



NEW APPLICATION



0000025272

Jana Van Ness  
Manager  
State Regulations

Tel 602/250-2310  
Fax 602/250-3399  
e-mail: [Jana.Van.Ness@aps.com](mailto:Jana.Van.Ness@aps.com)  
<http://www.apsc.com>

Mail Station 9905  
P.O. Box 53999  
Phoenix, AZ 85072-3999

April 23, 2001

Ms. Deborah Scott  
Director, Utilities Division  
Arizona Corporation Commission  
1200 W. Washington  
Phoenix, Arizona 85007

E-01345A-01-0344

AZ CORP COMMISSION  
DOCUMENT CONTROL

2001 APR 23 P 1:32

RECEIVED

RE: PROPOSED QF SALES OF AGREEMENT WITH ABITIBI

Dear Ms. Scott:

Enclosed please find a power sales/purchase agreement between Arizona Public Service Company ("APS" or "Company"), and Abitibi ("Abitibi"). Abitibi is self-certified as a "Qualifying Facility" ("QF") under applicable federal regulations. Pursuant to Decision No. 52345 (July 27, 1981), the Company is required to file all power sales/purchase agreements between itself and QFs over 100 kW with the Arizona Corporation Commission ("Commission") for approval. If no action is taken within 30 days, such approval is deemed to have occurred.

However, the Company is anxious to have this additional 12 MW resource available before the warm weather begins, and would ask the Commission to act within the 30 days permitted by that Decision.

If you or your staff have any questions, please feel free to call me.

Sincerely,

Jana Van Ness  
Manager  
State Regulations

Attachment

JVN/srm

Cc: Patrick Williams,  
Manager, Compliance & Enforcement  
Docket Control (Original, plus 10 copies)

**POWER PURCHASE AND SALE AGREEMENT**  
**BETWEEN**  
**ABITIBI CONSOLIDATED SALES CORPORATION**  
**AND**  
**ARIZONA PUBLIC SERVICE COMPANY**

**APS Contract No. 61977**

**POWER PURCHASE AND SALE AGREEMENT  
BETWEEN  
ABITIBI CONSOLIDATED SALES CORPORATION  
AND  
ARIZONA PUBLIC SERVICE COMPANY**

THIS POWER PURCHASE AND SALE AGREEMENT is entered into by and between Abitibi Consolidated Sales Corporation, a Delaware corporation ("Seller"), and Arizona Public Service Company, an Arizona corporation ("Buyer"). In this Agreement, the Seller and the Buyer may be individually referred to as a "Party" or collectively as "Parties". All defined terms have the meanings set forth on Exhibit "A" attached hereto and incorporated herein unless otherwise specifically defined in this Agreement.

WHEREAS, Abitibi owns and operates a cogeneration facility located near Snowflake, Arizona, that is a Qualifying Facility pursuant to Section 292.207(a)(1) of the Federal Energy Regulatory Commission's regulations.

WHEREAS, Abitibi desires to sell power from its Qualifying Facility;

WHEREAS, from time to time, the Parties desire to engage in certain Transactions with respect to the purchase and sale of Energy Products;

WHEREAS, the Parties desire to enter into this Agreement in order to set forth the terms and conditions relating to all such Transactions;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

**ARTICLE 1  
CONTRACTING PROCEDURE**

1.1 Transactions. Seller agrees to sell Energy Products to the Buyer, and the Buyer agrees to pay for such sales (each such sale a "Transaction") in accordance with this Agreement. The terms and conditions of each Transaction hereunder shall be governed by this Agreement, and shall be documented in a Confirmation to the extent required by Section 1.4.

1.2 Single Agreement. From time to time the Parties may, but shall not be obligated to, enter into one or more Transactions, each of which shall be governed by this Agreement and the Confirmation exchanged between the Parties with respect to such Transaction. If the terms of a specific Confirmation are inconsistent with this Agreement (or, absent an accepted Confirmation, an oral Transaction agreement), the terms of such Confirmation or oral Transaction agreement shall control for the purpose of the relevant Transaction. All Transactions are entered into in reliance on the fact that this Agreement, oral Transactions and all Confirmations form a single agreement

between the Parties and, in the absence of the same forming such a single agreement, the Parties would not otherwise enter into any Transactions.

1.3 Limited Undertaking. Neither Party commits, by entering into the Agreement, to enter into any individual Transaction with the other Party.

1.4 Oral Agreements and Confirmation. A Transaction agreed to orally and specifying at least the Purchaser, Seller, type of Energy Product, the quantity, the Purchase Price, the Delivery Point, delivery period, any conditions to the delivery or acceptance of the Energy Product, such as, but not limited to, any prior obligations with respect to delivery or acceptance which might affect the Transaction, shall be binding and enforceable as of the time of such oral agreement and shall be confirmed as follows (except for certain Oral Transactions specified in this Section): the Buyer under the Transaction shall confirm the Transaction by forwarding to Seller by facsimile a Confirmation substantially in the form of Exhibit "B" attached hereto by the close of the third (3<sup>rd</sup>) Business Day after Trade Date. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer verbally or in writing of such objections within five (5) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Buyer fails to send a Confirmation within three (3) Business Days of the Trade Date, a Confirmation forwarded by Seller, substantially in the form of Exhibit "B" attached hereto, shall be executed by Buyer and returned to Seller within five (5) Business Days of Buyer's receipt of the Seller's Confirmation. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller verbally or in writing of such objection within five (5) Business Days following Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. Confirmations issued by both Parties and reflecting the same terms or executed facsimile copies of a Confirmation shall constitute an original signed document for all purposes under the Agreement and under law. Any objection made by either Party shall have no effect on the commencement of delivery and purchase of the Energy Product under a Transaction. The objection shall be addressed in accordance with Section 1.5. The Parties acknowledge and understand that a Transaction may commence prior to the delivery of the Confirmation or completion of the confirmation process for such Transaction, and that such Confirmation and process are to memorialize in writing terms that are binding between the Parties as of the time orally agreed. A signed Confirmation, or one that is deemed conclusive as set forth above, shall constitute with this Agreement the entire agreement and understanding with respect to its subject matter and supersede all prior oral communication and prior writings with respect thereto. Oral Transactions providing for the sale of Energy Products for a period less than seven (7) days (or one hundred forty-four (144) hours in total) in duration will not require a written Confirmation and such oral Transactions shall be deemed a "Confirmation" for purposes of this Agreement. Each Party adopts its letterhead as its signature on any Confirmation as the identification, authentication and creation of a binding obligation on such Party.

