CO2 - Carbon Dioxide
  - H2S - Hydrogen Sulfide
  - C1 - Methane
  - C2 - Ethane
  - C3 - Propane
  - iC4 - Iso-butane
  - nC4 - Normal Butane
  - iC5 - Iso-pentane
  - nC5 - Normal Pentane
  - C6+ - Hexanes and heavier hydrocarbon compounds
- e. "Contract Year" shall mean a period commencing on the In-Service Date and ending at 10:00 AM Eastern Clock Time on the same Day and Month of the following calendar year, and each succeeding twelve (12) Month period thereafter.
- f. "Day" shall mean a period of twenty-four (24) consecutive hours beginning at 10:00 AM Eastern Clock Time on a calendar day and ending at 10:00 AM Eastern Clock Time the next succeeding day.
- g. "Dedication Area" shall mean that area located in Barbour, County West Virginia, encompassing all wells, acreage, leasehold interests, and oil and gas interests and rights held by Producer and its Affiliates, as shown within the red lines on Exhibit A which is attached hereto and made a part hereof for all purposes, which Exhibit may be amended by the Parties from time to time.
- h. "Dedication" shall have the meaning set forth in Section 2.1.
- i. "Dedicated Gas" shall have the meaning set forth in Section 2.1.
- j. "Delivery Point(s)" shall mean the points of interconnect between the Gathering System and facilities of Transporters receiving Producer's Gas, all as listed on Exhibit B which may be amended from time to time to reflect the addition or deletion of a Delivery Point.
- k. "Eastern Clock Time" shall mean Eastern Time, as adjusted for Daylight Savings Time.

4. Crestwood admits the allegations contained in Paragraph 4 of Arsenal's counterclaim.
5. Crestwood admits the allegations contained in Paragraph 5 of Arsenal's counterclaim.
6. Crestwood admits the allegations contained in Paragraph 6 of Arsenal's counterclaim.
7. Crestwood admits the allegations contained in Paragraph 7 of Arsenal's counterclaim.
8. Crestwood admits the allegations contained in Paragraph 8 of Arsenal's counterclaim.
9. Concerning Paragraph 9 of Arsenal's counterclaim, Crestwood admits the GGSA contains the language quoted by Arsenal but denies the language of the GGSA is quoted fully or completely.
10. Crestwood denies the allegations contained in Paragraph 10 of Arsenal's counterclaim and demands strict proof thereof.
11. Concerning Paragraph 11 of Arsenal's counterclaim, Crestwood admits it completed construction and also admits that the in-service date for the system was in April of 2013.
12. Crestwood denies the allegations contained in Paragraph 12 of Arsenal's counterclaim and demands strict proof thereof.
13. Crestwood denies the allegations contained in Paragraph 13 of Arsenal's counterclaim and demands strict proof thereof.
14. Crestwood denies the allegations contained in Paragraph 14 of Arsenal's counterclaim and demands strict proof thereof.

COUNT ONE

BREACH OF CONTRACT

15. Crestwood restates and incorporates each and every response contained in Paragraphs 1 through 14 of its Answer to Arsenal's counterclaim as if fully set forth verbatim herein.



16. Crestwood admits the allegations contained in Paragraph 16 of Arsenal's counterclaim.

17. Crestwood admits the allegations contained in Paragraph 17 of Arsenal's counterclaim.

18. Crestwood denies the allegations contained in Paragraph 18 of Arsenal's counterclaim and demands strict proof thereof.

19. Crestwood denies the allegations contained in Paragraph 19 of Arsenal's counterclaim and demands strict proof thereof.

20. Crestwood denies Arsenal has been damaged by any breach of the GGSA and/or MOU by Crestwood as alleged in Paragraph 20 of Arsenal's counterclaim and demands strict proof thereof.

21. Crestwood denies Arsenal is entitled to any of the relief sought in Arsenal's counterclaim and demands strict proof thereof.

### AFFIRMATIVE DEFENSES

Having fully answered the allegations in Arsenal's counterclaim, Crestwood asserts the following defenses:

1. Crestwood denies each and every allegation set forth in Arsenal's counterclaim which are not expressly admitted herein.

