

# **Petone and Lower Hutt Gas Amendment Act 1953**

Local Act 1953 No 9  
Date of assent 12 November 1953

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<b>Wellington Gas Company Limited</b>	

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**An Act to amend the Petone and Lower Hutt Gas Act 1922.**

### **Preamble**

WHEREAS both to preserve the continued supply of gas in the district of the Petone and Lower Hutt Gas Board and to meet the increasing demand the Board is faced with heavy capital expenditure in plant and machinery extensions: And whereas the Board has for several years been operating at a loss: And whereas the Board has executed agreements with the Wellington Gas Company, Limited, for the purpose of purchasing gas in bulk from the company and of empowering the company particularly through its technical staff to direct the undertaking of the Board: And whereas by the said agreements the continuity of supply of gas in the Board's district entailing the minimum capital expenditure will be achieved and the immediate necessity to levy a rate on all land in the Borough of Petone and City of Lower Hutt will be avoided: And whereas by the said agreements it is provided that no part thereof shall become operative until the said agreements have been validated by legislation: And whereas it is advisable that the Board's accumulated losses reflected by the Board's overdraft be extinguished by the raising of a loan or loans for that purpose:

**BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:**

**1 Short Title**

This Act may be cited as the Petone and Lower Hutt Gas Amendment Act 1953, and shall be read together with and deemed part of the Petone and Lower Hutt Gas Act 1922.

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**Board** means the Petone and Lower Hutt Gas Board

**Company** means the Wellington Gas Company, Limited.

**3 Validating agreements between the Board and the Wellington Gas Company, Limited, with respect to the**

**supply of gas in bulk, appointment of the company as managing agent, and matters incidental thereto**

Notwithstanding anything to the contrary in any enactment, deed, or other instrument, the agreements made between the Board and the company dated the tenth day of March, nineteen hundred and fifty-three, and the thirty-first day of July, nineteen hundred and fifty-three (copies of which respectively are set out in the Schedule hereto), are hereby validated and confirmed, and the Board and the company respectively shall always be deemed to have had authority and power to enter into and execute the same, and the same are hereby declared to be binding on the Board and the company and shall have effect according to the tenor thereof.

**4 Contract may be varied**

It shall be lawful for the Board and the company to make such modifications, additions, or variations of or to the said agreements or either of them as may be agreed upon by the parties from time to time:

Provided that such modifications, additions, or variations shall have no effect until the same shall have first been approved by the Minister of Trade and Industry, and from the date of the approval of the Minister of Trade and Industry such modifications, additions, or variations shall be deemed for all purposes to form part of the respective agreement so modified, added to, or varied.

The words "Minister of Trade and Industry" were substituted, as from October 1972, for the words "Minister of Industries and Commerce" pursuant to section 2(6) Trade and Industry Amendment Act 1972 (1972 No 107).

**5 Power to borrow for certain purposes**

The Board may from time to time, subject to the Local Government Loans Board Act 1926, borrow by way of special loan under the Local Authorities Loans Act 1956 any sum or sums required by it for the purpose of extinguishing the Board's overdraft existing at the commencement of this Act, or any portion thereof, and for the purposes of and incidental to the

acquisition and laying of a pipe line to connect the existing main of the company with the Board's gas holders at Petone: Provided that the proviso to subsection one of section nine of the Local Bodies' Loans Act 1926 shall not apply to any such loan.

**6 Power of Audit Office to suspend payments under section 119 of Municipal Corporations Act 1933**

For the period of five years from the first day of April, nineteen hundred and fifty-four, the payments required by section one hundred and nineteen of the Municipal Corporations Act 1933 may be deferred for such term as the Audit Office may from time to time approve.

