

Contract No.: Contract No. 193

Consolidated Edison Company of New York, Inc.

With

Xpress Natural Gas LLC

Type of contract: Termination

**CONFIDENTIAL CONTRACT TERMINATION
AND SETTLEMENT AGREEMENT**

This Confidential Contract Termination and Settlement Agreement (the “Agreement”) terminates the Contract for the Storage and Sale of Non-Pipeline Supply Natural Gas (the “Contract”) between Consolidated Edison Company of New York, Inc. (“ConEd”) and Xpress Natural Gas LLC (“XNG”), and settles any and all disputes or potential disputes arising out of or relating to the Contract. ConEd and XNG are referred to hereafter as the “Parties,” and each of the Parties is referred to individually as a “Party.” This Agreement shall be effective, legally binding upon, and enforceable against each of the Parties on the Effective Date, as defined below.

Recitals

WHEREAS, the Contract was executed by the Parties in [REDACTED], and a Statement of Work (“SOW”) was entered into by the Parties contemporaneously;

WHEREAS, the Contract provided for, among other things, the delivery of natural gas by XNG to ConEd and the storage of such gas at a site owned by ConEd at 30 Worth Street in Yonkers, New York (the “Site”);

WHEREAS, disputes arose between the Parties concerning performance of the Contract and termination and/or cancellation of the Contract;

WHEREAS, the Parties desire to resolve amicably and permanently their disputes without any admission of fault and without any admission of any of the facts alleged by any Party in connection with the Parties’ disputes under the Contract; and

WHEREAS, the Parties have reached an agreement to terminate and cancel the Contract, and to provide for a one-time payment from ConEd to XNG.


NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

Agreement

1. **Definitions.**

- a. “XNG Entities” means XNG and its successors and assigns, and its and their predecessors in interest, successors in interest, present and former parent corporations, subsidiaries, corporate affiliates, officers, directors, agents, attorneys, and employees.
- b. “ConEd Entities” means ConEd and its successors and assigns, and its and their predecessors in interest, successors in interest, present and former parent corporations, subsidiaries, corporate affiliates, officers, directors, agents, attorneys, and employees.
- c. “Effective Date” means the date the Settlement Payment (defined below) is paid.

2. Termination and Cancellation. As of the Effective Date, the Contract is hereby terminated and cancelled, and the Parties' obligations thereunder extinguished, except as explicitly set forth within this Agreement. For the avoidance of doubt, this termination is not pursuant to the provisions in either Section 43 (entitled "Termination for Convenience") or Section 44 (entitled "Cancellation for Default") of the Contract.



4. Mutual Release.

- a. As of the Effective Date, ConEd hereby releases the XNG Entities from, and covenants not to sue the XNG Entities for, any and all claims whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, in each case relating to or arising out of the Contract, except in the event of fraud.
- b. As of the Effective Date, XNG hereby releases the ConEd Entities from, and covenants not to sue the ConEd Entities for, any and all claims whether known or unknown, suspected or unsuspected, fixed or contingent, matured or unmatured, in each case relating to or arising out of the Contract, except in the event of fraud.

5. No Admission of Breach. This Agreement constitutes a compromise of any disputes related to performance under the Contract and SOW. Neither this Agreement nor the fact of the compromises described herein are intended to be, or shall be construed as, an admission, whether express or implied, with respect to any Party's performance under the Contract or SOW.

6. Confidentiality. The Parties agree to use best efforts to hold the terms of this Agreement, and the negotiations leading to the same, in strict confidence, with the following exceptions: (a) disclosures to each Party's attorneys and accountants; (b) as required by law or court order, including, by way of example and not limitation, in response to a judicial subpoena; or (c) in response to a request from state or federal regulatory authorities, in which case the Party receiving the request will seek confidential protection of such Agreement terms and/or negotiations. In the event any Party determines that it has become required pursuant to clause (b) above to disclose any information deemed confidential by this Paragraph 6 or in the event the regulatory authorities deny a Party's request for the confidential protection referenced in clause (c) above, then such Party shall give prompt written notice of such fact to the other Party, unless prohibited by law, so that the other Party may (i) in the case of clause (b), seek an appropriate remedy to prevent such disclosure or a protective order, or (ii) in the case of clause (c), request that the regulatory authorities refrain from publicly disclosing the Agreement terms or negotiations.

7. Governing Law; Submission to Jurisdiction; Waiver of Trial by Jury. This Agreement shall be governed by the provisions of Section 48, Section 49, and Section 50 of the Contract.

8. Complete Authority. Each person executing this Agreement represents and warrants that he or she is duly authorized and empowered to enter into this Agreement and has the authority and approval to bind the Party so represented.

9. Miscellaneous. Each Party represents and warrants that it has not assigned or transferred, and agrees that it will not assign or transfer, any part of or interest in the matters released pursuant to Paragraph 4 of this Agreement to anyone not a Party to this Agreement.
10. Advice of Counsel; Voluntary Execution. Each Party represents and warrants that it has carefully read and understood the contents of this Agreement; that it has been represented by, and has consulted with, the counsel of its choice regarding the provisions, obligations, rights, risks and legal effects of this Agreement; and that it enters into this Agreement without any inducement other than that which is described herein.
11. Integration Clause; No Reliance on Parol Evidence or Other Representations. This Agreement constitutes the entire agreement between the Parties regarding the subject matter set forth herein and supersedes all prior oral and written agreements with respect to the matters provided for herein. The consideration provided in this Section 3 of this Agreement contains the entire consideration to which the Parties will be entitled to in exchange for the agreements set forth herein. In entering this Agreement, the Parties acknowledge and agree that no prior representations or promises have been made other than as set forth in the Contract and the SOW and this Agreement, and that they are not relying on any promises or representations not set forth in the Contract and/or SOW and/or this Agreement.
12. Amendment or Modification of Agreement; No Oral Amendments. This Agreement may not be modified, changed or amended except in writing signed by all Parties.
13. Good Faith. The Parties agree to cooperate and work together in good faith on the demobilization and decommissioning relating to the Contract, including but not limited to the removal of Contractor Materials (as defined in the Contract) from the Site and the transfer of ownership of the Interconnection Facilities to ConEd.
14. Counterparts. This Agreement may be executed in counterparts, including by facsimile and electronic mail, each of which, when so executed and delivered, shall be deemed original, but all of which shall together constitute one and the same instrument.
15. Invalidity or Unenforceability of Any Provision of the Agreement. In the event that any provision of this Agreement is found to be invalid or unenforceable because it violates any statute, rule, regulation, or common law, all other provisions of this Agreement shall remain in full force and effect.
16. Headings; Captions. The captions contained in the paragraphs of this Agreement are for convenience of reference only and do not in any way limit, expand, or modify the terms or provisions of this Agreement.

Agreed to by:

XPRESS NATURAL GAS LLC



CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.

By: Frank A. Cuomo

Name: Frank A. Cuomo

Title: Director – Commodity Operations

Date: May 20th, 2024