Execution Copy

HYDRO

ASSET PURCHASE AND SALE AGREEMENT

dated as of September 29, 2004

by and among

USGEN NEW ENGLAND, INC.

as Seller

USG SERVICES COMPANY, LLC

as Employer

and

TRANSCANADA
HYDRO NORTHEAST INC.

as Buyer

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SCHEDULES AND EXHIBITS

Schedules

HYDRO ASSET PURCHASE AND SALE AGREEMENT

This Hydro Asset Purchase and Sale Agreement (this "Agreement") is made and entered into as of September 29, 2004, by and among USGen New England, Inc., a Delaware corporation ("Seller"), USG Services Company, LLC, a Delaware limited liability company ("Employer"), and TransCanada Hydro Northeast Inc., a Delaware corporation ("Buyer"). Seller, Employer and Buyer are referred to herein sometimes individually as a "Party" and collectively as the "Parties."

WHEREAS, on July 8, 2003 (the "Petition Date"), Seller filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (as hereinafter defined) (the "Bankruptcy Case");

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Transferred Assets (as hereinafter defined) and Buyer desires to assume the Assumed Liabilities (as hereinafter defined), and the Parties wish to enter into certain transactions related thereto upon the terms and subject to the conditions of this Agreement, including receipt of an order approving such sale under Section 363 of the Bankruptcy Code;

WHEREAS, Employer is an Affiliate of Seller which employs substantially all of the Plant Employees (as hereinafter defined) and Non-Plant Employees (as hereinafter defined);

WHEREAS, TransCanada PipeLines Limited, a Canadian corporation ("TCPL"), and TransCanada Pipeline USA Ltd., a Nevada corporation and wholly-owned subsidiary of TCPL (together, "Buyer Parents"), have executed and delivered the Buyer Parent Guarantee (as hereinafter defined); and

WHEREAS, Seller, Buyer and the Escrow Agent (as hereinafter defined) have executed and delivered the Escrow Agreement (as hereinafter defined).

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I.

DEFINITIONS

1.1 Definitions. As used in this Agreement, each of the following terms shall have the meanings given to it below:

"AAA" means the American Arbitration Association.

"Actual NEPOOL Proration Amount" shall have the meaning ascribed to such term in Section 4.4(c).

"Additional Damages" means (a) if all of the Transferred Assets are sold (directly or indirectly) to one or more Third Parties pursuant to one or more transactions, the amount, if any by which (i) the aggregate consideration actually received by Seller or any of its Affiliates (including the value of any liabilities assumed) in connection with such transactions exceeds (ii) the Initial Cash Amount or (b) if (i) an Alternative Seller Plan or an Alternative Third Party Plan is consummated pursuant to which Seller or any of its Affiliates retains ownership of any of the Transferred Assets and/or (ii) any of the Transferred Assets are transferred to one or more Third Parties in connection with a liquidation, the amount, if any, by which (x) the Value of the Business exceeds (y) the Initial Cash Amount.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, and "Affiliate", with respect to Buyer, shall be deemed to include Buyer Parents and their respective Affiliates. For the purposes of this definition, "control" means, when used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of the voting securities, by contract, or otherwise, and the terms "controlling" and "controlled" have correlative meanings.

"Agreement" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Allocation Schedule" shall have the meaning ascribed to such term in Section 4.2.

"Alternative Seller Plan" means (i) any plan of reorganization for or involving Seller that contemplates the continued ownership by Seller or any Affiliate of Seller (or by a successor in interest to Seller or such Affiliate) of the Transferred Assets or (ii) any plan of reorganization or plan of liquidation relating to Seller that rescinds or otherwise avoids the transactions contemplated by this Agreement, in each case, that is filed by Seller or any Affiliate of Seller.

"Alternative Third Party Plan" means (i) any plan of reorganization for or involving Seller that contemplates the continued ownership by Seller or any Affiliate of Seller (or by a successor in interest to Seller or such Affiliate) of the Transferred Assets or (ii) any plan of reorganization or plan of liquidation relating to Seller that rescinds or otherwise avoids the transactions contemplated by this Agreement, in each case, that is filed by any Person other than Seller or any Affiliate of Seller.

"Alternative Transaction" means any transaction with any Third Party relating to the direct or indirect sale, transfer or other disposition of the Transferred Assets or a substantial portion thereof, whether in one or more transactions, including through a chapter 11 plan of reorganization for or involving Seller.

"Ancillary Agreements" means, collectively, the Bill of Sale, the Assignment and Assumption Agreement, the Escrow Agreement, the Buyer Parent Guarantee, the TSA, the

Deeds, the NEPOOL Escrow Agreement, if any, and the certificates referred to in Sections 5.2(a)(v) and (a)(vi), and 5.2(b)(iii) and (b)(iv).

"Applicable Laws" means any statute, law, code, rule or regulation, or any Order, of, any Governmental Authority to which a specified Person or its property is subject.

"Arbitrator" shall have the meaning ascribed to such term in Section 4.2.

"Assigned Contracts" means each of the contracts, agreements, purchase commitments and personal property leases set forth on Schedule 2.1(e) (it being understood that, on the second Business Day prior to Closing, Seller shall provide Buyer with an updated version of Schedule 2.1(e) reflecting the contracts, agreements, purchase commitments and personal property leases relating to the Business that were entered into by Seller on or after the date of this Agreement not in violation of Section 9.3 of this Agreement).

"Assignment and Assumption Agreement" shall have the meaning ascribed to such term in Section 5.2(a)(ii).

"Assumed Liabilities" shall have the meaning ascribed to such term in Section 3.1.

"Auction" shall have the meaning ascribed to such term in the Bidding Procedures Order.

"Back-Up Bidder" shall have the meaning ascribed to such term in the Bidding Procedures Order.

"Back-Up Period" means the period during which Buyer is the Back-Up Bidder, pursuant to and in accordance with the terms of the Bidding Procedures Order.

"Bankruptcy Case" shall have the meaning ascribed to such term in the recitals to this Agreement.

"Bankruptcy Code" means title 11 of the United States Code, as amended.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Maryland, Greenbelt Division, or any other court having jurisdiction over Seller's bankruptcy case from time to time.

"Bear Swamp/Fife Brook Facilities" means the facilities commonly referred to as the Bear Swamp Pumped Storage Project and Fife Brook Facility and described in the FERC license issued in Docket No. P-2669, as such license is currently in effect and as it may be amended from time to time, together with the assets relating thereto, including the land on which such facilities are located.

"Bear Swamp Trusts" means, together, Bear Swamp Generating Trust No. 1 LLC and Bear Swamp Generating Trust No. 2 LLC, and their respective successors and assignees.

"Bellows Falls 8.8 Acre Parcel" means the approximately 8.8 acres of land, and the improvements thereon, located in the Town of Rockingham, Village of Bellows Falls, Vermont, which parcel is shown as "Land of PG&E Generating, Inc. to be Conveyed" on a plan entitled "Plan of Land in the Town of Rockingham, Village of Bellows Falls, VT, Prepared for PG&E Generating, Inc.," consisting of two sheets, dated October 3, 2002, prepared by Ainsworth Associates, Inc.

"Bellows Falls Agreements" means, collectively, any operating agreement and water flow coordination, facilities sharing or other agreements, in each case, reasonably required to be entered into between the owner of the Plants and Rockingham upon consummation of the transactions contemplated by the Bellows Falls Option Agreement if the Bellows Falls Option is exercised by Rockingham.

"Bellows Falls Escrow Account" means the escrow account into which the proceeds from the sale of the Bellows Falls Project upon exercise of the Bellows Falls Option by Rockingham shall be deposited, pending consummation of the sale of the Bellows Falls Project.

"Bellows Falls Option" means the option of Rockingham to purchase the Bellows Falls Project for $72,046,000 pursuant to the Bellows Falls Option Agreement.

"Bellows Falls Option Agreement" means the Option to Purchase by and between Seller and Rockingham, executed by Seller on July 9, 2004 and by Rockingham on July 13, 2004 and attached hereto as Exhibit 1.1(a)(i).

"Bellows Falls Project" means the hydroelectric project on the Connecticut River commonly referred to as the Bellows Falls Project and described in the FERC license issued in Docket No. P-1855, as such license is currently in effect and as it may be amended from time to time.

"Benefit Plan" means (i) any "employee benefit plan" within the meaning of Section 3(3) of ERISA; (ii) any stock or other equity-related award, restricted stock, stock ownership, stock purchase, stock option, stock appreciation right, phantom stock, retirement, pension, profit sharing, bonus, deferred compensation, incentive compensation, change in control, severance or termination pay, retention, salary continuation, hospitalization, medical, dental, life or other insurance, death benefit, disability, accident, vacation, sick leave, leave of absence, layoff, supplemental unemployment benefits, employee loan, educational assistance, dependent care assistance, legal assistance, cafeteria, club membership, employee discount or fringe benefit plan, program, practice, policy or arrangement; or (iii) any agreement, policy or other arrangement providing employment-related compensation or benefits; in each case, which provide benefits or payments to or with respect to any current or former Plant Employee or Non-Plant Employee, including, plans sponsored, maintained or contributed to by NEGT.

"Bidding Procedures Order" means an Order of the Bankruptcy Court (in substantially the form of Exhibit 1.1(a)(ii) attached hereto) (provided that any changes to the form attached hereto shall either (a) not be adverse to Buyer or (b) if adverse to Buyer, shall be consented to in writing by Buyer, such consent not to be unreasonably withheld or delayed) approving the payment of the Break-Up Fee and the Expense Reimbursement to Buyer and

otherwise establishing the procedures for noticing the approval of this Agreement and any Auction that may be required, and otherwise approving the terms of Section 9.10.

"Bill of Sale" shall have the meaning ascribed to such term in Section 5.2(a)(i).

"Break-Up Fee" means the fee, if any, to be paid by Seller to Buyer in accordance with the provisions of Section 13.3.

"Business" means all of Seller's business of owning, operating and generating electricity from the Plants and the machinery, equipment and facilities related thereto.

"Business Day" means any day other than a Saturday, Sunday or a legal holiday on which banking institutions in New York, New York are authorized or required by law to close.

"Buyer" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Buyer Employees" shall have the meaning ascribed to such term in Section 10.3(a)(v).

"Buyer Parent Guarantee" means the guarantee dated as of the date hereof of Buyer Parents, for the benefit of Seller, attached hereto as Exhibit 1.1(a)(iii).

"Buyer Parents" shall have the meaning ascribed to such term in the recitals to this Agreement.

"Buyer Plans" shall have the meaning ascribed to such term in Section 10.3(c)(i).

"Buyer Welfare Plans" shall have the meaning ascribed to such term in Section 10.3(c)(ii).

"Capital Expenditures Adjustment Amount" means, with respect to the Projects not completed prior to the Closing, the amount, if any, by which the aggregate amount of funds actually expended by Seller between the date hereof and the earlier to occur of (i) March 31, 2005 and (ii) the Closing Date in connection with such Projects is less than the aggregate budgeted amounts for such Projects as set forth on Schedule 9.3.

"Closing" shall have the meaning ascribed to such term in Section 5.1.

"Closing Date" shall have the meaning ascribed to such term in Section 5.1.

"Closing Proration Amount" shall have the meaning ascribed to such term in Section 4.4(b).

"COBRA" means Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA and the rules and regulations promulgated thereunder.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collective Bargaining Agreement" means the collective bargaining agreement set forth on Schedule 7.6(e)(i), as such agreement may be amended or replaced between the date hereof and the Closing Date.

"Commercially Reasonable Efforts" means efforts in accordance with reasonable commercial practice for EWGs operating assets similar to the Transferred Assets and without the incurrence of unreasonable expense (for purposes of this definition, it being understood that the amount of a particular expense and the consequences of failing to incur such expense shall be considered in determining the reasonableness of such expense).

"Confidentiality Agreement" means that certain confidentiality agreement between Seller and Buyer Parent, dated May 13, 2004.

"Consent" means any consent, approval or authorization of, notice to, or designation, registration, declaration or filing with, any Person.

"Continuing Services Agreement" means the Amended and Restated Continuing Site/Interconnection Agreement dated September 1, 1998, as the same may be amended and supplemented from time to time in accordance with this Agreement, between NEP and Seller.

"Cure-Amounts" means all amounts required to be paid by Seller in order to cure any pre- or post-petition defaults under any Assigned Contract or Lease or otherwise comply with the provisions of Section 365(b) of the Bankruptcy Code.

"Deeds" shall have the meaning ascribed to such term in Section 5.2(a)(iv).

"Deposit Amount" means the Initial Deposit Amount together with the Subsequent Deposit Amount, plus any income earned thereon, for so long as such amounts remain in the Escrow Account pursuant to the terms of the Escrow Agreement.

"Determination Date" shall have the meaning ascribed to such term in Section 13.3(f).

"Dollar" or "$"means the official currency of the United States of America.

"Employer" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Employer Welfare Plans" shall have the meaning ascribed to such term in Section 10.3(c)(ii).

"Environmental Claim" means (i) any notice, claim, administrative, regulatory or judicial or equitable action, suit, lien, judgment or demand asserted by any Governmental Authority or Third Party against Seller and (ii) any other written communication by any Governmental Authority or Third Party, in either case alleging or asserting Seller's liability for investigatory costs, cleanup costs, consultants' fees, governmental response costs, damages to

natural resources (including wetlands, wildlife, aquatic and terrestrial species and vegetation) or other property, personal injuries, fines or penalties arising out of, based on or resulting from (x) the presence, or release into the environment, of any Hazardous Material at any location, whether or not owned by Seller or (y) circumstances forming the basis of any liability (or alleged liability) arising from or under, or any violation (or alleged violation) of, any applicable Environmental Law or Environmental Permit.

"Environmental Costs and Liabilities" means any and all losses, liabilities, obligations, damages, fines, penalties, judgments, actions, claims, costs and expenses (including fees, disbursements and expenses of legal counsel) arising from or under any Environmental Law or related environmental Order or contract with any Governmental Authority or Third Party.

"Environmental Law" means any applicable foreign, federal, state or local law, statute, code, ordinance, rule, regulation, administrative or judicial order (whether unilateral or consented to) or other requirement relating to the environment, Hazardous Materials, natural resources, or public or employee health and safety and includes the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 33 U.S.C. § 2601 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., and the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as such laws have been amended or supplemented, and the rules and regulations promulgated thereunder, and all analogous state or local statutes.

"Environmental Notices" shall have the meaning ascribed to such term in Section 6.10.

"Environmental Permits" shall have the meaning ascribed to such term in Section 6.10.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" with respect to any Person, shall mean any trade or business, whether or not incorporated, which would be deemed a "single employer" with such Person within the meaning of Section 414 of the Code.

"Escrow Account" shall have the meaning ascribed to such term in Section 4.1.

"Escrow Agent" means The Bank of New York, as escrow agent, and any successor agent, under the Escrow Agreement and the NEPOOL Escrow Agreement (it being understood that if at any time during the term of the Escrow Agreement or the NEPOOL Escrow Agreement The Bank of New York ceases to be an Investment Grade Entity, each of Seller and Buyer shall reasonably cooperate to, as promptly as practicable, replace The Bank of New York

as the escrow agent under the Escrow Agreement and the NEPOOL Escrow Agreement with a Person that is an Investment Grade Entity).

"Escrow Agreement" shall have the meaning ascribed to such term in Section 4.1.

"Estimated NEPOOL Proration Amount" shall have the meaning ascribed to such term in Section 4.4(c).

"EWG" means an "exempt wholesale generator" as defined under PUHCA.

"Excluded Assets" shall have the meaning ascribed to such term in Section 2.2.

"Excluded Liabilities" shall have the meaning ascribed to such term in Section 3.2.

"Expense Reimbursement" shall have the meaning ascribed to such term in Section 13.3(a).

"Extension Period" shall have the meaning ascribed to such term in the Bidding Procedures Order.

"FCC" means the Federal Communications Commission or its successor.

"FCC Final Order" means that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

"FCC License Approval" means the decision of the FCC approving the assignment and/or transfer of control of the radio equipment licenses set forth on Schedule 1.1(a)(i) hereto.

"FERC" means the Federal Energy Regulatory Commission.

"FERC Approvals" means the Orders of FERC authorizing or approving (1) the transactions contemplated by this Agreement pursuant to Section 203 of the FPA, and (2) any modifications to the FERC Licenses for the Plants required under Part I of the FPA as a result of the transactions contemplated by this Agreement, including the exclusion from the project boundaries under the FERC License in FERC Docket No. P-1855 of the Bellows Falls 8.8 Acre Parcel.

"FERC License Transfer" means an Order of FERC approving the transfer from Seller to Buyer of all FERC Licenses.

"FERC Licenses" means the hydroelectric project licenses issued by the FERC in FERC Docket Nos. P-1855, P-1892, P-1904, P-2077 and P-2323 pursuant to Part I of the FPA, currently in effect and as they may be amended from time to time; provided that if Rockingham exercises the Bellows Falls Option and the transactions contemplated by the Bellows Falls Option Agreement are consummated prior to the Closing, FERC Licenses shall not include the license issued by the FERC in FERC Docket No. P-1855.

"Final Order" means any Order of a Governmental Authority (other than any FCC Final Order or FPA Part I Final Order) after all opportunities under the applicable rules for rehearing, judicial review, judicial rehearing, and petition for certiorari are exhausted, and any requests for rehearing, petitions for judicial review, requests for judicial rehearing, and petitions for certiorari have been denied, and that has not been revised, stayed, enjoined, set aside, annulled, reversed, remanded, modified or suspended, with respect to which any required waiting period has expired, and to which all conditions to effectiveness prescribed therein or otherwise by law or Order have been satisfied; provided, however, that no Order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Bankruptcy Rule 9024 may be filed with respect to such Order.

"Financial Statements" shall have the meaning ascribed to such term in Section 6.14.

"FPA" shall mean the Federal Power Act of 1935, as amended, and the rules and regulations promulgated thereunder, as amended.

"FPA Part I Final Order" means an Order for which FERC has denied rehearing or for which the right to request rehearing has expired as set forth at 18 CFR 385.713. An Order shall be deemed a FPA Part I Final Order as of the date FERC denies rehearing or as of the date the right to seek FERC rehearing expires.

"GAAP" means United States generally accepted accounting principles as in effect on the date on which the document or calculation to which it refers relates, applied on a consistent basis throughout the periods covered thereby.

"Governmental Approvals" means all Consents of Governmental Authorities, including those required under the HSR Act, the Communications Act of 1934, as amended, PUHCA and the FPA, in each case, that are necessary so that the consummation of the transactions contemplated hereby will be in compliance with Applicable Laws.

"Governmental Authority" means any court or tribunal in any domestic jurisdiction or any federal, state, municipal or local government or other domestic governmental body, agency, authority, department, commission, board, bureau, instrumentality, arbitrator or arbitral body, including the VPSB.

"Grandfathered Sick Leave" means the sick leave accounts, if any, which Buyer Employees that were Non-Represented Employees were permitted to retain in connection with NEGT's transition to a system of paid time off.

"Hazardous Material" means any material, substance or waste classified, characterized, designated or otherwise regulated as hazardous, toxic, pollutant, contaminant, radioactive or words of similar meaning or effect under any Environmental Law including, petroleum, petroleum products, asbestos, urea formaldehyde and polychlorinated biphenyls.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended and the rules and regulations promulgated thereunder, as amended.

"Identified Liens" means (i) Liens created by Buyer, or its successors and assigns, (ii) Liens for Taxes not yet due and payable, (iii) Liens set forth in the Title Commitments, (iv) Liens of record at any time up to and including the Closing Date that Buyer's title company has agreed to affirmatively insure against any Loss caused thereby in the applicable title policy at no additional cost to Buyer, (v) Liens set forth on Schedule 1.1(a)(vii), (vi) materialmen's, mechanics', repairmen's, landlord's and other similar Liens arising before Closing in the ordinary course of business securing payments not yet due and payable, and (vii) such Liens, defects, imperfections and irregularities of title as are, individually or in the aggregate, immaterial in character, scope or amount.

"Indebtedness" means, with respect to any Person at any date: (i) all obligations of such Person for borrowed money or in respect of loans or advances, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments or debt securities, (iii) all obligations in respect of drawn-upon (and not replenished) letters of credit and bankers' acceptances issued for the account of such Person, (iv) all obligations arising from cash/book overdrafts, and (v) all accrued interest, premiums or penalties related to any of the foregoing items set forth in clauses (i) through (iv) of this definition.

"Initial Cash Amount" means $505,000,000.

"Initial Deposit Amount" shall have the meaning ascribed to such term in Section 4.1.

"Initial Period" shall have the meaning ascribed to such term in the Bidding Procedures Order.

"Intellectual Property" means all of the intellectual property listed on Schedule 2.1(c).

"Investment Grade Entity" means any Person with outstanding indebtedness which, as of any date of determination, is rated (i) Baa3 or higher according to Moody's Investors Service and (ii) BBB minus or higher according to Standard & Poor's Corporation; provided, in either case, that if the Person's indebtedness is rated Baa3 or BBB minus, such Person is not on credit/negative watch by the applicable agency.

"IRS" means Internal Revenue Service.

"ISO-NE" means ISO New England, Inc.

"knowledge" or "aware" or any term of similar import means, (i) with respect to Seller, the actual knowledge after due and reasonable inquiry in the course of their respective duties of the Persons listed on Schedule 1.1(a)(ii), (ii) with respect to Employer, the actual knowledge after due and reasonable inquiry in the course of their respective duties of the Persons listed on Schedule 1.1(a)(iii), and (iii) with respect to Buyer, the actual knowledge after due and reasonable inquiry in the course of their respective duties of the Persons listed on Schedule 1.1(a)(iv).

"Leased Real Estate" shall have the meaning ascribed to such term in Section 2.1(f).

"Leases" shall have the meaning ascribed to such term in Section 2.1(f).

"Leave Employee" shall have the meaning ascribed to such term in Section 10.3(a)(ii).

"Liens" means liens, charges, pledges, options, mortgages, deeds of trust, security interests, claims, easements, guarantees, and other encumbrances of every type and description, whether imposed by law, agreement, understanding, or otherwise.

"Losses" means, collectively, any and all liabilities, losses, obligations, fines, penalties, assessments, judgments, damages, costs and expenses (including costs of investigation and defense, reasonable attorneys', experts' and consultants' fees and disbursements, court costs and other costs of suit).