1.5 Disagreements. A tape recording of the oral agreement, if available, may be relied upon to resolve any differences, provided that a true and complete copy of the tape recording is made available to the other Party within three (3) Business Days of a request. The Parties will cooperate in good faith to correct any error or to reach mutual agreement as to the terms of the Transaction in a timely manner, and corrected Confirmations shall be sent and/or confirmed in accordance with Section 1.4. If the Parties are unable to reach mutual agreement as to the terms of the Transaction, the Parties shall resolve their dispute pursuant to the provisions of Article 11.

**ARTICLE 2**  
**SERVICE TO BE RENDERED; FAILURE TO PERFORM**

2.1 Transfer. As between the Parties, Seller shall be deemed to be in exclusive control and possession of the Energy Products deliverable hereunder and responsible for any damage or injury caused prior to the time the same shall have been delivered to Buyer. At and after delivery of the Energy Products to Buyer at the Delivery Point(s), Buyer shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

2.2 Ownership/Risk of Loss/Indemnity. Unless otherwise agreed, ownership of the Energy Products and risk of loss shall pass from Seller to Buyer at the Delivery Point. Seller and Buyer each assumes full responsibility and liability for and shall indemnify and hold harmless the other Party from all liability, cost, and expense (including court costs and reasonable attorneys' fees) on account of any and all damages, claims, suits, judgments, demands, actions, penalties or liabilities (including injury to and death of persons), growing out of the operations conducted or performance hereunder by the indemnifying Party or arising from any act or incident occurring when title to the Energy Product is in the possession of the indemnifying Party; provided that, the indemnifying Party shall not be liable to the extent the same resulted from gross negligence or willful misconduct of the indemnified Party or the indemnified Party's breach of this Agreement.

2.3 Timing & Scheduling. All Energy Products shall be delivered on a scheduled basis as specified in the Confirmation unless otherwise agreed, and in accordance with the rules and regulations of the applicable Control Area.

2.4 Transmission Arrangements. Unless otherwise specified in the Confirmation, the Seller shall be responsible for making the arrangements necessary for transmission of Energy Products provided hereunder to the Delivery Point and for all costs, including losses associated with such transmission, to such Delivery Point. Buyer shall be responsible for all such arrangements and costs for the transmission of Energy Products, including losses associated with such transmission, from the Delivery Point to Buyer's receipt point.

2.5 Facilities. Sales under this Agreement shall not require either Party to construct or install any new facilities and no such sales shall be deemed to constitute the dedication of either Party's system or any portion thereof to the public or to the other Party. Neither Party shall incur any responsibility under this Agreement to operate or maintain facilities on behalf of the other Party or any other entity.

2.6 Damages for Failure to Deliver or Receive Firm Energy Products. If either Party fails to deliver or receive, as the case may be, the quantities of Firm Energy Products due under any Transaction and such failure is not excused by Force Majeure (thereby becoming a "Non-Performing Party"), the other Party (the "Performing Party") shall be entitled to receive from the Non-Performing Party an amount calculated as described in this Section 2.6:

**2.6.1 Buyer Non-Performance.** If the Non-Performing Party is the Buyer, and the amount the Non-Performing Party scheduled or received in any hour is less than the applicable hourly contract quantity, then the Non-Performing Party shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the contract price differed from the Sales Price (Contract Price - Sales Price) and the amount by which the quantity received by the Non-Performing Party was less than the hourly contract quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the Delivery Point, which the Performing Party incurred to achieve the Sales Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Non-Performing Party's schedule or receipt of electric energy (based on the Performing Party's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this Section 2.6.1 are negative, then neither the Performing Party nor the Non-Performing Party shall pay any amount under this Section.

**2.6.2 Seller Non-Performance.** If the Non-Performing Party is the Seller, and the amount the Non-Performing Party scheduled or delivered in any hour is less than the applicable hourly contract quantity, then the Non-Performing Party shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the contract price (Replacement Price - Contract Price) and the amount by which the quantity delivered by the Non-Performing Party was less than the hourly contract quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the Delivery Point, which the Performing Party incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Non-Performing Party's schedule or delivery (based on the Performing Party's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this Section 2.6.2 are negative, then neither the Non-Performing Party nor the Performing Party shall pay any damages under this Section.

**2.6.3 Payment Date.** The Non-Performing Party shall pay any amount due from it under this Section within the billing period as specified in Section 3.1 of this Agreement or as agreed to in the applicable Confirmation, provided, however, the Performing Party may, at its sole option, accelerate payments due under this Section by sending an invoice for such payments to the Non-Performing Party, which payment shall be due within five (5) Business Days of the receipt of the invoice. Netting shall not apply to such accelerated invoice amount.

**2.7 Metering.** Arizona Public Service Company ("APS"), shall provide, and maintain, or have maintained, the metering equipment for measuring the capacity and energy delivered hereunder. APS shall: (i) At its own expense, make or provide for tests and inspections at least once a year, after notices to Seller, in accordance with established utility practices, for all meters in order to maintain a commercial standard of accuracy, (ii) restore to a condition of accuracy any meter(s) found to be inaccurate, and (iii) advise Seller promptly of the results of any such test.