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**Schedule**  
**Agreements validated**

Section 3

**Preamble**

AGREEMENT made this 10th day of March one thousand nine hundred and fifty-three between the Wellington Gas Company Limited (hereinafter referred to as "the Company") of the one part and the Petone and Lower Hutt Gas Board (hereinafter referred to as "the Board") of the other part Whereas the Board under the Petone and Lower Hutt Gas-lighting Act, 1922, was empowered to undertake the supply of gas within the limits of the district in the said Act defined And whereas the Board has operated at a loss and in order both to continue and to expand its service to meet the demand for gas in the said District is faced with further large capital expenditure And whereas in order to preserve the continuity of supply of gas in its District the Board has negotiated with (*inter alia*) the Company for the purchase by the Company of the Board's undertaking And whereas the Company is not at present prepared to acquire the Board's undertaking with the liabilities exceeding the value of the assets of the Board but is desirous of assisting the Board both to meet the demand for gas in the Board's District and avoid the necessity for the Board to levy a rate to meet its liabilities which would otherwise appear to be inevitable: Now therefore it is mutually agreed and declared by and between the parties hereto as follows:

## I

1

Subject as hereinafter provided this Part of this agreement shall continue until determined by notice in writing given by either party to the other. Such notice must be given at least seven (7) years before the date on which it is to become effective. No such notice shall become effective before the expiration of twenty-five (25) years from the commencement of supply as hereinafter provided.

2

The Company agrees to sell to the Board and the Board agrees to buy from the Company gas in bulk on the following terms and conditions:

- (a) Not less than 50,000,000 cubic feet shall be supplied by the Company and accepted by the Board during each and every year during the continuance of this Part of this agreement.
- (b) On the basis of the minimum 50,000,000 cubic feet per annum of supply by the Company to the Board under this Part of this agreement the following limitations shall apply:—
  - (i) During the period between 4 pm and 6.30 pm on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays and between 10 am and 1 pm on Saturdays, Sundays and statutory holidays, the Company shall not be compellable to deliver to the Board any gas for supply to any part of the Board's district in excess of 2,000 feet in any one hour;
  - (ii) The Company shall not be compellable at any time of the day to deliver more than 20,000 cubic feet in any one hour;
  - (iii) The Company shall not be compellable to deliver more than 250,000 cubic feet in any one day.
- (c) Within one calendar month after any year of supply by the Company hereunder during which the Board may have purchased more than the minimum of 50,000,000 cubic feet of gas from the Company the Board may elect by notice in writing to the Company to raise the min-

I—*continued*

imum amount to be taken each year by the Board to an amount not exceeding the volume of gas so purchased in the preceding year.

Provided that such increased minimum shall thereafter be substituted for and read into subclause (a) above in lieu of 50,000,000 cubic feet And provided further that the Board may exercise such right to increase the minimum so to be taken by the Board and supplied by the Company from time to time subject to the limitations hereinafter provided.

- (d) Should the Board exercise the rights conferred on it under the preceding subclause (c) the limitations contained in paragraphs (i), (ii) and (iii) of subclause (b) above shall be proportionately increased.

Provided that in calculating the proportionate increase in relation to the limitation of hourly delivery under paragraph (ii) of the said subclause (b) the figure of 20,000 cubic feet shall be read as 10,000 cubic feet.

- (e) Notwithstanding anything hereinbefore contained or implied the Board shall not be entitled, unless and until the parties by mutual agreement shall have decided otherwise, to call upon the Company for supply in excess of 100,000,000 cubic feet per annum, 500,000 cubic feet in any one day, and 30,000 cubic feet in any one hour, but the Company will supply extra gas to the Board if and whenever labour, coal supplies of suitable quality, plant availability and other conditions permit.
- (f) Subject to the limitations aforesaid the Board shall be entitled to draw gas under this Part of this agreement as and when the Board requires it.
- (g) Notwithstanding anything hereinbefore contained the Company shall not be liable for any interruption diminution or discontinuance of supply caused by accidents to mains machinery or other apparatus or by *force majeure* strikes overload alterations repairs or other cause whether arising through default or negligence of the Company's servants or otherwise but the Company

I—*continued*

shall use every reasonable endeavour to restore supply dealing fairly and justly as between the Board and the Company's other customers.

- (h) If by reason of accident to mains, machinery or other apparatus, or *force majeure*, strikes or other cause beyond its control, the Board shall be unable to supply gas to its consumers for such length of time in any one year as would enable the Board to sell in that year the minimum quantity of gas agreed to be accepted by the Board from the Company under this Part of this agreement then, notwithstanding anything to the contrary hereinbefore contained, the Board shall not, for that year, be bound to accept from the Company a greater quantity of gas than that reasonably capable of being taken by the Board from the Company during that year, but the Board shall use every reasonable endeavour to restore normal supply to its consumers and resume normal intake of gas from the Company with as little delay as possible.

