



0000049526

NEW APPLICATION

RECEIVED

2002 DEC 18 A 11:39

BEFORE THE ARIZONA CORPORATION COMMISSION

AT THE OFFICE OF THE
DOCUMENT CLERK

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER

E-01933A-02-0914

E-01032C-02-0914

G-01032A-02-0914

IN THE MATTER OF THE JOINT)
APPLICATION OF CITIZENS)
COMMUNICATIONS COMPANY AND)
UNISOURCE ENERGY CORPORATION)
FOR THE APPROVAL OF THE SALE OF)
CERTAIN ELECTRIC UTILITY AND)
GAS UTILITY ASSETS IN ARIZONA,)
THE TRANSFER OF CERTAIN)
CERTIFICATES OF CONVENIENCE)
AND NECESSITY FROM CITIZENS)
COMMUNICATIONS COMPANY TO)
UNISOURCE ENERGY CORPORATION,)
THE APPROVAL OF THE FINANCING)
FOR THE TRANSACTIONS AND OTHER)
RELATED MATTERS.)

DOCKET NO: _____

JOINT APPLICATION

UniSource Energy Corporation, an Arizona corporation ("UniSource"), on behalf of itself, Tucson Electric Power Company ("TEP") and UniSource's designated affiliate or affiliates (collectively, "UniSource"), and Citizens Communications Company ("Citizens"), a Delaware corporation, respectfully submit this Joint Application pursuant to A.R.S. §§ 40-282, 40-285, 40-301 *et seq.*, and A.A.C. R14-2-801 *et seq.*

Through this Joint Application, Citizens, an Arizona public service corporation and a certified provider of electric and gas service to Arizona customers, seeks approval from the Arizona Corporation Commission ("Commission") to transfer to UniSource its Certificates of Convenience and Necessity ("Certificates") to provide gas

1 and electric service in Arizona and certain of its Arizona assets related to its electric and
2 gas utility business. UniSource and TEP further seek approval of the financing of this
3 transaction pursuant to A.R.S. § 40-301 *et seq.* and A.A.C. R14-2-801 *et seq.* In addition,
4 Citizens and UniSource (collectively, "Joint Applicants") request the consolidation with
5 this Joint Application of Citizens pending gas rate case (Docket No. G-01032A-02-0598)
6 ("Gas Rate Case") and its purchased power and fuel adjustment clause case (Docket No.
7 E-01032C-00-0751) ("PPFAC Case"). Resolution of the PPFAC Case and the Gas Rate
8 Case is critical to this transaction. The parties cannot consummate this transaction unless
9 and until these two related cases have been resolved.

10 The transactions contemplated in this Joint Application should be approved
11 for a number of reasons:

12 • Significant gas and electric facilities, operations and customers in
13 both northern and southern Arizona will now be the responsibility of UniSource, an
14 Arizona-based company that is well known, accessible and held in high regard by the
15 community. UniSource is experienced in providing quality utility service to Arizona
16 citizens.

17 • UniSource will retain substantially all the Arizona-based employees
18 of Citizens, which will minimize any negative economic impact of this transaction. The
19 retention of employees highlights the fact that this transaction is not motivated primarily
20 by economies of scale but rather by UniSource's desire to expand its Arizona presence in
21 its core business, and Citizens' desire to exit the electric and gas industry and focus on
22 telecommunications.

23 • UniSource will create a separate subsidiary or subsidiaries to operate the
24 Citizens gas and electric facilities. TEP will not own or operate the Citizens facilities, and
25 TEP's service and financial condition will not be impaired by this transaction.

26

1 • This transaction will allow Citizens to focus on its telecommunications
2 business consistent with its corporate plan and strategy. Citizens will devote its resources
3 to its telecommunication customers in Arizona and elsewhere, which will result in
4 continued quality of service.

5 • This transaction will facilitate the resolution of the long-standing PPFAC
6 Case. UniSource is willing to forego the PPFAC balance in existence at the time of
7 closing, which as of September 2002 stood at \$117 million and will be approximately
8 \$138 million in July 2003, if a PPFAC base rate of \$0.07019 per kWh is adopted based on
9 the current Pinnacle West – Citizens contract.

10 • Although a gas rate increase is necessary due to substantial new
11 investment in facilities, this transaction will result in a reduction in the 28.93% requested
12 increase proposed by Citizens. UniSource's pre-filed testimony will provide the support
13 for the lowered gas rate increase.

14 Joint Applicants respectfully request that the Commission expedite its
15 consideration in this matter so that the parties may consummate this transaction in July
16 2003. The purchase price is reduced if the transaction closes by July 28, 2003. UniSource
17 will share these savings with its customers if this transaction is approved and closed by the
18 July deadline.

19 **I. BACKGROUND**

20 Citizens is duly qualified to do business in Arizona, and, through its
21 operating divisions and subsidiaries, provides telecommunications, electric, gas, water,
22 and wastewater services in twenty-one states, including Arizona. Citizens is incorporated
23 in Delaware and a copy of its certificate of incorporation is attached as Exhibit A to this
24 Joint Application. A copy of Citizens authority to transact business in Arizona is attached
25 as Exhibit B to this Joint Application.

26

1 In Arizona, Citizens is certificated to provide electric service to the majority
2 of Mohave County and all of Santa Cruz County. Currently, Citizens, through its Arizona
3 Electric Division, serves approximately 77,500 total customers in Mohave County and
4 Santa Cruz County. Citizens is also certificated to provide gas service in certain portions
5 of Mohave County, Yavapai County, Coconino County, Navajo County, Greenlee County,
6 Apache County and Santa Cruz County. Citizens, through its Arizona Gas Division,
7 currently serves approximately 125,000 customers in its certificated areas.

8 UniSource, the parent company of TEP, is duly qualified to do business in
9 Arizona. TEP currently serves more than 360,000 customers in southern Arizona.
10 UniSource is incorporated in Arizona and a copy of its certificate of incorporation is
11 attached as Exhibit C to this Joint Application.

12 **II. THE TRANSACTIONS**

13 Citizens and UniSource entered into an Asset Purchase Agreement dated
14 October 29, 2002, relating to the purchase of Citizens' electric utility business in Arizona
15 ("Electric Agreement"). On the same date, Citizens and UniSource entered into an Asset
16 Purchase Agreement relating to Citizens' gas utility business in Arizona ("Gas
17 Agreement"). Through this Joint Application, Citizens and UniSource seek the approval
18 of the transactions contemplated in the Electric Agreement and the Gas Agreement.

19 **A. Electric Agreement**

20 Under the terms of the Electric Agreement, and subject to the satisfaction of
21 the conditions contained in the Electric Agreement, which includes the Commission's
22 approval, Citizens will transfer to UniSource its assets (subject to certain stated
23 exceptions) used in connection with or otherwise necessary for the conduct of its electric
24 utility business in Arizona. These assets include, but are not limited to, real property and
25 real property leases, accounts receivable, machinery and other equipment, certain assigned
26 agreements, Citizens' Certificates to provide electric service and other transferable

1 permits, and certain other assets related to its Arizona electric utility business (“Electric
2 Assets”). UniSource has agreed to pay Citizens \$92 million, plus or minus any
3 adjustments set forth in the Section 3.3 of the Electric Agreement, in exchange for the
4 transfer of the Electric Assets.¹

5 **B. Gas Agreement**

6 Under the terms of the Gas Agreement, and subject to the satisfaction of the
7 conditions contained in the Gas Agreement, which includes the Commission’s approval,
8 Citizens will transfer to UniSource its assets (subject to certain stated exceptions) used in
9 connection with or otherwise necessary for the conduct of its gas utility business in
10 Arizona. The Gas Assets include, but are not limited to, real property and real property
11 leases, accounts receivable, machinery and other equipment, certain assigned agreements,
12 Citizens’ Certificates to provide gas service and other transferable permits, and certain
13 other assets related to its gas utility business in Arizona (“Gas Assets”). UniSource has
14 agreed to pay Citizens \$138 million, plus or minus any adjustments set forth in the Section
15 3.3 of the Gas Agreement, in exchange for the transfer of these Gas Assets.²

16 **III. BASIS FOR THE TRANSACTIONS**

17 As Citizens has stated in prior filings with the Commission, Citizens’ current
18 strategy in Arizona is to focus on the provision of telecommunications service. *See* Direct
19 Testimony of Daniel McCarthy, filed with this Joint Application. In connection with this
20 strategy, Citizens has entered into the Electric Agreement and the Gas Agreement with
21 UniSource to sell its electric and gas utility business in Arizona. Prior to entering into the
22 Electric and Gas Agreements, Citizens divested itself of all of its water and wastewater

23
24 ¹ Joint Applicants have attached the Electric Agreement as Exhibit D but not the
voluminous schedules and exhibits. Joint Applicants will furnish a copy of the schedules
and exhibits to the Commission Staff and intervenors upon request.

25 ² Joint Applicants have attached the Gas Agreement as Exhibit E but not the voluminous
26 schedules and exhibits. Joint Applicants will furnish a copy of the schedules and exhibits
to the Commission Staff and intervenors upon request.

1 assets in Colorado and Louisiana, and its electric utility assets in Hawaii. These sales and
2 the proposed transactions with UniSource will allow Citizens to better focus on its
3 telecommunications business and on providing quality service to users of these services in
4 Arizona.

5 UniSource is the holding company for TEP and has amassed expertise in the
6 provision of energy services to residential, commercial, and industrial customers in
7 Arizona. This expertise will allow UniSource to effectively and efficiently serve Citizens'
8 electric and gas utility customers in southern and northern Arizona. As an Arizona-based
9 corporation, UniSource will have local control over Citizens' Arizona gas and electric
10 customers. This will lead to local decision-making and local accountability. UniSource
11 has the financial strength and stability to acquire these assets, as evidenced by its 2001
12 Annual Report and 10K, copies of which are attached as Exhibit F to this Joint
13 Application.³

14 The acquisition of Citizens' gas and electric utilities will not lead to
15 substantial economies of scale in large part because UniSource contemplates retaining
16 substantially all of Citizens' Arizona gas and electric employees. Thus, economies of
17 scale did not drive its decision to purchase these assets. Rather, the acquisition of the Gas
18 Assets and Electric Assets will allow UniSource to grow its core business within Arizona
19 and should allow UniSource shareholders to receive a reasonable rate of return on a larger
20 base of assets. As part of the approval of the transfer, UniSource asks for approval to
21 recover certain asset acquisition costs related to the Gas Assets and the Electric Assets as
22 an offset to the negative acquisition premium. This request is discussed in more detail in
23

24
25 ³ Because of the voluminous nature of the Annual Report and the 10K and because both
26 documents are public and readily available, a copy of the documents is only attached to the
original of the Joint Application. Upon request, Joint Applicants will provide a copy to
Commission Staff and intervenors.

1 the Direct Testimony of Steven Glaser, filed concurrently with this Joint Application
2 (“Glaser Direct Testimony”).

3 **IV. THE APPROVAL OF THESE TRANSACTIONS IS IN THE PUBLIC**
4 **INTEREST**

5 **A. UniSource Is Committed to Providing Quality Electric and Gas Service**

6 As set forth above, UniSource has extensive expertise in serving energy to
7 Arizona customers. In addition, UniSource is an Arizona corporation headquartered in
8 Arizona, which will provide the benefits of local control. Under the terms of the
9 agreements, UniSource has committed to retaining substantially all of the employees
10 currently employed by Citizens in operating its electric and gas utility businesses in
11 Arizona. The combination of UniSource’s expertise and the expertise and know-how of
12 Citizens’ current employees in operating the electric and gas utility businesses will
13 facilitate quality service to the gas and electric customers in Citizens’ certificated areas.

14 **B. UniSource Will Operate These Utilities As a Separate Subsidiary**

15 UniSource will operate the electric and gas utility business as a separate
16 wholly-owned subsidiary or subsidiaries with separate rate structures. In addition, because
17 both of Citizens’ systems are subject to two-county financing restrictions, they must be
18 accounted for and regulated separately. Accordingly, these utilities will keep separate
19 books and accounts and will not operate as part of TEP nor impair TEP’s operations.

20 **C. Rates and Tariffs Will Remain the Same**

21 Subject to the outcome of Citizens’ pending Gas Rate Case and PPFAC
22 Case, which the Joint Applicants request be consolidated with this Joint Application,
23 UniSource will provide gas and electric service to Citizens’ current customers under the
24 rates and tariffs existing at the time of the closing of the transactions contemplated in the
25
26

1 Electric Agreement and the Gas Agreement. This will allow Citizens' gas and electric
2 customers to experience a seamless change in service providers.⁴

3 **V. FINANCING THE TRANSACTION**

4 In conjunction with this Joint Application, UniSource and TEP request
5 approval of the financing of the purchase of the Electric Assets and the Gas Assets.
6 Specifically, UniSource is requesting authority to allow one or more new public service
7 corporations which will own and operate the purchased property ("New Utility
8 Companies") to (1) issue or guarantee up to \$175 million of debt securities for the purpose
9 of funding a portion of the purchase price and initial working capital requirements of the
10 New Utility Companies; (2) issue or guarantee additional debt securities from time to time
11 under the terms of a new revolving credit agreement that will provide ongoing liquidity
12 support to the New Utility Companies; (3) enter into indentures or security agreements
13 which grant liens on some or all of the properties held by such companies to secure the
14 debt obligations of such companies; and (4) cause the New Utility Companies to issue
15 common stock to UniSource or a new intermediate holding company which would be
16 wholly-owned by UniSource. Additionally, UniSource and TEP are seeking authority to
17 allow TEP to fund up to \$50 million of the aggregate purchase price through a loan to
18 UniSource. UniSource will continue to provide more specificity on the financing of this
19 transaction and the structure of the New Utility Companies throughout this proceeding and
20 will notify the Commission of the details of the financing plan as they become available.

21 UniSource, on behalf of the New Utility Companies, seeks approval
22 pursuant to A.R.S. § 40-301 *et seq.* and A.R.S. § 40-285 for the financing of this
23 transaction and working capital needs of the New Utility Companies. In addition,

24 _____
25 ⁴ UniSource seeks a modification to the service line and main extension policy reflected in
26 Citizens' current tariffs. The new policy would provide for an economic feasibility
assessment when determining under what circumstances to extend a service line or main
for any customer. This revision is discussed further in the Glaser Direct Testimony.

1 UniSource and TEP seek all necessary approvals pursuant to A.A.C. 14-2-801 *et seq.*⁵ to
2 consummate the financing of this transaction.

3 **A. Summary of Financing Plan**

4 UniSource intends to establish one or more wholly-owned subsidiaries for
5 the purpose of purchasing and operating the Electric Assets and Gas Assets being acquired
6 from Citizens. *See* Direct Testimony of Kevin Larson, filed concurrently with this Joint
7 Application. UniSource may decide to form an intermediate holding company (“HoldCo”)
8 to finance and hold ownership in two separate operating companies, one containing the
9 acquired Electric Assets (“ElecCo”) and the other containing the acquired Gas Assets
10 (“GasCo”). Under this scenario, HoldCo would issue debt securities and receive equity
11 funding from UniSource for the purpose of funding the property purchases and working
12 capital needs of the New Utility Companies. Alternatively, UniSource may establish
13 ElecCo and GasCo as direct subsidiaries of UniSource, or combine the electric and gas
14 properties into a single wholly-owned operating company. Under these scenarios, each
15 operating company would issue its own debt securities and receive equity funding directly
16 from UniSource. Regardless of which structure is ultimately adopted, the debt securities
17 issued to finance the acquisition will be repaid, either directly or indirectly, from the cash
18 flows of the purchased Electric Assets and Gas Assets. UniSource will make a final
19 decision regarding corporate structure after careful analysis of the costs and benefits of
20 each alternative.

21 The mix of debt and equity capital used to finance the acquisition will
22 depend on capital market conditions and UniSource’s desire to achieve a balanced capital
23 structure for the New Utility Companies. If possible, UniSource would like to capitalize

24 _____
25 ⁵ UniSource and TEP note that relevant portions of A.A.C. 14-2-803 and -804 may remain
26 subject to a partial stay as set forth in Decision No. 58063 (November 3, 1992). To the
extent those provisions remain subject to the stay, approval under those rules is not
required.

1 the New Utility Companies at a level consistent with an investment grade credit rating.
2 Based on current capital market conditions, UniSource believes that an equity investment
3 equal to 30-50% of the aggregate purchase price will be required. Assuming the aggregate
4 purchase price and initial working capital needs total \$250 million, this target capital
5 structure would require equity funding from UniSource in the range of \$75 million-\$125
6 million.

7 The ability of UniSource to fund its equity investment with new common
8 stock is largely dependent on its stock price and the financial prospects of the acquired
9 properties. As a result, UniSource requires some flexibility with respect to financing its
10 equity investment in the New Utility Companies. Specifically, it is requested that TEP be
11 authorized to lend money to UniSource for the purpose of funding up to \$50 million of the
12 aggregate property purchase price. Any such loan, if executed, would be evidenced by a
13 promissory note bearing a market-based rate of interest and a stated maturity date. Based
14 on current forecasts of TEP cash flows and liquidity, such a loan will not impair TEP's
15 financial condition or credit rating. TEP will continue to meet its stated objective of
16 continuing to improve its equity ratio, including using \$30 million-\$50 million per year for
17 early debt retirements and lease debt purchases.

18 In order to provide an ongoing source of liquidity support for the new
19 companies, UniSource may also seek to establish a revolving credit facility that would be
20 available to the New Utility Companies. The credit facility agreement would be entered
21 into either by HoldCo, the New Utility Companies, or some combination thereof, and
22 would contain terms and conditions comparable to facilities entered into by other utilities.
23 Any borrowings under the credit facility would be evidenced by notes issued by the New
24 Utility Companies. Depending on the cost and availability of credit, borrowings under the
25 facility may be made on either a secured or unsecured basis. UniSource is requesting that
26 the New Utility Companies be permitted to enter into a revolving credit agreement and

1 have the authority to issue up to \$50 million of notes at any given time pursuant to such
2 agreement.

3 Based on the financing plan described above, and an assumed aggregate
4 purchase price and working capital requirement for the New Utility Companies of \$250
5 million, the following table summarizes the initial mix of financing contemplated by
6 UniSource:

	<u>% Total</u>	<u>\$ Millions</u>
7 Debt Issued by New Utility Companies	50-70%	\$125-\$175
8 Balance of UniSource Equity Investment	10-50%	\$25-\$125
9 Loan from TEP to UniSource	0-20%	\$0-\$50

10
11
12 **B. Debt Issuance by New Companies**

13 **1. Terms of Debt Issuance**

14 As described above, UniSource requests authority for the New Utility
15 Companies to issue or guarantee new debt securities (“Debt Securities”) in an initial
16 aggregate amount not to exceed \$175 million. Authority to issue or guarantee up to \$50
17 million of additional debt securities under the terms of a new revolving credit facility is
18 also requested. Depending on market conditions and applicable credit rating criteria,
19 UniSource may need to issue the Debt Securities on a secured basis in order to complete
20 the financing on reasonable terms. Hence, the arrangements described below provide for
21 issuance on either a secured or unsecured basis by one or more of the New Utility
22 Companies. The following terms and arrangements would apply to the newly issued Debt
23 Securities:

24 (a) Bridge Financing. Depending on market conditions, it may be necessary or
25 desirable for either HoldCo or the New Utility Companies to initially issue or guarantee
26 Debt Securities to fund the purchase price on an interim basis and, following the closing of

1 the purchase, to refinance such bridge financing on a more permanent basis. If such
2 bridge financing is utilized, it is anticipated that either HoldCo or the New Utility
3 Companies would enter into a credit agreement with commercial banks or other
4 institutional lenders for this purpose. The aggregate amount of Debt Securities to be
5 issued under the bridge financing would not exceed \$250 million.

6 (i) Interest. The loans would bear interest at variable rates based on
7 prevailing rates in the market and would contain other terms and conditions similar to
8 credit facilities entered into by other utilities.

9 (ii) Maturity Date. The term of the loans would not exceed three years.

10 (iii) Security. In the event that security for the loans is necessary or
11 desirable, the New Utility Companies may secure the loans with a mortgage lien on some
12 or all of the electric and gas properties acquired from Citizens and other properties of the
13 New Utility Companies.

14 (b) Bond Financing. In order to fund the acquisition, or to refinance any bridge
15 financing described above, the New Utility Companies may issue or guarantee long-term
16 Debt Securities in the capital markets ("Bonds"). The aggregate principal amount of
17 Bonds issued to fund the acquisition or refinance a bridge facility would not exceed \$175
18 million.

19 (i) Interest. Each series of Bonds will bear a fixed interest rate based on
20 prevailing rates in the market at the time of pricing, and will include other terms and
21 conditions similar to bonds issued by other gas and electric utilities.

22 (ii) Maturity Date. The Bonds will have a term of not more than thirty
23 years.

24 (iii) Security. In the event that security for the Bonds is necessary or
25 desirable, the New Companies may secure the bonds with a mortgage lien on some or all
26 of the electric and gas properties acquired from Citizens and other properties of the New

1 Utility Companies. Should the Bonds be issued by an intermediate holding company on a
2 secured basis, the Bonds may be issued as collateral trust bonds secured by mortgage
3 bonds to be issued by either or both of the New Utility Companies. The New Utility
4 Company mortgage bonds would have the same stated rate of interest and maturity date as
5 the HoldCo bonds, and would be held in trust as collateral for the HoldCo bonds. If the
6 Bonds are issued on an unsecured basis, covenants may be required that would restrict or
7 prohibit the issuance of secured debt so long as any unsecured bonds remain outstanding.

8 (c) Revolving Credit Financing. For the purpose of obtaining short-term liquidity
9 support, the New Utility Companies may enter into a revolving credit agreement with
10 commercial banks and other institutional lenders. Under such agreement, or one entered
11 into by HoldCo on behalf of the operating companies, the New Utility Companies may
12 issue up to \$50 million of Debt Securities at any given time as evidence of loans received
13 under the agreement.

14 (i) Interest. The loans would bear interest at variable rates based on
15 prevailing rates in the market and would contain other terms and conditions similar to
16 credit facilities entered into by other utilities.

17 (ii) Maturity Date. The term of the loans would not exceed five years.

18 (iii) Security. In the event that security for the loans is necessary or
19 desirable, the New Utility Companies may secure the loans with a mortgage lien on some
20 or all of the electric and gas properties acquired from Citizens and other properties of the
21 New Utility Companies.

22 23 **2. Financial Impacts of Debt Issuance**

24 The issuance of Debt Securities will affect the cost of capital and required rate of
25 return for the New Utility Companies. The estimated cost of debt for use in the Gas Rate
26 Case for Citizens' Arizona Gas Division is presented in the Direct Testimony of Kevin

1 Larson. Since debt capital is generally less expensive than equity capital, the issuance of
2 Debt Securities within a properly balanced capital structure should serve to lower the
3 overall cost of capital and required rate of return. Since the Debt Securities will not be
4 guaranteed by either UniSource or TEP, the issuance of debt by the New Utility
5 Companies should not affect the financial standing or creditworthiness of TEP.

6 **3. Statutory Findings**

7 UniSource submits that based on the information set forth above, the
8 proposed debt issuances are for a lawful purpose within the corporate powers of the New
9 Utility Companies and are compatible with the public interest, with sound financial
10 practices, and with the proper performance by the New Utility Companies of service as a
11 public service corporation and will not impair the New Utility Companies' ability to
12 perform that service. UniSource also submits that the authorizations contemplated under
13 this section of the Joint Application are reasonably necessary and appropriate for such
14 purposes and that such purposes, except as specifically set forth in this Joint Application,
15 are not, wholly or in part, reasonably chargeable to operative expenses or to income of the
16 New Utility Companies. Pursuant to A.R.S. §§ 40-301 *et seq.*, UniSource requests that the
17 Commission issue an order authorizing the debt issuances. To the extent that the purposes
18 set forth herein are considered reasonably chargeable to operative expenses or to income,
19 UniSource requests that the order of the Commission authorize such charges.

20 **4. Notice of the Financing**

21 UniSource will provide notice of the financing as required by the
22 Commission and will submit proof of such notice to the Commission.

23 **C. TEP Loan to UniSource**

24 **1. Terms of Loan to UniSource**

25 TEP requests authority to lend money to UniSource in an amount not to
26 exceed \$50 million. The purpose of the loan would be to fund a portion of the purchase

1 price and working capital requirements of the New Utility Companies. Any such loan, if
2 executed, would be evidenced by a promissory note ("Note") created with the following
3 terms and arrangements:

4 (a) Interest. The Note will bear a variable interest rate based on the cost
5 of borrowing under TEP's current revolving credit facility or any subsequent credit
6 facility. This rate is currently equal to LIBOR plus four percent. Although TEP does not
7 anticipate borrowing on this facility to fund the loan to UniSource, it does represent the
8 opportunity cost to TEP should it need to borrow funds. Interest will be due and payable
9 annually.

10 (b) Maturity Date. The Note will have a term of not more than ten years.

11 **2. AAC R14-2-804 Approval**

12 As stated above, the cost of borrowing under TEP's loan to UniSource will
13 equal the cost of borrowing under TEP's credit facility. This loan will not impair TEP's
14 financial status nor will it impair TEP's ability to attract capital at fair and reasonable
15 terms. As set forth in the most recent annual report filed with the Commission, TEP's
16 financial condition is stable and improving. In recent years, TEP's operating cash flows
17 have been sufficient to fund all capital spending needs as well as substantial debt
18 retirements and lease debt purchases. TEP submits that the loan to UniSource will not
19 impair TEP's ability to provide safe, reasonable, and adequate service. The amount of the
20 loan will not exceed \$50 million and, based on current forecasts of TEP cash flows and
21 liquidity, the loan will not impair TEP's stated objective of continuing to improve its
22 equity ratio, including using \$30-50 million per year for early debt retirements and lease
23 debt purchases.

24 **D. UniSource Equity Investment**

25 UniSource would like to capitalize the New Companies at a level consistent
26 with an investment grade credit rating. Based on current capital market conditions,

1 UniSource believes that an equity investment equal to 30-50% of the aggregate purchase
2 price will be required. Assuming the aggregate purchase price and initial working capital
3 needs total \$250 million, this target capital structure would require equity funding from
4 UniSource in the range of \$75 million-\$125 million. As described above, up to \$50
5 million of this equity investment may be financed through a TEP loan to UniSource. The
6 balance of the equity investment would come from general corporate funds available to
7 UniSource, including the proceeds of any new issuance of common stock by UniSource.
8 Upon receipt of this equity investment, the New Utility Companies would issue common
9 stock to UniSource or HoldCo to evidence their ownership interest. Subsequent to this
10 initial equity investment, UniSource or HoldCo may make additional equity capital
11 investments in the New Utility Companies in order to provide liquidity support and to
12 maintain a reasonably balanced capital structure. To the extent required pursuant to AAC
13 R14-2-803, UniSource, through this Joint Application, provides notice of its intent to
14 invest in the New Companies as described above.

15 **E. Waiver of Prior Decision Regarding New Share Issuance**

16 Under Decision No. 60480, as amended by the settlement adopted in
17 Decision No. 62103, UniSource is required to invest at least 30% of the proceeds of a
18 public stock issuance in TEP. Through this Joint Application, UniSource and TEP request
19 a waiver of this requirement for the purpose of financing the acquisition of Citizens' gas
20 and electric properties as described above. UniSource intends to invest essentially all of
21 the proceeds received from a new share issuance in the New Utility Companies. Given the
22 purpose of the share issuance contemplated in this Joint Application, the waiver requested
23 is both reasonable and necessary and is in the public interest.

24 **F. Relevant Documents**

25 Copies of the operative documents relating to the issuance of debt by the
26 New Companies, including the form of any security agreements or indebtedness related

1 thereto will be filed with Staff as soon as they are available and subject to an appropriate
2 Protective Agreement. A copy of any promissory note between UniSource and TEP will
3 likewise be filed with the Commission Staff shortly after execution.
4

5 VI. TREATMENT OF PENDING MATTERS

6 A. Pending Gas Rate Case

7 Citizens currently has a Gas Rate Case pending before the Commission in
8 Docket No. G-01032A-02-0598. Joint Applicants request that the Commission
9 consolidate the Gas Rate Case with this Joint Application. Given the significance of the
10 interplay between the Gas Rate Case and the overall approval of the purchase by
11 UniSource of Citizens' gas and electric assets, a procedural conference is set for January
12 15, 2003, so that the parties may reschedule the pending deadlines relating to the Gas Rate
13 Case. As set forth below, Joint Applicants also request a procedural conference be set on
14 January 15, 2003, to discuss the scheduling for this Joint Application.

15 Citizens has requested a gas rate increase of 28.93%. As part of the approval
16 of this Joint Application, UniSource intends to seek a reduced gas rate increase of 23%.
17 As noted above, UniSource also seeks a tariff modification to the service line and main
18 extension agreement. The basis for these requests is set forth in the Glaser Direct
19 Testimony.

20 B. Pending Purchase Power and Fuel Adjustment Clause Case

21 Citizens also has a PPFAC Case pending before the Commission in Docket
22 No. E-01032C-00-0751. As further set forth in the Glaser Direct Testimony and the Direct
23 Testimony of James S. Pignatelli ("Pignatelli Direct Testimony"), filed concurrently with
24 this Joint Application, UniSource is willing to forego the PPFAC balance at the time of
25 closing, which, as of September 2002, is \$117 million and growing, if, on a going-forward
26 basis, the PPFAC base rate included in rates is set to account for the cost of power under

1 the new Pinnacle West agreement. UniSource anticipates trying to renegotiate the
2 Pinnacle West agreement. If these renegotiations are successful, UniSource will share
3 50% of any savings with its customers.

4 **C. Consolidation of Gas Rate Case and PPFAC Case**

5 Pursuant to AAC R14-3-109(H), Joint Applicants request the consolidation
6 of this matter with the Gas Rate Case and its PPFAC Case. Many of the issues addressed
7 in this Joint Application, the Gas Rate Case, and the PPFAC Case will be related and the
8 outcome of each proceeding will impact the others. In addition, Joint Applicants submit
9 that the rights of the parties to the pending Gas Rate Case and the PPFAC Case will not be
10 prejudiced by consolidation.

11 **D. Notice of Appearance**

12 Through this Joint Application, Thomas H. Campbell and Michael T.
13 Hallam of Lewis and Roca, LLP give notice of appearance in the Gas Rate Case and the
14 PPFAC Case as counsel for Joint Applicants. Copies of all pleadings and notices in the
15 Gas Rate Case and the PPFAC Case should be sent to the following address.

16
17 Thomas H. Campbell
18 Michael T. Hallam
19 Lewis and Roca, LLP
20 40 North Central Avenue
Phoenix, AZ 85004

21 **VII. CONCLUSION**

22 For the reasons set forth above, Joint Applicants request all necessary
23 approvals for the transactions set forth in this Joint Application, including:

- 24 • necessary approvals pursuant to A.R.S. § 40-285 for Citizens to transfer the Gas
25 Assets and Electric Assets, including the Certificates, to UniSource and for the
26

1 New Utility Companies to encumber the Gas Assets and Electric Assets for
2 financing purposes;

- 3 • necessary approvals pursuant to A.R.S. §§ 40-301 *et seq.* for the financing of
4 the transaction, including bridge financing, bond financing, and revolving credit
5 financing by the New Utility Companies and the issuance of stock by the New
6 Utility Companies;
- 7 • necessary approvals pursuant to A.A.C. R14-2-804 for the loan from TEP to
8 UniSource.
- 9 • necessary approvals under A.A.C. R14-2-803 for the capitalization of the New
10 Utility Companies;
- 11 • waiver of Decision No. 60480, as amended by Decision No. 62103, relating
12 UniSource's public stock issuance;
- 13 • approval of a gas rate increase of 23% and a tariff modification relating to the
14 service line and main extension policy;
- 15 • approval of a PPFAC base rate of \$0.07019 per kWh;
- 16 • approval to recover certain asset acquisition costs as an offset to the negative
17 acquisition premium; and
- 18 • all other approvals necessary to consummate the transactions contemplated in
19 this Joint Application.
- 20

21 In addition, Joint Applications request that a Procedural Conference be set on
22 January 15, 2003, in conjunction with the procedural conferences in the Gas Rate Case and
23 the PPFAC Case.

24

25

26

1 DATED this 18th day of December, 2002.

2
3 LEWIS AND ROCA LLP

4 By Michael Hill
5 Thomas H. Campbell
6 Michael T. Hallam
7 40 N. Central Avenue
8 Phoenix, Arizona 85004

Attorneys for Joint Applicants

9 ORIGINAL AND ten (13) copies
10 of the foregoing hand-delivered
11 this 18th day of December, 2002, to:

12 Arizona Corporation Commission
13 Utilities Division – Docket Control
14 1200 W. Washington Street
15 Phoenix, Arizona 85007

16 COPY of the foregoing hand-delivered
17 this 18th day of December, 2002,
18 to:

19 Chairman William A. Mundell
20 Arizona Corporation Commission
21 1200 W. Washington Street
22 Phoenix, Arizona 85007

23 Commissioner Jim Irvin
24 Arizona Corporation Commission
25 1200 W. Washington Street
26 Phoenix, Arizona 85007

Commissioner Marc Spitzer
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 W. Washington Street
Phoenix, Arizona 85007

LEWIS
AND
ROCA
LLP

LAWYERS

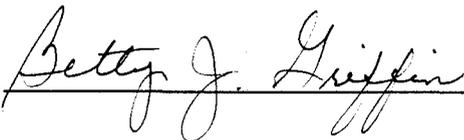
- 1 Lyn Farmer, Chief Administrative Law Judge
Hearing Division
2 Arizona Corporation Commission
1200 W. Washington Street
3 Phoenix, Arizona 85007
- 4 Christopher Kempley, Chief Counsel
Legal Division
5 Arizona Corporation Commission
1200 W. Washington Street
6 Phoenix, Arizona 85007
- 7 Dwight D. Nodes
Assistant Chief Administrative Law Judge
8 Arizona Corporation Commission
1200 W. Washington Street
9 Phoenix, Arizona 85007
- 10 Scott Wakefield
Daniel W. Pozefsky
11 RUCO
Suite 1200
12 2828 N. Central Avenue
Phoenix, Arizona 85004
- 13
14 COPY of the foregoing sent by mail
This 18th day of December, 2002,
15 to:
- 16 Walter Meek, Esq.
Arizona Utility Investors Association
Suite 210
17 2100 N. Central Avenue
18 Phoenix, Arizona 85004
- 19 Christine Nelson
John White
20 Deputy County Attorney
P.O. Box 7000
21 Kingman, Arizona 86402-7000
- 22 Thomas Mumaw, Esq.
Pinnacle West Capital Corporation
400 N. Fifth Street
23 Phoenix, Arizona 85072-3999
24
25
26

LEWIS
AND
ROCA
LLP

LAWYERS

- 1 Susan Mikes Doherty
John D. Draghi
- 2 Huber Lawrence & Abell
605 3rd Avenue
3 New York, New York 10158
- 4 Marshall Magruder
P.O. Box 1267
5 Tubac, Arizona 85646
- 6 Robert J. Metli
Cheifetz & Iannitelli, P.C.
7 3238 N. 16th Street
Phoenix, Arizona 85016
- 8
9 Raymond S. Heyman
Roshka Heyman & DeWulf
400 E. Van Buren Street
10 Suite 800
Phoenix, Arizona 85004
- 11
12 Jose L. Machado
City Attorney, City of Nogales
777 N. Grand Avenue
13 Nogales, Arizona 85621
- 14 Holly J. Hawn
Martha S. Chase
15 Santa Cruz County Attorney
2150 N. Congress Drive
16 Suite 201
Nogales, Arizona 85621
- 17
18 Vincent Nitido
Tucson Electric Power
One S. Church Avenue
19 Suite 1820
Tucson, Arizona 85701
- 20
21 Deborah Scott
Associate General Counsel
Citizens Communications Company
22 2901 N. Central Avenue
Suite 1660
23 Phoenix, Arizona 85012-2736

24
25
26



A

AZ. CORP. COMMISSION
DELIVERED

JUL 14 2000

FILED BY *R. Gray-Hotels*
TERM _____
DATE 8-5-00

APPLICATION FOR NEW AUTHORITY
TO TRANSACT BUSINESS
IN ARIZONA
CITIZENS COMMUNICATIONS COMPANY

F-0002620-8

DO NOT PUBLISH THIS SECTION

1. The corporate name must contain a corporate ending which may be "corporation," "association," "company," "limited," "incorporated" or an abbreviation of any of these words. If you are the holder or assignee of a tradename or trademark, attach Declaration of Tradename Holder form. If your name is not available for use in Arizona, you must adopt a fictitious name and provide a resolution adopting the name, which must be executed by the corporation Secretary.

3. You must provide the total duration in years for which your corporation was formed to endure. If perpetual succession, so indicate in this section. Do not leave blank, or state not applicable.

5. The statutory agent address cannot be a P.O. Box. It must be a physical address in Arizona. Include City, State and zip code

APPLICATION FOR AUTHORITY TO TRANSACT BUSINESS IN ARIZONA

PAID

The name of the corporation is: CITIZENS UTILITIES COMPANY A(n) DELAWARE Corporation (State, Province or Country)

We are a foreign corporation applying for authority to transact business in the state of Arizona.

- X We are a foreign corporation currently authorized to transact business in Arizona and must now file this Application for New Authority pursuant to A.R.S. § 10-1504 because we have changed the following in our domicile jurisdiction: [] Our actual corporate name... [] The period of our duration... [] The state, province or country of our incorporation.

1. The exact name of the foreign corporation is: CITIZENS COMMUNICATIONS COMPANY

If the exact name of the foreign corporation is not available for use in this state then the fictitious name adopted for use by the corporation in Arizona is: (FN)

2. The name of the state, province or country in which the foreign corporation is incorporated is: DELAWARE

3. The foreign corporation was incorporated on the 11th day of DECEMBER 19 35 and the period of its duration is: PERPETUAL

4. The street address of the principal office of the foreign corporation in the state, province or country of its incorporation is: CORPORATION SERVICE COMPANY 1013 CENTRE ROAD WILMINGTON, DE 19805

5. The name and street address of the statutory agent for the foreign corporation in Arizona is: THE PRENTICE-HALL CORPORATION SYSTEM, INC. 3636 NORTH CENTRAL AVENUE PHOENIX, AZ 85012

DO NOT PUBLISH THIS SECTION

5.a. The street address of the known place of business of the foreign corporation in Arizona IF DIFFERENT from the street address of the statutory agent is:

5.b. Indicate to which address the Annual Report should be mailed.

5.b. The Annual Report and general correspondence should be mailed to the address specified above in section 4 X or 5a _____

6. If the purpose of your corporation has any limitations with regard to this section, so indicate. If not, state no limitations.

6. The purpose of the corporation is to engage in any and all lawful business in which corporations may engage in the state, province or country under whose law the foreign corporation is incorporated, with the following limitations if any:

7. The names and usual business addresses of the current directors and officers of the foreign corporation are: (Attach additional sheets if necessary.)

Name: PLEASE SEE ATTACHED LIST [title]
Address: _____
City, State, Zip: _____
Name: _____ [title]
Address: _____
City, State, Zip: _____
Name: _____ [title]
Address: _____
City, State, Zip: _____

8. The total number of authorized shares cannot be "zero" or "N/A". Include authorized, not issued shares in this section.

8. The foreign corporation is authorized to issue 650,000,000 shares, itemized as follows: (Attach additional sheets if necessary.)

600,000,000 shares of COMMON [class or series] stock at _____ no par value or par value of \$ 0.25 per share.
50,000,000 shares of PREFERRED [class or series] stock at _____ no par value or par value of \$ 0.01 per share.
----- shares of ----- [class or series] stock at ----- no par value or par value of \$ ----- per share.

B

**RESTATED CERTIFICATE OF INCORPORATION
OF
CITIZENS COMMUNICATIONS COMPANY**

CITIZENS COMMUNICATIONS COMPANY, a corporation organized and existing under the laws of the State of Delaware (the "Company"), hereby certifies as follows:

1. The name of the corporation is

CITIZENS COMMUNICATIONS COMPANY

The date of filing its original Certificate of Incorporation with the Secretary of State was November 12, 1935 under the name Citizens Utilities Company.

2. The provisions of this Restated Certificate of Incorporation of the Company as heretofore amended, are hereby restated and integrated into the single instrument which is hereinafter set forth, and which is entitled Restated Certificate of Incorporation of Citizens Communications Company without any further amendments and without any further discrepancy between the provisions of the Amended and Restated Certificate of Incorporation as heretofore amended and the provisions of the said single instrument hereinafter set forth.

3. The restatement of the Restated Certificate of Incorporation herein certified has been duly adopted by the Board of Directors of the Company in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware.

4. The text of the Restated Certificate of Incorporation shall upon the effective date of this Restated Certificate of Incorporation read as follows:

**RESTATED CERTIFICATE OF INCORPORATION
OF
CITIZENS COMMUNICATIONS COMPANY**

FIRST: The name of this corporation is **CITIZENS COMMUNICATIONS COMPANY**.

SECOND: Its principal office in the State of Delaware is to be located at 1013 Centre Road, in the City of Wilmington, County of New Castle, and its resident agent is The Prentice-Hall Corporation System, Inc.

THIRD: The nature of the business and the objects and purposes to be transacted, promoted, and carried on are to do any or all of the things herein mentioned as fully and to the same extent as natural persons might or could do and in any part of the world, viz.:

(a) To purchase or otherwise acquire, own, operate and dispose of all or any part of the business and properties of persons, partnerships, associations, and other corporations engaged in any business, including that of operating public utilities, and to make payment therefor by the issuance of securities of this corporation or in any other manner permitted by law, and in connection therewith to assume any or all of the bonds, mortgages, franchises, leases, contracts, indebtedness, liabilities, and obligations of such corporations, and to do any things necessary or expedient in connection therewith or with the carrying out of any plan of reorganization of predecessor company or any modification therefor.

(b) To generate, produce, buy, or in any manner acquire, and to sell, dispose of, and distribute electricity for light, heat, power, and other purposes and to carry on the business of furnishing, supplying, manufacturing, and vending light heat, power, gas, water, steam heat, ice, refrigeration, and any and all businesses incident thereto, and to build, construct, develop, improve, acquire, hold, own, lease, maintain, and operate plants, facilities, and works for the manufacture, generation, production, accumulation, transmission, and distribution of electric energy, gas and steam, for light power, heat and other purposes, and to acquire, construct, maintain, and operate systems of water works, gas works, steam heating plants, for the supply of water, gas, and steam heat, and to exercise rights of condemnation and eminent domain in connection with the doing of its business objects and purposes as herein set forth so far as may be permissible by law, to acquire, maintain, operate, and exercise all the rights of ownership of any telephone, telegraph, and/or other communication system or systems.

(c) To build, construct, develop, improve, acquire, hold, own, lease, maintain and operate, by electricity or other power, street railways and interurban railways for the transportation of passengers, mail, express, merchandise, or other freight in any part of the world.

(d) To produce, mine, buy, sell, store, market, deal in, and prospect for coal and minerals of all kinds and the products and by-products thereof.

(e) To organize, incorporate, reorganize, finance, and to aid and assist financially or otherwise, companies, corporations, joint stock companies, syndicates, partnerships, and associations of all kinds, and to underwrite, subscribe for, and endorse the bonds, stocks, securities, debentures, notes, or undertakings of any such company, corporation, joint stock company, syndicate partnership or association, and to make any guarantee in connection therewith or otherwise for the payment of money or for the performance of any obligation or undertaking, and to do any and all things necessary or convenient to carry any of such purposes into effect.

(f) To carry on the business of engineering and contracting in all of its branches; to appraise, value, design, build, construct, enlarge, develop, improve, extend, and repair works, plants, systems, lines, stations, buildings, structures, mines, shafts, tunnels, wells, canals, viaducts, highways, facilities, apparatus, machinery, equipment, appliances and appurtenances, of any and every nature and kind whatsoever.

(g) To purchase and acquire securities, assets, and property of every kind and description at judicial, judiciary, trustee's, pledge's, mortgagee's or liquidating or public or private sales, either pursuant to a plan of reorganization or otherwise, and to carry on a general salvage, liquidation, and realization business; and also to do a general commission and brokerage business.

(h) To hold in trust, issue on commission, make advances upon or sell, lease, license, transfer, organize, reorganize, incorporate, or dispose of any of the undertakings or resulting investments aforesaid, or the stock or securities thereof; to act as agent or depository for any of the above or like purposes or any purpose herein mentioned; and to act as fiscal agent of any other person, firm or corporation.

(i) To obtain the grant of, purchase, lease, or otherwise acquire any concessions, rights, options, patents, privileges, lands, rights of way, sites, properties, undertakings or businesses, or any right, option or contract in relation thereto, and to perform, carry out, and fulfill the terms and conditions thereof and to carry the same into effect, and to develop, maintain, lease, sell, transfer, dispose of, and otherwise deal with the same.

(j) From time to time to apply for, obtain the grant of, purchase or acquire by assignment, transfer or otherwise, and to exercise, carry out and enjoy any license, power, authority, franchise, ordinance, order, right or privilege, which any government or authority, supreme, municipal or local, or any corporation or other public body shall enact, make, or grant.

(k) To issue shares of the capital, stock, bonds, debentures, debenture stock, notes, and other obligations of this corporation for cash, for labor done, for property, real or

personal, or leases thereof, or for any combination of any of the foregoing, or for services rendered or in exchange for the stock debentures, debenture stock, bonds, securities, or obligations of any person, firm, association, corporation, or other organization.

(l) To purchase, acquire, and lease, and to sell, lease, and dispose of water, water rights, water records, power privileges, and appropriations for power, light, heat, mining, milling, irrigation, agricultural, domestic or any other use or purpose.

(m) To acquire by purchase, lease, own, hold, sell, mortgage, and encumber both improved and unimproved real estate wherever situate; to survey, subdivide, plat, colonize, and improve the same for the purposes of sale or otherwise; and to construct and erect thereon factories, works, plants, shops, stores, mills, hotels, houses, buildings, and other structures, and to own, use, maintain, manage, and operate the same or any thereof.

(n) To own and control and acquire, by lease, purchase, construction, or otherwise, steamships, boats, barges, hydroplanes, and vessels of all kinds or interests therein and to operate the same either on Alaska Waters and on the Waters of Puget Sound and on all navigable rivers and waters connected therewith and elsewhere, or both, for the transportation of passengers and freight of all kinds, with power to purchase, build, construct, repair, lease, sell, convey, and operate vessels of all kinds, and all machinery, appliances and apparatus incident, necessary or convenient thereto, or in any way connected therewith; with power also to do a towing business, and also to purchase, own, lease, construct, control, and operate and sell docks, wharves, landings floats, warehouses, dry docks and dock machinery, appliances and apparatus of all kinds; and with the power also to do a general shipbuilding, stevedore, dockage, warehouse, and commission business; to conduct a general cold storage and refrigeration business.

(o) To subscribe for, or cause to be subscribed for, buy, own, hold, purchase, receive, or acquire, and/or to sell, negotiate, guarantee, assign, deal in, exchange, transfer, mortgage, pledge and/or otherwise dispose of shares of the capital stock, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, acceptances, drafts, and/or evidences of indebtedness issued and/or created by any government or by any political subdivision thereof or by any other corporations, joint stock companies, or associations, whether public, private, or municipal, or any corporate body, and while the owner thereof, to possess and to exercise in respect thereof all the rights, powers, and privileges of ownership, including the right to vote thereon; to guarantee the payment of dividends on any shares of the capital stock of any of the corporations, joint stock companies, or associations in which this corporation has or may at any time have an interest, and to become surety in respect of, endorse, or otherwise guarantee the payment of the principal of or interest on any scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, issued or created by any such corporations, joint stock companies, or associations; to assume and agree to pay all or part of the indebtedness, evidenced by bonds or otherwise, of any corporation, and to assume and agree to perform any covenants, conditions, or agreements contained in any mortgage or trust indenture, and to

assume any other obligation, or liability of any corporation: to become surety for or guarantee the carrying out and performance of any and all contracts, leases, and obligations of every kind of any corporations, joint stock companies, or associations, and in particular of any corporation, joint stock company, or association any of whose shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, are at any time held by or for this corporation, and to do any acts or things designed to protect, preserve, improve or enhance the value of any such shares, scrip, bonds, coupons, mortgages, debentures, debenture stock, securities, notes, drafts, bills of exchange, or evidences of indebtedness, provided, however, that this Subdivision (o) shall not be construed to authorize this corporation to engage in the business of banking.