"Market-Based Rate Authorization" means that authorization to be granted by FERC to Buyer and its Affiliates pursuant to Section 205 of the FPA in connection with the transactions contemplated by this Agreement to sell electric energy, capacity and/or certain ancillary services at rates established in accordance with market conditions.

"Material Adverse Effect" means any fact, event, change, development, circumstance or effect that, individually or in the aggregate with all such other facts, events, changes, developments, circumstances or effects, (a) would be materially adverse to the Business or the Transferred Assets, taken as a whole, the condition (financial or otherwise) of the Business or the Transferred Assets, taken as a whole, or the results of operations of the Business or the Transferred Assets, taken as a whole, or (b) that would prevent or materially impair or materially delay the ability of Seller or Employer to perform its obligations under this Agreement or under any Ancillary Agreement; provided, however, that Material Adverse Effect shall exclude any fact, event, change, development, circumstance or effect arising or resulting from (i) those that affect the international, national or regional electric market as a whole, (ii) changes in general economic conditions, interest rates or securities markets in the United States or worldwide, (iii) changes in the international, national, regional or local wholesale or retail markets or prices for natural gas, gas liquids, electricity, oil, coal or other energy commodities or services, (iv) changes in the North American, national, regional or local electricity transmission systems or operations thereof, (v) changes in any laws, statutes, rules, regulations, ordinances, judgments, orders or decrees that apply generally to similarly situated Persons, (vi) any change in or effect solely on the Transferred Assets that is cured (including by the payment of money) by and at the

cost of Seller before the earlier of the Closing and the termination of this Agreement pursuant to Section 13.1, such that, after such cure, the Transferred Assets and the Business are in the same position as they were prior to such change or effect, (vii) any default of any obligation by an Affiliate of Seller or any insolvency or filing of a bankruptcy petition by or against any Affiliate of Seller, so long as such would not prevent or materially impair or materially delay the obligations of either Seller or Employer to perform its obligations under this Agreement or the Ancillary Agreements, (viii) any acts of war or terrorist activities, (ix) strikes, work stoppages or other labor disturbances, (x) any change or effect arising by reason of or relating to the announcement or pendency of the transactions provided for in this Agreement, (xi) the matters set forth on Schedule 1.1(a)(v) and (xii) any matter to the extent that (A) it is disclosed in Seller's Schedules and (B) the facts regarding such disclosed matter do not change in a manner that is adverse to the Business, the Transferred Assets or Buyer in any material respect, other than, with respect to clauses (v), (viii) and (ix) above, any such fact, event, change, development, circumstance or effect that specifically relates to or disproportionately affects the Business or the Transferred Assets.

"Material Assigned Contracts" means, collectively, (i) all Assigned Contracts listed on Schedule 6.9 and (ii) all Assigned Contracts entered into after the date of this Agreement that would, if entered into on or prior to the date of the Agreement, be required to be listed in Schedule 6.9.

"Material Lease" shall have the meaning ascribed to such term in Section 6.12(a).

"Material Permits" shall have the meaning ascribed to such term in Section 6.5(b).

"Modifying Order" shall have the meaning ascribed to such term in Section 13.1(f).

"Motion" shall have the meaning ascribed to such term in Section 9.10(a).

"Multiemployer Plan" shall mean a "multiemployer plan" within the meaning of Section 3(37) of ERISA.

"NEGT" means National Energy & Gas Transmission, Inc., a Delaware corporation.

"NEGT Marks" means the name "NEGT" and the other trademarks, service marks and trade names owned by Seller and its Affiliates including those set forth on Schedule 1.1(a)(vi) hereto.

"NEP" means New England Power Company, a Massachusetts corporation.

"NEPOOL" means the New England Power Pool, as created under and governed by the Restated New England Power Pool Agreement, as amended, modified or supplemented from time to time, and the Persons collectively participating in the New England Power Pool as participants.

"NEPOOL Approval" means the establishment of all settlement accounts and any other agreements or authorizations with or by NEPOOL necessary for Buyer or its Affiliates to sell the output of the Plants into the NEPOOL market.

"NEPOOL Escrow Agreement" means the escrow agreement, substantially in the form of Exhibit 1.1(a)(iv), among Seller, Buyer and The Bank of New York, as Escrow Agent, to be entered into at the Closing if the Closing Date does not occur on the first day of any month.

"NEPOOL Proration Amount" shall have the meaning ascribed to such term in Section 4.4(a)(vi).

"NEPOOL Settlement Accounts" means those accounts managed by ISO-NE that contain revenues or charges arising from (i) the sale from the Plants of energy, capacity, forward reserves, operating reserve, and regulation service into the NEPOOL market pursuant to New England Power Pool Market Rule 1, (ii) the sale from the Plants of reactive supply and voltage control service and system restoration and planning service pursuant to the NEPOOL Open Access Transmission Tariff, (iii) the portion of charges under the ISO New England Tariff for System Dispatch and Administration Services relating to the Transferred Assets, and (iv) the portion of charges under the ISO New England Capital Funding Tariff relating to the Transferred Assets; or in the event of the formation of RTO-NE, the RTO-NE documents that supersede each of these NEPOOL and ISO-NE documents.

"New Bear Swamp Agreements" shall have the meaning ascribed to such term in Section 9.9(a).

"Non-Plant Employees" shall have the meaning ascribed to such term in Section 7.6(a)(ii).

"Non-Represented Employees" means all Plant Employees set forth on Schedule 7.6(a)(i) who are not represented by a labor organization.

"Notice" shall have the meaning ascribed to such term in Section 14.1.

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment, award, decision, stipulation or verdict.

"Outside Date" means the 180th day after the date hereof; provided, however, that (i) if any of the conditions to Closing set forth in Section 5.4(g)(i), 5.6(b) (by reason of any pending Proceeding seeking an Order referred to therein), 5.6(c) or 5.6(d) shall not have been satisfied or waived on or prior to the 180th day after the date hereof but all other conditions to the Closing (other than any such conditions) shall have been satisfied or waived (or shall be capable of being satisfied) as of such date, then the Outside Date shall be extended an additional one hundred eighty (180) days and (ii) if the Auction is held and Buyer is declared the Back-Up Bidder, then the running of the 180-day (or, as applicable, 360-day) period for purposes of determining the Outside Date shall be suspended from the date on which Buyer is declared the Back-Up Bidder through the date, if ever, that Buyer becomes the Winning Bidder, in each case, in accordance with the terms of the Bidding Procedures Order.

"Owned Real Estate" shall have the meaning ascribed to such term in Section 2.1(h).

"Owner of Bear Swamp/Fife Brook" means the Bear Swamp Trusts or, if the Bear Swamp Trusts have sold the Bear Swamp/Fife Brook Facilities, the new owner of such facilities.

"Party" and "Parties" shall have the meaning ascribed to such terms in the preamble to this Agreement.

"Payment Date" means the earliest of (a) the date on which an Alternative Transaction is consummated, (b) the date on which an Alternative Seller Plan or an Alternative Third Party Plan is consummated and (c) the date that is ninety (90) days after the date of termination of the Agreement.

"Permits" means permits, licenses, approvals, franchises, notices, variances, exemptions, consents and other authorizations issued by any Governmental Authority that relate to or otherwise are used or are necessary in connection with the ownership, operation or other use of any of the Transferred Assets.

"Permitted Liens" means (i) Liens created by Buyer, or its successors and assigns, (ii) Liens for Taxes not yet due and payable, for which Taxes Buyer is liable pursuant to Section 4.4 and (iii) easements, rights of way, covenants running with the land and similar interests in or against the Owned Real Estate, but only to the extent (A) properly reflected on the Title Commitments, and (B) Seller is not permitted to transfer the Owned Real Estate free and clear thereof pursuant to Section 363(f) of the Bankruptcy Code. For purposes of clarification, no matter contained in the Title Commitments which (x) creates a security interest or mortgage interest in any of the Transferred Assets or (y) subjects any of the Transferred Assets to a divestiture of title shall be a Permitted Lien. Buyer shall give Notice to Seller not later than thirty (30) days after the date hereof of any easements, rights of way, covenants running with the land or similar interests reflected in the Title Commitments which Buyer believes would (i) impair Buyer's ability to operate the Business in a manner similar to that in which Seller operated the Business prior to the Closing or (ii) adversely affect in any material respect the value of a Transferred Asset (in either case, an "Unpermitted Exception"). If Buyer notifies Seller of any Unpermitted Exceptions, Seller shall use its Commercially Reasonable Efforts to cure such Unpermitted Exceptions. Notwithstanding the above provisions of this definition, Permitted Liens shall not include any Unpermitted Exception that is not so cured to Buyer's satisfaction prior to the Closing.

"Person" shall mean any individual, general partnership, limited partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, Governmental Authority or other entity.

"Petition Date" shall have the meaning ascribed to such term in the recitals to this Agreement.

"Plant Employees" shall have the meaning ascribed to such term in Section 7.6(a)(i).

"Plants" means Seller's dams, powerhouses and related buildings located on the Connecticut River and the Deerfield River in the States of Vermont, New Hampshire and Massachusetts and all related improvements and facilities, and construction work in progress, in each case, as further set forth on Schedule 2.1(a); provided that the Plants shall not include the Bear Swamp/Fife Brook Facilities; provided, further, that if the Bellows Falls Option is exercised and the transactions contemplated by the Bellows Falls Option Agreement are consummated prior to the Closing, then the Plants shall not include the Bellows Falls Project.

"Proceedings" means all proceedings, actions, claims (excluding any proofs of claim filed in the Bankruptcy Case), suits, investigations and inquiries by or before any arbitrator or Governmental Authority.

"Projects" means the capital expenditure and maintenance projects set forth on Schedule 9.3.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations promulgated thereunder, as amended.

"Purchase Price" means the Initial Cash Amount minus the Capital Expenditures Adjustment Amount, if any; provided, however, that if the Closing does not occur on or before the 240th day after the date of this Agreement, the Purchase Price shall be reduced by $100,000 for each day from (and including) the 240th day after the date of this Agreement until (but excluding) the earlier of (i) the Closing Date and (ii) the Outside Date; provided further, that if the Auction is held and Buyer is declared the Back-Up Bidder, then the running of the 240-day period prior to the initiation of such purchase price reduction shall be suspended from the date on which Buyer is declared the Back-Up Bidder through the date, if ever, that Buyer becomes the Winning Bidder, in each case, in accordance with the terms of the Bidding Procedures Order. For purposes of clarification, in no event shall the purchase price reduction described in the first proviso of the prior sentence be greater than $12,000,000.

"Qualified Bid" shall have the meaning ascribed to such term in the Bidding Procedures Order.

"Qualifying Offer" means an offer of employment to a Non-Represented Employee that (i) provides for base salary and employee benefits that are, in the aggregate, generally similar in value to the base salary and employee benefits (other than stock options or other equity-based compensation, benefits under defined benefit pension plans, retention payments, long-term incentive compensation, deferred compensation and non-material benefit programs or fringe benefit arrangements) provided by Employer to such individual immediately prior to the Closing Date and (ii) does not require such employee's location of employment to be more than 50 driving miles from his or her residence (unless, in such case, such location of employment is no farther in driving miles from his or her residence than his or her location of employment on the Closing Date).

"Real Estate Assets" shall have the meaning ascribed to such term in Section 2.1(h).

"Representatives" of a Person means, collectively, such Person's Affiliates and its and their respective directors, officers, partners, members, employees, representatives, agents, advisors (including accountants, legal counsel, environmental consultants, engineering consultants and financial advisors), parent entities and other controlling Persons.

"Represented Employees" means all Plant Employees set forth on Schedule 7.6(a)(i) who are represented by a labor organization.

"Rockingham" means the Town of Rockingham, Vermont.

"RTO-NE" means the regional transmission organization, if any, established as a successor to ISO-NE pursuant to 18 C.F.R. Part 35 (FERC Docket No. RM99-2-000; Order No. 2000).

"Sale Order" means an Order of the Bankruptcy Court (in substantially the form of Exhibit 1.1(a)(iv) attached hereto) (provided that any changes to the form attached hereto shall either (a) not be adverse to Buyer or (b) if adverse to Buyer, shall be consented to in writing by Buyer, such consent not to be unreasonably withheld or delayed) approving the terms and conditions of this Agreement, including the sale of the Transferred Assets and the transfer of the Assumed Liabilities under Section 363 of the Bankruptcy Code, and the assumption and assignment of the Assigned Contracts and the Leases in accordance with the provisions of Sections 105, 363 and 365 of the Bankruptcy Code, including the provisions of Section 365 of the Bankruptcy Code with respect to the curing of defaults.

"Seller" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Seller Benefit Arrangements" shall have the meaning ascribed to such term in Section 6.15(b).

"Seller Insurance Policies" means those policies of insurance, surety bonds and financial assurance arrangements, which NEGT, Seller, or any of Seller's Affiliates maintains or have been issued to or deposited with any Person (other than Seller or any Seller Subsidiary) for the benefit of Seller or any Seller Subsidiary as of the date hereof, but only with respect to the Business or the Transferred Assets, including policies for all liability, property, workers' compensation, directors' and officers' liability and other insurance policies currently in effect that insure the Business or the Transferred Assets, including those material policies, bonds and arrangements that are set forth on Schedule 1.1(a)(viii).

"Seller Subsidiaries" means USGen Services Company, LLC, a Delaware limited liability company, and First Massachusetts Land Company, LLC, a Delaware limited liability company.

"Seller Subsidiaries Interests" means the outstanding limited liability company membership interests of the Seller Subsidiaries.

"Solicitation Period" means the period starting on entry of the Bidding Procedures Order and ending on entry of the Sale Order.

"Subsequent Deposit Amount" shall have the meaning ascribed to such term in Section 4.1.

"Tax" and "Taxes" means any domestic or foreign federal, state or local taxes, however denominated, including, but not limited to, gross receipts, license, payroll, parking, employment, excise, severance, stamp, occupation, premium, windfall profits, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative, add-on minimum, or estimated tax (including any interest, penalty, fines or additions thereto), or customs duties, whether disputed or not, including such item for which a liability arises as a transferee or successor-in-interest.

"Tax Return" means any domestic or foreign federal, state or local tax return or report, declaration, claim for refund, information return or statement relating to Taxes, including any related schedules, attachments or other supporting information, with respect to Taxes, and including any amendment thereto.

"Taxing Authority" means any Governmental Authority responsible for the imposition, administration or collection of any Tax.

"TCPL" shall have the meaning ascribed to such term in the recitals to this Agreement.

"Third Party" means any Person other than Seller, Buyer, Employer or any of their respective Affiliates.

"Title Commitments" shall have the meaning ascribed to such term in Section 2.1(h).

"Title IV Plan" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA, which is subject to Title IV of ERISA, including a Multiemployer Plan.

"Transfer Date" shall have the meaning ascribed to such term in Section 10.3(a)(ii).

"Transfer Tax" means any Tax imposed upon the sale, transfer, conveyance, assignment or delivery of the Transferred Assets or any interest therein or the recording thereof, and any penalty, addition to Tax or interest with respect thereto, but such term shall not include any Tax on, based upon or measured by, the net income, gains or profits from such sale, transfer, conveyance, assignment or delivery of the Transferred Assets or any interest therein.

"Transferred Assets" shall have the meaning ascribed to such term in Section 2.1.

"TSA" shall have the meaning ascribed to such term in Section 5.2(a)(viii).

"Value of the Business" means the amount equal to the aggregate value of the Business taking into account all relevant factors including, as applicable, (i) the aggregate consideration actually received by Seller or any of its Affiliates (including the value of any liabilities assumed) in connection with one or more transactions with any Third Party relating to the direct or indirect sale, transfer or other disposition of any of the Transferred Assets, (ii) the aggregate value of any Transferred Assets of which Seller or any of its Affiliates retains ownership pursuant to an Alternative Seller Plan or Alternative Third Party Plan, and (iii) the aggregate value of any Transferred Assets that are transferred in kind to any Third Party in connection with a liquidation of Seller; provided that Buyer shall bear the burden of proof with respect to establishing such amount of the value of the Business.

"VPSB" means the Vermont Public Service Board.

"Warranty" means all claims and rights against Third Parties, if and to the extent the same relate to or arise under the Transferred Assets, including all rights under manufacturers' and vendors' warranties, if any, and all rights of recovery, set-offs and credits.

"Winning Bidder" shall have the meaning ascribed to such term in the Bidding Procedures Order.

1.2 Construction. In construing this Agreement, together with the Schedules and Exhibits hereto, the following principles shall be followed:

(a) the terms "herein," "hereof," "hereby," "hereunder" and other similar terms refer to this Agreement as a whole and not only to the particular Article, Section or other subdivision in which any such terms may be employed;

(b) except as otherwise set forth herein, references to Articles, Sections, Schedules, Exhibits and other subdivisions refer to the Articles, Sections, Schedules, Exhibits and other subdivisions of this Agreement;

(c) a reference to any Person shall include such Person's predecessors;

(d) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;

(e) no consideration shall be given to the captions of the Articles, Sections, Schedules, Exhibits, subdivisions, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in its construction;

(f) examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

(g) the word "includes" and "including" and their syntactical variants mean "includes, but is not limited to" and "including, without limitation," and corresponding syntactical variant expressions;

(h) a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place in this Agreement where it is defined; and

(i) the plural shall be deemed to include the singular and vice versa.

ARTICLE II.

PURCHASE OF ASSETS

2.1 Purchase and Sale of Transferred Assets. On the terms and subject to the conditions set forth herein, at the Closing Seller shall sell, transfer, convey, assign and deliver, and Buyer shall purchase and accept, all of Seller's right, title and interest in and to the following assets, rights, privileges, claims, contracts and properties (as further set forth in this Section 2.1 and the Schedules attached hereto) as such exist as of the Closing, other than the Excluded Assets (collectively, the "Transferred Assets"), free and clear of all Liens, except for Permitted Liens, to the maximum extent permitted by Section 363(f) of the Bankruptcy Code:

(a) the Plants;

(b) wherever located, (i) all equipment (including turbines, generators, transformers, tractors, trailers, vehicles and communications equipment), inventory, machinery, goods, supplies, furniture, fixtures, keys, furnishings, tools, spare parts and other tangible personal property (including computer hardware) used in or relating to the operation of the Plants or the conduct of the Business and (ii) all Warranties existing for the benefit of Seller or its Affiliates in connection with the foregoing;

(c) all Intellectual Property;

(d) wherever located, all data, plans and records relating to the Plants or the conduct of the Business in Seller's possession, including operation, generation and hydrological records and service and repair records used in or relating to the Plants or the conduct of the Business, and operating documents, specifications, and diagrams in Seller's possession relating to the ownership, construction, operation, and maintenance of the Plants;

(e) each of the Assigned Contracts;

(f) all real property leases set forth on Schedule 2.1(f) (it being understood that, on the second Business Day prior to Closing, Seller shall provide Buyer with an updated version of Schedule 2.1(f) reflecting the real property leases relating to the Business that were entered into by Seller on or after the date of this Agreement not in violation of Section 9.3 of this Agreement) (the "Leases," and the real estate thereunder, the "Leased Real Estate");

(g) the FERC Licenses and, to the extent assignable, all Permits;

(h) all real property interests owned by Seller relating to the Plants, including real property interests described in the title insurance commitments set forth on Schedule 2.1(h) (the "Title Commitments"), together with all improvements, structures and fixtures thereon, and

all easements, privileges, rights-of-way, riparian and other water rights, lands underlying any adjacent streets or roads, appurtenances, licenses, and other rights pertaining to or accruing to the benefit of such property (hereinafter collectively referred to as the "Owned Real Estate" and, together with the Leased Real Estate, the "Real Estate Assets"), it being understood that neither Owned Real Estate nor Real Estate Assets includes (i) the Bear Swamp/Fife Brook Facilities or (ii) the Bellows Falls 8.8 Acre Parcel;

(i) [Reserved]

(j) if the Bellows Falls Option has been exercised and the transactions contemplated by the Bellows Falls Option Agreement have not been consummated prior to the Closing, the Bellows Falls Escrow Account and any proceeds therefrom;

(k) all rights and claims of Seller against Third Parties to the extent arising out of or relating to the Transferred Assets or the Business, choate or inchoate, known or unknown, contingent or otherwise; and

(l) in addition to all of the assets, rights, privileges, claims, contracts and properties that are of a type specifically addressed by other provisions of this Section 2.1, all other assets, rights, privileges, claims, contracts and properties of every kind, nature, character and description, real, personal and mixed, tangible and intangible, absolute or contingent, wherever located, used in or relating to the Business or the Plants, other than the Excluded Assets.

2.2 Excluded Assets. Notwithstanding anything contained in this Agreement to the contrary, the Transferred Assets shall not include the following assets, rights, privileges, claims, contracts and properties (collectively, the "Excluded Assets"):

(a) any cash, cash equivalent items, accounts receivable, deposits (except as provided in Section 2.1(j)), and pre-paid expenses, including checking accounts, bank accounts, certificates of deposits and securities of Seller;

(b) the NEGT Marks;

(c) if the Bellows Falls Option has been exercised and the transactions contemplated by the Bellows Falls Option Agreement have been consummated prior to the Closing, the assets, rights, privileges, claims, contracts and properties relating to the Bellows Falls Project;

(d) tax refunds and credits relating to time periods prior to the Closing Date, including tax refunds from Affiliates of Seller;

(e) the Seller Subsidiaries Interests, together with minute books and other corporate documents of the Seller Subsidiaries;

(f) assets, rights, privileges, claims, contracts and properties owned or held by Benefit Plans;

(g) insurance policies and proceeds which are not transferred to Buyer in connection with the transactions contemplated by this Agreement;

(h) other than as set forth in Section 2.1(k), all rights and claims of Seller against Third Parties, including those rights, claims and recoveries against Third Parties arising out of or relating to events prior to the Closing Date or which arise under the Bankruptcy Code or applicable state law (including all avoidance or fraudulent conveyance actions arising under Chapter 5 of the Bankruptcy Code);

(i) any minute books and other corporate documents of Seller;

(j) except as set forth on Schedule 6.14, any financial statements with respect to the Business;

(k) the Bellows Falls 8.8 Acre Parcel and the Bear Swamp/Fife Brook Facilities; and

(l) letters of credit, guarantees and other security provided to Third Parties by Seller.

ARTICLE III.

