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BEFORE THE ARIZONA CORPORATION COMMISSION

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SUSAN BITTER SMITH  
Chairman  
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Commissioner  
TOM FORESE  
Commissioner

Arizona Corporation Commission

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AZ CORP COMMISSION  
DOCKET CONTROL

JUN 10 2015

DOCKETED BY  
DAB

IN THE MATTER OF COMMISSION PIPELINE  
SAFETY SECTION STAFF'S COMPLAINT  
AGAINST DESERT GAS, LP FOR VIOLATIONS  
OF COMMISSION RULES.

DOCKET NO. G-20923A-15-0030

NOTICE OF FILING  
SETTLEMENT AGREEMENT  
AND REQUEST FOR  
PROCEDURAL CONFERENCE

On February 3, 2015, Arizona Corporation Commission ("Commission") Safety Division Staff ("Staff") filed a Complaint against Desert Gas LP ("Company"). On February 23, 2015, counsel for the Company filed an appearance and requested an extension of the deadline to file an answer to the Complaint in order to pursue settlement negotiations. On June 9, 2015, Staff and the Company entered into a Settlement Agreement resolving the outstanding issues presented by this matter. Staff hereby provides notice of filing a copy of the Settlement Agreement which is attached.

Additionally, now that settlement negotiations have concluded Staff believes it would be appropriate to have a procedural conference to discuss how best to proceed in this matter.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 2015.

Charles H. Hains  
Attorney, Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007  
(602) 542-3402

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...

1 The original and thirteen (13) copies  
of the foregoing were filed this  
2 10th day of June, 2015 with:

3 Docket Control  
Arizona Corporation Commission  
4 1200 West Washington Street  
Phoenix, Arizona 85007  
5

6 Copy of the foregoing mailed this  
10th day of June, 2015 to:

7  
8 Bret Bartholomey  
Desert Gas, LP  
1709 Utica Square - 240  
9 Tulsa, OK 74114

10 Mr. Raymond Latchem, President  
Desert Gas Services  
11 1709 Utica Square - 240  
Tulsa, OK 74114  
12

13 Mr. Robert E. Marvin  
Director, Safety Division  
Arizona Corporation Commission  
14 2200 N. Central Ave., Suite #300  
Phoenix, AZ 85004  
15

16 Jason D. Gellman  
Snell & Wilmer, LLP  
One Arizona Center  
17 400 East Van Buren Street, Suite 1900  
Phoenix, Arizona 85004  
18 Attorney for Desert Gas, LP  
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**ATTACHMENT A**

**DESERT GAS, LP**

**SETTLEMENT AGREEMENT**

**DOCKET NO. G-02923A-15-0030**

**JUNE 9, 2015**

**PROPOSED SETTLEMENT AGREEMENT**  
**Docket No. G-02923A-15-0030**

The Arizona Corporation Commission (Commission) Safety Division Staff (Staff) and Desert Gas, LP (DG), collectively referred to in this proposed Settlement Agreement (Agreement) as the "Parties," hereby submit this proposed Agreement to the Commission for review and approval. The purpose of the proposed Agreement is to resolve Docket No. G-02923A-15-0030 in a manner consistent with the best interests of the public.

**FACTUAL BACKGROUND**

1. DG operates a high pressure natural gas liquefaction facility located in the vicinity of Ehrenberg, Arizona. Also within the vicinity is an interstate natural gas pipeline crossing the Colorado River approximately one half mile south of the facility, as well as a major truck stop, restaurant and motel within a half mile of the DG facility. The facility is automated and designed to take natural gas from the TransCanada North Baja Pipeline, remove contaminants, and compress and refrigerate the natural gas until it is cryogenic liquid. The resulting liquefied natural gas (LNG) is stored on site for transport by trucks operated by Clean Energy Fuels Corporation (CEF). Each CEF truck has the capacity to carry approximately 9,500 gallons of LNG. The facility has the capacity to store up to 104,000 gallons of LNG on site. Upon vaporization, the 104,000 gallons approximates to 8,590,000 cubic feet of natural gas.

2. Staff conducts an annual safety compliance audit of this facility as part of its pipeline safety responsibilities.

3. During the audit performed by Staff investigators on August 25, through August 29, 2014, Staff determined that DG had installed a new methane compressor and associated pipeline. DG representatives confirmed that the new methane compressor and pipeline went into continuous service on July 28, 2014. Staff asked DG for records of qualified welding procedures,

individual welders' qualification records, pipe specification records, nondestructive testing records, and qualification records of the individuals that had performed the nondestructive tests used during the installation and construction of the new methane compressor and associated piping.