(p) To manufacture, buy, sell, and generally deal in, goods, wares, merchandise, property, and commodities of any and every class and description, and all articles used or useful in connection therewith; to engage in any business whether manufacturing or otherwise which this corporation may deem advantageous or useful in connection with any or all of the foregoing, and to purchase, acquire, manufacture, market, or prepare for market, sell or otherwise dispose of any article, commodity, or thing which this corporation may use in connection with its business.

(q) To manage, operate, conduct and supervise the business, properties, and affairs, in whole or in part, of any companies, corporations, joint stock companies, syndicates, partnerships, and associations of all kinds whether it owns any or all of the securities and/or obligations of such companies, corporations, joint stock companies, syndicates, partnerships, and associations or not.

(r) To secure, purchase, acquire, apply for, register, own, hold, sell, or dispose of any and all copyrights, trademarks and other trade rights.

(s) To organize, or cause to be organized, under the laws of the State of Delaware, or of any other state, territory, or country, or the District of Columbia, a corporation or corporations for the purpose of accomplishing any or all of the objects for which this corporation is organized, and to dissolve, wind up, liquidate, merge or consolidate any such corporation, or corporations, or to cause the same to be dissolved, wound up, liquidated, merged, or consolidated.

(t) To purchase, apply for, obtain, or otherwise acquire any and all letters patent, licenses, patent rights, patented processes, and similar rights granted by the United States or any other government or country, or any interest therein, or any inventions which may seem capable of being used for or in connection with any of the objects or purposes of this corporation, and to use, exercise, develop, sell, dispose of, lease, grant licenses in respect to, or other interests in the same, and otherwise turn the same to account, and to carry on any business, manufacturing or otherwise, which may be deemed to directly or indirectly aid, effectuate, or develop, the objects or any of them of this corporation.

(u) To lend money, to borrow money for any of the purposes of this corporation, and to issue bonds, debentures, debenture stock, notes, and other obligations, and to secure the same by pledge or mortgage of the whole or any part of the property, of this corporation, either real or personal, or to issue bonds, debentures, debenture stock, notes, or other obligations without any such security.

(v) To enter into, make, perform, and carry out contracts of every kind for any lawful purpose, without limit as to amount, with any person, firm, association, or corporation.

(w) In connection with its business, to draw, make, accept, endorse, discount, guarantee, execute, and issue promissory notes, bills of exchange, drafts, warrants and all kinds of obligations and certificates and negotiable or transferable instruments.

(x) To purchase, hold, sell, and transfer shares of its own capital stock, bonds, notes, and other obligations of this corporation from time to time to such extent and in such manner and upon such terms as its Board of Directors shall determine; provided that any purchase of any of the shares of the capital stock of the corporation shall not be made when such purchase would cause any impairment of the capital of the corporation; and provided further that shares of its own capital stock belonging to this corporation shall not be voted upon directly or indirectly.

(y) To have one or more offices, to carry on any or all of its operations and business and without restriction or limit as to amount, to purchase, lease, or otherwise acquire, hold, and own, and to mortgage, sell, convey, lease or otherwise dispose of, real and personal property of every class and description in any of the states or territories of the United States and in the District of Columbia, and in any and all foreign countries, subject to the laws of such state, district, territory, or country.

(z) To do any and all things herein set forth, and in addition such other acts and things as are necessary or convenient to the attainment of the purposes of this corporation, or any of them, to the same extent as natural persons lawfully might or could do in any part of the world.

The foregoing clauses shall be construed both as objects and powers and it is hereby expressly provided that the foregoing enumeration of specific power shall not be held to limit or restrict in any manner the powers of this corporation, and are in furtherance of, and in addition to, and not in limitation of the general powers conferred by the laws of the State of Delaware.

It is the intention that the purposes, objects and powers specified in this Article Third and all subdivisions thereof shall, except as otherwise expressly provided, in no wise be limited or restricted by reference to or inference from the terms of any other clause or paragraph of this Article, and that each of the purposes, objects, and powers specified in this Article Third shall be regarded as independent purposes, objects, and powers.

FOURTH: (a) The total number of shares of stock which this corporation shall have authority to issue is six hundred and fifty million (650,000,000) shares of which fifty million (50,000,000) shares shall be shares of Preferred Stock with a par value of one cent (\$.01) each, amounting in aggregate to five hundred thousand dollars (\$500,000), six hundred million (600,000,000) shares shall be shares of Common Stock, par value of twenty-five (\$.25) each, amounting in the aggregate to one hundred and fifty million dollars (\$150,000,000) .

(b) The Preferred Stock may be issued from time to time in one or more series, and in such amounts as may be determined by the Board of Directors. The designations, powers, preferences and relative, participating optional, conversion and other rights, and the qualifications, limitations and restrictions thereof, of the Preferred Stock of each series, which shall not be fixed by the Certificate of Incorporation, shall be such as may be fixed or altered by resolution or resolutions by the Board of Directors (authority so to do being hereby expressly granted to, and vested in, the Board of Directors) to the full extent now or hereafter permitted by the laws of Delaware.

(c) Each holder of Common Stock shall at every meeting of the stockholders be entitled to one vote in person or by written proxy signed by him for each full share of Common Stock owned by him and shall be entitled to vote upon all such matters as may come before the stockholders including without limitation the election of directors, which shall be decided by majority vote of the Common Stock present or represented by proxy and entitled to vote at the meeting. The stockholders of this corporation shall have no preemptive right to subscribe to any issue of shares of stock of this corporation now or hereafter made.

(d) Each full share of the former Common Stock Series B with the par value of twenty-five cents (\$.25) each ("Common Stock Series B") which shall be outstanding immediately prior to the time when this Article FOURTH shall become effective, shall, upon such effectiveness, automatically and without any further action on the part of the holder thereof, be changed and reclassified into one full share of Common Stock. Each certificate representing a share or shares of Common Stock Series B (including those certificates representing a share or shares of the former Common Stock Series A) shall thereafter represent a like number of shares of Common Stock of this corporation into which the shares of Common Stock Series B have been changed and reclassified and shall for all purposes be deemed evidence of the ownership of a like number of shares of Common Stock of this corporation into which the shares of Common Stock Series B have been changed and reclassified. The holders of such certificates shall not be required immediately to surrender the same in exchange for certificates of Common Stock, but, as such certificates representing shares of Common Stock Series B are surrendered for transfer, this corporation shall cause to be issued certificates representing shares of Common Stock, and, at any time upon surrender by any holders of certificates representing Common Stock Series B, this corporation shall cause to be issued thereof certificates for a like number of shares of Common Stock of this corporation."

FIFTH: The minimum amount of capital with which it will commence business is One Thousand Dollars (\$1,000.00).

SIXTH: The name and place of residence of each of the incorporators are as follows:

<u>NAME</u>	<u>RESIDENCE</u>
L. H. HERMAN	Wilmington, Delaware
WALTER LENZ	Wilmington, Delaware
W. T. HOBSON	Wilmington, Delaware

SEVENTH: This corporation is to have perpetual existence.

EIGHTH: The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

NINTH: In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized:

To make, alter, and repeal the by-laws subject to the power of the stockholders to change or repeal such bylaws; provided, however, that prior to the second Tuesday in March, 1937, no by-laws shall be adopted or amended by the directors so as to authorize or provide (a) for the holding of any meeting of stockholders for the election of directors at any place other than Minneapolis, Minnesota or at any time prior to the holding of the first annual meeting of stockholders for election of directors on the second Tuesday in March, 1937; or (b) for the holding of meetings of directors, prior to such first meeting of stockholders for the election of directors, at any place other than as provided in the original by-laws;

To set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and to alter or abolish any such reserve;

To fix, determine, and vary from time to time the amount to be maintained as surplus and the amount or amounts to be set apart for working capital.

All of the powers of this corporation, insofar as the same lawfully may be vested by this Certificate in the Board of Directors, are hereby conferred upon the Board of Directors of this corporation.

Directors need not be elected by ballot, unless voting by ballot shall be requested by the holders of ten percent (10%) or more of the shares of stock represented at the meeting of stockholders at which the directors are to be elected.

TENTH: This corporation may in its by-laws make any other provisions or requirements for the management or conduct of the business of this corporation provided the same be not

inconsistent with the provisions of this Certificate or contrary to the laws of the State of Delaware, and subject to the limitations upon amendment of by-laws contained in this Certificate of Incorporation.

ELEVENTH: This corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by law and all rights conferred on officers, directors, and stockholders herein are granted subject to this reservation.

TWELFTH: A. A director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the directors duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporation action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

B. No modification or repeal of the provisions of this Article shall adversely affect any right or protection of any director of the corporation existing at the date of such modification or repeal or create any liability or adversely affect any such right or protection for any acts or omissions of such director occurring prior to such modification or repeal.

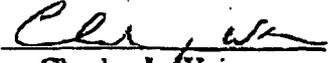
IN WITNESS WHEREOF, said **CITIZENS COMMUNICATIONS COMPANY** has caused this Certificate to be signed by Edward O. Kipperman, its Vice President, and attested by Charles J. Weiss, its Secretary, on this 19th day of May, 2000.

CITIZENS COMMUNICATIONS COMPANY

By: 

Edward O. Kipperman
Vice President

ATTEST:

By: 

Charles J. Weiss
Secretary

C

EXPEDITED

SECRETARY OF STATE
STATE OF ARIZONA

DEC 17 1 43 PM '92

Dale Swamy
12-18-92
0743952-3

**AMENDED & RESTATED ARTICLES OF INCORPORATION
OF
UNISOURCE ENERGY CORPORATION**

KNOW ALL MEN BY THESE PRESENTS: That the incorporators, having associated themselves together for the purpose of forming a corporation under and by virtue of the laws of the State of Arizona did adopt Articles of Incorporation, which are restated as follows:

FIRST: The name of the Corporation shall be UniSource Energy Corporation.

SECOND: The address of the Corporation within the State of Arizona shall be 220 West 6th Street, Tucson, Arizona 85701, but the known place of business may be established and maintained in or outside of the State of Arizona at such places as the Board of Directors may designate. ✓✓

THIRD: The purposes for which the Corporation is organized shall be the transaction of any or all lawful business for which corporations may be incorporated under Chapter 1 of Title 10, Arizona Revised Statutes.

The character of business, which the Corporation initially intends actually to conduct in the State of Arizona, is the acquisition and holding of securities of other corporations.

FOURTH: The total number of shares of Capital Stock of all classes which the Corporation shall have authority to issue is One Million Seventy-Five Thousand (1,075,000) shares, divided into:

One Million (1,000,000) shares of Preferred Stock without par value; and

Seventy-Five Thousand (75,000) shares of Common Stock without par value.

Preferred Stock

The Board of Directors of the Corporation shall have the authority to divide the Preferred Stock into series and determine the designation, preferences, limitations and relative rights of the shares of each series so established, all to the extent and in the manner provided by law.

Common Stock

Subject to the limitations, if any, specified with respect to the Preferred Stock, or any series thereof, dividends may be paid on shares of the Common Stock, out of any funds legally available therefor, when and as declared by the Board of Directors.

Subject to the limitations, if any, specified with respect to the Preferred Stock, or any series thereof, in the event of any dissolution or other winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation available for payment and distribution to shareholders shall be distributed ratably in accordance with their holdings to the holders of shares of the Common Stock.

All voting power shall vest exclusively as the holders of shares of the Common Stock, except as any statute of the State of Arizona shall expressly provide to the contrary, and except as and to the extent otherwise specified with respect to the Preferred Stock, or any series thereof, and each holder of the Common Stock shall, in the election of directors and upon each other matter coming before any meeting of shareholders, be entitled to one vote for each share of such stock standing in the name of such holder on the books of the Corporation.

General Provisions

The Corporation may, subject to such limitations, if any, as may be specified with respect to the Preferred Stock, or any series thereof, amend these Articles of Incorporation from time to time, in as many respects as may be desired and as now or hereafter permitted by law. The rights conferred upon shareholders in these Articles of Incorporation are granted subject to the foregoing right to amend.

A statutory merger of the Corporation shall not be deemed to be a dissolution or other winding up of the Corporation within the meaning of any provision of these Articles of Incorporation.

In consideration of the issuance by the Corporation of shares of the Capital Stock of the Corporation, each and every present and future holder of shares of the Capital Stock of the Corporation shall be conclusively deemed, by acquiring or holding such shares, to have expressly consented to all and singular the terms and provisions of these Articles of Incorporation and to have agreed, among other things, that the voting rights of such holder shall be as set forth in, or determined pursuant to, this Article.

FIFTH: The period of duration of the Corporation shall be perpetual.

SIXTH: (A) The corporate powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, a Board of Directors consisting of a number of persons, not less than eight nor more than fifteen, as fixed or changed from time to time by the Board of Directors. Directors shall receive reasonable compensation for the services, which they perform. Directors shall be elected annually by the shareholders at the annual meeting of shareholders and when so elected

shall serve until the next annual meeting of shareholders or until their successors have been duly elected and qualified.

Any action required or permitted by these Articles of Incorporation to be taken by the Board of Directors of the Corporation may be taken by a duly authorized committee of the Board of Directors, except as otherwise required by law.

(B) No director of the Corporation shall be personally liable to the Corporation or its shareholders for money damages for any action taken or any failure to take any action as a Director; *provided, however*, that nothing herein shall be deemed to eliminate or limit any liability which may not be so eliminated or limited under the laws of the State of Arizona, as in effect at the effective date of this paragraph (B) of Article SIXTH or as thereafter amended. No amendment, modification or repeal of this paragraph (B) shall eliminate or limit the protection afforded by this paragraph (B) to a director with respect to any act or omission occurring before the effective date thereof.

(C) (1) The Corporation shall, to the maximum extent permitted by applicable law, as from time to time in effect, indemnify any individual who is or was a party to or otherwise involved in (or threatened to be made a party to or otherwise involved in) any Proceeding (as hereinafter defined) because such individual is or was a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against all Liability (as hereinafter defined) incurred by such individual in connection with such Proceeding.

As used in this paragraph (C) of Article SIXTH, (a) the term "Expenses" includes attorneys' fees and all other costs and expenses reasonably related to a Proceeding; (b) the term "Liability" means the obligation to pay a judgment, settlement, penalty or fine (including any excise tax assessed with respect to an employee benefit plan) and reasonable Expenses incurred with respect to a Proceeding, and includes without limitation obligations and Expenses that have not yet been paid but that have been or may be incurred; and (c) the term "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal, including without limitation any action, suit or proceeding by or in the right of the Corporation and including, further, any appeal in connection with any such action, suit or proceeding.

(2) The Corporation shall, to the maximum extent permitted by applicable law, pay any Expenses incurred by a director or officer of the Corporation in defending any such Proceeding in advance of the final disposition thereof upon receipt of any undertaking by or on behalf of such individual to repay such advances if it is ultimately determined that such individual did not meet any standard of conduct prescribed by applicable law and upon the satisfaction of such other conditions as may be imposed by applicable law.

(3) The Corporation, by resolution of the Board of Directors, may extend the benefits of this paragraph (C) of Article SIXTH to employees and agents of the Corporation (each individual entitled to benefits under this paragraph (C) being hereinafter sometimes called an "Indemnified Person").

(4) All rights to indemnification and to the advancement of expenses granted under or pursuant to this paragraph (C) shall be deemed to arise out of a contract between the Corporation and each person who is an Indemnified Person at any time while this paragraph (C) is in effect and may be evidenced by a separate contract between the Corporation and each Indemnified Person; and such rights shall be effective in respect of all Proceedings commenced after the effective date of this paragraph (C), whether arising from acts or omissions occurring before or after such date. No amendment, modification or repeal of this Article shall affect any rights or obligations theretofore existing.

(5) The Corporation may purchase and maintain insurance on behalf of, or insure or cause to be insured, any individual who is an Indemnified Person against any Liability asserted against or incurred by him in any capacity in respect of which he is an Indemnified Person, or arising out of his status in such capacity, whether or not the Corporation would have the power to indemnify him against such liability under this Article. The Corporation's indemnity of any individual who is an Indemnified Person shall be reduced by any amounts such individual may collect with respect to such liability (a) under any policy of insurance purchased and maintained on his behalf by the Corporation or (b) from any other entity or enterprise served by such individual.

(6) The rights to indemnification and to the advancement of Expenses and all other benefits provided by, or granted pursuant to, this Article shall continue as to a person who has ceased to serve in the capacity in respect of which such person was an Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such person.

(7) The Board of Directors shall have the power and authority to make, alter, amend and repeal such procedural rules and regulations relating to indemnification and the advancement of Expenses as it, in its discretion, may deem necessary or expedient in order to carry out the purposes of this Article, such rules and regulations, if any, to be set forth in the Bylaws of the Corporation or in a resolution of the Board of Directors.

SEVENTH: The name and address of each incorporator were as follows:

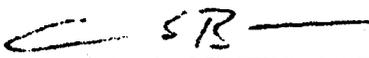
<u>Name</u>	<u>Address</u>
Joseph Mirrione	225 West 34 th Street Suite 2110 New York, New York 10122
Oriel Thomas	225 West 34 th Street Suite 2110 New York, New York 10122

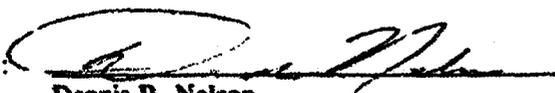
EIGHTH: The name and street address of the Corporation's statutory agent are as follows:

<u>Name</u>	<u>Address</u>
Dennis R. Nelson	220 West 6 th Street Tucson, Arizona 85702

IN WITNESS WHEREOF, the undersigned, UniSource Energy Corporation, an Arizona corporation, has executed the foregoing Restated Articles of Incorporation of UniSource Energy Corporation by its President, Charles E. Bayless, and by its Secretary, Dennis R. Nelson, whose signatures are acknowledged as hereinafter set forth, and said Corporation by said officers hereby states that the foregoing Restated Articles of Incorporation set forth all of the operative provisions of the Articles of Incorporation of UniSource Energy Corporation as heretofore amended and that the Restated Articles of Incorporation correctly set for the without change the provisions of the Articles of Incorporation as heretofore amended and that the Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto, and said officers further state that said Restated Articles of Incorporation were heretofore duly adopted by the Board of Directors of the Corporation.

UNISOURCE ENERGY CORPORATION

By: 
Charles E. Bayless
Its: President

By: 
Dennis R. Nelson
Its: Secretary, Statutory Agent

UNISOURCE ENERGY CORPORATION

CERTIFICATE

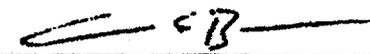
Pursuant to the provisions of § 10-1007 of the Arizona Revised Statutes, as amended, UniSource Energy Corporation hereby delivers for filing its Restated Articles of Incorporation, and certifies as follows:

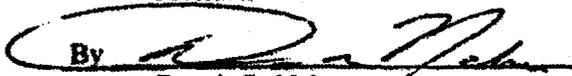
1. The restatement contains amendments to the articles requiring shareholder approval.
2. The name of the corporation is UniSource Energy Corporation.
3. Attached hereto as Exhibit A is the text of each amendment adopted.
4. The amendment was adopted the 12th day of December, 1997.
5. The amendment was approved by the shareholders. There was one voting group eligible to vote on the amendment. The designation of the voting group entitled to vote separately on the amendment, the number of votes in such group, and the votes cast for the amendment were as follows:

The voting group consisting of 1,000 outstanding shares of Common Stock is entitled to 1,000 votes. The voting group cast 1,000 undisputed votes for approval of the amendment. The number of votes cast for approval of the amendment was sufficient for approval by the voting group.

Dated as of this 12th day of December, 1997.

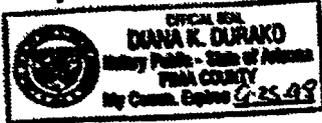
UNISOURCE ENERGY CORPORATION

By 
Charles E. Bayless
President

By 
Dennis R. Nelson
Secretary

STATE OF ARIZONA)
) ss. Tucson
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this 12th day of December, 1997, by Charles E. Bayless and Dennis R. Nelson, President and Secretary of UniSource Energy Corporation, an Arizona corporation, on behalf of the Corporation.



Diana K. Durako
Notary Public

My Commission Expires:

9-25-98

EXHIBIT A

TUCSON ELECTRIC POWER COMPANY

**AMENDMENT TO ARTICLE FOURTH OF RESTATED ARTICLES
OF INCORPORATION TO READ AS FOLLOWS:**

FOURTH: The total number of shares of Capital Stock of all classes which the Corporation shall have authority to issue is One Million Seventy-Five Thousand (1,075,000) shares, divided into:

One Million (1,000,000) shares of Preferred Stock without par value; and

Seventy-Five Thousand (75,000) shares of Common Stock without par value.

Preferred Stock

The Board of Directors of the Corporation shall have the authority to divide the Preferred Stock into series and determine the designation, preferences, limitations and relative rights of the shares of each series so established, all to the extent and in the manner provided by law.

Common Stock

Subject to the limitations, if any, specified with respect to the Preferred Stock, or any series thereof, dividends may be paid on shares of the Common Stock, out of any funds legally available therefor, when and as declared by the Board of Directors.

Subject to the limitations, if any, specified with respect to the Preferred Stock, or any series thereof, in the event of any dissolution or other winding up of the Corporation, whether voluntary or involuntary, the assets of the Corporation available for payment and distribution to shareholders shall be distributed ratably in accordance with their holdings to the holders of shares of the Common Stock.

All voting power shall vest exclusively as the holders of shares of the Common Stock, except as any statute of the State of Arizona shall expressly provide to the contrary, and except as and to the extent otherwise specified with respect to the Preferred Stock, or any series thereof, and each holder of the Common Stock shall, in the election of directors and upon each other matter coming before any meeting of shareholders, be entitled to one vote for each share of such stock standing in the name of such holder on the books of the Corporation.

General Provisions

The Corporation may, subject to such limitations, if any, as may be specified with respect to the Preferred Stock, or any series thereof, amend these Articles of Incorporation from time to time, in as many respects as may be desired and as now or hereafter permitted by law. The rights conferred upon shareholders in these Articles of Incorporation are granted subject to the foregoing right to amend.

A statutory merger of the Corporation shall not be deemed to be a dissolution or other winding up of the Corporation within the meaning of any provision of these Articles of Incorporation.

In consideration of the issuance by the Corporation of shares of the Capital Stock of the Corporation, each and every present and future holder of shares of the Capital Stock of the Corporation shall be conclusively deemed, by acquiring or holding such shares, to have expressly consented to all and singular the terms and provisions of these Articles of Incorporation and to have agreed, among other things, that the voting rights of such holder shall be as set forth in, or determined pursuant to, this Article.

AMENDMENT TO PARAGRAPH (A) OF ARTICLE SIXTH OF RESTATED ARTICLES OF INCORPORATION TO READ AS FOLLOWS:

SIXTH: (A) The corporate powers of the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of, a Board of Directors consisting of a number of persons, not less than eight nor more than fifteen, as fixed or changed from time to time by the Board of Directors. Directors shall receive reasonable compensation for the services, which they perform. Directors shall be elected annually by the shareholders at the annual meeting of shareholders and when so elected shall serve until the next annual meeting of shareholders or until their successors have been duly elected and qualified.

Any action required or permitted by these Articles of Incorporation to be taken by the Board of Directors of the Corporation may be taken by a duly authorized committee of the Board of Directors, except as otherwise required by law.

STATE OF ARIZONA)
)
) ss. Tucson
COUNTY OF PIMA)

Charles E. Bayless and Dennis R. Nelson, President and Secretary of UniSource Energy Corporation, an Arizona corporation, on behalf of the corporation, acknowledged the foregoing instrument before me this 12th day of December 1997.



Diana K. Durako
Notary Public

My Commission Expires:

9-25-98

D

ASSET PURCHASE AGREEMENT

**by and between
CITIZENS COMMUNICATION COMPANY, as SELLER
and
UNISOURCE ENERGY CORPORATION, as BUYER**

Relating to the Purchase by Buyer of Seller's
Electric Utility Business in the State of Arizona

Signing Date: October 29, 2002

ASSET PURCHASE AGREEMENT

Table of Contents

<u>Documents</u>	<u>Tab</u>
Asset Purchase Agreement.....	1
Exhibits	2
Schedules.....	3
Seller Deliveries at Signing	4

ASSET PURCHASE AGREEMENT

by and between

CITIZENS COMMUNICATIONS COMPANY, as SELLER,

and

UNISOURCE ENERGY CORPORATION, as BUYER,

Dated October 29, 2002

*Relating to Purchase by Buyer of Seller's
Electric Utility Business in the State of Arizona*

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	1
1.1 Definitions.....	1
1.2 Certain Interpretive Matters	14
ARTICLE II PURCHASE AND SALE.....	14
2.1 Transfer of Assets	14
2.2 Excluded Assets	15
2.3 Assumed Liabilities.....	17
2.4 Excluded Liabilities	19
2.5 Control of Litigation	20
ARTICLE III THE CLOSING.....	21
3.1 Closing	21
3.2 Closing Payment	21
3.3 Adjustment to Base Purchase Price.....	21
3.4 Prorations	24
3.5 Deliveries by Seller	24
3.6 Deliveries by Buyer.....	26
3.7 Work in Progress.....	26
ARTICLE IV REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SELLER.....	27
4.1 Incorporation; Qualification.....	27
4.2 Authority	27
4.3 Consents and Approvals; No Violation.....	27
4.4 Insurance	28
4.5 Real Property Leases.....	28
4.6 Environmental Matters.....	28
4.7 Labor Matters.....	29
4.8 Benefit Plans: ERISA.....	29

TABLE OF CONTENTS

	Page
4.9 Real Property.....	30
4.10 Condemnation	30
4.11 Assigned Agreements.....	30
4.12 Legal Proceedings	31
4.13 Permits	31
4.14 Taxes	31
4.15 Intellectual Property	32
4.16 Capital Expenditures	32
4.17 Compliance With Laws.....	32
4.18 Title	32
4.19 DISCLAIMERS.....	32
4.20 Financial Statements	33
4.21 SEC Filings; Financial Statements.....	33
4.22 Sufficiency of Assets.....	34
ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER	34
5.1 Organization.....	34
5.2 Authority	34
5.3 Consents and Approvals; No Violation.....	34
5.4 Availability of Funds.....	35
5.5 SEC Filings; Financial Statements.....	35
5.6 Legal Proceedings	36
5.7 No Knowledge of Seller's Breach.....	36
5.8 Qualified Buyer.....	36
5.9 Inspections.....	36
5.10 WARN Act.....	36
ARTICLE VI COVENANTS OF THE PARTIES	37
6.1 Conduct of Business and Operation of Assets.....	37
6.2 Access to Information.....	38

TABLE OF CONTENTS

	Page
6.3 Environmental Inspections and Information	40
6.4 Confidentiality.....	41
6.5 Public Statements	42
6.6 Expenses.....	42
6.7 Further Assurances.....	42
6.8 Consents and Approvals.....	43
6.9 Fees and Commissions.....	44
6.10 Tax Matters.....	45
6.11 Advice of Changes	47
6.12 Seller Employees.....	47
6.13 Risk of Loss.....	52
6.14 Tax Exempt Financing.....	53
6.15 Seller Guarantees and Surety Instruments	58
6.16 Citizens Marks	58
6.17 Title Commitments	58
6.18 Joint Use Agreement re: Easements.....	58
6.19 Leases.....	59
6.20 Post-Execution Delivery of Schedules.....	59
 ARTICLE VII CONDITIONS	 59
7.1 Conditions to Obligations of Buyer	59
7.2 Conditions to Obligations of Seller.....	60
 ARTICLE VIII INDEMNIFICATION	 61
8.1 Indemnification of Seller by Buyer.....	61
8.2 Indemnification of Buyer by Seller.....	62
8.3 Certain Limitations on Indemnification.....	62
8.4 Defense of Claims.....	65
 ARTICLE IX TERMINATION.....	 66
9.1 Termination.....	66

TABLE OF CONTENTS

	Page
9.2 Procedure and Effect of Termination.....	67
9.3 Liquidated Damages; Termination Fees.	68
ARTICLE X MISCELLANEOUS PROVISIONS	69
10.1 Amendment and Modification	69
10.2 Waiver of Compliance; Consents.....	69
10.3 [Intentionally Omitted]	69
10.4 Notices.....	69
10.5 Assignment.....	71
10.6 Governing Law.....	71
10.7 Counterparts	71
10.8 Interpretation.....	71
10.9 Schedules and Exhibits	72
10.10 Entire Agreement	72
10.11 U.S. Dollars.....	72
10.12 Bulk Sales Laws.....	72
10.13 Construction of Agreement.....	72
10.14 Severability	72
10.15 Third Party Beneficiary.....	73

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated October 29, 2002 (this "Agreement"), by and among Citizens Communications Company, a Delaware corporation ("Seller") and UniSource Energy Corporation, an Arizona corporation ("Buyer"). Seller and Buyer are referred to, individually, as a "Party" and, together, as the "Parties."

WITNESSETH

WHEREAS, Seller owns all of the Assets (as defined below); and

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, the Assets, and certain associated liabilities, upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

"ACC" means the Arizona Corporation Commission and any successor agency thereto.

"ADEQ" means the Arizona Department of Environmental Quality and any successor agency thereto.

"Advances" has the meaning set forth in Section 3.3(e).

"Adverse Environmental Condition" has the meaning set forth in Section 6.3(c).

"Affiliate" of any Person means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Agreement" means this Asset Purchase Agreement together with the Schedules and Exhibits attached hereto, as the same may be from time to time amended.

"Allocation" has the meaning set forth in Section 6.10(f).

"ALTA" has the meaning set forth in Section 6.17.

"Ancillary Agreements" means the agreements, contracts, documents, instruments and certificates provided for in this Agreement to be entered into by one or more of the Parties or any of their Affiliates in connection with the transactions contemplated by this Agreement.

"APBO" has the meaning set forth in Section 6.12(d)(iii)(D).

"Approved Capital Expenditures" means the Capital Expenditures that have been expressly approved by Buyer in writing and that are identified in said writing as Approved Capital Expenditures for purposes of this Agreement.

"Arizona Gas Purchase Agreement" has the meaning set forth in Section 7.1(j).

"Assets" has the meaning set forth in Section 2.1.

"Asset Material Adverse Effect" means any occurrence or condition, arising after the date hereof, that has or would reasonably be expected to have a material adverse effect with an aggregate economic impact, taking into account all relevant considerations, in excess of \$10,000,000 (except as provided otherwise in Sections 6.3(c), 6.13(b)(i) or 6.13(c)(ii)) on the condition of the Assets, taken as a whole, or on the business, operations, financial condition or results of operations of the Business, taken as a whole, other than any such occurrence or condition (a) arising from business, economic or financial market conditions, considered generally, (b) arising from the conditions in the electric utility industry, considered generally and not specifically as to the Business, (c) which is remedied, cured or otherwise reversed (including by the payment of money or application of insurance proceeds) before the Termination Date, or (d) arising from entering into this Agreement or the announcement of the transactions contemplated by this Agreement; it being understood that the occurrences and/or conditions which could, depending on the nature and extent thereof, be deemed to result in an Asset Material Adverse Effect shall include, without limitation, (x) the terms or conditions of a Final Order with respect to any Required Regulatory Approval, considered individually or together with any other such Final Order(s) with respect to any other Required Regulatory Approval(s), other than Regulatory Exceptions, and (y) facts or circumstances relating to the Assets and/or the Business which come to the attention of Buyer between the date of this Agreement and the Closing Date, whether as a result of Buyer's Inspection of the Assets or its examination of information and data relating to the Assets and/or the Business, as contemplated by Section 6.2 or 6.3, or otherwise.

"Assigned Agreements" means any contracts, agreements, software licenses and related contracts, Easements, Real Property Leases and personal property leases entered into by Seller or any of its Affiliates with respect to the ownership, operation or maintenance of the Assets or the Business, including those disclosed on Schedules 4.5 and 4.11(a) and excluding those disclosed on Schedule 2.2, including without limitation, the IBEW CBAs and the Power Service Contract.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement between Seller and Buyer substantially in the form of Exhibit A attached hereto.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Balance Sheet" has the meaning set forth in Section 4.20.

"Base Purchase Price" has the meaning set forth in Section 3.2.

"Benefit Plans" means each of Seller's deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA); each profit-sharing, stock bonus or other "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); each employment, termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by such Party or by any ERISA Affiliate, in any case maintained for employees of Seller connected with the Business, or in which such employees participate.

"Bill of Sale" means the Bill of Sale, substantially in the form of Exhibit B attached hereto, to be delivered at the Closing by Seller with respect to the Tangible Personal Property included in the Assets transferred to Buyer.

"Bond Counsel" has the meaning set forth in Section 6.14(c)(i).

"Business" means, collectively, (a) the electricity generation, transmission and distribution business conducted by Seller within the State of Arizona; and (b) the provision of related services and products and the engagement in related activities by Seller within the State of Arizona.

"Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the States of Arizona and New York are authorized by law or other governmental action to remain closed.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnifiable Loss" has the meaning set forth in Section 8.2.

"Buyer Indemnitee" has the meaning set forth in Section 8.2.

"Buyer Material Adverse Effect" means a Material Adverse Effect with respect to Buyer.

"Buyer Required Regulatory Approvals" means the Required Regulatory Approvals set forth in Schedule 5.3(b).

“CERCLA” means the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*, as amended.

“Capital Expenditures” means capital additions to or replacements of property, plants and equipment included in the Assets or otherwise relating to the Business and other expenditures or repairs on property, plants and equipment included in the Assets or otherwise relating to the Business that would be capitalized by Seller in accordance with its normal accounting policies.

“Capital Expenditures Schedule” has the meaning set forth in Section 4.16.

“Citizens Marks” has the meaning set forth in Section 2.2(c).

“Closing” has the meaning set forth in Section 3.1.

“Closing Date” means one minute after 11:59 p.m. on the date which is five (5) Business Days following the date on which the last of the conditions precedent to the Closing set forth in Article VII of this Agreement have been either satisfied or waived by the Party for whose benefit such conditions precedent exist, subject to such extensions (not to exceed six (6) months) as may be required by Seller to repair or replace lost or damaged Assets in accordance with Section 6.13(c), or such other date as the Parties may mutually agree.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1984.

“COBRA Continuation Coverage” means the requirements of Section 4980B(f) of the Code.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commercially Reasonable Efforts” means efforts by a Party which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

“Current Retirees” has the meaning set forth in Section 6.12(d)(iii)(D).

“Direct Claim” has the meaning set forth in Section 8.4(c).

“Easements” means all easements, rights of way, permits, licenses, prescriptive rights and other ways of necessity, and other similar real property grants, whether or not of record, relating to real property.

“Encumbrances” means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

"Environmental Claim" means any and all pending and/or threatened administrative or judicial actions, suits, orders, claims, liens, notices, notices of violations, investigations, complaints, requests for information, proceedings, or other written communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law or pursuant to a common law theory, by any Person (including, but not limited to, any Governmental Authority, private person and citizens' group) based upon, alleging, asserting, or claiming any actual or potential (a) violation of, or liability under any Environmental Law, (b) violation of any Environmental Permit, or (c) liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to any Environmental Condition or any Release or threatened Release into the environment of any Regulated Substances at any location related to the Assets, including, but not limited to, any Off-Site Location to which Regulated Substances, or materials containing Regulated Substances, were sent for handling, storage, treatment, or disposal.

"Environmental Condition" means the presence or Release of a Regulated Substance (other than a naturally-occurring substance) on or in environmental media, or structures on Real Property, at an Off-Site Location or other property (including the presence in surface water, groundwater, soils or subsurface strata, or air), including the subsequent migration of any such Regulated Substance, regardless of when such presence or Release occurred or is discovered.

"Environmental Data" has the meaning set forth in Section 6.3(e).

"Environmental Laws" means all federal, state, local, provincial, foreign and international civil and criminal laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, laws relating to Releases or threatened Releases of Regulated Substances (including, without limitation, Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Regulated Substances. "Environmental Laws" include: (a) with respect to federal law, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Surface Mine Conservation and Reclamation Act (30 U.S.C. §§ 1251-1279), and regulations adopted pursuant thereto, and counterpart state and local laws, regulations adopted pursuant thereto; and (b) with respect to Arizona law, laws comparable to such federal statutes and regulations adopted pursuant thereto.

"Environmental Permits" means any permits, registrations, certificates, certifications, licenses and authorizations, consents and approvals of Governmental Authorities issued under Environmental Laws held by Seller with respect to the Assets.

"Environmental Price Adjustment" has the meaning set forth in Section 6.3(c).

"Environmental Reports" has the meaning set forth in Section 4.6.

"Environmental Threshold" has the meaning set forth in Section 6.3(c).

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

"ERISA Affiliate" means a trade or business, whether or not incorporated, that together with a Party would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA.

"Estimated Adjustment" has the meaning set forth in Section 3.3(b).

"Estimated Closing Statement" has the meaning set forth in Section 3.3(b).

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Exempt Facilities" means those facilities listed in Exhibit A to each Loan Agreement included in the IDR Documents.

"FERC" means the Federal Energy Regulatory Commission or any successor agency thereto.

"Final Order" means an action by the relevant Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended and/or with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired and the time period permitted by statute or regulation for filing any request for a stay, petition for rehearing, reconsideration or application for review of the action or for filing a court appeal has passed.

"Financial Statements" has the meaning set forth in Section 4.20.

"FIRPTA Affidavit" means the Foreign Investment in Real Property Tax Act Certification and Affidavit to be executed by Seller.

"GAAP" means U.S. generally accepted accounting principles.

"Good Utility Practices" means any practices, methods, standards, guides, or acts, as applicable, that (a) are generally accepted in the region during the relevant time period for use in the electricity generation, transmission and distribution industry, (b) are commonly used in prudent electricity generation, transmission and distribution

engineering, construction, project management and operations, and (c) would be expected if the Business is to be conducted at a reasonable cost in a manner consistent with laws, rules and regulations applicable to the Business and the objectives of reliability, safety, environmental protection, economy and expediency. Good Utility Practice is intended to be acceptable practices, methods, or acts generally accepted in the region, and is not intended to be limited to the optimum practices, methods, or acts to the exclusion of all others.

"Governmental Authority" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority.

"Grandfathered Active Employees" has the meaning set forth in Section 6.12(d)(iii)(D).

"Grandfathered Individuals" has the meaning set forth in Section 6.12(d)(iii)(D).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"IBEW" means International Brotherhood of Electrical Workers.

"IBEW CBAs" has the meaning set forth in Section 6.12(a).

"IDRB Documents" has the meaning set forth in Section 6.14(m).

"IDRB Indebtedness" means the indebtedness of Seller owing to the issuers of the Revenue Bonds and arising under the Loan Agreements included among the IDRB Documents.

"Income Tax" means any federal, state, local or foreign Tax (a) based upon, measured by or calculated with respect to gross or net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties, or additions to such Tax.

"Indemnifiable Loss" means any claim, demand, suit, loss, liability, damage, obligation, payment, cost or expense (including, without limitation, the cost and expense of any action, suit, proceeding, assessment, judgment, settlement or compromise relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith).

"Indemnifying Party" means a Party obligated to provide indemnification under this Agreement.

"Indemnitee" means a Person entitled to receive indemnification under this Agreement.

"Independent Accounting Firm" means such independent accounting firm of national reputation as is mutually appointed by the Buyer and Seller.

"Inspection" means all tests, reviews, examinations, inspections, investigations, interviews, verifications, samplings and similar activities conducted by Buyer or its Representatives prior to the Closing with respect to the Assets, including "Phase I" and/or "Phase II" environmental assessments.

"Intellectual Property" means patents and patent rights, trademarks and trademark rights, inventions, copyrights and copyright rights, and all pending applications for registrations of patents, trademarks, and copyrights.

"Inventories" means materials, spare parts, consumable supplies, fuel supplies and chemical inventories relating to the Assets or the operation of the Business.

"Knowledge" means the actual knowledge, as of the date hereof or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of such certificate, of the Persons identified on Schedule 1.1 and successors to each such Person's employment responsibilities.

"Material Adverse Effect" means any occurrence or condition, arising after the date hereof, that has or would reasonably be expected to have a material adverse effect with an aggregate an adverse economic impact, taking into account all relevant considerations, in excess of \$10,000,000 on the business, operations, properties, financial condition or results of operations of any Party (including its Affiliates, taken as a whole) or on the ability of either Party to perform in all material respects its obligations under this Agreement and the Ancillary Agreements.

"Material Taking" has the meaning set forth in Section 6.13(b).

"Non-Union Employees" has the meaning set forth in Section 6.12(b).

"Off-Site Location" means any real property other than the Real Property.

"Order" means any award, decision, injunction, judgment, order, consent order, writ, decree, consent decree, ruling, subpoena, or verdict entered, issued, made or rendered by any court, administrative agency, other Governmental Authority, or by an arbitrator, each of which possesses competent jurisdiction.

"Party" has the meaning set forth in the Recitals.

"Permitted Encumbrances" means any of the following:

(a) mechanics', carriers', workers' and other similar liens arising in the ordinary course of business for charges that are not delinquent or that are being contested in good faith and have not proceeded to judgment;

(b) liens for current Taxes and assessments not yet due and payable;

(c) with respect to the Real Property, usual and customary nonmonetary Encumbrances, covenants, Easements, restrictions and other title matters (whether or not recorded) that do not and are not expected to materially interfere with the operation of that portion of the Business conducted on such Real Property or the Business as a whole;

(d) Encumbrances securing the payment or performance of any of the Assumed Liabilities;

(e) all applicable zoning ordinances and land use restrictions in effect as of the date of this Agreement and all changes to or new adoptions of zoning ordinances and land use restrictions prior to the Closing Date that do not and are not expected to materially interfere with the operation of that portion of the Business conducted on such Real Property or the Business as a whole;

(f) with respect to any Asset which consists of a leasehold or other possessory interests in real property, all Encumbrances, covenants, Easements, restrictions and other title matters (whether or not recorded) to which the underlying fee estate in such real property is subject that do not or will not interfere materially with the operation of that portion of the Business currently conducted on such property or the Business as a whole; and

(g) any other Encumbrances, obligations, defects or irregularities of any kind whatsoever affecting title to the Assets that will be terminated, released or waived on or before the Closing Date or that are not, individually or in the aggregate, reasonably likely to materially interfere with the present use of the Assets or to materially increase the cost of conducting the Business.

"Permits" means any permits, licenses, registrations, franchises and other authorizations, consents and approvals of Governmental Authorities held by Seller with respect to the Assets or the Business.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or governmental entity or any department or agency thereof.

"Post-Closing Adjustment" has the meaning set forth in Section 3.3(d).

"Post-Retirement Welfare Benefits" has the meaning set forth in Section 6.12(d)(iii)(D).

"Power Service Agreement" means that certain Power Service Agreement, dated as of June 1, 2001, between Pinnacle West Capital Corporation and Seller.

"Proposed Post-Closing Adjustment" has the meaning set forth in Section 3.3(c).

"Proprietary Information" of a Party means all information about the Party or its Affiliates, including their respective properties or operations, furnished to the other Party or its Representatives by the Party or its Representatives, before or after the date hereof, regardless of the manner or medium in which it is furnished and all analyses, reports, tests or other information created or prepared by, or on behalf of, a Party during the performance of "Phase I" or "Phase II" environmental site assessments. Proprietary Information does not include information that: (a) is or becomes generally available to the public, other than as a result of a disclosure by the other Party or its Representatives; (b) was available to the other Party on a nonconfidential basis prior to its disclosure by the Party or its Representatives; (c) becomes available to the other Party on a nonconfidential basis from a person, other than the Party or its Representatives, who is not otherwise bound by a confidentiality agreement with the Party or its Representatives, or is not otherwise under any obligation to the Party or any of its Representatives not to transmit the information to the other Party or its Representatives; or (d) is independently developed by the other Party.

"Purchase Price" has the meaning set forth in Section 3.2.

"Qualifying Offer" means an offer to a Transferred Non-Union Employee of the same or similar job that is at least 100% of such employee's current total cash compensation at the time the offer was made (consisting of base salary and target incentive bonus), and does not require, as a condition of acceptance, a relocation of residence as described in Section 6.12(f).

"Real Property" has the meaning set forth in Section 2.1(a). Any reference to the Real Property includes, by definition, Seller's right, title and interest in and to the surface and subsurface elements, including the soils and groundwater present at the Real Property, and any reference to items "at the Real Property" includes all items "at, on, in, upon, over, across, under and within" the Real Property.

"Real Property Leases" has the meaning set forth in Section 4.5.

"Recovery Costs" has the meaning set forth in Section 8.4(d).

"Regulated Substances" means (a) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and dielectric fluid containing polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which or whose discharge,

emission, disposal or Release is prohibited, limited or regulated by any applicable Environmental Law.

"Regulations" has the meaning set forth in Section 6.14(a)(iii).

"Regulatory Exceptions" means any of the following:

(a) a refusal by the ACC or the FERC to authorize an increase in base rates for the Business, an imposition by the ACC or the FERC of a rate moratorium for the Business, or a requirement by the ACC or the FERC of the filing of a rate case for the Business;

(b) an imposition by the ACC requiring Buyer to provide service, or to improve service, to Persons located in any authorized service area of the Business, provided such requirement has a corresponding rate recovery opportunity;

(c) an imposition by the ACC of performance, safety or reliability standards for Buyer's operation of the Business that are substantially equivalent to those standards being met by Buyer or its Affiliates in their other utility operations in Arizona, provided (i) Buyer is given a reasonable period of time after Closing to meet such imposed standards and (ii) such imposed standards have a corresponding rate recovery opportunity; and

(d) terms and conditions imposed by any Governmental Authority that is required to issue a Required Regulatory Approval that are either (i) usual and customary; (ii) applicable to the Business or to Buyer or any Affiliate of Buyer as of the date of this Agreement; or (iii) contemplated by this Agreement, including the understandings of the Parties referenced in Section 6.8(c)(i).

"Regulatory Material Adverse Effect" means, with respect to any Party, a Material Adverse Effect resulting from the effect on such Party of the terms and conditions of a Final Order with respect to any Required Regulatory Approval other than Regulatory Exceptions.

"Release" means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump or allow to escape into or through the environment.

"Remediation" means any action taken in the investigation, removal, confinement, cleanup, treatment, or monitoring of a Release or an Environmental Condition on Real Property or Off-Site Location, including, without limitation, (a) obtaining any Permits or Environmental Permits required for such remedial activities, and (b) implementation of any engineering controls and institutional controls. The term "Remediation" includes, without limitation, any action which constitutes "removal action" or "remedial action" as defined by Section 101 of CERCLA, Section 6901(23) and (24); or any action which constitutes "remediation" or "remedial action" as defined by Arizona Revised Statutes Sections 49-151(4), 49-171(8) and 49-282.02(C)(2).

"Representatives" of a Party means such Party's authorized representatives, including without limitation, its professional and financial advisors.

"Required Regulatory Approvals" means with respect to a Party, any consent or approval of, filing with, or notice to, any Governmental Authority that is necessary for the execution and delivery of this Agreement and the Ancillary Agreements by such Party or the consummation thereby of the transactions contemplated hereby, other than such consents, approvals, filings or notices (i) which are not required in the ordinary course to be obtained or made prior to the Closing and the transfer of the Assets, (ii) which, if not obtained or made, will not prevent such Party from performing its material obligations hereunder, or (iii) that relate to a Permit that is not material to the Business, taken as a whole.

"Revenue Bonds" has the meaning set forth in Section 6.14(a)(i).

"Savings Plan" has the meaning set forth in Section 6.12(d)(iii)(E).

"SEC" means the Securities and Exchange Commission and any successor agency thereto.

"Seller" has the meaning set forth in the Preamble.

"Seller Indemnifiable Loss" has the meaning set forth in Section 8.1.