### ARTICLE 3 BILLING, PAYMENT AND NETTING

3.1 Invoices. APS shall maintain and read the metering equipment for measuring the energy delivered hereunder. For review purposes, Buyer shall furnish Seller with a written invoice reflecting the Purchase Price, and any other charges due, within 10 (ten) Business Days after APS reads the meter. Such invoices may be furnished to Seller by facsimile transmission or by such other method as the Parties agree.

3.2 Payment. Unless otherwise agreed in a Confirmation, all invoices shall be due and payable by the 20<sup>th</sup> of the month following the month in which the meter is read or ten (10) days after receipt of acknowledgement from Seller that invoice received from Buyer is correct, whichever is earlier. All such payments shall be made by electronic transfer or by such other method as shall cause such payment to be available for the account of Seller on or before the due date.

3.3 Next Business Day. If the last calendar day for a payment due under this Agreement is not a Business Day, then such payment shall be due not later than the Business Day following that calendar day.

3.4 Late Payment. If either Party fails to remit any amount payable by it when due, interest on such unpaid amounts shall accrue at the Base Rate from and including the date such payment was due to but excluding the day it is actually made.

3.5 Netting of Payments. If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under this Agreement or Confirmation, then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment due date in Article 3.2 of this Agreement, unless the Parties have otherwise agreed to a different payment due date in a Confirmation. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Agreement for transactions shall be offset against each other or set off or recouped therefrom

3.6 Disputed Invoices or Payments. If Seller in good faith disputes the correctness of an invoice and submits to Buyer a written statement detailing the items disputed, Buyer shall, nevertheless, pay the undisputed amount when due. The Parties shall attempt in good faith to resolve the dispute promptly through negotiation between executives who have authority to settle the controversy, and who are at a higher level of management than the persons with direct responsibility for the related Transaction. Within fifteen (15) days after delivery of the written statement described above, the Buyer shall send a written response to the Seller. Both the statement and the response shall include: (a) a statement of the Party's position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the Seller's notice, the designated executives of the Parties shall meet at a mutually acceptable time and place and, thereafter, as often as they deem necessary to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause shall be confidential and treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence. If the matter has not been resolved

within sixty (60) days of the Purchaser's notice, or if the Parties fail to meet within thirty (30) days after delivery of the Seller's notice, either Party may initiate arbitration as provided in Section 11.2. If it is ultimately determined that Buyer owes all or a portion of the disputed amount, Buyer shall pay Seller that amount within two (2) Business Days of receiving notice of such determination, along with interest at the Base Rate from and including the original payment due date to but excluding the date the payment is actually made. Each Party shall pay its own costs, fees and expenses in connection with this dispute resolution process except as otherwise set forth in Section 11.2.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES**

4.1 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party, as of the date of this Agreement, as of the date of its entry into each Transaction hereunder, and as of the date of each delivery of Energy Products to or from the Delivery Point, as applicable, in connection with such Transaction, that:

4.1.1 It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

4.1.2 It has the corporate, governmental and/or other legal capacity, authority and power to execute this Agreement and any Confirmation or other document relating hereto to which it is a party, to deliver this Agreement and any Confirmation or other document relating hereto that it is required hereby to deliver, to enter into any Transaction pursuant to this Agreement, and to perform its obligations under this Agreement, any Transaction and any Confirmation or other document relating hereto to which it is a party, and has taken all necessary action to authorize such execution, delivery and performance;

4.1.3 All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to this Agreement or any Confirmation or other document relating hereto to which it is a party have been obtained or submitted and are in full force and effect and all conditions of any such authorizations, approvals, consents, notices and filings have been complied with;

4.1.4 No Event of Default under Article 6, or event which with notice and/or lapse of time would constitute such an Event of Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Confirmation or other document relating hereto to which it is a party;

4.1.5 There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Confirmation or other document relating hereto to which it is a party or its ability to perform its obligations under the same;

4.1.6 It has made its trading decisions (including regarding the suitability thereof) based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party; and

4.1.7 It has not received from the other Party any assurances or promises regarding any financial results or benefits under this Agreement or under any and all Transactions and Confirmations thereof.

4.2 Warranties of Seller. Seller further warrants with respect to each Transaction, as of the date of each delivery of Energy Products in connection with such Transaction, that Seller is the owner of and has good title to such Energy Products and that such Energy Products are transferred to Buyer shall pass to Buyer at the Delivery Point specified in the Transaction free and clear of any liens, taxes, claims, security interests or other encumbrances, or any right or interest therein or thereto by any person or entity of any kind whatsoever.

4.3 Limitation of Warranties. ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, ARE DISCLAIMED.

4.4 Survival. This Article 4 survives the expiration or termination of this Agreement.

## ARTICLE 5 FINANCIAL RESPONSIBILITY AND INFORMATION

5.1 Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, or if there is any material change since its entry into the most recent Transaction in the condition (financial or otherwise), net worth, assets, properties or operations of such party, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair either Party's (and its Guarantor's, if one exists) ability to fulfill its obligations), Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice, Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a Guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article 6 of the Agreement.

## ARTICLE 6 EVENTS OF DEFAULT; REMEDIES

6.1 Remedies Upon Event of Default. Upon an Event of Default, and so long as such Event of Default is continuing, the Performing Party may, with respect to the defaulting Party, exercise any right or remedy available at law or in equity.

6.2 Notices of Default. Each Party agrees to notify the other Party promptly of any event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default with respect to it.

6.3 Forward Contract. The Parties agree that Transactions for the forward sale and purchase of Energy Products entered into under this Agreement shall constitute "forward contracts," and that the Parties shall constitute "forward contract merchants," within the meaning of the United States Bankruptcy Code.

