WILLIAM R. DERASMO
202.274.2886 telephone
william.derasmo@troutmansanders.com

TROUTMAN SANDERS

TROUTMAN SANDERS LLP
Attorneys at Law
401 9th Street, N. W., Suite 1000
Washington, D.C. 20004-2134
202.274.2950 telephone
202.274.2994 facsimile
troutmansanders.com

May 13, 2009

Via Overnight Delivery
Honorable Jaclyn A. Brilling, Secretary
State of New York Department of Public Service
Three Empire State Plaza
Albany, New York 12223

RE: Matter No. 09-00336; Complaint and Petition of AG-Energy, LP against St. Lawrence Gas Company, Inc. Concerning Rates, Terms and Conditions for Gas Transportation Service

Dear Secretary Brilling:

Enclosed for filing on behalf of AG-Energy, LP are six conformed copies of its Reply to Response to Complaint and Petition in the above referenced matter.

Kindly date-stamp the enclosed extra copy and return it to us in the postage-paid envelope provided.

Thank you for your assistance.

Respectfully Submitted,

Troutman Sanders LLP
Counsel for AG-Energy, LP

By: William R. Derasmo

William R. Derasmo, Esq.
TROUTMAN SANDERS LLP
401 Ninth Street N.W., Suite 1000
Washington, DC 20004

2009 MAY 14 PM 2:03

cc: Eric J. Krathwohl
Sharon A. Gaines
Joseph Klimaszewski

BEFORE THE
STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of AG-Energy, LP Concerning Rates, Terms and Conditions for Gas Transportation Service by St. Lawrence Gas Company, Inc.	)))	Matter No. 09-00336

REPLY TO RESPONSE TO COMPLAINT AND PETITION OF AG-ENERGY, LP

AG-Energy, LP ("AG-Energy") through its undersigned counsel, hereby respectfully submits this Reply to Response to Complaint and Petition ("Reply"). On February 23, 2009, AG-Energy filed with the New York Public Service Commission ("Commission") its Complaint and Petition in the above captioned matter. On March 24, 2009, St. Lawrence Gas Company, Inc. ("St. Lawrence") submitted its Response.

As explained fully herein, St. Lawrence's Response has done nothing to advance the resolution of this matter and AG-Energy continues to request an order from the Commission (i) finding that the rates, terms and conditions imposed by St. Lawrence for gas transportation service are no longer just and reasonable, may be unduly discriminatory, and have not been properly filed with this commission; (ii) establishing just and reasonable rates, terms and conditions for service going forward, as described herein, pursuant to its authority under PSL § 66(5), (iii) providing for the refund with interest of amounts improperly charged prior to the date of the Complaint; (iv) declaring the Natural Gas Transportation Agreement dated April 20, 1992 (the "Agreement") to be terminated; and (v) to the extent necessary to resolve disputed facts related to the foregoing, issue an order initiating hearing procedures, including discovery, as described herein.

I. HEARING PROCEDURES ARE WARRANTED TO DETERMINE JUST AND REASONABLE RATES FOR SERVICE GOING-FORWARD

Disputed issues of material fact exist regarding whether the Agreement provides for just and reasonable rates for gas transportation service on a going-forward basis. Accordingly, AG-Energy renews its request that the Commission institute hearing procedures to determine just and reasonable rates for gas transportation service on a going-forward basis. Respectfully, AG-Energy submits that just and reasonable rates for gas transportation service on a going-forward basis would be pursuant to St. Lawrence's Service Classifications Nos. 3, 4 or 4A, at AG-Energy's election, with contract minimums at a level that reflects reasonable expectations of current and future use.

In the Complaint,[1] AG-Energy stated that Commission review of the rates St. Lawrence charges AG-Energy for gas transportation service is warranted, and in support of that review, that the commission's statutory duty to ensure just and reasonable rates is not eliminated by contract. The foundation for these statements is twofold: (i) AG-Energy has made a *prima facie* showing that St. Lawrence's charges to AG-Energy may not be just and reasonable and may be unduly discriminatory (discussed *infra*), thus warranting a review of the rates for service on a going forward basis, and (ii) the text of PSL § 66(5) and related case law, which delineate the Commission's authority to do so. As noted in the Complaint, the plain language of PSL § 66(5) preserves the Commission's jurisdiction on a going-forward basis over rates prescribed in contracts.[2] Among other case law precedent, the Appellate Division's opinion in *Village of*

---

1 Comp. at 5-6.

2 PSL § 66(5) ("Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, charges or classifications or the acts or regulations . . . are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe . . . the just and reasonable rates, charges and classifications thereafter to be in force for the service to be furnished **notwithstanding that a higher or lower rate or charge has heretofore been**

Warsaw makes this even clearer.[3] As fully revealed in the discussion that follows, St. Lawrence has not made any compelling legal or policy argument that would erode these concrete principles of New York public service law, or the conclusion that, in this case, Commission review is warranted.

A. The Commission has Jurisdiction under PSL § 66(5) to Review the Rates for Service by St. Lawrence to AG-Energy

The first argument St. Lawrence presents in attacking Commission jurisdiction misconstrues the relief requested by AG-Energy when it characterizes that relief as "retroactive ratemaking."[4] The prohibition on retroactive ratemaking generally precludes a regulator from changing the applicable rate on a backward-looking basis. This is not what AG-Energy seeks. The relief sought by AG-Energy involves a forward-looking adjustment to the rate for gas transportation service. Further, AG-Energy seeks hearing procedures, including discovery, to resolve the issue of whether St. Lawrence has properly implemented the terms of the contract for transportation service in the past. The only relief AG-Energy seeks with respect to prior periods relates to improper application of the rates specified in the contract and St. Lawrence's failure to file the contract with the Commission. The issues of prior rates implementation and the filing requirements applicable to the Agreement are discussed *infra*.

The second argument St. Lawrence offers to counter the clear statutory and judicial mandates supporting the Commission's jurisdiction over contract rates is an erroneous reference

---

prescribed by general or special statute, **contract**, grant, franchise condition, consent or other agreement, and the just and reasonable acts and regulations to be done and observed . . . .").

[3] *Village of Warsaw v. Pavilion Natural Gas Co.*, 195 A.D. 716, 719-20 (N.Y. App. Div. 1921) ("contracts of this nature are made ordinarily in contemplation that the State possesses the power to regulate rates and may at any time exercise it. These principles are so well known and established that it is no longer necessary to cite authority.").