## 3

The price payable by the Board for gas supplied to it by the Company shall be assessed by reference to the Company's costs fairly chargeable to the gas so delivered plus a reasonable percentage of profit.

Rates, land tax, interest on borrowed capital, and the cost of research shall be deemed costs for the purposes of this agreement, but income tax, social security charge, and shareholders' dividends shall not be deemed costs.

The percentage of profit shall not be less than sufficient to provide a tax-free dividend to shareholders at six dollars (\$6) per centum per annum if the same percentage of profit were applied to all the Company's sales, but if at any time circumstances make it reasonable the percentage may be increased or reduced by the parties after consultation.

The figures given in the annexed Schedule are those of the Company's operations for the year ended 31st December, 1951, as published in the Company's annual accounts for that year and where part of any one item of costs is apportionable

I—*continued*

under more than one column the apportionment of such item is to be made each year in respect to the amount of such item for the year in question after consultation between the parties and when calculating the price payable by the Board to the Company in the yearly adjustment hereinafter referred to.

The said Schedule is annexed as a guide to what is fair and reasonable under existing circumstances, but it is understood and agreed between the parties that items of cost may vary from time to time and that all costs from time to time incurred by the Company shall be taken into account. In computing the price payable by the Board all items of the Company's costs shall be shown in column 1, those which are fully chargeable in column 2, items part of which is chargeable shall be divided and the part chargeable shall be shown in column 3 and the part not chargeable in column 4 which shall also include items no part of which is chargeable. Column 5 shall set out items of overhead costs the total of which is to be spread proportionately and added to columns 2, 3 and 4, respectively. Column 6 shall show the Company's costs of production of its by-products.

The item "Depreciation" shall be such amount as shall in each particular year be allowable to the Company by the Inland Revenue Department or other appropriate taxing authority.

The net return of the Company on its sale of by-products, after allowing, however, 4 per cent on sales of by-products, shall be deducted as in manner shown in the said Schedule.

For the purposes of this Part of this agreement the volume of gas delivered shall be adjusted to standard temperature and standard barometric pressure, namely, 60° F and 30" Hg (gas pressure-zero), and the gas will be delivered at such pressure as shall ensure effective delivery into the holder at the Board's yard at Petone.

The words "six dollars (\$6)" were substituted, as from 10 July 1967, for the words "six pounds (£6)" pursuant to section 7(2) Decimal Currency Act 1964 (1964 No 27).



I—*continued*

4

The Board shall pay for the gas supplied to it by the Company calendar monthly and shall make payment for each month's supply on or before the 20th day of the succeeding month.

5

Payment each month shall be at a provisional rate based on the Company's costs of the previous quarter. As soon as may be after the end of each quarter the costs of that quarter shall be ascertained and additional payment or refund as the case may require shall forthwith be made. The first calendar month and the first quarter shall commence on the day supply commences. When either the calendar month or the quarter ends on a Saturday, Sunday or statutory holiday, the calendar month or the quarter, as the case may be, shall be deemed to end on the following business day. The assessment of the provisional rate shall be made as far as possible in accordance with the provisions of Clause 3 hereof but in ascertaining the Company's costs annual charges and charges not exclusively referable to the particular quarter shall be apportioned upon a time basis.

6

As soon as the Company's annual accounts have been compiled a true statement for the full year drawn in conformity with the provisions of Clause 3 hereof and certified by the Company's auditors shall be supplied to the Board, the true price payable by the Board for that year computed, and an additional payment or refund (as the case may require) shall be forthwith made.

7

Gas delivered pursuant to this part of this agreement shall be metered at some convenient point to be selected by the Company at or near to the commencement of the new main to be constructed by the Board as hereinafter provided. The Company at its own expense shall instal a sufficient and proper meter for such purpose and shall throughout the continuance of this agreement maintain the same in good order and condi-

I—*continued*

tion and permit the Board free access thereto at all reasonable times.

8

To enable the performance of this Part of this agreement the Board will at its own expense provide and lay a suitable main from the present termination of the Company's main on Hutt Road near Rangiora Avenue, and will properly maintain such main during the continuance of this agreement.