6.4 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of an Event of Default involving the other Party. Notwithstanding such mitigation obligations, neither Party shall be obligated to modify its own generation dispatch as a mitigation effort.

6.5 Limitations of Liability. THE PARTIES CONFIRM AND AGREE THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY THEREFOR. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE PARTIES CONFIRM AND AGREE THAT UNDER THIS AGREEMENT AND ANY TRANSACTION, NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, BUT NOT LIMITED TO, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE DEEMED LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

6.6 Survival. This Article 6 survives the expiration or termination of this Agreement.

## ARTICLE 7 FORCE MAJEURE

7.1. Suspension of Obligations. Except with regard to a Party's obligation to make payments under the Agreement or any Confirmation for a specific Transaction, in the event either Party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to a Transaction, it is agreed that upon such Party's (the "Claiming Party") giving notice and full particulars of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, such notice to be confirmed in writing or by facsimile to the other Party, then the obligations of the Claiming Party shall, to the extent they are affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer period, and the Claiming Party shall not be liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure. The Party receiving such notice of Force Majeure shall have until the end of the Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of an event of Force Majeure.

7.2. Due Diligence. A Party affected by an event of Force Majeure shall use due diligence to fulfill its obligations hereunder and to remove any disability caused by such event at the earliest practicable time. Nothing herein shall require a Party to settle any strike or labor dispute. The Party affected by Force Majeure shall continue to perform immediately after such cause has been removed.

## ARTICLE 8 TAXES

8.1 Taxes. Seller shall pay or cause to be paid, all taxes, fees, levies, penalties, licenses or charges imposed by any government authority ("Taxes") on or with respect to any Energy Products prior to its delivery to Buyer up to and at the Delivery Point. Buyer shall pay or cause to be paid, all Taxes on or with respect to Energy Products from the Delivery Point (other than ad valorem, franchise, or income taxes which are related to the sale of the Energy Products and therefore the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Taxes which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller hereunder. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes for which it is exempt under the law. Each Party shall indemnify, defend and hold the other Party harmless from any liability against all of any Taxes for which the indemnifying Party is liable.

## ARTICLE 9 NOTICES AND OTHER COMMUNICATIONS

9.1 Methods. All invoices, payments, statements, notices, and communications (except with respect to the oral agreements provided for in Section 1.4 or Oral Transactions made pursuant to this Agreement) shall be in writing and made as follows:

9.1.1 All written communications to the other Party shall be sent by first class, registered, certified or express mail, return receipt requested, postage prepaid, or by comparable delivery

service, or by hand, or by facsimile (with the original sent by first class mail) to the following individuals:

9.1.1.1 For the Buyer:

ARIZONA PUBLIC SERVICE COMPANY  
Marketing & Trading Department  
400 N. 5th Street, Station 9860  
Phoenix, AZ 85004  
ATTN: Contracts Department  
Phone: (602) 250-3548  
Fax: (602) 250-3199

**Copies of notices pursuant to any Section of Article 6 shall also be sent to the attention of the Vice President and General Counsel at the same address, Mail Station 9068, phone (602)250-3252 and fax (602)250-3002.**

Invoices to: ARIZONA PUBLIC SERVICE COMPANY  
Marketing & Trading Department  
400 N. 5th Street, Station 9860  
Phoenix, AZ 85004  
ATTN: Middle Office  
Phone: (602)250-2539  
Fax: (602)-250-3199

Payments to: ARIZONA PUBLIC SERVICE COMPANY  
APS General Fund  
Wells Fargo Bank  
ABA: 121000248  
Acct: 4159540921

9.1.1.2 For Seller:

Abitibi Consolidated Sales Corporation  
Snowflake Division  
Spur 277- North  
Snowflake, AZ 85937  
ATTN: Power & Utility Superintendent  
Phone: (520) 536-9330  
Fax: (520) 536-9439

P.O. Box 128  
Snowflake, AZ 85937

**Copies of notices pursuant to any Section of Article 6 shall also be sent to the attention of the General Manager at the same address, phone (520) 536-9201 and fax (520) 536-9436.**

Invoices to: Abitibi Consolidated Sales Corporation  
P.O. Box 128  
Snowflake, AZ 85937  
ATTN: Power & Utility Superintendent  
Phone: (520) 536-9330  
Fax: (520) 536-9439

Payments to: Abitibi Consolidated Sales Corporation  
P.O. Box 128  
Snowflake, AZ 85937  
ATTN: Controller

9.1.2 Either Party may modify any information specified in Section 9.1.1 by giving written notice to the other Party in accordance with this Section, and, for a specific Transaction, in the Confirmation for that Transaction.

9.1.3 Notwithstanding any other provision of the Agreement, a notice of early termination pursuant to Article 6 shall be delivered by hand or overnight delivery service.

9.2 Receipt. All written communications made as provided in Section 9.1 shall be deemed given upon receipt by the Party to which it is addressed, which, in the case of facsimile, shall be deemed to occur on the date that transmission is received by the addressee in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine).

## ARTICLE 10 EFFECTIVE DATE AND TERM

10.1 Effective Date. This Agreement shall become effective on the date first stated above. However, if the FERC, the Arizona Corporation Commission, or any court imposes any condition, limitation, or qualification which, individually, or in the aggregate, either Party determines to have a material adverse effect on such Party with respect to this Agreement and/or any Transactions, as applicable, such Party shall as soon as practicable notify the other Party and the Parties shall cooperate on a commercially reasonable basis to renegotiate the terms of this Agreement and/or any Transactions to preserve the original economic relationship of the Parties with respect to this Agreement and/or any such Transactions.