[4] Resp. at 5.

to the Commission's decision in *Keyspan.*[5] In *Keyspan*, the Commission observed that the contract for station power service contemplated the possibility of a mutually-acceptable alternative to the tariff rate, but that because the parties were not in agreement, the terms of the tariff governed. St. Lawrence makes much of the Commission's statement that it "would not normally interpret the terms of a contract between a utility and a vendor . . . ,"[6] and then proceeded to take jurisdiction over the contract dispute in that case. Accordingly, the *Keyspan* decision merely stands for the principle that where the Commission has jurisdiction, it may interpret disputed contract provisions, and where it does not have jurisdiction, it will generally not entertain contract disputes. For example, it seems unlikely that the Commission would assert jurisdiction over a contract dispute between a public utility and a non-affiliated "vendor" of office supplies.

The *Keyspan* decision is not on point. In the case of service to AG-Energy by St. Lawrence, the Commission plainly has jurisdiction over the subject matter—gas transportation service provided by a local distribution company. To the extent St. Lawrence means to imply that it is a "vendor" in relation to AG-Energy, then it is a jurisdictional vendor because it is a gas corporation under New York law and provides jurisdictional utility service to its customer.[7] As such, the Commission has jurisdiction over the contract and has a statutory duty to ensure that rates for service provided under the contract are just and reasonable.

---

[5] Resp. at 5, citing *KeySpan-Ravenswood, Inc.*, Order Denying Complaint, Case No. 01-E-0211 (Oct. 15, 2001).

[6] *KeySpan-Ravenswood, Inc.*, Order Denying Complaint, Case No. 01-E-0211, at 10 (Oct. 15, 2001). Apparently, the Commission viewed ConEd to be a vendor, *vis a vis* Keyspan Ravenswood, because ConEd provided utility service to Keyspan in the form of station power service.

[7] *See, e.g., Rochester Gas and Elec. Corp. v. Public Serv. Comm'n,* 71 N.Y.2d 313 (1988) (upholding PSL § 66-d(2) and the Commission's implementing regulations pertaining to gas transportation service).

B. Ongoing Commission Oversight of Rates under the Agreement was a Benefit of the Bargain

The most egregious error St. Lawrence makes is in asserting that the obligations of the parties under the contract are somehow so absolute that they preclude any adjustment of the rate for service on a going-forward basis. This view completely ignores the plain language of the statute, which mandates that the Commission, upon complaint, ensure that rates are just and reasonable, notwithstanding the existence of a contract for service that specifies a different rate, either higher or lower.[8] This view completely ignores the words of the Appellate Division in the year 1921, which made clear that the principle of continuing Commission oversight of rates established by contract was "so well known and established that it is no longer necessary to cite authority."[9] Worst, St. Lawrence's view would deny AG-Energy of the benefit of its bargain—nowhere did AG-Energy waive its right under PSL § 66(5) to lodge a complaint with the Commission seeking a reasonable reduction in the rates charged for service provided by St. Lawrence.

St. Lawrence's position implies that the parties to a contract for jurisdictional services could somehow contract away the Commission's jurisdiction and supervisory role over rates. Such is clearly not the case. As the United States District Court has stated with respect to New York public service law,

> A consideration of the authorities shows that the power of the Legislature to authorize the making of a contract as to rates is limited. The regulation of rates to be charged by a public utility is an exercise of the police powers of the state (*Munn v. Illinois*, 94 U.S. 113 (1877)); and contracts cannot be made which in any way impair or limit this power . . . ."[10]

---

8 *See* PSL § 66(5).

9 *Village of Warsaw v. Pavilion Natural Gas Co.*, 195 A.D. 716, 719-20 (N.Y. App. Div. 1921).

10 *Brooklyn Union Gas Co. v. Prendergast*, 7 F.2d 628, 660 (E.D.N.Y. 1925), *modified*, 272 U.S. 579 (1926).

While the U.S. Supreme Court narrowed the holding above in *Brooklyn Union* to find only that the statute was confiscatory, the principles stated in the District Court decision remain. To the extent the legislature cannot deprive the Commission of its authority, clearly the parties to a contract cannot do so either.

In a related context, what parties to wholesale electric or gas service contracts have often done for many years is to agree to constrain their rights under federal law to unilaterally petition the Federal Energy Regulatory Commission ("FERC") to examine whether rates under the contract are no longer just and reasonable. To the extent these waiver provisions are intended only to bind the parties (and not bind FERC), these provisions may be upheld. Notably, no comparable provisions (*i.e.,* provisions intended to preclude a unilateral complaint to this Commission) are included in the agreement between St. Lawrence and AG-Energy. Accordingly, this action should be no surprise to St. Lawrence—it is wholly consistent with settled law and commercial practices of which St. Lawrence cannot reasonably be unaware, and it is consistent with the bargain St. Lawrence struck.

The positions espoused by St. Lawrence would establish second class status for gas transportation customers taking service under legacy agreements. To the extent any customer of St. Lawrence taking service only pursuant to rate schedules contained in the tariff (*i.e.*, without a service agreement) seeks a change in rates, that customer indisputably has at its disposal a number of avenues to argue its position. Among other things, the customer may file a complaint and argue that its particular circumstances are not in accord with the precepts behind the rate classification assigned by St. Lawrence, such that service in no longer provided at just and reasonable rates. Without any foundation in law or policy, St. Lawrence seeks to deny AG-

Energy these benefits of due process—benefits that are a material part of the bargain contained in the agreement between the parties.

C. AG-Energy has made a *Prima Facie* Showing that St. Lawrence's charges to AG-Energy may not be just and reasonable and may be unduly discriminatory

There are two sources available to the Commission that provide particularized guidance on application of the statutory "just and reasonable" standard specified in New York public service law in the context of a challenge to rates set forth in a contract. These include decisions of the United States Supreme Court that have produced a well-developed body of law around the application of the "just and reasonable" standards contained in the Federal Power Act and the Natural Gas Act, specifically in the context of challenges to rates established by contract, which, under circumstances parallel to those at issue here, dictate a "public interest" analysis. Naturally, this guidance also includes the body of law defining what is "just and reasonable" under New York public service law (discussed *infra*).

1. The Public Interest is at Stake

The language of PSL § 65(5) is similar to that of the Federal Power Act ("FPA") and its companion language in the Natural Gas Act ("NGA"). Section 206(a) of the FPA states, in relevant part:

> Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.[11]

Similarly, PSL § 65(5) states:

---

[11] 18 U.S.C. § 824e(a).

> Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates, charges or classifications or the acts or regulations of any such person, corporation or municipality are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe in the manner provided by and subject to the provisions of section seventy-two of this chapter the just and reasonable rates, charges and classifications thereafter to be in force for the service to be furnished notwithstanding that a higher or lower rate or charge has heretofore been prescribed by general or special statute, contract, grant, franchise condition, consent or other agreement, and the just and reasonable acts and regulations to be done and observed . . . .

The relevant and self-evident similarities are that each commission is charged with determining, upon complaint, whether the charges for services under its jurisdiction are just and reasonable on a going-forward basis, even to the extent a contract between the parties specifies a rate.