2. Arsenal's counterclaim fails to state a claim upon which relief may be granted.

3. To the extent discovery and facts warrant, Crestwood reserves the defenses set forth in Rules 8:c(9), and (12) of the West Virginia Rules of Civil Procedure.

4. Crestwood did not commit any act or omission which was a proximate cause of the claimed injuries or damages of which Arsenal complains.

5. Crestwood denies that it breached any duty, contractual or otherwise, owed to Arsenal.

6. Arsenal's recovery is barred and/or should be reduced because of Arsenal's own fault and/or omissions.

7. To the extent Arsenal failed to reduce and/or mitigate any and all damages referred to in its counterclaim, Arsenal may have no recovery against Crestwood.

8. The terms of the GGSA and MOU bar, limit, or impair the claims asserted by Arsenal in its counterclaim.

9. Arsenal is prohibited under the terms of the contract from recovering any special, consequential exemplary or speculative damages from Crestwood.

10. Arsenal's claim for damages is barred or reduced by the application of offset or set-off.

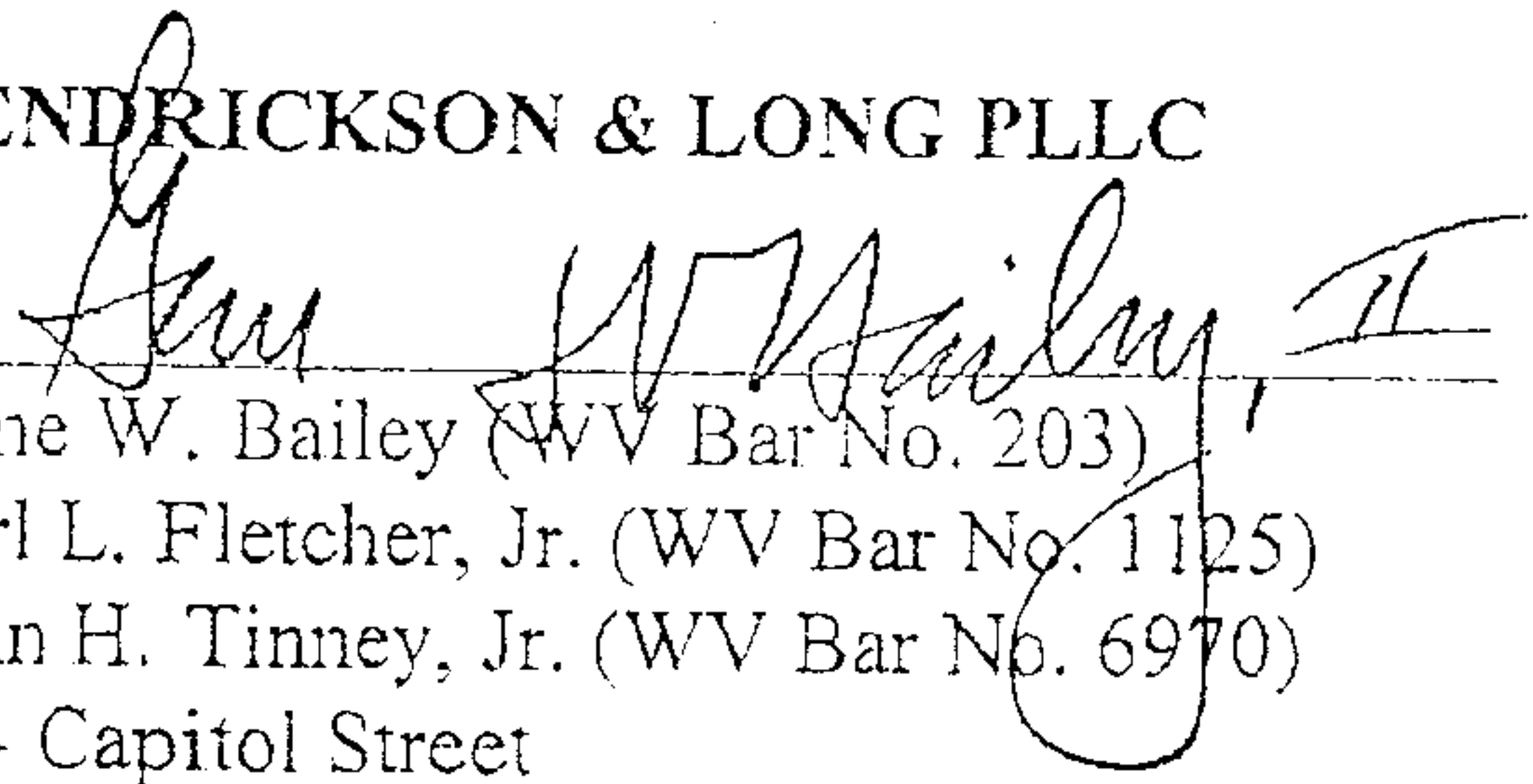
11. Because of the generality of the allegations in the counterclaim, Crestwood reserves the right to amend this answer and these affirmative defenses if investigation, discovery and further information should warrant such amendment and, further, to assert any applicable matters during the pendency of this action.