Provided that the maximum length of main which the Board shall be required to pay for shall not exceed the distance from Rangiora Avenue by the Hutt Road to the Board's holder at Petone. Should this route not be available or practicable the parties hereto shall confer on alternative routes and this Part of this agreement shall not be binding on either party until agreement has been reached as to the burden of costs of the construction of the main to the Board's holder at Petone.

9

The cost of the engineering survey necessary to obtain data for the laying of such main shall be borne by the parties in equal shares.

10

The Company (at its own expense in the first instance) will strengthen its main for conversion to a pressure sufficient to supply the necessary volume at the junction with the Board's main and will provide the governors and other apparatus necessary for such purpose. One third (but not exceeding \$64,000) of the cost of such strengthening governors and other apparatus shall be payable by the Board to the Company at the rate of \$10 per million cubic feet of gas taken by the Board until full payment of such third cost (not exceeding \$4,000) shall have been made.

The words "\$4,000" and "\$10" were substituted, as from 10 July 1967, for the words "£2,000" and "£5" pursuant to section 7 Decimal Currency Act 1964 (1964 No 27).

11

If during the term of this Part of this agreement the Company shall reasonably incur costs of a capital nature in respect to the

I—*continued*

Company's trunk main serving (*inter alia*) the Board, governors, compressors and such like plant and apparatus, wholly or partly by reason of an increase in the requirements of the Board such capital costs shall be borne between the parties hereto as may be just and fair.

12

The works agreed to be performed by the Board and the Company respectively shall be commenced as soon as all legal authorities have been obtained and such works shall be completed with all reasonable diligence and supply shall commence as soon as the said works are completed.

13

From time to time should any emergency interfere with the production of gas by the Company the Board will utilise its productive capacity to its reasonable limit to assist the Company to maintain supply to its own customers and the Company will similarly utilise its productive capacity to its reasonable limit to provide the Board with as much gas as it reasonably can during an emergency.

14

If and when the Board shall find it necessary or expedient to renew its COL plants or either of them it shall notify the Company accordingly and the time for the carrying out of such renewal work having been mutually agreed on between the parties hereto the Company shall during the period of renewal supply to the Board such extra quantity of gas as may be required by the Board to compensate for its loss of productive capacity during such period.

15

The Board will provide gas storage according to reasonable requirements and so as not to reduce below the present ratio its ratio of storage to daily productive capacity (inclusive of gas derived from the Company).

16

The Company shall at its own expense provide any governor or other apparatus necessary to take supply from the Board,

I—*continued*

and shall give credit for such supply at the same price as that chargeable by the Company to the Board in the relevant quarter.

17

Whenever the Company has insufficient coke to maintain adequate gas production for its own customers and the Board the Board will supply to the Company on loan all the coke the Board has available after making reasonable provision for the Board's own production of gas.

18

Whenever the Board has insufficient coke to maintain its normal gas production the Company will supply to the Board on loan such quantity or quantities of coke as the Board may require after making reasonable provision for the Company's own production of gas.

19

Loans of coke made by the Board to the Company or *vice versa* shall be repaid ton for ton as soon as reasonably possible and in coke of the borrower's manufacture.

20

The Board will maintain at all times coke available for lending to the Company to the quantity of Eighty (80) tons, less any amount already lent and not repaid.

21

In case the Board shall make default in payment for gas supplied by the Company in pursuance of this Part of this agreement for the space of one calendar month after any of the days hereinbefore appointed for payment of the same or in case the Board shall at any time fail to observe or perform any of the terms of this Part of this agreement or in case the Board shall cease to exist or a receiver of its undertaking shall be appointed by any creditor of the Board or by the Court then and in any such case it shall be lawful for the Company to determine this Part of this agreement and thereupon or at any time thereafter to discontinue the supply of gas to the Board and such determination shall not release the Board from liability in respect

I—*continued*

of any antecedent breach or non-observance of any agreement herein obtained. Such determination may be by mere resolution of the Company's Directors if the Board ceases to exist and otherwise shall be by notice in writing to the Board.