The United States Supreme Court's *Mobile-Sierra* doctrine, named for the seminal 1956 cases, prescribes how FERC implements its responsibility to ensure just and reasonable rates under the FPA and the NGA.[12] In that context, *Mobile-Sierra* requires an assessment of whether the existing contract rate poses serious harm to the public interest. In the case of a "high rate challenge"—such as that brought by AG-Energy—the public interest inquiry may implicate, among other things, the interests of the purchaser's customers.[13]

2. The Effect of Unjust, Unreasonable and Unduly Discriminatory Rates on AG-Energy and its Customer—the New York State Office of Mental Health

There is a limit on the extent to which, as St. Lawrence asserts, changed circumstances are the customer's risk alone.[14] This may be true to the extent the rates remain within a zone of

---

12 *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U. S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

13 *See Morgan Stanley Capital Group, Inc. v. PUD No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008).

14 *See* Resp. at 6.

reasonableness.[15] However, to the extent circumstances change over the course of time and a rate therefore becomes "exorbitant and unreasonable," the customer is entitled to a reduction in the rate upon complaint to and findings of the Commission.[16] This applies regardless of whether a rate is specified by contract.

As a practical matter, the only effect of stating a rate in the contract is that it precludes the utility from making a unilateral rate change simply by filing a new rate under the Commission's rate filing rules, without filing a complaint. Including rate provisions in the contract puts the parties on the same level playing field. Either may petition the Commission for a change in rate in a complaint proceeding, and either may be successful to the extent the existing rate is no longer just and reasonable, as determined by the Commission after considering the public interest.

Circumstances have changed drastically since the agreement between St. Lawrence and AG-Energy was executed. At that time, certain popular sentiment was that cogenerators, such as AG-Energy, who received the benefits of avoided cost power purchaser agreements with the incumbent load serving electric utility, were receiving a "windfall" and that therefore charging these entities gas transportation rates drastically in excess of traditional cost of service rates was a legitimate way to "claw back" some of that windfall for the benefit of ratepayers.[17]

---

15 *See, e.g., Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944).

16 *Village of Warsaw v. Pavilion Natural Gas Co.*, 195 A.D. 716, 20 (N.Y. App. Div. 1921).

17 The notorious "six-cent law" has long since been repealed. *See, e.g., In re: Megan-Racine Associates, Inc.*, 102 F.3d 671, 676 (1996) ("The district court found that the legislature, in repealing the six-cent law, intended to protect rate-payers from a subsidy which had outlived its purpose.").

Regardless of whether that approach produced a just and reasonable rate in the early 1990s, it does not do so today.[18] AG-Energy has not received avoided cost rates for its output since 1998. In fact, AG-Energy currently produces no electric output. AG-Energy receives no revenue for the steam it generates to provide heating, cooling and certain hotel services to the Office of Mental Health, at considerable expense. Simply put, there is no longer a "pot of money" to dip into in order to continue subsidizing service to St. Lawrence's other customers.

So far, St. Lawrence has refused to offer any reasonable reduction in the rate charged for service to AG-Energy. The so-called MAC Report[19] demonstrates this. Rather than consider foregoing even one dollar in revenue it expects to receive under the agreement, St. Lawrence proposed to accelerate receipt of these amounts, calculated in every way to its advantage, and reduced to present value with a discount rate of its choosing.

St. Lawrence's intransigence is threatening the public interest. AG-Energy is working diligently to renegotiate the terms under which it provides steam to the Office of Mental Health. If successful, these efforts promise to secure a reliable source of steam for the St. Lawrence Psychiatric Center for years to come. However, St. Lawrence's cooperation is critical in this regard. The Office of Mental Health is unlikely to agree to a rate for steam service that reflects exorbitant charges for gas transportation service.

If unsuccessful, the worst case scenario would involve AG-Energy's inability to provide steam to the Office of Mental Health. At some point, AG-Energy simply may not have the funds available to purchase and transport the fuel required to produce steam for OMH. Especially in light of current economic conditions, there is no assurance that AG-Energy can continue to draw

---

[18] Since that time, New York's electricity market, at both the retail and wholesale levels, has undergone a complete restructuring, with the advent of a competitive electricity market overseen by the New York Independent System Operator, Inc.

[19] *See* Exh. C to the Complaint.

upon its past funding sources. Accordingly, it is in the public interest to review the rates charged by St. Lawrence for service to AG-Energy.

3. The Commission's Ratemaking Authority under New York Law

The Commission has significant leeway in determining what constitutes a just and reasonable rate in any particular circumstances.[20] However, it is a basic ratemaking tenet that the rates for service must bear a reasonable relationship to costs.[21] In addition, the utility is entitled to a reasonable return on its investment. In this case, the issue is whether a rate allowing for a very generous rate of return and imposed (without the Commission's affirmative blessing) at a time when the customer's business was flourishing, may not be just and reasonable when that customer's business is struggling to avoid insolvency. "The question of whether a rate is just and reasonable must, of necessity, strike a balance between the interests of the consumer and those who invest in the utilities."[22]

St. Lawrence correctly notes that the "Bypass Policy Statement required that such contracts 'shall recover all costs expected during the term of the contract . . . , plus a reasonable contribution toward system costs.'"[23] And that the Commission declined to establish a particular level of contribution in its generic proceeding. Finally, St. Lawrence notes that "the Commission did state that 'very small contributions may not be commensurate with the risks associated with

---

20 *See, e.g., Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944).

21 *See id.*; *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, (D.C. Cir. 1984) ("the most useful and reliable starting point for rate regulation is an inquiry into costs . . . ." "'each deviation from cost-based pricing [must be] found not to be unreasonable and to be consistent with the Commission's [statutory] responsibility.'" (quoting *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 308 (1974))); *City of Detroit v. FPC*, 230 F.2d 810, 818 (D.C. Cir. 1955).

22 *St. Lawrence Gas Co. v. Public Service Com.*, 42 N.Y.2d 461, 464 (1977), citing *Federal Power Comm'n. v Hope Natural Gas Co.*, 320 US 591, 603 (1944); *Farmers Union Central Exchange v. FERC*, 734 F.2d 1486, 1502 (D.C. Cir. 1984) ("The 'zone of reasonableness' is delineated by striking a fair balance between the financial interests of the regulated company and 'the relevant public interests, both existing and foreseeable.'" (quoting *Permian Basin Area Rate Cases*, 390 U.S. 747, 792 (1968))).

23 Resp. at 4.

long-term contracts and estimates . . . .'" Apparently, St. Lawrence takes this last statement as a license to charge rates that include a disproportionately large contribution to system costs. Respectfully, we do not believe this is what the Commission had in mind.[24] AG-Energy submits that a hearing on this issue will show the existing rates grossly exceed the sum of incremental costs, a reasonable return on investment and a fair contribution to system costs—to such an extent that the existing rates cannot be said to be just and reasonable or in the public interest.

