

---

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is dated as of the 6<sup>th</sup> day of January, 2006, by and between Northwest Natural Gas Company, an Oregon corporation (“NWN”), on the one hand, and SEH America, Inc. (“Customer”), on the other.

### **RECITALS**

**WHEREAS**, NWN currently provides natural gas sales service to Customer; and

**WHEREAS**, certain Disputes have arisen between the Parties; and

**WHEREAS**, the OPUC has initiated an investigation to determine whether NWN provided adequate information to customers under OAR 860-020-0010(5); and

**WHEREAS**, the Parties desire to fully and finally settle the Disputes, as well as all other Claims, as between them, acknowledging that settlement is in the best interests of the Parties.

### **DEFINITIONS**

“Claim” or “Claims” means any or all claims, counterclaims, cross-claims, defenses, affirmative defenses, causes of action of any type (whether common law, statutory, regulatory or administrative, and whether or not reduced to a written complaint or pleading filed in any jurisdiction, and whether or not reduced to writing or formal demand, and whether or not liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured), demands, disputes, damages, costs, losses, detriments, interest, expenses, penalties, attorneys’ fees, expert fees, actions, debts, controversies, suits and choses in action, whether known or unknown, as against each other, relating to or arising out of any representation, promise, statement, agreement, quote, price, contract, tariff, rate schedule, special contract, or any other act, statement or omission of any kind related in any way to the Election by Customer for sales service to begin October 1 or November 1, 2005 by NWN and the related one year term of such sales service in 2005 and 2006.

“Customer” means the customer identified above, including subsidiaries, affiliates, successors and predecessors, and their respective current and/or former shareholders, members, partners, principals, directors, officers, employees, agents, servants, counsel, and insurers.

“Dispute” or “Disputes” means all issues that have arisen between the Parties relating to the Claims.

“Election” means Customer’s election of natural gas sales, transportation or other service under NWN’s Rate Schedule (RS) and Service Option Election Form for such service or services to begin October 1 or November 1, 2005, as appropriate.

“Incremental Costs” means all additional costs incurred by NWN, if any, to accommodate or fulfill Customer’s sales service Election pursuant to tariff Schedule T.

---

“Interim Settlement Agreement” means that agreement entered into by NWN and Customer on or about November or December, 2005, regarding interim gas supply costs for sales service.

“November Group” means those customers who elected to start, and did start, sales service as of November 1, 2005, and have not withdrawn that election at any time prior to the date of this Agreement.

“NWIGU” means Northwest Industrial Gas Users.

“NWN” means Northwest Natural Gas Company and its subsidiaries, affiliates, successors and predecessors, and their respective current and/or former shareholders, members, partners, principals, directors, officers, employees, agents, servants, counsel, and insurers.

“October Group” means those customers who elected to start, and did start, sales service as of October 1, 2005, and have not withdrawn that election at any time prior to the date of this Agreement.

“OPUC” means the Oregon Public Utility Commission.

“Parties” means NWN and Customer, collectively.

“Party” means NWN or Customer, individually.

“Permanent Margin” means the total tariff charges excluding commodity rate and any temporary rate adjustments.

“Revenue Sensitive Adjustment” means adjusting or grossing up rates to account for costs that change with changes in revenues. In Oregon the Revenue Sensitive Adjustment includes Regulatory Commission Fees, City License and Franchise Fees, Unbilled Franchise Accrual, and Net Uncollectible Expense, and in Washington includes Regulatory Commission Fees, Public Utility Tax, Unbilled Franchise Accrual, and Accrual for Uncollectibles. The Revenue Sensitive Adjustment is 2.852% of revenues in Oregon and 4.448% of revenues in Washington. Adjusted or grossed up rates are calculated by dividing pre-adjustment rates by one (1) minus the Revenue Sensitive Adjustment (e.g., pre-adjustment rates / (1 – 0.02852)).

“Unknown Claims” means Claims that any Party does not know or suspect to exist at the time of the release which might have affected the terms of this Agreement.

“WACOG” means NWN’s weighted average cost of gas.