4. A DG representative stated that these records were not available and he would have to contact the Operations Director of DG and the contractor who performed the work to provide Staff with these records. On September 15, 2014, Staff made a second request for the documentation and records by way of email.

5. During the DG 2014 Audit Exit meeting on September 29, 2014, DG provided Staff with documentation addressing the welding procedures, welding qualification records, nondestructive testing of welds and qualification records of the individuals who conducted the nondestructive testing. DG relied upon statements from a new Contractor that it was fully qualified and possessed the required Procedures.

6. Based on its review of the documentation, Staff determined that the contractor that had welded the process piping to the compressor did not have qualified welding procedures at the time of construction.

7. Additional documentation provided by DG regarding nondestructive testing indicated that only 11 out of 83 welds had been nondestructively tested (approximately 13%) prior to bringing the compressor online. DG had an additional 15 welds nondestructively tested on September 18, 2014, after the compressor was brought online and following Staff's inquiry regarding the nondestructive testing. Of the additional 15 welds that were nondestructively tested, there were 8 rejected indicating a more than 50 percent rejection rate. One rejected weld,

discovered through the additional testing, was rejected again after a re-weld using the qualified procedure.

8. On October 7, 2014, a formal Data Request letter was mailed to DG requesting documentation and records of the installation of the compressor and associated piping. Documentation received in response to the Data Request likewise reflected issues regarding the weld procedures and quality of the welds that were performed by the contractor, as demonstrated by nondestructive testing.

### **STATEMENT OF PARTIES' POSITIONS**

#### **1. Requirement for Qualified Welding Procedure**

a. Staff contends DG should have developed qualified welding procedures prior to performing the welds used in the installation of the methane compressor addition. Based on the records maintained by DG, qualified welding procedures were not developed until after the completion of the methane compressor addition. Staff maintains that A.A.C. R14-5-202(B), through the adoption of 49 C.F.R. part 193 requires the use of qualified welding procedures for the types of welds performed in connection with the methane compressor addition. Consequently, DG cannot demonstrate that it used qualified welding procedures to perform the welds used in connection with the methane compressor addition. Staff acknowledges that the welding procedures DG developed after the completion of the compressor addition are qualified welding procedures.

b. DG contends that it has developed qualified welding procedures for use in the installation of joints relating to the methane compressor addition. DG relied upon statements from a new Contractor that it was fully qualified and possessed the required Procedures. DG's

original Contractor did in fact possess the Qualified Procedures, however they did not belong to DG.

c. DG acknowledges the concerns raised by Staff regarding DG's failure to develop qualified welding procedures prior to performing the relevant welds and that the safe construction of the facility is ultimately DG's responsibility even when the work is performed by contractors working at DG's direction; and DG acknowledges that with certain modifications to its operating practices and training it believes improvements can be made to better inform its processes.

2. Requirement for Welder Qualifications

a. Staff contends that two of the welders DG used to perform the welds for the methane compressor addition did not possess demonstrated ability to perform the qualified welding procedures. Because the qualified welding procedures were not in existence at the time the welds were performed, Staff maintains that neither of the welders was certified on qualified welding procedures that should have been used during the construction. Staff asserts that A.A.C. R14-5-202(B), through the adoption of 49 C.F.R. part 193 requires that welders be qualified on qualified welding procedures they perform.

b. DG contends that the welders used to perform the welds were local contractors and that it is constrained by the availability of qualified personnel. DG further contends that while it is possible to adequately train and qualify an on-staff welder, the limited number of welds necessary to operate the facility do not justify maintaining a full-time welder.

c. DG acknowledges the concerns raised by Staff relating to the qualification of welders to perform the requisite welding procedures; and DG acknowledges that with certain

modifications to its operating practices that improvements can be made to ensure welders are trained and qualified to perform the necessary welds in the future.