10.2 Obtaining Regulatory Approval. Each Party will use commercially reasonable efforts to take or cause to be taken, all actions required to obtain the necessary regulatory approvals so that this Agreement shall become effective and any actions taken hereunder shall be effective as provided herein at the earliest practicable date.

10.3 Termination. This Agreement shall remain in effect until terminated by either Party upon thirty (30) days prior written notice or pursuant to Article 6 of this Agreement; provided,

however, that this Agreement shall remain in effect with respect to any Transaction entered into prior to the effective date of the termination of this Agreement unless such Transaction is terminated pursuant to Article 6.

**ARTICLE 11  
ALTERNATIVE DISPUTE RESOLUTION**

11.1 Alternative Dispute Resolution. All disputes arising under this Agreement or any Transaction are subject to the provisions of this Article 11.

11.2 Arbitration. Any disputes between the Parties relating to the terms of this Agreement or any Transaction or the breach thereof shall be submitted to binding arbitration in the State of Arizona in accordance with the then-prevailing Commercial Arbitration Rules of the American Arbitration Association ("AAA"), as modified herein (the "Rules") and the Supplementary Procedures for Large, Complex Disputes. Submission shall be made upon the request of either Party. The place of arbitration shall be Phoenix, Arizona. There shall be three (3) arbitrators, of whom the claimant shall appoint one (1) and the respondent shall appoint one (1) within twenty (20) days of receipt by the respondent from the AAA of service of the notice of arbitration. The two (2) arbitrators so appointed shall select the chairperson of the tribunal within twenty (20) days of the appointment of the second arbitrator. If the two Party-appointed arbitrators fail to appoint a chairperson within the time limits set forth herein, the chairperson will be appointed in accordance with the Rules. The chairperson shall be bound to schedule and hear the dispute within forty-five (45) calendar days after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. Each Party to the arbitration shall pay their own costs, including, but not limited to, the compensation, costs, fees and expenses of its own witnesses, experts and counsel. The compensation and any costs and expenses of the arbitrators shall be borne equally by the parties. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction.

11.3 Confidentiality. The arbitration proceedings conducted pursuant to this Agreement shall be confidential. Neither Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by the other Party in the arbitration proceedings or about the existence, contents or results of the arbitration award without the prior written consent of such other Party except as required in the course of a judicial, regulatory or arbitration proceeding, as may be requested or required by a governmental authority or as required for the enforcement of an arbitral award. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall give the other Party reasonable written notice of the intended disclosure and afford the other Party a reasonable opportunity to protect its interests.

## ARTICLE 12 GENERAL PROVISIONS

12.1 Entire Agreement, Amendments and Counterparts. The terms of this Agreement constitute the entire agreement between the Parties with regard to its subject matter and may be changed only by written agreement executed after the date hereof by the Parties or, in the case of an oral modification for a specific Transaction, in accordance with Section 1.4. This Agreement, the Confirmation for any Transaction, and any modification of the foregoing may be executed and delivered in counterparts, including by a facsimile transmission thereof, each of which shall be deemed an original.

12.2 No Waiver. No waiver by either Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement or a Transaction shall operate or be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, short of the maximum statutory period of limitation, in asserting or enforcing any right under this Agreement shall not be deemed a waiver of such right.

12.3 Headings. The headings used for the articles and sections herein are for convenience only and shall not affect the meaning or interpretation of the provisions of this Agreement or any Transaction hereunder.

12.4 Confidentiality. All Confidential Information shall be held and treated by the Parties and their agents in confidence, used solely in connection with this Agreement, and shall not, except as hereinafter provided, be disclosed without the other Party's prior written consent. Notwithstanding the foregoing, Confidential Information may be disclosed to a third party to the extent necessary to effectuate the transfer of Energy Products subject to this Agreement. In the event that either Party ("Disclosing Party") is requested or required to disclose any Confidential Information, the Disclosing Party shall provide the other Party with prompt written notice of any such request or requirement. This section shall survive the expiration or termination of this Agreement for a period of one (1) year.

12.5 Governing Law. This Agreement and any Transaction, including any Confirmation thereof, entered into pursuant to this Agreement shall be governed by, construed and enforced in accordance with the law of the State of Arizona without regard to principles of conflict of laws. The Parties agree that Energy Products are not a "good" within the meaning of the Arizona Uniform Commercial Code.

12.6 Jurisdiction and Costs. Any judicial action arising out of, resulting from or in any way relating to this Agreement, any Transaction or any Related Agreement or any alleged breach or default under the same or the warranties and representations contained in the same shall be brought only in a state or federal court of competent jurisdiction located in the state of Arizona, county of Maricopa and city of Phoenix, and both Parties waive any right to trial by jury in such action. Any action to enforce an arbitration award may be brought in any jurisdiction. In the event such judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its costs and reasonable attorneys' fees incurred in connection with such proceedings.

12.7 Oral Agreements Enforceable. The Parties agree not to contest, or enter any defense concerning the validity or enforceability of any Transaction on the grounds that the documentation for such Transaction fails to comply with the requirements of any applicable statute of frauds or any other statute that agreements be written or signed. In addition, the Parties agree not to contest its authority or the authority of any employee of the Party to enter into a Transaction.

12.8 No Third Party Beneficiaries. This Agreement and any Transaction pursuant hereto confer no rights whatsoever upon any person other than the Parties and shall not create, or be interpreted as creating, any standard of care, duty or liability to any person not a Party hereto.

12.9 Recording. Each Party acknowledges and agrees that the other may record telephone conversations and other discussions regarding any proposed or concluded Transaction or any matter arising under a Confirmation for the same. Each Party agrees to obtain the consent of its employees and agents to such recording to the extent required by applicable law. Any recording, if available, may be introduced and admitted into evidence for the purpose of proving the terms of a Transaction, and any objection to the introduction or admission of such a recording is hereby waived. Neither Party shall have an obligation to make such a recording or to keep copies of such a recording; provided, however, that no Party may knowingly destroy, erase, or otherwise tamper with a recording once the possessing Party becomes aware of an actual dispute in which the recording may reasonably be anticipated to be evidence. All recordings shall be deemed Confidential Information under this Agreement.