“Winter Storage Savings” means gas cost savings, if any, that NWN may create through transactions completed and closed by March 31, 2006, limited to those transactions allocated by NWN at its sole discretion to the October and November Groups, collectively, through serving their load requirements by using its reasonable best efforts to acquire natural gas supplies for Customer at the lowest reasonable cost (taking into account normal business exigencies and practices, and competing constraints of reliability and cost). In calculating Winter Storage Savings for the period

from December 2005 through March 2006, NWN shall continue to pursue and include the impact of the actions taken by NWN set forth in the Interim Settlement Agreement as Cost Reduction Measures for the Incurred Gas Costs in that Interim Settlement Agreement.

“Winter Storage Savings Rate Credit” means the Winter Storage Savings divided by the aggregate October Group and November Group usage for December 2005 through March 2006.

“Withdraw” or “Withdrew” means Customer’s decision, if any, to withdraw its Election, in whole or in part, in October or November, 2005.

“WUTC” means the Washington Utilities and Transportation Commission.

### **TERMS AND CONDITIONS**

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

**1. Incorporation of Recitals; Definitions.** The recitals stated above are incorporated in this Agreement and made a part of this Agreement as if fully set forth herein. Capitalized terms shall have the meanings given unless undefined.

**2. Consideration / Payment Terms.**

(c) The following terms in 2(c)(i) through 2(c)(iii) shall apply as monetary compensation calculated as direct credits to settle alleged Claims or Disputes for the period October 1, 2005 through March 31, 2006. To the extent any invoices under the following paragraphs differ from invoices issued by NWN under the Interim Settlement Agreement, NWN will reconcile the differences by February 15, 2006, and issue new invoices to Customer with debits or credits, as appropriate. In all events, the terms and conditions of this Agreement shall prevail over the terms of the Interim Settlement Agreement.

(i) If Customer is in the October Group, NWN shall invoice and Customer will pay for actual October 2005 gas usage at WACOG of \$7.35/Dth in Oregon and/or \$7.44/Dth in Washington, whichever is applicable. Additionally, if Customer is in the October Group, NWN

---

shall invoice and Customer will pay for actual November 2005 gas usage at Incremental Costs of \$8.855/Dth grossed up for the Revenue Sensitive Adjustment.

(ii) If Customer is in the November Group, NWN shall invoice and Customer will pay for actual November 2005 gas usage at WACOG of \$7.35/Dth in Oregon and/or \$7.44/Dth in Washington, whichever is applicable.

(iii) Additionally, for the period beginning December 1, 2005 and ending March 31, 2006, NWN shall invoice and Customer will pay for actual gas usage under Option A or Option B, below. Customer shall notify NWN in writing of its option selection under this provision on or before January 15, 2006.

a. **Option A:** \$10.02/Dth less \$0.25, or \$9.77/Dth, grossed up for the Revenue Sensitive Adjustment; or

b. **Option B:** \$10.02/Dth less the actual Winter Storage Savings Rate Credit, grossed up for the Revenue Sensitive Adjustment. Customer will continue to pay the interim billing rate of \$10.00 / Dth per the Interim Settlement Agreement. At the conclusion of March 2006, NWN will calculate the actual Winter Storage Savings Rate Credit and Customer's account will be reconciled in a lump sum billing credit by May 31, 2006.

To the extent any of the pricing mechanisms under this paragraph 2(c)(iii) Option B may be affected by Winter Storage Savings, Customer waives the right to make any claim with respect to the prudence of the Company's actions with regard to NWN's decisions for utilizing and allocating transactions to the October and November Groups, so long as the Company has acted in good faith and reasonably.