WHEREFORE, the Plaintiff, Crestwood Appalachia Pipeline, LLC, requests the counterclaim of Arsenal Resources, LLC be dismissed, that judgment be granted in favor of Crestwood Appalachia Pipeline, LLC, and that it be awarded its costs and fees in this behalf expended.



Respectfully submitted,

**HENDRICKSON & LONG PLLC**

  
Gene W. Bailey (WV Bar No. 203)  
Carl L. Fletcher, Jr. (WV Bar No. 1125)  
John H. Tinney, Jr. (WV Bar No. 6970)  
214 Capitol Street  
Charleston, West Virginia 25301  
Telephone: (304) 345-5500  
Facsimile: (304) 346-5515  
gbailey@handl.com  
cfletcher@handl.com  
jtinney@handl.com  
*Attorneys for Plaintiff*

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

CRESTWOOD APPALACHIA  
PIPELINE, LLC,

Plaintiff,

Case No.: 17-C-383

v.

Judge Bloom

MOUNTAINEER KEYSTONE, LLC,

Defendant.

and

MOUNTAINEER KEYSTONE, LLC

Counterclaim Plaintiff,

v.

CRESTWOOD APPALACHIA  
PIPELINE, LLC,

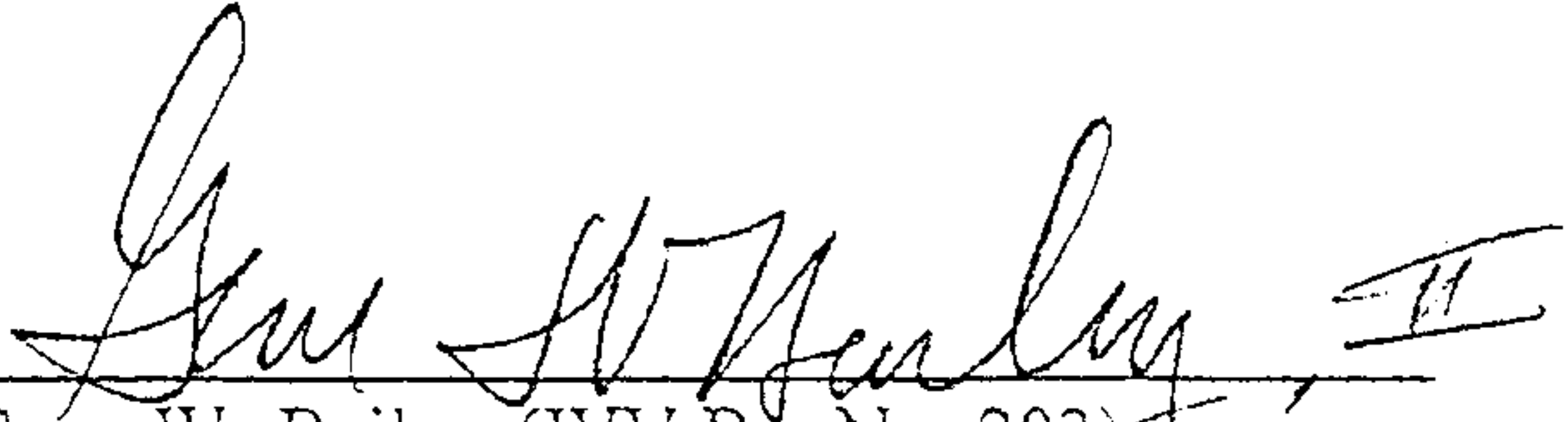
Counterclaim Defendant.