## II

22

Subject as hereinafter provided, the Board appoints the Company to be Managing Agent for the Board and the Company shall act in such capacity for a term to commence on the date of validation of this agreement, and to continue until the determination of Part I of this agreement in accordance with the provisions in that behalf hereinbefore contained.

23

The Company as such Managing Agent shall be invested with power to direct the operations (manufacturing, distribution and commercial) of the Board including (but not limited to) the powers authorities and discretions following, that is to say:

- (a) Power to direct the management operation and control of the Board's works, machinery, plant, mains, vehicles, apparatus and equipment;
- (b) Power to direct the production distribution and sale of all gas and by-products manufactured by the Board's undertaking;
- (c) Power to direct the management and control of the Board's gas appliance sales and service departments;
- (d) Power to direct the management of the Board's employees including power to engage and dismiss employees on behalf of the Board, provided that the power of dismissal hereby conferred shall not be unreasonably exercised by the Company;
- (e) Power to direct the purchase of all raw materials fuel plant machinery vehicles appliances apparatus and equipment which may from time to time be necessary or desirable for the more efficient and economical operation of the Board's undertaking;

II—*continued*

- (f) Power to supervise the collection and administration of the Board's revenues derived from sales of gas by-products and appliances and services relating thereto;
- (g) Generally, power to direct the performance of all acts matters and things in or relating to the premises which may be necessary or desirable for the provision of a satisfactory supply of gas to consumers in all areas now supplied and hereafter to be supplied by the Board's undertaking;
- (h) Nothing in this clause contained shall be construed as empowering the Company to direct the Board to levy a rate.

24

The Board shall at fair and reasonable rates pay the Company as and when required by the Company for all technical, administrative and maintenance services and supervision (including loans of plant and labour), and shall also as and when so required pay the Company at cost plus a reasonable percentage of profit (but in no case more than the fair market price) for all goods sold or supplied to the Board by the Company.

25

The Board will from time to time faithfully and diligently comply with and facilitate the carrying into effect of all decisions and directions of the Company in or relating to the operation of this Part of this agreement.

26

The Company shall not be answerable for any loss or damage which may happen to the Board's plant mains machinery vehicles or property or for any liabilities which may be incurred by the Board under or by virtue of the operation of this Part of this agreement unless such loss damage or liabilities shall happen or be incurred through the wilful default of the Company or its officers or servants.

27

Notwithstanding anything hereinbefore contained the Company shall be at liberty to determine this Part of this agreement

II—*continued*

by notice in writing to the Board immediately upon the breach by the Board of any of the terms of this Part of this agreement or immediately upon the happening of any event which would entitle the Company to determine the provisions of Part I of this agreement as provided by Clause 21 hereof.

28

- (a) Notwithstanding anything hereinbefore contained the Company shall be at liberty to determine this Part of this agreement at any time by giving to the Board not less than eighteen calendar months' previous notice in writing of its intention in that behalf.
- (b) Determination of this Part of this agreement under the provisions of the preceding paragraph hereof shall *ipso facto* determine Part III of this agreement (unless the Board otherwise resolves).

29

No determination under the provisions of Clause 27 or Clause 28 hereof shall release either party from liability in respect of any antecedent breach or non-observance of any term of this agreement.

## III

30

- (a) Subject as hereinafter provided, the Company shall have the option at any time during the continuance of Part II of this agreement (to be exercised by the Company giving to the Board not less than twelve calendar months' notice in writing of its intention in that behalf) to purchase the franchise land buildings machinery mains and other plant owned by the Board at the date of expiry of such notice at a price to be determined by agreement or failing agreement by valuation as provided by the next succeeding clause and the Board undertakes that it will not in the meantime sell or

III—*continued*

otherwise dispose of any asset of the type hereinbefore mentioned without the prior consent in writing of the Company nor shall the Board after the giving by the Company of notice exercising its option incur any further liability whether secured or unsecured without the prior consent in writing of the Company.