"Seller Indemnitee" has the meaning set forth in Section 8.1.

"Seller Material Adverse Effect" means a Material Adverse Effect with respect to Seller.

"Seller Required Regulatory Approvals" means the Required Regulatory Approvals set forth in Schedule 4.3(b).

"Seller SEC Reports" has the meaning set forth in Section 4.21.

"Seller's Pension Plan" has the meaning set forth in Section 6.12(d)(iii)(C).

"Severance Cost" has the meaning set forth in Section 6.12(b).

"Special Warranty Deed" means a special warranty deed substantially in the form of Exhibit C attached hereto.

"Subsidiary" when used in reference to any Person means any entity of which outstanding securities having ordinary voting power to elect a majority of the Board of Directors or other Persons performing similar functions of such entity are owned directly or indirectly by such Person.

"Sufficient Notice" has the meaning set forth in Section 6.14(c)(ii).

"Taking" has the meaning set forth in Section 6.13(b).

"Tangible Personal Property" has the meaning set forth in Section 2.1(c).

"Taxes" means all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security, gross receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto.

"Tax Impact" has the meaning set forth in Section 6.14(a)(vi).

"Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any taxing authority with respect to Taxes including amendments thereto.

"Termination Date" has the meaning set forth in Section 9.1(b).

"Terminated Power Service Agreement" means that certain Power Service Agreement, dated as of January 5, 1995, between Arizona Public Service Company and Seller, as heretofore terminated.

"Third Party Claim" means any claim, action, or proceeding made or brought by any Person who is not (a) a Party to this Agreement, or (b) an Affiliate of a Party to this Agreement.

"Title Commitment" has the meaning set forth in Section 6.17.

"Title Company" has the meaning set forth in Section 6.17.

"Title Policies" has the meaning set forth in Section 6.17.

"Transfer Taxes" means any real property transfer or gains tax, sales tax, conveyance fee, use tax, stamp tax, stock transfer tax or other similar tax, including any related penalties, interest and additions to tax.

"Transferable Permits" means those Permits and Environmental Permits with respect to the Assets or the Business which may be transferred to Buyer with or without a filing with, notice to, consent of or approval of any Governmental Authority, and excluding those Permits and Environmental Permits with respect to the Assets or the Business which are non-transferable to Buyer and with respect to which Buyer must apply for and obtain replacements.

"Transferred Employees" means Transferred Non-Union Employees and Transferred Union Employees.

"Transferred Employee Records" means records related to Seller's employees who become employees of Buyer but only to the extent such records pertain to (A) skill and development training and biographies, (B) seniority histories, (C) salary and benefit

information, (D) Occupational, Safety and Health Administration reports, or (E) subject to the limitation of the Health Insurance Portability and Accountability Act of 1996 and any applicable state privacy legislation and regulations, active medical restriction forms.

"Transferred Non-Union Employees" has the meaning set forth in Section 6.12(b).

"Transferred Union Employees" has the meaning set forth in Section 6.12(a).

"Union Employees" has the meaning set forth in Section 6.12(a).

"UniSource" means UniSource Energy Corporation, an Arizona corporation and a direct or indirect parent corporation of Buyer.

"UniSource Designee" means a wholly-owned subsidiary, direct or indirect, of either UniSource or Tucson Electric Power Company, an Arizona corporation named in the approvals by the ACC and the FERC as an entity that may acquire the Assets.

"UniSource SEC Reports" has the meaning set forth in Section 5.5.

"WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988, as amended.

"1954 Code" has the meaning set forth in Section 6.14(a)(iii).

1.2 Certain Interpretive Matters. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term "includes" or "including" shall mean "including without limitation." The terms "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits hereto) and not to any particular provision of this Agreement. References to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made.

ARTICLE II

PURCHASE AND SALE

2.1 Transfer of Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer or the UniSource Designee, and Buyer or such UniSource Designee will purchase, assume and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Seller's right, title and interest in and to all the assets (except for Excluded Assets), real, personal or mixed, tangible, or intangible, used or held for use by Seller in or in connection with, or otherwise necessary for, the conduct of the Business, including,

without limitation, those assets described below, each as in existence on the Closing Date (such assets, collectively, the "Assets"):

(a) those certain parcels of real property owned by Seller together with all buildings, facilities, and other improvements thereon and all appurtenances thereto as described in Schedule 4.9 (the "Real Property");

(b) all accounts receivable and earned but unbilled revenues attributable to the Business, and all Inventories;

(c) all machinery (mobile or otherwise), equipment (including communications equipment and computers), vehicles, tools, furniture and furnishings and other personal property related to the Business, owned by Seller and located on the Real Property on the Closing Date, together with all the personal property of Seller used principally in the operation of the Business that are in the possession of Seller and whether or not located on the Real Property (collectively, the "Tangible Personal Property");

(d) subject to the provisions of Section 6.7(c), all Assigned Agreements, including the Power Service Agreement and any and all rights, claims or causes of action against Arizona Public Service Company or any other Person that Seller may have under the Terminated Power Service Agreement;

(e) subject to the provisions of Section 6.7(c), all Real Property Leases;

(f) all Transferable Permits;

(g) all books, customer lists and customer information databases, meter reading and service data, accounts payable and receivable data, operating and maintenance records, warranty information, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of Seller relating specifically to the Assets and necessary for the operation of the Assets and the Business (subject to the right of Seller to retain copies of same for its use) other than such items which are proprietary to third parties and accounting records;

(h) all unexpired, transferable warranties and guarantees from third parties with respect to any Asset as of the Closing Date;

(i) Seller prepaid expenses; and

(j) petty cash held locally for the benefit of the Business.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement will constitute a transfer to Buyer or a UniSource Designee of, or be construed as conferring on Buyer or a UniSource Designee, and neither Buyer nor said UniSource Designee is acquiring, any right, title or interest in or to the following specific assets which are associated with the Assets or the Business, but which are hereby specifically excluded from the sale and the definition of Assets herein (the "Excluded Assets"):

- (a) assets that Seller uses in both the Business and Seller's gas or communications businesses, the material items of which are identified in Schedule 2.2 hereto and any contracts or agreements regarding the procurement of goods or services by Seller for use in its gas or communications businesses;
- (b) cash and cash equivalents (including checks) in transit, in hand or in bank accounts, other than petty cash held locally for the benefit of the Business;
- (c) the rights of Seller and its Affiliates to the names "Citizens Communications Company", "Citizens Utilities", "CZN" or "Citizens" or any other trade names, trademarks, service marks, corporate names, corporate symbols or logos or any part, derivative or combination thereof (the "Citizens Marks");
- (d) the stock record and minute books of Seller, duplicate copies of all books and records transferred to Buyer, all records prepared in connection with the sale of the Business (including bids received from third parties and analyses relating to the Business and all original documents relating to the Revenue Bonds (provided that copies of such documents relating to the Revenue Bonds have been furnished to Buyer);
- (e) assets disposed of by Seller after the date of this Agreement to the extent such dispositions are not prohibited by this Agreement;
- (f) except in the case of causes of action against third parties (including indemnification and contribution) (i) relating to an Environmental Condition or Regulated Substance or arising under Environmental Laws and not relating to a Retained Liability or (ii) relating to the Terminated Power Service Agreement, the rights of Seller in and to any causes of action against third parties (including indemnification and contribution) relating to any Real Property or Tangible Personal Property, Permits, Environmental Permits, Taxes, Real Property Leases or the Assigned Agreements, if any, and not relating to the Assumed Liabilities, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds (subject to Section 6.13(c)), condemnation awards (subject to Section 6.13(b)), judgments and the like, whether received as payment or credit against future liabilities, relating specifically to the Real Property or any improvements thereon and relating to any period prior to the Closing Date;
- (g) all personnel records of Seller and its Affiliates relating to the Transferred Employees other than Transferred Employee Records or other records, the disclosure of which is required by law or legal or regulatory process or subpoena;
- (h) any and all of Seller's rights and interests in any contract that is not an Assigned Agreement or the Terminated Power Service Agreement, or that is an intercompany transaction between Seller and an Affiliate of Seller and all accounts owing by and among Seller and any of its Affiliates, whether or not any such intercompany transaction or account relates to the provision of goods and services, payment arrangements, intercompany charges or balances, or the like;
- (i) except to the extent set forth in Section 3.4, rights to refunds of Taxes payable with respect to the Business, the Assets, or any other assets, properties or operations of Seller or any Affiliate thereof;

- (j) all deferred tax assets or collectibles;
- (k) any insurance policy, bond, letter of credit or similar item, and any cash surrender value in regard thereto;
- (l) except as otherwise set forth in Section 6.12, assets attributable to or related to a Benefit Plan; and
- (m) all other assets listed in Schedule 2.2 hereto.

2.3 Assumed Liabilities. On the Closing Date, Buyer or the UniSource Designee acquiring the Assets shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer or such UniSource Designee shall assume and agree to discharge when due, without recourse to Seller, in accordance with the respective terms and subject to the respective conditions thereof, all of the Assumed Liabilities. All of the following liabilities and obligations of Seller or Buyer which relate to, or arise by virtue of Seller's or Buyer's ownership of the Assets or operation of the Business (other than Excluded Liabilities) are referred to collectively as the "Assumed Liabilities":

- (a) all liabilities and obligations of Seller or Buyer arising on or after the Closing Date under the Assigned Agreements, the Real Property Leases, and the Transferable Permits in accordance with the terms thereof, including, without limitation, the Assigned Agreements entered into by Seller (i) prior to the date hereof and (ii) after the date hereof consistent with the terms of this Agreement, except in each case to the extent such liabilities and obligations, but for a breach or default by Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date and are not otherwise included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3 or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice or passage of time or both would constitute a default by Seller;
- (b) all liabilities and obligations of Seller for accounts payable to the extent included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;
- (c) all liabilities and obligations associated with the Assets or the Business in respect of Taxes for which Buyer is liable pursuant to Section 3.4 or 6.10(a) hereof;
- (d) all liabilities and obligations of Seller or Buyer with respect to the Transferred Employees incurred on or after the Closing Date for which Buyer is responsible pursuant to Section 6.12;
- (e) all liabilities, responsibilities and obligations of Seller or Buyer arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation is known or unknown, contingent or accrued as of the Closing Date, including but not limited to: (i) costs of compliance (including capital, operating and other costs) relating to any violation or alleged violation of Environmental Laws occurring prior to, on or after the Closing Date, with respect to the

ownership of the Assets or operation of the Business; (ii) property damage or natural resource damage (whether such damages were manifested before or after the Closing Date) arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to, or migrating from any Assets prior to, on or after the Closing Date; (iii) any Remediation (whether or not such Remediation commenced before the Closing Date or commences after the Closing Date) of Environmental Conditions or Regulated Substances that are present or have been Released prior to, on or after the Closing Date, at, on, in, adjacent to or migrating from the Assets; (iv) any violations or alleged violations of Environmental Laws occurring on or after the Closing Date with respect to the ownership of any Assets or operation of the Business; (v) any bodily injury or loss of life arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to or migrating from any Asset on or after the Closing Date; (vi) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Closing Date, of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business; and (vii) any Remediation of any Environmental Condition or Release of Regulated Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Closing Date, of Regulated Substances generated in connection with the ownership or operation of the Assets; provided, that nothing set forth in this Section 2.3 shall require Buyer to assume any liabilities, responsibilities or obligations that are expressly excluded in Section 2.4;

(f) any Tax that may be imposed by any federal, state or local government on the ownership, sale (except as otherwise provided in Section 3.4 or 6.10(a)), operation of the Business or use of the Assets on or after the Closing Date, except for any Income Taxes attributable to the income of Seller;

(g) all liabilities and obligations of Seller or Buyer arising on and after the Closing Date under those Orders specifically relating to the Assets or the Business issued by or entered into with any Governmental Authority and listed in Schedule 2.3(g) or imposed on Buyer in any Required Regulatory Approval;

(h) customer advances, customer deposits and construction advances, unperformed service obligations, Easement relocation obligations, and engineering and construction required to complete scheduled construction, construction work in progress, and other capital expenditure projects, in each case directly related to the Business and outstanding on or arising after the Closing Date; and

(i) actions and proceedings based on conduct, actions, circumstances or conditions arising or occurring on or after the Closing Date, actions and proceedings described in Schedule 2.3(i), actions and proceedings arising from or directly related to any other Assumed Liability, and generic or industry-wide actions and proceedings outstanding on or arising on or after the Closing Date that are applicable to the Business.

2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Buyer shall not assume or be obligated to pay, perform or otherwise discharge the following liabilities or obligations of Seller (collectively, the "Excluded Liabilities"):

(a) any liabilities or obligations of Seller in respect of any Excluded Assets or other assets of Seller that are not Assets;

(b) any liabilities or obligations with respect to Taxes attributable to Seller's ownership, or use of the Assets or operation of the Business for taxable periods, or portions thereof, ending before the Closing Date, except for Taxes for which Buyer is liable pursuant to Section 3.4 or 6.10(a) hereof;

(c) any liabilities or obligations of Seller accruing under any of the Assigned Agreements prior to the Closing Date or any liability, other than an Assumed Liability, underlying a Permitted Encumbrance, in each case to the extent not included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;

(d) any and all asserted or unasserted liabilities or obligations to third parties (including employees) for injuries or damages, whether arising from tortious conduct or otherwise, or similar causes of action relating to the Assets or the Business arising during or attributable to the period prior to the Closing Date, other than such that relate to liabilities or obligations assumed by Buyer;

(e) any fines, penalties and associated costs for defending related enforcement actions, resulting from any violation or alleged violation of Environmental Laws with respect to the ownership of the Assets or the operation of the Business occurring prior to the Closing Date;

(f) any payment obligations of Seller pursuant to the Assigned Agreements for goods delivered or services rendered prior to the Closing Date, including, but not limited to, rental payments pursuant to the Real Property Leases, in each case to the extent not included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;

(g) any liabilities, responsibilities and obligations of Seller arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation was known or unknown, contingent or accrued, which relates to (i) any bodily injury, loss of life, property damage or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business at any Off-Site Location, or arising from the arrangement for such activities, prior to the Closing Date; or (ii) any Remediation of any Environmental Condition or Regulated Substance at any Off-Site Location, arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business at such Off-Site Location, or arising from the arrangement for such activities, prior to the Closing Date; provided, that for purposes of this paragraph, "Off-Site Location" does not include any location

to which Regulated Substances disposed of or Released at the site of any Asset may have migrated;

(h) any liability to third parties (including employees) for personal injury or loss of life, to the extent caused (or allegedly caused) by Environmental Conditions or the Release of Regulated Substances at, on, in, under, or adjacent to, or migrating from, the Assets prior to the Closing;

(i) subject to Section 6.12, any liabilities or obligations of Seller, any Seller Subsidiary or any ERISA Affiliate of Seller relating to any Benefit Plan including but not limited to any such liability (i) relating to benefits payable under any Benefit Plan; (ii) relating to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (iii) relating to a multi-employer plan; (iv) with respect to non-compliance with the notice and benefit continuation requirements of COBRA; (v) with respect to any noncompliance with ERISA or any other applicable laws; or (vi) with respect to any suit, proceeding or claim which is brought against Seller, Buyer, any Benefit Plan, or any fiduciary or former fiduciary of any such Benefit Plan;

(j) subject to Section 6.12, any liabilities or obligations arising from facts or circumstances prior to the Closing Date relating to the employment or termination of employment, including discrimination, wrongful discharge, unfair labor practices, or constructive termination by Seller of any individual, attributable to any actions or inactions by Seller prior to the Closing Date other than actions or inactions taken at the written direction of Buyer (it being understood and agreed that Buyer shall have no liability for action taken by Seller pursuant to Section 6.12 except as expressly provided therein);

(k) subject to Section 6.12, any obligations of Seller for wages, overtime, employment taxes, severance pay, transition payments in respect of compensation or similar benefits accruing or arising prior to the Closing under any term or provision of any contract, plan, instrument or agreement relating to any of the employees of Seller;

(l) all obligations of Seller with respect to the Revenue Bonds and any other indebtedness for money borrowed by Seller (including items due to Seller's Affiliates) other than payment obligations arising on or after the Closing Date under any equipment lease of the kind listed in Schedule 4.11(a) or under any line extension contracts or similar construction arrangements, it being understood and agreed that such leases, contracts and similar arrangements do not create indebtedness for money borrowed; and

(m) any liability of Seller arising out of a breach by Seller or any of its Affiliates of any of their respective obligations under this Agreement or the Ancillary Agreements.

2.5 Control of Litigation.

(a) The Parties agree and acknowledge that, from and after the Closing Date, Seller shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), arising out of or related to any Excluded Liabilities, and Buyer agrees to cooperate fully in connection therewith and in

connection therewith, shall comply with the provisions of Section 6.2, provided that, in no event shall Seller's exercise of its rights under this Section 2.5 (i) unreasonably interfere with Buyer's conduct or operation of the Business, (ii) place any environmental liens or deed restrictions on the Real Property, or (iii) cause Buyer to be responsible for maintaining any institutional or engineering controls that may be part of a Remediation activity.

(b) The Parties agree and acknowledge that, from and after the Closing Date, Buyer shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), arising out of or related to any Assumed Liabilities, and Seller agrees to cooperate fully in connection therewith and in connection therewith, shall comply with the provisions of Section 6.2.

ARTICLE III

THE CLOSING

3.1 Closing. Upon the terms and subject to the satisfaction of the conditions in Article VII of this Agreement, each of (i) the sale, assignment, conveyance, transfer and delivery of the Assets to Buyer by Seller, (ii) the payment of the Purchase Price to Seller by Buyer, (iii) the assumption of the Assumed Liabilities by Buyer, and (iv) the consummation of the other respective obligations of the Parties contemplated by this Agreement to be consummated on the Closing Date shall take place at a closing (the "Closing"), to be held at the offices of Seller in Phoenix, Arizona, or another mutually acceptable location, at 9:00 a.m. local time on the Closing Date.

3.2 Closing Payment. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, assumption, conveyance, transfer and delivery of the Assets, Buyer will pay or cause to be paid to Seller at the Closing an aggregate amount in U.S. dollars of ninety-two million dollars (\$92,000,000) (the "Base Purchase Price") plus or minus any adjustments pursuant to the provisions of this Agreement (the "Purchase Price"), by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by Seller and Buyer.

3.3 Adjustment to Base Purchase Price.

(a) Subject to Section 3.3(b), at the Closing, the Base Purchase Price shall be adjusted to account for the items set forth in this Section 3.3(a):

(i) the Base Purchase Price shall be decreased by four million dollars (\$4,000,000) if the Closing occurs on or before July 28, 2003;

(ii) [intentionally omitted]

(iii) the Base Purchase Price shall be increased by two million dollars (\$2,000,000) in the event the Closing occurs after the first anniversary of the date hereof;

(iv) the Base Purchase Price shall be increased by the aggregate amount of all accounts receivable and earned but unbilled revenues (other than any amounts that are due from any of Seller's Affiliates or that otherwise are Excluded Assets) attributable to the Business as of day immediately preceding the Closing Date net of Seller's reserve for allowance for bad debt (as reflected in Seller's written policy for allowance for bad debt as of the date hereof);

(v) the Base Purchase Price shall be decreased by all accounts payable attributable to the Business as of the day immediately preceding the Closing Date (other than any liability that is an Excluded Liability);

(vi) the Base Purchase price shall be decreased by (A) the aggregate amount of customer advances for construction times 25% and (B) the aggregate amount of customer deposits, in each case to the extent relating to the Business outstanding as of the day immediately preceding the Closing Date (other than any amounts due to any of Seller's Affiliates or that otherwise is an Excluded Liability);

(vii) the Base Purchase Price shall increased by the aggregate amount of Inventories recorded on Seller's books and records as of day immediately preceding the Closing Date;

(viii) the Base Purchase Price shall be adjusted to account for the net balance payable to or by Seller, if any, for items prorated pursuant to Section 3.4, other than the items addressed in Section 3.4(a);

(ix) the Base Purchase Price shall be increased or decreased if and to the extent required by Sections 6.3(c), 6.12(b), 6.12(d)(iii)(D) and 6.13; and

(x) the Base Purchase Price will be increased by the aggregate amount of all (i) Approved Capital Expenditures that are accrued by Seller between the date of this Agreement and the Closing Date (including expenditures recorded in the Construction Work in Progress account of the Business as of the day immediately preceding the Closing Date and relating to the Approved Capital Expenditures), (ii) without duplication, expenditures to purchase materials, supplies and other capital items that are dedicated to, but as of Closing have not been used in, the construction or improvement of the property, plant or equipment and relating to the Approved Capital Expenditures) and (iii) without duplication, other expenditures recorded as an asset of the Business as of the day immediately preceding the Closing Date and relating to such Approved Capital Expenditures.

(b) At least ten (10), but no more than thirty (30) days prior to the Closing Date, Seller shall prepare and deliver to Buyer an estimated closing statement (the "Estimated Closing Statement") that shall set forth Seller's best estimate of the estimated adjustments to the Base Purchase Price required by Section 3.3(a) (regardless of whether notice of such Base Purchase Price adjustments have been previously delivered to Buyer) (the "Estimated Adjustment"). Within five (5) days following the delivery of an Estimated Closing Statement to Buyer, Buyer may object in good faith to such Estimated Closing Payment in writing. In the

event of any such objection, the Parties shall attempt to resolve their differences by negotiation. If the Parties are unable to do so before three (3) days prior to the Closing Date, then (i) the full amount of the Estimated Adjustment shall be made at the Closing if the amount in dispute is less than \$1,000,000, or (ii) the undisputed portion of the Estimated Adjustment shall be made at the Closing if the amount in dispute is \$1,000,000 or more. The disputed portions shall be paid as a Post-Closing Adjustment if and to the extent required by Section 3.3(d).

(c) Within sixty (60) days following the Closing Date, Seller shall prepare and deliver to Buyer a final closing statement setting forth the final adjustments to the Base Purchase Price required by Section 3.3(a) (the "Proposed Post-Closing Adjustment"). All calculations of the Proposed Post-Closing Adjustments shall be prepared using the same accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on such Proposed Post-Closing Adjustments.

(d) Within thirty (30) days following the delivery of a Proposed Post-Closing Adjustment to Buyer, Buyer may object to such Proposed Post-Closing Adjustment in writing. Seller agrees to cooperate with Buyer to provide Buyer and Buyer's Representatives information used to prepare the Proposed Post-Closing Adjustments and information relating thereto. If Buyer objects to a Proposed Post-Closing Adjustment, the Parties shall attempt to resolve such dispute by negotiation. If such Parties are unable to resolve such dispute within thirty (30) days of any such objection by Buyer, the Parties shall appoint an Independent Accounting Firm. The fees and expenses of such Independent Accounting Firm shall be allocated between Buyer and Seller so that Seller's share of such fees and expenses shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by Buyer to such auditor that is successfully disputed by Buyer (as finally determined by such auditor) bears to the total amount of such remaining disputed amounts so submitted by Buyer to such auditor. The Independent Accounting Firm shall review such Proposed Post-Closing Adjustment and determine the appropriate adjustment to the Base Purchase Price, if any, within thirty (30) days of such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The finding of such Independent Accounting Firm shall be binding on the Parties hereto. Upon determination by agreement of the Parties or by binding determination of the Independent Accounting Firm of the appropriate adjustment to the Base Purchase Price (in either case, the "Post-Closing Adjustment"), if such Post-Closing Adjustment results in a change to the Base Purchase Price, the Party owing the difference shall deliver such difference to the Party owed such amount no later than two (2) Business Days after the determination of such Post Closing Adjustment, in immediately available funds or in any other manner as reasonably requested by the Party owed such amount, plus interest at 6.0% per annum on such determined amount from the Closing Date to (but not including) the date of payment.

(e) If at any time following the Closing Date Buyer actually returns to customers greater than thirty-five percent (35%) of the aggregate customer advances for construction directly relating to the Business and outstanding as of the Closing Date ("Advances"), Seller shall reimburse Buyer for all amounts returned to customers to the extent said returns exceed twenty-five percent (25%) of Advances. Buyer may, at any time within seven (7) years from the Closing Date, provide notice to Seller of a reimbursement claim under this Section 3.3(e), which notice shall include reasonable documentary substantiation of returns

to customers of Advances. In the event Seller agrees with said determination, it shall promptly pay such reimbursement to Buyer. In the event Seller disputes said determination, it shall initiate the dispute resolution procedures with regard to the Post-Closing Adjustment, as provided in Section 3.3(d), which shall be binding on the Parties.

3.4 Prorations. Buyer and Seller agree that all of the items normally prorated, including those listed below (but not including Income Taxes), relating to the Business and operation of the Assets shall be prorated as of the Closing Date, with Seller liable for such items to the extent such items relate to any time period prior to the Closing Date, and Buyer liable for such items to the extent such items relate to periods commencing with the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days). The Base Purchase Price shall be increased to the extent Buyer will benefit financially due to Seller's payment prior to the Closing Date of the portion of any such item allocable to Buyer, and (except with respect to the items addressed in clause (a) below) shall be decreased to the extent Seller will benefit financially due to Buyer's payment on or after the Closing Date of the portion of any such item allocable to Seller. The items subject to proration include the following:

(a) Subject to Section 6.10(b), personal property, real estate and occupancy Taxes, assessments and other charges, if any, on or with respect to the Business and operation of the Assets;

(b) rent, Taxes (other than Income Taxes) and all other items (including prepaid services or goods not included in Inventories) payable by or to Seller under any of the Assigned Agreements to the extent not included in the account payables of the Business outstanding as of the day immediately preceding the Closing Date;

(c) any permit, license, registration, compliance assurance fees or other fees with respect to any Transferable Permit or other Asset;

(d) sewer rents and charges for water, telephone, electricity and other utilities with respect to the Assets;

(e) rent and Taxes payable by or to Seller under the Real Property Leases assigned to Buyer to the extent not included in the account payables of the Business outstanding as of the day immediately preceding the Closing Date;

(f) deposits made by Seller to the extent transferred to Buyer;

(g) prepaid expenses paid by Seller to the extent transferred to Buyer; and

(h) petty cash held locally for the benefit of the Business to the extent transferred to Buyer.

3.5 Deliveries by Seller. At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer:

(a) The Bill of Sale, duly executed by Seller;

- (b) Copies of any and all consents, waivers or approvals obtained or required to be obtained by Seller from Government Authorities or non-governmental Persons with respect to the transfer of the Assets, or the consummation of the transactions contemplated by this Agreement;
- (c) One or more Special Warranty Deeds conveying title to the Real Property to Buyer, duly executed and acknowledged by Seller and in recordable form;
- (d) An opinion from Seller's general counsel, dated the Closing Date, substantially in the form of Exhibit D attached hereto, and opinions from Seller's Bond Counsel, dated the Closing Date, substantially in the form of Exhibit E attached hereto;
- (e) The Assignment and Assumption Agreement, duly executed by Seller;
- (f) A FIRPTA Affidavit, duly executed by Seller;
- (g) Copies, certified by the Secretary or Assistant Secretary of Seller, of corporate resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by Seller in connection herewith, and the consummation of the transactions contemplated hereby;
- (h) A certificate of the Secretary or Assistant Secretary of Seller identifying the name and title and bearing the signatures of the officers of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;
- (i) Certificate of Good Standing with respect to Seller, issued by the Secretary of State of the State of Delaware;
- (j) To the extent available, originals of all Assigned Agreements, Real Property Leases and Transferable Permits and, if not available, true and correct copies thereof (delivery of the foregoing documents will be deemed made in the case of any such documents then located at any of the offices included in the Assets, but only to the extent that Seller delivers to Buyer a schedule generally identifying each such office and the general categories of documents located in each such office);
- (k) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer the Assets to Buyer, in accordance with this Agreement and where necessary or desirable in recordable form;
- (l) Such other agreements, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably requested by Buyer in connection herewith; and
- (m) A certificate dated the Closing Date executed by Seller's President, Public Services Sector, to the effect that, to such officer's Knowledge, the conditions set forth in Sections 7.1(e) and (f) have been satisfied by Seller.

3.6 Deliveries by Buyer. At the Closing, Buyer will deliver, or cause to be delivered, the following:

(a) The Purchase Price, as adjusted pursuant to Section 3.3, by wire transfer of immediately available funds denominated in U.S. dollars in accordance with Seller's instructions or by such other means as are agreed upon by Seller and Buyer;

(b) The Assignment and Assumption Agreement, duly executed by Buyer;

(c) All such other instruments of transfer or assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for the sale, conveyance, assignment and transfer of the Assets to, or the assumption of the Assumed Liabilities by, Buyer in accordance with this Agreement;

(d) Copies, certified by the Secretary or Assistant Secretary of Buyer, of resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by the Buyer in connection herewith, and the consummation of the transactions contemplated hereby;

(e) A certificate of the Secretary or Assistant Secretary of Buyer, identifying the name and title and bearing the signatures of the officers of Buyer authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;

(f) An opinion from Buyer's general counsel, dated the Closing Date, substantially in the form of Exhibit F attached hereto;

(g) Certified copies of any and all consents, waivers or approvals obtained or required to be obtained by Buyer from Government Authorities or non-governmental Persons with respect to the transfer of the Assets or the consummation of the transactions contemplated by this Agreement;

(h) Such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably requested by Seller in connection herewith;

(i) Certificate of Good Standing with respect to Buyer, issued by the Secretary of State of Arizona; and

(j) A certificate dated the Closing Date executed by Buyer's Chief Financial Officer to the effect that, to such officer's knowledge, the conditions set forth in Sections 7.2(e), (f) and (g) have been satisfied by Buyer.

3.7 Work in Progress. The Parties agree to work together before the Closing Date to effect on the Closing Date an orderly transition with respect to work in progress.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SELLER

Seller hereby represents and warrants to Buyer as follows:

4.1 Incorporation; Qualification. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease, and operate its material assets and properties and to carry on its business as is now being conducted. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which its business, as now being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a Seller Material Adverse Effect.

4.2 Authority. Seller has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which Seller is a signatory and to consummate the transactions contemplated hereby or thereby. The execution and delivery by Seller of this Agreement and each of the Ancillary Agreements to which Seller is a signatory and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Seller and this Agreement has been duly and validly executed and delivered by Seller. Each of this Agreement and the Ancillary Agreements to which Seller is a signatory constitutes the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

4.3 Consents and Approvals; No Violation.

(a) Except as set forth in Schedule 4.3(a), neither the execution, delivery and performance of this Agreement nor the execution, delivery and performance of the Ancillary Agreements by Seller will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or Bylaws of Seller, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which it, or any of the Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or that would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect; or (iii) subject to obtaining the Seller Required Regulatory Approvals, constitute violations of any law, regulation, order, judgment or decree applicable to Seller, which violations, individually or in the aggregate, would result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

(b) Except as set forth in Schedule 4.3(b) (the filings and approvals referred to in Schedule 4.3(b) are collectively referred to as the "Seller Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for

the execution and delivery of this Agreement and the Ancillary Agreements by Seller or the consummation by Seller of the transactions contemplated hereby and thereby, other than those the failure to obtain which would not result in a Seller Material Adverse Effect or an Asset Material Adverse Effect and would not otherwise result in a material violation of law by Buyer.

4.4 Insurance. Schedule 4.4 lists, as of the date of this Agreement, all material policies of fire, liability, workers' compensation and other forms of insurance (if any) owned or held by, or on behalf of, Seller with respect to the Assets and the Business. Except as set forth in such Schedule, all such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums which may be payable with respect to auto, general liability and workers' compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as described in Schedule 4.4, within the thirty-six (36) months preceding the date of this Agreement, Seller has not been refused any insurance with respect to the Assets or the Business nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last twelve (12) months.

4.5 Real Property Leases. Schedule 4.5 lists, as of the date of this Agreement, all material real property leases under which Seller is a lessee or lessor and which relate to the Assets, including a separate listing of all leases of office space used by Seller in the conduct of the Business (the "Real Property Leases"). Seller will deliver to Buyer true, correct and complete copies of each of the Real Property Leases in accordance with Section 6.20.

4.6 Environmental Matters. Seller has heretofore delivered to Buyer all environmental reports and all environmental site assessments relating to the Assets that have been identified by Seller after diligent inquiry, which reports have been identified in schedules delivered to Buyer on or prior to the date hereof ("Environmental Reports"). Except as disclosed in Schedule 4.6 or in the Environmental Reports:

(a) Seller holds, and is in substantial compliance with, all Environmental Permits that are required for Seller to conduct the Business and operate the Assets, and Seller is otherwise in compliance with applicable Environmental Laws with respect to the Business and operation of the Assets, except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, result in an Asset Material Adverse Effect;

(b) Seller has not received (i) any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar state law with respect to any of the Real Property, or (ii) any written notification from a Governmental Authority with respect to pending or ongoing investigations or enforcement actions related to alleged or potential violations of any applicable Environmental Law with respect to any of the Real Property;

(c) Seller has not entered into or agreed to any consent decree or order relating to the Assets, and is not subject to any outstanding judgment, decree, or judicial order

relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to the Assets; and

(d) To Seller's Knowledge, no Release of Regulated Substances has occurred at, from, in, on, or under the Real Property, and, except as legally permitted, no Regulated Substances are present in, on, about or migrating from the Real Property, in each case that would give rise to an Environmental Claim related to the Assets for which Remediation would reasonably be required, except in any such case to the extent that any such Release or Environmental Claim would not, individually or in the aggregate, result in an Environmental Claim in excess of \$500,000.

4.7 Labor Matters. Schedule 4.7 sets forth the collective bargaining agreements, and amendments thereto, to which Seller is a party in connection with the Business. Seller has previously delivered to Buyer true and correct copies of all such collective bargaining agreements and amendments thereto. With respect to the Assets and the Business, except to the extent set forth in Schedule 4.7 and except for such matters as would not, individually or in the aggregate, result in an Asset Material Adverse Effect, (a) Seller is in compliance with all applicable laws respecting employment and employment practices, occupational safety and health, plant closing, mass layoffs, terms and conditions of employment and wages and hours; (b) Seller has not received any written notice of any unfair labor practice complaint against Seller pending before the National Labor Relations Board; (c) no arbitration proceeding arising out of or under any collective bargaining agreement is pending against Seller; and (d) Seller has not experienced any work stoppage within the three-year period prior to the date hereof and to Seller's Knowledge none is currently threatened.

4.8 Benefit Plans: ERISA.

(a) Schedule 4.8 lists all material Benefit Plans. True and complete copies of all such Benefit Plans have been made available to the Buyer.

(b) No liability under Title IV or Section 302 of ERISA has been incurred by Seller or any ERISA Affiliate of Seller that has not been satisfied in full, and no condition exists that presents a material risk to Seller or any ERISA Affiliate of Seller of incurring any such liability, other than liability for premiums due to the Pension Benefit Guaranty Corporation (which premiums have been paid when due). Insofar as the representation made in this Section 4.8 applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is made with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which Seller or any ERISA Affiliate of Seller made, or was required to make, contributions during the five (5)-year period ending on the last day of the most recent plan year ended prior to the Closing Date.

(c) Except as expressly provided in this Agreement, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or officer of Seller or any ERISA Affiliate of Seller to severance pay, unemployment compensation or any other payment, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer.

(d) There has been no material failure of any of the Benefit Plans that is a group health plan (as defined in Section 5000(b)(1) of the Code) to meet the requirements of Section 4980B(f) of the Code with respect to a qualified beneficiary (as defined in Section 4980B(g) of the Code). Neither the Seller nor any ERISA Affiliate of Seller has contributed to a nonconforming group health plan (as defined in Section 5000(c) of the Code) and no ERISA Affiliate of Seller has incurred a tax under Section 5000(e) of the Code that is or could become a liability of Buyer.

(e) There are no pending, or to Seller's Knowledge, threatened claims by or on behalf of any Benefit Plans, by any employee or beneficiary covered under any such Benefit Plans, or otherwise involving any such Benefit Plans (other than routine claims for benefits).

4.9 Real Property. Schedule 4.9 contains a description of the Real Property included in the Assets. True and correct copies of any current surveys, abstracts, title commitments and title opinions identified by Seller after diligent inquiry to be in Seller's possession and all policies of title insurance currently in force and identified by Seller after diligent inquiry to be in the possession of Seller with respect to the Real Property have heretofore been made available to Buyer.

4.10 Condemnation. Except as set forth in Schedule 4.10, Seller has not received any written notices of and otherwise has no Knowledge of any pending or threatened proceedings or actions by any Governmental Authority to condemn or take by power of eminent domain all or any part of the Assets.

4.11 Assigned Agreements.

(a) Schedule 4.11(a) lists each Assigned Agreement (other than Real Property Leases, line extension agreements and similar construction arrangements, railroad crossing agreements and similar arrangements, and Easements held by Seller) which is material to the Business, other than those (i) that are listed or described on another Schedule, (ii) that provide for annual payments by Seller after the date hereof of less than \$100,000 or (iii) that, when aggregated with all other Assigned Agreements not listed on Schedule 4.5 or 4.11(a), provide for payments by Seller after the date hereof of less than \$500,000 in the aggregate. Schedule 4.11(a) also lists each agreement that is material to the Assets or the Business that may expire or that Seller expects to terminate prior to the Closing Date other than any agreement that is an Excluded Asset.

(b) Except as disclosed in Schedule 4.11(b), each Assigned Agreement listed on Schedule 4.5 or 4.11(a) constitutes a legal, valid and binding obligation of Seller and, to Seller's Knowledge, constitutes a valid and binding obligation of the other parties thereto, and may be transferred to the Buyer as contemplated by this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, unless in such case the impact of such lack of legality, validity or binding nature, or inability to transfer, would not, individually or in the aggregate, result in an Asset Material Adverse Effect.

(c) Except as set forth in Schedule 4.11(c), there is not, under the Assigned Agreements listed on Schedule 4.5 or 4.11(a), any default or event which, with notice or lapse of

time or both, would constitute a default on the part of the Seller or to Seller's Knowledge, any of the other parties thereto, except such events of default and other events which would not, individually or in the aggregate, result in an Asset Material Adverse Effect.

4.12 Legal Proceedings. Except as set forth in Schedule 4.12, there is no action or proceeding pending or, to Seller's Knowledge, threatened against Seller before any court, arbitrator or Governmental Authority, which would, individually or in the aggregate, reasonably be expected to result in a Seller Material Adverse Effect or an Asset Material Adverse Effect. Except as set forth in Schedule 4.12 Seller is not subject to any outstanding Order that would, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

4.13 Permits. Seller has all Permits (other than Environmental Permits, which are addressed in Section 4.6 hereof) necessary to own and operate the Assets except where the failure to have such Permits would not, individually or in the aggregate, create a Seller Material Adverse Effect or an Asset Material Adverse Effect. Except as disclosed on Schedule 4.13, Seller has not received any written notification that it is in violation of any such Permits, except notifications of violations which would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect. Seller is in compliance with all Permits except where such non-compliance would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

4.14 Taxes.

(a) Seller has filed or caused to be filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the Assets, and has paid or caused to be paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where the failure to so file or pay would not result in a Seller Material Adverse Effect or an Asset Material Adverse Effect. Seller has complied in all material respects with all applicable laws, rules and regulations relating to withholding Taxes relating to Transferred Employees. All Tax Returns relating to the Assets are true, correct and complete in all material respects. There are no liens for Taxes upon the Assets except for liens for Taxes not yet due and Permitted Encumbrances.

(b) Except as set forth in Schedule 4.14, no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of Seller in respect of the Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 4.14 is being contested in good faith through appropriate proceedings.

(c) Except as set forth in Schedule 4.14, there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the Assets that will be binding upon Buyer after the Closing.

(d) Except as set forth on Schedule 4.14, none of the Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f) of the Code, and none of the Assets is "tax-exempt use" property within the meaning of Section 168(h) of the Code.

(e) Schedule 4.14 sets forth the taxing jurisdictions in which Seller owns assets or conducts business that require a notification to a taxing authority of the transactions contemplated by this Agreement, if the failure to make such notification, or obtain Tax clearance certificates in connection therewith, would either require Buyer to withhold any portion of the consideration or subject Buyer to any liability for any Taxes of Seller.

4.15 Intellectual Property. The Citizens Marks and the software licenses and related contracts described in Schedules 2.2 and 4.11(a) constitute all of the material Intellectual Property necessary for the operation and maintenance of the Assets or the conduct of the Business, each of which Seller either has all right, title and interest in or valid and binding rights under contract to use in connection with the operation of the Assets and the Business. Except as disclosed in Schedule 4.15, (a) Seller is not, nor has it received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default), under any contract to use such Intellectual Property, and (b) to Seller's Knowledge, such Intellectual Property is not being infringed by any other Person. Except as disclosed in Schedule 4.15, Seller has not received notice that it is infringing any Intellectual Property of any other Person in connection with the Assets or the Business, and Seller, to its Knowledge, is not infringing any Intellectual Property of any other Person which, individually or in the aggregate, would have an Asset Material Adverse Effect.

4.16 Capital Expenditures. Seller has heretofore delivered to Buyer a schedule of all Capital Expenditures that, as of the date of this Agreement, are planned by Seller from the date hereof through December 31, 2003 (the "Capital Expenditures Schedule").

4.17 Compliance With Laws. Seller is in compliance with all applicable laws, rules and regulations with respect to its ownership of the Assets and operation of the Business except where the failure to be in compliance would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

4.18 Title. Seller has, and will have as of the Closing Date, good, valid and indefeasible title to the Real Property and the other Assets purported to be owned by Seller, free and clear of all Encumbrances except Permitted Encumbrances.

4.19 DISCLAIMERS.

(a) EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE IV, THE ASSETS ARE TRANSFERRED "AS IS, WHERE IS", AND SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF THE ASSETS, CONDITION, VALUE OR QUALITY OF THE ASSETS OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE ASSETS AND SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, OR THE APPLICABILITY OF ANY

GOVERNMENTAL REQUIREMENTS, INCLUDING BUT NOT LIMITED TO ANY ENVIRONMENTAL LAWS, OR WHETHER SELLER POSSESSES SUFFICIENT REAL PROPERTY OR PERSONAL PROPERTY TO OPERATE THE ASSETS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING THE ABSENCE OF HAZARDOUS SUBSTANCES OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL LAWS WITH RESPECT TO THE ASSETS.

(b) It is understood that Seller makes no representation or warranty with respect to the assigned rights in respect of the Terminated Power Service Agreement contemplated in Section 2.1(d).

4.20 Financial Statements. Schedule 4.20 sets forth the unaudited balance sheet for the Business as of December 31, 2001 (the "Balance Sheet") and the unaudited statement of income of the Business for the twelve-month period ended December 31, 2001 (collectively, the "Financial Statements"). Except as set forth in Schedule 4.20, the Financial Statements have been prepared on a pre-tax basis in accordance, in all material respects, with GAAP applied on a basis consistent with prior periods except for the omission of full footnotes to such Financial Statements. Except as set forth in Schedule 4.20, the Balance Sheet presents fairly in all material respects the financial condition of the Business as of its date and the income statement included in the Financial Statements presents fairly in all material respects the results of operations of the Business for the periods covered thereby. The books and records of Seller from which the Financial Statements were derived were complete and accurate in all material respects at the time of such preparation.

4.21 SEC Filings; Financial Statements.

(a) Seller has filed, or caused to be filed, all forms, reports and documents required to be filed by Seller with the SEC since January 1, 2001, and has heretofore delivered or made available to Buyer in the form filed with the SEC, together with any amendments thereto, its (i) Annual Reports on Form 10-K for the fiscal year ended December 31, 2000 and 2001, (ii) Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31 and June 30, 2002, and (iii) all other reports or registration statements filed by Seller with the SEC since January 1, 2001 (collectively, the "Seller SEC Reports"). The Seller SEC Reports were prepared substantially in accordance with the requirements of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as the case may be, and the rules and regulations promulgated under each of such respective acts, and did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements, including all related notes and schedules, contained in the Seller SEC Reports (or incorporated by reference therein) fairly present the consolidated financial position of Seller as at the respective dates thereof and the consolidated results of operations and cash flows of Seller for the periods indicated in accordance with GAAP applied on a consistent basis throughout the periods involved (except for changes in accounting

principles disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

4.22 Sufficiency of Assets. The Assets and the Excluded Assets are the only assets owned, used, or held for use by Seller in, or in connection with, or otherwise necessary for, the conduct of the Business as presently conducted, except for such assets the failure to own, use, or hold for use, as would not have an Asset Material Adverse Effect or a Material Adverse Effect for Buyer.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 Organization. Buyer is an Arizona corporation, duly organized, validly existing and in good standing under the laws of the state of its organization and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

5.2 Authority. Buyer has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which Buyer is a signatory and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer is a signatory and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Buyer and this Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Buyer. Each of this Agreement and the Ancillary Agreements to which Buyer is a signatory, constitute the legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

5.3 Consents and Approvals; No Violation.

(a) Except as set forth in Schedule 5.3(a), neither the execution, delivery and performance of this Agreement by Buyer nor the execution, delivery and performance of the Ancillary Agreements by Buyer or any of its Affiliates nor the consummation by Buyer of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws (or other similar governing documents) of Buyer, or any of its Affiliates, or (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Buyer or any of its Affiliates is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a

Buyer Material Adverse Effect or (iii) subject to obtaining the Buyer Required Regulatory Approvals, constitute violations of any law, regulation, order, judgment or decree applicable to Buyer, which violations, individually or in the aggregate, would result in a Buyer Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) (the filings and approvals referred to in such Schedule are collectively referred to as the "Buyer Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for Buyer's execution and delivery of this Agreement and the Ancillary Agreements or the consummation by Buyer of the transactions contemplated hereby and thereby, other than such consents, approvals, filings or notices, which, if not obtained or made, will not (i) prevent Buyer from performing its obligations under this Agreement and the Ancillary Agreements or (ii) result in a Buyer Material Adverse Effect.

5.4 Availability of Funds. Buyer acknowledges and agrees that on the Closing Date, it will have sufficient funds to pay the Purchase Price under this Agreement and the Arizona Gas Purchase Agreement (including sufficient cash to fund the equity portions thereof) and to timely perform all of its obligations under this Agreement, the Ancillary Agreements, and Arizona Gas Purchase Agreement. Tucson Electric Power Company has the ability to contribute cash as equity to a wholly-owned subsidiary which constitutes a "Utility" or "Public Utility" subject to the receipt of required approvals under Title 14, Chapter 2, Article 8 (Public Utility Holding Companies and Affiliated Interests) of the Arizona Administrative Code. As of September 30, 2002, Tucson Electric Power Company held cash in the amount of approximately \$65,000,000.

5.5 SEC Filings: Financial Statements.

(a) UniSource has filed, or caused to be filed, all forms, reports and documents required to be filed by UniSource with the SEC since January 1, 2001, and has heretofore delivered or made available to Seller in the form filed with the SEC, together with any amendments thereto, its (i) Annual Reports on Form 10-K for the fiscal year ended December 31, 2000 and 2001, (ii) Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31 and June 30, 2002, and (iii) all other reports or registration statements filed by UniSource with the SEC since January 1, 2001 (collectively, the "UniSource SEC Reports"). The UniSource SEC Reports were prepared substantially in accordance with the requirements of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as the case may be, and the rules and regulations promulgated under each of such respective acts, and did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements, including all related notes and schedules, contained in the UniSource SEC Reports (or incorporated by reference therein) fairly present the consolidated financial position of UniSource as at the respective dates thereof and the consolidated results of operations and cash flows of UniSource for the periods indicated in accordance with GAAP applied on a consistent basis throughout the periods involved (except for changes in accounting principles disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

5.6 Legal Proceedings. Except as set forth in Schedule 5.6, (a) there are no actions or proceedings pending or, to Buyer's knowledge threatened against Buyer or any of its Affiliates before any court or arbitrator or Governmental Authority, which, individually or in the aggregate, would result in a Buyer Material Adverse Effect, and (b) neither Buyer nor any of its Affiliates is subject to any outstanding Orders, which would, individually or in the aggregate, result in a Buyer Material Adverse Effect.