ASSUMED LIABILITIES AND EXCLUDED LIABILITIES

3.1 Assumed Liabilities. As additional consideration for the Transferred Assets, from and after the Closing, Buyer shall assume and Buyer hereby agrees to pay, satisfy, discharge and perform when due only the following liabilities and obligations of Seller or Employer (all such liabilities and obligations referred to herein as the "Assumed Liabilities"):

(a) all liabilities and obligations (including Environmental Costs and Liabilities) relating to, arising out of or incurred in connection with the operation of the Transferred Assets by Buyer from and after the Closing Date under any Assigned Contract or Lease; and

(b) all liabilities and obligations (including Environmental Costs and Liabilities) relating to, arising out of or incurred in connection with the operation of the Transferred Assets by Buyer from and after the Closing Date.

3.2 Excluded Liabilities. Buyer does not assume or agree to pay, satisfy, discharge or perform, and shall not be deemed by virtue of the execution and delivery of this Agreement or any document delivered in connection with this Agreement, or as a result of the consummation of the transactions contemplated by this Agreement or otherwise to have assumed, or to have agreed to pay, satisfy, discharge or perform any liabilities or obligations of Seller or Employer other than the Assumed Liabilities (all such liabilities and obligations not assumed by Buyer referred to herein as the "Excluded Liabilities"). Without limiting the generality of the foregoing, Buyer shall not assume any of the following:

(a) any liability or obligation relating to, arising out of or incurred in connection with the Excluded Assets, whether before, on or after the Closing;

(b) if the Bellows Falls Option has been exercised and the transactions contemplated by the Bellows Falls Option Agreement have been consummated prior to the Closing, any liability or obligation arising in connection with the Bellows Falls Project (other than under the Bellows Falls Option Agreement and the Bellows Falls Agreements);

(c) any liability or obligation listed in Schedule 3.2(c);

(d) any accounts payable arising prior to the Closing Date (whether invoiced prior to, on or after the Closing Date);

(e) any liability or obligation to or with respect to any employee or former employee or to or with respect to an employee benefit plan, program, policy or arrangement, except to the extent assumed by Buyer pursuant to Section 10.3;

(f) any liability or obligation arising from the performance prior to the Closing of the Assigned Contracts and the Leases relating to, arising out of or incurred in connection with any breach of contract, breach of warranty, tort, infringement or violation of Law or other similar event or occurrence prior to the Closing;

(g) any Indebtedness of Seller or Employer; and

(h) any liability or obligation (including any Environmental Costs and Liabilities) relating to, arising out of or incurred in connection with the operation of the Business or the ownership of the Transferred Assets prior to the Closing Date.

For purposes of clarity, the foregoing is not intended to, and shall not, relieve Buyer of any of its liabilities or obligations hereunder or under any document delivered in connection with this Agreement.

ARTICLE IV.

PURCHASE PRICE

4.1 Purchase Price. In consideration of the conveyance to Buyer of Seller's right, title and interest in and to the Transferred Assets, including the assignment of the Assigned Contracts and the Leases, and subject to the conditions and in accordance with the terms hereof, (a) Buyer shall pay to Seller an aggregate amount in cash equal to the Purchase Price, and (b) Buyer shall assume the Assumed Liabilities. The Purchase Price shall be payable by Buyer to Seller as follows: (i) on the second Business Day after the date of this Agreement, Buyer shall pay to the Escrow Agent an amount equal to 1½% of the Initial Cash Amount (the "Initial Deposit Amount") by wire transfer of immediately available funds into an escrow account (the "Escrow Account") pursuant to the escrow agreement attached hereto as Exhibit 4.1(a) (the "Escrow Agreement"); (ii) no later than the first Business Day after entry of the Bidding Procedures Order, Buyer shall pay to the Escrow Agent an amount equal to 2½% of the Initial

Cash Amount by wire transfer of immediately available funds into the Escrow Account pursuant to the Escrow Agreement (the "Subsequent Deposit Amount"); and (iii) on the Closing Date, Buyer shall pay to Seller an amount equal to the Purchase Price less the Deposit Amount by wire transfer (pursuant to wire transfer instructions provided by Seller at least five (5) Business Days prior to the Closing Date) of immediately available funds; provided that if the Bellows Falls Option has been exercised and the transactions contemplated by the Bellows Falls Option Agreement have been consummated prior to the Closing the Purchase Price to be paid at Closing shall be reduced by the amount of the gross proceeds to Seller from the sale of the Bellows Falls Project to Rockingham. No later than five (5) Business Days prior to the Closing Date, each of Buyer and Seller shall jointly instruct the Escrow Agent to release, at the Closing, the Deposit Amount being held by the Escrow Agent pursuant to the Escrow Agreement to Seller.

4.2 Allocation of Purchase Price. Buyer shall, no later than ninety (90) days after the Closing Date, prepare and deliver to Seller a schedule (the "Allocation Schedule") allocating, to the extent allowable under applicable United States tax laws, the Purchase Price and the Assumed Liabilities as of the Closing Date in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor provision. Seller shall have the right to raise objections within ten (10) days of its receipt thereof. If Buyer and Seller cannot mutually resolve Seller's objections to the Allocation Schedule within ten (10) days of Buyer's receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to an independent appraiser (the "Arbitrator") mutually selected by Buyer and Seller, which Arbitrator shall be instructed to endeavor to deliver, within sixty (60) days thereafter, a final, binding and conclusive decision upon each of the Parties. In the event that Buyer and Seller cannot agree on the selection of an Arbitrator, either Party may request the AAA to appoint a nationally recognized independent appraiser, and such appointment shall be final, binding and conclusive on Buyer and Seller. Promptly, but no later than thirty (30) days after acceptance of its appointment as Arbitrator, the Arbitrator shall determine the remaining disputed items and shall render a written report to Buyer and Seller resolving such dispute with respect to the Allocation Schedule. The Arbitrator's decision shall be final, binding and conclusive on all Parties. The Parties shall cooperate with each other, and each other's Representatives and with the Arbitrator in order that any and all matters in dispute shall be resolved as soon as practicable. The fees, costs and expenses of such Arbitrator incurred in connection therewith shall be shared equally by Buyer and Seller. Buyer and Seller shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any Taxing Authority or any other Proceedings). Buyer and Seller shall file or cause to be filed any and all forms (including Form 8594), statements and schedules with respect to such allocation, including any amendments to such forms required with respect to any adjustment to the Purchase Price, pursuant to this Agreement. Notwithstanding any other provisions of this Agreement, the agreements set forth in this Section 4.2 shall survive the Closing Date.

4.3 Capital Expenditures Adjustment Amount. At least five (5) Business Days prior to Closing, Seller shall provide to Buyer a written statement setting forth in reasonable detail (a) the status with respect to each Project, (b) with respect to those Projects that are not complete, the aggregate amount of funds actually expended by Seller between the date hereof

and the Closing Date in connection with such Projects (together with reasonably detailed evidence of the payment of such expenditures) and (c) based on the foregoing, Seller's calculation of the Capital Expenditures Adjustment Amount. Seller shall cooperate reasonably with Buyer in connection with Buyer's review and verification of the information set forth on such statement, including (i) providing Buyer with such additional information with respect to such expenditures reasonably requested by Buyer, (ii) using Commercially Reasonable Efforts to make available to Buyer any employees of Seller or Employer who may have information about such expenditures and (iii) providing access to Representatives of Buyer to the applicable Plants to permit Buyer to physically inspect the Projects. If, after its receipt of the statement provided by Seller pursuant to the first sentence of this Section 4.3 and prior to the Closing, Buyer provides a written statement to Seller questioning or disputing the amounts set forth in the statement provided by Seller pursuant to the first sentence of this Section 4.3, Buyer and Seller shall work together in good faith to resolve such questions or disputes prior to Closing. If Buyer fails to provide a written statement by Closing to Seller questioning or disputing amounts after its receipt of the statement provided by Seller pursuant to the first sentence of this Section 4.3, then the amounts set forth in such statement provided by Seller shall be final, binding and conclusive on Buyer and Seller.

4.4 Proration.

(a) All of the items normally prorated, including those listed below, relating to the Business and operation of the Transferred Assets shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period prior to the Closing Date, and Buyer liable to the extent such items relate to periods on and after the Closing Date:

(i) personal property, real estate, occupancy, sewerage and water Taxes, assessments and other charges, if any, on or with respect to the business and operation of the Transferred Assets;

(ii) rent, Taxes and all other items payable by or to Seller under any of the Assigned Contracts assigned to and assumed by Buyer hereunder which are associated with the Transferred Assets;

(iii) any permit, license, registration, compliance assurance fees or other fees with respect to any Permit associated with the Business or the Transferred Assets;

(iv) sewer rents and charges for water, telephone, electricity and other utilities;

(v) rent under any leases of real or personal property included in the Transferred Assets, including the leases set forth on Schedule 6.12(a); and

(vi) if the Closing Date does not occur on the first day of any month, the NEPOOL Settlement Accounts which are associated with the Transferred Assets, prorated on the basis of the same time intervals used by NEPOOL to settle each item (the amount owing to Buyer with respect to time periods after Closing being referred to as the "NEPOOL Proration Amount").

(b) In connection with the prorations referred to in Section 4.4(a)(i)-(v), at least five (5) Business Days prior to Closing, Seller shall deliver to Buyer a written statement setting forth the actual or estimated amounts in respect of the accrued receivables, prepayments and payables for the items described in Sections 4.4(a)(i)-(v) (the aggregate of such estimated amounts being the "Closing Proration Amount"). A receivable or prepayment shall be a positive amount and a payable shall be a negative amount. In the event that actual figures for items described in Sections 4.4(a)(i)-(v) are not available at the Closing Date, the proration for such items shall be based upon the actual amounts for the preceding year (or appropriate period) for which actual amounts are available. On the Closing Date, Seller or Buyer, as applicable, shall pay to the other Party the Closing Proration Amount. To the extent that any amounts included in the Closing Proration Amount are estimates of the actual amount of the prorations, the proration of such amounts shall be recalculated and appropriate adjustments shall be paid upon request of either Seller or Buyer, made within sixty (60) days of the date that the actual amounts become available, except for amounts in respect of Taxes described in Section 4.4(a)(i) and (ii) which will be settled pursuant to Section 10.7.

(c) In connection with the prorations referred to in Section 4.4(a)(vi), at least five (5) Business Days prior to Closing, Seller shall deliver to Buyer a written statement setting forth an estimate of the NEPOOL Proration Amount (the "Estimated NEPOOL Proration Amount"), which Estimated NEPOOL Proration Amount shall, unless otherwise mutually agreed upon by Seller and Buyer, be determined based on the amounts incurred by Seller for the same time period of the previous year. At the Closing, Seller shall pay the Estimated NEPOOL Proration Amount to the Escrow Agent pursuant to the terms of the NEPOOL Escrow Agreement. On or prior to the 60th day after the Closing, the Parties shall work together to determine the actual NEPOOL Proration Amount (the "Actual NEPOOL Proration Amount") as promptly as reasonably practicable, based on the weekly or monthly invoice or remittance issued by ISO-NE inclusive of all revenues and charges allocated to and among the Plants contained in the Seller's NEPOOL Settlement Accounts for the prorated period where such information is based on information contained in the then current NEPOOL Market Information System. Within three (3) Business Days of the determination of the Actual NEPOOL Proration Amount, (i) if the Actual NEPOOL Proration Amount is greater than the Estimated NEPOOL Proration Amount, (A) each of Buyer and Seller shall jointly instruct the Escrow Agent to release the amount being held by the Escrow Agent pursuant to the NEPOOL Escrow Agreement to Buyer (excluding income earned thereon, which shall be distributed pursuant to the next ensuing sentence) and (B) Seller shall pay to Buyer the amount by which the Actual NEPOOL Proration Amount exceeds the Estimated NEPOOL Proration Amount and (ii) if the Actual NEPOOL Proration Amount is less than the Estimated NEPOOL Proration Amount, each of Buyer and Seller shall jointly instruct the Escrow Agent to release (A) the Actual NEPOOL Proration Amount to Buyer and (B) the remaining amount being held by the Escrow Agent pursuant to the NEPOOL Escrow Agreement (excluding income earned thereon, which shall be distributed pursuant to the next ensuing sentence) to Seller. Notwithstanding anything herein, upon disbursement of the Actual NEPOOL Proration Amount as described herein, one-half of all income earned on the amount in the escrow account shall be distributed to Seller and one-half of all income earned on the amount in the escrow account shall be distributed to Buyer.

(d) Seller and Buyer shall furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustments and proration calculations made pursuant to this Section 4.4.

4.5 Transfer Taxes and Permits. Buyer shall file (with reasonable cooperation from Seller where necessary) all necessary documentation with respect to, and make all payments of, Transfer Taxes on a timely basis, whether or not Seller would otherwise be required to make such payments under Applicable Law. Seller shall have no responsibility for, or any obligation to reimburse Buyer with respect to, any such Transfer Taxes. Notwithstanding the foregoing, the Parties shall use Commercially Reasonable Efforts to obtain an exemption under Section 1146(c) of the Bankruptcy Code from all Transfer Taxes that may be imposed by reason of the transactions contemplated by this Agreement. To the extent that such exemption is not available, the Parties shall cooperate in the preparation and timely delivery of any resale exemption or similar certificate or instrument that would entitle a Party to claim an exemption from a Transfer Tax. Without limiting the generality of the foregoing, Buyer hereby unconditionally and irrevocably waives any requirement that Seller comply with any bulk sales laws. Buyer shall be responsible for and shall pay the filing fees related to applying for new Permits and Environmental Permits and obtaining the transfer of existing Permits and Environmental Permits, including the FERC License Transfer, which may be lawfully transferred, and Seller shall use Commercially Reasonable Efforts as reasonably requested by Buyer in connection therewith. Buyer shall promptly, upon Seller's request, reimburse Seller and Employer for (i) any filing fees incurred by Seller or Employer in connection with transferring any Permit or Environmental Permit to Buyer and (ii) any reasonable out-of-pocket expenses (including reasonable fees of counsel) incurred by Seller in connection with assisting Buyer in its efforts to obtain any Permit or Environmental Permit that is not currently held (or required to be held) by Seller in connection with Seller's operation of the Transferred Assets but that is necessary for Buyer to operate the Transferred Assets subsequent to the Closing.

ARTICLE V.

CLOSING

5.1 Closing. Subject to the satisfaction or waiver of the conditions set forth in this Agreement, the consummation of the transactions contemplated hereby (the "Closing") shall take place at the offices of Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174, at 10:00 a.m., New York City time, on the fifth (5^{th}) Business Day following the satisfaction or waiver of all conditions precedent to the Closing or at such other time or date as the Parties may mutually agree in writing (the "Closing Date"). Notwithstanding anything contained herein to the contrary, the Closing shall be effective for all purposes as of 12:01 a.m., New York City time, on the Closing Date.

5.2 Deliveries at Closing.

(a) Deliveries by Seller. At the Closing, Seller and Employer shall deliver to Buyer the following:

(i) a bill of sale, in substantially the form of Exhibit 5.2(a)(i) (the "Bill of Sale"), with respect to the Transferred Assets (other than the Assigned Contracts and Leases), duly executed by Seller;

(ii) an assignment and assumption agreement, in substantially the form of Exhibit 5.2(a)(ii) (the "Assignment and Assumption Agreement"), with respect to the Assigned Contracts and Leases, duly executed by Seller;

(iii) the information and documents comprising the Transferred Assets set forth in Section 2.1(d), it being understood that such information and documents shall be deemed delivered if located at the Plants;

(iv) deeds with respect to the Owned Real Estate in substantially the form attached hereto as Exhibit 5.2(a)(iv) (as modified as necessary to reflect any changes required in connection with the filing of the deeds in the applicable jurisdictions) (the "Deeds"), and assignments of leases with respect to the Leased Real Estate, each in form and substance reasonably satisfactory to Buyer together with, with respect to the Owned Real Estate, such other certificates, affidavits, statements and other documents as are customarily required by Buyer's title insurance company, other than any survey, abstract, title opinion or title insurance policy with respect to the Real Estate Assets;

(v) the officer's certificates referenced in Section 5.4(c);

(vi) a certificate duly executed on behalf of each of Seller and Employer by the secretary or assistant secretary of Seller or Employer, as applicable, dated the Closing Date, certifying and attaching (A) a good standing certificate for Seller or Employer, as applicable, issued by the Secretary of State for the State of Delaware dated within three (3) Business Days of the Closing, (B) a certified copy of authorizing resolutions of Seller's or Employer's, as applicable, board of directors or board of control, as applicable, associated with the approval of the transactions contemplated hereby and (C) specimen signatures of the officers of Seller or Employer, as applicable, authorized to execute the agreements and documents contemplated hereby, on behalf of Seller or Employer, as applicable;

(vii) an affidavit of non-foreign status that complies with Section 1445 of the Code;

(viii) a transition services agreement, in substantially the form of Exhibit 5.2(a)(viii) (the "TSA"), duly executed by Seller;

(ix) the NEPOOL Escrow Agreement duly executed on behalf of Seller if the Closing Date does not occur on the first day of any month;

(x) if payable by Seller pursuant to Section 4.4, cash in an amount equal to the Closing Proration Amount in accordance with Section 4.4;

(xi) cash in the amount of the Estimated NEPOOL Proration Amount to the Escrow Agent in accordance with Section 4.4(c); and

(xii) such other documents and deliveries customarily delivered upon consummation of transactions contemplated by this Agreement as may be reasonably requested by Buyer.

(b) Deliveries by Buyer. At the Closing, Buyer shall deliver the following:

(i) cash in an amount equal to the Purchase Price less the Deposit Amount in accordance with Section 4.1;

(ii) if payable by Buyer pursuant to Section 4.4, cash in an amount equal to the Closing Proration Amount in accordance with Section 4.4;

(iii) the officer's certificate referenced in Section 5.5(c);

(iv) a certificate duly executed on behalf of Buyer by the secretary or assistant secretary of Buyer, dated the Closing Date, certifying and attaching (A) a good standing certificate for Buyer issued by the Secretary of State for the State of Delaware dated within three (3) Business Days of the Closing, (B) a certified copy of all authorizing resolutions of the Buyer's board of directors associated with the approval of the transactions contemplated hereby, and (C) specimen signatures of the officers of Buyer authorized to execute the agreements and documents contemplated hereby, on behalf of Buyer;

(v) the Assignment and Assumption Agreement, duly executed by Buyer;

(vi) the TSA, duly executed by Buyer;

(vii) the NEPOOL Escrow Agreement duly executed on behalf of Buyer if the Closing Date does not occur on the first day any month; and

(viii) such other documents and deliveries customarily delivered upon consummation of transactions contemplated in this Agreement as may be reasonably requested by Seller or Employer.

5.3 Delivery of Transferred Assets. At the Closing, Seller shall take such action as may be reasonably requested by Buyer to place Buyer in possession and ownership of the Transferred Assets.

5.4 Conditions Precedent to Obligations of Buyer. The obligations of Buyer under this Agreement to consummate the transactions contemplated hereby to be consummated at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing at the option of Buyer:

(a) All the representations and warranties of Seller and Employer contained in this Agreement, any Ancillary Agreement, or the agreements, instruments or documents delivered pursuant to Section 5.2(a) (other than clause (xii) thereof), shall be true and correct in all material respects on and as of the date of this Agreement and on and as of the Closing Date as if made again on and as of such date; provided, however, that (i) any such representation or

warranty qualified by a reference to materiality, a Material Adverse Effect or other similar qualifier shall be true and correct in all respects and (ii) any such representation or warranty that is made as of a specific date need only be true and correct or true and correct in all material respects, as the case may be, as of such specified date.

(b) All of the terms, covenants and conditions to be complied with and performed by Seller and Employer on or prior to the Closing Date (other than those set forth in Section 9.3(b)) shall have been complied with or performed in all material respects by Seller or Employer, as applicable.

(c) Buyer shall have received a certificate or certificates, dated as of the Closing Date, executed on behalf of Seller and Employer, each by an authorized officer thereof, certifying that the conditions specified in Sections 5.4(a) and (b) hereof have been fulfilled.

(d) Buyer shall have received each of the certificates, agreements, instruments and other deliveries set forth in Section 5.2(a) hereof.

(e) The Sale Order shall not have been reversed, stayed, modified, or amended in a manner adverse in any material respect to Buyer, or if Buyer is found to be a good faith buyer pursuant to Section 363(m), the Sale Order shall not have been stayed.

(f) All Liens on the Transferred Assets, other than Permitted Liens, shall have been terminated and released as of the Closing, at no expense to Buyer.

(g) There shall have been obtained the (i) Consents listed on Schedule 5.4(g)(i) and (ii) Consents to transfer the material Environmental Permits listed on Schedule 5.4(g)(ii), each of which shall be in full force and effect as of the completion of the Closing.

(h) Fidelity National Title Insurance Company (or its successor or other title insurance company reasonably acceptable to Buyer) shall be willing to issue 1992 ALTA Owner's Title Insurance Policies dated the Closing Date insuring Buyer as owner of the Owned Real Estate in the same form as described in the Title Commitments, subject only to (i) the Permitted Liens and (ii) paragraphs 2 and 3 of Schedule BII of the Title Commitments (with respect to matters concerning paragraph 3 of such Schedule BII, only with respect to any matters which would be disclosed by an accurate survey and inspection of the Owned Real Estate).

(i) No fact, event, change, development, circumstance or effect shall have occurred that constitutes, or that would reasonably be expected to constitute, a Material Adverse Effect.

(j) Either (i) Seller shall have entered into the New Bear Swamp Agreements in accordance with Section 9.9(a) and such New Bear Swamp Agreements shall be assignable to Buyer at the Closing without any further action of any Third Party or (ii) Buyer shall have entered into the New Bear Swamp Agreements, effective as of the Closing Date.

(k) The NEPOOL Approval shall have been received.

(l) Buyer shall have interconnection service in accordance with the terms and conditions of the applicable open access transmission tariff(s) relating to such service as approved by FERC. For the avoidance of doubt, interconnection service under an unexecuted interconnection agreement filed with FERC shall be deemed to have satisfied this condition precedent.

5.5 Conditions Precedent to Obligations of Seller and Employer. The obligations of Seller and Employer under this Agreement to consummate the transactions contemplated hereby to be consummated at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, any one or more of which may be waived in writing at the option of Seller:

(a) All the representations and warranties of Buyer contained in this Agreement, any Ancillary Agreement, or the agreements, instruments or documents delivered pursuant to Section 5.2(b) (other than clause (viii) thereof), shall be true and correct in all material respects on and as of the date of this Agreement and on and as of the Closing Date as if made again on and as of such date; provided, however, that (i) any such representation or warranty qualified by a reference to materiality or other similar qualifier shall be true and correct in all respects and (ii) any such representation or warranty that is made as of a specific date need only be true and correct or true and correct in all material respects, as the case may be, as of such specified date.