- (b) The Board may at any time after the expiration of fifteen years from the date of validation of this agreement by giving to the Company not less than three years' notice in writing in that behalf call upon the Company to exercise the option created by the last preceding paragraph And should the Company not exercise its option by the date of expiration of the Board's notice (or any later date agreed to in writing by the Board) then Parts II and III of this agreement shall *ipso facto* determine Provided however that the Board shall not be entitled to give such notice unless or until the value of the Board's assets (as computed under Clause 31 hereof) shall at least equal the amount of the Board's liabilities.
- (c) The Company shall not (except with the prior approval in writing of the Board) be entitled to exercise the said option at any time prior to the expiration of twenty years from the date of validation of this agreement unless the price agreed to be paid by the Company for the purchase of the Board's assets shall be sufficient to defray all the Board's liabilities as at the date of completion of the purchase. Provided always that in computing the amount of the Board's liabilities for the purposes of this paragraph any liabilities incurred by the Board in breach of any of the terms of this agreement shall be excluded.

31

- (a) The Board's franchise shall not be deemed to have any value.
- (b) After notice of intention to exercise the option to purchase has been given as provided by the last preceding Clause the parties hereto shall cause a valuation to be



III—*continued*

made as at the date of expiry of the said notice of all the land buildings machinery mains and other plant owned by the Board.

- (c) The value of the Board's land (including dwelling houses) shall be the market value thereof current at the date of expiry of the said notice but shall expressly exclude all other buildings and improvements thereon.
- (d) The valuation of the Board's buildings (other than dwelling houses) machinery mains and other plant shall be made on the basis of cost less depreciation. Depreciation on each asset shall be at such rate (not being less in any case than the normal rate allowed to gas companies by the Inland Revenue Department or other appropriate taxing authority) as may be fair and reasonable having regard to the nature of the asset concerned.
- (e) The cost of all the Board's present assets (other than land and dwelling houses) of the type hereinbefore mentioned shall be set out in a schedule to be prepared in duplicate and executed by or on behalf of the parties hereto as soon as conveniently may be after the execution of this agreement. Such schedule shall be in the form of an itemised list with appropriate headings and shall state in respect of each item included therein the date from which depreciation is to be computed and the rate of depreciation to be allowed. Assets acquired by the Board after the compilation of the original schedule shall from time to time be added to the said schedule and the cost of such assets shall be depreciated in like manner.
- (f) Assets unfit for further use at the date of the said valuation shall be valued as scrap.
- (g) The said valuation shall be made by one valuer if the parties can agree upon one valuer otherwise by two valuers (one to be appointed by each party) and an umpire to be appointed by such valuers before proceeding to the valuation and shall be reduced into writing in du-

III—*continued*

plicate and signed by the valuer or valuers making the same.

- (h) The reasonable costs of and incidental to the said valuation shall be borne by the parties hereto in equal shares.
- (i) As from the date of expiry of the said notice all revenue derived from the assets under purchase from the Board shall belong to the Company and the Company shall pay to the Board interest on all unpaid purchase money at the then current bank rate for best accounts until the said purchase money has been fully paid. Such purchase money shall be paid in full within five years of the date of exercise of the option and shall be secured to the Board in such manner as may reasonably be required of the Company.
- (j) The Company shall have the right to set off against the purchase price any debts owing to the Company by the Board whether incurred under or by virtue of this agreement or otherwise.
- (k) Upon payment in full of the purchase price the Board's franchise land buildings machinery mains and other plant shall vest in the Company free from encumbrances and the Company shall thenceforth have in relation to the supply of gas all the powers privileges and authorities of the Board.

## IV

32

It is declared that determination under Part I of this agreement shall *ipso facto* determine the whole of this agreement but save as aforesaid and unless otherwise herein expressly stipulated the determination of any Part or Parts of this agreement under any of the provisions in that behalf hereinbefore contained shall not effect or be deemed to effect a rescission of any other Part or Parts of this agreement not so determined.

IV—*continued*

33

Any dispute or difference between the parties hereto arising out of this agreement or any part thereof or touching the interpretation of any of the provisions hereof may, if both parties so desire, be referred to the decision of a single arbitrator to be agreed upon between the parties within one calendar month after notice of desire to have the dispute or difference referred to an arbitrator has been given by one party to the other, but nothing herein contained shall preclude or be deemed to preclude either party from having any such dispute or difference determined without reference to arbitration.