4. AG-Energy has made a *Prima Facie* Showing of Unjust and Unreasonable Rates

The information available to AG-Energy to make its case is currently incomplete. Given the course of prior communications, it appears that only through discovery will AG-Energy be able to extract the relevant data from St. Lawrence. However, as indicated in the Complaint, AG-Energy has made a *prima facie* showing that, on a going forward basis, the rates St. Lawrence is charging appear to be unjust and unreasonable. This is so because, as St. Lawrence has admitted, St. Lawrence has fully recovered the incremental cost of building the Lisbon-Ogdensburg line,[25] and St. Lawrence incurs no material ongoing costs in providing service to AG-Energy.[26] However, St. Lawrence continues to charge AG-Energy in excess of $500,000

---

[24] *See, e.g., Complaint of Town and Village of Gouverneur against St. Lawrence Gas Co.*, Opinion, 95-G-0336 at 6-7 ("[the Commission's bypass policy] requires a '**reasonable**' amount of those pipeline transportation revenues above costs accrue to the benefit of existing customers to account for investment made in the utility's total system infrastructure."). Where as in the case of AG-Energy, effectively no part of the greater system infrastructure is used to provide service, a "reasonable" contribution to costs would appear to lie on the low end rather the higher end of a zone of reasonableness.

[25] Resp. at 6 ("That the Company has already recovered the capital costs of the facilities necessary to provide the service to AGE is irrelevant.").

[26] *See* Comments of St. Lawrence Gas, Case Nos. 02-M-1034 and 07-M-1074, at 3 (dated Dec. 6, 2007). ("Because St. Lawrence Gas no longer has significant ongoing costs to provide service under the Contract, termination of the Contract would reduce St. Lawrence Gas' Utility Operating Income by about 16%."). In other words, AG-Energy subsidizes 16% of the revenue requirement, including St. Lawrence's return, for all of St. Lawrence's other customers. Of course this is only true to the extent St. Lawrence makes appropriate revenue requirement offsets, which sometimes appears to require the coercion of Commission staff. *See, e.g., Minor Rate Filing by St. Lawrence Gas Co.*, Opinion, Case No. 99-G-1188 at 34-35 (Mar. 1, 2001) ("In 1994, St. Lawrence negotiated with three of its cogeneration customers to include an administrative overhead charge on the capital

annually for this service.[27] Accordingly, the rates charged do not appear to bear a reasonable relationship to the cost of service.

Additionally, AG-Energy has raised legitimate concerns related to the monthly facility charge rate and its components. These include, but are not limited to, both the discount rate and the amortization period. AG-Energy noted that the 10% discount rate St. Lawrence uses may not be reasonable in a period of historically low interest rates. Additionally, AG-Energy argued that a twenty year amortization period is unreasonable given that the expected life of the Lisbon-Ogdensburg Line is sixty-five years.[28]

5. St. Lawrence has Provided no Credible Rebuttal

In its thin response to the complaint, St. Lawrence has raised certain facts that it alleges support the current rates. For instance, St. Lawrence suggests that its cost of providing service to AG-Energy includes financing costs, taxes, staffing, and outside service providers.[29] However, these statements appear to directly contradict prior statements by St. Lawrence before this Commission where St. Lawrence has stated that "St. Lawrence Gas no longer has significant ongoing costs to provide service under the Contract . . . ."[30] At a minimum, these statements

---

outlay for each construction project. The accounting treatment of the charges was intended to allow the company to increase its rate base by the amount of charges and to correspondingly increase deferred credits to compensate customers for the increase in rate base. The company did increase rate base but failed to reflect the related credits. Staff proposes to correct this accounting error and reduce the company's rate base by the unamortized balance ($467,988) of the administrative overhead credits."); *Minor Rate Filing of St. Lawrence Gas Co.*, Order Approving Recommendation, Case No. 94-G-0686 at 51 (Oct. 10, 1995) ("Adj. No. 1-c Increase cogeneration revenues to reflect the revenues associated with the property taxes relating to the Ag-Energy facility. The company failed to include these revenues in the rate case. $ 71,479"). To the extent appropriate credits are not made to the revenue requirement, 100% of these amounts would appear to accrue to the benefit of St. Lawrence Gas and the shareholders of its parent corporation.

27 *See id.*

28 *See* Comp. at 12.

29 Resp. at 6.

30 Comments of St. Lawrence Gas, Case Nos. 02-M-1034 and 07-M-1074, at 3 (dated Dec. 6, 2007).

present a major credibility issue for St. Lawrence and provide further justification for hearing procedures.

St. Lawrence alludes to the possibility that these circumstances result from the levelized nature of charges under the agreement. However, given the relative magnitudes of: (i) incremental costs (of approximately $2.2 million for construction of the Lisbon-Ogdensburg Line), (ii) ongoing costs (of either zero or perhaps some unspecified number, depending upon which St. Lawrence pleading is believable), (iii) charges St. Lawrence expects to continue to collect going forward (approximately $500,000 annually),[31] and (iv) payments already made by AG-Energy to St. Lawrence (approximately $9 million),[32] it is highly unlikely that levelizing is responsible for the disparity between ongoing costs and current rates.

Moreover, St. Lawrence's own levelized charge analysis supports the conclusion that it has fully recovered its incremental costs and no further contributions to system costs are warranted. St. Lawrence states, "it is entirely expected that at some point the Company's capital investment in the necessary facilities will have been recovered," alludes that this is presently the case, and suggests that this might occur prior to fully recovering an allowed return on investment.[33] A series of charges based on a properly constructed levelized charge should not result in any one component of the charges reaching zero at any time. The case of fixed rate mortgage payments demonstrates this. The interest component makes up the vast majority of the charge, relative to principal, in the first period. This relationship is reversed in the last period. The interest component is reduced to zero once the principal is fully recovered. In the instant case, St. Lawrence's concession that its investment in the Lisbon-Ogdensburg Line has been

---

31 *See id.*

32 *See* Exhibit A hereto, Summary of Charges 1993-2008.

33 Resp. at 7.

fully recovered implies that carrying costs related to that investment should be zero as well, as should any related contribution to system costs.