(b) All of the terms, covenants and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects by Buyer.

(c) Seller shall have received a certificate, dated as of the Closing Date, executed on behalf of Buyer by an authorized officer thereof, certifying that the conditions specified in Section 5.5(a) and Section 5.5(b) have been fulfilled.

(d) Seller shall have received each of the certificates, agreements, instruments and other deliveries set forth in Section 5.2(b) hereof.

5.6 Conditions Precedent to Obligations of each of Buyer, Seller and Employer. The obligations of each of Buyer, Seller and Employer under this Agreement to consummate the transactions contemplated hereby to be consummated at the Closing shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing, to the extent permitted by Applicable Law, with respect to a particular Party at the option of such Party (with such waiver only waiving the condition as it relates to such Party):

(a) The Bankruptcy Court shall have entered the Sale Order.

(b) No Order issued by any court of competent jurisdiction preventing the consummation of the transactions contemplated hereby shall be in effect, nor shall any Proceeding by any Governmental Authority of competent jurisdiction having valid enforcement authority seeking such an Order be pending, nor shall there be any action taken, or any

Applicable Law or Order enacted, entered or enforced that has not been subsequently overturned or otherwise made inapplicable to this Agreement, that makes the consummation of the transactions contemplated hereby illegal.

(c) Any waiting periods (and any extensions thereof) applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall have expired or been terminated.

(d) Each of the Governmental Approvals listed on Schedule 5.6(d) shall have been obtained.

ARTICLE VI.

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

6.1 Organization and Good Standing. Seller is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware and, subject to the limitations imposed on Seller as a result of having filed a petition for relief under the Bankruptcy Code, has the requisite corporate power and authority to own, lease or otherwise hold its properties and assets and carry on the Business as and where it is presently conducted. Seller is qualified to do business as a foreign corporation and is in good standing in every jurisdiction where the nature of the Business conducted by it or the properties owned or leased by it requires such qualification, except where the failure thereof individually or in the aggregate, would not have a Material Adverse Effect.

6.2 Authorization and Effect of the Agreement. Subject to the entry of the Bidding Procedures Order and the Sale Order, Seller has the requisite power and authority as a corporation to enter into this Agreement and the Ancillary Agreements to which it is a Party, and to perform its obligations hereunder and thereunder, and the execution and delivery of this Agreement and the Ancillary Agreements to which it is a Party, and the consummation of the transactions contemplated hereby and thereby, and the performance of Seller's obligations hereunder and thereunder, have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been, and each of the Ancillary Agreements to which it is a Party will be at or prior to the Closing, duly and validly executed and delivered by Seller and, subject to the entry of the Bidding Procedures Order and the Sale Order, this Agreement constitutes, and each of the Ancillary Agreements to which it is a Party when so executed and delivered will constitute, a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms except that such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally, and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

6.3 No Conflicts. Except as set forth in Schedule 6.3 and except as may result from any facts or circumstances relating solely to Buyer or its Affiliates, (i) the execution, delivery and performance of, including compliance by Seller with its obligations under, this

Agreement and the Ancillary Agreements to which Seller is a Party, (ii) the taking of any action or the filing of any instrument or document as contemplated hereunder or thereunder by Seller, and (iii) the consummation by Seller of the transactions contemplated hereby and thereby do not and will not (a) conflict with, violate or breach the certificate of incorporation or by-laws of Seller, (b) violate or breach any Applicable Laws binding upon Seller, except as would not have, individually or in the aggregate, a Material Adverse Effect, or (c) subject to the provisions of Section 365 of the Bankruptcy Code, violate or result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the assets or properties of Seller pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which Seller is a Party or by which it or any of its assets or properties is bound or affected, except in each case as would not have, individually or in the aggregate, a Material Adverse Effect.

6.4 No Third Party Options. Except as set forth on Schedule 6.4, there are no existing agreements, options, commitments or other oral or written arrangements granting to any Person the right to acquire Seller's right, title or interest in or to any of the Transferred Assets or any interest therein.

6.5 Consents and Approvals; Permits and Licenses.

(a) Consents and Approvals. Other than with respect to Environmental Permits, as to which Seller's sole representations and warranties are set forth in Section 6.10, no Consent, waiver, license, Order or Permit of, or declaration, filing or registration with, any Governmental Authority or any other Person is required to be made or obtained by Seller for the execution, delivery or performance of this Agreement or the Ancillary Agreements to which it is a Party and the consummation of the transactions on the part of Seller contemplated hereby or thereby, except: (i)(A) as set forth on Schedule 6.5(a) (but solely to the extent such Consent, if any, is necessary pursuant to Section 365 of the Bankruptcy Code) or Schedule 6.5(b) or (B) for any Consents required pursuant to Assigned Contracts that are not Material Assigned Contracts which, if not obtained, would not materially impair the value to Buyer of the Transferred Assets and the Business; (ii) applicable requirements under the HSR Act; (iii) the FERC Approvals and the FERC License Transfer; (iv) the FCC License Approval; (v) the entry of the Sale Order and the Bidding Procedures Order; (vi) where the failure to make or obtain such Consents, waivers, licenses, orders or permits would not have, individually or in the aggregate, a Material Adverse Effect; or (vii) as may be necessary as a result of any facts or circumstances relating solely to Buyer.

(b) Permits and Licenses. Other than with respect to Environmental Permits, as to which Seller's sole representations and warranties are set forth in Section 6.10 and with respect to all Permits issued by FERC, as to which Seller's sole representations and warranties are set forth in Section 6.5(c) and Section 6.13: (i) Schedule 6.5(b) contains a true and correct list of all Permits that are material, individually or in the aggregate, to the operation and ownership of the Business and the Transferred Assets as presently conducted (the "Material Permits") (and all pending applications for any such Material Permits); and (ii) prior to the execution of this Agreement, Seller has made available to Buyer true and correct copies of all

such Material Permits and all pending applications for any Material Permits. Except as set forth on Schedule 6.5(b), as of the date of this Agreement, all of such Material Permits are in full force and effect and Seller is in compliance in all material respects with each such Material Permit. Except as set forth on Schedule 6.5(b), no written notice has been received by Seller since September 1, 1998 which currently remains uncured and no Proceeding is pending or, to Seller's knowledge, threatened with respect to any alleged failure by Seller to have any such Material Permit or not to be in material compliance therewith.

(c) Schedule 6.5(c) contains a list of all Permits issued by FERC to Seller used in the business or operations of the Transferred Assets (and all pending applications by Seller for any such Permits), all of which Permits Seller has made available to Buyer prior to the date of execution of this Agreement. The FERC Licenses are in full force and effect. Except as set forth on Schedule 6.5(c), no written notice has been received by Seller since September 1, 1998 which remains uncured and no Proceeding is pending or to the knowledge of Seller, threatened with respect to any alleged failure or violation by Seller with respect to the FERC Licenses.

(d) Seller is not a "registered holding company" or a "subsidiary company" or an "affiliate" of a "registered holding company" as such terms are defined under PUHCA.

6.6 Absence of Material Changes. Except as set forth on Schedule 6.6, since December 31, 2003 until the date hereof: there has not been any Material Adverse Effect and Seller has (i) not mortgaged, pledged or subjected to any Liens any of the Transferred Assets (except for Identified Liens), (ii) not made any material changes in the manner in which Plant or Non-Plant Employees are compensated or the amount of such compensation, materially increased (or provided additional or supplemental) benefits for Plant or Non-Plant Employees or entered into any employment agreement with any Plant or Non-Plant Employee or agreed to any of the foregoing, except normal periodic increases or promotions effected in the ordinary course of business and consistent with past practice or as otherwise required under the terms of the Collective Bargaining Agreement or pursuant to retention programs whereby all payments to the Plant Employees under such programs will be made by Seller and/or Employer on or prior to the Closing Date, (iii) conducted the Business in the ordinary course of business consistent with past practices, (iv) not suffered any damage, destruction or loss in excess of $3,000,000 to any of the Transferred Assets whether or not covered by insurance, (v) made any material changes in the accounting systems, policies, principles or practices related to the Business, (vi) waived, released or cancelled any material claims against Third Parties or debts owing to it, in each case related to the Business, or (vii) made any material Tax election or settled or compromised any federal, state, provincial, local or foreign Tax material liability, or waived or extended the statute of limitations in respect of any such Taxes, in each case with respect to clauses (i) through (vii) above, relating to the Transferred Assets or the Business.

6.7 Litigation. Other than Proceedings pending before the Bankruptcy Court and except as set forth on Schedule 6.7, there are no Proceedings pending or, to Seller's knowledge, threatened which question the validity of this Agreement or any action taken or to be taken by Seller in connection with this Agreement. Other than Proceedings pending before the Bankruptcy Court and except as set forth on Schedule 6.7, there are no Proceedings relating to the ownership or use of the Transferred Assets or conduct of the Business or otherwise affecting

the Transferred Assets pending, or, to Seller's knowledge, threatened against Seller that, if adversely determined against Seller, would materially impair or materially delay the ability of Seller or Employer to perform its obligations under this Agreement or under any Ancillary Agreement or materially impair the value to Buyer of the Transferred Assets and the Business. Except as set forth on Schedule 6.7, there are no Orders of any Governmental Authority binding on Seller or, to Seller's knowledge, on any other Person that relate to the Transferred Assets or otherwise affect the Transferred Assets which has had, individually or in the aggregate, a Material Adverse Effect. Seller is not in violation in any material respect of the terms of any Order entered by any Governmental Authority and outstanding against it relating to or with respect to any of the Transferred Assets. Except as set forth on Schedule 6.7, since January 1, 2003, Seller has not entered into any material agreement to settle or compromise any Proceeding pending or threatened against it with respect to the Business or any of the Transferred Assets. Notwithstanding anything in this Agreement to the contrary, this Section 6.7 shall not apply to: (i) Proceedings under applicable Environmental Laws, or otherwise relating to Environmental Claims, Environmental Permits, or Environmental Costs and Liabilities, as to which Seller's sole representations and warranties are set forth in Section 6.10 and (ii) Taxes as to which Seller's sole representations and warranties are set forth in Section 6.11.

6.8 Title to Assets; Sufficiency of Assets. Other than with regard to Owned Real Property and except for Identified Liens, Seller has good, valid and marketable title to the Transferred Assets which it owns and a valid leasehold or license interest in or to the Transferred Assets which it leases or licenses which are reflected in the December 31, 2003 audited financial statements (except for assets and properties sold, consumed or otherwise disposed of in the ordinary course of business consistent with past practice since December 31, 2003 and not in violation of this Agreement). Seller has not received any written notice alleging that any Third Party has any right, title or ownership interest in or to the Transferred Assets, except Identified Liens. Except for the Excluded Assets or as set forth on Schedule 6.8, the Transferred Assets (whether real, personal, tangible or intangible and whether owned, leased or licensed), constitute all of the assets required for or used in the operation of the Plants as presently operated by Seller.

6.9 Material Assigned Contracts.

(a) Schedule 6.9 sets forth a true and correct list, as of the date hereof, of:

(i) any Assigned Contract which requires a payment by any party in excess of, or a series of payments that in the aggregate exceed, $500,000 or provides for the delivery of goods or performance of services, or any combination thereof, having a value in excess of $500,000;

(ii) any Assigned Contract that expires one (1) year or more after the date hereof (including any renewal term exercisable by a party other than any Seller) and that cannot be cancelled by Seller without material cost (other than attorneys' fees and expenses of other professional advisors) to Seller prior to one (1) year following the date hereof;

(iii) any collective bargaining agreement that is an Assigned Contract;

(iv) any Assigned Contract containing covenants limiting the freedom of Seller to engage in any line of business or compete with any Person;

(v) any Assigned Contract with an Affiliate;

(vi) any Assigned Contract which forms a joint venture, strategic alliance, partnership or similar business relationship; and

(vii) any amendment, modification, extension or renewal of any of the above.

(b) Seller has made available to Buyer true and correct copies of each Material Assigned Contract. Subject to provisions of the Bankruptcy Code and the proceedings before the Bankruptcy Court, each Material Assigned Contract is in full force and effect and is a legal, valid and binding agreement, arrangement or commitment of Seller, enforceable against Seller in accordance with its terms and, to Seller's knowledge, is a valid agreement, arrangement or commitment of each other Party thereto, enforceable against such Party in accordance with its terms, except in each case where enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and except where enforceability is subject to the application of equitable principles or remedies or as would not have, individually or in the aggregate, a Material Adverse Effect. Neither Seller nor, to Seller's knowledge, any other Party to any of the Material Assigned Contracts is (with or without notice or lapse of time, or both) in breach or default in any material respect under any Material Assigned Contract and except where such breaches or defaults are capable of cure in accordance with the provisions of Section 365 of the Bankruptcy Code. Other than (i) the Assigned Contracts and the Leases and (ii) any contracts, agreements, purchase commitments for materials and other services and personal property leases entered into by Seller relating principally to the Transferred Assets after the date hereof and to the extent not prohibited by Section 9.3 hereof, there are no additional contracts, personal property leases, agreements, arrangements or commitments included as part of the Transferred Assets being conveyed to Buyer hereunder.

6.10 Environmental Matters. Schedule 6.10(a) contains a list of all material Environmental Permits used in the Business or operations of the Transferred Assets (and all pending applications for any such Environmental Permits). Schedule 6.10(a) also identifies which of those Environmental Permits requires Consent, waiver, license, order or permit of any Governmental Authority or any other Person, in connection with the execution, delivery and performance by Seller of this Agreement or the Ancillary Agreements and the consummation by Seller of the transactions contemplated hereby or thereby. Except as disclosed on Schedule 6.10(b), regarding the Business and the Transferred Assets (i) Seller is in compliance with all Environmental Laws, which compliance includes the obtaining, maintaining and complying with any and all Permits required by Environmental Laws for the conduct, ownership and operations of the Business by Seller ("Environmental Permits"), except for noncompliance that would not reasonably be expected to result in Seller incurring Environmental Costs and Liabilities in excess of $1,000,000 individually or $3,000,000 in the aggregate; (ii) such Environmental Permits are valid, in good standing, and in full force and effect; (iii) since September 1, 1998 neither Seller nor any Seller Subsidiary has received any notices or demands, requests for information, Orders, penalties, or Proceedings alleging the violation of,

noncompliance with or liability under any Environmental Law or Environmental Permit which, if adversely determined, would result in Seller incurring Environmental Costs and Liabilities in excess of $1,000,000 individually or $3,000,000 in the aggregate which remain uncured (collectively, "Environmental Notices"); (iv) Seller has made available to Buyer all environmental investigations, studies, audits, tests, material reviews or other material analyses conducted by Seller or on behalf of in relation to the Transferred Assets; and (v) other than such Liens as set forth in the Title Commitments or other Identified Liens, no Lien in favor of any Person imposed under Environmental Law relating to or in connection with any Environmental Claim has been filed or has been attached to any of the property or assets which are owned, leased or operated by Seller and which are part of the Transferred Assets. Notwithstanding anything in this Agreement to the contrary, the representations and warranties under this Section 6.10 are the sole and exclusive representations and warranties with respect to Environmental Laws, Environmental Claims, Environmental Permits, and Environmental Costs and Liabilities and Proceedings relating to Environmental Laws, Environmental Claims, Environmental Permits and Environmental Costs and Liabilities.

6.11 Taxes. Except as set forth on Schedule 6.11: (i) to Seller's knowledge, there are no Liens for Taxes upon any of the Transferred Assets other than for Taxes not yet due and payable; (ii) Seller is not a foreign person within the meaning of Section 1445 of the Code; (iii) to Seller's knowledge, all Tax Returns required to be filed with respect to the Transferred Assets have been timely filed with appropriate taxing authorization in all jurisdictions in which such Tax Returns are required to be filed; (iv) to Seller's knowledge, such Tax Returns were true and correct in all material respects at the time of filing; (v) to Seller's knowledge, Seller has not with respect to the Transferred Assets, extended or waived the application of a statue of limitations of any jurisdiction regulating the assessment or collection of any Tax; (vi) none of the Transferred Assets, directly or indirectly, secures any debt where interest on such debt is tax exempt under Section 103(a) of the Code; (vii) there are no Tax indemnity agreements, Tax allocation agreements or Tax sharing agreements with respect to the Transferred Assets; (viii) none of the Transferred Assets is subject to a lease, safe harbor lease or other arrangement as a result of which Seller is not treated as the owner for Federal income tax purposes; and (ix) all Taxes which Seller or Employer is required by law to withhold or collect, including sales and use taxes, and amounts required to be withheld for Taxes of employees, have been duly withheld or collected and, to the extent required, have been paid over to the proper governmental authorities or are held in separate bank accounts for such purpose.

6.12 Real Property.

(a) Schedule 6.12(a) sets forth (i) each Lease under which Seller is the lessor of real property and (ii) each Lease under which Seller is the lessee of real property and which, in the case of clauses (i) and (ii), requires, in accordance with its terms, an annual base rental in excess of $75,000 (each of the leases set forth in (i) and (ii) above, a "Material Lease"). Seller has heretofore made available to Buyer true and correct copies of each Material Lease. Subject to provisions of the Bankruptcy Code and the proceedings before the Bankruptcy Court, each Material Lease is in full force and effect and is a legal, valid and binding agreement, arrangement or commitment of Seller, enforceable against Seller in accordance with its terms and, to Seller's knowledge, is a valid agreement, arrangement or commitment of each other Party thereto,

enforceable against such Party in accordance with its terms, except in each case where enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and except where enforceability is subject to the application of equitable principles or remedies. Seller has performed all material obligations required to be performed by it under the relevant Material Lease and is not (solely with or without notice or lapse of time, or both) in breach or default in any material respect thereunder; and, to Seller's knowledge, no other Party to any of the Material Leases is (solely with or without notice or lapse of time, or both) in breach or default in any material respect thereunder except where such breaches or defaults are capable of cure in accordance with the provisions of Section 365 of the Bankruptcy Code.

(b) Except as set forth on Schedule 6.12(b), there is no pending or, to Seller's knowledge, threatened condemnation or other similar Proceeding of any part of the Real Estate Assets.

6.13 Certain Regulatory Matters. Seller is in compliance in all material respects with each FERC License.

6.14 Financial Statements. Attached hereto as Schedule 6.14 are the unaudited consolidated balance sheet and income statement of Seller for the three months ended June 30, 2004 and as at June 30, 2004 (collectively, the "Financial Statements"). The Financial Statements present fairly in all material respects, on a pro forma basis, the financial position of Seller as of the dates indicated, and the results of operations for the periods therein specified.

6.15 Employee-Related Liabilities.

(a) Except as set forth on Schedule 6.15, Seller has no material obligation or liability (contingent or otherwise) with respect to (i) any current or former employee, consultant or independent contractor; (ii) (A) any "employee benefit plan" within the meaning of Section 3(3) of ERISA; (B) any stock or other equity-related award, restricted stock, stock ownership, stock purchase, stock option, stock appreciation right, phantom stock, retirement, pension, profit sharing, bonus, deferred compensation, incentive compensation, change in control, severance or termination pay, retention, salary continuation, hospitalization, medical, dental, life or other insurance, death benefit, disability, accident, vacation, sick leave, leave of absence, layoff, supplemental unemployment benefits, employee loan, educational assistance, dependent care assistance, legal assistance, cafeteria, club membership, employee discount or fringe benefit plan, program, practice, policy or arrangement; or (C) any agreement, policy or other arrangement providing employment-related compensation or benefits; in each case, relating to any current or former employee; or (iii) any labor or collective bargaining agreement. Buyer shall not have any responsibility or liability with respect to any obligation set forth on Schedule 6.15.

(b) With respect to any plan, program, policy, arrangement or agreement set forth on Schedule 6.15 (collectively, the "Seller Benefit Arrangements"): (i) each such Seller Benefit Arrangement complies and has been administered in all material respects in accordance with its terms and Applicable Laws; (ii) to Seller's knowledge each such Seller Benefit Arrangement which is intended to be qualified under Section 401(a) is so qualified and either (A)

is the subject of a favorable determination letter issued by the Internal Revenue Service or (B) is the subject of an opinion from counsel as to the Seller Benefit Arrangement's qualified status, and the trusts maintained pursuant thereto are exempt from federal taxation under Section 501 of the Code and (iii) except as set forth in Schedule 6.15, no Seller Benefit Arrangement is a Title IV Plan.

(c) None of the payments contemplated by the Seller Benefit Arrangements would, in the aggregate, constitute excess parachute payments (as defined in Section 280G of the Code (without regard to subsection (b)(4) thereof)).

(d) With respect to any Seller Benefit Arrangement that is a Title IV Plan, (i) no such Seller Benefit Arrangement is a Multiemployer Plan, (ii) there has been no reportable event (as described in section 4043 of ERISA); (iii) no steps have been taken to terminate any such plan; (iv) there has been no withdrawal (within the meaning of section 4063 of ERISA) of a "substantial employer" (as defined in section 4001(a)(2) of ERISA); and (v) no event or condition has occurred which might constitute grounds under section 4042 of ERISA for the termination of or the appointment of a trustee to administer any such plan.

6.16 Brokers; Finders. Except as set forth on Schedule 6.16, Seller has not, and none of Seller's Affiliates have, retained any financial advisor, broker, agent, or finder or paid or agreed to pay any financial advisor, broker, agent, or finder on account of this Agreement or the transactions contemplated hereby. Buyer shall not have any responsibility or liability with respect to any Person set forth on Schedule 6.16.

6.17 Tangible Assets. Schedule 6.17 sets forth (a) a list of significant assets included in the Transferred Assets; and (b) a true and correct list of leases of personal property included in the Transferred Assets having aggregate minimum annual lease payments in excess of $75,000 (with true and complete copies of such personal property leases having been made available to Buyer). Except as set forth on Schedule 6.17, such of the Transferred Assets as are comprised of tangible personal property are in good operating condition taking into account their use and age, subject to normal wear and tear, and subject to continued maintenance, repair and replacement in the ordinary course of business consistent with past practice.