5.7 No Knowledge of Seller's Breach. Buyer has no knowledge of any breach by Seller of any representation or warranty of Seller or of any other condition or circumstance that would excuse Buyer from its timely performance of its obligations hereunder. Buyer shall notify promptly Seller if any such information comes to Buyer's attention prior to the Closing.

5.8 Qualified Buyer. Buyer is qualified to obtain any Permits and Environmental Permits necessary for Buyer to own and operate the Assets as of the Closing.

5.9 Inspections. Buyer is knowledgeable about the Business as engaged in by Seller and of the usual and customary practices of companies engaged in businesses similar to the Business and has had access to the Assets, the officers and employees of Seller, and the books, records and files of Seller relating to the Business and the Assets. Buyer acknowledges and agrees that it has, prior to its execution of this Agreement, (i) reviewed the Environmental Reports and (ii) had an opportunity to conduct Inspections of the Assets, including the Real Property. Subject to Sections 6.2, 6.3 and 7.1(g), and without waiving Seller's representations and warranties in Section 4.6, Buyer acknowledges that it is satisfied with such review and Inspections to date and (ii) Buyer acknowledges and agrees that past, present, and future physical characteristics and Environmental Conditions may not have been revealed by its Inspections and the investigations of the Assets contained in the Environmental Reports. In making its decision to execute this Agreement, and to purchase the Assets, Buyer has relied on and will continue to rely upon the results of its Inspections, the Environmental Reports and Seller's representations and warranties in Section 4.6. Buyer acknowledges and agrees that the representations and warranties set forth in Article IV of this Agreement constitute the sole and exclusive representations and warranties of Seller to Buyer in connection with the transactions contemplated hereby and by the Ancillary Agreements, and there are no representations, warranties, covenants, understandings or agreements, oral or written, in relation thereto between the Parties other than those incorporated herein, including Section 6.3, and therein. Except for the representations and warranties expressly set forth in Article IV of this Agreement, Buyer disclaims reliance on any representations or warranties, either express or implied, by or on behalf of Seller or its Affiliates or Representatives. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that, except as provided in Section 4.6, there are no representations or warranties of Seller with respect to the Environmental Condition of the Assets, compliance with Environmental Laws and Environmental Permits of the presence or Releases of hazardous material in the fixtures, soils, groundwater, surface water or air on, under or about or emanating from any of the Assets.

5.10 WARN Act. Buyer does not intend to engage in a "Plant Closing" or "Mass Layoff" as such terms are defined in the WARN Act within sixty days of the Closing Date.

ARTICLE VI

COVENANTS OF THE PARTIES

6.1 Conduct of Business and Operation of Assets.

(a) Except as described in Schedule 6.1(a), as required by an applicable law or by any Governmental Authority, as expressly contemplated by this Agreement or to the extent Buyer otherwise consents in writing (such consent not to be unreasonably withheld), during the period from the date of this Agreement to the Closing Date, Seller shall (i) operate the Assets in the ordinary course of business consistent with its past practices and Good Utility Practices, (ii) use all Commercially Reasonable Efforts to preserve intact the Assets in all material respects, and endeavor to preserve the goodwill and relationships with customers, suppliers and others having business dealings with it, (iii) maintain insurance described in Section 4.4 (or replacements thereto providing for substantially the same coverage), and (iv) comply with all applicable laws relating to the Assets, including without limitation, all Environmental Laws, except where the failure to so comply would not result in an Asset Material Adverse Effect. Seller agrees to incur Capital Expenditures in the ordinary course in respect of (A) growth of the customer base (see, e.g., items under the heading "Growth" in the Capital Expenditures Schedule) and (B) maintenance of the Assets and replacement activities (see, e.g., items under the heading "Replacement" in the Capital Expenditures Schedule). Buyer agrees that Seller's deferral of Capital Expenditures in respect of network growth (see, e.g., items under the heading "Infrastructure" in the Capital Expenditures Schedule) shall not be deemed to be inconsistent with or to violate Good Utility Practices.

(b) Without limiting the generality of Section 6.1(a) and, except as contemplated in this Agreement or as described in Schedule 6.1(a), or as required under applicable law or by any Governmental Authority, prior to the Closing Date, without the prior written consent of Buyer (such consent not to be unreasonably withheld), Seller shall not:

(i) Make any material change in the levels of Inventories customarily maintained by Seller with respect to the Business, other than changes which are consistent with Good Utility Practices;

(ii) Sell, lease (as lessor), encumber, pledge, transfer or otherwise dispose of, any Asset (except for Inventories used, consumed or replaced in the ordinary course of business consistent with past practices of Seller or with Good Utility Practices) other than to encumber any such Asset with Permitted Encumbrances;

(iii) Modify, amend or voluntarily terminate, prior to the respective expiration date of any of the Assigned Agreements or Real Property Leases or any of the Permits or Environmental Permits with respect to such Assets in any material respect, other than (A) in the ordinary course of business, to the extent consistent with the past practices of Seller or Good Utility Practices, (B) with cause, to the extent consistent with past practices of Seller or Good Utility Practices, or (C) as may be required in connection with transferring Seller's rights or obligations thereunder to Buyer pursuant to this Agreement;

(iv) Except as otherwise provided herein, enter into any commitment for the purchase, sale, or transportation of fuel for the Business having a term greater than six months and not terminable on or before the Closing Date either (A) automatically, or (B) by option of Seller (or, after the Closing, by Buyer) in its sole discretion, if the aggregate payment under such commitment for fuel and all other outstanding commitments for fuel for the Business not previously approved by Buyer would exceed \$1,000,000;

(v) Except as otherwise provided herein, enter into any contract, agreement, commitment or arrangement for the Business that individually exceeds \$250,000 or in the aggregate exceeds \$1,000,000 unless it is terminable by Seller (or, after the Closing Date, by Buyer) without penalty or premium upon no more than sixty (60) days notice;

(vi) Except as otherwise required by the terms of the applicable IBEW CBA or as otherwise provided in Section 6.12, (A) hire, or transfer any employees of or for the Business prior to the Closing, other than to fill vacancies in existing positions in the reasonable discretion of Seller, (B) materially increase salaries or wages of employees employed in connection with such Asset prior to the Closing, (C) take any action prior to the Closing to affect a material change in the IBEW CBA(s) or (D) take any action prior to the Closing to materially increase the aggregate benefits payable to the employees (considered as a group) employed in connection with the Business; and

(vii) Except as otherwise provided herein, enter into any written or oral contract, agreement, commitment or arrangement with respect to any of the proscribed transactions set forth in the foregoing paragraphs (i) through (vi).

6.2 Access to Information.

(a) Between the date of this Agreement and the Closing Date, Seller will, at reasonable times and upon reasonable notice, provide Buyer and its Representatives:

(i) reasonable access to their respective managerial personnel, to all books, records, plans, equipment, offices and other facilities and properties constituting part of the Assets;

(ii) such historical financial and operating data and other information with respect to the Assets as Buyer may from time to time reasonably request, to the extent reasonably available;

(iii) upon request, a copy of each material report, schedule or other document, if any, filed by Seller with respect to the Assets with the SEC, FERC, ACC, ADEQ or any other Governmental Authority;

(iv) access to all Assets for inspection by Buyer and its Representatives at reasonable times during regular business hours scheduled for such inspections, and shall provide qualified management, engineering, operations and maintenance and other personnel to make presentations as required, to escort such Persons and to assist in all

aspects of conducting the Inspections, provided that each of Buyer and Seller shall bear their own costs of participating in the Inspections; and

(v) access to all such other information in the possession or control of Seller as shall be reasonably necessary to enable Buyer or its Representatives to verify the accuracy of the representations and warranties of Seller contained in this Agreement; provided, however, that any such Inspections shall be conducted in such a manner as not to interfere unreasonably with the operation of the Assets. In the event that Seller's provision of information under this Section 6.2 would (A) constitute a waiver of any legal privilege, including the attorney-client privilege or work product privilege, or (B) violate any legal or contractual obligation of Seller to a third party, then Seller shall first notify Buyer with respect to the existence and general nature of the restricted information. If the restricted information relates to the Assets, the Parties shall thereupon mutually agree upon a reasonable procedure in order to provide Buyer with access to the information while protecting the legitimate interests of Seller thereto. The mutually agreed procedure may include, without limitation, a limited waiver by Seller of the relevant privilege, Buyer's agreement to maintain the information in strict confidence, limited review or inspection of the information by specified individuals, or any combination of the foregoing.

Notwithstanding anything in this Section 6.2(a) to the contrary, with respect to employee records Seller will only furnish or provide such access to Transferred Employee Records and will not furnish or provide access to other employee personnel records or medical information unless required by law or specifically authorized by the affected employee.

(b) The Parties shall cooperate to schedule Buyer's Inspections of the Assets so that, to the extent reasonably feasible, any interference with the operation of the Business is minimized, and Buyer may complete its Inspections of the Assets within ninety (90) working days of commencement of Inspections and within six (6) months after the execution of this Agreement.

(c) Until the conclusion of Buyer's next rate case for the Business (or such longer period as may be required by applicable law), each Party and its Representatives shall have reasonable access to all of the books and records relating to the Assets and the Business (for the Seller, only to the extent relating to periods prior to the Closing Date), including all Transferred Employee Records in the possession of Buyer or Seller to the extent that such access may reasonably be required in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Assets. Such access shall be afforded by the Party in possession of any such books and records upon receipt of reasonable advance notice and during normal business hours. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it or the holder of the information with respect to such access pursuant to this Section 6.2(c). If the Party in possession of such books and records shall desire to dispose of any books and records upon or prior to the expiration of such above-stated period (or any such longer period), such Party shall, prior to such disposition, give the other Party a reasonable opportunity, at the latter's expense, to segregate and remove such books and records as it may select.

(d) Buyer agrees that, prior to the Closing Date, neither it nor its Representatives will contact any vendors, suppliers, employees, or other contracting parties of Seller or its Affiliates with respect to any aspect of the Assets or the transactions contemplated hereby, without the prior written consent of Seller, which consent shall not be unreasonably withheld.

6.3 Environmental Inspections and Information.

(a) Buyer may rely on certain Environmental Reports. Seller shall cause the consultants listed on Schedule 6.3, who were responsible for such Environmental Reports, to deliver written confirmation to Buyer prior to the Closing Date that Buyer may rely on such Environmental Reports.

(b) Buyer has conducted various environmental assessment activities with respect to the Assets, including reviewing existing environmental reports, correspondence, permits and related materials regarding the Assets and certain other "Phase I" and "Phase II" activities as set forth in the ASTM protocol regarding "Phase I" and "Phase II" environmental assessments. Seller acknowledges that, between the date of this Agreement and the Closing Date, Buyer will continue to conduct Inspections with respect to environmental matters, including "Phase I" and "Phase II" environmental assessments to the extent Buyer reasonably concludes that such assessments are warranted by the Environmental Reports or the findings of Buyer's assessments prior to the date of this Agreement. Any such Inspections shall be conducted as provided in Section 6.2.

(c) If any environmental inspection conducted by Buyer or Seller before or after the date of this Agreement and before the Closing Date results in the discovery of one or more Environmental Conditions that are reasonably likely to give rise to one or more Environmental Claims related to the Assets, for which Remediation would reasonably be required (an "Adverse Environmental Condition"), and if the Adverse Environmental Condition, aggregated with all other Adverse Environmental Conditions identified by Buyer or Seller prior to the Closing Date, is reasonably likely to give rise to Remediation expenses of Buyer after Closing in excess of \$1,500,000 in the aggregate (the "Environmental Threshold"), then either (i) the Base Purchase Price shall be reduced, to the extent such Adverse Environmental Condition is not Remediated prior to the Closing Date, by a mutually agreed amount, which amount shall be equal to the excess of (A) the estimated out-of-pocket costs and expenses which Buyer reasonably can be expected to incur to Remediate, in accordance with Good Utility Practices, such Adverse Environmental Condition after the Closing over (B) the Environmental Threshold (the "Environmental Price Adjustment") or (ii) if the Parties are not able to mutually agree on an Environmental Price Adjustment, Seller shall reimburse Buyer for all actual out-of-pocket costs and expenses that Buyer reasonably incurs after Closing to Remediate such Adverse Environmental Condition in excess of the Environmental Threshold. Any Adverse Environmental Condition which has or is reasonably expected to have an aggregate economic impact on Buyer, taking into consideration all relevant circumstances, in excess of \$25,000,000, shall be conclusively deemed to be an Asset Material Asset Effect. Notwithstanding the foregoing, any single Adverse Environmental Condition which is reasonably expected to give rise to Remediation expenses of less than \$25,000 shall not be counted toward the Environmental Threshold and shall not result in an Environmental Price Adjustment.

(d) Buyer either has provided or shall provide to Seller, promptly following Buyer's receipt thereof, copies of all audits, reports, studies, assessments and other information composed or compiled, or to be composed or compiled, by Buyer or Buyer's Representatives in connection with environmental assessment activities. Buyer shall treat all such information delivered to, or composed or compiled by, Buyer or Buyer's Representative as Environmental Data in accordance with the procedures of Section 6.3(e).

(e) All audits, reports, studies and assessments delivered to or prepared by Buyer and all other information collected and generated as a result of Buyer's environmental due diligence ("Environmental Data") will be subject to the terms and conditions of the Confidentiality Agreement, dated June 3, 2002, between Seller and Buyer, except as otherwise expressly provided in this Section 6.3(e). Neither Buyer nor its Representatives shall disclose or release any Environmental Data without the prior written consent of Seller and all such information shall be kept strictly confidential. To the extent reasonably practicable, the Environmental Data shall be prepared at the request of counsel to Buyer and, to the fullest extent permitted by law, shall be the work product of such counsel and constitute confidential attorney/client communications. The Environmental Data shall be transferred among Buyer and its Representatives in a manner that will preserve, to the extent reasonably practicable, such privileges. Buyer expressly agrees that until the Closing, it will not distribute the Environmental Data to any third party without Seller's prior written consent (such consent not to be unreasonably withheld). After the Closing, Buyer agrees that it will not distribute the Environmental Data to any third party without Seller's prior written consent, except as required by law or by express provisions of Buyer's corporate compliance program if Seller is provided written notice at least ten (10) days prior to such distribution; provided, however, that Buyer may distribute the Environmental Data to any potential purchaser of any of the Assets or an ownership interest therein (either directly or through the purchase of an ownership interest in an entity holding any of the Assets) only after first notifying the Seller.

6.4 Confidentiality.

(a) Each Party shall, and shall use its reasonable best efforts to cause its Representatives to, (i) keep all Proprietary Information of any other Party confidential and not to disclose or reveal any such Proprietary Information to any person other than such Party's Representatives and (ii) not use such Proprietary Information other than in connection with the consummation of the transactions contemplated hereby. After the Closing Date and except as provided in Section 6.3(e), any Proprietary Information, to the extent related to the Assets acquired by Buyer, shall no longer be subject to the restrictions set forth herein. The obligations of the Parties under this Section 6.4(a) shall be in full force and effect for three (3) years from the date hereof and will survive the termination of this Agreement, the discharge of all other obligations owed by the Parties to each other and the Closing Date.

(b) Notwithstanding the terms of Section 6.4(a) above, the Parties agree that prior to the Closing, Buyer may reveal or disclose Proprietary Information to any other Persons in connection with (i) the financing of Buyer's purchase of the Assets or any equity participation in Buyer's purchase of the Assets and (ii) obtaining insurance for the Assets; provided that such Persons agree in writing to maintain the confidentiality of the Proprietary Information in accordance with this Agreement.

(c) Upon the other Party's prior written approval (which shall not be unreasonably withheld), any of the Parties may provide Proprietary Information of the other Parties to the SEC, FERC, ACC, ADEQ or any other Governmental Authority with jurisdiction or any securities exchange, as may be necessary to obtain Required Regulatory Approvals or to comply generally with any relevant law or regulation. The disclosing Party will seek confidential treatment for the Proprietary Information provided to any Governmental Authority and the disclosing Party will notify the other Party as far in advance as is practicable of its intention to release to any Governmental Authority any Proprietary Information.

6.5 Public Statements. Subject to the requirements imposed by law, any Governmental Authority or securities exchange, prior to the Closing Date, no press release or other public announcement or public statement or comment in response to any inquiry relating to the transactions contemplated by this Agreement shall be issued or made by any Party without the prior approval of the other Party (which approval shall not be unreasonably withheld). The Parties agree to cooperate in preparing any such announcements.

6.6 Expenses. Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses. Notwithstanding anything to the contrary herein, Buyer will be responsible for all filing fees under the HSR Act relating to the Assets it would acquire hereunder.

6.7 Further Assurances.

(a) Subject to the terms and 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 under applicable laws and regulations to consummate and make effective the purchase, sale, transfer and delivery of the Assets and the assumption of the Assumed Liabilities pursuant to this Agreement. Such actions shall include, without limitation, each Party using its Commercially Reasonable Efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, including obtaining all necessary consents, approvals, and authorizations of third parties and Governmental Authorities required to be obtained in order to consummate the transactions hereunder, and to effectuate a transfer of the Transferable Permits to Buyer. Seller shall cooperate with Buyer in its efforts to obtain all other Permits and Environmental Permits necessary for Buyer to operate the Assets. None of the Parties hereto shall, without prior written consent of the other Party, take or fail to take any action, which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(b) In the event that any Asset shall not have been assigned, conveyed, transferred and delivered hereunder to Buyer at the Closing, Seller shall, subject to Section 6.7(c), use Commercially Reasonable Efforts to assign, convey, transfer and deliver such Assets to Buyer as promptly as is practicable after the Closing.

(c) (i) To the extent that Seller's rights under any Assigned Agreement or Real Property Lease may not be assigned without the consent of another Person which consent

has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful.

(ii) Seller agrees that if any consent to an assignment of any Assigned Agreement or Real Property Lease shall not be obtained or if any attempted assignment would be ineffective or would impair the Buyer's rights and obligations under the Assigned Agreement or Real Property Lease in question, so that Buyer would not in effect acquire the benefit of all such rights and obligations, Seller, at the Buyer's option and to the maximum extent permitted by law and such Assigned Agreement or Real Property Lease, shall, after the Closing Date, appoint Buyer to be Seller's agent with respect to such Assigned Agreement or Real Property Lease, or, to the maximum extent permitted by law and such Assigned Agreement or Real Property Lease, enter into such reasonable arrangements with Buyer or take such other actions as are necessary to provide Buyer with the same or substantially similar rights and obligations of such Assigned Agreement or Real Property Lease as Buyer may reasonably request. Seller shall cooperate and shall use Commercially Reasonable Efforts prior to and after the Closing Date to obtain an assignment to Buyer of each Assigned Agreement or Real Property Lease.

(iii) To the extent that any fuel supply contract or power purchase agreement is not assignable or the contracting party withholds consent to assignment, then Seller agrees to continue to purchase fuel and/or power pursuant to such contract(s) and to resell it to Buyer at the purchase price for the remainder of the term of such contract(s), provided that the term of such contract(s) shall not be extended. Buyer shall make payment to Seller in this circumstance on an as-incurred basis.

(d) To the extent that Seller's rights under any warranty or guaranty described in Section 2.1(h) may not be assigned without the consent of another Person, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof, or be unlawful. Seller agrees that if any consent to an assignment of any such warranty or guaranty shall not be obtained, or if any attempted assignment would be ineffective or would impair Buyer's rights and obligations under the warranty or guaranty in question, so that Buyer would not in effect acquire the benefit of all such rights and obligations, Seller, at Buyer's option and expense, shall use Commercially Reasonable Efforts, to the extent permitted by law and by such warranty or guaranty, to enforce such warranty or guaranty for the benefit of Buyer so as to provide Buyer to the maximum extent possible with the benefits and obligations of such warranty or guaranty.

6.8 Consents and Approvals.

(a) As promptly as advisable after the execution of this Agreement, Buyer and Seller shall each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. Each Party shall file any HSR Act notifications with respect to this Agreement and with respect to the Arizona Gas Purchase Agreement simultaneously and in the same filing. Buyer and Seller shall use their respective reasonable best efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing of

such notification. Buyer will pay all filing fees under the HSR Act relating to the Assets, but each of Seller and Buyer will bear its own costs of the preparation of any such filing.

(b) The Parties shall cooperate and use all Commercially Reasonable Efforts to promptly prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, approvals and authorizations of all Governmental Authorities necessary or advisable to consummate the transactions contemplated by this Agreement, including, without limitation, the Required Regulatory Approvals. Buyer shall have the right to review and approve in advance all the information relating to Buyer, on the one hand, and Seller shall have the right to review and approve in advance all the information relating to Seller, on the other hand, in either case, which appear in any filing made in connection with the transactions contemplated by this Agreement. Buyer and Seller agree that they will consult and cooperate with each other with respect to the obtaining of all such necessary permits, consents, approvals and authorizations of Governmental Authorities.

(c) In connection with applications and other filings for the Required Regulatory Approvals, and the prosecution of any pending regulatory proceedings material to the Business Buyer and Seller shall jointly, and on an equal basis, coordinate the overall development of the positions to be taken and the regulatory actions to be requested in such applications and filings for approval of the sale by the Seller and the purchase by the Buyer of the Assets and the Business, of all other matters contemplated by this Agreement which require regulatory approval and of all other regulatory matters incidental thereto which are to be addressed in such applications and filings. Efforts to obtain any necessary approvals (including from the ACC and the FERC) shall be prosecuted by counsel mutually agreed upon by the Parties, and acting as joint counsel to the Parties, it being understood, however, that (i) all positions taken in the filings with such Governmental Authorities shall be consistent with the mutual understandings of the Parties and (ii) any SEC approvals required by Buyer shall be prosecuted by Buyer's counsel.

(d) Seller and Buyer shall cooperate with each other and promptly prepare and file notifications with, and request Tax clearances from, state and local taxing authorities in any jurisdictions in which a portion of the Purchase Price may be required to be withheld or in which Buyer would otherwise be liable for any Tax liabilities of Seller pursuant to such state and local Tax law.

(e) Seller shall have primary responsibility for securing the transfer of the Transferable Permits, effective as of the Closing Date. Buyer shall have the primary responsibility for securing the transfer, reissuance or procurement of the Permits and Environmental Permits (other than Transferable Permits) effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and assist in any transfer or reissuance of a Permit or Environmental Permit held by Seller, or the procurement of any other Permit or Environmental Permit when so requested by Buyer.

6.9 Fees and Commissions. Each of Seller and Buyer represent and warrant to the other that, except for Morgan Stanley & Co. Incorporated, which is acting for and at the expense of Seller, and Credit Suisse First Boston Corporation, which is acting for and at the expense of

Buyer, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such representation. Each of Seller and Buyer will pay to the others or otherwise discharge, and will indemnify and hold the others harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than the fees, commissions and finder's fees payable to the party listed above) incurred by reason of any action taken by the indemnifying party. Buyer has a preexisting business relationship with New Harbor, Incorporated and agrees to be responsible for any brokerage fees, commissions or finder's fees of New Harbor, Incorporated, if any, arising from the transactions contemplated by this Agreement.

6.10 Tax Matters.

(a) All Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (A) Arizona sales tax; (B) the Arizona transfer tax, conveyance fees or conveyances of interests in real and/or personal property; and (C) Arizona sales tax and transfer tax on deeds shall be borne as follows: fifty percent (50%) by the Buyer and fifty percent (50%) by the Seller. Seller shall file, to the extent required by, or permissible under, applicable law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable law, Buyer shall join in the execution of any such Tax Returns and other documentation. Prior to the Closing Date, to the extent applicable, Buyer shall provide to Seller appropriate certificates of Tax exemption from each applicable taxing authority.

(b) With respect to Taxes to be prorated in accordance with Section 3.4 of this Agreement, Buyer shall prepare and timely file all Tax Returns required to be filed after the Closing Date with respect to the Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing each such Tax Return. Upon receipt by Buyer of the tax bill, invoice or other statement regarding such real and personal property Taxes, Buyer shall calculate the *pro rata* share of such tax bill, invoice or other statement attributable to Buyer and Seller. Buyer shall then forward, as soon as possible, to Seller a copy of such tax bill, invoice or statement along with the supporting documentation relating to the calculation of the *pro rata* share to Seller and Seller will promptly pay to Buyer Seller's *pro rata* share of such tax bill, invoice or statement. In the event Seller first receives a tax bill, invoice or statement relating to the Assets from a taxing authority, Seller shall promptly forward such tax bill, invoice or statement to Buyer.

(c) 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, examination or proceedings. Any information obtained pursuant to this Section 6.10(c) or pursuant to any other

Section hereof providing for the sharing of information or review of any Tax Return or other instrument relating to Taxes shall be kept confidential by the Parties hereto.

(d) In the event that a dispute arises between Buyer and Seller, with respect to Taxes in Sections 6.10(a) and 6.10(b), or concerning any amount due under this Section 6.10, the Parties shall attempt in good faith to resolve such dispute and any agreed upon amount shall be paid to the appropriate Party. If such dispute is not resolved within thirty (30) days, the Parties to such dispute shall submit the dispute to the Independent Accounting Firm for resolution, which resolution shall be final, conclusive and binding on such Parties. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of such Independent Accounting Firm shall be allocated between the Parties so that the non-disputing Party's share of such fees and expenses shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by the disputing Party to such auditor that is successfully disputed by the disputing Party (as finally determined by such auditor) bears to the total amount of such remaining disputed amount so submitted by the disputing Party to such auditor. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate.

(e) Buyer agrees that Seller may, at Seller's election prior to the Closing Date, direct that all or a portion of the Purchase Price be delivered to a "qualified intermediary" (as defined in Treasury Regulation Section 1.1031(k) - (g)(4)) as to enable Seller's relinquishment of the Assets to qualify as part of a like-kind exchange of property covered by Section 1031 of the Code. If Seller so elects, Buyer shall cooperate with Seller (but without being required to incur any out-of-pocket costs in the course thereof) in connection with Seller's efforts to effect such like-kind exchange, which cooperation shall include, without limitation, taking such actions as Seller requests in order to enable Seller to qualify such transfer as part of a like-kind exchange of property covered by Section 1031 of the Code (including any actions required to facilitate the use of a "qualified intermediary"), and Buyer agrees that Seller may assign all or part of its rights and delegate all or part of its obligations under this Agreement to a person or entity acting as a qualified intermediary to qualify the transfer of the Assets as part of like-kind exchange of property covered by Section 1031 of the Code. Buyer and Seller agree in good faith to use reasonable efforts to coordinate the transactions contemplated by this Agreement with any other transactions engaged in by either Buyer or Seller; provided that such efforts are not required to include an unreasonable delay in the consummation of the transactions contemplated by this Agreement.

(f) Prior to the Closing Date, Buyer and Seller shall use their good faith efforts to agree upon the allocation (the "Allocation") of the Purchase Price, the Assumed Liabilities and other relevant items (including, for example, adjustments to the Base Purchase Price) to the individual assets or classes of assets within the meaning of Section 1060 of the Code. If Buyer and Seller agree to such Allocation prior to Closing, Buyer and Seller covenant and agree that (i) the values assigned to the assets by the Parties' mutual agreement shall be conclusive and final for all purposes, and (ii) neither Buyer nor Seller will take any position before any Governmental Authority or in any Proceeding that is in any way inconsistent with such Allocation. Notwithstanding the foregoing, if Buyer and Seller cannot agree to an Allocation, Buyer and Seller covenant and agree to file, and to cause their respective Affiliates to

file, all Tax Returns and schedules thereto (including, for example, amended returns, claims for refund, and those returns and forms required under Section 1060 of the Code and any Treasury regulations promulgated thereunder) consistent with each of such Party's good faith Allocations, unless otherwise required because of a change in any applicable law.

6.11 Advice of Changes. Prior to the Closing, each Party will timely advise the other in writing with respect to any matter arising after execution of this Agreement which becomes known to that Party and which, if existing or occurring at the date of this Agreement, would have been required to be set forth in this Agreement, including any of the Schedules or Exhibits hereto. Any such written notice will not be deemed to have amended this Agreement, including the appropriate Schedule or Exhibit, or to have qualified any representation or warranty contained in this Agreement, or to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the development.

6.12 Seller Employees.

(a) Buyer shall give Qualifying Offers of employment to all employees of Seller who are covered by the IBEW Local Unions Nos. 387 and 769 collective bargaining agreements with Seller (the "IBEW CBA(s)") and are employed in positions relating to the Business (collectively, "Union Employees"). Each such person who becomes employed by Buyer pursuant to this section shall be referred to herein as a "Transferred Union Employee".

(b) Buyer shall give Qualifying Offers of employment to substantially all of the salaried employees of Seller who are employed in positions relating to the Business (collectively, "Non-Union Employees"). Each such person who becomes employed by Buyer pursuant to this section shall be referred to herein as a "Transferred Non-Union Employee." Buyer shall reimburse Seller for 50 percent of the aggregate Severance Cost (as defined below) relating to those Non-Union Employees whose employment is terminated by Seller prior to or as of the Closing Date. "Severance Cost" means the sum of the following costs incurred by Seller resulting from a Non-Union Employee's termination of employment with Seller: (i) all cash severance benefits payable pursuant to Seller's severance policy, (ii) the cost of outplacement services provided pursuant to Seller's severance policy, (iii) Seller's subsidized portion of COBRA Continuation Coverage provided by Seller's health plan in accordance with Seller's severance policy, (iv) the additional severance benefits payable pursuant to arrangements with the specific individuals identified in a schedule delivered to Buyer prior to the date hereof; and (v) any retention bonuses paid by Seller to Non-Union Employees who do not receive Qualifying Offers of employment and who are deemed in Seller's discretion to be critical to the ongoing operation of the Business. With respect to the Severance Cost components described in clauses (i), (ii), (iv) and (v) of the preceding sentence, Buyer shall pay such reimbursement to Seller at the later of Closing or five days after receipt of a list of such terminated Non-Union Employees and the amount of such Severance Cost components with respect to such employees. With respect to the Severance Cost component described in clause (iii), Seller shall provide Buyer during the COBRA Continuation Coverage period with a monthly schedule setting forth the cumulative amount of such cost component for the preceding month, and Buyer shall pay such reimbursement to Seller within five days after receipt of each such schedule.

(c) All offers of employment made by Buyer pursuant to Sections 6.12(a) and (b) shall be made in accordance with all applicable laws and regulations, and for Union Employees, in accordance with the applicable IBEW CBA and shall remain open for a period of ten (10) working days. Any such offer which is accepted within such ten (10) working day period shall thereafter be irrevocable, except for good cause, until the earlier of the Closing Date or the termination of this Agreement pursuant to its terms. Additionally, such offers shall be contingent upon the Non-Union Employee's or Union Employee's successful completion of drug testing pursuant to Buyer's policies and in compliance with the applicable IBEW CBA. Following acceptance of such offers, Buyer shall provide written notice thereof to Seller and Seller shall provide Buyer with access to the files and records of employees accepting such offers, to the extent permitted by contract, the applicable IBEW CBA and/or applicable law.

(d) The following shall be applicable with respect to Transferred Employees:

(i) From and after the Closing Date, Transferred Employees shall accrue no additional benefits under any employee benefit plan, policy, program or arrangement of Seller or its Affiliates.

(ii) For such Transferred Union Employees, Buyer shall recognize the IBEW as the exclusive collective bargaining representative and shall assume the terms and conditions of the applicable IBEW CBA, to the extent applicable to such Transferred Union Employees, until the expiration of said agreement, and will further comply with all applicable legal obligations with respect to collective bargaining under federal labor law thereafter.

(iii) As of the Closing Date, Buyer shall cause Transferred Non-Union Employees to be covered by the Buyer benefit plans listed on Schedule 6.12(d)(iii), and shall cause Transferred Union Employees to be provided with benefits that are consistent with the terms of the applicable IBEW CBA or are otherwise acceptable to the applicable union. The commitments under this paragraph shall require the following:

(A) With respect to health care plans, Buyer agrees to waive or to cause the waiver of all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for such employees, except that Buyer may require the employee or his/her dependents who, on the Closing Date, is then in the process of satisfying any similar exclusion or waiting period under the Seller health care plans to satisfy fully the balance of the applicable time period for such exclusion or waiting period under the applicable Buyer plan. With respect to the calendar year in which the Closing Date occurs, all health care expenses incurred by any such employees and/or any eligible dependent thereof, including without limitation any alternate recipient pursuant to qualified medical child support orders, in the portion of the calendar year preceding the Closing Date that were qualified to be taken into account for purposes of satisfying any deductible or out-of-pocket limit under any Seller health care plans shall be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the health care plan of Buyer for such calendar year.

(B) With respect to service and seniority, Buyer shall recognize each such employee's service and seniority with Seller and any affiliate of Seller for all non-pension purposes, including the determination of eligibility and extent of service or seniority-related welfare benefits such as vacation and sick pay benefits. Seller agrees to pay each such employee for all vacation benefits banked, accrued, and unused, as of the Closing Date, or otherwise according to Seller's policies and applicable law. For purposes of this Section 6.12(d)(iii)(B), Transferred Employees who have prior service with Southern Union Company, and who are identified on a schedule delivered to Buyer prior to the date hereof, shall be treated as service with Seller.

(C) The Citizens Pension Plan ("Seller's Pension Plan") shall retain all liabilities and assets for pension benefits accrued by Transferred Employees through the day immediately preceding the Closing Date, and Seller shall cause all such accrued benefits to become fully vested as of the Closing Date. Seller shall, within 90 days following the Closing Date, notify Transferred Employees who are entitled to deferred vested benefits under Seller's Pension Plan of the amount of such benefits. Buyer shall take all actions necessary to cause the Buyer's qualified pension plan listed on Schedule 6.12(d)(iii) in which Transferred Employees are eligible to participate pursuant to Section 6.12(d)(iii) to provide benefits no less valuable than those provided in Seller's Pension Plan and to recognize the service that the Transferred Employees had under Seller's Pension Plan for purposes of such Transferred Employees' eligibility to participate, vesting, attainment of retirement dates, subsidized benefits, entitlement to optional forms of payment, and benefit accrual; provided, however that a Transferred Employee's benefit under Buyer's Pension Plan shall be offset by his or her accrued benefit under Seller's Pension Plan. The offset referred to in the preceding sentence shall be based on the benefit that would have been available with respect to such Transferred Employee under the terms of Seller's Pension Plan had such Seller's Pension Plan benefit commenced on the Transferred Employee's annuity starting date under Buyer's Pension Plan and been paid in the same form as the benefit paid under Buyer's Pension Plan. Notwithstanding the preceding sentence, in the event that a Transferred Employee is ineligible to commence receipt of his or her accrued benefit under Seller's Pension Plan on his or her annuity starting date under Buyer's Pension Plan or in the form elected under the Buyer's Pension Plan, the offset shall be based on the hypothetical benefit that is the actuarial equivalent (as determined using the then current actuarial assumptions of Seller's Pension Plan) of the Transferred Employee's accrued benefit under Seller's Pension Plan, such hypothetical benefit being assumed to be payable in the same form and with the same annuity starting date as the Transferred Employee's benefit under Buyer's Pension Plan. At Buyer's request, Seller shall provide Buyer with the benefit calculations applicable to a Transferred Employee under Seller's Pension Plan.

(D) Buyer shall assume all liabilities, obligations and responsibilities with respect to providing post-retirement health and life insurance benefits ("Post-Retirement Welfare Benefits") to (i) retirees of the Business as of

the Closing Date (the "Current Retirees") and (ii) Transferred Employees who have satisfied the age and service eligibility requirements for Post-Retirement Welfare Benefits under the applicable Seller plans (the "Grandfathered Active Employees" and, together with the Current Retirees, the "Grandfathered Individuals"). The Grandfathered Individuals are listed in Schedule 6.12(d)(iii)(D). Buyer shall continue to provide to the Current Retirees Post-Retirement Welfare Benefits that are comparable to those Post-Retirement Welfare Benefits provided to such Current Retirees immediately prior to the Closing Date, under cost-sharing structures that are at least as favorable as the cost-sharing structures in effect for and available to the Current Retirees immediately prior to the Closing Date. Buyer shall provide to the Grandfathered Active Employees Post-Retirement Welfare Benefits that are comparable to those Post-Retirement Welfare Benefits provided to such Grandfathered Active Employees immediately prior to the Closing Date, commencing at the time such Grandfathered Active Employees retire. The Base Purchase Price shall be decreased by the amount by which the APBO (as hereinafter defined) exceeds two million dollars (\$2,000,000). The "APBO" means the accumulated post-retirement benefit obligation (within the meaning of the Statement on Financial Accounting Standards No. 106) of the Grandfathered Individuals receiving or eligible for the Post-Retirement Welfare Benefits to the extent Buyer has committed to provide such Post-Retirement Welfare Benefits pursuant to this Section 6.12(d)(iii)(D), determined using a discount rate of 6.75% and the remaining assumptions disclosed in the January 1, 2001 Actuarial Valuation Report dated September 17, 2002, as set forth on Schedule 6.12(d)(iii)(D).

(E) With respect to the Seller's 401(k) Savings Plan (the "Savings Plan"), Seller shall vest Transferred Employees in their Savings Plan account balances as of the Closing Date. Seller hereby represents to Buyer that the Savings Plan is intended to be qualified within the meaning of Section 401 of the Code. Buyer shall take all actions necessary to cause the Buyer's qualified 401(k) plan listed on Schedule 6.12(d)(iii) in which Transferred Employees are eligible to participate pursuant to Section 6.12(d)(iii) (x) to recognize the service that the Transferred Employees had in the Savings Plan for purposes of determining such Transferred Employees' eligibility to participate, vesting, attainment of retirement dates, contribution levels, and, if applicable, eligibility for optional forms of benefit payments, and (y) to accept direct-rollover transfers of Transferred Employees' account balances in the Savings Plan, including transfers of loan balances and related promissory notes, provided that such loans would not be treated as taxable distributions at any time prior to such transfer.

(F) Within sixty (60) days after the Closing Date, Seller shall transfer to Buyer's flexible benefits plan any balances standing to the credit of Transferred Employees under Seller's flexible benefits plan as of the day immediately preceding the Closing Date. As soon as practicable after the Closing Date, Seller shall provide to Buyer a list of those Transferred Employees that have participated in the health or dependent care reimbursement accounts of Seller, together with their elections made prior to the Closing Date with respect to such

account, and balances standing to their credit as of the day immediately preceding the Closing Date.

(e) With respect to severance benefits, Buyer shall provide to any Transferred Non-Union Employee who is terminated by Buyer (other than for cause) prior to the date which is one year following the Closing Date, severance benefits at the level set forth in a schedule provided to Seller prior to the date hereof. Any employee provided severance benefits under this section may be required to execute a release of claims against Seller and Buyer, in such form as Buyer shall prescribe, as a condition for the receipt of such benefits.

(f) Each Transferred Non-Union Employee who is initially assigned, or assigned within twelve (12) months of the Closing Date, by Buyer to a principal place of work that requires such employee to relocate his residence will be reimbursed by Buyer for all relocation expenses in accordance with the relocation benefits plans set forth in a schedule provided to Seller prior to the date hereof. For purposes of the foregoing a required relocation of residence shall include a change in the principal place of work that is more than 30 miles farther from such employee's principal place of work immediately prior to the Closing Date and requires an average commute from his current residence of at least one hour in each direction.

(g) Seller shall be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs on or prior to the Closing Date.

(h) Buyer shall not be responsible for, but Seller shall be responsible for, extending COBRA Continuation Coverage to any employees and former employees of Seller, or to any qualified beneficiaries of such employees and former employees, who become or became entitled to COBRA Continuation Coverage on or before the Closing Date, including those for whom the Closing Date occurs during their COBRA election period.

(i) Seller or its Affiliates shall pay or cause to be paid to all Transferred Employees, all compensation (including vacation pay), workers' compensation or other employment benefits to which they are entitled under the terms of the applicable compensation or Seller benefit plans or programs as of the Closing Date. Buyer shall pay to each Transferred Employee all unpaid salary or other compensation or employment benefits which have accrued to such employees following the Closing Date, at such times as provided under the terms of the applicable compensation or benefit programs. Notwithstanding the foregoing, if the Closing Date is on or after July 1 of any calendar year, Seller and Buyer shall pro-rate the obligation to pay any bonuses declared by Seller on or after the Closing Date (but prior to March 1 of the calendar year following the year in which the Closing Date occurs) that would have been payable to the Transferred Employees had the Transferred Employees remained employed by Seller or its Affiliates throughout the calendar year in which the Closing Date occurs, in accordance with the provisions of any policy, plan, practice or arrangement of Seller under which such bonus would have been paid. Buyer shall be obligated to pay that portion of each such bonus determined by multiplying the amount of such bonus by a fraction, the numerator of which is the number of days from and after the Closing Date through the end of the calendar year in which the Closing Date occurs, and the denominator of which is 365.

(j) Seller shall be responsible for maintaining workers' compensation coverage for all Union Employees and Non-Union Employees for claims relating to occurrences prior to the Closing Date.

(k) Individuals who are otherwise Union Employees or Non-Union Employees but who on any date are not actively at work due to a leave of absence covered by the Family and Medical Leave Act (FMLA), or due to any other authorized leave of absence, including, without limitation, short-term disability, or who are on long-term disability, shall nevertheless be treated as "Union Employees" or as "Non-Union Employees", as the case may be, on such date if they are able (i) to return to work within the protected period under the FMLA or such other leave (which in any event shall not extend more than twelve (12) weeks after the Closing Date), whichever is applicable, and (ii) to perform the essential functions of their job, with or without a reasonable accommodation.

(l) Buyer shall be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs following the Closing Date.

(m) Buyer is responsible for extending and continuing to extend COBRA Continuation Coverage to all Transferred Employees, and qualified beneficiaries of such employees who become entitled to such COBRA Continuation Coverage following the Closing Date.

(n) The provisions of this Section 6.12 shall not be construed as being for the benefit for any person other than the Parties hereto, and shall not be enforceable by persons other than such Parties (including, without limitations, the Transferred Employees).

6.13 Risk of Loss.

(a) From the date hereof through the Closing Date, all risk of loss or damage to the assets included in the Assets shall be borne by Seller, other than loss or damage caused by the acts or negligence of Buyer or any Buyer Representative, which loss or damage shall be the responsibility of Buyer.

(b) If, before the Closing Date, all or any portion of the Assets are taken by eminent domain, municipalization or condemnation or are the subject of a pending taking which has not been consummated, (such event being called, in either case, a "Taking"), then Seller shall notify Buyer promptly in writing of such Taking.

(i) If such Taking relates to Assets of Seller having an aggregate net book value in excess of \$50,000,000, then such Taking shall be a "Material Taking." Upon a Material Taking, Seller and Buyer shall negotiate to settle the loss, if any, resulting from such Material Taking (and such negotiation shall include, without limitation, the negotiation of a fair and equitable reduction in the Base Purchase Price to offset such loss, if any, based on consideration of all relevant circumstances). If Seller and Buyer shall fail to agree to settle the loss, if any, resulting from said Material Taking, said Material Taking shall be conclusively deemed to be an Asset Material Adverse

Effect. Any Taking relating to any Assets of Seller's Santa Cruz division shall not be deemed to be a Material Taking.

(ii) If such Taking is not a Material Taking, then (A) Buyer may elect to, in the name of Seller, negotiate for, claim, contest and receive the portion of the award properly allocable to those Assets that are the subject of the Taking, (B) to the extent the Taking shall have been consummated prior to the Closing, Seller shall be relieved of its obligation to convey to Buyer those Assets that were the subject of the Taking, (C) at the Closing, Seller will assign to Buyer all of its rights to damages payable as a result of the Taking, and will pay to Buyer all damages previously paid to it in connection with the Taking, in each case to the extent properly allocable to those Assets that are the subject of the Taking, and (D) following the Closing, Seller will give to Buyer any further assurances of such rights and assignment with respect to the Taking as Buyer reasonably may request from time to time.

(c) (i) If any casualty loss or damage to the Assets shall occur before the Closing Date, then the Base Purchase Price shall be reduced, to the extent such loss or damage is not remedied prior to the Closing Date, by an amount mutually acceptable to the Parties, which amount shall be equal to the estimated out-of-pocket costs and expenses which Buyer reasonably can be expected to incur to repair or replace, in accordance with Good Utility Practices, such lost or damaged Assets after Closing. If the actual out-of-pocket costs and expenses which Buyer reasonably incurred to repair or replace, in accordance with Good Utility Practices, such lost or damaged Assets exceeds such estimated amount, Seller shall reimburse Buyer for such excess costs. If the Parties do not agree to an adjustment to the Base Purchase Price in respect of the casualty loss, then the Closing shall be postponed for such period of time (not to exceed six (6) months), and Seller shall repair or replace the lost or damaged Assets in accordance with Good Utility Practices and Buyer or its Representatives will have the right to inspect and observe and approve, all repairs or replacements made by Seller to remedy such casualty loss.

(ii) Notwithstanding anything to the contrary in Section 6.13(c)(i) above, if Seller shall have failed to remedy, cure or otherwise reverse by the Closing Date any casualty loss or damage to the Assets such that the estimated out-of-pocket costs and expenses that Buyer reasonably can be expected to incur to repair or replace such lost or damaged Assets exceeds \$25,000,000, such loss or damage shall be conclusively deemed to be an Asset Material Adverse Effect.

6.14 Tax Exempt Financing

(a) Seller represents that:

(i) The Exempt Facilities have been financed, and refinanced, in whole or in part, with the proceeds of the issuance and sale by various governmental authorities of industrial development revenue bonds or private activity bonds the interest on which, with certain exceptions, is excluded from gross income for purposes of Federal

income taxation (such bonds, as currently outstanding, the "Revenue Bonds"); and Seller is the economic obligor in respect of such Revenue Bonds;

(ii) The Revenue Bonds are described in Schedule 6.14(a);

(iii) The basis for the exclusion of interest on the Revenue Bonds from gross income for Federal income tax purposes is the use of the Exempt Facilities for (A) "the local furnishing of electric energy or gas" under Sections 142(a)(8) and 142(f) of the Code or, if applicable, Section 103(b)(4)(E) of the Internal Revenue Code of 1954, as amended (the "1954 Code"), and in either case the applicable Treasury Regulations (the "Regulations") thereunder, or (B) "the furnishing of water" or "sewage facilities" under Sections 142(a)(4) and 142(a)(5) of the Code or, if applicable, Sections 103(b)(4)(G) or 103(b)(4)(E) of the 1954 Code, and in either case the applicable Regulations. Seller acknowledges and agrees that Buyer has and shall have no responsibility or obligation hereunder for the Exempt Facilities described in clause (B);

(iv) The use of the Exempt Facilities for a purpose other than a qualifying purpose indicated in subsection (iii) above could impair (A) such exclusion from gross income of the interest on the Revenue Bonds, possibly with retroactive effect, unless appropriate remedial action were taken (which could include prompt defeasance or redemption of the Revenue Bonds) and/or (B) the deductibility of payments by Seller or Buyer of interest based on the restrictions in Section 150(b) of the Code;

(v) After August 20, 1996, at least the following bonds exempt from tax under Section 103 of the Code and in whole or in part described in Section 142(a)(8) of the Code have been issued with respect to facilities of Seller for the "local furnishing of electric energy or gas": The Industrial Development Authority of the County of Navajo, Industrial Development Revenue Bonds (Citizens Utilities Company Project) 1997 Series B (\$12,380,000), and The Industrial Development Authority of the County of Yavapai, Industrial Development Revenue Bonds (Citizens Utilities Company Project) 1998 Series (\$20,000,000); and

(vi) Any breach by Buyer of its obligations under this Section 6.14 could result in the incurrence by Seller of additional costs and expenses with respect to the Revenue Bonds, including, without limitation, increased interest costs, loss of the interest deduction for tax purposes and transaction costs relating to any refinancing, redemption and/or defeasance of all or part of the Revenue Bonds (cumulatively, the "Tax Impact").

(b) Buyer agrees that Buyer will indemnify Seller for costs incurred by Seller in respect of any Tax Impact that would not have arisen but for Buyer's breach of its obligations under Section 6.14(c) (except as excused elsewhere in this Section 6.14), provided that Buyer's agreements and representations as set out in this Section 6.14 shall be limited to and apply solely to those Exempt Facilities described by Section 6.14(a)(iii)(A).