12.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and permitted assigns, except as expressly provided in this Agreement or a specific Transaction.

12.11 Regulation of the Parties. Nothing contained in this Agreement shall be construed as subjecting either Party to the jurisdiction of any regulatory agency which would not otherwise normally have jurisdiction over such Party.

12.12 Assignment. Neither Party shall transfer or assign all or any part of this Agreement or any Confirmation or its rights or obligations hereunder or thereunder otherwise dispose of any right, title or interest herein or therein without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, (a) transfer, pledge, or assign this Agreement and all Confirmations as security for any financing; (b) transfer, assign or delegate this Agreement and all Confirmations or its rights or obligations hereunder and thereunder to an Affiliate of such party; or (c) transfer, assign or delegate this Agreement and all Confirmations to any person or entity succeeding to all or substantially all of the assets of such party; *provided, however*, that any such assignee shall agree to be bound by the terms and conditions hereof and, *provided, further*, that any transfer, assignment or delegation that does not require consent hereunder shall not, in any way, release the assignor from liability for full performance of any obligations (and only those obligations) arising under this Agreement and all Confirmations prior to the effective date of the transfer, assignment or delegation. To the extent a transfer does not require consent, the transferring Party shall provide prompt notice to the other party of the transfer and the effective date thereof. Any transfer in violation of this section shall be deemed null and void.

12.13 Records. The Parties shall maintain records of all Transactions for a period of three years from the date of the Confirmation of the Transaction. Each Party has the right, to require the other Party to produce records of such Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such documentation reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Base Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof.

12.14 Severability. The invalidity or unenforceability of any provision of this Agreement or a Confirmation entered into pursuant to this Agreement under any present or future law, rule, or regulation will not affect any other provision of this Agreement or Confirmation, and the remaining provisions of this Agreement or Confirmation shall continue with the same force and effect as if such invalid or unenforceable provision had not been inserted in this Agreement or Confirmation, unless enforcing the balance of this Agreement or Confirmation would deprive either Party of a fundamental benefit of its bargain.

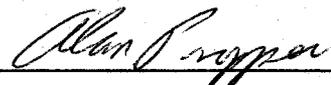
12.15 Negotiated Agreement. The Parties hereto agree that they have had meaningful discussion and/or negotiation of the provisions, terms and conditions contained in this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the Party who physically drafted and prepared this Agreement.

IN WITNESS THEREOF, the Parties hereto made and executed this Agreement, signed by their duly authorized officers or individuals, as of the day and year first above written.

ABITIBI CONSOLIDATED SALES CORPORATION

ARIZONA PUBLIC SERVICE COMPANY

By: 

By: 

Name: Richard Zgol

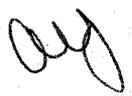
Name: Alan Propper

Title: General Manager

Title: Director, Pricing & Regulation

Date: April 19, 2001

Date: 4/23/01



## EXHIBIT "A" DEFINITIONS

As used in this Agreement to which this is Exhibit "A," and in all other Exhibits and all Confirmations to this Agreement, the following defined terms have the meanings set forth below:

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**"Affiliate"** means, with respect to any person, any entity controlled, directly or indirectly, by such person, any entity that controls, directly or indirectly, such person, or any entity directly or indirectly under common control with such person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Base Rate"** means the lesser of (i) the interest rate per annum published from time to time in the *Wall Street Journal* under "Money Rates" as the "Prime Rate" (or if such rate is no longer published by such entity, a successor or comparable rate agreed to by the Parties) plus two percent (2%) per annum, or (ii) the maximum rate of interest allowed by law. Interest at the Base Rate shall accrue and compound daily based on a 360-day year.

**"Business Day"** means a 24-hour period ending at 5:00 p.m. Phoenix prevailing time on a weekday on which banks are open for general commercial business in Phoenix, Arizona.

**"Capacity"** means the electric generating capability, expressed in megawatts (MW).

**"Claiming Party"** means the Party which claims that its performance is suspended by Force Majeure.

**"Confidential Information"** means the terms of each specific Transaction, including but not limited to the Purchase Price, Strike Price, Contract Quantity and all other material terms thereof. Notwithstanding the foregoing, the following shall not constitute Confidential Information:

- (1) Information which was already in a Party's possession prior to its receipt from the other Party;
- (2) Information which is obtained from a third person who, insofar as is known to the Party, is not prohibited from transmitting the information to the Party by a contractual, legal or fiduciary obligation to the Party;
- (3) Information which is or becomes publicly available through no fault of the Party; and
- (4) Information which a Party is required to disclose by law, regulation or judicial or administrative order.

**"Confirmation"** means a confirmation in substantially the form attached as Exhibit "B".

**“Contract Quantity”** means the quantity of Energy Products sold by Seller and purchased by Buyer under each Transaction.

**“Control Area”** means APS’ or its successor’s control area operating under applicable guidelines of the North American Electric Reliability Council (“NERC”) and the Western Systems Coordinating Council (“WSCC”) and consistent with the terms & conditions of the APS Open Access Transmission Tariff (“OATT”).

**“Credit Support”** means a Letter of Credit or Guaranty.

**“Credit Support Provider”** means a Guarantor or Issuer.

**“Defaulting Party”** means the Party with respect to which (or whose Credit Support Provider with respect to which) an Event of Default has occurred.

**“Delivery Point”** means the delivery point(s) for the delivery of Energy Products specified in the Confirmation or oral Transaction agreement.