St. Lawrence's justification for the discount rate used in the monthly facilities charge calculations is without basis. In response to AG-Energy's position that the discount rate is excessive in light of historically low interest rates, St. Lawrence merely states that its Commission-allowed after-tax rate of return was 10.43 percent. This statement appears to confirm that St. Lawrence is "double-dipping" on recovery of capital costs under the charging scheme, as implemented. The first step of the rate formula includes a pre-tax return on investment. The stated purpose of the second step of the rate formula is to "employ[] the concept of 'present value' which calculates the value today of a stream of payments discounted at an appropriate discount rate."[34] The first month example of the rate calculation is based on a 10% annual rate. Nowhere does St. Lawrence justify why 10% was or continues to be an appropriate discount rate. Nowhere does St. Lawrence explain why it believes its after-tax rate of return is a proxy for an appropriate discount rate. This is true even though AG-Energy noted in its complaint that St. Lawrence has indicated its true cost of capital is only 6.67% and AG-Energy alleged that lower rates may be appropriate.[35]

St. Lawrence's justification for the amortization period used in the monthly facilities charge calculations is without basis as well and is self-contradictory. On the one hand, St. Lawrence states that it is speculative whether any use will be made of the pipeline after twenty years. On the other hand, St. Lawrence states that, "It is standard procedure for depreciation to be calculated using the expected life of the facilities."[36] Moreover, this position contradicts St.

---

34 *See* Agreement, App. II, p. 32.

35 *See* Comp. at 12.

36 Resp. at 9.

Lawrence's admission that it is using the Lisbon-Ogdensburg Line to serve other customers; presumably, St. Lawrence would be obligated to maintain service to those other customers beyond the term of the agreement with AG-Energy. St. Lawrence appears to believe it should be able to use whatever depreciation rate is most advantageous to it at a particular moment in time.[37]

6. St. Lawrence Demonstrates Callous Disregard for the Nondiscrimination Provisions in New York Public Service Law

St. Lawrence belittles the importance of complying with the Commission's filing requirements for negotiated contracts.[38] However, to the extent St. Lawrence had properly complied with these, the basis for charges imposed might already have been stated in the public record. For example, the Commission's Bypass Policy Statement required that:

> "Contracts negotiated pursuant to the tariffs shall be filed with the Commission, along with complete cost estimates, assessment of impacts, and justification for the negotiated rates and terms. Supporting material should be in adequate detail to constitute the *prima facie* case in the event of challenges. All filed material shall be available for public inspection."[39]

This order was in effect at the time the Agreement was executed. AG-Energy has not been able to locate any such filing related to its agreement with St. Lawrence, even though St. Lawrence asserts in its Response that the agreement was filed with the Commission.[40] To the extent St. Lawrence has in fact made such a filing constituting its *prima facie* case providing justification

---

[37] *See Minor Rate Filing by St. Lawrence Gas Company, Inc.*, Opinion, Case No. Case No. 99-G-1188, at 25, n.13 (Mar. 1, 2000) ("Historically, the company depreciated cogeneration assets over the life of the individual contracts. Due to the termination of the cogeneration contracts, St. Lawrence proposes to depreciate the remaining book value of these assets over the same time frame as other similar assets beginning with the rate year. The average service life of the remaining cogeneration assets therefore will be increased and the associated annual depreciation expense will decrease.").

[38] *See* Resp. at 12 ("the only thing the Company has done wrong is the oversight of not refiling an electronic copy of summaries of a couple special contracts . . . the Company's oversight is only administrative and has yielded no harm . . . .").

[39] *Proceeding on Motion of the Commission to Investigate the Impact of Bypass by Gas Cogeneration Projects*, Policy Statement, Case No. 90-G-0379, at 20 (Mar. 6, 1991).

for rates and terms, it has not made that material available in the instant proceeding or even provided the most basic identifying information, such as a filing date or case number, that would assist AG-Energy or the Commission in its review.

Similarly, St. Lawrence ignores the Appellate Division's mandate in *MCI*.[41] St. Lawrence makes much out of the fact that for a period of time, AG-Energy and Power City Partners ("PCP") had in common upstream ownership.[42] St. Lawrence's flawed and unsupported excuse for failing to comply with the Commission's filing requirements is that somehow this common upstream ownership made AG-Energy privy to the content of the PCP contract, which St. Lawrence alleges was similar to several other transportation contracts St. Lawrence had entered into with co-generators. First, this rationale makes no sense. Regardless of whether the PCP and AG-Energy contracts were similar,[43] St. Lawrence ignores the point of the *MCI* decision and the Commission's implementing regulations contained in the Negotiated Contracts Order.[44] Utility customers, the Commission, and the public have a right to access information that will allow them to determine for themselves whether St. Lawrence has discriminated in providing service. Accordingly, it is imperative that St. Lawrence make all of the required

---

40 *See* Resp. at 2.

41 *MCI Telecommunications Corp. v. Public Service Commission*, 169 A.D.2d 143 (N.Y. App. 1991).

42 *See, e.g.*, Resp. at 2 n.1, 4-6 & 12-13.

43 AG-Energy takes no position the issue of whether the agreements are in fact similar. PCP is no longer affiliated with AG-Energy and AG-Energy does not currently have access to the PCP agreement with St. Lawrence.

44 *Proceeding on Motion of the Commission as to the Administration of Utility Tariffs with Respect to Individually Negotiated Contracts between Customers and Utilities*, Order Concerning Tariffs Authorizing Individually Negotiated Contracts, Case No. 91-M-0927, at 17-18 (May 8, 1992) (hereinafter "Negotiated Contracts Order").

material available in the manner specified by the Commission, including historical material relating to terminated agreements that was improperly withheld in the past.[45]

Second, the record in at least one Commission proceeding discussing the Natural Dam cogeneration project appears to belie St. Lawrence's conclusion that the contracts were similar.[46] In that case, while electric generating operations were not taking place, charges under the gas transportation agreement were reported to be only approximately $6,500 per year in excess of costs.[47] In the case of AG-Energy, charges sought by St. Lawrence currently appear to be $550,000 per year in excess of costs. If St. Lawrence had properly complied with the Commission's disclosure requirements and made the contract summaries publicly available in the electronic format required by the Commission, a reasonable explanation for this disparity may or may not have already come to light. However, this differential, combined with St. Lawrence's recalcitrance, suggests that St. Lawrence may be in violation of the nondiscrimination provisions in PSL §§ 65(2) and 65(3).

Further, St. Lawrence has violated the plain language of Section 25(1) of the Public Service Law, which states, "[e]very public utility company, corporation, or person and the officers, agents and employees thereof shall obey and comply with every provision of this chapter *and every order or regulation adopted under authority of this chapter* so long as the same shall be in force." (emphasis added). The Bypass Policy Statement required that contracts be filed and St. Lawrence has simply failed to comply.

---

45 To the extent St. Lawrence has negotiated contracts with customers other than cogenerators, information regarding these contracts should be made available as well. Potential discriminatory treatment is not inherently limited to particular service classifications.

46 *See Complaint of Town and Village of Gouverneur against St. Lawrence Gas Company, Inc.*, Opinion, Case No. 95-G-0336 (Jan. 25, 1995).

47 *Id.* at 9.