3. Requirement for Nondestructive Testing of New Welds

a. Staff contends that DG did not perform nondestructive testing on 30 percent of each day's circumferentially welded pipe joints during the process of adding the methane compressor as required by A.A.C. R14-5-202(B). At the time the compressor was installed, only 11 of the 83 welds were tested. A further 15 welds were tested after the compressor was brought into service and as of the time Staff's Complaint was filed. Staff maintains that the rule requirement is at its most effective for improving safety when performed before facilities are brought under full operating pressure.

b. DG contends that it has performed 26 nondestructive tests and that in all instances of rejected welds detected by the nondestructive testing it has performed re-welds to produce adequate welds. DG contends that it has further performed nondestructive testing of all remaining welds since the filing of the Staff Complaint. Of the remaining welds, all rejected welds were repaired and retested and found to be satisfactory.

c. DG acknowledges Staff's concerns relating to nondestructive testing performed prior to the installation of new high pressure natural gas facilities. Staff acknowledges and appreciates the further efforts of DG in performing nondestructive testing on the remaining welds and the repair of those additional welds that were identified to be faulty. Both Parties acknowledge the importance of nondestructive testing and, in light of the remedial actions agreed to by DG, both Parties believe that DG is taking sufficient action to prevent recurrence of this issue in future similar circumstances.

4. Requirement for Nondestructive Testing in the Event of Demonstrated Test Failures

a. Staff contends that upon the detection of eight rejected welds and one rejected re-weld, DG would be required under A.A.C. R14-5-202(B) to perform two additional nondestructive tests for each rejected weld, totaling 18 additional nondestructive tests of welded joints. Among the 15 additional welds that were nondestructively tested, DG detected eight rejected welds that were subsequently re-welded with one of the re-welds resulting in a further rejected weld. Although all of the rejected welds have since been satisfactorily re-welded, Staff contends that the additional nondestructive testing for each rejected weld would be particularly warranted in light of the high incidence of rejected welds.

b. DG contends that it performed the initial 26 nondestructive tests and in all instances of rejected welds, including the rejected re-weld, it re-welded each rejected weld to a satisfactory level. DG further contends that following the filing of the Staff Complaint it has performed nondestructive testing on all the remaining welds.

c. DG acknowledges Staff's concerns relating to nondestructive testing performed upon the detection of a rejected weld and with the frequency of rejected welds that were detected. Staff acknowledges and appreciates the further efforts of DG in performing nondestructive testing on all the remaining welds. Both Parties acknowledge the importance of nondestructive testing and, in light of the remedial actions agreed to by DG, both Parties believe that DG is taking sufficient action to prevent recurrence of this issue in future similar circumstances.

#### **TERMS AND CONDITIONS**

DGS and Staff agree that the following terms will provide a just and reasonable resolution of the issues presented in this matter and will serve the public interest by promoting

public safety, health, and welfare, and by avoiding litigation which unnecessarily diverts the resources of all parties.

**1. Testing of Welds for New Compressor (MRC-6)**

DG agrees to immediately cease operating the new methane compressor until it has completed nondestructive x-ray testing of 100% of the welds in question at the natural gas liquefaction facility in Ehrenberg, Arizona (the Facility). DG further agrees to provide Staff with a written report within 30 days of the nondestructive x-ray testing being completed, verifying that all of the welds in question meet or exceed the American Society of Mechanical Engineers (ASME) Code standard B31.3, and that the welds in question met the ASME Code prior to the piping being returned to service. Pressure testing shall be conducted in accordance with all regulations, including Title 49, Part 193 of the Code of Federal Regulations (49 C.F.R 193), ASME B31.3, and Arizona Administrative Code (A.A.C.) Rule R14-5-202(B), and records of such testing shall be maintained for the life of the facility.

**2. Additional Staffing**

DG agrees to retain a trained and qualified welding inspector to ensure all welding work done at the Facility meets the requirements set forth in 49 C.F.R 193.2013(b)(C). The inspector will also review and approve all applicable qualifications and procedures of any welding contractor performing any work at the Facility. Welding inspector qualifications shall be provided to Staff for review, and a record of all qualifications shall be retained for no less than five years following the termination of the welding inspector services.

Further, DG agrees to establish a new position on a permanent basis to implement its Process Safety Management System program described in Terms and Conditions Section 5 below.

### **3. Future Testing of Welds**

DG agrees to conduct testing of all future welds at the Facility pursuant to 49 C.F.R 193.2013(b)(C) to ensure that the welds meet the standards set forth in 49 C.F.R 193.2013(b)(C). Further, DG agrees that all pressure testing shall be conducted in accordance with all regulations and, with the exception of emergency repairs, Staff shall be notified no less than 72 hours prior to any testing taking place to afford Staff the opportunity to witness all testing. Records of all tests performed shall be maintained for the life of the facility. No component shall be placed into service prior to completion of testing.