**“Early Termination Date”** means a date for termination of this Agreement and all Transactions hereunder, except as otherwise specifically set forth herein.

**“Energy”** means electric energy of the character commonly known as three-phase, sixty-hertz electric energy that is delivered at the nominal voltage of the Delivery Point expressed in megawatt hours (MWh) .

**“Energy Products”** means Energy, Capacity and/or ancillary services.

**“Event of Default”** means, with respect to a Party:

(1) ***Payment Default.*** Failure by the Party (and if applicable, its Credit Support Provider) to: (i) make, when due, any payment under this Agreement or, if applicable under Credit Support, or (ii) deliver collateral when required by this Agreement pursuant to arrangements entered into in accordance with Section 5.1, if such failure is not remedied on or before the third (3<sup>rd</sup>) Business Day after written notice of such failure is given to the Party;

(2) ***Breach of Other Agreement.*** Failure by the Party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery as set forth in clause (i) of this definition or an obligation to deliver Firm Energy Products, the sole remedy for which is set forth in Article 2) to be complied with or performed by the Party in accordance with this Agreement if such failure is not remedied on or before the third (3<sup>rd</sup>) day after notice of such failure is given to the Party;

(3) ***Credit Support Default.*** (i) the expiration or termination of any Credit Support of such Party’s obligations hereunder or the failing or ceasing of such Credit Support to be in full force and effect for the purpose of this Agreement (in either case other than in

accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such Credit Support relates without the written consent of the other Party; or (ii) the Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support;

(4) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the Party or any Credit Support Provider of such Party in this Agreement or any Credit Support proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(5) **Default under Specified Transaction.** The Party, any Credit Support Provider of such Party or any Specified Entity of such Party (1) defaults under any Specified Transaction, and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three (3) Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf), provided that no such event shall constitute an Event of Default with respect to the Buyer under this Agreement unless such event has remained uncured for two (2) Business Days after written notice of such event has been provided to the Contracts Department and the Vice President and General Counsel of the Buyer under this Agreement;

(6) **Bankruptcy.** The Party, any Credit Support Provider of such Party or any applicable Specified Entity of such Party:

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has

a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;

**(7) Merger Without Assumption.** The Party or any Credit Support Provider of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: (a) the resulting, surviving or transferee entity fails to assume all the obligations of such Party or such Credit Support Provider under this Agreement or any Credit Support to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party to this Agreement; or (b) the benefits of any Credit Support fail to extend (without the consent of the other Party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement or a Confirmation entered into pursuant thereto; or

**(8) Credit Event Upon Merger.** The Party or any Credit Support Provider or any Specified Entity of such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity in a transaction that is not an Event of Default under clause (7) of the definition thereof, but the creditworthiness of such successor is materially weaker (taking into consideration any Credit Support) than the creditworthiness of the assignor before such transfer and assumption, unless the transferee within three (3) Business Days of receiving notice of such event from the other Party has entered into collateral arrangements (and delivered collateral pursuant thereto to such other Party or its custodian) or provided other assurances satisfactory to the other Party as described in Section 5.1.

**“Firm”** means, with respect to Transaction, that the only excuses for the failure to deliver Energy Products by Seller or the failure to receive Energy Products by the Buyer pursuant to a Transaction are Force Majeure or the other Party’s non-performance.

**“Force Majeure”** means an event that (a) is not anticipated as of the Trade Date for a Transaction, (b) is not within the control of the Party relying thereon and (c) could not have been prevented or avoided by such Party through the exercise of due diligence. In addition, Force Majeure means the following events and circumstances, if applicable:

(a) If the Energy Product is Unit Firm or Unit Contingent, the Seller shall be excused from performance if the specified unit to which the obligation is expressly tied is unavailable or unable to perform due to forced or unplanned outages.

(b) An interruption in transmission shall only be a Force Majeure with respect to a Party's obligation to deliver or receive Energy Products under this Agreement if (i) the Parties agreed on a transmission path for that transaction at the time of the Transactions Trade Date, (ii) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the Transaction, (iii) the entity providing transmission service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract due to an event of Force Majeure or provision of like effect.

Subject to the foregoing, Force Majeure includes, without limitation, floods, earthquakes, storms, fire, other natural catastrophes, wars, civil disturbances or disobedience, strikes, actions or restraints by court order, governmental authority or arbitration award (so long as the claiming Party has not sought and has opposed, to the extent reasonable, such actions or restraints).

Force Majeure specifically excludes the following:

(a) any claim if the Claiming Party is, or should be, able to obtain, or cause to be obtained, substitute performance, provided, that, (i) if Seller is the Claiming Party, "substitute performance" means obtaining the Contract Quantity of Energy Products from an alternate source and, if Purchaser is the Claiming Party, "substitute performance" means finding an alternate buyer for the Contract Quantity of Energy Products, (ii) the price for such substitute shall not be considered in determining the availability of such substitute, and (iii) the Parties agree to follow delivery requirements of a specific Power Pool or regional Reliability council, if applicable, to determine if such substitute is acceptable;

(b) Purchaser's inability economically to use or resell Energy Products purchased hereunder;

(c) Seller's ability to sell the Energy Products to a market at a more advantageous price;

(d) failure to deliver the Energy Products by the Seller in order to meet regional reliability requirements (in which event such failure shall be subject to Section 2.6 and not an Event of Default); and

(e) the inability of a Party (A) accurately to record, store, recognize, interpret, process, address, produce, calculate, or compare 20th and 21st century dates, (B) to produce accurate results involving dates as used in any forward or regression databased functions, or (C) to perform calculations involving a four-digit year field.

**"Guarantor"** means, as to a Party (the "first Party"), the person(s), if any executing a Guaranty of the obligations of the first Party to the other Party (the "second Party"), which Guarantor shall be reasonably acceptable to the second Party.