With respect to the refund remedy proposed by AG-Energy in the complaint, the Commission should not be dissuaded by St. Lawrence's mischaracterization of such as "retroactive ratemaking" or an "*ex post facto* law." To the extent the Commission's filing and disclosure requirements are not met, the Commission has the right to consider charges collected by St. Lawrence as collected not in accordance with law. As such, the "retro" component of retroactive ratemaking is missing. Retroactive adjustments to properly filed rates are generally prohibited. Retroactive refund of illegally collected charges is not. Moreover, as to notice of liability stemming from potential refunds, St. Lawrence need look no further than PSL § 65(2), which states in relevant part, "All charges . . . shall be . . . not more than allowed by law or by order of the commission." That which is prohibited may be taken away by force of law—any other result would condone utilities charging as much as possible over and above filed rates, knowing that they were immune from refund liability even after being caught.

II. HEARING PROCEDURES ARE WARRANTED TO DETERMINE THE EXTENT TO WHICH ST. LAWRENCE HAS IMPROPERLY CHARGED AG-ENERGY FOR SERVICE UNDER THE AGREEMENT

Disputed issues of material fact exist regarding the extent to which St. Lawrence has improperly charged AG-Energy for gas transportation service under the Agreement. Accordingly, AG-Energy renews its request that the Commission institute hearing procedures to determine the extent to which St. Lawrence has historically improperly charged AG-Energy for gas transportation service under the Agreement. Respectfully, AG-Energy submits that St. Lawrence has admitted to improperly charging AG-Energy for gas transportation service under the Agreement and a disputed issue of material fact exists as to the extent of the overcharges.

In the Complaint, AG-Energy presented its case that St. Lawrence had failed to make appropriate adjustments to charges under the Agreement for third-party use of the Lisbon-

Ogdensburg Line.[48] St. Lawrence has admitted that third-parties use the Lisbon-Ogdensburg Line. St. Lawrence states that this use is *de minimis*. However, St. Lawrence has refused to provide any documentation regarding the nature and scope of this use. Accordingly, St. Lawrence has provided no credible rebuttal to the AG-Energy's *prima facie* showing of improper charging under the Agreement. Moreover, St. Lawrence's only rebuttal—the argument that the intent of the parties to incorporate the main extension provisions in the tariff—brings into dispute a material fact.[49] Therefore, hearing procedures are warranted to determine the scope of the improper charging.

III. A DECLARATORY ORDER IS WARRANTED CONFIRMING THAT THE AGREEMENT HAS TERMINATED

AG-Energy renews its request that the Commission issue a declaratory order confirming the Agreement has terminated. St. Lawrence's theory that a "mere billing dispute" is not a material breach is without foundation. The only purported support St. Lawrence puts forth is the self-serving hyperbolic conclusion that a finding to this effect "would throw the world of commerce into utter chaos." Given the lack of any cushion in AG-Energy's finances, any overcharge is material and the contract provides for termination in the event of an uncured material breach. AG-Energy paid these amounts in good faith. St. Lawrence's overcharges contribute to the possibility that AG-Energy may be unable to meet the steam service needs of its customer, the State of New York. AG-Energy provided the contractually agreed 30-day notice and opportunity to cure. St. Lawrence failed to timely cure and AG-Energy terminated the agreement. Accordingly, a declaratory order from the Commission is warranted to establish clearly the rights and obligations of the parties.

---

48 Comp. at 13-15.

49 *See* Resp. at 11.

IV. REQUESTED RELIEF

FOR ALL THE FOREGOING REASONS, AG-Energy respectfully requests that the Commission grant its Petition and issue an order:

a. initiating hearing procedures, including discovery, with respect to main extension cost recovery under the Natural Gas Transportation Agreement;

b. requiring St. Lawrence to refund amounts previously recovered in excess of costs of the main extension;

c. permanently precluding St. Lawrence Gas from charging AG-Energy additional main extension costs for the existing extension;

d. precluding St. Lawrence from imposing minimum take charges;

e. initiating hearing procedures, including discovery, with respect to the extent other customers are served over the main extension;

f. requiring further refunds to the extent such hearing procedures establish that St. Lawrence has improperly failed to account for other customers' use of the main extension;

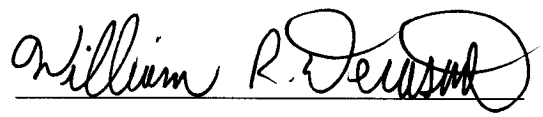
g. precluding St. Lawrence from unlawfully threatening termination of service; and

h. summarily finding that St. Lawrence failed to file the contract at issue in violation of Commission orders and the Public Service Law.

Dated May 13, 2009

Respectfully submitted,

Troutman Sanders LLP
Counsel for AG-Energy, LP

By: 

William R. Derasmo, Esq.
TROUTMAN SANDERS LLP
401 Ninth Street N.W., Suite 1000
Washington, DC 20004

Exhibit A - ST. LAWRENCE GAS Charges to AG ENERGY, L. P.

	Total Paid	Monthly Facility Charge	Pipeline Property Tax	SLG Gas Transportation	Annual Min Take Charge	Iroquois Surcharge
	$ 9,024,829.89	**$4,225,083.49**	**$1,084,796.59**	**$1,863,111.12**	**$1,337,444.06**	**$514,394.63**
1993	Oct		$240.26	$6,441.33		
	Nov		$1,975.47	$52,901.65		
	Dec	$22,794.59	$14,392.26	$6,325.32		
1994	Jan	$22,794.59		$16,877.60		$6,428.00
	Feb	$22,794.59		$16,200.38		$7,736.02
	Mar	$22,794.59		$19,821.72		$7,549.30
	Apr	$22,794.59		$18,666.51		$7,109.33
	May	$22,794.59		$24,018.13		$9,147.54
	June	$38,631.32		$23,290.94		$8,870.59
	July	$25,056.98		$23,393.34		$8,909.59
	Aug	$25,125.44		$23,711.22		$9,030.66
	Sept	$25,125.44		$20,037.14		$7,631.34
	Oct	$25,125.44		$24,058.29		$9,162.84
	Nov	$25,125.44		$24,471.31		$9,320.14
	Dec	$25,321.04		$25,564.56		$9,736.52
1995	Jan	$25,223.65	$7,009.90	$25,648.02		$9,768.30
	Feb	$25,223.65	$7,009.90	$23,476.94		$8,941.43
	Mar	$25,265.90	$7,021.64	$25,362.62		$9,659.61
	Apr	$25,223.65	$7,009.90	$24,366.39		$9,143.04
	May	$25,223.65	$7,009.90	$24,919.60		$9,350.62
	June	$25,223.65	$7,009.90	$23,980.19		$8,998.12
	July	$25,223.65	$8,253.23	$24,557.78		$9,214.85
	Aug	$25,223.65	$7,009.90	$24,769.32		$9,294.23
	Sept	$25,223.65	$7,009.90	$20,757.64		$7,788.92
	Oct	$21,716.34	$7,009.90	$25,146.83		$6,756.69
	Nov	$21,716.34	$5,756.00	$24,815.09		$6,667.56
	Dec	$21,716.34	$5,756.00	$25,888.71		$6,956.03
1996	Jan	$21,667.56	$5,743.07	$26,041.13		$6,996.98
	Feb	$21,667.56	$5,743.07	$22,522.28		$6,051.50
	Mar	$21,667.56	$5,743.07	$24,524.67		$6,589.53