(c) After August 20, 1996, at least the following bonds exempt from tax under Section 103 of the Code and described in whole or in part in Section 142(a)(8) of the Code have

been issued with respect to facilities of Buyer for the "local furnishing of electric energy": The Industrial Development Authority of the County of Pima, Industrial Development Revenue Bonds (Tucson Electric Power Company Project) 1997 Series A, B and C (\$247,460,000), and The Industrial Development Authority of the County of Apache, Pollution Control Revenue Bonds (Tucson Electric Power Company Project) 1998 Series A, B and C (\$200,000,000). So long as any Revenue Bonds remain outstanding with respect to electric Exempt Facilities in any county, Buyer agrees that it shall not use, or take any deliberate act to permit the use of, or fail to take any act within its control that would prevent the use of, the electric Exempt Facilities within that county for any purpose or in any manner other than as shall be consistent with the Exempt Facility Operating Protocols (as such Exempt Facility Operating Protocols may have been updated, amended or corrected by Seller for the purpose of their accuracy on or before the Closing Date; provided that such changes do not materially impact Buyer's operation of the Assets) delivered by Seller to Buyer on or before the date of this Agreement, unless Buyer:

(i) has obtained at its own expense an opinion addressed to Seller of nationally recognized bond counsel reasonably acceptable to Seller ("Bond Counsel") that such use will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for Federal income tax purposes and (y) the deductibility of Seller's payments of interest based on the restrictions in Section 150(b) of the Code; or

(ii) has provided written notice to Seller of any act or failure to act either (x) not later than 45 days after the effective date of such action, or (y) if any of such affected Revenue Bonds are not then eligible for optional or mandatory redemption by the terms thereof, sufficiently in advance of such act or failure to act to permit Seller to request from the IRS a private letter ruling to the effect that such action does not constitute an event that would adversely affect the exclusion of the interest on such Revenue Bonds from gross income for Federal income tax purposes, to receive a final ruling to such effect from the IRS, and to dispose of the Revenue Bonds in a manner not inconsistent with such ruling ("Sufficient Notice"). (Reference is made to Schedule 6.14(a) for a listing of the respective optional redemption dates of the Revenue Bonds.)

(d) Notwithstanding any other provision of this Agreement, it is expressly understood and agreed that the provisions of Section 6.14(c) shall not prohibit Buyer from (and Buyer shall incur no liability to Seller for or in connection with Buyer) suspending the operation of the Exempt Facilities (in whole or in part) on a temporary basis, or from terminating the operation of the Exempt Facilities (in whole or in part) on a permanent basis and shutting down, retiring, abandoning and/or decommissioning the Exempt Facilities (in whole or in part); provided, however, that if the Exempt Facilities, in whole or in part, are dismantled and sold, including any sale for scrap, at any time when any Revenue Bonds remain outstanding, then the proceeds of such sale of Exempt Facilities shall within six months from the date of sale be expended to acquire replacement property to be used as described in the related Exempt Facility Operating Protocol, unless (I) Buyer has obtained at its own expense an opinion addressed to Seller of Bond Counsel that the failure to take this action will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for Federal income tax purposes and (y) the deductibility of Seller's payments of interest based on the restrictions in Section 150(b) of

the Code; (II) the proceeds of such sales are less than \$50,000 in a calendar year; or (III) Buyer has provided Sufficient Notice of such action to Seller.

(e) Buyer agrees that it shall not issue, or have issued on its behalf, any tax-exempt bonds to finance or refinance its acquisition of the Exempt Facilities, provided that it is expressly understood and agreed that this clause (e) shall not prohibit Buyer's use of tax-exempt bonds to finance or refinance any improvement to the Exempt Facilities made after the date of acquisition or to any assets other than the Exempt Facilities.

(f) Buyer agrees to provide prompt written notice to Seller of any condemnation of, or casualty loss with respect to, the Exempt Facilities, in whole or in substantial part, to cooperate in good faith with Seller in Seller's efforts to ascertain the consequences of any such eminent domain proceeding or casualty loss for the (A) exclusion of interest on the Revenue Bonds from gross income for Federal income tax purposes and (B) the deductibility of Seller's payments of interest based on the restrictions in Section 150(b) of the Code.

(g) Seller agrees that the Revenue Bonds shall be redeemed no later than the earlier of (I) their respective stated maturity dates, and (II) their respective first optional redemption dates on or after the Closing Date. Seller also agrees that none of the Revenue Bonds shall be refunded.

(h) Seller hereby represents that it has performed all duties and obligations of "Company" under the documents relating to the Revenue Bonds, that the representations and warranties under the documents relating to the Revenue Bonds remain true and correct, and that there has been no breach of any covenant or agreement by Seller under the documents relating to the Revenue Bonds. Seller hereby covenants that, until all of the Revenue Bonds have been redeemed, Seller will perform all duties and obligations of "Company" under the documents relating to the Revenue Bonds, that Seller's representations and warranties under such documents will remain true and correct and that Seller will not breach any covenant or agreement of Seller under such documents; provided that Seller's covenant in this sentence shall not extend to any such duties, obligations, representations, warranties, covenants or agreements the necessary predicate for which is Seller's actual ownership, possession or control of the Exempt Facilities from and after the Closing Date. Seller acknowledges and agrees that although Seller from and after the Closing Date will not own, possess or control the Exempt Facilities, Seller shall remain primarily obligated under the documents relating to the Revenue Bonds and, as between itself and each issuer of the Revenue Bonds, shall remain subject to each of Seller's representations, warranties, covenants and agreements thereunder. Buyer shall have no liability under this Section 6.14 unless interest on the Revenue Bonds would be excluded from gross income for Federal income tax purposes absent an act or failure to act by Buyer in contravention of the terms of Section 6.14(c).

(i) In any case where Buyer has provided notice to Seller under this Section 6.14, Buyer agrees that it will join and cooperate with Seller with respect to any request by Seller to the Internal Revenue Service to obtain a private letter ruling regarding any Tax Impacts of the act or failure to act by Buyer that prompted such notice. Seller will join and cooperate with Buyer with respect to any request by Buyer to the Internal Revenue Service to

obtain a private letter ruling regarding any Tax Impacts. The Party seeking the private letter ruling shall bear all costs of the filing, legal and related out-of-pocket expenses incurred in the course of such request.

(j) Seller agrees that it has sole responsibility to make any required payments of principal and interest on the Revenue Bonds and that Buyer has no responsibility to make such payments. Seller agrees that it will indemnify, protect, defend and hold harmless Buyer from and against any claim that Buyer owes any payment of principal or interest on the Revenue Bonds. Seller agrees that Buyer shall retain any payments with respect to any casualty event or any condemnation of the Exempt Facilities and that, except as Buyer has otherwise agreed under Section 6.14(c), Buyer shall not be restricted in its use of any such proceeds.

(k) If Buyer shall sell, exchange, transfer or otherwise dispose of the Exempt Facilities in whole or substantial part (aggregate price of \$500,000 or more in a calendar year) to one or more third parties, Buyer shall cause to be included in the documentation relating to such transaction covenants and agreements on the part of such third party substantially identical to those on the part of Buyer contained in this Section 6.14.

(l) The covenants and agreements on the part of Buyer and Seller contained in this Section 6.14 shall continue in effect so long as any of the Revenue Bonds shall remain outstanding. Seller shall notify Buyer promptly when there shall be no Revenue Bonds outstanding.

(m) Buyer acknowledges and agrees that Seller's bond counsel may rely on Buyer's representations, warranties and covenants as hereinabove provided for the purpose of rendering legal opinions, as required by the Indentures of Trust, the Loan Agreements and the Tax Regulatory Agreements relating to the Revenue Bonds ("IDRB Documents") as a precondition to the sale by Seller of such Exempt Facilities, to the effect that the sale of such Exempt Facilities will not result in (I) the inclusion of the interest on the Revenue Bonds in the gross income of the recipient for purposes of Federal income taxation, and (II) disallowance of interest expense to Seller under Section 150(b) of the Code. Seller acknowledges and agrees that Buyer shall be an addressee of the above-described opinion letters of Seller's bond counsel or shall receive a reliance letter from Seller's bond counsel authorizing Buyer to rely on such opinion letters.

(n) Nothing in this Agreement is intended to nor shall it be interpreted as (i) an assignment to, and assumption by, Buyer of any of the IDR Documents, or (ii) as an undertaking or agreement by Buyer to assume, guarantee or pay any of Seller's loan or other payment obligations pursuant to the IDR Documents. Other than as stated in this Section 6.14, Buyer shall have no liability in respect of the Revenue Bonds.

(o) Each of Buyer and Seller shall use its Commercially Reasonable Efforts, and shall cooperate with the other Party in the other Party's efforts, to obtain all Consents, bond counsel opinions and IRS rulings as may be required under the IDR Documents and the Code to enable Seller to defease, prepay, redeem or retain until the first possible redemption date the IDR Indebtedness and to sell the Assets to Buyer without the result that the interest on the Revenue Bonds will be included in the gross income of the recipient for purposes of Federal

income taxation; provided, however, that Buyer shall have no obligation in respect of its ownership or operation of the Exempt Facilities (including but not limited to rates imposed by Buyer in respect of utility service provided by the Exempt Facilities or by any other facilities of Buyer or affiliates of Buyer) other than to comply with the Exempt Facility Operating Protocols.

6.15 Seller Guarantees and Surety Instruments. Buyer shall use Commercially Reasonable Efforts to assist Seller in obtaining full and complete releases of the guarantees, letters of credit, bonds and other surety instruments listed in Schedule 6.15. In this connection, Buyer agrees to provide a guaranty, letter of credit, bond or other surety instrument at Closing to replace those listed in Schedule 6.15.

6.16 Citizens Marks. Buyer acknowledges and agrees with Seller that Seller has the absolute and exclusive proprietary right to the Citizens Marks, all rights to which and the goodwill represented thereby and pertaining thereto are being retained by Seller. Within ninety (90) days after the Closing Date, Buyer shall cease using any Citizens Mark and shall remove from the Assets any and all Citizens Marks. Thereafter, Buyer shall not use any Citizens Mark in connection with the sale of any products or services or otherwise in the conduct of the businesses. In the event that Buyer breaches this Section 6.16, Seller shall be entitled to specific performance and to injunctive relief against further violations, as well as any other remedies at law or in equity available to Seller.

6.17 Title Commitments. Prior to Closing, Seller shall cooperate with Buyer and use Commercially Reasonable Efforts to assist Buyer if Buyer desires to obtain American Land Title Association ("ALTA") title insurance commitments (collectively, the "Title Commitments," and each a "Title Commitment"), in final form, from one or more title insurance companies (collectively, the "Title Company"), committing the Title Company (subject only to the satisfaction of any industry standard requirements contained in the Title Commitment) to issue ALTA (or its local equivalent) form of title insurance policies in an amount acceptable to the Buyer and the Title Company insuring good, valid, indefeasible fee simple title to the Real Property in Buyer, in all cases, at Buyer's sole expense and in the respective amounts that Buyer requests prior to Closing, subject to no Encumbrances or other exceptions to title other than Permitted Encumbrances (collectively the "Title Policies"). On or prior to the Closing Date, Seller shall execute and deliver, or cause to be executed and delivered, to the Title Company, at no cost to Seller, any customary affidavits, standard gap indemnities, evidence of corporate existence and authority, and similar documents reasonably requested by the Title Company in connection with the issuance of the Title Commitments or the Title Policies; provided that such efforts and Buyer's request for Title Policies or Title Commitments shall, in no event, result in any delay in the consummation of the transactions contemplated by this Agreement, except to the extent caused by or resulting from Seller's breach of this Agreement; and provided further, that nothing in this Section 6.17 shall obligate Seller to execute or deliver any document that affects, in a manner adverse to Seller, Seller's liability to Buyer as expressed herein and in the Special Warranty Deed.

6.18 Joint Use Agreement re: Easements. To the extent reasonably requested by either Party, at least sixty (60) days before Closing, Buyer and Seller (or its appropriate Affiliate) will commence good faith negotiations of a joint use agreement, to be fully executed and delivered by the Parties at Closing, regarding the shared Easements to be partially assigned to Buyer at

Closing as contemplated in Schedule 2.2. Such joint use agreement will be partially assignable by Seller to any purchaser of Seller's or its Affiliate's other utility plant permitted to be located on the real property that is the subject of any such shared Easements.

6.19 Leases. If requested by Buyer at least sixty (60) days before Closing, Buyer and Seller (or its appropriate Affiliate) will commence good faith negotiations regarding Buyer's short-term lease (not to exceed one hundred eighty (180) days from the Closing Date) of space at the business office at 1760 McCulloch Boulevard, Lake Havasu City, Arizona, a portion of which is used by Seller in connection with the Business, on commercially reasonable terms acceptable to Buyer and Seller.

6.20 Post-Execution Delivery of Schedules. Within one hundred eighty days (180) following the date of execution of this Agreement, Seller shall deliver to Buyer a schedule, to be identified as Schedule 6.20, which sets forth all of the following identified by Seller after reasonable investigation (i) all Permits, (ii) all material items of Tangible Personal Property (other than Inventories), (iii) quantities of Inventories recorded in Seller's books and records for the Business as of the last day of the month preceding the date of this Agreement, together with the net book values of such Inventories as of such date, (iv) all Easements held by Seller in connection with the Business, (v) all line extension agreements and similar construction arrangements, railroad crossing agreements and similar arrangements, and (vi) all Real Property Leases. Schedule 6.20 will also designate those Permits that require the consent of the respective Governmental Authority to transfer and those that purport to be non-transferable.

ARTICLE VII

CONDITIONS

7.1 Conditions to Obligations of Buyer. The obligation of Buyer to effect purchase of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions, or waiver thereof, by Buyer at or prior to the Closing Date:

- (a) The waiting period under the HSR Act applicable to the consummation of the sale of the Assets contemplated hereby shall have expired or been terminated;
- (b) No preliminary or permanent injunction or other order or decree by any Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or Governmental Authority prohibiting the consummation of the sale of the Assets;
- (c) Buyer shall have received all of Buyer's Required Regulatory Approvals by Final Order, and such Required Regulatory Approvals shall not contain terms and conditions that would result in a Regulatory Material Adverse Effect for Buyer or an Asset Material Adverse Effect;

(d) Seller shall have received all of Seller's Required Regulatory Approvals by Final Order, and such Required Regulatory Approvals shall not contain terms and conditions that would result in a Regulatory Material Adverse Effect for Buyer or an Asset Material Adverse Effect;

(e) Seller shall have performed and complied with each of its covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date except where the failure to so perform or comply, when taken in the aggregate, would not have a Buyer Material Adverse Effect or an Asset Material Adverse Effect;

(f) The representations and warranties of Seller set forth in this Agreement shall be true and correct as of the Closing Date as though made at and as of the Closing Date, except (i) subject to Section 6.11, to the extent due to changes expressly permitted by this Agreement or otherwise in writing by Buyer, (ii) that representations and warranties made as of, or in respect of, only a specified date or period shall be true and correct as of, or in respect of, such date or period and (iii) to the extent that any failure of such representations and warranties to be true and correct as aforesaid when taken in the aggregate would not have a Buyer Material Adverse Effect or an Asset Material Adverse Effect (it being understood and agreed that the economic impact of any Adverse Environmental Condition shall not be considered in the determination of an Asset Material Adverse Effect except as otherwise provided in Section 6.3);

(g) No Asset Material Adverse Effect shall have occurred and be continuing;

(h) Seller shall have delivered, caused to be delivered, or be standing ready to deliver, to Buyer at the Closing, Seller's closing deliveries described in Section 3.5;

(i) Buyer shall have received any consents of third parties required for the assignment to Buyer of any of the Assigned Agreements other than consents that, if not obtained, would not have an Asset Material Adverse Effect or a Buyer Material Adverse Effect, in form and substance reasonably acceptable to Buyer; and

(j) Buyer shall be reasonably satisfied that the consummation of the asset purchase and sale transaction contemplated by the Asset Purchase Agreement, dated as of the date hereof, between Seller and Buyer relating to purchase by Buyer of Seller's gas utility business in the State of Arizona (the "Arizona Gas Purchase Agreement"), will occur concurrently with the Closing.

7.2 Conditions to Obligations of Seller. The obligations of Seller to effect the sale of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions, or the waiver thereof, by Seller at or prior to the Closing Date:

(a) The waiting period under the HSR Act applicable to the consummation of the sale of the Assets contemplated hereby shall have expired or been terminated;

(b) No preliminary or permanent injunction or other order or decree by any Governmental Authority which prevents the consummation of the sale of the Assets

contemplated herein shall have been issued and remain in effect (each of Seller and Buyer agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or Governmental Authority in the United States prohibiting the consummation of the sale of the Assets;

(c) Seller shall have received all of Seller's Required Regulatory Approvals by Final Order, and such Required Regulatory Approvals shall not contain terms and conditions that would have an Asset Material Adverse Effect or a Seller Material Adverse Effect;

(d) Seller shall have received any consents of third parties required for the assignment to Buyer of any of the Assigned Agreements other than consents that, if not obtained, would not have a Seller Material Adverse Effect;

(e) Buyer shall have performed and complied with each of its covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date except where the failure to so perform or comply, when taken in the aggregate, would not have a Seller Material Adverse Effect;

(f) The representations and warranties of Buyer set forth in this Agreement shall be true and correct as of the Closing Date as though made at and as of the Closing Date, except (i) subject to Section 6.11, to the extent due to changes expressly permitted by this Agreement or otherwise in writing by Seller, (ii) that representations and warranties made as of, or in respect of, only a specified date or period shall be true and correct as of, or in respect of, such date or period and (iii) to the extent that any failure of such representations and warranties to be true and correct as aforesaid when taken in the aggregate would not have a Seller Material Adverse Effect;

(g) Buyer shall have assumed, as set forth in and subject to Section 6.12, all of the applicable obligations under the IBEW CBA(s);

(h) Buyer shall have delivered, caused to be delivered or standing ready to deliver, to Seller at the Closing, Buyer's closing deliveries described in Section 3.6;

(i) Seller shall be reasonably satisfied that the consummation of the Arizona Gas Purchase Agreement will occur concurrently with the Closing; and

(j) Seller shall have received opinions from Seller's Bond Counsel, dated the Closing Date, substantially in the form attached hereto as Exhibit E.

ARTICLE VIII

INDEMNIFICATION

8.1 Indemnification of Seller by Buyer. Subject to Section 8.3, Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, employees, shareholders, Affiliates and agents (each, a "Seller Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Seller Indemnitee (each, a "Seller Indemnifiable");

Loss") in any way relating to, resulting from or arising out of or in connection with (i) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement or any failure or inaccuracy of any representation or warranty of Buyer contained in this Agreement, (ii) the Assumed Liabilities, (iii) any loss or damages resulting from or arising solely out of any Inspection of the Assets, and (iv) any Third Party Claims against a Seller Indemnitee to the extent arising out of or in connection with Buyer's ownership or operation of the Assets on or after the Closing Date.

8.2 Indemnification of Buyer by Seller.

(a) Subject to Section 8.3, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, employees, shareholders, Affiliates and agents (each, a "Buyer Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Buyer Indemnitee (each, a "Buyer Indemnifiable Loss") in any way relating to, resulting from or arising out of or in connection with (i) any breach by Seller of any covenant or agreement of Seller contained in this Agreement or failure or inaccuracy of any representation or warranty of Seller contained in this Agreement, (ii) the Excluded Liabilities, (iii) noncompliance by Seller with any bulk sales or transfer laws as provided in Section 10.12, and (iv) any Third Party Claims against a Buyer Indemnitee arising out of or in connection with Seller's ownership or operation of the Excluded Assets on or after the Closing Date.

(b) Subject to Sections 8.3(a), (e), (f) and (g) and to the other provisions of this Section 8.2(b) and so long as Buyer complies with the Exempt Facilities Operating Protocols relating to an issue of outstanding Revenue Bonds, Seller agrees to indemnify, defend and hold harmless the Buyer Indemnitees from and against Buyer's Tax Losses (as defined below) upon a final decree or judgment of any federal court or a final action by the IRS (a "Final Determination") that the related Exempt Facilities are "tax-exempt bond financed property" under Section 168(g)(5) of the Code by reason of such issue of Revenue Bonds remaining outstanding from and after the Closing Date. No such decree or action shall be considered to be a Final Determination unless Seller has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same either directly or in the name of Buyer, and until conclusion of any appellate review, if sought. The maximum aggregate amount of Buyer's Tax Losses for which Seller shall be obligated to indemnify the Buyer Indemnitees both (i) under this Section 8.2(b) and (ii) under the corresponding Section 8.2(b) of the Arizona Gas Purchase Agreement shall be \$1,500,000. "Buyer's Tax Losses" shall mean the amount equal to the present value (calculated using a discount rate of 10 percent per annum) of the difference (multiplied by the applicable combined federal and State of Arizona corporate tax rate of Buyer Indemnitee) for each affected tax year between the respective dollar amounts of (x) depreciation of the related Exempt Facilities allowed under Section 168(g) of the Code, and (y) the depreciation of such Exempt Facilities that would be allowable under Section 168 of the Code if the Exempt Facilities were not "tax-exempt bond financed property." The indemnity granted by Seller in this Section 8.2(b) shall terminate at 5:00 p.m., local time in New York, New York, on the seventh anniversary of the Closing Date, provided that such termination shall not affect Seller's obligations under this Section 8.2(b) if Buyer provided Seller with proper notice of the claim or event for which indemnification is sought prior to such termination.

8.3 Certain Limitations on Indemnification.

(a) Notwithstanding anything to the contrary contained herein:

(i) any Indemnitee shall use Commercially Reasonable Efforts to mitigate all losses, damages and the like relating to a claim under these indemnification provisions, including availing itself of any defenses, limitations, rights of contribution, claims against third persons and other rights at law or equity. The Indemnitee's Commercially Reasonable Efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any loss or expenses for which indemnification would otherwise be due, and the Indemnifying Party shall reimburse the Indemnitee for the Indemnitee's reasonable expenditures in undertaking the mitigation; and

(ii) any Indemnifiable Loss shall be net of the dollar amount of any insurance or other proceeds actually received by the Indemnitee or any of its Affiliates with respect to the Indemnifiable Loss. Any Party seeking indemnity hereunder shall use Commercially Reasonable Efforts to seek coverage (including both costs of defense and indemnity) under applicable insurance policies with respect to any such Indemnifiable Loss.

(b) Except as otherwise provided in this Section 8.3(b), the representations, warranties, covenants and agreements of the Parties set forth in this Agreement shall survive the Closing Date for a period of eighteen (18) months, and all representations, warranties, covenants and agreements of the Parties under this Agreement and the related indemnities granted in this Article VIII shall terminate at 5:00 p.m., local time in New York City, New York, on the day that is eighteen (18) months after the Closing Date. The expiration, termination or extinguishment of any covenant or agreement shall not affect the Parties' obligations under Section 8.1 or 8.2 hereof if the Indemnitee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment. Notwithstanding the foregoing provisions of this Section 8.3(b), the representations, warranties, covenants and agreements contained in Sections 3.3(e), 6.2(c), 6.3(c), 6.3(e), 6.4(a), 6.10, 6.12, 6.14, 6.16, and in Articles VIII and X, will survive the Closing in accordance with their terms.

(c) Notwithstanding anything to contrary in this Agreement, in no event shall Buyer indemnify Seller Indemnitees or Seller indemnify Buyer Indemnitees, or otherwise be liable in any way whatsoever to said Indemnitees, for any Losses otherwise subject to indemnification by the Indemnifying Party (determined after giving effect to the other provisions of this Section 8.3) until the Buyer Indemnitees or the Seller Indemnitees, as the case may be, have incurred otherwise indemnifiable Losses that in the aggregate exceed a threshold amount equal to one percent (1%) of the Purchase Price, after which Buyer or Seller, as the case may be, shall then be liable for all Losses incurred by the Seller Indemnitees or the Buyer Indemnitees, as applicable. The limitations on indemnification set forth in this Section 8.3(c) shall not apply to any losses asserted against or suffered by an Indemnitee in any way relating to, resulting from or arising out of or in connection with the failure of (i) the appropriate Party to make the payment required to be made by it in accordance with Section 3.3(d), (ii) Buyer to discharge Assumed Liabilities other than those specified in Sections 2.3(e) and 2.3(i), (iii) Seller to discharge Excluded Liabilities other than those specified in Sections 2.4(d), 2.4(g), 2.4(h), 2.4(j) and 2.4(n), (iv) Seller to make any payment to Buyer if and to the extent required by Section 3.3(e),

6.3(c), 6.10(b), 6.13(c) or 8.2(b), and (v) Buyer to make any payment to Seller if and to the extent required by Section 6.12(b). Any such losses also shall be disregarded when determining whether the threshold set forth in this Section 8.3(c) has been exceeded.

(d) Notwithstanding anything to the contrary in this Agreement, in no event shall Seller indemnify the Buyer Indemnitees or Buyer indemnify Seller Indemnitees, or be otherwise liable in any way whatsoever to said Indemnitees, for any Losses otherwise subject to indemnification by the Indemnifying Party (determined after giving effect to the other provisions of this Section 8.3) that in the aggregate exceed an amount equal to fifty percent (50%) of the Purchase Price.

(e) Except to the extent otherwise provided in Section 3.3 (relating to adjustments to the Base Purchase Price), Section 6.3(c) (relating to post-Closing reimbursement of excess environmental Remediation costs), Section 6.10(b) (relating to post-Closing reimbursements for Taxes), Section 6.12(b) (relating to post-Closing reimbursements for Severance Costs), Section 6.13(c) (relating to post-Closing reimbursement of excess costs and expenses of repairing lost or damaged Assets), and Section 6.16 (relating to specific performance and injunctive relief with respect to Citizens Marks), the rights and remedies of Seller and Buyer under this Article VIII are exclusive and in lieu of any and all other rights and remedies which each of Seller and Buyer may have under this Agreement or otherwise for monetary relief, with respect to (i) all post-Closing claims relating to this Agreement, the events giving rise to this Agreement and the transactions provided for herein or contemplated hereby or thereby, or (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be. Notwithstanding any language contained in any Ancillary Agreement (including the Special Warranty Deed), the representations and warranties of Seller set forth in this Agreement will not be merged into any such Ancillary Agreement and the indemnification obligations of Seller, and the limitations on such obligations, set forth in this Agreement shall control. No provision set forth in any such Ancillary Agreement shall be deemed to enlarge, alter or amend the terms or provisions of this Agreement.

(f) Notwithstanding anything to the contrary contained herein, no Party (including an Indemnitee) shall be entitled to recover from any other Party (including an Indemnifying Party) for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Agreement any amount in excess of the actual compensatory damages, court costs and reasonable attorney's and other advisor fees suffered by such Party. Each of Buyer and Seller waive any right to recover punitive, incidental, special, exemplary and consequential damages arising in connection with or with respect to this Agreement. The provisions of this Section 8.3(d) shall not apply to indemnification for a Third Party Claim.

(g) The limitations set forth in this Section 8.3 do not apply to fraud or willful misconduct of a Party.

(h) No amount shall be recovered from a Party for the breach or untruth of any of such Party's representations, warranties, covenants or agreements, or for any other matter, to the extent that the other such Party had knowledge of such breach, untruth or other matter at or prior to the Closing, nor shall the other Party be entitled to rescission with respect to any such matter.

8.4 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion or commencement of any Third Party Claim made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume or to participate in the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the loss for which the Indemnified Party may seek indemnification from the Indemnifying Party pursuant to this Agreement.

(b) (i) If, within ten (10) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.4(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim at its own expense. In such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of thirty (30) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction (less any out-of-pocket costs incurred in connection therewith and the cost of any adjusted premium charges to the extent directly relating to the claim for such Indemnifiable Loss ("Recovery Costs"), together with interest thereon from the date of payment thereof at the publicly announced prime rate then in effect of Citibank, shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 8.4 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

ARTICLE IX

TERMINATION

9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer if (i) any federal or state court of competent jurisdiction shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and nonappealable; (ii) any statute, rule, nonappealable order or regulation shall have been enacted or issued by any Governmental Authority which prohibits the consummation of the Closing; or (iii) the Closing shall have not occurred on or before the day which is fifteen (15) months from the date of this Agreement, subject to such extensions (not to exceed six months) as may be required by Seller to repair or replace lost or damaged Assets in accordance with Section 6.13(c) (the "Termination Date"); provided that the right to terminate this Agreement under this Section 9.1(b)(iii), and any other Section, shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in the event giving rise to the applicable termination right.

(c) Except as otherwise provided in this Agreement, this Agreement may be terminated by Buyer if any of the Buyer Required Regulatory Approvals, the receipt of which is a condition to the obligation of Buyer to consummate the Closing as set forth in Section 7.1(c), shall have been denied (and a petition for rehearing or refiling of an application initially denied without prejudice shall also have been denied) or, if such Required Regulatory Approval is obtained, contains terms or conditions that would have a Regulatory Material Adverse Effect for Buyer (after Buyer's petition for rehearing objecting to such terms and conditions has been denied) or an Asset Material Adverse Effect, in either case that is not cured or otherwise addressed in a manner reasonably acceptable to Buyer by the Closing Date.

(d) Except as otherwise provided in this Agreement, this Agreement may be terminated by Seller if any of the Seller Required Regulatory Approvals, the receipt of which is a condition to the obligation of Seller to consummate the Closing as set forth in Section 7.2(c), shall have been denied (and a petition for rehearing or refiling of an application initially denied without prejudice shall also have been denied) or, if such Required Regulatory Approval is obtained, contains terms or conditions that would have a Regulatory Material Adverse Effect for Seller (after Seller's petition for rehearing objecting to such terms and conditions has been denied), in either case that is not cured or otherwise addressed in a manner reasonably acceptable to Seller by the Closing Date.

(e) This Agreement may be terminated by Buyer if there has been a violation or breach by Seller of any covenant, representation or warranty contained in this Agreement provided that such violation or breach would have an Asset Material Adverse Effect or a Buyer Material Adverse Effect that is not cured or otherwise addressed by Seller in a manner reasonably acceptable to Buyer by the Closing Date and such violation or breach has not been waived by Buyer.

(f) This Agreement may be terminated by Seller, if there has been a violation or breach by Buyer of any covenant, representation or warranty contained in this Agreement provided that such violation or breach would have a Seller Material Adverse Effect, (including, without limitation, Buyer's failure to pay the Purchase Price on the Closing Date) and such violation or breach is not cured or otherwise addressed by Buyer in a manner reasonably acceptable to Seller by the Closing Date, and such violation or breach has not been waived by Seller.

9.2 Procedure and Effect of Termination. In the event of termination of this Agreement by either or both Seller and Buyer pursuant to this Article IX, written notice thereof shall forthwith be given by the terminating Party to the other Party, whereupon the liabilities of the Parties hereunder will terminate, except as otherwise expressly provided in this Agreement (including Section 9.3), and thereafter none of the Parties shall have any recourse against any other Party by reason of this Agreement. If prior to Closing either Party resorts to legal proceedings to enforce this Agreement, the prevailing Party in such proceedings shall be entitled to recover all costs incurred by such Party, including reasonable attorney's fees, in addition to any other relief to which such Party may be entitled; provided, however, and notwithstanding anything to the contrary in this Agreement, in no event shall either Party be entitled to receive any punitive, indirect or consequential damages. If a Party terminates this Agreement pursuant to this Article IX, the Arizona Gas Purchase Agreement shall be automatically terminated,

without any further liability to the parties thereto (including payment of liquidated damages or termination fees pursuant to Section 9.3 of the Arizona Gas Purchase Agreement, and both Parties agree that if the Arizona Gas Purchase Agreement is terminated pursuant to Article IX of the Arizona Gas Purchase Agreement, this Agreement shall be automatically terminated, without any further liability to the parties thereto.

9.3 Liquidated Damages; Termination Fees.

(a) Seller shall pay to Buyer \$10,000,000 if (i) Buyer terminates this Agreement pursuant to Section 9.1(e) or (ii) Buyer terminates this Agreement pursuant to Section 9.1(c) due to a Regulatory Material Adverse Effect on Buyer which is due in whole or in substantial part to concern by the ACC about the condition of the Assets and which is reasonably expected to have an aggregate economic impact on Buyer, taking into consideration all relevant circumstances, in excess of \$25,000,000.

(b) Buyer shall pay to Seller \$25,000,000 if (i) Seller terminates this Agreement pursuant to Section 9.1(f), (ii) Seller terminates this Agreement pursuant to Section 9.1(d) because the requisite Required Regulatory Approval from the ACC or the FERC has not been obtained due in whole or in substantial part to concerns about Buyer's financial qualifications or capabilities, or (iii) Buyer terminates this Agreement pursuant to Section 9.1(c), because the requisite Required Regulatory Approval from the ACC or the FERC has not been obtained, due in whole or in substantial part to concerns about Buyer's financial qualifications or capabilities, or has been obtained and contains financial terms and conditions that are unacceptable to Buyer.

(c) Buyer may terminate this Agreement upon payment of a \$25,000,000 termination fee upon any of the following events:

(i) There shall have occurred an Asset Material Adverse Effect having or reasonably expected to have a financial or economic impact, taking into account all relevant considerations, in excess of \$25,000,000;

(ii) Regulatory Exceptions (after Buyer's petition for rehearing objecting to such Regulatory Exceptions has been denied) shall have been imposed against Buyer having a financial or economic impact on Buyer, taking into account all relevant considerations in excess of \$25,000,000; or

(iii) There shall have occurred a casualty loss to the Assets having an aggregate financial or economic impact, taking into account all relevant considerations, in excess of \$25,000,000.

(d) Seller may terminate this agreement upon payment of a \$10,000,000 termination fee if there shall have occurred a casualty loss to the Assets having or reasonably expected to have an aggregate financial or economic impact, taking into account all relevant considerations, in excess of \$25,000,000.

(e) In view of the difficulty of determining the amount of damages which may result to the non-terminating Party from a termination pursuant to any of Sections 9.3(a) through

9.3(d) or pursuant to any of the Sections of this Agreement referenced in Section 9.3(a) through 9.3(d), and the failure of the terminating Party to consummate the transactions contemplated by this Agreement, Buyer and Seller have mutually agreed that each of the payments set forth in Section 9.3(a) through 9.3(d) shall be made to the non-terminating Party as liquidated damages, and not as a penalty, and this Agreement shall thereafter become null and void except for those provisions which by their terms survive termination of this Agreement. In the event of any such termination, the Parties have agreed that each of the payments set forth in Section 9.3(a) through Section 9.3(d) shall be the non-terminating Party's sole and exclusive remedy. ACCORDINGLY, THE PARTIES HEREBY ACKNOWLEDGE THAT (1) THE EXTENT OF DAMAGES TO THE NON-TERMINATING PARTY CAUSED BY THE FAILURE OF THIS TRANSACTION TO BE CONSUMMATED WOULD BE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, (2) THE AMOUNT OF THE LIQUIDATED DAMAGES PROVIDED FOR IN EACH OF SECTIONS 9.3(a) THROUGH 9.3(d) ARE FAIR AND REASONABLE ESTIMATES OF SUCH DAMAGES UNDER THE CIRCUMSTANCES AND (3) RECEIPT OF SUCH LIQUIDATED DAMAGES BY THE NON-TERMINATING PARTY DOES NOT CONSTITUTE A PENALTY. THE PARTIES HEREBY FOREVER WAIVE AND AGREE TO FOREGO TO THE FULLEST EXTENT UNDER APPLICABLE LAW ANY AND ALL RIGHTS THEY HAVE OR IN THE FUTURE MAY HAVE TO BRING ANY ACTION OR ARBITRAL PROCEEDING DISPUTING OR OTHERWISE OBJECTING TO ANY OR ALL OF THE FOREGOING PROVISIONS OF THIS SECTION 9.3.

(f) All payments under this Section 9.3 shall be from payor to payee by wire transfer of immediately available funds to a bank account in the United States of America designated in writing by payee not later than three (3) business days following payor's receipt of such account designation from payee.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of the Parties.

10.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but any such waiver of such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

10.3 [Intentionally Omitted]

10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission with completed transmission acknowledgment, or mailed by overnight delivery via a nationally recognized courier or registered or certified first class mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address or facsimile number for a Party as shall be

specified by like notice; provided; however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to Seller, to:

Citizens Communications Company
1460 Poydras Street, Suite 1800
New Orleans, LA 70112
Attention: Kenneth L. Cohen
Telephone: (504) 299-4501
Telecopier: (504) 544-5822

with a copy to:

Citizens Communications Company
High Ridge Park
Stamford, CT 06905
Attention: L. Russell Mitten
Telephone: (203) 614-5047
Telecopier: (203) 614-4651

and:

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
Attention: Jeffrey L. Hardin
Telephone: (202) 939-7914
Telecopier: (202) 387-3467

(b) if to Buyer, to:

Tucson Electric Power Company
One South Church Avenue, Suite 100
Tucson, Arizona 85701
Attention: Vincent Nitido, Jr.
Telephone: (520) 884-3670
Telecopier: (520) 884-3612

with a copy to:

Thelen Reid & Priest LLP
40 West 57th Street
New York, NY 10019
Attention: J. Anthony Terrell
Telephone: (212) 603-2108
Attention: John T. Hood

Telephone: (212) 603-2140

Telecopier: (212) 603-2001

10.5 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto, including by operation of law, without the prior written consent of each other Party, nor is this Agreement intended to confer upon any other Person except the Parties hereto any rights, interests, obligations or remedies hereunder; provided, however, in the event of any such assignment by a Party by operation of law without the consent of the other Party, this Agreement and all the provisions hereof shall be binding upon the Person receiving such assignment by operation of law. Notwithstanding the foregoing, Buyer may (i) assign any or all of its rights and obligations hereunder to a UniSource Designee, or (ii) make a security assignment to any lender providing financing in respect of the Buyer's acquisition of the Assets. Upon receipt of notice by Seller from Buyer of any such assignment to a UniSource Designee, such assignee will be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Buyer" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the Parties hereto or such assignee; provided, however, that no such assignment shall relieve or discharge UniSource from any of its obligations hereunder.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Arizona (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies (except to such matters of real estate law that must be governed by the law of the State of Arizona). THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE STATE AND FEDERAL COURTS IN AND FOR PHOENIX, ARIZONA, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.7 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 instrument.

10.8 Interpretation. The articles, section and schedule headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

10.9 Schedules and Exhibits. Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any matter or item disclosed on any Schedule shall not be deemed to give rise to circumstances which result in an Asset Material Adverse Effect or a Material Adverse Effect solely by reason of it being so disclosed. Any matter or item disclosed pursuant to any Schedule shall be deemed to be disclosed for all purposes under this Agreement reasonably related thereto and any matter disclosed in one Schedule will be deemed disclosed with respect to another Schedule if such disclosure is made in such a way as to make its relevance with respect to such other Schedule readily apparent.

10.10 Entire Agreement. This Agreement, the Ancillary Agreements and the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties other than the Confidentiality Agreement with respect to such transactions.

10.11 U.S. Dollars. Unless otherwise stated, all dollar amounts set forth herein are United States (U.S.) dollars.

10.12 Bulk Sales Laws. Buyer acknowledges that, notwithstanding anything in this Agreement to the contrary, Seller will not comply with the provision of the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales laws of all applicable jurisdictions to the extent permitted by law.

10.13 Construction of Agreement. The terms and provisions of this Agreement represent the results of negotiations between Buyer and Seller, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Buyer and Seller hereby waive the application in connection with the interpretation and construction of this Agreement of any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. It is understood and agreed that neither the specification of any dollar amount in the representations and warranties contained in this Agreement nor the inclusion of any specific item in the Schedules or Exhibits is intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and none of the Parties shall use the fact of the setting of such amounts or the fact of any inclusion of any such item in the Schedules or Exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter is or is not material for purposes hereof.

10.14 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and

provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

10.15 Third Party Beneficiary. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependant thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

UNISOURCE ENERGY CORPORATION

CITIZENS COMMUNICATIONS COMPANY

By: 
Name: Michael J. DeConcini
Title: Senior Vice President

By: _____
Name:
Title:

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

UNISOURCE ENERGY CORPORATION

CITIZENS COMMUNICATIONS COMPANY

By: _____

Name:

Title:

By: 

Name: Kenneth L. Cohen

Title: President and C.O.O.

E

ASSET PURCHASE AGREEMENT

**by and between
CITIZENS COMMUNICATION COMPANY, as SELLER
and
UNISOURCE ENERGY CORPORATION, as BUYER**

Relating to the Purchase by Buyer of Seller's
Gas Utility Business in the State of Arizona

Signing Date: October 29, 2002

ASSET PURCHASE AGREEMENT

Table of Contents

<u>Documents</u>	<u>Tab</u>
Asset Purchase Agreement.....	1
Exhibits	2
Schedules.....	3
Seller Deliveries at Signing	4

ASSET PURCHASE AGREEMENT

by and between

CITIZENS COMMUNICATIONS COMPANY, as SELLER,

and

UNISOURCE ENERGY CORPORATION, as BUYER,

Dated October 29, 2002

*Relating to Purchase by Buyer of Seller's
Gas Utility Business in the State of Arizona*

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	1
1.1 Definitions.....	1
1.2 Certain Interpretive Matters.....	14
ARTICLE II PURCHASE AND SALE.....	14
2.1 Transfer of Assets.....	14
2.2 Excluded Assets.....	15
2.3 Assumed Liabilities.....	17
2.4 Excluded Liabilities.....	18
2.5 Control of Litigation.....	20
ARTICLE III THE CLOSING.....	21
3.1 Closing.....	21
3.2 Closing Payment.....	21
3.3 Adjustment to Base Purchase Price.....	21
3.4 Prorations.....	24
3.5 Deliveries by Seller.....	24
3.6 Deliveries by Buyer.....	26
3.7 Work in Progress.....	26
ARTICLE IV REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SELLER.....	27
4.1 Incorporation; Qualification.....	27
4.2 Authority.....	27
4.3 Consents and Approvals; No Violation.....	27
4.4 Insurance.....	28
4.5 Real Property Leases.....	28
4.6 Environmental Matters.....	28
4.7 Labor Matters.....	29
4.8 Benefit Plans: ERISA.....	29

TABLE OF CONTENTS

	Page
4.9 Real Property.....	30
4.10 Condemnation.....	30
4.11 Assigned Agreements.....	30
4.12 Legal Proceedings.....	31
4.13 Permits.....	31
4.14 Taxes.....	31
4.15 Intellectual Property.....	32
4.16 Capital Expenditures.....	32
4.17 Compliance With Laws.....	32
4.18 Title.....	32
4.19 DISCLAIMERS.....	32
4.20 Financial Statements.....	33
4.21 SEC Filings; Financial Statements.....	33
4.22 Sufficiency of Assets.....	33
ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER.....	34
5.1 Organization.....	34
5.2 Authority.....	34
5.3 Consents and Approvals; No Violation.....	34
5.4 Availability of Funds.....	35
5.5 SEC Filings; Financial Statements.....	35
5.6 Legal Proceedings.....	35
5.7 No Knowledge of Seller's Breach.....	36
5.8 Qualified Buyer.....	36
5.9 Inspections.....	36
5.10 WARN Act.....	36
ARTICLE VI COVENANTS OF THE PARTIES.....	37
6.1 Conduct of Business and Operation of Assets.....	37
6.2 Access to Information.....	38

TABLE OF CONTENTS

	Page
6.3 Environmental Inspections and Information.....	40
6.4 Confidentiality.....	41
6.5 Public Statements.....	42
6.6 Expenses.....	42
6.7 Further Assurances.....	42
6.8 Consents and Approvals.....	43
6.9 Fees and Commissions.....	44
6.10 Tax Matters.....	45
6.11 Advice of Changes.....	47
6.12 Seller Employees.....	47
6.13 Risk of Loss.....	52
6.14 Tax Exempt Financing.....	53
6.15 Seller Guarantees and Surety Instruments.....	58
6.16 Citizens Marks.....	58
6.17 Title Commitments.....	58
6.18 Joint Use Agreement re: Easements.....	58
6.19 [Intentionally Omitted].....	58
6.20 Post-Execution Delivery of Schedules.....	59
ARTICLE VII CONDITIONS.....	59
7.1 Conditions to Obligations of Buyer.....	59
7.2 Conditions to Obligations of Seller.....	60
ARTICLE VIII INDEMNIFICATION.....	61
8.1 Indemnification of Seller by Buyer.....	61
8.2 Indemnification of Buyer by Seller.....	61
8.3 Certain Limitations on Indemnification.....	62
8.4 Defense of Claims.....	64
ARTICLE IX TERMINATION.....	66
9.1 Termination.....	66

TABLE OF CONTENTS

	Page
9.2 Procedure and Effect of Termination	67
9.3 Liquidated Damages; Termination Fees.	68
ARTICLE X MISCELLANEOUS PROVISIONS	69
10.1 Amendment and Modification	69
10.2 Waiver of Compliance; Consents.....	69
10.3 [Intentionally Omitted]	69
10.4 Notices.....	69
10.5 Assignment.....	71
10.6 Governing Law.....	71
10.7 Counterparts	71
10.8 Interpretation	71
10.9 Schedules and Exhibits	71
10.10 Entire Agreement	72
10.11 U.S. Dollars.....	72
10.12 Bulk Sales Laws.....	72
10.13 Construction of Agreement.....	72
10.14 Severability	72
10.15 Third Party Beneficiary.....	73

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated October 29, 2002 (this "Agreement"), by and among Citizens Communications Company, a Delaware corporation ("Seller") and UniSource Energy Corporation, an Arizona corporation ("Buyer"). Seller and Buyer are referred to, individually, as a "Party" and, together, as the "Parties."

WITNESSETH

WHEREAS, Seller owns all of the Assets (as defined below); and

WHEREAS, Buyer desires to purchase and assume, and Seller desires to sell and assign, the Assets, and certain associated liabilities, upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1.

"ACC" means the Arizona Corporation Commission and any successor agency thereto.

"ADEQ" means the Arizona Department of Environmental Quality and any successor agency thereto.

"Advances" has the meaning set forth in Section 3.3(e).

"Adverse Environmental Condition" has the meaning set forth in Section 6.3(c).

"Affiliate" of any Person means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Agreement" means this Asset Purchase Agreement together with the Schedules and Exhibits attached hereto, as the same may be from time to time amended.

"Allocation" has the meaning set forth in Section 6.10(f).

"ALTA" has the meaning set forth in Section 6.17.

"Ancillary Agreements" means the agreements, contracts, documents, instruments and certificates provided for in this Agreement to be entered into by one or more of the Parties or any of their Affiliates in connection with the transactions contemplated by this Agreement.

"APBO" has the meaning set forth in Section 6.12(d)(iii)(D).

"Approved Capital Expenditures" means the Capital Expenditures that have been expressly approved by Buyer in writing and that are identified in said writing as Approved Capital Expenditures for purposes of this Agreement.

"Arizona Electric Purchase Agreement" has the meaning set forth in Section 7.1(j).

"Assets" has the meaning set forth in Section 2.1.

"Asset Material Adverse Effect" means any occurrence or condition, arising after the date hereof, that has or would reasonably be expected to have a material adverse effect with an aggregate economic impact, taking into account all relevant considerations, in excess of \$10,000,000 (except as provided otherwise in Sections 6.3(c), 6.13(b)(i) or 6.13(c)(ii)) on the condition of the Assets, taken as a whole, or on the business, operations, financial condition or results of operations of the Business, taken as a whole, other than any such occurrence or condition (a) arising from business, economic or financial market conditions, considered generally, (b) arising from the conditions in the gas utility industry, considered generally and not specifically as to the Business, (c) which is remedied, cured or otherwise reversed (including by the payment of money or application of insurance proceeds) before the Termination Date, or (d) arising from entering into this Agreement or the announcement of the transactions contemplated by this Agreement; it being understood that the occurrences and/or conditions which could, depending on the nature and extent thereof, be deemed to result in an Asset Material Adverse Effect shall include, without limitation, (x) the terms or conditions of a Final Order with respect to any Required Regulatory Approval, considered individually or together with any other such Final Order(s) with respect to any other Required Regulatory Approval(s), other than Regulatory Exceptions, and (y) facts or circumstances relating to the Assets and/or the Business which come to the attention of Buyer between the date of this Agreement and the Closing Date, whether as a result of Buyer's Inspection of the Assets or its examination of information and data relating to the Assets and/or the Business, as contemplated by Section 6.2 or 6.3, or otherwise.