(d) The following terms shall apply as monetary compensation calculated as direct credits to settle alleged Claims or Disputes for the period beginning April 1, 2006 and ending with the conclusion of Customer's 2005/06 term of service, either September 30, 2006 or October 31, 2006, whichever is applicable. Customer shall notify NWN in writing of its option selection on or before January 15, 2006, for one of the following three (3) options:

(i) **Option A:** If Customer elects to end sales service and return to transportation service as of April 1, 2006, NWN shall credit Customer

NWN will credit this lump sum amount to Customer no later than February 15, 2006; or

(ii) **Option B:** If Customer elects to remain on sales service through the remainder of its 2005/06 term of service – i.e., September 30, 2006 or October 31, 2006, whichever is applicable – NWN shall invoice and Customer will pay for actual gas usage during the remaining term of service at \$9.04/Dth, grossed up for the Revenue Sensitive Adjustment; or

(iii) **Option C:** If Customer elects to maintain the right to shift from sales to transport after January 15, 2006 but no later than March 15, 2006, the then-applicable price for sales service is indeterminate at this time. The then-applicable price may depend on, without limitation, the number of customers and volumes selecting Option A and Option B, and other factors in NWN's sole discretion, using its reasonable best efforts to acquire natural gas supplies for Customer at the lowest reasonable cost (taking into account normal business exigencies and practices, competing constraints of reliability and cost, its previous fixed price purchases for the October and November Groups, gains from the sale of such purchases not allocated to Options A and B and any additional variable price purchases).

(e) As part of settling any Claims or Disputes under this Agreement, the Customer will not be charged for pipeline capacity demand charges in applying the incremental gas supply cost provisions in Schedule T of NWN's applicable tariff only for the time period beginning with Customer's 2005/06 sales service term – i.e., either October 1, 2005 or November 1, 2005, as applicable – and ending on (i) March 31, 2006, if Customer returns to transport as of that date, or (ii) completion of the relevant 12-month term of service.

**3. Request for Tariff Modification.** NWN shall submit a request to OPUC and WUTC to amend Rate Schedule 32 or 42 as appropriate, and to Schedule T to its tariff. The requested amendment shall generally be designed to permit transportation customers to submit Election forms for sales service at WACOG prices by giving notice on or before May 31 of the given year, with 12-month term for sales service to begin October 1 or November 1 of that year, as appropriate. Additionally, the requested amendment will leave in place the current terms of Rate Schedule 32, Schedule T, permitting sales service Elections after May 31 of a given year, and subject to incremental costs per the tariff. Finally, the requested amendment will be designed to allow the Customer, if remaining on sales service under paragraph 2(d)(ii), Option B or Option C, to elect sales service on or before June 30, 2006 at the WACOG price for the 2006/07 term of service only. NWN will pursue implementation of this tariff change with its best efforts to effectuate tariff approval before the respective commissions. Notwithstanding this provision:

(a) Nothing in this Agreement shall prohibit, prevent or prejudice NWN's right to file a request with the OPUC and/or WUTC for a determination, construction or interpretation of its tariff, including but not limited to Rate Schedule 32 or 42 and Schedule T thereto. In that event, any such determination, construction or interpretation shall have no effect on the terms of this Agreement;

(b) Nothing in this Agreement shall prohibit, prevent or prejudice NWN's right to seek future amendments to the tariff.

---

**5. Mutual Releases.** NWN, on the one hand, and Customer, on the other, in consideration of paragraph 2 and the other terms and conditions stated herein, hereby release and forever discharge each other from any and all Claims, including Unknown Claims, which they now have, may hereafter have, or claim to have against each other with respect to the Disputes and Claims. It is the intent of the Parties to this Agreement to give the broadest release and discharge possible under the law with respect to the particular Disputes and Claims between the Parties that are the direct subject of this Agreement. This mutual release is binding upon and for the benefit of each of the Parties and their respective subsidiaries, affiliates, successors and predecessors, and their respective current and/or former shareholders, members, partners, principals, directors, officers, employees, agents, servants, counsel, and insurers to the extent of the Disputes and Claims between the Parties; provided, however, that this mutual release does not affect any claims or disputes arising from performance of the terms and conditions in this Agreement or any other matter that is not a Claim or Dispute.

**8. Regulatory Filing.** Each Party will cooperate with the other in developing the regulatory filing required to implement paragraph 3 in a timely fashion and in obtaining regulatory approval of paragraph 3.

**9. Non-Admission.** The settlement of Claims and Disputes between the Parties is voluntary and does not constitute an admission of negligence, breach of contract or any other basis for liability by any of the Parties, or an admission of the existence of any facts upon which liability could be based.