CERTIFICATE OF SERVICE

I, Gene W. Bailey, counsel for Plaintiff, does hereby certify that on the 22<sup>nd</sup> day of May 2017, a true and exact copy of "PLAINTIFF'S AND COUNTERCLAIM DEFENDANT'S ANSWER TO COUNTERCLAIM" was served upon counsel of record as listed below via U.S. Mail.

Benjamin L. Bailey (WVSB #200)  
Steven R. Ruby (WVSB #10752)  
Bailey & Glasser LLP  
209 Capitol Street  
Charleston, WV 25301  
Telephone: (304) 345-6555  
Facsimile: (304) 342-1110





Gene W. Bailey (WV Bar No. 203)

Carl L. Fletcher, Jr. (WV Bar No. 1125)

Jack H. Tinney, Jr. (WV Bar No. 6970)

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Charleston, West Virginia 25301

Telephone: (304) 345-5500

Facsimile: (304) 346-5515

[gbailey@handl.com](mailto:gbailey@handl.com)

[cfletcher@handl.com](mailto:cfletcher@handl.com)

[jtinney@handl.com](mailto:jtinney@handl.com)

CRESTWOOD APPALACHIA PIPELINE, vs. MOUNTAINEER KEYSTONE, LLC

## LINE DATE ACTION

1	03/20/17	# CASE INFO SHEET; COMPLAINT W/EXH'S; ISSUED SUM & 2 CPYS; F FEE
2		# RCPT 549218; \$200.00
3	03/27/17	# LET FR SS DTD 3/22/17; SUM W/RET (3/22/17 SS) AS TO ARSENAL
4		# RESOURCES LLC
5	04/04/17	# E-CERT FR SS AS TO ARSENAL RESOURCES LLC DID 3/27/17
6	04/14/17	@ JOINT STIP TO EXTEND TIME
7	05/01/17	# CASE INFO SHEET; ANS & CC OF ARSENAL RESOURCES LLC W/EXH &
8		# W/COS; FEE; RCPT 550516; \$200.00
9	05/12/17	# COS AS TO ARSENAL RESOURCES 1ST REQ FOR PROD TO CRESTWOOD
10		# APPALACHIA PIPELINE LLC
11	05/12/17	# COS AS TO ARSENAL RESOURCES LLC'S 1ST INTERROG'S TO CRESTWOOD
12		# APPALACHIA PIPELINE LLC
13	05/12/17	# APPLICATION FOR ADM PRO HAC VICE OF MICHAEL MAGEE W/EXH & COS
14	05/12/17	# APPLICATION FOR ADM PRO HAC VICE OF ROY POWELL W/EXH & COS
15	05/12/17	# APPLICATION FOR ADM PRO HAC VICE OF KATELYN MATSCHERZ
16		# W/EXH & COS
17	05/19/17	3 O'S MAILED; 5/15/17; S RUBY; K MATSCHERZ; R POWELL; M MAGEE/CLE
18	05/15/17	*O: KATELYN MATSCHERZ ADM PRO HAC VICE/BLO
19	05/15/17	*O: ROY POWELL ADM PRO HAC VICE/BLO
20	05/15/17	*O: MICHAEL MAGEE ADM PRO HAC VICE/BLO
21	05/22/17	# CRESTWOOD APPALACHIAN PIPELINE LLC'S ANS TO CC W/COS