"Assigned Agreements" means any contracts, agreements, software licenses and related contracts, Easements, Real Property Leases and personal property leases entered into by Seller or any of its Affiliates with respect to the ownership, operation or maintenance of the Assets or the Business, including those disclosed on Schedules 4.5 and 4.11(a) and excluding those disclosed on Schedule 2.2, including without limitation, the IBEW CBA.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement between Seller and Buyer substantially in the form of Exhibit A attached hereto.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Arizona Electric Purchase Agreement" has the meaning set forth in Section 7.1(j).

"Balance Sheet" has the meaning set forth in Section 4.20.

"Base Purchase Price" has the meaning set forth in Section 3.2.

"Benefit Plans" means each of Seller's deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity compensation plan, program, agreement or arrangement; each severance or termination pay, medical, surgical, hospitalization, life insurance and other "welfare" plan, fund or program (within the meaning of Section 3(1) of ERISA); each profit-sharing, stock bonus or other "pension" plan, fund or program (within the meaning of Section 3(2) of ERISA); each employment, termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by such Party or by any ERISA Affiliate, in any case maintained for employees of Seller connected with the Business, or in which such employees participate.

"Bill of Sale" means the Bill of Sale, substantially in the form of Exhibit B attached hereto, to be delivered at the Closing by Seller with respect to the Tangible Personal Property included in the Assets transferred to Buyer.

"Bond Counsel" has the meaning set forth in Section 6.14(c)(i).

"Business" means, collectively, (a) the regulated natural gas distribution business conducted by Seller within the State of Arizona through its Arizona Gas divisions, (b) the natural gas transportation business conducted by Seller within the State of Arizona through its Arizona Gas divisions and (c) the provision of related services and products and the engagement in related activities, including financing of conversions to gas and agreements as to appliances, by Seller within the State of Arizona through its Arizona Gas divisions.

"Business Day" means any day other than Saturday, Sunday and any day which is a day on which banking institutions in the States of Arizona and New York are authorized by law or other governmental action to remain closed.

"Buyer" has the meaning set forth in the Preamble.

"Buyer Indemnifiable Loss" has the meaning set forth in Section 8.2.

"Buyer Indemnitee" has the meaning set forth in Section 8.2.

"Buyer Material Adverse Effect" means a Material Adverse Effect with respect to Buyer.

"Buyer Required Regulatory Approvals" means the Required Regulatory Approvals set forth in Schedule 5.3(b).

"CERCLA" means the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 *et seq.*, as amended.

"Capital Expenditures" means capital additions to or replacements of property, plants and equipment included in the Assets or otherwise relating to the Business and other expenditures or repairs on property, plants and equipment included in the Assets or otherwise relating to the Business that would be capitalized by Seller in accordance with its normal accounting policies.

"Capital Expenditures Schedule" has the meaning set forth in Section 4.16.

"Citizens Marks" has the meaning set forth in Section 2.2(c).

"Closing" has the meaning set forth in Section 3.1.

"Closing Date" means one minute after 11:59 p.m. on the date which is five (5) Business Days following the date on which the last of the conditions precedent to the Closing set forth in Article VII of this Agreement have been either satisfied or waived by the Party for whose benefit such conditions precedent exist, subject to such extensions (not to exceed six (6) months) as may be required by Seller to repair or replace lost or damaged Assets in accordance with Section 6.13(c), or such other date as the Parties may mutually agree.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1984.

"COBRA Continuation Coverage" means the requirements of Section 4980B(f) of the Code.

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

"Commercially Reasonable Efforts" means efforts by a Party which are reasonably within the contemplation of the Parties at the time of executing this Agreement and which do not require the performing Party to expend any funds other than expenditures which are customary and reasonable in transactions of the kind and nature contemplated by this Agreement in order for the performing Party to satisfy its obligations hereunder.

"Current Retirees" has the meaning set forth in Section 6.12(d)(iii)(D).

"Direct Claim" has the meaning set forth in Section 8.4(c).

"Easements" means all easements, rights of way, permits, licenses, prescriptive rights and other ways of necessity, and other similar real property grants, whether or not of record, relating to real property.

"Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

"Environmental Claim" means any and all pending and/or threatened administrative or judicial actions, suits, orders, claims, liens, notices, notices of violations, investigations, complaints, requests for information, proceedings, or other written communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law or pursuant to a common law theory, by any Person (including, but not limited to, any Governmental Authority, private person and citizens' group) based upon, alleging, asserting, or claiming any actual or potential (a) violation of, or liability under any Environmental Law, (b) violation of any Environmental Permit, or (c) liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to any Environmental Condition or any Release or threatened Release into the environment of any Regulated Substances at any location related to the Assets, including, but not limited to, any Off-Site Location to which Regulated Substances, or materials containing Regulated Substances, were sent for handling, storage, treatment, or disposal.

"Environmental Condition" means the presence or Release of a Regulated Substance (other than a naturally-occurring substance) on or in environmental media, or structures on Real Property, at an Off-Site Location or other property (including the presence in surface water, groundwater, soils or subsurface strata, or air), including the subsequent migration of any such Regulated Substance, regardless of when such presence or Release occurred or is discovered.

"Environmental Data" has the meaning set forth in Section 6.3(e).

"Environmental Laws" means all federal, state, local, provincial, foreign and international civil and criminal laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, laws relating to Releases or threatened Releases of Regulated Substances (including, without limitation, Releases to ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Regulated Substances. "Environmental Laws" include: (a) with respect to federal law, CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), the Emergency Planning and

Community Right-to-Know Act (42 U.S.C. §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), the Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), the Surface Mine Conservation and Reclamation Act (30 U.S.C. §§ 1251-1279), and regulations adopted pursuant thereto, and counterpart state and local laws, regulations adopted pursuant thereto; and (b) with respect to Arizona law, laws comparable to such federal statutes and regulations adopted pursuant thereto.

“Environmental Permits” means any permits, registrations, certificates, certifications, licenses and authorizations, consents and approvals of Governmental Authorities issued under Environmental Laws held by Seller with respect to the Assets.

“Environmental Price Adjustment” has the meaning set forth in Section 6.3(c).

“Environmental Reports” has the meaning set forth in Section 4.6.

“Environmental Threshold” has the meaning set forth in Section 6.3(c).

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

“ERISA Affiliate” means a trade or business, whether or not incorporated, that together with a Party would be deemed a “single employer” within the meaning of Section 4001(b) of ERISA.

“Estimated Adjustment” has the meaning set forth in Section 3.3(b).

“Estimated Closing Statement” has the meaning set forth in Section 3.3(b).

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Exempt Facilities” means those facilities listed in Exhibit A to each Loan Agreement included in the IDR Documents.

“FERC” means the Federal Energy Regulatory Commission or any successor agency thereto.

“Final Order” means an action by the relevant Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended and/or with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired and the time period permitted by statute or regulation for filing any request for a stay, petition for rehearing, reconsideration or application for review of the action or for filing a court appeal has passed.

“Financial Statements” has the meaning set forth in Section 4.20.

"FIRPTA Affidavit" means the Foreign Investment in Real Property Tax Act Certification and Affidavit to be executed by Seller.

"GAAP" means U.S. generally accepted accounting principles.

"Good Utility Practices" means any practices, methods, standards, guides, or acts, as applicable, that (a) are generally accepted in the region during the relevant time period for use in the gas, transmission and distribution industry, (b) are commonly used in prudent gas, transmission and distribution engineering, construction, project management and operations, and (c) would be expected if the Business is to be conducted at a reasonable cost in a manner consistent with laws, rules and regulations applicable to the Business and the objectives of reliability, safety, environmental protection, economy and expediency. Good Utility Practice is intended to be acceptable practices, methods, or acts generally accepted in the region, and is not intended to be limited to the optimum practices, methods, or acts to the exclusion of all others.

"Governmental Authority" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority.

"Grandfathered Active Employees" has the meaning set forth in Section 6.12(d)(iii)(D).

"Grandfathered Individuals" has the meaning set forth in Section 6.12(d)(iii)(D).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"IBEW" means International Brotherhood of Electrical Workers.

"IBEW CBA" has the meaning set forth in Section 6.12(a).

"IDRB Documents" has the meaning set forth in Section 6.14(m).

"IDRB Indebtedness" means the indebtedness of Seller owing to the issuers of the Revenue Bonds and arising under the Loan Agreements included among the IDRB Documents.

"Income Tax" means any federal, state, local or foreign Tax (a) based upon, measured by or calculated with respect to gross or net income, profits or receipts (including, without limitation, capital gains Taxes and minimum Taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties, or additions to such Tax.

"Indemnifiable Loss" means any claim, demand, suit, loss, liability, damage, obligation, payment, cost or expense (including, without limitation, the cost and expense of any action, suit, proceeding, assessment, judgment, settlement or compromise relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith).

"Indemnifying Party" means a Party obligated to provide indemnification under this Agreement.

"Indemnitee" means a Person entitled to receive indemnification under this Agreement.

"Independent Accounting Firm" means such independent accounting firm of national reputation as is mutually appointed by the Buyer and Seller.

"Inspection" means all tests, reviews, examinations, inspections, investigations, interviews, verifications, samplings and similar activities conducted by Buyer or its Representatives prior to the Closing with respect to the Assets, including "Phase I" and/or "Phase II" environmental assessments.

"Intellectual Property" means patents and patent rights, trademarks and trademark rights, inventions, copyrights and copyright rights, and all pending applications for registrations of patents, trademarks, and copyrights.

"Inventories" means materials, spare parts, consumable supplies, fuel supplies and chemical inventories relating to the Assets or the operation of the Business.

"Knowledge" means the actual knowledge, as of the date hereof or, with respect to any certificate delivered pursuant to this Agreement, the date of delivery of such certificate, of the Persons identified on Schedule 1.1 and successors to each such Person's employment responsibilities.

"Material Adverse Effect" means any occurrence or condition, arising after the date hereof, that has or would reasonably be expected to have a material adverse effect with an aggregate adverse economic impact, taking into account all relevant considerations, in excess of \$10,000,000 on the business, operations, properties, financial condition or results of operations of any Party (including its Affiliates, taken as a whole) or on the ability of either Party to perform in all material respects its obligations under this Agreement and the Ancillary Agreements.

"Material Taking" has the meaning set forth in Section 6.13(b).

"Non-Union Employees" has the meaning set forth in Section 6.12(b).

"Off-Site Location" means any real property other than the Real Property.

"Order" means any award, decision, injunction, judgment, order, consent order, writ, decree, consent decree, ruling, subpoena, or verdict entered, issued, made or

rendered by any court, administrative agency, other Governmental Authority, or by an arbitrator, each of which possesses competent jurisdiction.

"Party" has the meaning set forth in the Recitals.

"Permitted Encumbrances" means any of the following:

(a) mechanics', carriers', workers' and other similar liens arising in the ordinary course of business for charges that are not delinquent or that are being contested in good faith and have not proceeded to judgment;

(b) liens for current Taxes and assessments not yet due and payable;

(c) with respect to the Real Property, usual and customary nonmonetary Encumbrances, covenants, Easements, restrictions and other title matters (whether or not recorded) that do not and are not expected to materially interfere with the operation of that portion of the Business conducted on such Real Property or the Business as a whole;

(d) Encumbrances securing the payment or performance of any of the Assumed Liabilities;

(e) all applicable zoning ordinances and land use restrictions in effect as of the date of this Agreement and all changes to or new adoptions of zoning ordinances and land use restrictions prior to the Closing Date that do not and are not expected to materially interfere with the operation of that portion of the Business conducted on such Real Property or the Business as a whole;

(f) with respect to any Asset which consists of a leasehold or other possessory interests in real property, all Encumbrances, covenants, Easements, restrictions and other title matters (whether or not recorded) to which the underlying fee estate in such real property is subject that do not or will not interfere materially with the operation of that portion of the Business currently conducted on such property or the Business as a whole; and

(g) any other Encumbrances, obligations, defects or irregularities of any kind whatsoever affecting title to the Assets that will be terminated, released or waived on or before the Closing Date or that are not, individually or in the aggregate, reasonably likely to materially interfere with the present use of the Assets or to materially increase the cost of conducting the Business.

"Permits" means any permits, licenses, registrations, franchises and other authorizations, consents and approvals of Governmental Authorities held by Seller with respect to the Assets or the Business.

"Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or governmental entity or any department or agency thereof.

"Post-Closing Adjustment" has the meaning set forth in Section 3.3(d).

"Post-Retirement Welfare Benefits" has the meaning set forth in Section 6.12(d)(iii)(D).

"Proposed Post-Closing Adjustment" has the meaning set forth in Section 3.3(c).

"Proprietary Information" of a Party means all information about the Party or its Affiliates, including their respective properties or operations, furnished to the other Party or its Representatives by the Party or its Representatives, before or after the date hereof, regardless of the manner or medium in which it is furnished and all analyses, reports, tests or other information created or prepared by, or on behalf of, a Party during the performance of "Phase I" or "Phase II" environmental site assessments. Proprietary Information does not include information that: (a) is or becomes generally available to the public, other than as a result of a disclosure by the other Party or its Representatives; (b) was available to the other Party on a nonconfidential basis prior to its disclosure by the Party or its Representatives; (c) becomes available to the other Party on a nonconfidential basis from a person, other than the Party or its Representatives, who is not otherwise bound by a confidentiality agreement with the Party or its Representatives, or is not otherwise under any obligation to the Party or any of its Representatives not to transmit the information to the other Party or its Representatives; or (d) is independently developed by the other Party.

"Purchase Price" has the meaning set forth in Section 3.2.

"Qualifying Offer" means an offer to a Transferred Non-Union Employee of the same or similar job that is at least 100% of such employee's current total cash compensation at the time the offer was made (consisting of base salary and target incentive bonus), and does not require, as a condition of acceptance, a relocation of residence as described in Section 6.12(f).

"Real Property" has the meaning set forth in Section 2.1(a). Any reference to the Real Property includes, by definition, Seller's right, title and interest in and to the surface and subsurface elements, including the soils and groundwater present at the Real Property, and any reference to items "at the Real Property" includes all items "at, on, in, upon, over, across, under and within" the Real Property.

"Real Property Leases" has the meaning set forth in Section 4.5.

"Recovery Costs" has the meaning set forth in Section 8.4(d).

"Regulated Substances" means (a) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and dielectric fluid containing polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants," "pollutants," "toxic pollutants" or

words of similar meaning and regulatory effect under any applicable Environmental Law; and (c) any other chemical, material or substance, exposure to which or whose discharge, emission, disposal or Release is prohibited, limited or regulated by any applicable Environmental Law.

“Regulations” has the meaning set forth in Section 6.14(a)(iii).

“Regulatory Exceptions” means any of the following:

(a) a refusal by the ACC or the FERC to authorize an increase in base rates for the Business, an imposition by the ACC or the FERC of a rate moratorium for the Business, or a requirement by the ACC or the FERC of the filing of a rate case for the Business;

(b) an imposition by the ACC requiring Buyer to provide service, or to improve service, to Persons located in any authorized service area of the Business, provided such requirement has a corresponding rate recovery opportunity;

(c) an imposition by the ACC of performance, safety or reliability standards for Buyer’s operation of the Business that are substantially equivalent to those standards being met by Buyer or its Affiliates in their other utility operations in Arizona, provided (i) Buyer is given a reasonable period of time after Closing to meet such imposed standards and (ii) such imposed standards have a corresponding rate recovery opportunity; and

(d) terms and conditions imposed by any Governmental Authority that is required to issue a Required Regulatory Approval that are either (i) usual and customary; (ii) applicable to the Business or to Buyer or any Affiliate of Buyer as of the date of this Agreement; or (iii) contemplated by this Agreement, including the understandings of the Parties referenced in Section 6.8(c)(i).

“Regulatory Material Adverse Effect” means, with respect to any Party, a Material Adverse Effect resulting from the effect on such Party of the terms and conditions of a Final Order with respect to any Required Regulatory Approval other than Regulatory Exceptions.

“Release” means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump or allow to escape into or through the environment.

“Remediation” means any action taken in the investigation, removal, confinement, cleanup, treatment, or monitoring of a Release or an Environmental Condition on Real Property or Off-Site Location, including, without limitation, (a) obtaining any Permits or Environmental Permits required for such remedial activities, and (b) implementation of any engineering controls and institutional controls. The term “Remediation” includes, without limitation, any action which constitutes “removal action” or “remedial action” as defined by Section 101 of CERCLA, Section 6901(23) and (24); or any action which constitutes “remediation” or “remedial action” as defined by Arizona Revised Statutes Sections 49-151(4), 49-171(8) and 49-282.02(C)(2).

“Representatives” of a Party means such Party’s authorized representatives, including without limitation, its professional and financial advisors.

“Required Regulatory Approvals” means with respect to a Party, any consent or approval of, filing with, or notice to, any Governmental Authority that is necessary for the execution and delivery of this Agreement and the Ancillary Agreements by such Party or the consummation thereby of the transactions contemplated hereby, other than such consents, approvals, filings or notices (i) which are not required in the ordinary course to be obtained or made prior to the Closing and the transfer of the Assets, (ii) which, if not obtained or made, will not prevent such Party from performing its material obligations hereunder, or (iii) that relate to a Permit that is not material to the Business, taken as a whole.

“Revenue Bonds” has the meaning set forth in Section 6.14(a)(i).

“Savings Plan” has the meaning set forth in Section 6.12(d)(iii)(E).

“SEC” means the Securities and Exchange Commission and any successor agency thereto.

“Seller” has the meaning set forth in the Preamble.

“Seller Indemnifiable Loss” has the meaning set forth in Section 8.1.

“Seller Indemnitee” has the meaning set forth in Section 8.1.

“Seller Material Adverse Effect” means a Material Adverse Effect with respect to Seller.

“Seller Required Regulatory Approvals” means the Required Regulatory Approvals set forth in Schedule 4.3(b).

“Seller SEC Reports” has the meaning set forth in Section 4.21.

“Seller’s Pension Plan” has the meaning set forth in Section 6.12(d)(iii)(C).

“Severance Cost” has the meaning set forth in Section 6.12(b).

“Special Warranty Deed” means a special warranty deed substantially in the form of Exhibit C attached hereto.

“Subsidiary” when used in reference to any Person means any entity of which outstanding securities having ordinary voting power to elect a majority of the Board of Directors or other Persons performing similar functions of such entity are owned directly or indirectly by such Person.

“Sufficient Notice” has the meaning set forth in Section 6.14(c)(ii).

“Taking” has the meaning set forth in Section 6.13(b).

"Tangible Personal Property" has the meaning set forth in Section 2.1(c).

"Taxes" means all taxes, charges, fees, levies, penalties or other assessments imposed by any federal, state, local or foreign taxing authority, including, but not limited to, income, excise, property, sales, transfer, franchise, payroll, withholding, social security, gross receipts, license, stamp, occupation, employment or other taxes, including any interest, penalties or additions attributable thereto.

"Tax Impact" has the meaning set forth in Section 6.14(a)(vi).

"Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) required to be supplied to any taxing authority with respect to Taxes including amendments thereto.

"Termination Date" has the meaning set forth in Section 9.1(b).

"Third Party Claim" means any claim, action, or proceeding made or brought by any Person who is not (a) a Party to this Agreement, or (b) an Affiliate of a Party to this Agreement.

"Title Commitment" has the meaning set forth in Section 6.17.

"Title Company" has the meaning set forth in Section 6.17.

"Title Policies" has the meaning set forth in Section 6.17.

"Transfer Taxes" means any real property transfer or gains tax, sales tax, conveyance fee, use tax, stamp tax, stock transfer tax or other similar tax, including any related penalties, interest and additions to tax.

"Transferable Permits" means those Permits and Environmental Permits with respect to the Assets or the Business which may be transferred to Buyer with or without a filing with, notice to, consent of or approval of any Governmental Authority, and excluding those Permits and Environmental Permits with respect to the Assets or the Business which are non-transferable to Buyer and with respect to which Buyer must apply for and obtain replacements.

"Transferred Employees" means Transferred Non-Union Employees and Transferred Union Employees.

"Transferred Employee Records" means records related to Seller's employees who become employees of Buyer but only to the extent such records pertain to (A) skill and development training and biographies, (B) seniority histories, (C) salary and benefit information, (D) Occupational, Safety and Health Administration reports, or (E) subject to the limitation of the Health Insurance Portability and Accountability Act of 1996 and any applicable state privacy legislation and regulations, active medical restriction forms.

"Transferred Non-Union Employees" has the meaning set forth in Section 6.12(b).

"Transferred Union Employees" has the meaning set forth in Section 6.12(a).

"Union Employees" has the meaning set forth in Section 6.12(a).

"UniSource" means UniSource Energy Corporation, an Arizona corporation and a direct or indirect parent corporation of Buyer.

"UniSource Designee" means a wholly-owned subsidiary, direct or indirect, of either UniSource or Tucson Electric Power Company, an Arizona corporation named in the approvals by the ACC and the FERC as an entity that may acquire the Assets.

"UniSource SEC Reports" has the meaning set forth in Section 5.5.

"WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988, as amended.

"1954 Code" has the meaning set forth in Section 6.14(a)(iii).

1.2 Certain Interpretive Matters. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The term "includes" or "including" shall mean "including without limitation." The terms "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits hereto) and not to any particular provision of this Agreement. References to a Section, Article, Exhibit or Schedule shall mean a Section, Article, Exhibit or Schedule of this Agreement, and reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made.

ARTICLE II

PURCHASE AND SALE

2.1 Transfer of Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to Buyer or the UniSource Designee, and Buyer or such UniSource Designee will purchase, assume and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Seller's right, title and interest in and to all the assets (except for Excluded Assets), real, personal or mixed, tangible, or intangible, used or held for use by Seller in or in connection with, or otherwise necessary for, the conduct of the Business, including, without limitation, those assets described below, each as in existence on the Closing Date (such assets, collectively, the "Assets"): .

(a) those certain parcels of real property owned by Seller together with all buildings, facilities, and other improvements thereon and all appurtenances thereto as described in Schedule 4.9 (the "Real Property");

(b) all accounts receivable and earned but unbilled revenues attributable to the Business, and all Inventories;

(c) all machinery (mobile or otherwise), equipment (including communications equipment and computers), vehicles, tools, furniture and furnishings and other personal property related to the Business, owned by Seller and located on the Real Property on the Closing Date, together with all the personal property of Seller used principally in the operation of the Business that are in the possession of Seller and whether or not located on the Real Property (collectively, the "Tangible Personal Property");

(d) subject to the provisions of Section 6.7(c), all Assigned Agreements;

(e) subject to the provisions of Section 6.7(c), all Real Property Leases;

(f) all Transferable Permits;

(g) all books, customer lists and customer information databases, meter reading and service data, accounts payable and receivable data, operating and maintenance records, warranty information, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items of Seller relating specifically to the Assets and necessary for the operation of the Assets and the Business (subject to the right of Seller to retain copies of same for its use) other than such items which are proprietary to third parties and accounting records;

(h) all unexpired, transferable warranties and guarantees from third parties with respect to any Asset as of the Closing Date;

(i) Seller prepaid expenses; and

(j) petty cash held locally for the benefit of the Business.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement will constitute a transfer to Buyer or a UniSource Designee of, or be construed as conferring on Buyer or a UniSource Designee, and neither Buyer nor said UniSource Designee is acquiring, any right, title or interest in or to the following specific assets which are associated with the Assets or the Business, but which are hereby specifically excluded from the sale and the definition of Assets herein (the "Excluded Assets"):

(a) assets that Seller uses in both the Business and Seller's electric or communications businesses, the material items of which are identified in Schedule 2.2 hereto and any contracts or agreements regarding the procurement of goods or services by Seller for use in its electric or communications businesses;

(b) cash and cash equivalents (including checks) in transit, in hand or in bank accounts, other than petty cash held locally for the benefit of the Business;

(c) the rights of Seller and its Affiliates to the names "Citizens Communications Company", "Citizens Utilities", "CZN" or "Citizens" or any other trade names, trademarks, service marks, corporate names, corporate symbols or logos or any part, derivative or combination thereof (the "Citizens Marks");

(d) the stock record and minute books of Seller, duplicate copies of all books and records transferred to Buyer, all records prepared in connection with the sale of the Business (including bids received from third parties and analyses relating to the Business and all original documents relating to the Revenue Bonds (provided that copies of such documents relating to the Revenue Bonds have been furnished to Buyer);

(e) assets disposed of by Seller after the date of this Agreement to the extent such dispositions are not prohibited by this Agreement;

(f) except in the case of causes of action against third parties (including indemnification and contribution) relating to an Environmental Condition or Regulated Substance or arising under Environmental Laws and not relating to a Retained Liability, the rights of Seller in and to any causes of action against third parties (including indemnification and contribution) relating to any Real Property or Tangible Personal Property, Permits, Environmental Permits, Taxes, Real Property Leases or the Assigned Agreements, if any, and not relating to the Assumed Liabilities, including any claims for refunds, prepayments, offsets, recoupment, insurance proceeds (subject to Section 6.13(c)), condemnation awards (subject to Section 6.13(b)), judgments and the like, whether received as payment or credit against future liabilities, relating specifically to the Real Property or any improvements thereon and relating to any period prior to the Closing Date;

(g) all personnel records of Seller and its Affiliates relating to the Transferred Employees other than Transferred Employee Records or other records, the disclosure of which is required by law or legal or regulatory process or subpoena;

(h) any and all of Seller's rights and interests in any contract that is not an Assigned Agreement or that is an intercompany transaction between Seller and an Affiliate of Seller and all accounts owing by and among Seller and any of its Affiliates, whether or not any such intercompany transaction or account relates to the provision of goods and services, payment arrangements, intercompany charges or balances, or the like;

(i) except to the extent set forth in Section 3.4, rights to refunds of Taxes payable with respect to the Business, the Assets, or any other assets, properties or operations of Seller or any Affiliate thereof;

(j) all deferred tax assets or collectibles;

(k) any insurance policy, bond, letter of credit or similar item, and any cash surrender value in regard thereto;

(l) except as otherwise set forth in Section 6.12, assets attributable to or related to a Benefit Plan; and

(m) all other assets listed in Schedule 2.2 hereto.

2.3 Assumed Liabilities. On the Closing Date, Buyer or the UniSource Designee acquiring the Assets shall deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer or such UniSource Designee shall assume and agree to discharge when due, without recourse to Seller, in accordance with the respective terms and subject to the respective conditions thereof, all of the Assumed Liabilities. All of the following liabilities and obligations of Seller or Buyer which relate to, or arise by virtue of Seller's or Buyer's ownership of the Assets or operation of the Business (other than Excluded Liabilities) are referred to collectively as the "Assumed Liabilities":

(a) all liabilities and obligations of Seller or Buyer arising on or after the Closing Date under the Assigned Agreements, the Real Property Leases, and the Transferable Permits in accordance with the terms thereof, including, without limitation, the Assigned Agreements entered into by Seller (i) prior to the date hereof and (ii) after the date hereof consistent with the terms of this Agreement, except in each case to the extent such liabilities and obligations, but for a breach or default by Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date and are not otherwise included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3 or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice or passage of time or both would constitute a default by Seller;

(b) all liabilities and obligations of Seller for accounts payable to the extent included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;

(c) all liabilities and obligations associated with the Assets or the Business in respect of Taxes for which Buyer is liable pursuant to Section 3.4 or 6.10(a) hereof;

(d) all liabilities and obligations of Seller or Buyer with respect to the Transferred Employees incurred on or after the Closing Date for which Buyer is responsible pursuant to Section 6.12;

(e) all liabilities, responsibilities and obligations of Seller or Buyer arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation is known or unknown, contingent or accrued as of the Closing Date, including but not limited to: (i) costs of compliance (including capital, operating and other costs) relating to any violation or alleged violation of Environmental Laws occurring prior to, on or after the Closing Date, with respect to the ownership of the Assets or operation of the Business; (ii) property damage or natural resource damage (whether such damages were manifested before or after the Closing Date) arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to, or migrating from any Assets prior to, on or after the Closing Date; (iii) any Remediation (whether

or not such Remediation commenced before the Closing Date or commences after the Closing Date) of Environmental Conditions or Regulated Substances that are present or have been Released prior to, on or after the Closing Date, at, on, in, adjacent to or migrating from the Assets; (iv) any violations or alleged violations of Environmental Laws occurring on or after the Closing Date with respect to the ownership of any Assets or operation of the Business; (v) any bodily injury or loss of life arising from Environmental Conditions or Releases of Regulated Substances at, on, in, under, adjacent to or migrating from any Asset on or after the Closing Date; (vi) any bodily injury, loss of life, property damage, or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Closing Date, of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business; and (vii) any Remediation of any Environmental Condition or Release of Regulated Substances arising from the storage, transportation, treatment, disposal, discharge, recycling or Release, at any Off-Site Location, or arising from the arrangement for such activities, on or after the Closing Date, of Regulated Substances generated in connection with the ownership or operation of the Assets; provided, that nothing set forth in this Section 2.3 shall require Buyer to assume any liabilities, responsibilities or obligations that are expressly excluded in Section 2.4;

(f) any Tax that may be imposed by any federal, state or local government on the ownership, sale (except as otherwise provided in Section 3.4 or 6.10(a)), operation of the Business or use of the Assets on or after the Closing Date, except for any Income Taxes attributable to the income of Seller;

(g) all liabilities and obligations of Seller or Buyer arising on and after the Closing Date under those Orders specifically relating to the Assets or the Business issued by or entered into with any Governmental Authority and listed in Schedule 2.3(g) or imposed on Buyer in any Required Regulatory Approval;

(h) customer advances, customer deposits and construction advances, unperformed service obligations, Easement relocation obligations, and engineering and construction required to complete scheduled construction, construction work in progress, and other capital expenditure projects, in each case directly related to the Business and outstanding on or arising after the Closing Date; and

(i) actions and proceedings based on conduct, actions, circumstances or conditions arising or occurring on or after the Closing Date, actions and proceedings described in Schedule 2.3(i), actions and proceedings arising from or directly related to any other Assumed Liability, and generic or industry-wide actions and proceedings outstanding on or arising on or after the Closing Date that are applicable to the Business.

2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Buyer shall not assume or be obligated to pay, perform or otherwise discharge the following liabilities or obligations of Seller (collectively, the "Excluded Liabilities"):

(a) any liabilities or obligations of Seller in respect of any Excluded Assets or other assets of Seller that are not Assets;

(b) any liabilities or obligations with respect to Taxes attributable to Seller's ownership, or use of the Assets or operation of the Business for taxable periods, or portions thereof, ending before the Closing Date, except for Taxes for which Buyer is liable pursuant to Section 3.4 or 6.10(a) hereof;

(c) any liabilities or obligations of Seller accruing under any of the Assigned Agreements prior to the Closing Date or any liability, other than an Assumed Liability, underlying a Permitted Encumbrance, in each case to the extent not included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;

(d) any and all asserted or unasserted liabilities or obligations to third parties (including employees) for injuries or damages, whether arising from tortious conduct or otherwise, or similar causes of action relating to the Assets or the Business arising during or attributable to the period prior to the Closing Date, other than such that relate to liabilities or obligations assumed by Buyer;

(e) any fines, penalties and associated costs for defending related enforcement actions, resulting from any violation or alleged violation of Environmental Laws with respect to the ownership of the Assets or the operation of the Business occurring prior to the Closing Date;

(f) any payment obligations of Seller pursuant to the Assigned Agreements for goods delivered or services rendered prior to the Closing Date, including, but not limited to, rental payments pursuant to the Real Property Leases, in each case to the extent not included among the items causing an adjustment to the Base Purchase Price contemplated in Section 3.3;

(g) any liabilities, responsibilities and obligations of Seller arising under Environmental Laws or relating to Environmental Conditions or Regulated Substances (including common law liabilities relating to Environmental Conditions and Regulated Substances), whether such liability, responsibility or obligation was known or unknown, contingent or accrued, which relates to (i) any bodily injury, loss of life, property damage or natural resource damage arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business at any Off-Site Location, or arising from the arrangement for such activities, prior to the Closing Date; or (ii) any Remediation of any Environmental Condition or Regulated Substance at any Off-Site Location, arising from the storage, transportation, treatment, disposal, discharge, recycling or Release of Regulated Substances generated in connection with the ownership of the Assets or the operation of the Business at such Off-Site Location, or arising from the arrangement for such activities, prior to the Closing Date; provided, that for purposes of this paragraph, "Off-Site Location" does not include any location to which Regulated Substances disposed of or Released at the site of any Asset may have migrated;

(h) any liability to third parties (including employees) for personal injury or loss of life, to the extent caused (or allegedly caused) by Environmental Conditions or the Release of Regulated Substances at, on, in, under, or adjacent to, or migrating from, the Assets prior to the Closing;

(i) subject to Section 6.12, any liabilities or obligations of Seller, any Seller Subsidiary or any ERISA Affiliate of Seller relating to any Benefit Plan including but not limited to any such liability (i) relating to benefits payable under any Benefit Plan; (ii) relating to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (iii) relating to a multi-employer plan; (iv) with respect to non-compliance with the notice and benefit continuation requirements of COBRA; (v) with respect to any noncompliance with ERISA or any other applicable laws; or (vi) with respect to any suit, proceeding or claim which is brought against Seller, Buyer, any Benefit Plan, or any fiduciary or former fiduciary of any such Benefit Plan;

(j) subject to Section 6.12, any liabilities or obligations arising from facts or circumstances prior to the Closing Date relating to the employment or termination of employment, including discrimination, wrongful discharge, unfair labor practices, or constructive termination by Seller of any individual, attributable to any actions or inactions by Seller prior to the Closing Date other than actions or inactions taken at the written direction of Buyer (it being understood and agreed that Buyer shall have no liability for action taken by Seller pursuant to Section 6.12 except as expressly provided therein);

(k) subject to Section 6.12, any obligations of Seller for wages, overtime, employment taxes, severance pay, transition payments in respect of compensation or similar benefits accruing or arising prior to the Closing under any term or provision of any contract, plan, instrument or agreement relating to any of the employees of Seller;

(l) all obligations of Seller with respect to the Revenue Bonds and any other indebtedness for money borrowed by Seller (including items due to Seller's Affiliates) other than payment obligations arising on or after the Closing Date under any equipment lease of the kind listed in Schedule 4.11(a) or under any line extension contracts or similar construction arrangements, it being understood and agreed that such leases, contracts and similar arrangements do not create indebtedness for money borrowed; and

(m) all obligations and liabilities included in Seller's "other current and accrued liabilities" account; and

(n) any liability of Seller arising out of a breach by Seller or any of its Affiliates of any of their respective obligations under this Agreement or the Ancillary Agreements.

2.5 Control of Litigation.

(a) The Parties agree and acknowledge that, from and after the Closing Date, Seller shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), arising out of or related to any Excluded Liabilities, and Buyer agrees to cooperate fully in connection therewith and in connection therewith, shall comply with the provisions of Section 6.2, provided that, in no event shall Seller's exercise of its rights under this Section 2.5 (i) unreasonably interfere with Buyer's conduct or operation of the Business, (ii) place any environmental liens or deed restrictions on

the Real Property, or (iii) cause Buyer to be responsible for maintaining any institutional or engineering controls that may be part of a Remediation activity.

(b) The Parties agree and acknowledge that, from and after the Closing Date, Buyer shall be entitled exclusively to control, defend and settle any litigation, administrative or regulatory proceeding, and any investigation or Remediation activity (including without limitation any environmental mitigation or Remediation activities), arising out of or related to any Assumed Liabilities, and Seller agrees to cooperate fully in connection therewith and in connection therewith, shall comply with the provisions of Section 6.2.

ARTICLE III

THE CLOSING

3.1 Closing. Upon the terms and subject to the satisfaction of the conditions in Article VII of this Agreement, each of (i) the sale, assignment, conveyance, transfer and delivery of the Assets to Buyer by Seller, (ii) the payment of the Purchase Price to Seller by Buyer, (iii) the assumption of the Assumed Liabilities by Buyer, and (iv) the consummation of the other respective obligations of the Parties contemplated by this Agreement to be consummated on the Closing Date shall take place at a closing (the "Closing"), to be held at the offices of Seller in Phoenix, Arizona, or another mutually acceptable location, at 9:00 a.m. local time on the Closing Date.

3.2 Closing Payment. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, assumption, conveyance, transfer and delivery of the Assets, Buyer will pay or cause to be paid to Seller at the Closing an aggregate amount in U.S. dollars of one hundred thirty-eight million dollars (\$138,000,000) (the "Base Purchase Price") plus or minus any adjustments pursuant to the provisions of this Agreement (the "Purchase Price"), by wire transfer of immediately available funds denominated in U.S. dollars or by such other means as are agreed upon by Seller and Buyer.

3.3 Adjustment to Base Purchase Price.

(a) Subject to Section 3.3(b), at the Closing, the Base Purchase Price shall be adjusted to account for the items set forth in this Section 3.3(a):

(i) the Base Purchase Price shall be decreased by six million dollars (\$6,000,000) if the Closing occurs on or before July 28, 2003;

(ii) [intentionally omitted]

(iii) the Base Purchase Price shall be increased by three million dollars (\$3,000,000) in the event the Closing occurs after the first anniversary of the date hereof;

(iv) the Base Purchase Price shall be increased by the aggregate amount of all accounts receivable and earned but unbilled revenues (other than any amounts that are due from any of Seller's Affiliates or that otherwise are Excluded

Assets) attributable to the Business as of day immediately preceding the Closing Date net of Seller's reserve for allowance for bad debt (as reflected in Seller's written policy for allowance for bad debt as of the date hereof);

(v) the Base Purchase Price shall be decreased by all accounts payable attributable to the Business as of the day immediately preceding the Closing Date (other than any liability included in Seller's "other current and accrued liabilities" account, which shall be an Excluded Liability or that otherwise is an Excluded Liability);

(vi) the Base Purchase price shall be decreased by (A) the aggregate amount of customer advances for construction times 25% and (B) the aggregate amount of customer deposits, in each case to the extent relating to the Business outstanding as of the day immediately preceding the Closing Date (other than any amounts due to any of Seller's Affiliates or that otherwise is an Excluded Liability);

(vii) the Base Purchase Price shall increased by the aggregate amount of Inventories recorded on Seller's books and records as of day immediately preceding the Closing Date;

(viii) the Base Purchase Price shall be adjusted to account for the net balance payable to or by Seller, if any, for items prorated pursuant to Section 3.4, other than the items addressed in Section 3.4(a);

(ix) the Base Purchase Price shall be increased or decreased if and to the extent required by Sections 6.3(c), 6.12(b), 6.12(d)(iii)(D) and 6.13;

(x) the Base Purchase Price will be increased by the aggregate amount of all (i) Approved Capital Expenditures that are accrued by Seller between the date of this Agreement and the Closing Date (including expenditures recorded in the Construction Work in Progress account of the Business as of the day immediately preceding the Closing Date and relating to the Approved Capital Expenditures), (ii) without duplication, expenditures to purchase materials, supplies and other capital items that are dedicated to, but as of Closing have not been used in, the construction or improvement of the property, plant or equipment and relating to the Approved Capital Expenditures) and (iii) without duplication, other expenditures recorded as an asset of the Business as of the day immediately preceding the Closing Date and relating to such Approved Capital Expenditures; and

(xi) The Base Purchase Price shall be increased or decreased by the amount of the Seller's Purchased Gas Adjustment account balance outstanding on the day immediately preceding the Closing Date.

(b) At least ten (10), but no more than thirty (30) days prior to the Closing Date, Seller shall prepare and deliver to Buyer an estimated closing statement (the "Estimated Closing Statement") that shall set forth Seller's best estimate of the estimated adjustments to the Base Purchase Price required by Section 3.3(a) (regardless of whether notice of such Base Purchase Price adjustments have been previously delivered to Buyer) (the "Estimated Adjustment"). Within five (5) days following the delivery of an Estimated Closing Statement to

Buyer, Buyer may object in good faith to such Estimated Closing Payment in writing. In the event of any such objection, the Parties shall attempt to resolve their differences by negotiation. If the Parties are unable to do so before three (3) days prior to the Closing Date, then (i) the full amount of the Estimated Adjustment shall be made at the Closing if the amount in dispute is less than \$1,000,000, or (ii) the undisputed portion of the Estimated Adjustment shall be made at the Closing if the amount in dispute is \$1,000,000 or more. The disputed portions shall be paid as a Post-Closing Adjustment if and to the extent required by Section 3.3(d).

(c) Within sixty (60) days following the Closing Date, Seller shall prepare and deliver to Buyer a final closing statement setting forth the final adjustments to the Base Purchase Price required by Section 3.3(a) (the "Proposed Post-Closing Adjustment"). All calculations of the Proposed Post-Closing Adjustments shall be prepared using the same accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on such Proposed Post-Closing Adjustments.

(d) Within thirty (30) days following the delivery of a Proposed Post-Closing Adjustment to Buyer, Buyer may object to such Proposed Post-Closing Adjustment in writing. Seller agrees to cooperate with Buyer to provide Buyer and Buyer's Representatives information used to prepare the Proposed Post-Closing Adjustments and information relating thereto. If Buyer objects to a Proposed Post-Closing Adjustment, the Parties shall attempt to resolve such dispute by negotiation. If such Parties are unable to resolve such dispute within thirty (30) days of any such objection by Buyer, the Parties shall appoint an Independent Accounting Firm. The fees and expenses of such Independent Accounting Firm shall be allocated between Buyer and Seller so that Seller's share of such fees and expenses shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by Buyer to such auditor that is successfully disputed by Buyer (as finally determined by such auditor) bears to the total amount of such remaining disputed amounts so submitted by Buyer to such auditor. The Independent Accounting Firm shall review such Proposed Post-Closing Adjustment and determine the appropriate adjustment to the Base Purchase Price, if any, within thirty (30) days of such appointment. The Parties agree to cooperate with the Independent Accounting Firm and provide it with such information as it reasonably requests to enable it to make such determination. The finding of such Independent Accounting Firm shall be binding on the Parties hereto. Upon determination by agreement of the Parties or by binding determination of the Independent Accounting Firm of the appropriate adjustment to the Base Purchase Price (in either case, the "Post-Closing Adjustment"), if such Post-Closing Adjustment results in a change to the Base Purchase Price, the Party owing the difference shall deliver such difference to the Party owed such amount no later than two (2) Business Days after the determination of such Post Closing Adjustment, in immediately available funds or in any other manner as reasonably requested by the Party owed such amount, plus interest at 6.0% per annum on such determined amount from the Closing Date to (but not including) the date of payment.

(e) If at any time following the Closing Date Buyer actually returns to customers greater than thirty-five percent (35%) of the aggregate customer advances for construction directly relating to the Business and outstanding as of the Closing Date ("Advances"), Seller shall reimburse Buyer for all amounts returned to customers to the extent said returns exceed twenty-five percent (25%) of Advances. Buyer may, at any time within seven (7) years from the Closing Date, provide notice to Seller of a reimbursement claim under

this Section 3.3(e), which notice shall include reasonable documentary substantiation of returns to customers of Advances. In the event Seller agrees with said determination, it shall promptly pay such reimbursement to Buyer. In the event Seller disputes said determination, it shall initiate the dispute resolution procedures with regard to the Post-Closing Adjustment, as provided in Section 3.3(d), which shall be binding on the Parties.

3.4 Prorations. Buyer and Seller agree that all of the items normally prorated, including those listed below (but not including Income Taxes), relating to the Business and operation of the Assets shall be prorated as of the Closing Date, with Seller liable for such items to the extent such items relate to any time period prior to the Closing Date, and Buyer liable for such items to the extent such items relate to periods commencing with the Closing Date (measured in the same units used to compute the item in question, otherwise measured by calendar days). The Base Purchase Price shall be increased to the extent Buyer will benefit financially due to Seller's payment prior to the Closing Date of the portion of any such item allocable to Buyer, and (except with respect to the items addressed in clause (a) below) shall be decreased to the extent Seller will benefit financially due to Buyer's payment on or after the Closing Date of the portion of any such item allocable to Seller. The items subject to proration include the following:

(a) Subject to Section 6.10(b), personal property, real estate and occupancy Taxes, assessments and other charges, if any, on or with respect to the Business and operation of the Assets;

(b) rent, Taxes (other than Income Taxes) and all other items (including prepaid services or goods not included in Inventories) payable by or to Seller under any of the Assigned Agreements to the extent not included in the account payables of the Business outstanding as of the day immediately preceding the Closing Date;

(c) any permit, license, registration, compliance assurance fees or other fees with respect to any Transferable Permit or other Asset;

(d) sewer rents and charges for water, telephone, electricity and other utilities with respect to the Assets;

(e) rent and Taxes payable by or to Seller under the Real Property Leases assigned to Buyer to the extent not included in the account payables of the Business outstanding as of the day immediately preceding the Closing Date;

(f) deposits made by Seller to the extent transferred to Buyer;

(g) prepaid expenses paid by Seller to the extent transferred to Buyer; and

(h) petty cash held locally for the benefit of the Business to the extent transferred to Buyer.

3.5 Deliveries by Seller. At the Closing, Seller will deliver, or cause to be delivered, the following to Buyer:

- (a) The Bill of Sale, duly executed by Seller;
- (b) Copies of any and all consents, waivers or approvals obtained or required to be obtained by Seller from Government Authorities or non-governmental Persons with respect to the transfer of the Assets, or the consummation of the transactions contemplated by this Agreement;
- (c) One or more Special Warranty Deeds conveying title to the Real Property to Buyer, duly executed and acknowledged by Seller and in recordable form;
- (d) An opinion from Seller's general counsel, dated the Closing Date, substantially in the form of Exhibit D attached hereto, and opinions from Seller's Bond Counsel, dated the Closing Date, substantially in the form of Exhibit E attached hereto;
- (e) The Assignment and Assumption Agreement, duly executed by Seller;
- (f) A FIRPTA Affidavit, duly executed by Seller;
- (g) Copies, certified by the Secretary or Assistant Secretary of Seller, of corporate resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by Seller in connection herewith, and the consummation of the transactions contemplated hereby;
- (h) A certificate of the Secretary or Assistant Secretary of Seller identifying the name and title and bearing the signatures of the officers of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;
- (i) Certificate of Good Standing with respect to Seller, issued by the Secretary of State of the State of Delaware;
- (j) To the extent available, originals of all Assigned Agreements, Real Property Leases and Transferable Permits and, if not available, true and correct copies thereof (delivery of the foregoing documents will be deemed made in the case of any such documents then located at any of the offices included in the Assets, but only to the extent that Seller delivers to Buyer a schedule generally identifying each such office and the general categories of documents located in each such office);
- (k) All such other instruments of assignment, transfer or conveyance as shall, in the reasonable opinion of Buyer and its counsel, be necessary to transfer the Assets to Buyer, in accordance with this Agreement and where necessary or desirable in recordable form;
- (l) Such other agreements, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably requested by Buyer in connection herewith; and
- (m) A certificate dated the Closing Date executed by Seller's President, Public Services Sector, to the effect that, to such officer's Knowledge, the conditions set forth in Sections 7.1(e) and (f) have been satisfied by Seller.