### **4. Procedures and Structure Regarding Future Welding Work**

DG agrees to develop written procedures regarding future work involving additions to the Facility that involve pipe welding, including the addition of new compressors to the Facility. These written procedures will be shared with Staff no less than 30 calendar days in advance of any future welding work to be performed at the Facility.

DG further agrees that all DG staff and contractors who perform welding activities at the Facility will be trained and qualified in accordance with these procedures. Further, DG agrees that the welders will have the proper certifications to demonstrate that they have been trained and tested in accordance with these procedures. With the exception of repair work of an urgent nature, DG will provide Staff, no less than 10 calendar days prior to any welding taking place, copies of all welding procedures and qualification testing of the welding procedures along with copies of welding qualifications and test results for each qualified welder for review and comment. Records of all welding procedures, welder qualifications, and test results for the procedures and welders shall be maintained for the life of the system.

### **5. Process Safety Management System Program**

DG will establish a formal process for the implementation of a Safety Management System (SMS) program. DG further agrees to incorporate the American Petroleum Institute (API) Recommended Practice (RP) 1173 within 60 days of the official release of the API RP-1173 into the program or adopt those as its procedures for the SMS program. The program will include the additional staffing as described in Terms and Conditions Section 2, as well as the following:

a. Dedicated Safety Office

DG agrees to establish an office at the Facility dedicated to implementing the SMS program, for the exclusive purpose of housing the program. DG further agrees that such office will be built within 90 days of the approval of this agreement by the Commission. Copies of all plans, procedures, manuals and records necessary for demonstrating compliance with all federal and state regulations and this agreement shall be maintained within the safety office.

b. Quarterly Meetings and Annual Review

The SMS program will include quarterly meetings, with DG's Chief Executive officer (CEO) participating, to review the program and any issues that have arisen at the Facility. Additionally, on an annual basis, DG will review updates to API RP 1173 to determine applicability to the Facility operations. DG further agrees to invite Staff to participate in the annual review, and to coordinate the review with the annual Staff audit. DG's Top Management will participate in the quarterly meetings and annual review, in accordance with API RP 1173.

c. Safety Manual

DG agrees to develop a safety manual appropriate to the Facility and including the written procedures detailed in Terms and Conditions Section 4. DG will test employees and will provide incentives to those employees who either achieve an exceptional grade on the test, or to

an employee who submits suggestions that are ultimately incorporated into the manual. Records shall be maintained of all testing and the results for the life of the Facility. These records shall include the name of the individual being tested, the date of the testing, a copy of the materials being addressed with the personnel being trained and the signature of the person being trained and tested.

d. Operator Training

DG agrees to provide process training for operators of the Facility, and to test such operators on all applicable processes relevant to the operations of the Facility. Records shall be maintained of all testing and the results for the life of the facility. These records shall include the name of the individual being tested, the date of the testing, a copy of the materials being addressed with the personnel being trained and the signature of the person being trained and tested.

e. Safety Promotion

DG agrees to emphasize the importance of safety throughout the program, including the training and testing of the Facility operators. To encourage employee participation, DG, as part of emphasizing safety, will provide promotional materials and awards including cash incentives.

**6. Immediate Payment and Future Penalty**

DG agrees to the following:

- a. DG agrees to make an immediate payment of \$7,500 to the Arizona General Fund.
- b. DG agrees that, should it be found that it has not complied with the terms and conditions of the settlement agreement regarding this matter during any time within 5 years of Commission approval of an agreement between Staff and DG, DG will then pay any future penalty of \$42,500 to the Arizona General Fund. Both Parties agree that the additional penalty

will not be imposed until Staff files notice of noncompliance with the terms of this agreement in the docket and DG has an opportunity to be heard, including an evidentiary hearing, regarding any allegations that is has not complied with the terms and conditions of the settlement.

### **MISCELLANEOUS PROVISIONS**

1. This Agreement represents the Parties' mutual desire to compromise and resolve this docket in a manner consistent with the public interest. This Agreement represents a compromise of the positions of the Parties. Acceptance of this Agreement is without prejudice to any position taken by any Party, and none of the provisions may be referred to, cited, or relied upon by any other Party as precedent in any proceeding before this Commission, any other regulatory agency, or any court of law for any purpose except in furtherance of the purposes and results of this Agreement.

2. All negotiations relating to or leading to this Agreement are privileged and confidential, and no Party is bound by any position asserted in negotiations, except to the extent expressly stated in this Agreement. As such, evidence of conduct or statements made in the course of negotiation of this Agreement are not admissible as evidence in any proceeding before the Commission, any other regulatory agency, or any court.