---

This Agreement and attached addenda, if any, may not be amended except by writing signed by all Parties.

**13. Conditions Precedent / Regulatory Approval.** This Agreement is expressly conditioned on final approval, without any modification, of this Agreement as a confidential special contract filing by the WUTC. Each Party will cooperate with the other in obtaining regulatory approval of this Agreement as a special contract as expeditiously as possible. In the event the WUTC does not approve this Agreement as a special contract without modification, either Party shall have five (5) business days following receipt of written notice of disapproval to rescind or modify this Agreement. In the case of rescission all monies paid and credits given by NWN to Customer under the Agreement shall be promptly returned. Notice of rescission shall be provided in writing to the other Party to this Agreement, pursuant to the Notice provision in paragraph 19.

arbitration by filing a claim in accordance with the filing rules of the organization selected, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Venue for any arbitration hereunder shall be in Portland, Oregon.

**16. Fees and Costs.** In the event suit or action is brought, or an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this agreement, or that arise out of or relate to this Agreement in any way, the prevailing party shall be entitled to recover all fees for attorneys, experts and arbitrators, as well as costs, in connection therewith. The determination of who is the prevailing party and the amount of fees and costs to be paid to the prevailing party shall be decided by the arbitrator(s) (with respect to fees and costs incurred prior to and during the arbitration proceedings) and by the court or courts, including any appellate court, in which such matter is tried, heard, or decided, including a court that hears a request to compel or stay litigation or that hears any exceptions or objections to, or requests to modify, correct, or vacate, an arbitration award submitted to it for confirmation as a judgment (with respect to fees and costs incurred in such court proceedings).

**17. Choice of Law.** This Agreement shall be construed and interpreted under the laws of the State of Oregon.

**18. Counterparts.** This Agreement may be executed in two or more separate but identical counterparts, and by facsimile, each of which, when executed, shall be an original, and all of which together shall constitute one and the same Agreement, notwithstanding that all Parties may not have executed the same counterpart, and each Party may execute a separate signature page which may be appended to form one or more duplicate originals of this Agreement.

**19. Notice.** Customer agrees to provide NWN with written notice within ten (10) days (or if served within less than ten (10) days to respond, immediately) of any subpoena, summons, motion, order, or other formal or informal request or directive that may call for disclosure of documents relating to and/or their testimony about the circumstances of the Claims and/or terms or conditions of the Agreement so that NWN may seek appropriate protection. Written notice shall be sent by facsimile and overnight delivery as follows: to NWN, to Margaret D. Kirkpatrick, General Counsel, NW Natural, 220 NW Second Avenue, Portland, OR 97209-3991, (503) 220-2584 (fax), and to Customer, to Steve Stenberg, Director of Facilities, SEH America, 4111 N.E. 112<sup>TH</sup> Ave, Vancouver, WA 98683-6776, (360) 885-8784 (fax)

**20. Authority.** Each of the signatories hereto represents and warrants that he, she or it is fully authorized to enter into this Agreement on behalf of the person or entity for which they execute the Agreement. Customer represents and warrants the Customer is the sole owner of the Claims released herein, and that Customer has not assigned or transferred, or purported to assign or transfer, any of the Customer's released Claims herein, except to the extent (if any) of any fee interest of Customer's counsel, which is also released herein to the extent it relates to the Claims released herein (but not otherwise).

////

////



**IN WITNESS WHEREOF**, intending to be legally bound hereby, the Parties have executed this Agreement as of the day and year written above.

**NORTHWEST NATURAL GAS COMPANY**

By: \_\_\_\_\_

Mark S. Dodson

President and Chief Executive Officer

**CUSTOMER**

**SEH AMERICA, INC.**

Company: SEH America, Inc.

By: P. Stuber

Title: Director of Facilities

NWNA/102443.4

---

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the Parties have executed this Agreement as of the day and year written above.

**NORTHWEST NATURAL GAS COMPANY**

By: \_\_\_\_\_

Mark S. Dodson

President and Chief Executive Officer

**CUSTOMER**

**SEH AMERICA, INC.**

Company: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

NWNA/102443.4