34

Without prejudice to any other sufficient mode of service any notice required to be given under any of the foregoing provisions of this agreement may be served by posting the same by prepaid registered letter addressed to the last known address or registered office or place of business of the party to be served and if so posted shall be deemed to have been served on the day following the date of posting.

35

If after the execution of this agreement by the parties hereto there shall be any assignment or divestment of the Board's rights hereunder (otherwise than in pursuance of Section 28 of the Petone and Lower Hutt Gas-lighting Act 1922) whether by act of the Board or by operation of law or otherwise howsoever, then notwithstanding anything hereinbefore contained the Company may at any time determine this Agreement by notice in writing to the Board stating its intention in that behalf and specifying a date (not being earlier than six calendar months after the date of service of the notice) on which such determination shall become effective. Such determination shall not release either party from any liability incurred by such party under the provisions of this agreement up to the time of such determination. Without prejudice to any other sufficient mode of service any such notice may be served by posting the same by prepaid registered letter addressed to "The Secretary, The Petone and Lower Hutt Gas Board, Petone",

IV—*continued*

and if so posted shall be deemed to have been served on the day following the date of posting.

36

In carrying out the terms of this agreement the Company shall co-operate with the Board in endeavouring to give full effect to the recitals hereinbefore contained.

37

Every Part of this agreement shall bind the Company its successors and assigns and shall bind the Board its successors and assigns including, in the event of the Petone Borough and the City of Lower Hutt becoming united, the Corporation of such united body.

38 **The following clause is to be ethically binding upon the parties but is to have no legal effect:**

Each party agrees to act in good faith and show due consideration to the other party and to co-operate with the other party in making this Agreement advantageous to both parties and for such purpose to confer from time to time on matters arising out of this Agreement and so that each party shall appoint a Committee of three to act on its behalf.

39

No part of this Agreement shall have any effect until the whole Agreement is validated by legislation.

As witness the Seals of the parties.

-

As witness the Seals of the parties.

The Common Seal  
of the Wellington  
Gas Company  
Limited was  
hereunto affixed  
pursuant to a  
resolution of the  
Board of Directors  
by and in the  
presence of:—

[LS]

C B NORWOOD  
W S WHEELER

Directors.

MATTHEW  
KENNEDY

Secretary.

The Common Seal  
of the Petone  
and Lower Hutt  
Gas Board was  
hereunto affixed in  
the presence of:—

[LS]

J A S CUMMING

Chairman.

R G MAXWELL

Board  
Member.

C N ASTBURY

Secretary.

**Schedule**  
**Wellington Gas Company Limited**  
**Schedule of costs for the year ended 31st December, 1951**

	<i>Column 1</i> Itemised Statement of Company's Costs as per Annual Accounts	<i>Column 2</i> Items fully chargeable in computing the price payable by the Board
Coal .....	\$483,874	\$483,874
Water Gas Oil .....	53,584	53,584
Water Gas Coke .....	55,288	55,288
Miramar Repairs & Maintenance .....	30,706	30,706
Miramar Wages & Salaries .....	120,860	
Provision for Retort Renewals .....	22,360	22,360
Distribution .....	72,512	
Meter Repairs .....	8,630	
Transport .....	12,600	
Workshop Rent .....	272	
Salaries .....	37,728	
Office Upkeep & Governor Supervision .....	6,614	
Trade Expenses .....	6,548	
Printing & Stationery .....	3,948	
Advertising .....	294	
Insurance .....	6,742	
Rates and Taxes .....	22,800	



	<i>Column 1</i> Itemised Statement of Company's Costs as per Annual Accounts	<i>Column 2</i> Items fully chargeable in computing the price payable by the Board
Costs payable by the Board	Column 2	56.04c
	Column 3	28.92
		84.96 cents per tho

All monetary references were decimalized pursuant to section 7 Decimal Currency Act 1964 (1964 No 27).