6.18 Compliance with Laws. Seller (in relation to its conduct of the Business) is in compliance in all material respects with all Applicable Laws (other than (i) applicable Environmental Laws, as to which Seller's sole representations and warranties regarding compliance are set forth in Section 6.10, (ii) Applicable Laws pertaining to Taxes, as to which Seller's sole representations and warranties regarding compliance are set forth in Section 6.11, (iii) Applicable Laws pertaining to the FERC Licenses, as to which Seller's sole representations and warranties regarding compliance are set forth in Section 6.13 and (iv) Applicable Laws pertaining to Seller Benefit Arrangements, as to which Seller's sole representations and warranties are set forth in Section 6.15. Except as set forth on Schedule 6.5(b), Schedule 6.5(c), Schedule 6.10(b), Schedule 6.11 and Schedule 6.18 hereto, Seller (in relation to its conduct of the Business) has not, since January 1, 2002, received any written notice of any material violation of any Applicable Law.

6.19 Eligible Facility. The Transferred Assets comprise "eligible facilities", as the term "eligible facility" is defined in PUHCA § 32(a)(2).

6.20 Insurance.

(a) Schedule 6.20 contains a true and correct list of all policies of fire, liability, workers' compensation, title and other forms of insurance owned or held by Seller or its Affiliates with respect to the Business or the Transferred Assets. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing Date have been paid, and no notice of cancellation or termination has been received with respect to any such policy.

(b) Seller has made available to Buyer a true and correct list of all insurance claims that have been made by Seller since December 31, 2001 with respect to the Business under the insurance policies listed on Schedule 6.20 hereto.

ARTICLE VII.

REPRESENTATIONS AND WARRANTIES OF EMPLOYER

Employer hereby represents and warrants to Buyer as follows:

7.1 Organization and Good Standing. Employer is a limited liability company duly formed and validly existing under the laws of the State of Delaware and has the requisite organizational power and authority to own, lease or otherwise hold its properties and assets and carry on its business as and where it is presently conducted. Employer is qualified to do business and is in good standing in every jurisdiction where the nature of the business conducted by it or the properties owned or leased by it requires such qualification, except where the failure thereof, individually or in the aggregate, would not have a Material Adverse Effect.

7.2 Authorization and Effect of the Agreement. Employer has the requisite power and authority as a limited liability company to enter into this Agreement and the Ancillary Agreements to which it is a Party, and to perform its obligations hereunder and thereunder, and the execution and delivery of this Agreement and the Ancillary Agreements to which it is a Party, and the consummation of the transactions contemplated hereby and thereby, and the performance of Employer's obligations hereunder and thereunder, have been duly authorized by all necessary limited liability company action on the part of Employer. This Agreement has been, and each of the Ancillary Agreements to which it is a Party will be at or prior to the Closing, duly and validly executed and delivered by Employer and this Agreement constitutes, and each of the Ancillary Agreements to which it is a Party when so executed and delivered will constitute, a valid and legally binding obligation of Employer, enforceable against Employer in accordance with its terms, except that such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

7.3 No Conflicts. Except as set forth in Schedule 7.3 and except as may result from any facts or circumstances relating solely to Buyer or its Affiliates, (i) the execution, delivery and performance of, including compliance by Employer with its obligations under, this Agreement and the Ancillary Agreements to which Employer is a Party, (ii) the taking of any action or the filing of any instrument or document as contemplated hereunder or thereunder by Employer and (iii) the consummation by Employer of the transactions contemplated hereby and thereby do not and will not (a) conflict with, violate or breach the certificate of formation or limited liability company agreement of Employer, (b) violate or breach any Applicable Laws binding upon Employer, except as would not have, individually or in the aggregate, a Material Adverse Effect, or (c) violate or result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the assets or properties of Employer pursuant to any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which Employer is a Party or by which it or any if its assets or properties is bound or affected, except in each case as would not have, individually or in the aggregate, a Material Adverse Effect.

7.4 Consents and Approvals. No Consent, waiver, license, Order or Permit of any Governmental Authority or any other Person is required to be made or obtained by Employer in connection with the execution, delivery and performance of this Agreement or the Ancillary Agreements to which it is a Party and the consummation of the transactions contemplated hereby or thereby by Employer, except: (a) as set forth on Schedule 7.4; (b) where the failure to make or obtain such Consents, waivers, licenses, Orders or Permits would not have, individually or in the aggregate, a Material Adverse Effect; or (c) as may be necessary as a result of any facts or circumstances relating solely to Buyer.

7.5 Absence of Material Changes. Except as disclosed on Schedule 7.5 or pursuant to retention programs whereby all payments to Plant Employees under such program will be made by Seller and/or Employer on or prior to the Closing Date, since December 31, 2003, Employer has not made any material changes in the manner in which Plant or Non-Plant Employees are compensated or the amount of such compensation, materially increased (or provided additional or supplemental) benefits for Plant or Non-Plant Employees or entered into any employment agreement with any Plant or Non-Plant Employee or agreed to any of the foregoing, except normal periodic increases or promotions effected in the ordinary course of business and consistent with past practice or as otherwise required under the terms of the Collective Bargaining Agreement or pursuant to retention programs whereby all payments to the Plant Employees under such programs will be made by Seller and/or Employer on or prior to the Closing Date.

7.6 Benefit Plans and Labor Matters.

(a) Employees.

(i) Plant Employees. Schedule 7.6(a)(i) sets forth a complete and correct list, as of September 27, 2004 of the employees of Employer who work primarily at the Plants (the "Plant Employees") and, with respect to each such individual (as applicable) (A)

location; (B) job title; and (C) whether a Represented Employee or Non-Represented Employee. Except as set forth on Schedule 7.6(a)(i), neither Seller, Employer nor any of their respective Affiliates is a party to any employment or service agreements or arrangements with any of the Plant Employees.

(ii) Non-Plant Employees. Schedule 7.6(a)(ii) sets forth a list of employees of Employer who provide services primarily related to the Transferred Assets, but are not otherwise listed on Schedule 7.6(a)(i) as Plant Employees ("Non-Plant Employees").

(b) Benefit Plans. Schedule 7.6(b) sets forth an accurate and complete list of all Benefit Plans. With respect to each Benefit Plan, true and correct copies of the following documents (if applicable) have been made available to Buyer or its counsel: (i) the most recent plan document constituting the Benefit Plan and all amendments thereto and (ii) the most recent summary plan description. None of the Benefit Plans is a Title IV Plan.

(c) Compliance; Tax Qualification. Each of the Benefit Plans has been administered in form and operation in all material respects with its terms and all Applicable Laws. To Employer's knowledge, the Benefit Plans intended to qualify under Section 401 of the Code are so qualified and the trusts maintained pursuant thereto are exempt from federal income taxation under Section 501 of the Code and are either (A) the subject of a favorable determination letter issued by the Internal Revenue Service or (B) are subject of an opinion from counsel as to the Benefit Plan's qualified status. None of the payments contemplated by the Benefit Plans would, in the aggregate, constitute excess parachute payments (as defined in Section 280G of the Code (without regard to subsection (b)(4) thereof)). There are no actions, suits or claims (other than routine claims for benefits) pending or to Employer's knowledge, threatened involving any Benefit Plan or the assets thereof by any employee or beneficiary under any such Benefit Plan, or otherwise involving any such Benefit Plan (other than routine claims for benefits). There have been no "prohibited transactions" (as described in Section 406 of ERISA or Section 4975 of the Code) with respect to any Benefit Plan that would result in a material liability.

(d) Retiree Benefits. Except as set forth in Schedule 7.6(d), none of the Benefit Plans provide for post-employment life or health insurance, benefits or coverage for any participant or any beneficiary thereof, except as may be required under COBRA, and at the expense of the participant or beneficiary.

(e) Labor Matters.

(i) Except as set forth on Schedule 7.6(e)(i), Employer (with respect to the Transferred Assets) is not party to any collective bargaining agreement and there are no collective bargaining agreements that pertain to the Plant or the Non-Plant Employees. Employer has heretofore made available to Buyer true and correct copies of the labor or collective bargaining agreements listed on Schedule 7.6(e)(i), together with all amendments, modifications or supplements thereto as agreed upon by Employer and any authorized representative of any labor organization representing Plant or Non-Plant Employees.

(ii) Except as set forth on Schedule 7.6(e)(ii), no Plant or Non-Plant Employees are represented by any labor organization. Since January 1, 2004, no labor organization or group of Plant Employees has made a pending demand for recognition or certification and as of the date of this Agreement there are no representation proceedings presently pending before the National Labor Relations Board or threatened in writing to be filed. To the knowledge of Employer (with respect to the Transferred Assets), there are no pending organizing activities involving any labor organization or group of Plant or Non-Plant Employees.

(iii) As of the date of this Agreement, there are no strikes, work stoppages, slowdowns, lockouts or similar labor disputes pending. Except as set forth on Schedule 7.6(e)(iii) and as of the date of this Agreement there are no unfair labor practice charges, arbitrations, material grievances, unfair employment practice charges or complaints, or other claims or complaints against Employer (with respect to the Transferred Assets), pending or to Employer's knowledge, threatened in writing to be filed with any public or governmental authority, arbitral forum, or court based on, arising out of, in connection with or otherwise relating to the employment or termination of employment of any Plant or Non-Plant Employees.

(iv) Except as set forth on Schedule 7.6(e)(iv), the transactions contemplated by this Agreement will not result (either alone or in combination with any other event) in: (i) any payment of, or increase in, remuneration or benefit, to any individual, (ii) the acceleration of any payment or benefit to any individual or (iii) the vesting of any payment or benefit to any individual, in each case which would result in any obligation or liability with respect to the Business.

(v) Since January 1, 2002, Employer has not taken any action with respect to the Transferred Assets that could constitute a "mass layoff" or "plant closing" within the meaning of the Worker Adjustment and Retraining Notification Act or could otherwise trigger any notice requirement or Liability under any local or state plant closing notice law. Employer has complied and is in compliance in all material respects with all Laws relating to labor and employment practices, including all Laws relating to terms and conditions of employment, wages, hours, collective bargaining, workers' compensation, occupational safety and health, equal employment opportunity and immigration, and is not engaged in any unfair labor or unlawful employment practice.

ARTICLE VIII.

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller and Employer as follows:

8.1 Corporate Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the requisite corporate power and authority to own, lease or otherwise hold its properties and assets and to carry on its business as presently conducted. TCPL owns, directly or indirectly, one hundred percent (100%) of the equity of Buyer.

8.2 Authorization and Effect of the Agreement. Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it will be a Party and to perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements and the performance by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer and constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, reorganization, fraudulent conveyance, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity. Each of the Ancillary Agreements to which Buyer will be a Party, when executed and delivered by Buyer, will constitute a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except that such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally, and (ii) equitable principles which may limit the availability of certain equitable remedies (such as specific performance) in certain instances.

8.3 No Conflicts. Except as set forth on Schedule 8.3, and except as may result from any facts or circumstances relating solely to Seller, Employer or the Transferred Assets, the execution, delivery and performance of this Agreement by Buyer do not and will not (a) violate or breach any provision of the certificate of incorporation or bylaws of Buyer, (b) violate or breach any Applicable Laws binding upon Buyer, except as would not have, individually or in the aggregate, a material adverse effect on Buyer or (c) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the assets or properties of Buyer pursuant to, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which Buyer is a Party or by which it or any of its assets or properties is bound or affected, except in each case as would not have, individually or in the aggregate, a material adverse effect on Buyer.

8.4 Consents and Approvals. No Consent, license, Order, or Permit of any Governmental Authority, or any other Person, is required to be made or obtained by Buyer or any of its Affiliates in connection with the execution, delivery, and performance of this Agreement and the consummation of the transactions contemplated hereby by Buyer, except: (a) as set forth on Schedule 8.4; (b) where the failure to make or obtain such Consents, waivers, licenses, orders or permits would not, individually or in the aggregate, prevent or materially impair the ability of Buyer to perform its obligations under this Agreement; or (c) as may be necessary as a result of any facts or circumstances relating solely to Seller, Employer or the Transferred Assets.

8.5 Litigation. As of the date of this Agreement, there are no Proceedings pending or, to Buyer's knowledge, threatened that question the validity of this Agreement or any action taken or to be taken by Buyer or Buyer Parent in connection with this Agreement.

8.6 Financing. Buyer has, and at the Closing will have, sufficient unrestricted funds available to consummate the transactions contemplated by this Agreement. TCPL is, as of the date hereof, an Investment Grade Entity.

8.7 Brokers; Finders. Buyer has not, and none of Buyer's Affiliates have, retained any financial advisor, broker, agent, or finder or paid or agreed to pay any financial advisor, broker, agent, or finder on account of this Agreement or the transactions contemplated hereby.

ARTICLE IX.

PRE-CLOSING COVENANTS

9.1 Access. (a) Between the date hereof and the Closing, Seller and Employer (i) shall give Buyer and its Representatives reasonable access, during regular business hours and upon reasonable advance Notice, to such employees, Transferred Assets, Plants and other facilities, and such books and records, of the Business or relating to the Transferred Assets as are reasonably necessary to allow Buyer and its Representatives to make such inspections as they may reasonably require to verify the accuracy of any representation or warranty contained herein or as Buyer may reasonably require for the transition of the ownership of the Business and the Transferred Assets from Seller to Buyer, (ii) shall furnish Buyer and its Representatives such financial and operating data and other information with respect to the Business (including information relating to environmental matters), to the extent prepared by Seller or Employer in the ordinary course of business, as Buyer may from time to time reasonably request; provided, however, disclosure shall not be required of any information if Seller or Employer, as the case may be, reasonably believes such disclosure would jeopardize the attorney client privilege, and (iii) at Buyer's request, shall furnish Buyer and its Representatives with a list of service providers and employees of Seller and Employer that may be available to assist Buyer with transition services not otherwise provided to Buyer pursuant to the TSA. Seller and Employer shall have the right to have a Representative present at all times during any such inspections, interviews, and examinations. Buyer agrees that if Buyer or its Representatives receive, or if the information (whether in electronic mail format, on computer hard drives or otherwise) held by any of Seller, Employer, Buyer or its Affiliates as of the Closing includes, information that relates to the business operations or other strategic matters of Seller, Employer or any of their respective Affiliates, such information shall be deemed to be part of the Evaluation Materials, as such term is defined in the Confidentiality Agreement, and shall be subject to the terms and conditions set forth therein. Notwithstanding anything in this Agreement to the contrary, except for background environmental records reviews of any Governmental Authority, (i) prior to Closing, Buyer shall not investigate or inquire as to any matter relating to the Business or the Transferred Assets with any Governmental Authority (other than to the extent required to obtain or make any Governmental Approvals) having jurisdiction over any aspect of the Business or the Transferred Assets, unless and until the written consent of Seller (not to be unreasonably withheld or delayed) to the making of such investigation or inquiry has been received by Buyer and after consultation with Seller as to the scope and manner of the investigation or inquiry, and (ii) Buyer's right of examination and access pending the Closing with respect to environmental matters relating to the Transferred Assets shall be limited to an examination of existing records and interviews with personnel as authorized in writing by Seller, and in no event shall include

physical testing of or collection of samples from the Real Property or the Transferred Assets or contacting staff or officials of any Governmental Authority or any Third Party.

(b) In the interest of facilitating an orderly transition of the Business and in furtherance of Buyer's rights under this Section, Seller shall permit up to two (2) individuals designated by Buyer to conduct the transition efforts and to be present at each of the Plants after completion of the Auction and selection of Buyer as the Winning Bidder. Seller shall provide Buyer, at no cost to Buyer, interim furnished office space, utilities and HVAC at each Plant reasonably necessary to allow Buyer and its Representatives to conduct transition efforts through the date of Closing; provided that Buyer shall be responsible for all other costs relating thereto, including telecommunications expenses, the cost of workers' compensation and employer's liability coverage, which shall be maintained by Buyer for such individuals.

9.2 Conduct and Preservation of the Transferred Assets. Except as provided in this Agreement (including Section 9.3), and unless otherwise consented to by Buyer, which consent shall not be unreasonably delayed or withheld, during the period from the date hereof to the Closing, each of Seller and Employer shall cause the Business to be conducted in the ordinary course of business consistent with its practice since the Petition Date and shall (i) preserve the present business operations, organization and goodwill of the Business (but Seller shall not be required to make any payments or enter into or amend any contractual agreements, arrangements, or understandings to satisfy the foregoing obligation unless such payment or other action is required by or consistent with past practice since the Petition Date); (ii) preserve, maintain, and protect the assets, rights, and properties of the Business; (iii) comply in all material respects with all post-petition contractual and other obligations applicable to the operation of the Business; (iv) comply in all material respects with Applicable Laws, including Environmental Laws, Environmental Permits, the FERC Licenses and Material Permits insofar as they relate to the Transferred Assets; (v) preserve the Transferred Assets' qualification as "eligible facilities," as the term "eligible facility" is defined in PUHCA § 32(a)(2); and (vi) not knowingly take any action with respect to the Transferred Assets that would prevent Buyer from qualifying as an EWG.

9.3 Restrictions on Certain Actions of Seller and Employer.

(a) Without limiting the generality of Section 9.2, and except as set forth on Schedule 9.3, or as otherwise provided in this Agreement, prior to the Closing, Seller and Employer shall not with regard to the Transferred Assets, without the prior written consent of Buyer, which consent shall not be unreasonably delayed or withheld:

(i) except (x) as required pursuant to Section 9.3(b) or (y) as necessary, in Seller's reasonable judgment, for the protection of life or safety of Persons or the prevention or mitigation of physical damage to the Transferred Assets if, under the circumstances, in the good faith estimation of Seller, there is insufficient time to obtain the approval of Buyer required hereunder to such action and any delay would materially increase the risk to life or safety or of damage to Transferred Assets (it being understood that if Seller takes an action pursuant to this clause (y) Seller shall notify Buyer of such action contemporaneously therewith or as soon as reasonably practicable thereafter), acquire, sell, lease, transfer, or otherwise dispose of, directly or indirectly, any assets relating to or forming part of the Business

(A) with an aggregate value greater than $1,000,000 or (B) outside the ordinary course of business;

(ii) acquire for the Business (by merger, consolidation, or acquisition of stock or assets or otherwise) any corporation, partnership, or other business organization or division thereof;

(iii) (A) amend, modify, or change in any material respect any Assigned Contract or Lease, including the Collective Bargaining Agreement; provided that, notwithstanding any provision hereof to the contrary, Employer may enter into any successor Collective Bargaining Agreement that contains changes (1) in economic terms, including wages and benefit plans, that are in value consistent with the trend for economic increases in past agreements covering the Represented Employees, or (2) in non-economic terms that are not materially different from those existing in the current Collective Bargaining Agreement; or (B) waive, release or assign any material rights or claims thereunder which waiver, release or assignment has a value of greater than $1,000,000;

(iv) enter into any joint venture, strategic alliance, partnership or similar business relationship with a Third Party that affects or is binding upon the Business;

(v) enter into for the Business any agreement that contains a covenant or other provision restricting the ability of the Business (or which, following the Closing, could restrict the ability of Buyer) to compete with any Person or in any geographic area or to engage in any activity or business, or pursuant to which any benefit is required to be given or is lost as a result of so competing or engaging;

(vi) enter into for the Business any lease of real property, except any renewal or extension of an existing lease in accordance with its terms and consistent with Seller's past practices regarding renewals and extensions, or grant any material easement, covenant, right-of-way or similar right with respect to any Real Estate Asset;

(vii) mortgage, pledge or subject to any Liens any of the Transferred Assets (except for Identified Liens existing as of the date hereof and Liens that will be discharged as of the Closing Date);

(viii) make any material changes in the manner in which Plant Employees or Non-Plant Employees are compensated or the amount of such compensation or materially increase (or provide additional or supplemental) benefits for Plant or Non-Plant Employees, except, in any case, as required by Applicable Laws or the terms of the Collective Bargaining Agreement, or normal increases in the ordinary course of business consistent with past practices;

(ix) hire or fire any Plant Employee or Non-Plant Employee, other than terminations for cause in the ordinary course of business and consistent with the past practice of the Employer with respect to the Business, or require the transfer of any Plant Employee or Non-Plant Employee to another position outside the Business;

(x) change any accounting principles or practices used by it in connection with the Business (other than changes required by reason of a concurrent change in GAAP);

(xi) make any Tax election (unless otherwise required by Applicable Law) or settle or compromise any federal, state, local or foreign Tax liability if such election, settlement or compromise would result in a Lien on the Transferred Assets (except for Identified Liens existing as of the date hereof and Liens that will be discharged as of the Closing Date) or could have a significant adverse Tax effect on the Business;

(xii) waive, release, cancel or compromise any right or claim in respect of the Transferred Assets or the Business, other than in the ordinary course of business consistent with past practice in an amount not exceeding $500,000 individually or $1,000,000 in the aggregate;

(xiii) other than the Collective Bargaining Agreement (which is governed by Section 9.3(a)(iii)(A)), enter into any contract, agreement, purchase commitment or lease other than any contract, agreement, purchase commitment or lease that (A) is entered into in the ordinary course of business consistent with past practices and (B) either (x) is terminable within 180 days without any penalty of any kind or (y) cannot, by its terms, extend beyond the Closing Date (it being understood that neither Seller nor Employer shall be permitted to enter into any contract, agreement, purchase commitment or lease that is not assignable to Buyer at Closing without the Consent of any Third Party thereto);

(xiv) modify or amend in any material respect or voluntarily terminate prior to the expiration thereof any provision of any Permit set forth on Schedule 6.5(b), Schedule 6.5(c) or Schedule 5.4(g)(ii), except to the extent that such modification, amendment, or termination is required pursuant to Applicable Law;

(xv) make any filing pertaining to the Business or the Transferred Assets with any Governmental Authority having jurisdiction over the Business or the Transferred Assets, other than in the ordinary course consistent with past practices or other than such filings required pursuant to this Agreement; or

(xvi) commit or otherwise agree to do any of the foregoing.

(b) Notwithstanding anything in Section 9.3(a) to the contrary, Seller shall use its Commercially Reasonable Efforts to complete the Projects prior to Closing (it being understood that the only remedy available to Buyer, whether under this Agreement or otherwise, for Seller's failure to complete the Projects prior to Closing, shall be the reduction at Closing of the Purchase Price by the Capital Expenditure Adjustment Amount pursuant to Section 4.3).

9.4 Notification. Upon receiving knowledge thereof, Seller shall promptly notify Buyer, and Buyer shall promptly notify Seller, of any Proceeding pending or threatened against Seller or Buyer, or both, as the case may be, which challenges or would affect the transactions contemplated hereby.