	Apr	$21,667.56	$5,743.07	$24,000.52		$6,291.25
	May	$21,667.56	$5,743.07	$24,997.59		$6,552.62
	June	$21,667.56	$5,743.07	$23,504.09		$6,161.13
	July	$21,667.56	$5,743.07	$25,057.04		$6,568.20
	Aug	$21,667.56	$5,743.07	$25,236.24		$6,615.18
	Sept	$21,667.56	$5,743.07	$22,490.99		$5,895.56
	Oct	$21,667.56	$5,743.07	$24,972.33		$6,546.00
	Nov	$21,667.56	$7,088.27	$23,675.80		$6,206.14
	Dec	$21,667.56	$7,088.27	$26,217.12		$6,872.29
1997	Jan	$21,643.27	$7,080.33	$26,212.47		$6,871.07
	Feb	$21,643.27	$7,080.33	$23,950.82		$6,278.23
	Mar	$21,643.27	$7,080.33	$26,256.28		$6,882.56
	Apr	$21,643.27	$7,080.33	$25,524.69		$6,553.47
	May	$21,643.27	-$202.15	$25,946.10		$6,661.66
	June	$21,643.27	$6,040.31	$22,198.37		$5,699.43
	July	$21,643.27	$6,040.31	$25,734.97		$6,607.46
	Aug	$21,643.27	$6,040.31	$25,672.08		$6,591.31
	Sept	$21,643.27	$6,040.31	$25,398.58		$6,521.09
	Oct	$21,643.27	$6,040.31	$26,197.65		$6,726.25
	Nov	$21,643.27	$6,040.31	$25,377.55		$6,515.69
	Dec	$21,643.27	$6,040.31	$27,133.02		$6,966.41
1998	Jan	$21,643.27	$6,040.31	$15,005.32		$3,852.62
	Feb	$21,643.27	$6,040.31	$24,279.00		$6,233.64
	Mar	$21,643.27	$6,040.31	$26,743.93		$6,866.51
	Apr	$21,643.27	$6,040.31	$26,034.96		$6,533.17
	May	$21,643.27	$6,040.31	$25,672.46		$6,651.09
	June	$21,643.27	$6,040.31	$25,444.79		$6,385.08
	July	$21,643.27	$6,040.31	$9,555.67		$2,397.89
	Aug	$21,643.27	$5,665.54	$4,651.47		$1,167.23
	Sept	$34,012.66	$6,000.97	$2,340.62		$587.35
	Oct	$24,053.68	$5,985.18	$1,284.18		$322.25
	Nov	$24,053.68	$5,536.37	$1,723.47		$432.49
	Dec	$24,053.68	$5,536.37	$6,784.77		$1,702.56
1999	Jan	$24,053.68	$5,536.37	$2,758.74		$692.27
	Feb	$24,053.68	$5,536.37	$2,447.66		$614.21
	Mar	$24,053.68	$5,536.37	$1,987.72		$498.80
	Apr	$24,053.68	$5,536.37	$5,574.21		$1,396.21

	May	$24,053.68	$5,536.37	$9,246.16		$2,315.96
	June	$24,053.68	$5,536.37	$15,005.11		$3,758.44
	July	$24,053.68	$5,536.37	$14,451.00		$3,619.65
	Aug	$24,053.68	$5,536.37	$9,765.36		$2,446.00
	Sept	$24,053.68	$5,536.37	$896.25		$224.49
	Oct	$24,053.68	$5,536.37	$1,715.05	$99,531.40	$429.58
	Nov	$24,053.68	$5,772.54	$6,822.82		$1,708.96
	Dec	$24,053.68	$5,772.54	$4,198.91		$1,051.73
2000	Jan	$24,053.68	$5,772.54	$5,449.28		$1,364.92
	Feb	$23,865.27	$5,440.31	$4,942.88		$1,238.08
	Mar	$23,865.27	$5,727.32	$6,973.60		$1,746.73
	Apr	$23,865.27	$5,727.32	$3,355.55		$840.49
	May	$23,865.27	$5,727.32	$8,212.38		$2,024.29
	June	$23,865.27	$5,727.32	$4,602.20		$1,134.41
	July	$23,865.27	$5,727.32	$10,774.27		$2,655.78
	Aug	$23,865.27	$5,727.32	$9,919.23		$2,445.02
	Sept	$23,865.27	$5,727.32	$2,933.62		$723.12
	Oct	$23,865.27	$5,727.32	$7,343.84	$97,415.78	$1,810.21
	Nov	$23,865.27	$6,300.47	$3,480.71		$857.97
	Dec	$23,865.27	$6,300.47	$2,336.17		$575.85
2001	Jan	$23,733.90	$6,265.79	$1,668.54		$411.28
	Feb	$23,733.90	$6,265.79	$2,173.59		$535.77
	Mar	$23,733.90	$6,265.79	$3,115.98		$768.07
	Apr	$23,733.90	$6,265.79	$3,008.66		$725.36
	May	$23,733.90	$6,265.79	$5,011.41		$1,208.20
	June	$23,733.90	$6,265.79	$6,298.26		$1,518.44
	July	$23,733.90	$6,265.79	$9,796.98		$2,361.95
	Aug	$23,733.90	$6,265.79	$19,695.13		$4,748.28
	Sept	$23,733.90	$6,265.79	$5,503.21		$1,326.76
	Oct	$23,621.05	$6,263.18	$3,448.91	$109,903.25	$831.49
	Nov	$23,621.05	$6,235.99	$2,181.61		$526.20
	Dec	$23,621.05	$6,263.18	$2,263.71		$545.76
2002	Jan	$23,463.39	$6,221.38	$3,472.18		$837.11
	Feb	$23,463.39	$6,221.38	$2,770.26		$667.88
	Mar	$23,463.39	$6,221.38	$2,259.58		$544.76
	Apr	$23,463.39	$6,221.38	$3,201.70		$755.34
	May	$23,463.39	$6,221.38	$1,460.69		$344.60