AGREEMENT made this 31st day of July one thousand nine hundred and fifty-three between the Wellington Gas Company Limited (hereinafter referred to as "the Company") of the one part and the Petone and Lower Hutt Gas Board (hereinafter referred to as "the Board") of the other part Whereas the parties hereto by an Agreement dated the 10th day of March, 1953, (hereinafter called "the Principal Agreement") entered into certain arrangements affecting their respective undertakings And whereas further negotiation between the parties hereto has led to the desire of the parties to enter into a supplementary agreement in terms hereinafter appearing Now therefore it is mutually agreed and declared by and between the parties hereto as follows:—

**1**

Clause 2 in Part I of the Principal Agreement shall be amended by deleting paragraph (h) and substituting the following paragraph:—

“(h) If by reason of accident to mains machinery or other apparatus or *force majeure*, strikes or other cause beyond its control (whether arising through default or negligence of its servants or otherwise) the Board shall be unable to supply gas to its consumers for such length of time in any one year as would enable the Board to sell in that year the minimum quantity of gas agreed to be accepted by the Board from the Company under this Part of this Agreement then, notwithstanding anything to the contrary hereinbefore contained, the Board shall



not, for that year, be bound to accept from the Company a greater quantity of gas than that reasonably capable of being taken by the Board from the Company during that year, but the Board shall use every reasonable endeavour to restore normal supply to its consumers and resume normal intake of gas from the Company with as little delay as possible.”

2

Part II of the Principal Agreement shall be amended by deleting Clause 24 and substituting the following Clause:—

“24

(a) The Board shall as and when required by the Company pay the Company at fair and reasonable rates for all services provided by the Company in connection with the maintenance repair and renewal of the Board’s plant and mains including technical supervision loans of plant and labour and overhead charges incidental thereto.

“(b) The Board shall also as and when required by the Company pay the Company at cost plus cartage plus 5 per centum overhead charge for all goods purchased by the Company for supply to the Board and at fair market rates for all goods manufactured by the Company for supply to the Board.”

3

Part III of the Principal Agreement shall be further amended by the insertion after Clause 29 of the following Clause:—

“29A

Until such time as the Board’s present liabilities are extinguished the maximum net price rate to be charged for supply of gas to consumers in the Board’s District during the continuance of this Part of this Agreement shall not exceed by more than 44.12c per 1000 cubic feet the maximum net price rate from time to time charged by the Company to its own consumers after taking into account any variation in the amounts of any subsidies (whether general or special) from time to time payable in respect of each Undertaking Provided always that if it

should be found that the margin of 44.12c per 1000 cubic feet hereinbefore mentioned is not sufficient to recoup the total costs of manufacture and supply of gas in the Board's District without the Board being obliged to have recourse to its rating powers the said margin of 44.12c per 1000 cubic feet may from time to time be increased after consultation between the parties."

References to 44.12c were substituted, as from 10 July 1967, for references to 4s 5d pursuant to section 7 Decimal Currency Act 1964 (1964 No 27).

4

Clause 30 in Part III of the Principal Agreement shall be amended by the insertion after paragraph (c) of the following paragraph:—

"(d) The Company undertakes with the Board that in the event of its exercising the said option the maximum net price rate fixed by the Company from time to time for supply of gas to consumers in the Board's District as at present defined shall not exceed the maximum net price rate from time to time applicable to consumers in the Company's area of supply, plus a reasonable loading not exceeding 10c per 1000 cubic feet for delivery charges."

The reference to 10c substituted, as from 10 July 1967, a reference to 12d pursuant to section 7 Decimal Currency Act 1964 (1964 No 27).

5

Paragraph (k) of Clause 31 in Part III of the Principal Agreement shall be amended by the insertion of the following proviso at the end of the said paragraph:—

"Provided always that nothing in this paragraph contained shall vest or be deemed to vest in the Company any of the Board's rating powers."

6

In all other respects the provisions of the Principal Agreement are hereby confirmed.

7

Neither this Agreement nor the Principal Agreement nor any part of the same respectively shall have any effect until both Agreements have been validated by legislation.

As witness the Seals of the parties.

The Common Seal of the Wellington Gas Company Limited was hereunto affixed pursuant to a resolution of the Board of Directors by and in the presence of:—



[LS]

C. B. NORWOOD

C. PRENDERGAST  
KNIGHT

MATTHEW KENNEDY



Directors

Secretary

The Common Seal of the Petone and Lower Hutt Gas Board was hereunto affixed in the presence of:—



[LS]

JAS CUMMING

R.G. MAXWELL

C.N. ASTBURY

Chairman.

Board  
Member.

Secretary.