**“Guaranty”** means, as to a Party, (the “first Party”) a Guaranty, hypothecation agreement, margin or security agreement or any other document containing an obligation of a Guarantor in favor of the other Party supporting any obligations of the first Party under this Agreement, in a form and substance reasonably acceptable to the second Party.

**“Issuer”** means as to a Party (the “first Party”), the person(s), if any, executing and delivering to the other Party (the “second Party”) a Letter of Credit, which Issuer shall be reasonably acceptable to the second Party.

**“Letter of Credit”** means, as to a Party (the “first Party”), a Letter of Credit issued for the first Party in favor of and for the benefit of the other Party (the “second Party”) in a form and substance reasonably acceptable to the second Party.

**“Performance Assurance”** means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the requesting Party.

**“Performing Party”** means, upon the occurrence of an Event of Default, the non-Defaulting Party with respect to such Event of Default.

**“Purchase Price”** means the price in United States Dollars (unless otherwise agreed) to be paid by the Buyer to the Seller for the purchase of Energy Products. The Purchase Price may be stated in either a per Energy Product purchase price or the total purchase price for all Energy Products pursuant to a Transaction.

**“Buyer”** means the Party to a Transaction who is obligated to purchase and receive Energy Products.

**“Replacement Price”** means the price at which the Performing Party, acting in a commercially reasonable manner, effects a purchase of substitute Energy Products in place of the Energy Products not delivered by the Non-Performing Party (plus amounts reasonably incurred by the Performing Party in purchasing such substitute Energy Products including additional transmission charges, if any, incurred by the Performing Party to the Delivery Point), or, absent such a purchase, the market price for such quantity of Energy Products, as determined by the Performing Party in a commercially reasonable manner at the Delivery Point agreed upon by the Performing Party and the Non-Performing Party for the Transaction, provided, however, in no event shall such price include any penalties, ratcheted demand or other similar transmission charges, and provided further, a Party shall not be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize the other Party’s liability for damages. For the purpose of this definition, the Performing Party shall be considered to have purchased substitute Energy Product to the extent the Performing Party shall have entered into one or more arrangements in a commercially reasonable manner whereby the Performing Party repurchases its obligation to sell and deliver the Energy Product at the Delivery Point.

**“Sales Price”** means the price at which the Performing Party, acting in a commercially reasonable manner, effects a resale of the Energy Products not received by the Non-Performing Party

(including costs reasonably incurred by the Performing Party in reselling such Energy Product, and excluding additional transmission charges, if any, incurred by the Performing Party in delivering such Energy Product to third party purchasers), or, absent such a resale, the market price for such quantity of Energy Products at the Delivery Point agreed upon by the Performing Party and the Non-Performing Party, as determined by the Performing Party in a commercially reasonable manner, provided, however, in no event shall such price include any penalties, ratcheted demand or similar transmission charges, and provided further, a Party shall not be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize the other Party's liability for damages. For purposes of this definition, the Performing Party shall be considered to have resold such Energy Product to the extent the Performing Party shall have entered into one or more arrangements in a commercially reasonable manner whereby the Performing Party repurchases its obligation to purchase and receive the Energy Product at the Delivery Point.

**"Seller"** means the Party to a Transaction who is obligated to sell and deliver Energy Products.

**"Specified Entity"** means, with respect to the Buyer, none, and with respect to Seller, (i) for clause (5) of the definition of Event of Default, Affiliates, (ii) for clause (6) of the definition of Event of Default, Affiliates, and (iii) for clause (8) of the definition of Event of Default, Affiliates.

**"Specified Indebtedness"** means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Trade Date"** means the date the oral agreement for a Transaction is reached.

**"Transaction"** means a specific sale and purchase of Energy Products to be supplied by one Party to the other Party.

**"Transmission Provider"** means any entity or entities transmitting or transporting the Energy Product on behalf of the Seller or Purchaser to or from the Delivery Point in a particular Transaction.

**"Unit Contingent"** means the Energy Product is sold and purchased subject to such Energy Product being available to the Seller from the unit within Seller's system that is identified in the Transaction, in which event the additional rights of Force Majeure apply as set forth in the definition of Force Majeure.

**EXHIBIT "B"**  
**FORM OF CONFIRMATION**

Arizona Public Service Company  
Marketing & Trading Department  
400 N. 5th Street, Station 9860  
Phoenix, Arizona 85004

To: \_\_\_\_\_ ("Customer")  
Attn:  
Fax:  
Date:

Reference Number:

Ladies and Gentlemen:

The purpose of this communication (this "Confirmation") is to confirm the terms and conditions of the Transaction(s) entered into between us on the Trade Date specified below (each, a "Transaction"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

This Confirmation supplements, forms part of, and is subject to, the Agreement dated as of [date] as amended from time to time (the "Agreement"), between you ("Customer") and us (the "Company"). All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

The terms of the particular Transaction(s) to which this Confirmation relates are as follows:

Trade Date:

**[For spot or forward sales/purchases:]**

Seller:

Purchaser:

Quantity:

Delivery Point:

Contract:

Seller's Facsimile Number and  
Contact Details for purpose  
of giving notice:

If the recipient of this Confirmation disagrees with any of the terms summarized herein, it shall promptly notify the sending party by telephone and facsimile transmission. Failure by recipient to execute and return this Confirmation or to notify sender of its disagreement within three (3) Business Days of receiving this Confirmation constitutes the recipient's agreement to the terms set forth herein.

**ABITIBI CONSOLIDATED SALES CORPORATION**

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

Authorized Signatory

Date: \_\_\_\_\_

**ACCEPTED AND AGREED:**

**ARIZONA PUBLIC SERVICE COMPANY**

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

Authorized Signatory

Date: \_\_\_\_\_