

LAS Natural Gas Appointment and Retainer Agreement - FAQ

Section 1 - Appointment and Authorization of LAS

What does the exclusivity reference and/with associated contracts related to Natural Gas arrangement with LAS involve?

Natural Gas Agreements

Purchasing natural gas for Members on a competitive basis requires several different contracts with a number of different parties. This includes:

- ***LAS that is the legal counterparty with the suppliers, utilities, etc. not the individual members.***
- the sale and purchase of natural gas typically from a number of different suppliers in Canada through the GasEDI base contract;
- agreements relating to the transportation of the purchased natural gas with gas transporters (TransCanada) including permanent and temporary assignment agreements for capacity on the pipeline
- agreements with distributors (Enbridge) for the distribution of natural gas in Ontario
- agreements relating to the storage of natural gas
- IT Agreements such as the EnTrac agreement with Enbridge
- regulatory framework agreements with the distributor as agent for the Customer (Service Agreement under the Gas Distribution Access Rule) to permit proper accounting between the physical supply and the billing for the natural gas at the specific customer meter.

Exclusivity

Appointing LAS as its exclusive agent is a necessary requirement of the nature of purchasing natural gas in Canada. Specifically:

- In the first instance, exclusivity is effectively required under the natural gas regulatory framework established in Ontario. Under Ontario Energy Board codes, rules and other governing documents natural gas distributors are only able to recognize a single gas vendor (agent or broker) acting on behalf of a consumer. This is recognized by distributors in various agreements including the Gas Delivery Agreement – Agent where the distributor is “entitled to deal exclusively with the Agent in respect of the rights and obligations of the Customers”.
- Secondly, as natural gas is purchased on a forward basis for a number of years by LAS, LAS needs to ensure that the costs of those purchases are covered by the members participating in the program (as well as the benefits of those purchases to members). So exclusivity is provided in the second instance to ensure that for the period of time during which purchases have been made that members are contractually bound to the program. That does not mean that members are unable to leave the program but rather than leaving the program can only take place after all of the transactions entered into supply contracts on behalf of the group of

members has expired. In that way all members are protected and not subject to any instability caused by members coming or going.

Section 2 - LAS Obligations

What are the contracts necessary to operate the program and how does this impact members?

There is no easy way to summarize the obligations that is imposed on LAS under Section 2 of the Agreement. As noted above, there are a series of Agreements relating to supplying natural gas, transporting natural gas (where purchased outside of Ontario), storing and distributing natural gas and then allowing for the purchase of that natural gas at the member's gas meter as well as a regulatory framework and set of rules that LAS has to follow.

In a nutshell, LAS needs to ensure compliance with all of the noted agreements while trying to find the best possible natural gas purchases for members, making sure they get the benefits of the purchases and properly accounting for them. So in effect, Section 2 is a high level summary of the obligations contained in all of the various agreements required.

Section 3 - Members Undertakings

3.1(d) and (h) – What collateral is required from the member (if any)?

The form of collateral or performance assurances is often specified in the GasEDI contracts and the other underlying agreements. It often includes letters of credit, cash and guarantees. Typically the form of the collateral is a decision of the party who is entitled to demand or request the collateral. For the party who is demanding the collateral it very much depends upon when the collateral is being requested i.e. at the start of a contract as opposed to where the party demanding the collateral is concerned about the financial ability of the other party to perform the contract.

e.g Under the Gas Distribution Access Rule Service Agreement a Gas Distributor can demand from an Agent the following forms of security (a) irrevocable letter of credit; (b) cash deposit; (c) pre-payment; or (d) a combination of the above.

e.g. Under the GasEDI Base Contract, "Performance Assurance" means support in the form, amount and term reasonably specified by the party demanding performance assurance including without limitation a standby irrevocable letter of credit, a prepayment, a security interest in an asset acceptable to the party demanding performance assurance or a performance bond or guarantee by an entity acceptable to the party demanding performance assurance.

3.1(i) – How can we provide Council assurance entering into future contracts is necessary?

While most agreements will be executed at the onset of being appointed as an Agent, the natural gas market (like any market) is not static. Changes occur in production, pipeline availability, storage, prices and weather. Under Section 2 LAS wants to be able to react to those changes in a timely manner for the benefit of members. This is why Council is being asked to commit to contracts in the future. From a practical perspective, given the large group of members in the program, LAS would not be able to work through a process with each Council in sufficient time to address any changes in a timely fashion.

3.2 – How is ineligibility determined?

Ineligibility would be determined on a case by case basis and would reflect the specific circumstances for a particular transaction. For example, it is possible that the Member in question has already entered into a number of transactions such that they do not require more natural gas for their benefit. LAS would therefore want to ensure that this particular member does not participate. Another example would be a circumstance in which the nature of the transaction is for a short term (to deal with reasonable requirements), and a number of members may not have that type of seasonal load. The language here is designed to permit LAS to deal with these types of circumstances. Perhaps another reason would be that the member is already part of another natural gas purchasing program via another agent, and eligibility for the LAS program wouldn't be until the existing agreement is fulfilled.

3.3 – How is termination and default determined?

As noted earlier, the purchase and sale of natural gas is substantially done through GasEDI Base Contracts (which is a standard form of contract most commonly used in Canada by sellers and purchasers of natural gas). Under that Agreement, Section 2.1 defines Termination Payment for a Transaction: *“means the difference between the Market Value and the Contract Value as of the Early Termination Date. If the Non-Defaulting Party is Seller under that Transaction and: (i) the Market Value is greater than the Contract Value, then the Termination Payment in respect of that Transaction will be positive (gain); or (ii) if the Market Value is less than the Contract Value, the Termination Payment in respect of that Transaction will be negative (loss). If the Non-Defaulting Party is the Buyer under that Transaction and: (A) the Contract Value is greater than the Market Value, the Termination Payment in respect of that Transaction will be positive (gain); or (B) if the Contract Value is less than the Market Value, the Termination Payment in respect of that Transaction will be negative (loss). Any loss with respect to a Transaction will be owed by the Defaulting Party to the Non-Defaulting Party and any gain with respect to a Transaction will be owed by the Non-Defaulting Party to the Defaulting Party.”*

Since that is the standard contract approach this Section reflects that provision.

3.4 – What is the finance charge referenced in this clause?

As noted under Section 3.1 (d) and (h), collateral/performance assurance may have to be provided under the Natural Gas Agreements. If LAS is obligated to provide a Letter of Credit there is a financial cost of obtaining that Letter of Credit from a financial institution and this provision allows LAS to apportion that cost to each of the members participating i.e. a charge that reasonably represents the cost of LAS or a party appointed by LAS providing collateral/performance assurance.

6.3 – Liability and Indemnification

What is the member liability for all obligations?

LAS is providing this program for the benefit of the Member and fundamental to the program is legally committing the member to the obligations it is entering into on behalf of the member. It is unclear in the absence of this type of language how LAS could function and provide certainty to the various counterparties to contracts that they have the authority to enter into these contracts and that the member will stand behind and honor those obligations and indemnify LAS for them. The strength of the program is based on the acknowledgement and support by each member to the commitment that LAS is entering into on their behalf.

Appendix A – 3. Termination Provision

The termination provision is intended to work with Section 5.1 in the Agreement. However, the Appendix is designed to be used independently of the Agreement i.e. to be provided to All Interested Parties. Those interested parties do not need to see all of the provisions of the Agreement nor do they need to know the timeline for termination. What is important from a program perspective is the interested parties knowing that upon the End User terminating that it continues in effect until the last transaction entered into expires and that the End User remain liable.