3.6 Deliveries by Buyer. At the Closing, Buyer will deliver, or cause to be delivered, the following:

- (a) The Purchase Price, as adjusted pursuant to Section 3.3, by wire transfer of immediately available funds denominated in U.S. dollars in accordance with Seller's instructions or by such other means as are agreed upon by Seller and Buyer;
- (b) The Assignment and Assumption Agreement, duly executed by Buyer;
- (c) All such other instruments of transfer or assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for the sale, conveyance, assignment and transfer of the Assets to, or the assumption of the Assumed Liabilities by, Buyer in accordance with this Agreement;
- (d) Copies, certified by the Secretary or Assistant Secretary of Buyer, of resolutions authorizing the execution and delivery of this Agreement and all of the agreements and instruments to be executed and delivered by the Buyer in connection herewith, and the consummation of the transactions contemplated hereby;
- (e) A certificate of the Secretary or Assistant Secretary of Buyer, identifying the name and title and bearing the signatures of the officers of Buyer authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby;
- (f) An opinion from Buyer's general counsel, dated the Closing Date, substantially in the form of Exhibit F attached hereto;
- (g) Certified copies of any and all consents, waivers or approvals obtained or required to be obtained by Buyer from Government Authorities or non-governmental Persons with respect to the transfer of the Assets or the consummation of the transactions contemplated by this Agreement;
- (h) Such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably requested by Seller in connection herewith;
- (i) Certificate of Good Standing with respect to Buyer, issued by the Secretary of State of Arizona; and
- (j) A certificate dated the Closing Date executed by Buyer's Chief Financial Officer to the effect that, to such officer's knowledge, the conditions set forth in Sections 7.2(e), (f) and (g) have been satisfied by Buyer.

3.7 Work in Progress. The Parties agree to work together before the Closing Date to effect on the Closing Date an orderly transition with respect to work in progress.

ARTICLE IV

REPRESENTATIONS, WARRANTIES AND DISCLAIMERS OF SELLER

Seller hereby represents and warrants to Buyer as follows:

4.1 Incorporation; Qualification. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease, and operate its material assets and properties and to carry on its business as is now being conducted. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which its business, as now being conducted, shall require it to be so qualified, except where the failure to be so qualified would not have a Seller Material Adverse Effect.

4.2 Authority. Seller has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which Seller is a signatory and to consummate the transactions contemplated hereby or thereby. The execution and delivery by Seller of this Agreement and each of the Ancillary Agreements to which Seller is a signatory and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Seller and this Agreement has been duly and validly executed and delivered by Seller. Each of this Agreement and the Ancillary Agreements to which Seller is a signatory constitutes the legal, valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

4.3 Consents and Approvals; No Violation.

(a) Except as set forth in Schedule 4.3(a), neither the execution, delivery and performance of this Agreement nor the execution, delivery and performance of the Ancillary Agreements by Seller will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or Bylaws of Seller, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Seller is a party or by which it, or any of the Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or that would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect; or (iii) subject to obtaining the Seller Required Regulatory Approvals, constitute violations of any law, regulation, order, judgment or decree applicable to Seller, which violations, individually or in the aggregate, would result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

(b) Except as set forth in Schedule 4.3(b) (the filings and approvals referred to in Schedule 4.3(b) are collectively referred to as the "Seller Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for

the execution and delivery of this Agreement and the Ancillary Agreements by Seller or the consummation by Seller of the transactions contemplated hereby and thereby, other than those the failure to obtain which would not result in a Seller Material Adverse Effect or an Asset Material Adverse Effect and would not otherwise result in a material violation of law by Buyer.

4.4 Insurance. Schedule 4.4 lists, as of the date of this Agreement, all material policies of fire, liability, workers' compensation and other forms of insurance (if any) owned or held by, or on behalf of, Seller with respect to the Assets and the Business. Except as set forth in such Schedule, all such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the date hereof have been paid (other than retroactive premiums which may be payable with respect to auto, general liability and workers' compensation insurance policies), and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as described in Schedule 4.4, within the thirty-six (36) months preceding the date of this Agreement, Seller has not been refused any insurance with respect to the Assets or the Business nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last twelve (12) months.

4.5 Real Property Leases. Schedule 4.5 lists, as of the date of this Agreement, all material real property leases under which Seller is a lessee or lessor and which relate to the Assets, including a separate listing of all leases of office space used by Seller in the conduct of the Business (the "Real Property Leases"). Seller will deliver to Buyer true, correct and complete copies of each of the Real Property Leases in accordance with Section 6.20.

4.6 Environmental Matters. Seller has heretofore delivered to Buyer all environmental reports and all environmental site assessments relating to the Assets that have been identified by Seller after diligent inquiry, which reports have been identified in schedules delivered to Buyer on or prior to the date hereof ("Environmental Reports"). Except as disclosed in Schedule 4.6 or in the Environmental Reports:

(a) Seller holds, and is in substantial compliance with, all Environmental Permits that are required for Seller to conduct the Business and operate the Assets, and Seller is otherwise in compliance with applicable Environmental Laws with respect to the Business and operation of the Assets, except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, as would not, individually or in the aggregate, result in an Asset Material Adverse Effect;

(b) Seller has not received (i) any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar state law with respect to any of the Real Property, or (ii) any written notification from a Governmental Authority with respect to pending or ongoing investigations or enforcement actions related to alleged or potential violations of any applicable Environmental Law with respect to any of the Real Property;

(c) Seller has not entered into or agreed to any consent decree or order relating to the Assets, and is not subject to any outstanding judgment, decree, or judicial order

relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to the Assets; and

(d) To Seller's Knowledge, no Release of Regulated Substances has occurred at, from, in, on, or under the Real Property, and, except as legally permitted, no Regulated Substances are present in, on, about or migrating from the Real Property, in each case that would give rise to an Environmental Claim related to the Assets for which Remediation would reasonably be required, except in any such case to the extent that any such Release or Environmental Claim would not, individually or in the aggregate, result in an Environmental Claim in excess of \$500,000.

4.7 Labor Matters. Schedule 4.7 sets forth the collective bargaining agreements, and amendments thereto, to which Seller is a party in connection with the Business. Seller has previously delivered to Buyer true and correct copies of all such collective bargaining agreements and amendments thereto. With respect to the Assets and the Business, except to the extent set forth in Schedule 4.7 and except for such matters as would not, individually or in the aggregate, result in an Asset Material Adverse Effect, (a) Seller is in compliance with all applicable laws respecting employment and employment practices, occupational safety and health, plant closing, mass layoffs, terms and conditions of employment and wages and hours; (b) Seller has not received any written notice of any unfair labor practice complaint against Seller pending before the National Labor Relations Board; (c) no arbitration proceeding arising out of or under any collective bargaining agreement is pending against Seller; and (d) Seller has not experienced any work stoppage within the three-year period prior to the date hereof and to Seller's Knowledge none is currently threatened.

4.8 Benefit Plans: ERISA.

(a) Schedule 4.8 lists all material Benefit Plans. True and complete copies of all such Benefit Plans have been made available to the Buyer.

(b) No liability under Title IV or Section 302 of ERISA has been incurred by Seller or any ERISA Affiliate of Seller that has not been satisfied in full, and no condition exists that presents a material risk to Seller or any ERISA Affiliate of Seller of incurring any such liability, other than liability for premiums due to the Pension Benefit Guaranty Corporation (which premiums have been paid when due). Insofar as the representation made in this Section 4.8 applies to Sections 4064, 4069 or 4204 of Title IV of ERISA, it is made with respect to any employee benefit plan, program, agreement or arrangement subject to Title IV of ERISA to which Seller or any ERISA Affiliate of Seller made, or was required to make, contributions during the five (5)-year period ending on the last day of the most recent plan year ended prior to the Closing Date.

(c) Except as expressly provided in this Agreement, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or officer of Seller or any ERISA Affiliate of Seller to severance pay, unemployment compensation or any other payment, or (ii) accelerate the time of payment or vesting, or increase the amount of compensation due any such employee or officer.

(d) There has been no material failure of any of the Benefit Plans that is a group health plan (as defined in Section 5000(b)(1) of the Code) to meet the requirements of Section 4980B(f) of the Code with respect to a qualified beneficiary (as defined in Section 4980B(g) of the Code). Neither the Seller nor any ERISA Affiliate of Seller has contributed to a nonconforming group health plan (as defined in Section 5000(c) of the Code) and no ERISA Affiliate of Seller has incurred a tax under Section 5000(e) of the Code that is or could become a liability of Buyer.

(e) There are no pending, or to Seller's Knowledge, threatened claims by or on behalf of any Benefit Plans, by any employee or beneficiary covered under any such Benefit Plans, or otherwise involving any such Benefit Plans (other than routine claims for benefits).

4.9 Real Property. Schedule 4.9 contains a description of the Real Property included in the Assets. True and correct copies of any current surveys, abstracts, title commitments and title opinions identified by Seller after diligent inquiry to be in Seller's possession and all policies of title insurance currently in force and identified by Seller after diligent inquiry to be in the possession of Seller with respect to the Real Property have heretofore been made available to Buyer.

4.10 Condemnation. Except as set forth in Schedule 4.10, Seller has not received any written notices of and otherwise has no Knowledge of any pending or threatened proceedings or actions by any Governmental Authority to condemn or take by power of eminent domain all or any part of the Assets.

4.11 Assigned Agreements.

(a) Schedule 4.11(a) lists each Assigned Agreement (other than Real Property Leases, line extension agreements and similar construction arrangements, railroad crossing agreements and similar arrangements, and Easements held by Seller) which is material to the Business, other than those (i) that are listed or described on another Schedule, (ii) that provide for annual payments by Seller after the date hereof of less than \$100,000 or (iii) that, when aggregated with all other Assigned Agreements not listed on Schedule 4.5 or 4.11(a), provide for payments by Seller after the date hereof of less than \$500,000 in the aggregate. Schedule 4.11(a) also lists each agreement that is material to the Assets or the Business that may expire or that Seller expects to terminate prior to the Closing Date other than any agreement that is an Excluded Asset.

(b) Except as disclosed in Schedule 4.11(b), each Assigned Agreement listed on Schedule 4.5 or 4.11(a) constitutes a legal, valid and binding obligation of Seller and, to Seller's Knowledge, constitutes a valid and binding obligation of the other parties thereto, and may be transferred to the Buyer as contemplated by this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, unless in such case the impact of such lack of legality, validity or binding nature, or inability to transfer, would not, individually or in the aggregate, result in an Asset Material Adverse Effect.

(c) Except as set forth in Schedule 4.11(c), there is not, under the Assigned Agreements listed on Schedule 4.5 or 4.11(a), any default or event which, with notice or lapse of

time or both, would constitute a default on the part of the Seller or to Seller's Knowledge, any of the other parties thereto, except such events of default and other events which would not, individually or in the aggregate, result in an Asset Material Adverse Effect.

4.12 Legal Proceedings. Except as set forth in Schedule 4.12, there is no action or proceeding pending or, to Seller's Knowledge, threatened against Seller before any court, arbitrator or Governmental Authority, which would, individually or in the aggregate, reasonably be expected to result in a Seller Material Adverse Effect or an Asset Material Adverse Effect. Except as set forth in Schedule 4.12 Seller is not subject to any outstanding Order that would, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

4.13 Permits. Seller has all Permits (other than Environmental Permits, which are addressed in Section 4.6 hereof) necessary to own and operate the Assets except where the failure to have such Permits would not, individually or in the aggregate, create a Seller Material Adverse Effect or an Asset Material Adverse Effect. Except as disclosed on Schedule 4.13, Seller has not received any written notification that it is in violation of any such Permits, except notifications of violations which would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect. Seller is in compliance with all Permits except where such non-compliance would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

4.14 Taxes.

(a) Seller has filed or caused to be filed all Tax Returns that are required to be filed by it with respect to any Tax relating to the Assets, and has paid or caused to be paid all Taxes that have become due as indicated thereon, except where such Tax is being contested in good faith by appropriate proceedings, or where the failure to so file or pay would not result in a Seller Material Adverse Effect or an Asset Material Adverse Effect. Seller has complied in all material respects with all applicable laws, rules and regulations relating to withholding Taxes relating to Transferred Employees. All Tax Returns relating to the Assets are true, correct and complete in all material respects. There are no liens for Taxes upon the Assets except for liens for Taxes not yet due and Permitted Encumbrances.

(b) Except as set forth in Schedule 4.14, no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of Seller in respect of the Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 4.14 is being contested in good faith through appropriate proceedings.

(c) Except as set forth in Schedule 4.14, there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the Assets that will be binding upon Buyer after the Closing.

(d) Except as set forth on Schedule 4.14, none of the Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f) of the Code, and none of the Assets is "tax-exempt use" property within the meaning of Section 168(h) of the Code.

(e) Schedule 4.14 sets forth the taxing jurisdictions in which Seller owns assets or conducts business that require a notification to a taxing authority of the transactions contemplated by this Agreement, if the failure to make such notification, or obtain Tax clearance certificates in connection therewith, would either require Buyer to withhold any portion of the consideration or subject Buyer to any liability for any Taxes of Seller.

4.15 Intellectual Property. The Citizens Marks and the software licenses and related contracts described in Schedules 2.2 and 4.11(a) constitute all of the material Intellectual Property necessary for the operation and maintenance of the Assets or the conduct of the Business, each of which Seller either has all right, title and interest in or valid and binding rights under contract to use in connection with the operation of the Assets and the Business. Except as disclosed in Schedule 4.15, (a) Seller is not, nor has it received any notice that it is, in default (or with the giving of notice or lapse of time or both, would be in default), under any contract to use such Intellectual Property, and (b) to Seller's Knowledge, such Intellectual Property is not being infringed by any other Person. Except as disclosed in Schedule 4.15, Seller has not received notice that it is infringing any Intellectual Property of any other Person in connection with the Assets or the Business, and Seller, to its Knowledge, is not infringing any Intellectual Property of any other Person which, individually or in the aggregate, would have an Asset Material Adverse Effect.

4.16 Capital Expenditures. Seller has heretofore delivered to Buyer a schedule of all Capital Expenditures that, as of the date of this Agreement, are planned by Seller from the date hereof through December 31, 2003 (the "Capital Expenditures Schedule").

4.17 Compliance With Laws. Seller is in compliance with all applicable laws, rules and regulations with respect to its ownership of the Assets and operation of the Business except where the failure to be in compliance would not, individually or in the aggregate, result in a Seller Material Adverse Effect or an Asset Material Adverse Effect.

4.18 Title. Seller has, and will have as of the Closing Date, good, valid and indefeasible title to the Real Property and the other Assets purported to be owned by Seller, free and clear of all Encumbrances except Permitted Encumbrances.

4.19 DISCLAIMERS. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE IV, THE ASSETS ARE TRANSFERRED "AS IS, WHERE IS", AND SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO LIABILITIES, OPERATIONS OF THE ASSETS, CONDITION, VALUE OR QUALITY OF THE ASSETS OR THE PROSPECTS (FINANCIAL AND OTHERWISE), RISKS AND OTHER INCIDENTS OF THE ASSETS AND SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE ASSETS, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, OR COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, OR THE APPLICABILITY OF ANY GOVERNMENTAL REQUIREMENTS, INCLUDING BUT NOT LIMITED TO ANY ENVIRONMENTAL LAWS, OR WHETHER SELLER POSSESSES SUFFICIENT REAL

PROPERTY OR PERSONAL PROPERTY TO OPERATE THE ASSETS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, SELLER FURTHER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY REGARDING THE ABSENCE OF HAZARDOUS SUBSTANCES OR LIABILITY OR POTENTIAL LIABILITY ARISING UNDER ENVIRONMENTAL LAWS WITH RESPECT TO THE ASSETS.

4.20 Financial Statements. Schedule 4.20 sets forth the unaudited balance sheet for the Business as of December 31, 2001 (the "Balance Sheet") and the unaudited statement of income of the Business for the twelve-month period ended December 31, 2001 (collectively, the "Financial Statements"). Except as set forth in Schedule 4.20, the Financial Statements have been prepared on a pre-tax basis in accordance, in all material respects, with GAAP applied on a basis consistent with prior periods except for the omission of full footnotes to such Financial Statements. Except as set forth in Schedule 4.20, the Balance Sheet presents fairly in all material respects the financial condition of the Business as of its date and the income statement included in the Financial Statements presents fairly in all material respects the results of operations of the Business for the periods covered thereby. The books and records of Seller from which the Financial Statements were derived were complete and accurate in all material respects at the time of such preparation.

4.21 SEC Filings; Financial Statements.

(a) Seller has filed, or caused to be filed, all forms, reports and documents required to be filed by Seller with the SEC since January 1, 2001, and has heretofore delivered or made available to Buyer in the form filed with the SEC, together with any amendments thereto, its (i) Annual Reports on Form 10-K for the fiscal year ended December 31, 2000 and 2001, (ii) Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31 and June 30, 2002, and (iii) all other reports or registration statements filed by Seller with the SEC since January 1, 2001 (collectively, the "Seller SEC Reports"). The Seller SEC Reports were prepared substantially in accordance with the requirements of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as the case may be, and the rules and regulations promulgated under each of such respective acts, and did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements, including all related notes and schedules, contained in the Seller SEC Reports (or incorporated by reference therein) fairly present the consolidated financial position of Seller as at the respective dates thereof and the consolidated results of operations and cash flows of Seller for the periods indicated in accordance with GAAP applied on a consistent basis throughout the periods involved (except for changes in accounting principles disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

4.22 Sufficiency of Assets. The Assets and the Excluded Assets are the only assets owned, used, or held for use by Seller in, or in connection with, or otherwise necessary for, the conduct of the Business as presently conducted, except for such assets the failure to own, use, or

hold for use, as would not have an Asset Material Adverse Effect or a Material Adverse Effect for Buyer.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 Organization. Buyer is an Arizona corporation, duly organized, validly existing and in good standing under the laws of the state of its organization and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

5.2 Authority. Buyer has full corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which Buyer is a signatory and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Ancillary Agreements to which Buyer is a signatory and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action required on the part of Buyer and this Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Buyer. Each of this Agreement and the Ancillary Agreements to which Buyer is a signatory, constitute the legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally and general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

5.3 Consents and Approvals; No Violation.

(a) Except as set forth in Schedule 5.3(a), neither the execution, delivery and performance of this Agreement by Buyer nor the execution, delivery and performance of the Ancillary Agreements by Buyer or any of its Affiliates nor the consummation by Buyer of the transactions contemplated hereby and thereby will (i) conflict with or result in any breach of any provision of the Articles of Incorporation or Bylaws (or other similar governing documents) of Buyer, or any of its Affiliates, or (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, material agreement or other instrument or obligation to which Buyer or any of its Affiliates is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a Buyer Material Adverse Effect or (iii) subject to obtaining the Buyer Required Regulatory Approvals, constitute violations of any law, regulation, order, judgment or decree applicable to Buyer, which violations, individually or in the aggregate, would result in a Buyer Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) (the filings and approvals referred to in such Schedule are collectively referred to as the "Buyer Required Regulatory Approvals"), no consent or approval of, filing with, or notice to, any Governmental Authority is necessary for Buyer's execution and delivery of this Agreement and the Ancillary Agreements or the consummation by Buyer of the transactions contemplated hereby and thereby, other than such consents, approvals, filings or notices, which, if not obtained or made, will not (i) prevent Buyer from performing its obligations under this Agreement and the Ancillary Agreements or (ii) result in a Buyer Material Adverse Effect.

5.4 Availability of Funds. Buyer acknowledges and agrees that on the Closing Date, it will have sufficient funds to pay the Purchase Price under this Agreement and the Arizona Electric Purchase Agreement (including sufficient cash to fund the equity portions thereof) and to timely perform all of its obligations under this Agreement, the Ancillary Agreements, and Arizona Electric Purchase Agreement. Tucson Electric Power Company has the ability to contribute cash as equity to a wholly-owned subsidiary which constitutes a "Utility" or "Public Utility" subject to the receipt of required approvals under Title 14, Chapter 2, Article 8 (Public Utility Holding Companies and Affiliated Interests) of the Arizona Administrative Code. As of September 30, 2002, Tucson Electric Power Company held cash in the amount of approximately \$65,000,000.

5.5 SEC Filings; Financial Statements.

(a) UniSource has filed, or caused to be filed, all forms, reports and documents required to be filed by UniSource with the SEC since January 1, 2001, and has heretofore delivered or made available to Seller in the form filed with the SEC, together with any amendments thereto, its (i) Annual Reports on Form 10-K for the fiscal year ended December 31, 2000 and 2001, (ii) Quarterly Reports on Form 10-Q for the fiscal quarter ended March 31 and June 30, 2002, and (iii) all other reports or registration statements filed by UniSource with the SEC since January 1, 2001 (collectively, the "UniSource SEC Reports"). The UniSource SEC Reports were prepared substantially in accordance with the requirements of the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, as the case may be, and the rules and regulations promulgated under each of such respective acts, and did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(b) The financial statements, including all related notes and schedules, contained in the UniSource SEC Reports (or incorporated by reference therein) fairly present the consolidated financial position of UniSource as at the respective dates thereof and the consolidated results of operations and cash flows of UniSource for the periods indicated in accordance with GAAP applied on a consistent basis throughout the periods involved (except for changes in accounting principles disclosed in the notes thereto) and subject in the case of interim financial statements to normal year-end adjustments.

5.6 Legal Proceedings. Except as set forth in Schedule 5.6, (a) there are no actions or proceedings pending or, to Buyer's knowledge threatened against Buyer or any of its Affiliates before any court or arbitrator or Governmental Authority, which, individually or in the

aggregate, would result in a Buyer Material Adverse Effect, and (b) neither Buyer nor any of its Affiliates is subject to any outstanding Orders, which would, individually or in the aggregate, result in a Buyer Material Adverse Effect.

5.7 No Knowledge of Seller's Breach. Buyer has no knowledge of any breach by Seller of any representation or warranty of Seller or of any other condition or circumstance that would excuse Buyer from its timely performance of its obligations hereunder. Buyer shall notify promptly Seller if any such information comes to Buyer's attention prior to the Closing.

5.8 Qualified Buyer. Buyer is qualified to obtain any Permits and Environmental Permits necessary for Buyer to own and operate the Assets as of the Closing.

5.9 Inspections. Buyer is knowledgeable about the Business as engaged in by Seller and of the usual and customary practices of companies engaged in businesses similar to the Business and has had access to the Assets, the officers and employees of Seller, and the books, records and files of Seller relating to the Business and the Assets. Buyer acknowledges and agrees that it has, prior to its execution of this Agreement, (i) reviewed the Environmental Reports and (ii) had an opportunity to conduct Inspections of the Assets, including the Real Property. Subject to Sections 6.2, 6.3 and 7.1(g), and without waiving Seller's representations and warranties in Section 4.6, Buyer acknowledges that it is satisfied with such review and Inspections to date and (ii) Buyer acknowledges and agrees that past, present, and future physical characteristics and Environmental Conditions may not have been revealed by its Inspections and the investigations of the Assets contained in the Environmental Reports. In making its decision to execute this Agreement, and to purchase the Assets, Buyer has relied on and will continue to rely upon the results of its Inspections, the Environmental Reports and Seller's representations and warranties in Section 4.6. Buyer acknowledges and agrees that the representations and warranties set forth in Article IV of this Agreement constitute the sole and exclusive representations and warranties of Seller to Buyer in connection with the transactions contemplated hereby and by the Ancillary Agreements, and there are no representations, warranties, covenants, understandings or agreements, oral or written, in relation thereto between the Parties other than those incorporated herein, including Section 6.3, and therein. Except for the representations and warranties expressly set forth in Article IV of this Agreement, Buyer disclaims reliance on any representations or warranties, either express or implied, by or on behalf of Seller or its Affiliates or Representatives. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that, except as provided in Section 4.6, there are no representations or warranties of Seller with respect to the Environmental Condition of the Assets, compliance with Environmental Laws and Environmental Permits of the presence or Releases of hazardous material in the fixtures, soils, groundwater, surface water or air on, under or about or emanating from any of the Assets.

5.10 WARN Act. Buyer does not intend to engage in a "Plant Closing" or "Mass Layoff" as such terms are defined in the WARN Act within sixty days of the Closing Date.

ARTICLE VI

COVENANTS OF THE PARTIES

6.1 Conduct of Business and Operation of Assets.

(a) Except as described in Schedule 6.1(a), as required by an applicable law or by any Governmental Authority, as expressly contemplated by this Agreement or to the extent Buyer otherwise consents in writing (such consent not to be unreasonably withheld), during the period from the date of this Agreement to the Closing Date, Seller shall (i) operate the Assets in the ordinary course of business consistent with its past practices and Good Utility Practices, (ii) use all Commercially Reasonable Efforts to preserve intact the Assets in all material respects, and endeavor to preserve the goodwill and relationships with customers, suppliers and others having business dealings with it, (iii) maintain insurance described in Section 4.4 (or replacements thereto providing for substantially the same coverage), and (iv) comply with all applicable laws relating to the Assets, including without limitation, all Environmental Laws, except where the failure to so comply would not result in an Asset Material Adverse Effect. Seller agrees to incur Capital Expenditures in the ordinary course in respect of (A) growth of the customer base (see, e.g., items under the heading "Growth" in the Capital Expenditures Schedule) and (B) maintenance of the Assets and replacement activities (see, e.g., items under the heading "Replacement" in the Capital Expenditures Schedule). Buyer agrees that Seller's deferral of Capital Expenditures in respect of network growth (see, e.g., items under the heading "Infrastructure" in the Capital Expenditures Schedule) shall not be deemed to be inconsistent with or to violate Good Utility Practices.

(b) Without limiting the generality of Section 6.1(a) and, except as contemplated in this Agreement or as described in Schedule 6.1(a), or as required under applicable law or by any Governmental Authority, prior to the Closing Date, without the prior written consent of Buyer (such consent not to be unreasonably withheld), Seller shall not:

(i) Make any material change in the levels of Inventories customarily maintained by Seller with respect to the Business, other than changes which are consistent with Good Utility Practices;

(ii) Sell, lease (as lessor), encumber, pledge, transfer or otherwise dispose of, any Asset (except for Inventories used, consumed or replaced in the ordinary course of business consistent with past practices of Seller or with Good Utility Practices) other than to encumber any such Asset with Permitted Encumbrances;

(iii) Modify, amend or voluntarily terminate, prior to the respective expiration date of any of the Assigned Agreements or Real Property Leases or any of the Permits or Environmental Permits with respect to such Assets in any material respect, other than (A) in the ordinary course of business, to the extent consistent with the past practices of Seller or Good Utility Practices, (B) with cause, to the extent consistent with past practices of Seller or Good Utility Practices, or (C) as may be required in connection with transferring Seller's rights or obligations thereunder to Buyer pursuant to this Agreement;

(iv) Except as otherwise provided herein, enter into any commitment for the purchase, sale, or transportation of fuel for the Business having a term greater than six months and not terminable on or before the Closing Date either (A) automatically, or (B) by option of Seller (or, after the Closing, by Buyer) in its sole discretion, if the aggregate payment under such commitment for fuel and all other outstanding commitments for fuel for the Business not previously approved by Buyer would exceed \$1,000,000;

(v) Except as otherwise provided herein, enter into any contract, agreement, commitment or arrangement for the Business that individually exceeds \$250,000 or in the aggregate exceeds \$1,000,000 unless it is terminable by Seller (or, after the Closing Date, by Buyer) without penalty or premium upon no more than sixty (60) days notice;

(vi) Except as otherwise required by the terms of the applicable IBEW CBA or as otherwise provided in Section 6.12, (A) hire, or transfer any employees of or for the Business prior to the Closing, other than to fill vacancies in existing positions in the reasonable discretion of Seller, (B) materially increase salaries or wages of employees employed in connection with such Asset prior to the Closing, (C) take any action prior to the Closing to affect a material change in the IBEW CBA or (D) take any action prior to the Closing to materially increase the aggregate benefits payable to the employees (considered as a group) employed in connection with the Business; and

(vii) Except as otherwise provided herein, enter into any written or oral contract, agreement, commitment or arrangement with respect to any of the proscribed transactions set forth in the foregoing paragraphs (i) through (vi).

6.2 Access to Information.

(a) Between the date of this Agreement and the Closing Date, Seller will, at reasonable times and upon reasonable notice, provide Buyer and its Representatives:

(i) reasonable access to their respective managerial personnel, to all books, records, plans, equipment, offices and other facilities and properties constituting part of the Assets;

(ii) such historical financial and operating data and other information with respect to the Assets as Buyer may from time to time reasonably request, to the extent reasonably available;

(iii) upon request, a copy of each material report, schedule or other document, if any, filed by Seller with respect to the Assets with the SEC, FERC, ACC, ADEQ or any other Governmental Authority;

(iv) access to all Assets for Inspection by Buyer and its Representatives at reasonable times during regular business hours scheduled for such Inspections, and shall provide qualified management, engineering, operations and maintenance and other personnel to make presentations as required, to escort such Persons and to assist in all

aspects of conducting the Inspections, provided that each of Buyer and Seller shall bear their own costs of participating in the Inspections; and

(v) access to all such other information in the possession or control of Seller as shall be reasonably necessary to enable Buyer or its Representatives to verify the accuracy of the representations and warranties of Seller contained in this Agreement; provided, however, that any such Inspections shall be conducted in such a manner as not to interfere unreasonably with the operation of the Assets. In the event that Seller's provision of information under this Section 6.2 would (A) constitute a waiver of any legal privilege, including the attorney-client privilege or work product privilege, or (B) violate any legal or contractual obligation of Seller to a third party, then Seller shall first notify Buyer with respect to the existence and general nature of the restricted information. If the restricted information relates to the Assets, the Parties shall thereupon mutually agree upon a reasonable procedure in order to provide Buyer with access to the information while protecting the legitimate interests of Seller thereto. The mutually agreed procedure may include, without limitation, a limited waiver by Seller of the relevant privilege, Buyer's agreement to maintain the information in strict confidence, limited review or inspection of the information by specified individuals, or any combination of the foregoing.

Notwithstanding anything in this Section 6.2(a) to the contrary, with respect to employee records Seller will only furnish or provide such access to Transferred Employee Records and will not furnish or provide access to other employee personnel records or medical information unless required by law or specifically authorized by the affected employee.

(b) The Parties shall cooperate to schedule Buyer's Inspections of the Assets so that, to the extent reasonably feasible, any interference with the operation of the Business is minimized, and Buyer may complete its Inspections of the Assets within ninety (90) working days of commencement of Inspections and within six (6) months after the execution of this Agreement.

(c) Until the conclusion of Buyer's next rate case for the Business (or such longer period as may be required by applicable law), each Party and its Representatives shall have reasonable access to all of the books and records relating to the Assets and the Business (for the Seller, only to the extent relating to periods prior to the Closing Date), including all Transferred Employee Records in the possession of Buyer or Seller to the extent that such access may reasonably be required in connection with the Assumed Liabilities or the Excluded Liabilities, or other matters relating to or affected by the operation of the Assets. Such access shall be afforded by the Party in possession of any such books and records upon receipt of reasonable advance notice and during normal business hours. The Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it or the holder of the information with respect to such access pursuant to this Section 6.2(c). If the Party in possession of such books and records shall desire to dispose of any books and records upon or prior to the expiration of such above-stated period (or any such longer period), such Party shall, prior to such disposition, give the other Party a reasonable opportunity, at the latter's expense, to segregate and remove such books and records as it may select.

(d) Buyer agrees that, prior to the Closing Date, neither it nor its Representatives will contact any vendors, suppliers, employees, or other contracting parties of Seller or its Affiliates with respect to any aspect of the Assets or the transactions contemplated hereby, without the prior written consent of Seller, which consent shall not be unreasonably withheld.

6.3 Environmental Inspections and Information.

(a) [Intentionally omitted.]

(b) Buyer has conducted various environmental assessment activities with respect to the Assets, including reviewing existing environmental reports, correspondence, permits and related materials regarding the Assets and certain other "Phase I" and "Phase II" activities as set forth in the ASTM protocol regarding "Phase I" and "Phase II" environmental assessments. Seller acknowledges that, between the date of this Agreement and the Closing Date, Buyer will continue to conduct Inspections with respect to environmental matters, including "Phase I" and "Phase II" environmental assessments to the extent Buyer reasonably concludes that such assessments are warranted by the Environmental Reports or the findings of Buyer's assessments prior to the date of this Agreement. Any such Inspections shall be conducted as provided in Section 6.2.

(c) If any environmental inspection conducted by Buyer or Seller before or after the date of this Agreement and before the Closing Date results in the discovery of one or more Environmental Conditions that are reasonably likely to give rise to one or more Environmental Claims related to the Assets, for which Remediation would reasonably be required (an "Adverse Environmental Condition"), and if the Adverse Environmental Condition, aggregated with all other Adverse Environmental Conditions identified by Buyer or Seller prior to the Closing Date, is reasonably likely to give rise to Remediation expenses of Buyer after Closing in excess of \$1,500,000 in the aggregate (the "Environmental Threshold"), then either (i) the Base Purchase Price shall be reduced, to the extent such Adverse Environmental Condition is not Remediated prior to the Closing Date, by a mutually agreed amount, which amount shall be equal to the excess of (A) the estimated out-of-pocket costs and expenses which Buyer reasonably can be expected to incur to Remediate, in accordance with Good Utility Practices, such Adverse Environmental Condition after the Closing over (B) the Environmental Threshold (the "Environmental Price Adjustment") or (ii) if the Parties are not able to mutually agree on an Environmental Price Adjustment, Seller shall reimburse Buyer for all actual out-of-pocket costs and expenses that Buyer reasonably incurs after Closing to Remediate such Adverse Environmental Condition in excess of the Environmental Threshold. Any Adverse Environmental Condition which has or is reasonably expected to have an aggregate economic impact on Buyer, taking into consideration all relevant circumstances, in excess of \$25,000,000, shall be conclusively deemed to be an Asset Material Asset Effect. Notwithstanding the foregoing, any single Adverse Environmental Condition which is reasonably expected to give rise to Remediation expenses of less than \$25,000 shall not be counted toward the Environmental Threshold and shall not result in an Environmental Price Adjustment.

(d) Buyer either has provided or shall provide to Seller, promptly following Buyer's receipt thereof, copies of all audits, reports, studies, assessments and other information

composed or compiled, or to be composed or compiled, by Buyer or Buyer's Representatives in connection with environmental assessment activities. Buyer shall treat all such information delivered to, or composed or compiled by, Buyer or Buyer's Representative as Environmental Data in accordance with the procedures of Section 6.3(e).

(e) All audits, reports, studies and assessments delivered to or prepared by Buyer and all other information collected and generated as a result of Buyer's environmental due diligence ("Environmental Data") will be subject to the terms and conditions of the Confidentiality Agreement, dated June 3, 2002, between Seller and Buyer, except as otherwise expressly provided in this Section 6.3(e). Neither Buyer nor its Representatives shall disclose or release any Environmental Data without the prior written consent of Seller and all such information shall be kept strictly confidential. To the extent reasonably practicable, the Environmental Data shall be prepared at the request of counsel to Buyer and, to the fullest extent permitted by law, shall be the work product of such counsel and constitute confidential attorney/client communications. The Environmental Data shall be transferred among Buyer and its Representatives in a manner that will preserve, to the extent reasonably practicable, such privileges. Buyer expressly agrees that until the Closing, it will not distribute the Environmental Data to any third party without Seller's prior written consent (such consent not to be unreasonably withheld). After the Closing, Buyer agrees that it will not distribute the Environmental Data to any third party without Seller's prior written consent, except as required by law or by express provisions of Buyer's corporate compliance program if Seller is provided written notice at least ten (10) days prior to such distribution; provided, however, that Buyer may distribute the Environmental Data to any potential purchaser of any of the Assets or an ownership interest therein (either directly or through the purchase of an ownership interest in an entity holding any of the Assets) only after first notifying the Seller.

6.4 Confidentiality.

(a) Each Party shall, and shall use its reasonable best efforts to cause its Representatives to, (i) keep all Proprietary Information of any other Party confidential and not to disclose or reveal any such Proprietary Information to any person other than such Party's Representatives and (ii) not use such Proprietary Information other than in connection with the consummation of the transactions contemplated hereby. After the Closing Date and except as provided in Section 6.3(e), any Proprietary Information, to the extent related to the Assets acquired by Buyer, shall no longer be subject to the restrictions set forth herein. The obligations of the Parties under this Section 6.4(a) shall be in full force and effect for three (3) years from the date hereof and will survive the termination of this Agreement, the discharge of all other obligations owed by the Parties to each other and the Closing Date.

(b) Notwithstanding the terms of Section 6.4(a) above, the Parties agree that prior to the Closing, Buyer may reveal or disclose Proprietary Information to any other Persons in connection with (i) the financing of Buyer's purchase of the Assets or any equity participation in Buyer's purchase of the Assets and (ii) obtaining insurance for the Assets; provided that such Persons agree in writing to maintain the confidentiality of the Proprietary Information in accordance with this Agreement.

(c) Upon the other Party's prior written approval (which shall not be unreasonably withheld), any of the Parties may provide Proprietary Information of the other Parties to the SEC, FERC, ACC, ADEQ or any other Governmental Authority with jurisdiction or any securities exchange, as may be necessary to obtain Required Regulatory Approvals or to comply generally with any relevant law or regulation. The disclosing Party will seek confidential treatment for the Proprietary Information provided to any Governmental Authority and the disclosing Party will notify the other Party as far in advance as is practicable of its intention to release to any Governmental Authority any Proprietary Information.

6.5 Public Statements. Subject to the requirements imposed by law, any Governmental Authority or securities exchange, prior to the Closing Date, no press release or other public announcement or public statement or comment in response to any inquiry relating to the transactions contemplated by this Agreement shall be issued or made by any Party without the prior approval of the other Party (which approval shall not be unreasonably withheld). The Parties agree to cooperate in preparing any such announcements.

6.6 Expenses. Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses. Notwithstanding anything to the contrary herein, Buyer will be responsible for all filing fees under the HSR Act relating to the Assets it would acquire hereunder.

6.7 Further Assurances.

(a) Subject to the terms and 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 under applicable laws and regulations to consummate and make effective the purchase, sale, transfer and delivery of the Assets and the assumption of the Assumed Liabilities pursuant to this Agreement. Such actions shall include, without limitation, each Party using its Commercially Reasonable Efforts to ensure satisfaction of the conditions precedent to its obligations hereunder, including obtaining all necessary consents, approvals, and authorizations of third parties and Governmental Authorities required to be obtained in order to consummate the transactions hereunder, and to effectuate a transfer of the Transferable Permits to Buyer. Seller shall cooperate with Buyer in its efforts to obtain all other Permits and Environmental Permits necessary for Buyer to operate the Assets. None of the Parties hereto shall, without prior written consent of the other Party, take or fail to take any action, which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement.

(b) In the event that any Asset shall not have been assigned, conveyed, transferred and delivered hereunder to Buyer at the Closing, Seller shall, subject to Section 6.7(c), use Commercially Reasonable Efforts to assign, convey, transfer and deliver such Assets to Buyer as promptly as is practicable after the Closing.

(c) (i) To the extent that Seller's rights under any Assigned Agreement or Real Property Lease may not be assigned without the consent of another Person which consent

has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof or be unlawful.

(ii) Seller agrees that if any consent to an assignment of any Assigned Agreement or Real Property Lease shall not be obtained or if any attempted assignment would be ineffective or would impair the Buyer's rights and obligations under the Assigned Agreement or Real Property Lease in question, so that Buyer would not in effect acquire the benefit of all such rights and obligations, Seller, at the Buyer's option and to the maximum extent permitted by law and such Assigned Agreement or Real Property Lease, shall, after the Closing Date, appoint Buyer to be Seller's agent with respect to such Assigned Agreement or Real Property Lease, or, to the maximum extent permitted by law and such Assigned Agreement or Real Property Lease, enter into such reasonable arrangements with Buyer or take such other actions as are necessary to provide Buyer with the same or substantially similar rights and obligations of such Assigned Agreement or Real Property Lease as Buyer may reasonably request. Seller shall cooperate and shall use Commercially Reasonable Efforts prior to and after the Closing Date to obtain an assignment to Buyer of each Assigned Agreement or Real Property Lease.

(iii) To the extent that any fuel supply contract or power purchase agreement is not assignable or the contracting party withholds consent to assignment, then Seller agrees to continue to purchase fuel and/or power pursuant to such contract(s) and to resell it to Buyer at the purchase price for the remainder of the term of such contract(s), provided that the term of such contract(s) shall not be extended. Buyer shall make payment to Seller in this circumstance on an as-incurred basis.

(d) To the extent that Seller's rights under any warranty or guaranty described in Section 2.1(h) may not be assigned without the consent of another Person, which consent has not been obtained by the Closing Date, this Agreement shall not constitute an agreement to assign the same, if an attempted assignment would constitute a breach thereof, or be unlawful. Seller agrees that if any consent to an assignment of any such warranty or guaranty shall not be obtained, or if any attempted assignment would be ineffective or would impair Buyer's rights and obligations under the warranty or guaranty in question, so that Buyer would not in effect acquire the benefit of all such rights and obligations, Seller, at Buyer's option and expense, shall use Commercially Reasonable Efforts, to the extent permitted by law and by such warranty or guaranty, to enforce such warranty or guaranty for the benefit of Buyer so as to provide Buyer to the maximum extent possible with the benefits and obligations of such warranty or guaranty.

6.8 Consents and Approvals.

(a) As promptly as advisable after the execution of this Agreement, Buyer and Seller shall each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. Each Party shall file any HSR Act notifications with respect to this Agreement and with respect to the Arizona Electric Purchase Agreement simultaneously and in the same filing. Buyer and Seller shall use their respective reasonable best efforts to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of

filing of such notification. Buyer will pay all filing fees under the HSR Act relating to the Assets, but each of Seller and Buyer will bear its own costs of the preparation of any such filing.

(b) The Parties shall cooperate and use all Commercially Reasonable Efforts to promptly prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, approvals and authorizations of all Governmental Authorities necessary or advisable to consummate the transactions contemplated by this Agreement, including, without limitation, the Required Regulatory Approvals. Buyer shall have the right to review and approve in advance all the information relating to Buyer, on the one hand, and Seller shall have the right to review and approve in advance all the information relating to Seller, on the other hand, in either case, which appear in any filing made in connection with the transactions contemplated by this Agreement. Buyer and Seller agree that they will consult and cooperate with each other with respect to the obtaining of all such necessary permits, consents, approvals and authorizations of Governmental Authorities.

(c) In connection with applications and other filings for the Required Regulatory Approvals, and the prosecution of any pending regulatory proceedings material to the Business Buyer and Seller shall jointly, and on an equal basis, coordinate the overall development of the positions to be taken and the regulatory actions to be requested in such applications and filings for approval of the sale by the Seller and the purchase by the Buyer of the Assets and the Business, of all other matters contemplated by this Agreement which require regulatory approval and of all other regulatory matters incidental thereto which are to be addressed in such applications and filings. Efforts to obtain any necessary approvals (including from the ACC and the FERC) shall be prosecuted by counsel mutually agreed upon by the Parties, and acting as joint counsel to the Parties, it being understood, however, that (i) all positions taken in the filings with such Governmental Authorities shall be consistent with the mutual understandings of the Parties and (ii) any SEC approvals required by Buyer shall be prosecuted by Buyer's counsel.

(d) Seller and Buyer shall cooperate with each other and promptly prepare and file notifications with, and request Tax clearances from, state and local taxing authorities in any jurisdictions in which a portion of the Purchase Price may be required to be withheld or in which Buyer would otherwise be liable for any Tax liabilities of Seller pursuant to such state and local Tax law.

(e) Seller shall have primary responsibility for securing the transfer of the Transferable Permits, effective as of the Closing Date. Buyer shall have the primary responsibility for securing the transfer, reissuance or procurement of the Permits and Environmental Permits (other than Transferable Permits) effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and assist in any transfer or reissuance of a Permit or Environmental Permit held by Seller, or the procurement of any other Permit or Environmental Permit when so requested by Buyer.

6.9 Fees and Commissions. Each of Seller and Buyer represent and warrant to the other that, except for Morgan Stanley & Co. Incorporated, which is acting for and at the expense of Seller, and Credit Suisse First Boston Corporation, which is acting for and at the expense of

Buyer, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby by reason of any action taken by the Party making such representation. Each of Seller and Buyer will pay to the others or otherwise discharge, and will indemnify and hold the others harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than the fees, commissions and finder's fees payable to the party listed above) incurred by reason of any action taken by the indemnifying party. Buyer has a preexisting business relationship with New Harbor, Incorporated and agrees to be responsible for any brokerage fees, commissions or finder's fees of New Harbor, Incorporated, if any, arising from the transactions contemplated by this Agreement.

6.10 Tax Matters.

(a) All Transfer Taxes incurred in connection with this Agreement and the transactions contemplated hereby, including, without limitation, (A) Arizona sales tax; (B) the Arizona transfer tax, conveyance fees or conveyances of interests in real and/or personal property; and (C) Arizona sales tax and transfer tax on deeds shall be borne as follows: fifty percent (50%) by the Buyer and fifty percent (50%) by the Seller. Seller shall file, to the extent required by, or permissible under, applicable law, all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable law, Buyer shall join in the execution of any such Tax Returns and other documentation. Prior to the Closing Date, to the extent applicable, Buyer shall provide to Seller appropriate certificates of Tax exemption from each applicable taxing authority.

(b) With respect to Taxes to be prorated in accordance with Section 3.4 of this Agreement, Buyer shall prepare and timely file all Tax Returns required to be filed after the Closing Date with respect to the Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing each such Tax Return. Upon receipt by Buyer of the tax bill, invoice or other statement regarding such real and personal property Taxes, Buyer shall calculate the *pro rata* share of such tax bill, invoice or other statement attributable to Buyer and Seller. Buyer shall then forward, as soon as possible, to Seller a copy of such tax bill, invoice or statement along with the supporting documentation relating to the calculation of the *pro rata* share to Seller and Seller will promptly pay to Buyer Seller's *pro rata* share of such tax bill, invoice or statement. In the event Seller first receives a tax bill, invoice or statement relating to the Assets from a taxing authority, Seller shall promptly forward such tax bill, invoice or statement to Buyer.

(c) 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, examination or proceedings. Any information obtained pursuant to this Section 6.10(c) or pursuant to any other

Section hereof providing for the sharing of information or review of any Tax Return or other instrument relating to Taxes shall be kept confidential by the Parties hereto.

(d) In the event that a dispute arises between Buyer and Seller, with respect to Taxes in Sections 6.10(a) and 6.10(b), or concerning any amount due under this Section 6.10, the Parties shall attempt in good faith to resolve such dispute and any agreed upon amount shall be paid to the appropriate Party. If such dispute is not resolved within thirty (30) days, the Parties to such dispute shall submit the dispute to the Independent Accounting Firm for resolution, which resolution shall be final, conclusive and binding on such Parties. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of such Independent Accounting Firm shall be allocated between the Parties so that the non-disputing Party's share of such fees and expenses shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by the disputing Party to such auditor that is successfully disputed by the disputing Party (as finally determined by such auditor) bears to the total amount of such remaining disputed amount so submitted by the disputing Party to such auditor. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate.

(e) Buyer agrees that Seller may, at Seller's election prior to the Closing Date, direct that all or a portion of the Purchase Price be delivered to a "qualified intermediary" (as defined in Treasury Regulation Section 1.1031(k) - (g)(4)) as to enable Seller's relinquishment of the Assets to qualify as part of a like-kind exchange of property covered by Section 1031 of the Code. If Seller so elects, Buyer shall cooperate with Seller (but without being required to incur any out-of-pocket costs in the course thereof) in connection with Seller's efforts to effect such like-kind exchange, which cooperation shall include, without limitation, taking such actions as Seller requests in order to enable Seller to qualify such transfer as part of a like-kind exchange of property covered by Section 1031 of the Code (including any actions required to facilitate the use of a "qualified intermediary"), and Buyer agrees that Seller may assign all or part of its rights and delegate all or part of its obligations under this Agreement to a person or entity acting as a qualified intermediary to qualify the transfer of the Assets as part of like-kind exchange of property covered by Section 1031 of the Code. Buyer and Seller agree in good faith to use reasonable efforts to coordinate the transactions contemplated by this Agreement with any other transactions engaged in by either Buyer or Seller; provided that such efforts are not required to include an unreasonable delay in the consummation of the transactions contemplated by this Agreement.