3. This Agreement represents the complete agreement of the Parties. There are no understandings or commitments other than those specifically set forth herein. The Parties acknowledge that this Agreement resolves all issues that were raised in connection with this matter and is a complete and total settlement between the Parties.

4. Nothing included in the Agreement is intended to constitute an admission by either Party that any of the positions asserted, or that might be asserted, in the above-referenced

docket, is unreasonable or unlawful. Additionally, execution of the Agreement by the Parties is without prejudice to any position asserted by either Party in the above-referenced docket.

5. The Parties recognize that (1) Staff does not have the power to bind the Commission and (2) for purposes of proposing a settlement agreement, Staff acts in the same manner as a Party to proceedings before the Commission.

6. The Parties further recognize that (1) the Agreement functions as a procedural device to propose its terms to the Commission and (2) the Agreement has no binding force or effect unless and until finally approved in an order of the Commission.

7. The Parties further recognize that the Commission will evaluate the terms of the Agreement and that, after such evaluation, the Commission may require modifications to the terms of the Agreement as a condition of Commission approval.

8. In the event the Commission adopts an order approving substantially all of the terms of the Agreement, such action by the Commission constitutes approval of the Agreement and, thereafter, the Parties shall abide by the terms approved by the Commission.

9. In the event that DG objects to any Commission modification(s) of the Agreement, DG shall timely file an application for rehearing pursuant to A.R.S. § 40-253. In the event that DG does not file such an application, DG shall be deemed (1) to have accepted any Commission modification(s) and (2) to have conclusively and irrefutably acknowledged that any Commission modification(s) are not substantial and that, therefore, the Commission order has adopted substantially all of the terms of the Agreement.

10. In the event that DG files an application for rehearing and alleges that the Commission has not adopted substantially all of the terms of the Agreement, such application

shall be deemed a withdrawal of DG's execution of the Agreement, and the Parties may proceed without any prejudice to any of the positions asserted by the Parties.

11. In the event that a Party's application for rehearing is denied, either by Commission order or by operation of law, and the Party continues to object to any Commission modification(s), the Party shall timely appeal the Commission's order pursuant to A.R.S. § 40-254 and/or § 40-254.01, as appropriate. In the event the Party does not file such an appeal, the Party shall be deemed (1) to have accepted any Commission modification(s) and (2) to have conclusively and irrefutably acknowledged that any Commission modification(s) are not substantial and that, therefore, the Commission's order has adopted substantially all of the terms of the Agreement.

12. The definitive text of the Agreement shall be the text adopted by the Commission in an order approving substantially all of the terms of the Agreement, including any Commission modification(s).

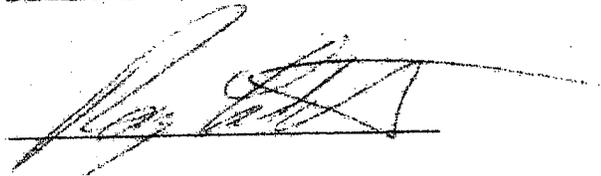
13. Each of the terms of the definitive text of the Agreement is in consideration and support of all other terms. Accordingly, the terms are not severable.

14. Each signatory Party will actively defend this Agreement before the Commission, any other regulatory agency, or court in the event of any challenge to its validity or implementation. The Parties expressly recognize, however, that Staff shall not be obligated to file any document or take any position that is inconsistent with a Commission order in this matter before any other regulatory agency, or before any court in which it may be at issue.

15. There is no other agreement between the Parties regarding the issues to be resolved in the above-referenced docket. Upon Commission approval of the Agreement, the Parties shall treat Docket No. G-20923A-15-0030 as closed.

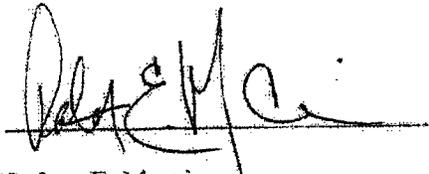
Executed by the Parties this 9<sup>th</sup> day of June 2015.

DESERT GAS, LP

A handwritten signature in black ink, appearing to read 'Ray Latchem', written over a horizontal line.

Raymond Latchem  
President

ARIZONA CORPORATION COMMISSION  
SAFETY DIVISION STAFF

A handwritten signature in black ink, appearing to read 'Robert E. Marvin', written over a horizontal line.

Robert E. Marvin  
Director of Safety Division