9.5 NEPOOL Approval. Buyer shall, or shall cause its designated Affiliate to, prepare an application or applications to NEPOOL to obtain the NEPOOL Approval. Such applications shall be filed with NEPOOL as promptly as commercially practicable, but in no event later than forty-five (45) days after the date of this Agreement. Seller shall use its Commercially Reasonable Efforts to assist Buyer or its designated Affiliate in connection with obtaining the NEPOOL Approval. Buyer and Seller shall cooperate to prepare and file with ISO-NE at least five (5) Business Days prior to the Closing Date such duly executed forms as shall be necessary under NEPOOL rules to transfer ownership of the Transferred Assets to Buyer or its designated Affiliate, such ownership under NEPOOL rules to be effective as of the first day of the month following the month during which the Closing Date occurs (except if the Closing Date occurs on the first day of a month, then such ownership shall be effective as of the Closing Date), and to designate Buyer or its designated Affiliate as lead participant with respect to the Transferred Assets, such designation to be effective from and after the Closing Date. Prior to 11:00 a.m., New York City time, on the day before the Closing Date, Buyer shall submit to Seller its instructions for bidding the output of the Plants into the NEPOOL day-ahead market for the Closing Date. Seller shall follow such instructions submitted by Buyer for the Closing Date.

9.6 Antitrust and Other Authorizations and Consents.

(a) Filings. Each Party shall use its Commercially Reasonable Efforts to obtain, and to cooperate with the other Party in obtaining, all Consents of any Governmental Authority that may be or become necessary in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, and to take commercially reasonable actions to avoid the entry of any Order by any Governmental Authority prohibiting the consummation of the transactions contemplated hereby and thereby, and shall furnish to the other all such information in its possession as may be necessary for the completion of the notifications or applications to be filed by the other. No Party shall withdraw any such filing or submission prior to the termination of this Agreement without the written consent of the other Parties. The filing fee required to be paid in connection with any regulatory filing, premiums relating to any title insurance policy covering the Owned Real Estate for the benefit of Buyer, premiums relating to any insurance policy insuring the Transferred Assets and Transfer Taxes shall each be the sole responsibility of Buyer. Filings in respect of Transfer Taxes shall be governed by Section 4.5 of this Agreement. In the event Buyer is not the Winning Bidder, Buyer shall cooperate with Seller to withdraw all filings, applications and requests submitted to any Governmental Authority for consent to, or approval of, the transactions set forth herein.

(b) HSR Act. Without limiting the generality of Section 9.6(a), to the extent required by the HSR Act, each Party shall (i) file or cause to be filed, as promptly as commercially practicable, but in no event later than five (5) Business Days after the entry of the Bidding Procedures Order, with the United States Federal Trade Commission and the United States Department of Justice, all reports and other documents required to be filed by such Party under the HSR Act concerning the transactions contemplated hereby and (ii) promptly comply with or cause to be complied with any requests by the United States Federal Trade Commission or the United States Department of Justice for additional information concerning such transactions, in each case so that the waiting period applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall expire as soon as practicable. Each

Party agrees to request, and to cooperate with the other Party in requesting, early termination of any applicable waiting period under the HSR Act. Buyer shall pay the filing fees payable in connection with the filings by the Parties required by the HSR Act.

(c) Energy Regulatory Approval. Without limiting the generality of Section 9.6(a), (i) Seller and Buyer shall work cooperatively and with all due diligence to prepare an application or applications to the FERC to obtain the FERC Approvals and the FERC License Transfer, and (ii) Buyer shall prepare an application to obtain the Market-Based Rate Authorization. Seller shall use its Commercially Reasonable Efforts to assist Buyer in connection with the preparation of the application to obtain the Market-Based Rate Authorization. Such applications shall be filed with FERC as promptly as commercially practicable after (and not before) filing of the motion seeking the entry of the Bidding Procedures Order, but in no event later than thirty (30) days after the execution and delivery of this Agreement assuming the motion seeking the entry of the Bidding Procedures Order has been filed. Without limiting the generality of Section 9.6(a), Seller and Buyer shall work cooperatively and with all due diligence to prepare an application or applications to obtain approvals set forth on Schedule 9.6(c).

(d) FCC License Approval. Without limiting the generality of Section 9.6(a), Seller and Buyer shall work cooperatively and with all due diligence to prepare an application or applications (on FCC Form 603 or as otherwise required) to obtain the FCC License Approval. Such application shall be filed with the FCC as promptly as commercially practicable after (and not before) filing of the motion seeking the entry of the Bidding Procedures Order, but in no event later than thirty (30) days after the execution and delivery of this Agreement assuming the motion seeking the entry of the Bidding Procedures Order has been filed. Further, Seller and Buyer shall comply with or cause to be complied with any request by the FCC for additional information concerning such transactions. Buyer shall pay the filing fees and expenses payable in connection with the filings by the Parties hereto pursuant to this Section 9.6(d).

(e) Third Party Consents. Unless otherwise provided by Order of the Bankruptcy Court, without limiting the generality of Section 9.6(a), Seller shall use its Commercially Reasonable Efforts in order to obtain any Consents required in connection with the transactions contemplated hereby (except as otherwise provided for the Consents referenced in Sections 9.6(a), (b), (c), or (d) above, which are respectively governed by such Sections), and Buyer shall (i) use its Commercially Reasonable Efforts to assist Seller in obtaining any Consents of Third Parties, to the extent required under Section 9.10(b), including providing to such Third Parties such financial statements and other financial information with respect to Buyer as such Third Parties may reasonably request and (ii) take all actions necessary to satisfy the requirements of Section 365(f)(2) of the Bankruptcy Code relating to adequate assurance of future performance including by providing required witnesses, financial statements and other financial information, as may be required by such Section. If any Consent that is required (because the same is not subject to the terms and conditions of the Sale Order) is not obtained prior to the Closing, Seller and Buyer shall cooperate in a mutually agreeable arrangement under which Buyer or its Affiliates would obtain the benefits and assume the obligations of the applicable Transferred Asset in accordance with this Agreement.

9.7 Commercially Reasonable Efforts.

(a) Upon the terms and subject to the conditions of this Agreement, each Party shall use its Commercially Reasonable Efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable consistent with Applicable Laws to consummate and make effective in the most expeditious manner practicable the transactions contemplated hereby, including satisfying the conditions to consummation of such transactions, including using Commercially Reasonable Efforts to oppose any Governmental Authority seeking an Order preventing the consummation of the transactions contemplated hereby.

(b) Seller and Employer shall use their Commercially Reasonable Efforts to assist Buyer in obtaining agreements with any labor organization necessary or appropriate to effectuate the terms of this Agreement, including the provisions of Section 10.3 hereof.

(c) Notwithstanding anything in this Agreement to the contrary, neither of the Parties hereto shall, without prior written consent of the other Party, take or fail to take any action, which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement; provided that, subject to the performance of its obligations hereunder, neither Party shall be required to undertake extraordinary measures inconsistent with the normal operations and business of such Party.

9.8 Publicity. No Party shall issue any press release or otherwise make any public statement with respect to this Agreement or the Ancillary Agreements or the transactions contemplated hereby and thereby without the prior approval of each other Party, except as may be required by Applicable Laws or stock exchange rule (in which case the Parties shall use their best efforts to consult with each other regarding the content of any such press release or statement prior to its release).

9.9 Interconnection and Facilities Sharing Arrangements.

(a) Prior to the Closing, Seller shall use its Commercially Reasonable Efforts to enter into a water flow coordination and a facilities sharing arrangement with the Owner of Bear Swamp/Fife Brook (the "New Bear Swamp Agreements"), which New Bear Swamp Agreements shall be reasonably acceptable to Buyer. Exhibits 9.9(a)(i) and (ii) set forth the material terms of the New Bear Swamp Agreements that Seller shall use its Commercially Reasonable Efforts to include in the New Bear Swamp Agreements. If the material terms of such agreements are consistent in all material respects with the terms set forth on Exhibits 9.9(a)(i) and (ii), such agreements shall be deemed reasonably acceptable to Buyer. Assuming that Seller, prior to Closing, enters into the New Bear Swamp Agreements consistent in all material respects with the terms set forth on Exhibits 9.9(a)(i) and (ii), Buyer shall assume such agreements as of the Closing if such agreements are assignable to Buyer at Closing. If the New Bear Swamp Agreements have not been entered into by Seller prior to the Closing, Buyer shall enter into such agreements as of the Closing if consistent in all material respects with the terms set forth on Exhibits 9.9(a)(i) and (ii), provided the Owner of Bear Swamp/Fife Brook shall have entered into such agreements.

(b) If the Bellows Falls Option is exercised prior to the Closing Date, Seller, with Buyer's approval, such approval not to be unreasonably delayed or withheld, shall enter into the Bellows Falls Agreements upon consummation prior to the Closing Date of the sale of the Bellows Falls Project to Rockingham, and Buyer shall assume such agreements at Closing as Assigned Contracts.

(c) As soon as reasonably practicable after the date hereof, Buyer intends to enter into discussions with NEP in an effort to obtain from NEP, to be effective at Closing, either an assignment of that portion of the Continuing Services Agreement relating to the Transferred Assets or a new electrical interconnection agreement with NEP. If Buyer enters into such discussions, Seller shall use its Commercially Reasonable Efforts to assist Buyer in any such efforts. If Buyer is unable to reach agreement with NEP with respect to an electrical interconnection agreement at least sixty (60) days prior to Closing, Buyer shall use its Commercially Reasonable Efforts to ensure the satisfaction of the condition precedent set forth in Section 5.4(l).

9.10 Procedural Orders and Motions. Between the date of this Agreement and the Closing:

(a) General; Bankruptcy Court Filings. It is the Parties' intention to consummate the transactions contemplated by this Agreement pursuant to a Bankruptcy Court approved sale of the Transferred Assets under Section 363 of the Bankruptcy Code and the assignment and assumption of the Assigned Contracts and the Leases under Sections 105, 363 and 365 of the Bankruptcy Code. As soon as reasonably practicable after the date hereof (but in no event more than three (3) days after the date hereof (or if such third day is not a Business Day, the next Business Day), provided that Buyer has paid the Initial Deposit Amount to the Escrow Agent, Seller shall file one or more motions (the "Motion") with the Bankruptcy Court seeking entry of (i) the Bidding Procedure Order and (ii) the Sale Order.

(b) Approvals, Consents and Notice.

(i) Seller shall promptly give notice to all Third Parties to the Assigned Contracts and the Leases as and when required by, and shall take all other actions required with respect to, the Assigned Contracts and the Leases under the Bidding Procedures Order. Without limiting the generality of Section 9.7, Seller and Buyer shall use their respective Commercially Reasonable Efforts to obtain all required Consents (if any) of all third parties to the Assigned Contracts and the Leases, whose Consent is required under Section 365 of the Bankruptcy Code in order for Seller to validly assign such Assigned Contracts and the Leases to Buyer on the Closing Date (it being understood that, in connection with the assignment and assumption of the Assigned Contracts and the Leases hereunder, Seller shall be responsible for (A) paying, and shall promptly pay when due, all Cure-Amounts and other amounts required or agreed to be paid in connection with obtaining Consents or otherwise and (B) taking such other actions as may be required to comply with the requirements of Section 365 of the Bankruptcy Code with the reasonable assistance from Buyer to the extent necessary to meet the requirements of such section, and provided further that Buyer shall be responsible for complying with the provisions of Section 365(b)(1)(C)).

(ii) Other than any such proposals or written inquiries that are made during the Solicitation Period in accordance with the Bidding Procedures Order, Seller shall promptly provide Notice to Buyer of any proposals or written inquiries from any Third Party with respect to an Alternative Transaction or an Alternative Third Party Plan and provide Buyer with copies of any correspondence evidencing or regarding such proposals or written inquiries, including the name(s) of the Third Party or Third Parties making such proposals or written inquiries, the substance of any such proposals or written inquiries and the dates that such proposals or written inquiries were made to Seller. Seller shall promptly provide Notice to Buyer of (A) the receipt of any Qualified Bid (such Notice to be provided in accordance with the Bidding Procedures Order); (B) the entry by the Bankruptcy Court of any Order approving the Winning Bid; (C) the filing of any motion or other pleading in the Bankruptcy Court that seeks to rescind or otherwise avoid the transactions contemplated by this Agreement; (D) the withdrawal of the Motion; and (E) the approval by the board of directors of Seller of any Alternative Seller Plan.

(c) Competing Proposals and Overbids.

(i) In the event that Seller or any Representative of Seller shall receive a Qualified Bid, it shall afford Buyer an opportunity to participate in an Auction to be held in accordance with the terms of the Bidding Procedures Order and as noticed at the offices of bankruptcy counsel for Seller, Blank Rome LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174. At any Auction so held, bidding shall proceed in accordance with the Bidding Procedures Order.

(ii) The Bankruptcy Court sale hearing to confirm the highest or best offer and to authorize the sale of the Transferred Assets to the Winning Bidder shall be held as soon as reasonably practicable after the later of the Bid Deadline and the conclusion of the Auction (in the event Qualified Bids are submitted prior to the Bid Deadline), but in no event more than ten (10) Business Days after the later of the Bid Deadline and such conclusion of the Auction.

(d) Nonsolicitation of Alternative Transactions. Other than with respect to the transactions contemplated by the Bellows Falls Option Agreement, during the periods (x) between the date hereof and the entry of the Bidding Procedures Order and (y) between (A) the entry of the Sale Order and (B) the Closing, Seller shall not, and shall cause its respective Affiliates and Representatives not to, (i) solicit inquiries, proposals, offers or bids from, (ii) negotiate or discuss with, (iii) respond to any request for information or due diligence inquiry of, (iv) make the management and employees of the Business available to, or (v) enter into any agreement or consummate any transaction with any Third Party relating to an Alternative Transaction. During the period between (A) the later of (1) the Bid Deadline and (2) the conclusion of the Auction (in the event Qualified Bids are submitted prior to the Bid Deadline) and (B) the entry of the Sale Order, Seller shall not, and shall cause its respective Affiliates and Representatives not to, solicit inquiries, proposals, offers or bids from any Third Party relating to an Alternative Transaction. During the Solicitation Period, except as set forth in the immediately preceding sentence, Seller and its respective Affiliates and Representatives shall be permitted, in the manner and to the extent permitted by the Bidding Procedures Order, to (i) solicit inquiries, proposals, offers or bids from, (ii) negotiate or discuss with, (iii) respond to any request for

information or due diligence inquiry of, and (iv) make the management and employees of the Business available to, any Third Party in connection with the submission or proposed submission of a Qualified Bid and may take any other affirmative action to cause, promote or assist the purchase of all or substantially all of the Transferred Assets, provided, however, that Seller may only seek Bankruptcy Court approval of a definitive agreement with the Winning Bidder made and accepted in the accordance with the Bidding Procedures Order. Without limiting and subject to the foregoing, Seller and its Affiliates and respective Representatives shall be permitted to supply information relating to the Business and the Transferred Assets during the Solicitation Period only to prospective purchasers that have executed in accordance with the Bidding Procedures Order a confidentiality agreement.

(e) Alternative Plans. Seller shall not (i) file an Alternative Seller Plan, (ii) file any motion or other pleading in the Bankruptcy Court that seeks to rescind or otherwise avoid the transactions contemplated by this Agreement or (iii) withdraw the Motion. Seller shall not knowingly take any affirmative action with an intent to support any Alternative Third Party Plan, it being understood that Seller shall have no obligation to take any action in opposition to any Alternative Third Party Plan.

9.11 Advice of Changes. Prior to the Closing, each Party shall advise the other in writing with respect to any matter arising after the date of this Agreement of which that Party obtains knowledge and which, if existing or occurring on or prior to the date of this Agreement, would have been required to be set forth in this Agreement, including any of the Schedules hereto. Seller and Employer, as applicable, shall, from time to time prior to the Closing, promptly supplement or amend the Schedules to this Agreement with respect to (a) any matter that existed as of the date of this Agreement and should have been set forth in any of the Schedules hereto and (b) any matter hereafter arising which, if existing as of the date of this Agreement, would have been required to be set forth in any of the Schedules hereto in order to make any representation or warranty set forth in this Agreement true and correct as of such date; provided, however, that, with respect to clause (a) above, any such supplemental or amended disclosure shall not be deemed to have been disclosed as of the date of this Agreement unless expressly consented to in writing by Buyer; and provided further, that, with respect to clause (b) above, unless expressly consented to in writing by Buyer, any such supplemental or amended disclosure shall, for purposes of this Agreement, not be deemed to have been disclosed as of the date of this Agreement until such time, if ever, that the Closing occurs, at which point such supplemental or amended disclosure shall, for purposes of this Agreement, be deemed disclosed as of the date of this Agreement. Buyer shall, promptly upon acquiring knowledge thereof, notify Seller of (i) any breach by Seller or Employer of any representation or warranty of Seller or Employer, or (ii) any other event, fact, condition or circumstance that would excuse Buyer from the timely performance of its obligations hereunder, if any such information comes to Buyer's attention prior to the Closing.

9.12 Additional Financial Statements. From the date hereof until the Closing, Seller shall continue to prepare any financial statements and summary consolidated financial information regarding the Business as prepared by Seller in the ordinary course of business and shall provide Buyer with a copy of such financial statements and summary consolidated financial information as soon as reasonably practicable after the preparation thereof.

9.13 Effect of Back-Up Bidder Status.

(a) Notwithstanding any provision hereof to the contrary but subject to Seller's obligations to deliver Back-Up Period Schedule Updates and Back-Up Period Officer's Certificates pursuant to this Section 9.13, if the Auction is held and Buyer is declared the Back-Up Bidder, then, during the Back-Up Period, this Agreement shall remain in full force and effect in accordance with the terms hereof and the terms of the Bidding Procedures Order except that, during such Back-Up Period, (i) no Party hereto shall be obligated to comply with or perform any term, covenant or condition to be complied with or performed by such Party on or prior to the Closing Date other than those terms, covenants and conditions set forth in clause (i) of the last sentence of Section 9.1(a), Section 9.8, Section 9.10(b)(ii), Section 9.10(d), Section 9.10(e), Section 9.13(b), Section 10.2, Article 13 and Article 14 (collectively, the "Specified Provisions") and (ii) no Party shall be deemed to have breached any of the terms, covenants or conditions described in the foregoing clause (i) (other than the Specified Provisions) by reason of its failure to comply with or perform any such terms, covenants or conditions during the Back-Up Period. For purposes of clarification but subject to the terms of the Specified Provisions, during the Back-Up Period Seller and Employer may, without Buyer's prior written consent, take or fail to take any action which, if taken or not taken either prior to or after the Back-Up Period would require such consent, it being understood that neither Seller nor Employer shall be deemed to have breached any of its terms, covenants or conditions set forth in this Agreement (other than the Specified Provisions) by reason of any such action or failure to act during the Back-Up Period.

(b) If the Auction is held and Buyer is declared the Back-Up Bidder, on the fifth Business Day prior to the end of the Initial Period and, if applicable, each Extension Period, Seller shall deliver to Buyer (i) supplemented and amended schedules of the type described in Section 9.11 (including by adding additional Schedules, if required, that do not exist as of the date of this Agreement) ("Back-Up Period Schedule Updates") and (ii) a certificate executed on behalf of Seller and Employer by an authorized officer of Seller ("Back-Up Period Officer's Certificate") certifying that during the Back-Up Period, other than as set forth in such Back-Up Period Schedule Update accompanying such Back-Up Period Officer's Certificate or in such Back-Up Period Officer's Certificate, (i) neither Seller nor Employer have failed to comply with or perform any term, covenant or condition that by its terms, in the absence of Section 9.13(a), was to be complied with or performed during the Back-Up Period, and (ii) to the knowledge of such authorized officer, no matter has arisen after the date of this Agreement which, if existing or occurring on or prior to the date of this Agreement, would have been required to be set forth in any of the Schedules hereto in order to make any representation or warranty set forth in this Agreement true and correct in all material respects as of such date; provided, however, that (i) any such representation or warranty qualified by a reference to materiality, a Material Adverse Effect or other similar qualifier shall be true and correct in all respects and (ii) any such representation or warranty that is made as of a specific date need only be true and correct or true and correct in all material respects, as the case may be, as of such specified date. From the fifth Business Day prior to the end of the Initial Period and, if applicable, each Extension Period until the end of each such Initial Period and, if applicable, Extension Period, Seller and Employer shall give Buyer and its Representatives reasonable access, during regular business hours and upon reasonable advance Notice, to such employees and other information of the Business as are

reasonably necessary to allow Buyer and its Representatives to reasonably understand the information set forth on any Back-Up Period Schedule Updates and Back-Up Period Officer's Certificates.

(c) If the Auction is held and Buyer is declared the Back-Up Bidder but subsequently becomes the Winning Bidder in accordance with the terms of the Bidding Procedures Order, then Section 9.13(a) shall cease to be in effect and, within five (5) Business Days of Buyer becoming the Winning Bidder, Seller shall deliver to Buyer Back-Up Period Schedule Updates and a Back-Up Period Officer's Certificate. Within fifteen (15) Business Days of receipt of the Back-Up Period Schedule Updates and Back-Up Period Officer's Certificate contemplated by the previous sentence, Buyer shall have the right to terminate this Agreement pursuant to Section 13.1(e) based on the information and/or matters disclosed in connection with any Back-Up Period Schedule Updates and Back-Up Period Officer's Certificates delivered to Buyer pursuant to the terms of this Section 9.13 if and to the extent that such information and/or matters disclosed thereby, if not for Section 9.13(a), would give rise to Buyer's right to terminate the Agreement under Section 13.1(e), it being understood that any such termination shall be deemed to result from non-willful breaches by Seller and/or Employer, as the case may be, of this Agreement. If Buyer fails to give such notice within such fifteen (15) Business Day period, Buyer shall be deemed to have irrevocably and unconditionally waived any of its rights hereunder or otherwise with respect to any breaches disclosed on the Back-Up Period Schedule Updates and Back-Up Period Officer's Certificates delivered to Buyer pursuant to the terms of this Section 9.13, provided that no such waiver shall relieve Seller or Employer of liability for fraud. Other than in the case of fraud (for which Buyer's remedies shall not be limited), if Seller inadvertently fails to disclose in Back-Up Period Schedule Updates or in a Back-Up Period Officer's certificate one or more breaches of the Agreement that arose during the Back-Up Period, Buyer shall have the right to terminate this Agreement pursuant to Section 13.1(e) based on such breaches if and to the extent that such breaches would give rise to Buyer's right to terminate the Agreement under Section 13.1(e), it being understood that any such termination shall be deemed to result from non-willful breaches of this Agreement.

ARTICLE X.