	June	$23,463.39	$6,221.38	$3,737.06		$881.64
	July	$23,463.39	$6,221.38	$14,704.00		$3,468.92
	Aug	$23,463.39	$6,221.38	$11,824.68		$2,789.64
	Sept	$23,463.39	$6,221.38	$8,613.17		$2,031.99
	Oct	$23,463.39	$6,221.38	$8,326.32	$111,834.63	$1,964.32
	Nov	$23,463.39	$6,463.47	$8,574.57		$2,022.89
	Dec	$23,463.39	$6,463.47	$4,605.63		$1,086.55
2003	Jan	$23,300.70	$6,418.65	$1,559.76		$367.97
	Feb	$23,300.70	$6,418.65	$2,007.18		$473.53
	Mar	$23,300.70	$6,418.65	$3,147.85		$742.63
	Apr	$23,300.70	$6,418.65	$3,029.18		$706.93
	May	$23,300.70	$6,418.65	$2,291.75		$534.83
	June	$23,300.70	$6,418.65	$2,600.09		$606.79
	July	$23,300.70	$6,418.65	$6,452.83		$1,505.92
	Aug	$23,300.70	$6,418.65	$10,831.42		$2,527.76
	Sept	$23,255.65	$6,406.24	$9,644.46		$2,250.76
	Oct	$23,348.32	$6,431.77	$7,533.95	$115,784.00	$1,758.22
	Nov	$23,348.32	$6,692.41	$3,183.46		$742.94
	Dec	$23,348.32	$6,692.41	$1,854.08		$432.69
2004	Jan	$23,206.05	$6,651.63	$1,686.83		$393.66
	Feb	$23,206.05	$6,651.63	$10,935.05		$2,551.95
	Mar	$23,206.05	$6,651.63	$8,125.36		$1,896.24
	Apr	$23,206.05	$6,651.63	$3,030.55		$695.58
	May	$23,206.05	$6,651.63	$3,782.02		$868.06
	June	$23,206.05	$6,651.63	$2,548.37		$584.91
	July	$23,206.05	$6,651.63	$3,030.30		$695.52
	Aug	$23,206.05	$6,651.63	$5,802.13		$1,331.73
	Sept	$23,206.05	$6,651.63	$8,290.45		$1,902.85
	Oct	$23,206.05	$6,651.63	$4,302.29	$123,366.00	$987.48
	Nov	$23,206.05	$7,127.46	$7,335.80		$1,683.74
	Dec	$23,206.05	$7,127.46	$5,880.91		$1,349.81
2005	Jan	$23,081.82	$7,089.30	$3,777.72		
	Feb	$23,081.82	$7,089.30	$2,257.47		$518.14
	Mar	$23,081.82	$7,089.30	$3,033.88		$696.35
	Apr	$23,081.82	$7,089.30	$1,813.53		$407.67
	May	$23,081.82	$7,089.30	$1,367.91		$307.50
	June	$23,081.82	$7,089.30	$3,817.65		$858.19

	July	$23,081.82	$7,089.30	$6,505.27		$1,462.35
	Aug	$23,081.82	$7,089.30	$5,341.92		$1,200.83
	Sept	$23,081.82	$7,089.30	$1,200.38		$269.84
	Oct	$23,081.82	$7,089.30	$1,224.46	$138,845.00	$275.25
	Nov	$23,081.82	$7,089.30	$1,325.48		$297.96
	Dec	$23,081.82	$7,089.30	$520.02		$116.90
2006	Jan	$23,081.82	$7,089.30	$1,273.68		$286.31
	Feb	$23,081.82	$7,089.30	$649.82		$146.08
	Mar	$23,081.82	$7,089.30	$487.55		$109.60
	Apr	$23,081.82	$7,089.30	$988.96		$214.87
	May	$23,081.82	$7,089.30	$865.21		$187.99
	June	$23,081.82	$6,369.68	$827.62		$179.82
	July	$23,081.82	$6,369.68	$1,276.44		$277.34
	Aug	$23,081.82	$6,369.68	$1,065.06		$231.41
	Sept	$23,081.82	$6,998.56	$2,046.90		$444.73
	Oct	$23,081.82	$6,998.56	$3,134.44	$173,070.00	$681.03
	Nov	$23,081.82	$6,789.16	$1,328.05		$288.55
	Dec	$23,081.82	$6,789.16	$1,434.29		$311.63
2007	Jan	$23,081.82	$6,789.16	$1,827.35		$397.03
	Feb	$23,081.82	$6,789.16	$1,428.35		$310.34
	Mar	$23,081.82	$6,789.16	$1,281.48		$278.43
	Apr	$23,081.82	$6,789.16	$1,013.44		$213.09
	May	$23,081.82	$6,789.16	$830.02		$174.53
	June	$23,081.82	$6,789.16	$813.93		$171.15
	July	$23,281.82	$5,789.15	$917.88		$193.00
	Aug	$23,081.82	$6,789.16	$886.11		$185.11
	Sept	$23,081.82	$6,789.16	$817.56		$171.91
	Oct	$23,081.82	$6,789.16	$829.31	$180,468.00	$174.38
	Nov	$23,081.82	$6,632.12	$1,187.97		$249.79
	Dec	$23,081.82	$6,632.12	$1,486.56		$312.58
2008	Jan	$23,081.82	$6,632.12	$1,515.87		$318.74
	Feb	$23,081.82	$6,632.12	$1,489.16		$313.13
	Mar	$23,081.82	$6,632.12	$1,412.37		$296.98
	Apr	$23,081.82	$6,632.12	$934.29		$190.77
	May	$23,081.82	$6,632.12	$813.56		$166.12
	June	$23,081.82	$6,632.12	$723.43		$147.72
	July	$23,081.82	$6,632.12	$790.74		$161.46

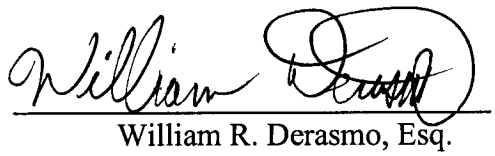
	Aug	$23,081.82	$6,632.12	$775.64		$158.38
	Sept	$23,081.82	$6,632.12	$712.24		$145.43
	Oct	$23,081.82	$6,632.12	$857.19	$187,226.00	$175.03
	Nov	$23,081.82	$6,724.08	$1,092.62		$223.11
	Dec	$23,081.82	$6,724.08	$1,484.13		$303.05
2009	Jan					
	Feb					
	Mar					
	Apr					
	May					
	June					
	July					
	Aug					
	Sept					
	Oct					
	Nov					
	Dec					

CERTIFICATE OF SERVICE

I, William R. Derasmo, Esq., hereby certify that on this 13th day of May 2009, I caused to be served a copy of the foregoing Reply to Response to Complaint and Petition of AG-Energy, LP upon the following parties by overnight delivery:

Eric J. Krathwohl, Esq.
Rich May, A Professional Corporation
176 Federal Street
Boston, MA 02110-2223

Sharon A. Gaines, Treasurer
St. Lawrence Gas Company, Inc.
33 Stearns Street, PO Box 270
Massena, NY 13662



William R. Derasmo, Esq.