POST-CLOSING COVENANTS

10.1 Maintenance of Books and Records. Each Party shall preserve for a period of at least 2 years from the Closing Date (or, in the case of Seller, until Seller's dissolution or liquidation, if earlier) all records possessed by such Party relating to the assets, liabilities or operations of the Business and the Transferred Assets prior to the Closing Date. During such period, where there is a legitimate purpose, such Party shall provide the other Party with access, upon prior reasonable written request specifying the need therefor, during regular business hours, to (i) the relevant officers and employees of such Party and (ii) the books of account and records of such Party, but, in each case, only to the extent relating to the Business or the Transferred Assets prior to the Closing Date, and the other Party and its Representatives shall have the right to make copies of such books and records; provided, however, that the foregoing right of access shall not be exercisable in such a manner as to interfere unreasonably with the normal operations and business of such Party; and provided further that, as to so much of such information as

constitutes trade secrets or confidential business information of such Party, the requesting Party and its representatives shall agree not to disclose, furnish or make accessible to anyone or use for its own benefit (other than as contemplated hereby) any such trade secrets or other confidential or proprietary information of another Party except as provided for in the last proviso of Section 10.2. The Party requesting any such books and records, information, or employees shall bear all of the out-of-pocket costs and expenses (excluding attorneys' fees and disbursement and reimbursement for the reasonable salaries and employee benefits for those employees who are made available) reasonably incurred in connection with providing such books and records, information, or employees. After such two-year period (or, in the case of Seller, immediately prior to Seller's dissolution or liquidation, if earlier), such records may nevertheless be destroyed by a Party if such Party sends the other Party written Notice of its intent to destroy records, specifying with particularity the contents of the records to be destroyed. Such records may then be destroyed after the 30th day following delivery of such Notice unless the other Party objects to the destruction, in which case the Party seeking to destroy the records shall either agree to retain such records or to deliver such records to the objecting Party at the objecting Party's expense.

10.2 Confidentiality. From and after the date of this Agreement, other than to the extent necessary to obtain Governmental Approvals and Consents required in connection with the consummation of the transactions contemplated by this Agreement, no Party shall disclose, furnish or make accessible to anyone or use for its own benefit (other than as contemplated hereby) any trade secrets or other confidential or proprietary information of another Party relating to Seller, Buyer and/or their respective businesses or, in the case of Buyer, Employer, including information obtained by or revealed to such Party during any investigations, negotiations or review relating to this Agreement and any other document contemplated hereby or thereby or any past or future actions taken in connection with, pursuant to, in accordance with, or under this Agreement and any other document contemplated hereby or thereby, including any business plans, marketing plans, financial information, strategies, systems, programs, methods and computer programs, but excluding any of the Intellectual Property; provided, however, that such protected information shall not include (i) information required to be disclosed by law, legal or judicial process (including a court order, subpoena or order of a Governmental Authority) or the rules of any stock exchange, (ii) information that is or becomes available to the disclosing Party on a non-confidential basis from a source other than the other Party and not disclosed or obtained in violation of this Agreement or any other agreement and (iii) information known to the public or otherwise in the public domain without violation of this Section 10.2.

10.3 Employee Matters.

(a) Offers.

(i) Effective as of the Closing Date, Buyer or its designated Affiliate shall unconditionally offer employment to all Represented Employees who are employed by Employer on the Closing Date, including Represented Employees who, on the Closing Date, are on authorized leave of absence or other authorized temporary absence.

(ii) Buyer or its designated Affiliate shall make a Qualifying Offer to each Non-Represented Employee (or any employee who replaces any such Non-Represented

Employee) who either (A) is actively employed by Employer on the Closing Date or who is temporarily absent from active employment due to vacation effective as of the Closing Date, or (B) is temporarily absent from active employment due to disability, military leave or paid time off on the Closing Date, and seeks to return to active employment within nine months following the Closing Date, provided that such individual is able to perform the essential functions of the position being offered by Buyer (with or without reasonable accommodation) ("Leave Employee(s)"). Such Qualifying Offers of employment shall be effective as of the Closing Date; provided, however, that any Qualifying Offer of employment to a Leave Employee shall be effective as of the date such Leave Employee returns to active employment (the "Transfer Date").

(iii) Effective as of the Closing Date, Buyer or its designated Affiliate may make an offer of employment to any Non-Plant Employee (or any employee who replaces any such Non-Plant Employee) who is actively employed by Employer as of the Closing Date. Buyer, in its sole discretion, shall determine those Non-Plant Employees to whom offers of employment will be made pursuant to this subsection.

(iv) Employer will make all Non-Plant Employees available to Buyer or its designated Affiliate for interviews and provide position, work location, date of hire, salary and other compensation received, and such other information, as reasonably requested by Buyer or its designated Affiliate, within ninety (90) days prior to the Closing Date. Employer will not knowingly take any action (or refrain from taking any action) which is reasonably likely to discourage Plant and Non-Plant Employees from accepting the offers of employment from Buyer or its designated Affiliates.

(v) Plant Employees and Non-Plant Employees, in each case, who actually commence active employment with Buyer or its designated Affiliate as of the Closing Date, or for Represented Employees, those who, on the Closing Date, are on authorized leave of absence or other authorized temporary absence (or Leave Employees who actually commence active employment with Buyer as of the Transfer Date) shall be referred to herein as "Buyer Employees" from and after the Closing Date (or, in the case of Leave Employees, the Transfer Date).

(vi) Except as otherwise specifically set forth herein, neither Seller nor Employer nor any of their Affiliates shall have any responsibility whatsoever for any Losses or other obligations which relate in any way to any Buyer Employees' employment or service with Buyer or Buyer's designated Affiliate from and after the Closing Date (or, in the case of Leave Employees who become Buyer Employees, the Transfer Date). Except as provided in Sections 10.3(b) and 10.3(c), neither Buyer nor any of its Affiliates shall have any responsibility whatsoever for any Losses which relate in any way to (A) employment or service with Employer or its Affiliates of any Buyer Employee prior to the Closing Date (or, in the case of any Leave Employee, the Transfer Date), (B) obligations to or with respect to any Plant Employee or Non-Plant Employee under or with respect to any Benefit Plan, and (C) except as otherwise specifically set forth herein, employment or service with Employer or its Affiliates at any time of any person who does not become a Buyer Employee or any other obligations to or with respect to any person who does not become a Buyer Employee.

(b) Collective Bargaining Agreement. Effective as of the Closing Date, Buyer or Buyer's designated Affiliate, as applicable, shall (i) recognize International Brotherhood of Electrical Workers Union No. 486 as the exclusive bargaining representatives of the Represented Employees; (ii) recognize each Buyer Employee's service with Employer (including prior service with Employer's predecessors) for all purposes under the Collective Bargaining Agreement, such that each Buyer Employee's seniority date and years of service remain intact after Closing; and (iii) assume the Collective Bargaining Agreement, to the extent applicable to the Plants, and become the employer of such Represented Employees as if there had been no change in their employer.

(c) Employee Benefit Plans.

(i) Buyer Plans. Effective as of the Closing Date (or, in the case of Leave Employees, the Transfer Date), Buyer or Buyer's designated Affiliate shall cause each Buyer Employee who was a Non-Represented Employee or a Non-Plant Employee to be provided with employee benefit plans, programs and arrangements maintained or established by Buyer or one of its designated Affiliates ("Buyer Plans") as determined in Buyer's sole discretion and subject to the provisions of this Section 10.3; provided, however, that, to the extent required by this Section 10.3, Buyer shall provide any Non-Represented Employee who becomes a Buyer Employer with benefits consistent with a Qualifying Offer. With respect to any Non-Represented Employee or Non-Plant Employee who becomes a Buyer Employee, Buyer shall cause such Buyer Employee's service with Employer as set forth on Schedule 7.6(a)(i) to be recognized under the Buyer Plans, solely for purposes of eligibility to participate, vesting and, to the extent applicable, entitlement to vacation and sick leave but excluding benefit accruals, to the same extent such service (including prior service with Employer's predecessors) is recognized under the corresponding Benefit Plans; provided that such recognition does not result in any duplication of benefits.

(ii) Buyer Welfare Plans. Effective as of the Closing Date (or, in the case of Leave Employees, the Transfer Date), each Buyer Employee shall cease to be covered by the Benefit Plans which are "employee welfare benefit plans" (as defined in Section 3(1) of ERISA), including plans, programs, policies, and arrangements which provide medical, vision, dental, life insurance, accident insurance and disability coverage (collectively, "Employer Welfare Plans"). NEGT, Employer and their respective Affiliates shall retain responsibility for all medical, vision, dental, life insurance, accident insurance and disability coverage claims incurred by Plant Employees and Non-Plant Employees prior to the Closing Date (or, in the case of Leave Employees, the Transfer Date), including all liabilities and obligations under and with respect to the applicable Employer Welfare Plans. For purposes of this subsection, a claim shall be deemed to have been incurred (i) for medical, vision and dental coverage, on the date the service giving rise to the claim is performed, (ii) for life and accident insurance coverage, on the date of death or accident, and (iii) for disability coverage, on the date of disability. With respect to Buyer Employees, effective as of the Closing Date (or, in the case of Leave Employees, the Transfer Date), Buyer shall cause all applicable Buyer Plans that provide medical, vision, dental, life insurance, accident insurance and disability coverage (collectively, "Buyer Welfare Plans") to recognize service with Employer for purposes of satisfying any pre-existing condition exclusions (to the extent required under Applicable Laws), evidence of insurability provisions

and waiting period requirements to the same extent such service was credited for such purposes under a corresponding Benefit Plan immediately prior to the Closing Date (or, in the case of Leave Employees, the Transfer Date). In addition, Buyer shall cause the applicable Buyer Welfare Plans to credit Buyer Employees with amounts credited by Employer under Employer's health and dental plans toward the satisfaction of annual deductible and out-of-pocket maximums under such Buyer health and dental plans during the calendar year in which the Closing Date occurs, provided that proof of such credit is provided to the Buyer by the Buyer Employee within sixty (60) days of the Closing Date. Employer shall use Commercially Reasonable Efforts to cause Employer Plan providers to issue such records to Buyer Employees.

(iii) COBRA. Employer and its ERISA Affiliates shall be exclusively responsible for complying with COBRA with respect to their employees and their eligible dependents by reason of such employees' termination of employment with Employer and its ERISA Affiliates, and neither Buyer nor any Affiliate thereof shall have any obligation or liability (or assume any obligation or liability of Employer or its Affiliates) to provide COBRA benefits on account of any such termination of employment except to the extent required by Applicable Laws.

(iv) Severance. In the event that any Buyer Employee is terminated by Buyer other than for cause during the one year period immediately following the Closing, Buyer or its designated Affiliate shall provide such person with a severance benefit which is not less than the severance benefit such person was entitled to receive under the Power Services Amended and Restated Severance Plan dated September 24, 2003 in the case of a Non-Represented Employee or a Non-Plant Employee, or the Collective Bargaining Agreement, in the case of a Represented Employee.

(v) Paid Time Off. Prior to the Closing Date (or, in the case of Leave Employees, the Transfer Date), Employer shall pay to all Buyer Employees (excluding any Represented Employees) all amounts of accrued and unused paid time off owed to Buyer Employees as of the Closing Date (or, in the case of Leave Employees, the Transfer Date).

(vi) Grandfathered Sick Leave For Non-Represented Employees. Buyer hereby agrees to assume all Grandfathered Sick Leave accrued as of the Closing Date by Non-Represented Employees that become Buyer Employees on or after the Closing Date, pursuant to a Qualifying Offer.

(d) Alternative Procedure. Pursuant to the "Standard Procedure" provided in Section 5 of Revenue Procedure 96-60, 1996-2 C.B. 399, Buyer and Employer shall each be responsible for filing their own Forms W-2 with respect to the Buyer Employees.

(e) Cooperation and Information. From and after the Closing, Seller and Employer agree to provide, and to use their respective Commercially Reasonable Efforts to cause NEGT to provide, Buyer or its designated Affiliate with the following information regarding each Buyer Employee, as requested from time to time to enable Buyer to carry out its obligations under Section 10.3: (i) name, (ii) date of hire, (iii) social security number, (iv) title, (v) location, (vi) salary, and (vii) bonus target.

10.4 Further Assurances; Post-Closing Assignments. From time to time following the Closing, Seller, at its expense, shall execute, acknowledge and deliver such additional documents, instruments of conveyance, transfer and assignment or assurances and take such other action as Buyer may reasonably request to more effectively assign, convey and transfer to Buyer, and fully vest title in Buyer, with respect to the Transferred Assets and to otherwise carry out the purposes of this Agreement. Without limiting the generality of the foregoing, after the Closing Date and upon the discovery by Seller of any items included within the definitions of Business, Transferred Assets or Assigned Contracts but not transferred, conveyed or assigned to or assumed by Buyer in the Bill of Sale, the Assignment and Assumption Agreement or any other applicable instrument of conveyance, Seller shall (i) promptly deliver written Notice to Buyer of the existence and non-transfer or non-assumption of such item and provide Buyer with all the information about and with access to such item as Buyer may reasonably request and (ii) if notified in writing by Buyer within thirty (30) days after the delivery of such Notice by Seller, transfer, convey or assign to Buyer such item in the manner and on the terms and conditions as if it were a part of the Business, a Transferred Asset, or an Assigned Contract under this Agreement. From time to time after Closing, Seller shall use Commercially Reasonable Effects to cooperate with Buyer in Buyer's efforts to cure or remove any Liens existing with respect to the Real Estate Assets that Buyer reasonably deems objectionable; provided, however, that in connection therewith Seller shall not be under any obligation to initiate legal action or to incur expense other than reasonable administrative and out-of-pocket expenses.

10.5 Use of NEGT Marks. NEGT Marks may appear on some of the Transferred Assets, including on signage throughout the Real Estate Assets, and on supplies, materials, stationery, brochures, advertising materials, manuals and similar consumable items forming part of the Transferred Assets. Buyer acknowledges and agrees that it obtains no right, title, interest, license or any other right whatsoever to use the NEGT Marks. In furtherance thereof, Buyer shall, within ninety (90) days after the Closing Date, remove any such NEGT Marks from (or, if appropriate return to Seller or destroy) the Transferred Assets (and if requested, provide written verification thereof). Buyer shall not challenge Seller's (or its Affiliates') ownership of the NEGT Marks or any application for registration thereof or any registration thereof or any rights of Seller or its Affiliates therein as a result, directly or indirectly, of its ownership of the Transferred Assets. Buyer shall not do any business or offer any goods or services under the NEGT Marks. Buyer shall not send, or cause to be sent, any correspondence or other materials to any Person on any stationery that contains any NEGT Marks or otherwise operate the Transferred Assets in any manner which would or might confuse any Person into believing that Buyer has any right, title, interest, or license to use the NEGT Marks.

10.6 Insurance. Effective at the Closing, the Seller Insurance Policies shall be terminated or modified to exclude coverage of all or any portion of the Business or the Transferred Assets. With respect to the insurance and surety bonds identified on Schedule 1.1(a)(viii) under the heading "Surety Bonds and Assurance Arrangements", effective at the Closing, Buyer shall be obligated to obtain at its sole cost and expense replacement insurance or surety bonds, or to provide required financial assurance arrangements, including insurance, surety bonds or financial assurance arrangements required by any Third Party to be maintained in respect of the Business or the Transferred Assets. Buyer further acknowledges and agrees that Buyer will be required to provide to certain Governmental Authorities and Third

Parties evidence of such replacement or substitute insurance coverage, surety bonds or financial assurance arrangements for the continued operations of the Business and the Transferred Assets following the Closing.

10.7 Tax Matters.

(a) With respect to Taxes to be prorated in accordance with Section 4.4 of this Agreement only, Buyer shall prepare and timely file all Tax Returns required to be filed after the Closing with respect to the Transferred Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. If Seller is still in existence when such Tax Returns are prepared, Buyer's preparation thereof shall be subject to Sellers' approval, which approval shall not be unreasonably withheld. Buyer shall make such Tax Returns available for Sellers' review and approval no later than fifteen (15) Business Days prior to the due date for filing such Tax Return. Within ten (10) Business Days after receipt of such Tax Return, Seller shall pay to Buyer its proportionate share of the amount shown as due on such Tax Return determined in accordance with Section 4.4 of this Agreement as properly reduced by any negative adjustments to Purchase Price in respect of Taxes reflected in the Closing Proration Amount.

(b) Each of Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each shall retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 10.7 or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties.

ARTICLE XI.

NON-SURVIVAL; EXISTENCE

11.1 Non-Survival of Representations and Warranties. The representations and warranties of the Parties contained in this Agreement (or in any document or deliveries, including any Ancillary Agreements delivered by the Parties pursuant to this Agreement) shall terminate upon the earlier of the Closing or the termination of this Agreement pursuant to Article XIII.

11.2 Existence. Notwithstanding any other provision in this Agreement or any Ancillary Agreement to the contrary, Buyer acknowledges and agrees that neither Seller nor Employer is required to preserve, renew or keep in effect its legal existence, or to have, directly or indirectly, any employees or agents for more than six (6) months after the Closing Date.

ARTICLE XII.

RISK OF LOSS

12.1 Casualty Loss.

(a) From the date hereof through the Closing Date, all risk of loss or damage to any tangible personal property included in the Transferred Assets shall be borne by Seller, other than loss or damage caused by the acts or omissions of Buyer involving negligence or willful misconduct, which loss or damage shall be the responsibility of Buyer.

(b) If, before the Closing Date, all or any portion, of the Transferred Assets is (i) condemned or taken by eminent domain or is the subject of a pending or threatened condemnation or taking which has not been consummated, in each case, other than pursuant to Proceedings set forth on Schedule 6.12(b), or (ii) materially damaged or destroyed by fire or other casualty, Seller shall notify Buyer promptly in writing of such fact, and (x) in the case of a condemnation or taking, Seller shall pay or, if assignable, assign, as the case may be, any proceeds thereof to Buyer at the Closing and (y) in the case of a fire or other casualty, Seller shall either (A) restore such Transferred Assets prior to the Closing or (B) if, prior to the Closing, Seller receives insurance proceeds in connection with such casualty that are reasonably equivalent to the value of such Transferred Assets (or if such insurance proceeds are reasonably likely to be obtained within ninety (90) days of Closing), pay such insurance proceeds (or, if assignable, assign the right to receive such insurance proceeds) to Buyer at Closing. The Parties acknowledge and agree that (1) any amounts paid to Buyer, (2) any right to receive funds assigned to Buyer (taking into account, among other things, the likely timing delay in receiving such funds and the likely amount of the funds that will ultimately be received by Buyer) and (3) any actions taken by Seller to restore Transferred Assets pursuant to this Section 12.1(b) shall be considered together in determining whether a Material Adverse Effect has occurred for purposes of Section 5.4(i), but shall not, by themselves, preclude Buyer from exercising any rights pursuant to this Agreement, including the right to claim that a Material Adverse Effect has occurred for purposes of Section 5.4(i).

ARTICLE XIII.

TERMINATION

13.1 Termination. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing in the following manner:

(a) by mutual written consent of Seller and Buyer;

(b) by either Seller or Buyer (provided that such Party is not then in material breach of any provision of this Agreement), upon written notice to the other Parties, if a Governmental Authority shall have issued an Order or taken any other action, in each case restraining, enjoining or otherwise prohibiting the sale of the Transferred Assets hereunder and such Order or other action shall have become final and non-appealable;

(c) by either Seller or Buyer, upon written notice to the other Parties, if the Closing shall not have occurred on or before 12:01 a.m., New York City time, on the Outside Date; provided, however, that the right to terminate this Agreement under this Section 13.1(c) shall not be available to a Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur prior to the Outside Date;

(d) by Buyer, upon written notice to the other Parties, if (i) Seller or any of its Affiliates enters into an agreement with respect to, or consummates, an Alternative Transaction in each case, other than in compliance with the Bidding Procedures Order or (ii) the Bankruptcy Court enters an Order approving an Alternative Transaction which is not a sale to the Winning Bidder or the Back-Up Bidder in accordance with the Bidding Procedures Order;

(e) by Buyer, upon written notice to the other Parties, if (i) there shall have been a breach of any representation, warranty, covenant or agreement set forth in this Agreement on the part of Seller or Employer (other than any breach of such covenant or agreement set forth in Section 9.3(b)), which breach is incapable of cure or, if capable of cure, shall not have been cured within thirty (30) days following receipt by Seller of Notice of such breach and (ii) such breach would result in a failure to satisfy the conditions to Closing set forth in Section 5.4(a) or 5.4(b);

(f) by Buyer, upon written notice to the other Parties, if (i) the Bankruptcy Court has not approved the Bidding Procedures Order on or prior to November 4, 2004 or the Bankruptcy Court denies the Motion with respect to the Bidding Procedures Order; (ii) following entry of the Bidding Procedures Order, the Bidding Procedures Order is reversed, revoked, voided, vacated, stayed or modified by an Order of any Governmental Authority in any manner that is material and adverse to Buyer (a "Modifying Order"), and such Modifying Order is not reversed, revoked, voided, vacated, stayed or further modified within sixty (60) days (or ten (10) days with respect to any Modifying Order of the Bankruptcy Court) such that the Bidding Procedures Order is in full force and effect, final, non-appealable and not subject to stay; (iii) the Bankruptcy Court has not entered the Sale Order on or prior to December 16, 2004 (or January 6, 2005 in the case where Buyer is not the Winning Bidder) or the Bankruptcy Court denies the Motion with respect to the Sale Order; or (iv) following entry of the Sale Order, the Sale Order is modified by a Modifying Order and such Modifying Order is not reversed, revoked, voided, vacated, stayed or further modified within sixty (60) days (or ten (10) days with respect to any Modifying Order of the Bankruptcy Court) such that the Sale Order is in full force and effect, final, non-appealable and not subject to stay;

(g) by Seller, upon written notice to the other Parties, if (i) there shall have been a breach of any representation, warranty, covenant or agreement set forth in this Agreement on the part of Buyer, which breach is incapable of cure or, if capable of cure, shall not have been cured within thirty (30) days following receipt by Buyer of Notice of such breach and (ii) such breach would result in a failure to satisfy the conditions to Closing set forth in Section 5.5(a) or 5.5(b);

(h) (i) by Seller or Buyer, upon written notice to the other Parties, if the Auction is held and (A) Buyer is not the Winning Bidder or the Back-Up Bidder or (B) Seller

consummates a transaction with the Winning Bidder in accordance with the Bidding Procedures Order, (ii) by Buyer, as of the end of the Initial Period or any Extension Period, if Seller has delivered Notice to Buyer prior to 11:59 p.m. New York City time on the seventy second (72nd) day of such Initial Period or Extension Period stating that Seller elects for Buyer to remain the Back-Up Bidder for an additional Extension Period and if Buyer delivers a Notice to Seller prior to 11:59 p.m. New York City time on the last day of such Initial Period or Extension Period stating that Buyer elects to terminate its status as the Back-Up Bidder or (iii) automatically, as of the end of the Initial Period or any Extension Period, if Seller does not deliver a Notice to Buyer prior to 11:59 p.m. New York City time on the seventy second (72nd) day of such Initial Period or Extension Period stating that Seller elects for Buyer to remain the Back-Up Bidder for an additional Extension Period;

(i) by Buyer, if Seller files an Alternative Seller Plan; or

(j) by Buyer, if the Bankruptcy Court confirms an Alternative Third Party Plan.

13.2 Effect of Termination. Upon any termination of this Agreement, all rights and obligations of the Parties hereunder shall terminate without any liability or obligation of any Party to any other Party, provided that Section 9.8, 10.2, this Section 13.2, Section 13.3, Article XIV and the Confidentiality Agreement shall survive such termination. Subject to the other terms and conditions of this Agreement (including Section 13.3(e) and Section 13.3(f)), no termination of the Agreement pursuant to Section 13.1 shall relieve any Party from liability for damages actually incurred as a result of any breach of this Agreement.

13.3 Expense Reimbursement; Break-Up Fee; Deposit; Liquidated Damages.

(a) Seller shall pay to Buyer all of Buyer's actual documented reasonable fees (including reasonable attorneys' fees and HSR Act and other regulatory filing fees) and expenses incurred in connection with the transactions contemplated by this Agreement through and including the date this Agreement is terminated, not to exceed $5,000,000 (the "Expense Reimbursement"), if this Agreement is terminated:

(i) by Buyer pursuant to Sections 13.1(d), 13.1(e), 13.1(i) or 13.1(j);

(ii) other than in the case of a termination by Buyer on account of the Bidding Procedures Order not being entered within the stated period, by Buyer pursuant to Section 13.1(f); provided, however, that Buyer shall only be entitled to the Expense Reimbursement pursuant to this Section 13.3(a)(ii) if Seller or an Affiliate of Seller enters into an agreement with one or more Third Parties relating to an Alternative Transaction or consummates an Alternative Transaction within nine months after the date of such termination; or

(iii) (A) by either Seller or Buyer pursuant to Section 13.1(h)(i), (B) by Buyer pursuant to Section 13.1(h)(ii) or (C) automatically, pursuant to Section 13.1(h)(iii).

(b) Seller shall pay Buyer an amount equal to $12,750,000 (the "Break-Up Fee"), in addition to the Expense Reimbursement payable pursuant to Section 13.3(a), if this Agreement is terminated:

(i) by Buyer pursuant to Section 13.1(d), 13.1(e), 13.1(i) or 13.1(j);

(ii) other than in the case of a termination by Buyer on account of the Bidding Procedures Order not being entered within the stated period, by Buyer pursuant to Section 13.1(f); provided, however, that Buyer shall only be entitled to the Break-Up Fee pursuant to this Section 13.3(b)(ii) if Seller or an Affiliate of Seller enters into an agreement with one or more Third Parties relating to an Alternative Transaction or consummates an Alternative Transaction within nine months after the date of such termination; or

(iii) (A) by either Seller or Buyer pursuant to Section 13.1(h)(i), (B) by Buyer pursuant to Section 13.1(h)(ii) or (C) automatically pursuant to Section 13.1(h)(iii), provided, however, that solely in the case of this clause (C), the Break-Up Fee shall be increased to $15,150,000.

(c) Seller shall pay to Buyer the Expense Reimbursement and the Break-Up Fee to the extent Buyer is entitled to receive either or both of them in accordance with 13.3(a) and 13.3(b), in cash by wire transfer of immediately available funds to an account designated in writing by Buyer, on or before the following date:

(i) if this Agreement is terminated pursuant to Section 13.1(d), 13.1(e), 13.1(h), 13.1(i) or 13.1(j), the Payment Date; or

(ii) if this Agreement is terminated pursuant to Section 13.1(f), upon Seller or any of its Affiliates entering into an agreement with one or more Third Parties relating to, or consummating, an Alternative Transaction.

(d) All payments with respect to Seller's obligations under this Article XIII shall constitute allowed administrative superpriority expenses under Section 503(b), 507(a)(i) and 507(b) of the Bankruptcy Code, without need for further Order or approval of the Bankruptcy Court.

(e) If this Agreement is terminated by Seller pursuant to Section 13.1(g) as a result of any non-willful breach by Buyer, the Deposit Amount shall be paid to Seller upon such termination, as liquidated damages, and Buyer shall have no further liability or obligation to Seller as a result of such termination. If this Agreement is terminated by Seller pursuant to Section 13.1(g) as a result of any willful breach by Buyer, in addition to any other remedies that Seller may seek, at law or in equity, the Deposit Amount and any interest accrued thereon shall be paid to Seller upon such termination. If this Agreement is terminated for any reason other than as contemplated by the previous two sentences then, in addition to any other amounts that may be owing to Buyer pursuant to this Article XIII or otherwise (but subject to Section 13.3(f)), the Deposit Amount shall be paid to Buyer upon such termination. The Parties acknowledge and agree that the amount of actual losses that Seller would suffer as a result of a termination of this Agreement by Seller pursuant to Section 13.1(g) as a result of any non-willful breach by Buyer

would be difficult to ascertain. The Parties have therefore provided for liquidated damages in such instances, which the Parties acknowledge and agree, (i) are reasonably proportionate to the probable losses that Seller would suffer in connection with such termination and (ii) are not intended as a penalty but are compensatory.

(f) If this Agreement is terminated other than under Section 13.1(d) (only to the extent such termination is based upon (i) an Alternative Third Party Plan that is confirmed after the entry of the Sale Order or, if Buyer is not the Winning Bidder, after the entry of a sale order with respect to the Winning Bidder, that either (A) obligates Seller to enter into the agreement with respect to, or to consummate, the Alternative Transaction that resulted in such termination or (B) results in the Bankruptcy Court entering an Order approving the Alternative Transaction that resulted in such termination or (ii) Seller or any of its Affiliates entering into an agreement with respect to, or consummating, an Alternative Transaction other than in compliance with the Bidding Procedures Order, after the entry of the Sale Order or, if Buyer is not the Winning Bidder, after the entry of a sale order with respect to the Winning Bidder), Section 13.1(e) (only to the extent based upon a willful breach), Section 13.1(i) or Section 13.1(j) (only to the extent such termination is after the entry of the Sale Order or, if Buyer is not the Winning Bidder, after the entry of a sale order with respect to the Winning Bidder), then the Expense Reimbursement and the Break-Up Fee, to the extent each is payable to Buyer hereunder, shall be paid by Seller to Buyer as liquidated damages, and Seller shall have no further liability or obligation to Buyer as a result of such termination. If this Agreement is terminated under Section 13.1(d) (only to the extent such termination is based upon (i) an Alternative Third Party Plan that is confirmed after the entry of the Sale Order or, if Buyer is not the Winning Bidder, after the entry of a sale order with respect to the Winning Bidder, that either (A) obligates Seller to enter into the agreement with respect to, or to consummate, the Alternative Transaction that resulted in such termination or (B) results in the Bankruptcy Court entering an Order approving the Alternative Transaction that resulted in such termination or (ii) Seller or any of its Affiliates entering into an agreement with respect to, or consummating, an Alternative Transaction other than in compliance with the Bidding Procedures Order, after the entry of the Sale Order, or if Buyer is not the Winning Bidder, after the entry of sale order with respect to the Winning Bidder), Section 13.1(e) (only to the extent based upon a willful breach), Section 13.1(i) or Section 13.1(j) (only to the extent such termination is after the entry of the Sale Order or, if Buyer is not the Winning Bidder, after the entry of a sale order with respect to the Winning Bidder), then the Expense Reimbursement, the Break-Up Fee and Additional Damages, if any, shall be paid by Seller to Buyer as liquidated damages, and Seller shall have no further liability or obligation to Buyer as a result of such termination. If liquidated damages are payable to Buyer pursuant to the previous sentence, the Expense Reimbursement and Break-Up Fee shall be payable to Buyer pursuant to the terms of this Section 13.3 and Buyer shall retain the additional right to receive Additional Damages if (i) all of the Transferred Assets are sold (directly or indirectly) to one or more Third Parties pursuant to one or more transactions or (ii) (A) an Alternative Seller Plan or an Alternative Third Party Plan is consummated pursuant to which Seller or any of its Affiliates retains ownership of any of the Transferred Assets and/or (B) any of the Transferred Assets are transferred to one or more Third Parties in connection with a liquidation (it being understood that (i) Additional Damages, if any, shall not become payable until the total amount of all Additional Damages possible under the terms of this Agreement has been finally determined (the date upon which the total amount of Additional Damages, if any,

shall have been finally determined being referred to as the "Determination Date") and all such Additional Damages, if any, shall be paid on the Business Day immediately following the Determination Date and (ii) if Seller is obligated to pay or pays any Additional Damages on account of the consummation of an Alternative Seller Plan or the consummation of an Alternative Third Party Plan, Buyer shall not be entitled to any further Additional Damages upon the subsequent disposition by Seller or any of its Affiliates of any of the Transferred Assets that were retained by Seller or any of its Affiliates pursuant to such Alternative Seller Plan or Alternative Third Party Plan). The Parties acknowledge and agree that the amount of actual losses that Buyer would suffer as a result a termination of this Agreement as described in this Section 13.3(f) would be difficult to ascertain. The Parties have therefore provided for liquidated damages in such instances, which the Parties acknowledge and agree (i) are reasonably proportionate to the probable losses that Buyer would suffer in connection with any such termination and (ii) are not intended as a penalty but are compensatory. For purposes of clarity, Buyer shall have no right to receive Additional Damages if Buyer (1) terminates this Agreement pursuant to Section 13.1(d) if (A) an Alternative Third Party Plan that is confirmed prior to the entry of the Sale Order or, if Buyer is not the Winning Bidder, prior to the entry of a sale order with respect to the Winning Bidder, that either (I) obligates Seller to enter into the agreement with respect to, or to consummate, the Alternative Transaction that resulted in such termination, or (II) results in the Bankruptcy Court entering an Order approving the Alternative Transaction that resulted in such termination or (B) Seller or any of its Affiliates enters into an agreement with respect to, or consummates an Alternative Transaction other than in compliance with the Bidding Procedures Order, prior to the entry of the Sale Order or, if Buyer is not the Winning Bidder, prior to the entry of a sale order with respect to the Winning Bidder, or (2) terminates this Agreement pursuant to Section 13.1(j) prior to the entry of the Sale Order or, if Buyer is not the Winning Bidder, prior to the entry of a sale order with respect to the Winning Bidder.

ARTICLE XIV.

MISCELLANEOUS PROVISIONS

14.1 Notices. All notices, requests, demands, and other communications required or permitted to be given or made hereunder by any Party (each a “Notice”) shall be in writing and shall be deemed to have been duly given or made if (i) delivered personally, (ii) delivered by prepaid overnight courier service, or (iv) delivered by confirmed telecopy or facsimile transmission to the Parties at the following addresses and telecopy or facsimile numbers (or at such other addresses and numbers as shall be specified by the Parties by similar notice):

If to Buyer:

TransCanada Hydro Northeast Inc.
c/o TransCanada Corporation
TransCanada PipeLines Tower
450 First Street, S.W.
Calgary, Alberta T2P5H1
Attention: Albrecht W.A. Bellstedt, Q.C., Executive Vice President, Law and General Counsel
Fax: (403) 920-2410

with a copy to:

Mayer, Brown, Rowe & Maw LLP
190 South LaSalle Street
Chicago, IL 60603
Attention: Marc F. Sperber
Fax: (312) 701-7711

If to Seller or Employer:

USGen New England, Inc.
7600 Wisconsin Avenue
Bethesda, MD 20814
Attention: General Counsel
Fax: (301) 280 6800

with a copy to:

Blank Rome LLP
The Chrysler Building
405 Lexington Avenue
New York, NY 10174
Attention: Marc E. Richards
Fax: (212) 885 5002

and with a copy to:

Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
Attention: Ronald Fisher
Fax: (215) 832-5479

Notices shall be effective (i) if delivered personally or by overnight courier service, upon actual receipt by the intended recipient, or (ii) if sent by telecopy or facsimile transmission, when the confirmation of transmission is received by the sender.

14.2 Fees and Expenses. Except as otherwise provided herein, each Party shall pay any fees and expenses incurred by it incident to this Agreement and in preparing to consummate and consummating the transactions provided for herein.

14.3 Successors and Assigns. Subject to the following sentence, this Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns. Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned or delegated by any Party without the prior written consent of the other Parties provided that no such written consent of any other Party shall be required for Buyer to (i) assign any of its rights and obligations hereunder to any wholly-owned subsidiary of TCPL or (ii) collaterally assign to Buyer's lenders any or all of Buyer's rights and interests hereunder; it being agreed that, in the case of any such assignment under clause (i) or (ii), Buyer shall not be relieved of any of its obligations hereunder. Nothing in this Agreement is intended to or shall confer upon any Person other than the Parties, and their respective successors and assigns, any rights, benefits, or remedies of any nature whatsoever under or by reason of this Agreement or any transaction contemplated by this Agreement. Without limiting the foregoing, except as provided in the Buyer Parent Guarantee, no direct or indirect holder of any equity interests or securities of any Party (whether such holder is a limited or general partner, member, stockholder or otherwise), nor any Affiliate of any Party, nor any Representative of each of the Parties and their respective Affiliates, shall have any liability or obligation arising under this Agreement or the transactions contemplated hereby.

14.4 Amendment; Waiver. This Agreement may not be amended or modified except by an instrument in writing signed by all the Parties, and no performance, term or condition can be waived in whole or in part, except by a writing signed by the Party against whom enforcement of the waiver is sought. Any performance, term or condition of this Agreement may be waived in writing at any time by the Party hereto entitled to the benefit thereof. No delay or failure on the part of any Party in exercising any rights hereunder, and no partial or single exercise thereof, will constitute a waiver of such rights or of any other rights hereunder.

14.5 Entire Agreement; Disclosure Schedules. This Agreement, together with the Schedules and the Exhibits hereto, the Ancillary Agreements and the Confidentiality Agreement, constitutes the entire agreement among the Parties with respect to the subject matter hereof and, other than the Confidentiality Agreement, supersede all prior agreements and understandings, both written and oral, between or among the Parties with respect to the subject matter hereof and thereof. There are no restrictions, promises, representations, warranties, covenants or undertakings between or among the Parties, other than those expressly set forth or referred to herein or therein.

14.6 Governing Law. This Agreement shall be governed by and construed and enforced in accordance with (i) the laws of the State of New York, without regard to conflict of laws rules or principles and (ii) the Bankruptcy Code, to the extent applicable.

14.7 Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

14.8 Disclosure. Disclosure of any matter, fact or circumstance in any Schedule to this Agreement shall be disclosure thereof for purposes of all other Schedules to this Agreement; provided that such disclosure is (i) explicitly cross referenced to such other Schedule or (ii) sufficiently detailed so as to be reasonably recognizable to Buyer that such disclosure is relevant and responsive to such other Schedule. Certain information set forth in the Schedules is included solely for informational purposes, is not an admission of liability with respect to the matters covered by the information, and may not be required to be disclosed pursuant to this Agreement. The specification of any Dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Schedules is not intended to imply that such amounts (or higher or lower amounts) or such items are or are not material, and no Party shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Schedules in any dispute or controversy among the Parties as to whether any obligation, item, or matter not described herein or included in a Schedule is or is not material for purposes of this Agreement. The fact that any Assigned Contract or Lease is set forth on any Schedule is not intended, nor shall be construed, as a representation, warranty or admission by Seller that any Consent under Section 365 of the Bankruptcy Code is required with respect to such Assigned Contract or Lease.

14.9 Titles and Headings. Titles and headings to Articles and Sections herein are inserted for convenience of reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

14.10 Invalid Provisions. If any provision of this Agreement (other than Section 5.4, Section 5.5, Section 5.6, Article II, Article III or Article IV of this Agreement or any part or provision thereof) is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations under this Agreement of Seller on the one hand and Buyer on the other hand will not be materially and adversely affected thereby, (a) such provision shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement; and (d) in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible. If any provisions of Section 5.4, Section 5.5, Section 5.6, Article II, Article III or Article IV of this Agreement are held to be illegal, invalid or unenforceable this Agreement shall be void and of no further effect.

14.11 Mutual Drafting. This Agreement is the joint product of Buyer, Seller and Employer, each provision hereof has been subject to the mutual consultations, negotiation and agreement of Buyer, Seller and Employer, and shall not be construed for or against any Party hereto as a result of such Party having prepared such provision.

14.12 Submission to Jurisdiction. Any litigation arising hereunder or related hereto shall be tried by the Bankruptcy Court or, if the Bankruptcy Court does not have jurisdiction, in the courts of the State of New York, or the United States District Courts, located in the City of New York. Each Party irrevocably consents to and confers personal jurisdiction on the courts referred to above, and irrevocably and unconditionally waives any objection to the venue of such

courts, and further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any lawsuit, action or other Proceeding brought in any such court has been brought in an inconvenient forum. Each Party further agrees that service of process may be made on such Party by mailing a copy of the pleading or other document by registered or certified mail, return receipt requested, to its addresses for the giving of notice provided for in Section 14.1 hereof, with service being deemed to be made five (5) Business Days after the giving of such notice.

14.13 WAIVER OF JURY TRIAL. BUYER, SELLER AND EMPLOYER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. FURTHER, BUYER, SELLER AND EMPLOYER EACH HEREBY CERTIFY THAT NO REPRESENTATIVE OF THE OTHER, OR COUNSEL TO THE OTHER, HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT IT WOULD NOT, IN THE EVENT OF SUCH LITIGATION, SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION. BUYER, SELLER AND EMPLOYER EACH ACKNOWLEDGE THAT THE OTHER HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, INTER ALIA, THE PROVISIONS OF THIS SECTION 14.13.

14.14 Limitation on Liability. No Party shall have any liability, whether based on contract or tort (including negligence) for any punitive, exemplary, consequential, special, indirect or incidental loss or damage suffered by another Party, even if such Party is advised of the possibility of such losses or damages, it being understood that the foregoing shall not limit Buyer's right to receive Additional Damages, if any, pursuant to Section 13.3.

14.15 Selection of Arbitrator. With respect to any provision contained herein which explicitly requires resolution of a dispute by an arbitrator, if the Parties hereto are unable to agree upon a mutually acceptable arbitrator, then such arbitration shall be conducted before a single arbitrator appointed by the AAA and shall be conducted in accordance with The Commercial Arbitration Rules of the AAA then in effect.

14.16 Disclaimer of Warranties. Notwithstanding anything contained in this Agreement, it is the explicit intent of each Party that neither Seller nor Employer is making any representations or warranties whatsoever, express or implied, beyond those given in Article VI and Article VII of this Agreement, and it is understood that, except for the representations and warranties contained herein, Buyer takes the Transferred Assets "as is" and "where is." Without limiting the generality of the immediately foregoing, except for the representations and warranties contained in Article VI and Article VII, Seller and Employer hereby expressly disclaim and negate any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to (a) the condition of the Transferred Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) or (b) any infringement by Seller or Employer or any of their respective Affiliates of any patent or proprietary right of any Third Party it being the intention of the Parties that the Transferred Assets are to be accepted by Buyer in their present condition and state of repair. It is understood and agreed that any cost estimates, projections, or

other predictions or other statements or information contained or referred to in the offering materials that have been provided to Buyer are not and shall not be deemed to be representations or warranties of Seller or Employer or any of their respective Affiliates.

14.17 Additional Claims. Buyer acknowledges TCPL has filed a proof of claim against Seller in the amount of $71,133,275.63 (CDN). Buyer agrees that such claim, and any other claims of TCPL or any claims of Buyer's or TCPL's Affiliates against Seller (other than any claims pursuant to this Agreement, any Ancillary Agreement or any other document or delivery delivered at the Closing in connection with the consummation of the transactions contemplated by this Agreement) shall be resolved in the claims process established by the Bankruptcy Court and shall not affect Buyer's obligation hereunder to pay, subject to the terms and conditions herein, the Purchase Price in full at Closing, without setoff, deduction or counterclaim.

14.18 Specific Performance. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement or the Ancillary Agreements were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, after the entry of the Sale Order or, if Buyer is not the Winning Bidder, after the entry of a sale order with respect to the Winning Bidder, each Party shall be entitled, in addition to any other remedy to which such Party may be entitled at law or in equity, to an injunction or injunctions to restrain willful breaches of this Agreement and the Ancillary Agreements that would result in a termination right set forth in Section 13.1(d), 13.1(e) (only to the extent based upon a willful breach), 13.1(i) or 13.1(j) and to enforce specifically the terms and provisions of this Agreement and the Ancillary Agreements that may be avoided on account of any such willful breach.

14.19 Payments Pursuant to Agreement. Any amounts payable by one Party to another Party pursuant to this Agreement shall be paid in cash in Dollars by wire transfer of immediately available funds.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, each Party has executed and delivered this Hydro Asset Purchase and Sale Agreement as of the day and year first above written.

USGEN NEW ENGLAND, INC.
(Seller)

By: _____
Name: James S. Gott
Title: V.P.

USG SERVICES COMPANY, LLC
(Employer)

By: _____
Name: P. CHRISMAN TRIBE
Title: EXECUTIVE VICE PRESIDENT

TRANSCANADA HYDRO NORTHEAST INC.
(Buyer)

By: _____
Name:
Title:

IN WITNESS WHEREOF, each Party has executed and delivered this Hydro Asset Purchase and Sale Agreement as of the day and year first above written.

USGEN NEW ENGLAND, INC.
(Seller)

By:_____
Name:
Title:

USG SERVICES COMPANY, LLC
(Employer)

By:_____
Name:
Title:

TRANSCANADA HYDRO NORTHEAST INC.
(Buyer)

By:_____
Name: Alexander J. Pourbaix
Title: President

TRANSCANADA HYDRO NORTHEAST INC.
(Buyer)

By:_____
Name: Donald R. Marchand
Title: Vice-President and Treasurer