(f) Prior to the Closing Date, Buyer and Seller shall use their good faith efforts to agree upon the allocation (the "Allocation") of the Purchase Price, the Assumed Liabilities and other relevant items (including, for example, adjustments to the Base Purchase Price) to the individual assets or classes of assets within the meaning of Section 1060 of the Code. If Buyer and Seller agree to such Allocation prior to Closing, Buyer and Seller covenant and agree that (i) the values assigned to the assets by the Parties' mutual agreement shall be conclusive and final for all purposes, and (ii) neither Buyer nor Seller will take any position before any Governmental Authority or in any Proceeding that is in any way inconsistent with such Allocation. Notwithstanding the foregoing, if Buyer and Seller cannot agree to an Allocation, Buyer and Seller covenant and agree to file, and to cause their respective Affiliates to

file, all Tax Returns and schedules thereto (including, for example, amended returns, claims for refund, and those returns and forms required under Section 1060 of the Code and any Treasury regulations promulgated thereunder) consistent with each of such Party's good faith Allocations, unless otherwise required because of a change in any applicable law.

6.11 Advice of Changes. Prior to the Closing, each Party will timely advise the other in writing with respect to any matter arising after execution of this Agreement which becomes known to that Party and which, if existing or occurring at the date of this Agreement, would have been required to be set forth in this Agreement, including any of the Schedules or Exhibits hereto. Any such written notice will not be deemed to have amended this Agreement, including the appropriate Schedule or Exhibit, or to have qualified any representation or warranty contained in this Agreement, or to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the development.

6.12 Seller Employees.

(a) Buyer shall give Qualifying Offers of employment to all employees of Seller who are covered by the IBEW Local Union No. 387 collective bargaining agreement with Seller (the "IBEW CBA") and are employed in positions relating to the Business (collectively, "Union Employees"). Each such person who becomes employed by Buyer pursuant to this section shall be referred to herein as a "Transferred Union Employee".

(b) Buyer shall give Qualifying Offers of employment to substantially all of the salaried employees of Seller who are employed in positions relating to the Business (collectively, "Non-Union Employees"). Each such person who becomes employed by Buyer pursuant to this section shall be referred to herein as a "Transferred Non-Union Employee." Buyer shall reimburse Seller for 50 percent of the aggregate Severance Cost (as defined below) relating to those Non-Union Employees whose employment is terminated by Seller prior to or as of the Closing Date. "Severance Cost" means the sum of the following costs incurred by Seller resulting from a Non-Union Employee's termination of employment with Seller: (i) all cash severance benefits payable pursuant to Seller's severance policy, (ii) the cost of outplacement services provided pursuant to Seller's severance policy, (iii) Seller's subsidized portion of COBRA Continuation Coverage provided by Seller's health plan in accordance with Seller's severance policy, (iv) the additional severance benefits payable pursuant to arrangements with the specific individuals identified in a schedule delivered to Buyer prior to the date hereof; and (v) any retention bonuses paid by Seller to Non-Union Employees who do not receive Qualifying Offers of employment and who are deemed in Seller's discretion to be critical to the ongoing operation of the Business. With respect to the Severance Cost components described in clauses (i), (ii), (iv) and (v) of the preceding sentence, Buyer shall pay such reimbursement to Seller at the later of Closing or five days after receipt of a list of such terminated Non-Union Employees and the amount of such Severance Cost components with respect to such employees. With respect to the Severance Cost component described in clause (iii), Seller shall provide Buyer during the COBRA Continuation Coverage period with a monthly schedule setting forth the cumulative amount of such cost component for the preceding month, and Buyer shall pay such reimbursement to Seller within five days after receipt of each such schedule.

(c) All offers of employment made by Buyer pursuant to Sections 6.12(a) and (b) shall be made in accordance with all applicable laws and regulations, and for Union Employees, in accordance with the IBEW CBA and shall remain open for a period of ten (10) working days. Any such offer which is accepted within such ten (10) working day period shall thereafter be irrevocable, except for good cause, until the earlier of the Closing Date or the termination of this Agreement pursuant to its terms. Additionally, such offers shall be contingent upon the Non-Union Employee's or Union Employee's successful completion of drug testing pursuant to Buyer's policies and in compliance with the IBEW CBA. Following acceptance of such offers, Buyer shall provide written notice thereof to Seller and Seller shall provide Buyer with access to the files and records of employees accepting such offers, to the extent permitted by contract, the IBEW CBA and/or applicable law.

(d) The following shall be applicable with respect to Transferred Employees:

(i) From and after the Closing Date, Transferred Employees shall accrue no additional benefits under any employee benefit plan, policy, program or arrangement of Seller or its Affiliates.

(ii) For such Transferred Union Employees, Buyer shall recognize the IBEW as the exclusive collective bargaining representative and shall assume the terms and conditions of the IBEW CBA, to the extent applicable to such Transferred Union Employees, until the expiration of said agreement, and will further comply with all applicable legal obligations with respect to collective bargaining under federal labor law thereafter.

(iii) As of the Closing Date, Buyer shall cause Transferred Non-Union Employees to be covered by the Buyer benefit plans listed on Schedule 6.12(d)(iii), and shall cause Transferred Union Employees to be provided with benefits that are consistent with the terms of the IBEW CBA or are otherwise acceptable to the applicable union. The commitments under this paragraph shall require the following:

(A) With respect to health care plans, Buyer agrees to waive or to cause the waiver of all limitations as to pre-existing conditions and actively-at-work exclusions and waiting periods for such employees, except that Buyer may require the employee or his/her dependents who, on the Closing Date, is then in the process of satisfying any similar exclusion or waiting period under the Seller health care plans to satisfy fully the balance of the applicable time period for such exclusion or waiting period under the applicable Buyer plan. With respect to the calendar year in which the Closing Date occurs, all health care expenses incurred by any such employees and/or any eligible dependent thereof, including without limitation any alternate recipient pursuant to qualified medical child support orders, in the portion of the calendar year preceding the Closing Date that were qualified to be taken into account for purposes of satisfying any deductible or out-of-pocket limit under any Seller health care plans shall be taken into account for purposes of satisfying any deductible or out-of-pocket limit under the health care plan of Buyer for such calendar year.

(B) With respect to service and seniority, Buyer shall recognize each such employee's service and seniority with Seller and any affiliate of Seller for all non-pension purposes, including the determination of eligibility and extent of service or seniority-related welfare benefits such as vacation and sick pay benefits. Seller agrees to pay each such employee for all vacation benefits banked, accrued, and unused, as of the Closing Date, or otherwise according to Seller's policies and applicable law. For purposes of this Section 6.12(d)(iii)(B), Transferred Employees who have prior service with Southern Union Company, and who are identified on a schedule delivered to Buyer prior to the date hereof, shall be treated as service with Seller.

(C) The Citizens Pension Plan ("Seller's Pension Plan") shall retain all liabilities and assets for pension benefits accrued by Transferred Employees through the day immediately preceding the Closing Date, and Seller shall cause all such accrued benefits to become fully vested as of the Closing Date. Seller shall, within 90 days following the Closing Date, notify Transferred Employees who are entitled to deferred vested benefits under Seller's Pension Plan of the amount of such benefits. Buyer shall take all actions necessary to cause the Buyer's qualified pension plan listed on Schedule 6.12(d)(iii) in which Transferred Employees are eligible to participate pursuant to Section 6.12(d)(iii) to provide benefits no less valuable than those provided in Seller's Pension Plan and to recognize the service that the Transferred Employees had under Seller's Pension Plan for purposes of such Transferred Employees' eligibility to participate, vesting, attainment of retirement dates, subsidized benefits, entitlement to optional forms of payment, and benefit accrual; provided, however that a Transferred Employee's benefit under Buyer's Pension Plan shall be offset by his or her accrued benefit under Seller's Pension Plan. The offset referred to in the preceding sentence shall be based on the benefit that would have been available with respect to such Transferred Employee under the terms of Seller's Pension Plan had such Seller's Pension Plan benefit commenced on the Transferred Employee's annuity starting date under Buyer's Pension Plan and been paid in the same form as the benefit paid under Buyer's Pension Plan. Notwithstanding the preceding sentence, in the event that a Transferred Employee is ineligible to commence receipt of his or her accrued benefit under Seller's Pension Plan on his or her annuity starting date under Buyer's Pension Plan or in the form elected under the Buyer's Pension Plan, the offset shall be based on the hypothetical benefit that is the actuarial equivalent (as determined using the then current actuarial assumptions of Seller's Pension Plan) of the Transferred Employee's accrued benefit under Seller's Pension Plan, such hypothetical benefit being assumed to be payable in the same form and with the same annuity starting date as the Transferred Employee's benefit under Buyer's Pension Plan. At Buyer's request, Seller shall provide Buyer with the benefit calculations applicable to a Transferred Employee under Seller's Pension Plan.

(D) Buyer shall assume all liabilities, obligations and responsibilities with respect to providing post-retirement health and life insurance benefits ("Post-Retirement Welfare Benefits") to (i) retirees of the Business as of

the Closing Date (the "Current Retirees") and (ii) Transferred Employees who have satisfied the age and service eligibility requirements for Post-Retirement Welfare Benefits under the applicable Seller plans (the "Grandfathered Active Employees" and, together with the Current Retirees, the "Grandfathered Individuals"). The Grandfathered Individuals are listed in Schedule 6.12(d)(iii)(D). Buyer shall continue to provide to the Current Retirees Post-Retirement Welfare Benefits that are comparable to those Post-Retirement Welfare Benefits provided to such Current Retirees immediately prior to the Closing Date, under cost-sharing structures that are at least as favorable as the cost-sharing structures in effect for and available to the Current Retirees immediately prior to the Closing Date. Buyer shall provide to the Grandfathered Active Employees Post-Retirement Welfare Benefits that are comparable to those Post-Retirement Welfare Benefits provided to such Grandfathered Active Employees immediately prior to the Closing Date, commencing at the time such Grandfathered Active Employees retire. The Base Purchase Price shall be decreased by the amount by which the APBO (as hereinafter defined) exceeds two million dollars (\$2,000,000). The "APBO" means the accumulated post-retirement benefit obligation (within the meaning of the Statement on Financial Accounting Standards No. 106) of the Grandfathered Individuals receiving or eligible for the Post-Retirement Welfare Benefits to the extent Buyer has committed to provide such Post-Retirement Welfare Benefits pursuant to this Section 6.12(d)(iii)(D), determined using a discount rate of 6.75% and the remaining assumptions disclosed in the January 1, 2001 Actuarial Valuation Report dated September 17, 2002, as set forth on Schedule 6.12(d)(iii)(D).

(E) With respect to the Seller's 401(k) Savings Plan (the "Savings Plan"), Seller shall vest Transferred Employees in their Savings Plan account balances as of the Closing Date. Seller hereby represents to Buyer that the Savings Plan is intended to be qualified within the meaning of Section 401 of the Code. Buyer shall take all actions necessary to cause the Buyer's qualified 401(k) plan listed on Schedule 6.12(d)(iii) in which Transferred Employees are eligible to participate pursuant to Section 6.12(d)(iii) (x) to recognize the service that the Transferred Employees had in the Savings Plan for purposes of determining such Transferred Employees' eligibility to participate, vesting, attainment of retirement dates, contribution levels, and, if applicable, eligibility for optional forms of benefit payments, and (y) to accept direct-rollover transfers of Transferred Employees' account balances in the Savings Plan, including transfers of loan balances and related promissory notes, provided that such loans would not be treated as taxable distributions at any time prior to such transfer.

(F) Within sixty (60) days after the Closing Date, Seller shall transfer to Buyer's flexible benefits plan any balances standing to the credit of Transferred Employees under Seller's flexible benefits plan as of the day immediately preceding the Closing Date. As soon as practicable after the Closing Date, Seller shall provide to Buyer a list of those Transferred Employees that have participated in the health or dependent care reimbursement accounts of Seller, together with their elections made prior to the Closing Date with respect to such

account, and balances standing to their credit as of the day immediately preceding the Closing Date.

(e) With respect to severance benefits, Buyer shall provide to any Transferred Non-Union Employee who is terminated by Buyer (other than for cause) prior to the date which is one year following the Closing Date, severance benefits at the level set forth in a schedule provided to Seller prior to the date hereof. Any employee provided severance benefits under this section may be required to execute a release of claims against Seller and Buyer, in such form as Buyer shall prescribe, as a condition for the receipt of such benefits.

(f) Each Transferred Non-Union Employee who is initially assigned, or assigned within twelve (12) months of the Closing Date, by Buyer to a principal place of work that requires such employee to relocate his residence will be reimbursed by Buyer for all relocation expenses in accordance with the relocation benefits plans set forth in a schedule provided to Seller prior to the date hereof. For purposes of the foregoing a required relocation of residence shall include a change in the principal place of work that is more than 30 miles farther from such employee's principal place of work immediately prior to the Closing Date and requires an average commute from his current residence of at least one hour in each direction.

(g) Seller shall be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs on or prior to the Closing Date.

(h) Buyer shall not be responsible for, but Seller shall be responsible for, extending COBRA Continuation Coverage to any employees and former employees of Seller, or to any qualified beneficiaries of such employees and former employees, who become or became entitled to COBRA Continuation Coverage on or before the Closing Date, including those for whom the Closing Date occurs during their COBRA election period.

(i) Seller or its Affiliates shall pay (or cause to be paid to all Transferred Employees, all compensation (including vacation pay), workers' compensation or other employment benefits to which they are entitled under the terms of the applicable compensation or Seller benefit plans or programs as of the Closing Date. Buyer shall pay to each Transferred Employee all unpaid salary or other compensation or employment benefits which have accrued to such employees following the Closing Date, at such times as provided under the terms of the applicable compensation or benefit programs. Notwithstanding the foregoing, if the Closing Date is on or after July 1 of any calendar year, Seller and Buyer shall pro-rate the obligation to pay any bonuses declared by Seller on or after the Closing Date (but prior to March 1 of the calendar year following the year in which the Closing Date occurs) that would have been payable to the Transferred Employees had the Transferred Employees remained employed by Seller or its Affiliates throughout the calendar year in which the Closing Date occurs, in accordance with the provisions of any policy, plan, practice or arrangement of Seller under which such bonus would have been paid. Buyer shall be obligated to pay that portion of each such bonus determined by multiplying the amount of such bonus by a fraction, the numerator of which is the number of days from and after the Closing Date through the end of the calendar year in which the Closing Date occurs, and the denominator of which is 365.

(j) Seller shall be responsible for maintaining workers' compensation coverage for all Union Employees and Non-Union Employees for claims relating to occurrences prior to the Closing Date.

(k) Individuals who are otherwise Union Employees or Non-Union Employees but who on any date are not actively at work due to a leave of absence covered by the Family and Medical Leave Act (FMLA), or due to any other authorized leave of absence, including, without limitation, short-term disability, or who are on long-term disability, shall nevertheless be treated as "Union Employees" or as "Non-Union Employees", as the case may be, on such date if they are able (i) to return to work within the protected period under the FMLA or such other leave (which in any event shall not extend more than twelve (12) weeks after the Closing Date), whichever is applicable, and (ii) to perform the essential functions of their job, with or without a reasonable accommodation.

(l) Buyer shall be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees of any "employment loss" within the meaning of the WARN Act which occurs following the Closing Date.

(m) Buyer is responsible for extending and continuing to extend COBRA Continuation Coverage to all Transferred Employees, and qualified beneficiaries of such employees who become entitled to such COBRA Continuation Coverage following the Closing Date.

(n) The provisions of this Section 6.12 shall not be construed as being for the benefit for any person other than the Parties hereto, and shall not be enforceable by persons other than such Parties (including, without limitations, the Transferred Employees).

6.13 Risk of Loss.

(a) From the date hereof through the Closing Date, all risk of loss or damage to the assets included in the Assets shall be borne by Seller, other than loss or damage caused by the acts or negligence of Buyer or any Buyer Representative, which loss or damage shall be the responsibility of Buyer.

(b) If, before the Closing Date, all or any portion of the Assets are taken by eminent domain, municipalization or condemnation or are the subject of a pending taking which has not been consummated, (such event being called, in either case, a "Taking"), then Seller shall notify Buyer promptly in writing of such Taking.

(i) If such Taking relates to Assets of Seller having an aggregate net book value in excess of \$50,000,000, then such Taking shall be a "Material Taking." Upon a Material Taking, Seller and Buyer shall negotiate to settle the loss, if any, resulting from such Material Taking (and such negotiation shall include, without limitation, the negotiation of a fair and equitable reduction in the Base Purchase Price to offset such loss, if any, based on consideration of all relevant circumstances). If Seller and Buyer shall fail to agree to settle the loss, if any, resulting from said Material Taking, said Material Taking shall be conclusively deemed to be an Asset Material Adverse

Effect. Any Taking relating to any Assets of Seller's Santa Cruz division shall not be deemed to be a Material Taking.

(ii) If such Taking is not a Material Taking, then (A) Buyer may elect to, in the name of Seller, negotiate for, claim, contest and receive the portion of the award properly allocable to those Assets that are the subject of the Taking, (B) to the extent the Taking shall have been consummated prior to the Closing, Seller shall be relieved of its obligation to convey to Buyer those Assets that were the subject of the Taking, (C) at the Closing, Seller will assign to Buyer all of its rights to damages payable as a result of the Taking, and will pay to Buyer all damages previously paid to it in connection with the Taking, in each case to the extent properly allocable to those Assets that are the subject of the Taking, and (D) following the Closing, Seller will give to Buyer any further assurances of such rights and assignment with respect to the Taking as Buyer reasonably may request from time to time.

(c) (i) If any casualty loss or damage to the Assets shall occur before the Closing Date, then the Base Purchase Price shall be reduced, to the extent such loss or damage is not remedied prior to the Closing Date, by an amount mutually acceptable to the Parties, which amount shall be equal to the estimated out-of-pocket costs and expenses which Buyer reasonably can be expected to incur to repair or replace, in accordance with Good Utility Practices, such lost or damaged Assets after Closing. If the actual out-of-pocket costs and expenses which Buyer reasonably incurred to repair or replace, in accordance with Good Utility Practices, such lost or damaged Assets exceeds such estimated amount, Seller shall reimburse Buyer for such excess costs. If the Parties do not agree to an adjustment to the Base Purchase Price in respect of the casualty loss, then the Closing shall be postponed for such period of time (not to exceed six (6) months), and Seller shall repair or replace the lost or damaged Assets in accordance with Good Utility Practices and Buyer or its Representatives will have the right to inspect and observe and approve, all repairs or replacements made by Seller to remedy such casualty loss.

(ii) Notwithstanding anything to the contrary in Section 6.13(c)(i) above, if Seller shall have failed to remedy, cure or otherwise reverse by the Closing Date any casualty loss or damage to the Assets such that the estimated out-of-pocket costs and expenses that Buyer reasonably can be expected to incur to repair or replace such lost or damaged Assets exceeds \$25,000,000, such loss or damage shall be conclusively deemed to be an Asset Material Adverse Effect.

6.14 Tax Exempt Financing

(a) Seller represents that:

(i) The Exempt Facilities have been financed, and refinanced, in whole or in part, with the proceeds of the issuance and sale by various governmental authorities of industrial development revenue bonds or private activity bonds the interest on which, with certain exceptions, is excluded from gross income for purposes of Federal

income taxation (such bonds, as currently outstanding, the "Revenue Bonds"); and Seller is the economic obligor in respect of such Revenue Bonds;

(ii) The Revenue Bonds are described in Schedule 6.14(a);

(iii) The basis for the exclusion of interest on the Revenue Bonds from gross income for Federal income tax purposes is the use of the Exempt Facilities for "the local furnishing of electric energy or gas" under Sections 142(a)(8) and 142(f) of the Code or, if applicable, Section 103(b)(4)(E) of the Internal Revenue Code of 1954, as amended (the "1954 Code"), and in either case the applicable Treasury Regulations (the "Regulations") thereunder;

(iv) The use of the Exempt Facilities for a purpose other than a qualifying purpose indicated in subsection (iii) above could impair (A) such exclusion from gross income of the interest on the Revenue Bonds, possibly with retroactive effect, unless appropriate remedial action were taken (which could include prompt defeasance or redemption of the Revenue Bonds) and/or (B) the deductibility of payments by Seller or Buyer of interest based on the restrictions in Section 150(b) of the Code;

(v) After August 20, 1996, at least the following bonds exempt from tax under Section 103 of the Code and in whole or in part described in Section 142(a)(8) of the Code have been issued with respect to facilities of Seller for the "local furnishing of electric energy or gas": The Industrial Development Authority of the County of Navajo, Industrial Development Revenue Bonds (Citizens Utilities Company Project) 1997 Series B (\$12,380,000), and The Industrial Development Authority of the County of Yavapai, Industrial Development Revenue Bonds (Citizens Utilities Company Project) 1998 Series (\$20,000,000); and

(vi) Any breach by Buyer of its obligations under this Section 6.14 could result in the incurrence by Seller of additional costs and expenses with respect to the Revenue Bonds, including, without limitation, increased interest costs, loss of the interest deduction for tax purposes and transaction costs relating to any refinancing, redemption and/or defeasance of all or part of the Revenue Bonds (cumulatively, the "Tax Impact").

(b) Buyer agrees that Buyer will indemnify Seller for costs incurred by Seller in respect of any Tax Impact that would not have arisen but for Buyer's breach of its obligations under Section 6.14(c) (except as excused elsewhere in this Section 6.14).

(c) After August 20, 1996, at least the following bonds exempt from tax under Section 103 of the Code and described in whole or in part in Section 142(a)(8) of the Code have been issued with respect to facilities of Buyer for the "local furnishing of electric energy": The Industrial Development Authority of the County of Pima, Industrial Development Revenue Bonds (Tucson Electric Power Company Project) 1997 Series A, B and C (\$247,460,000), and The Industrial Development Authority of the County of Apache, Pollution Control Revenue Bonds (Tucson Electric Power Company Project) 1998 Series A, B and C (\$200,000,000). So long as any Revenue Bonds remain outstanding with respect to gas Exempt Facilities in any

county, Buyer agrees that it shall not use, or take any deliberate act to permit the use of, or fail to take any act within its control that would prevent the use of, the gas Exempt Facilities within that county for any purpose or in any manner other than as shall be consistent with the Exempt Facility Operating Protocols (as such Exempt Facility Operating Protocols may have been updated, amended or corrected by Seller for the purpose of their accuracy on or before the Closing Date; provided that such changes do not materially impact Buyer's operation of the Assets) delivered by Seller to Buyer on or before the date of this Agreement, unless Buyer:

(i) has obtained at its own expense an opinion addressed to Seller of nationally recognized bond counsel reasonably acceptable to Seller ("Bond Counsel") that such use will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for Federal income tax purposes and (y) the deductibility of Seller's payments of interest based on the restrictions in Section 150(b) of the Code; or

(ii) has provided written notice to Seller of any act or failure to act either (x) not later than 45 days after the effective date of such action, or (y) if any of such affected Revenue Bonds are not then eligible for optional or mandatory redemption by the terms thereof, sufficiently in advance of such act or failure to act to permit Seller to request from the IRS a private letter ruling to the effect that such action does not constitute an event that would adversely affect the exclusion of the interest on such Revenue Bonds from gross income for Federal income tax purposes, to receive a final ruling to such effect from the IRS, and to dispose of the Revenue Bonds in a manner not inconsistent with such ruling ("Sufficient Notice"). (Reference is made to Schedule 6.14(a) for a listing of the respective optional redemption dates of the Revenue Bonds.)

(d) Notwithstanding any other provision of this Agreement, it is expressly understood and agreed that the provisions of Section 6.14(c) shall not prohibit Buyer from (and Buyer shall incur no liability to Seller for or in connection with Buyer) suspending the operation of the Exempt Facilities (in whole or in part) on a temporary basis, or from terminating the operation of the Exempt Facilities (in whole or in part) on a permanent basis and shutting down, retiring, abandoning and/or decommissioning the Exempt Facilities (in whole or in part); provided, however, that if the Exempt Facilities, in whole or in part, are dismantled and sold, including any sale for scrap, at any time when any Revenue Bonds remain outstanding, then the proceeds of such sale of Exempt Facilities shall within six months from the date of sale be expended to acquire replacement property to be used as described in the related Exempt Facility Operating Protocol, unless (I) Buyer has obtained at its own expense an opinion addressed to Seller of Bond Counsel that the failure to take this action will not impair (x) the exclusion from gross income of the interest on any issue of Revenue Bonds for Federal income tax purposes and (y) the deductibility of Seller's payments of interest based on the restrictions in Section 150(b) of the Code; (II) the proceeds of such sales are less than \$50,000 in a calendar year; or (III) Buyer has provided Sufficient Notice of such action to Seller.

(e) Buyer agrees that it shall not issue, or have issued on its behalf, any tax-exempt bonds to finance or refinance its acquisition of the Exempt Facilities, provided that it is expressly understood and agreed that this clause (e) shall not prohibit Buyer's use of

tax-exempt bonds to finance or refinance any improvement to the Exempt Facilities made after the date of acquisition or to any assets other than the Exempt Facilities.

(f) Buyer agrees to provide prompt written notice to Seller of any condemnation of, or casualty loss with respect to, the Exempt Facilities, in whole or in substantial part, to cooperate in good faith with Seller in Seller's efforts to ascertain the consequences of any such eminent domain proceeding or casualty loss for the (A) exclusion of interest on the Revenue Bonds from gross income for Federal income tax purposes and (B) the deductibility of Seller's payments of interest based on the restrictions in Section 150(b) of the Code.

(g) Seller agrees that the Revenue Bonds shall be redeemed no later than the earlier of (I) their respective stated maturity dates, and (II) their respective first optional redemption dates on or after the Closing Date. Seller also agrees that none of the Revenue Bonds shall be refunded.

(h) Seller hereby represents that it has performed all duties and obligations of "Company" under the documents relating to the Revenue Bonds, that the representations and warranties under the documents relating to the Revenue Bonds remain true and correct, and that there has been no breach of any covenant or agreement by Seller under the documents relating to the Revenue Bonds. Seller hereby covenants that, until all of the Revenue Bonds have been redeemed, Seller will perform all duties and obligations of "Company" under the documents relating to the Revenue Bonds, that Seller's representations and warranties under such documents will remain true and correct and that Seller will not breach any covenant or agreement of Seller under such documents; provided that Seller's covenant in this sentence shall not extend to any such duties, obligations, representations, warranties, covenants or agreements the necessary predicate for which is Seller's actual ownership, possession or control of the Exempt Facilities from and after the Closing Date. Seller acknowledges and agrees that although Seller from and after the Closing Date will not own, possess or control the Exempt Facilities, Seller shall remain primarily obligated under the documents relating to the Revenue Bonds and, as between itself and each issuer of the Revenue Bonds, shall remain subject to each of Seller's representations, warranties, covenants and agreements thereunder. Buyer shall have no liability under this Section 6.14 unless interest on the Revenue Bonds would be excluded from gross income for Federal income tax purposes absent an act or failure to act by Buyer in contravention of the terms of Section 6.14(c).

(i) In any case where Buyer has provided notice to Seller under this Section 6.14, Buyer agrees that it will join and cooperate with Seller with respect to any request by Seller to the Internal Revenue Service to obtain a private letter ruling regarding any Tax Impacts of the act or failure to act by Buyer that prompted such notice. Seller will join and cooperate with Buyer with respect to any request by Buyer to the Internal Revenue Service to obtain a private letter ruling regarding any Tax Impacts. The Party seeking the private letter ruling shall bear all costs of the filing, legal and related out-of-pocket expenses incurred in the course of such request.

(j) Seller agrees that it has sole responsibility to make any required payments of principal and interest on the Revenue Bonds and that Buyer has no responsibility to make such

payments. Seller agrees that it will indemnify, protect, defend and hold harmless Buyer from and against any claim that Buyer owes any payment of principal or interest on the Revenue Bonds. Seller agrees that Buyer shall retain any payments with respect to any casualty event or any condemnation of the Exempt Facilities and that, except as Buyer has otherwise agreed under Section 6.14(c), Buyer shall not be restricted in its use of any such proceeds.

(k) If Buyer shall sell, exchange, transfer or otherwise dispose of the Exempt Facilities in whole or substantial part (aggregate price of \$500,000 or more in a calendar year) to one or more third parties, Buyer shall cause to be included in the documentation relating to such transaction covenants and agreements on the part of such third party substantially identical to those on the part of Buyer contained in this Section 6.14.

(l) The covenants and agreements on the part of Buyer and Seller contained in this Section 6.14 shall continue in effect so long as any of the Revenue Bonds shall remain outstanding. Seller shall notify Buyer promptly when there shall be no Revenue Bonds outstanding.

(m) Buyer acknowledges and agrees that Seller's bond counsel may rely on Buyer's representations, warranties and covenants as hereinabove provided for the purpose of rendering legal opinions, as required by the Indentures of Trust, the Loan Agreements and the Tax Regulatory Agreements relating to the Revenue Bonds ("IDRB Documents") as a precondition to the sale by Seller of such Exempt Facilities, to the effect that the sale of such Exempt Facilities will not result in (I) the inclusion of the interest on the Revenue Bonds in the gross income of the recipient for purposes of Federal income taxation, and (II) disallowance of interest expense to Seller under Section 150(b) of the Code. Seller acknowledges and agrees that Buyer shall be an addressee of the above-described opinion letters of Seller's bond counsel or shall receive a reliance letter from Seller's bond counsel authorizing Buyer to rely on such opinion letters.

(n) Nothing in this Agreement is intended to nor shall it be interpreted as (i) an assignment to, and assumption by, Buyer of any of the IDR Documents, or (ii) as an undertaking or agreement by Buyer to assume, guarantee or pay any of Seller's loan or other payment obligations pursuant to the IDR Documents. Other than as stated in this Section 6.14, Buyer shall have no liability in respect of the Revenue Bonds.

(o) Each of Buyer and Seller shall use its Commercially Reasonable Efforts, and shall cooperate with the other Party in the other Party's efforts, to obtain all Consents, bond counsel opinions and IRS rulings as may be required under the IDR Documents and the Code to enable Seller to defease, prepay, redeem or retain until the first possible redemption date the IDR Indebtedness and to sell the Assets to Buyer without the result that the interest on the Revenue Bonds will be included in the gross income of the recipient for purposes of Federal income taxation; provided, however, that Buyer shall have no obligation in respect of its ownership or operation of the Exempt Facilities (including but not limited to rates imposed by Buyer in respect of utility service provided by the Exempt Facilities or by any other facilities of Buyer or affiliates of Buyer) other than to comply with the Exempt Facility Operating Protocols.

6.15 Seller Guarantees and Surety Instruments. Buyer shall use Commercially Reasonable Efforts to assist Seller in obtaining full and complete releases of the guarantees, letters of credit, bonds and other surety instruments listed in Schedule 6.15. In this connection, Buyer agrees to provide a guaranty, letter of credit, bond or other surety instrument at Closing to replace those listed in Schedule 6.15.

6.16 Citizens Marks. Buyer acknowledges and agrees with Seller that Seller has the absolute and exclusive proprietary right to the Citizens Marks, all rights to which and the goodwill represented thereby and pertaining thereto are being retained by Seller. Within ninety (90) days after the Closing Date, Buyer shall cease using any Citizens Mark and shall remove from the Assets any and all Citizens Marks. Thereafter, Buyer shall not use any Citizens Mark in connection with the sale of any products or services or otherwise in the conduct of the businesses. In the event that Buyer breaches this Section 6.16, Seller shall be entitled to specific performance and to injunctive relief against further violations, as well as any other remedies at law or in equity available to Seller.

6.17 Title Commitments. Prior to Closing, Seller shall cooperate with Buyer and use Commercially Reasonable Efforts to assist Buyer if Buyer desires to obtain American Land Title Association ("ALTA") title insurance commitments (collectively, the "Title Commitments," and each a "Title Commitment"), in final form, from one or more title insurance companies (collectively, the "Title Company"), committing the Title Company (subject only to the satisfaction of any industry standard requirements contained in the Title Commitment) to issue ALTA (or its local equivalent) form of title insurance policies in an amount acceptable to the Buyer and the Title Company insuring good, valid, indefeasible fee simple title to the Real Property in Buyer, in all cases, at Buyer's sole expense and in the respective amounts that Buyer requests prior to Closing, subject to no Encumbrances or other exceptions to title other than Permitted Encumbrances (collectively the "Title Policies"). On or prior to the Closing Date, Seller shall execute and deliver, or cause to be executed and delivered, to the Title Company, at no cost to Seller, any customary affidavits, standard gap indemnities, evidence of corporate existence and authority, and similar documents reasonably requested by the Title Company in connection with the issuance of the Title Commitments or the Title Policies; provided that such efforts and Buyer's request for Title Policies or Title Commitments shall, in no event, result in any delay in the consummation of the transactions contemplated by this Agreement, except to the extent caused by or resulting from Seller's breach of this Agreement; and provided further, that nothing in this Section 6.17 shall obligate Seller to execute or deliver any document that affects, in a manner adverse to Seller, Seller's liability to Buyer as expressed herein and in the Special Warranty Deed.

6.18 Joint Use Agreement re: Easements. To the extent reasonably requested by either Party, at least sixty (60) days before Closing, Buyer and Seller (or its appropriate Affiliate) will commence good faith negotiations of a joint use agreement, to be fully executed and delivered by the Parties at Closing, regarding the shared Easements to be partially assigned to Buyer at Closing as contemplated in Schedule 2.2. Such joint use agreement will be partially assignable by Seller to any purchaser of Seller's or its Affiliate's other utility plant permitted to be located on the real property that is the subject of any such shared Easements.

6.19 [Intentionally Omitted]

6.20 Post-Execution Delivery of Schedules. Within one hundred eighty days (180) following the date of execution of this Agreement, Seller shall deliver to Buyer a schedule, to be identified as Schedule 6.20, which sets forth all of the following identified by Seller after reasonable investigation (i) all Permits, (ii) all material items of Tangible Personal Property (other than Inventories), (iii) quantities of Inventories recorded in Seller's books and records for the Business as of the last day of the month preceding the date of this Agreement, together with the net book values of such Inventories as of such date, (iv) all Easements held by Seller in connection with the Business, (v) all line extension agreements and similar construction arrangements, railroad crossing agreements and similar arrangements, and (vi) all Real Property Leases. Schedule 6.20 will also designate those Permits that require the consent of the respective Governmental Authority to transfer and those that purport to be non-transferable.

ARTICLE VII

CONDITIONS

7.1 Conditions to Obligations of Buyer. The obligation of Buyer to effect purchase of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions, or waiver thereof, by Buyer at or prior to the Closing Date:

(a) The waiting period under the HSR Act applicable to the consummation of the sale of the Assets contemplated hereby shall have expired or been terminated;

(b) No preliminary or permanent injunction or other order or decree by any Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each Party agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or Governmental Authority prohibiting the consummation of the sale of the Assets;

(c) Buyer shall have received all of Buyer's Required Regulatory Approvals by Final Order, and such Required Regulatory Approvals shall not contain terms and conditions that would result in a Regulatory Material Adverse Effect for Buyer or an Asset Material Adverse Effect;

(d) Seller shall have received all of Seller's Required Regulatory Approvals by Final Order, and such Required Regulatory Approvals shall not contain terms and conditions that would result in a Regulatory Material Adverse Effect for Buyer or an Asset Material Adverse Effect;

(e) Seller shall have performed and complied with each of its covenants and agreements contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing Date except where the failure to so perform or comply, when taken in the aggregate, would not have a Buyer Material Adverse Effect or an Asset Material Adverse Effect;

(f) The representations and warranties of Seller set forth in this Agreement shall be true and correct as of the Closing Date as though made at and as of the Closing Date, except (i) subject to Section 6.11, to the extent due to changes expressly permitted by this Agreement or otherwise in writing by Buyer, (ii) that representations and warranties made as of, or in respect of, only a specified date or period shall be true and correct as of, or in respect of, such date or period and (iii) to the extent that any failure of such representations and warranties to be true and correct as aforesaid when taken in the aggregate would not have a Buyer Material Adverse Effect or an Asset Material Adverse Effect (it being understood and agreed that the economic impact of any Adverse Environmental Condition shall not be considered in the determination of an Asset Material Adverse Effect except as otherwise provided in Section 6.3);

(g) No Asset Material Adverse Effect shall have occurred and be continuing;

(h) Seller shall have delivered, caused to be delivered, or be standing ready to deliver, to Buyer at the Closing, Seller's closing deliveries described in Section 3.5;

(i) Buyer shall have received any consents of third parties required for the assignment to Buyer of any of the Assigned Agreements other than consents that, if not obtained, would not have an Asset Material Adverse Effect or a Buyer Material Adverse Effect, in form and substance reasonably acceptable to Buyer; and

(j) Buyer shall be reasonably satisfied that the consummation of the asset purchase and sale transaction contemplated by the Asset Purchase Agreement, dated as of the date hereof, between Seller and Buyer relating to purchase by Buyer of Seller's electric utility business in the State of Arizona (the "Arizona Electric Purchase Agreement"), will occur concurrently with the Closing.

7.2 Conditions to Obligations of Seller. The obligations of Seller to effect the sale of the Assets and the other transactions contemplated by this Agreement shall be subject to the fulfillment of the following conditions, or the waiver thereof, by Seller at or prior to the Closing Date:

(a) The waiting period under the HSR Act applicable to the consummation of the sale of the Assets contemplated hereby shall have expired or been terminated;

(b) No preliminary or permanent injunction or other order or decree by any Governmental Authority which prevents the consummation of the sale of the Assets contemplated herein shall have been issued and remain in effect (each of Seller and Buyer agreeing to use its reasonable best efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted by any state or federal government or Governmental Authority in the United States prohibiting the consummation of the sale of the Assets;

(c) Seller shall have received all of Seller's Required Regulatory Approvals by Final Order, and such Required Regulatory Approvals shall not contain terms and conditions that would have an Asset Material Adverse Effect or a Seller Material Adverse Effect;

(d) Seller shall have received any consents of third parties required for the assignment to Buyer of any of the Assigned Agreements other than consents that, if not obtained, would not have a Seller Material Adverse Effect;

(e) Buyer shall have performed and complied with each of its covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date except where the failure to so perform or comply, when taken in the aggregate, would not have a Seller Material Adverse Effect;

(f) The representations and warranties of Buyer set forth in this Agreement shall be true and correct as of the Closing Date as though made at and as of the Closing Date, except (i) subject to Section 6.11, to the extent due to changes expressly permitted by this Agreement or otherwise in writing by Seller, (ii) that representations and warranties made as of, or in respect of, only a specified date or period shall be true and correct as of, or in respect of, such date or period and (iii) to the extent that any failure of such representations and warranties to be true and correct as aforesaid when taken in the aggregate would not have a Seller Material Adverse Effect;

(g) Buyer shall have assumed, as set forth in and subject to Section 6.12, all of the applicable obligations under the IBEW CBA;

(h) Buyer shall have delivered, caused to be delivered or standing ready to deliver, to Seller at the Closing, Buyer's closing deliveries described in Section 3.6;

(i) Seller shall be reasonably satisfied that the consummation of the Arizona Electric Purchase Agreement will occur concurrently with the Closing; and

(j) Seller shall have received opinions from Seller's Bond Counsel, dated the Closing Date, substantially in the form attached hereto as Exhibit E.

ARTICLE VIII

INDEMNIFICATION

8.1 Indemnification of Seller by Buyer. Subject to Section 8.3, Buyer shall indemnify, defend and hold harmless Seller, its officers, directors, employees, shareholders, Affiliates and agents (each, a "Seller Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by any Seller Indemnitee (each, a "Seller Indemnifiable Loss") in any way relating to, resulting from or arising out of or in connection with (i) any breach by Buyer of any covenant or agreement of Buyer contained in this Agreement or any failure or inaccuracy of any representation or warranty of Buyer contained in this Agreement, (ii) the Assumed Liabilities, (iii) any loss or damages resulting from or arising solely out of any Inspection of the Assets, and (iv) any Third Party Claims against a Seller Indemnitee to the extent arising out of or in connection with Buyer's ownership or operation of the Assets on or after the Closing Date.

8.2 Indemnification of Buyer by Seller.

(a) Subject to Section 8.3, Seller shall indemnify, defend and hold harmless Buyer, its officers, directors, employees, shareholders, Affiliates and agents (each, a "Buyer Indemnatee") from and against any and all Indemnifiable Losses asserted against or suffered by any Buyer Indemnatee (each, a "Buyer Indemnifiable Loss") in any way relating to, resulting from or arising out of or in connection with (i) any breach by Seller of any covenant or agreement of Seller contained in this Agreement or failure or inaccuracy of any representation or warranty of Seller contained in this Agreement, (ii) the Excluded Liabilities, (iii) noncompliance by Seller with any bulk sales or transfer laws as provided in Section 10.12, and (iv) any Third Party Claims against a Buyer Indemnatee arising out of or in connection with Seller's ownership or operation of the Excluded Assets on or after the Closing Date.

(b) Subject to Sections 8.3(a), (e), (f) and (g) and the other provisions of this Section 8.2(b) and so long as Buyer complies with the Exempt Facilities Operating Protocols relating to an issue of outstanding Revenue Bonds, Seller agrees to indemnify, defend and hold harmless the Buyer Indemnitees from and against Buyer's Tax Losses (as defined below) upon a final decree or judgment of any federal court or a final action by the IRS (a "Final Determination") that the related Exempt Facilities are "tax-exempt bond financed property" under Section 168(g)(5) of the Code by reason of such issue of Revenue Bonds remaining outstanding from and after the Closing Date. No such decree or action shall be considered to be a Final Determination unless Seller has been given written notice and, if it is so desired and is legally allowed, has been afforded the opportunity to contest the same either directly or in the name of Buyer, and until conclusion of any appellate review, if sought. The maximum aggregate amount of Buyer's Tax Losses for which Seller shall be obligated to indemnify the Buyer Indemnitees both (i) under this Section 8.2(b) and (ii) under the corresponding Section 8.2(b) of the Arizona Electric Purchase Agreement shall be \$1,500,000. "Buyer's Tax Losses" shall mean the amount equal to the present value (calculated using a discount rate of 10 percent per annum) of the difference (multiplied by the applicable combined federal and State of Arizona corporate tax rate of Buyer Indemnatee) for each affected tax year between the respective dollar amounts of (x) depreciation of the related Exempt Facilities allowed under Section 168(g) of the Code, and (y) the depreciation of such Exempt Facilities that would be allowable under Section 168 of the Code if the Exempt Facilities were not "tax-exempt bond financed property." The indemnity granted by Seller in this Section 8.2(b) shall terminate at 5:00 p.m., local time in New York, New York, on the seventh anniversary of the Closing Date, provided that such termination shall not affect Seller's obligations under this Section 8.2(b) if Buyer provided Seller with proper notice of the claim or event for which indemnification is sought prior to such termination.

8.3 Certain Limitations on Indemnification.

(a) Notwithstanding anything to the contrary contained herein:

(i) any Indemnatee shall use Commercially Reasonable Efforts to mitigate all losses, damages and the like relating to a claim under these indemnification provisions, including availing itself of any defenses, limitations, rights of contribution, claims against third persons and other rights at law or equity. The Indemnatee's Commercially Reasonable Efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any loss or expenses for which indemnification

would otherwise be due, and the Indemnifying Party shall reimburse the Indemnitee for the Indemnitee's reasonable expenditures in undertaking the mitigation; and

(ii) any Indemnifiable Loss shall be net of the dollar amount of any insurance or other proceeds actually received by the Indemnitee or any of its Affiliates with respect to the Indemnifiable Loss. Any Party seeking indemnity hereunder shall use Commercially Reasonable Efforts to seek coverage (including both costs of defense and indemnity) under applicable insurance policies with respect to any such Indemnifiable Loss.

(b) Except as otherwise provided in this Section 8.3(b), the representations, warranties, covenants and agreements of the Parties set forth in this Agreement shall survive the Closing Date for a period of eighteen (18) months, and all representations, warranties, covenants and agreements of the Parties under this Agreement and the related indemnities granted in this Article VIII shall terminate at 5:00 p.m., local time in New York City, New York, on the day that is eighteen (18) months after the Closing Date. The expiration, termination or extinguishment of any covenant or agreement shall not affect the Parties' obligations under Section 8.1 or 8.2 hereof if the Indemnitee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment. Notwithstanding the foregoing provisions of this Section 8.3(b), the representations, warranties, covenants and agreements contained in Sections 3.3(e), 6.2(c), 6.3(c), 6.3(e), 6.4(a), 6.10, 6.12, 6.14, 6.16, and in Articles VIII and X, will survive the Closing in accordance with their terms.

(c) Notwithstanding anything to contrary in this Agreement, in no event shall Buyer indemnify Seller Indemnitees or Seller indemnify Buyer Indemnitees, or otherwise be liable in any way whatsoever to said Indemnitees, for any Losses otherwise subject to indemnification by the Indemnifying Party (determined after giving effect to the other provisions of this Section 8.3) until the Buyer Indemnitees or the Seller Indemnitees, as the case may be, have incurred otherwise indemnifiable Losses that in the aggregate exceed a threshold amount equal to one percent (1%) of the Purchase Price, after which Buyer or Seller, as the case may be, shall then be liable for all Losses incurred by the Seller Indemnitees or the Buyer Indemnitees, as applicable. The limitations on indemnification set forth in this Section 8.3(c) shall not apply to any losses asserted against or suffered by an Indemnitee in any way relating to, resulting from or arising out of or in connection with the failure of (i) the appropriate Party to make the payment required to be made by it in accordance with Section 3.3(d), (ii) Buyer to discharge Assumed Liabilities other than those specified in Sections 2.3(e) and 2.3(i), (iii) Seller to discharge Excluded Liabilities other than those specified in Sections 2.4(d), 2.4(g), 2.4(h), 2.4(j) and 2.4(n), (iv) Seller to make any payment to Buyer if and to the extent required by Section 3.3(e), 6.3(c), 6.10(b), 6.13(c) or 8.2(b), and (v) Buyer to make any payment to Seller if and to the extent required by Section 6.12(b). Any such losses also shall be disregarded when determining whether the threshold set forth in this Section 8.3(c) has been exceeded.

(d) Notwithstanding anything to the contrary in this Agreement, in no event shall Seller indemnify the Buyer Indemnitees or Buyer indemnify Seller Indemnitees, or be otherwise liable in any way whatsoever to said Indemnitees, for any Losses otherwise subject to indemnification by the Indemnifying Party (determined after giving effect to the other provisions

of this Section 8.3) that in the aggregate exceed an amount equal to fifty percent (50%) of the Purchase Price.

(e) Except to the extent otherwise provided in Section 3.3 (relating to adjustments to the Base Purchase Price), Section 6.3(c) (relating to post-Closing reimbursement of excess environmental Remediation costs), Section 6.10(b) (relating to post-Closing reimbursements for Taxes), Section 6.12(b) (relating to post-Closing reimbursements for Severance Costs), Section 6.13(c) (relating to post-Closing reimbursement of excess costs and expenses of repairing lost or damaged Assets), and Section 6.16 (relating to specific performance and injunctive relief with respect to Citizens Marks), the rights and remedies of Seller and Buyer under this Article VIII are exclusive and in lieu of any and all other rights and remedies which each of Seller and Buyer may have under this Agreement or otherwise for monetary relief, with respect to (i) all post-Closing claims relating to this Agreement, the events giving rise to this Agreement and the transactions provided for herein or contemplated hereby or thereby, or (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be. Notwithstanding any language contained in any Ancillary Agreement (including the Special Warranty Deed), the representations and warranties of Seller set forth in this Agreement will not be merged into any such Ancillary Agreement and the indemnification obligations of Seller, and the limitations on such obligations, set forth in this Agreement shall control. No provision set forth in any such Ancillary Agreement shall be deemed to enlarge, alter or amend the terms or provisions of this Agreement.

(f) Notwithstanding anything to the contrary contained herein, no Party (including an Indemnitee) shall be entitled to recover from any other Party (including an Indemnifying Party) for any liabilities, damages, obligations, payments, losses, costs, or expenses under this Agreement any amount in excess of the actual compensatory damages, court costs and reasonable attorney's and other advisor fees suffered by such Party. Each of Buyer and Seller waive any right to recover punitive, incidental, special, exemplary and consequential damages arising in connection with or with respect to this Agreement. The provisions of this Section 8.3(d) shall not apply to indemnification for a Third Party Claim.

(g) The limitations set forth in this Section 8.3 do not apply to fraud or willful misconduct of a Party.

(h) No amount shall be recovered from a Party for the breach or untruth of any of such Party's representations, warranties, covenants or agreements, or for any other matter, to the extent that the other such Party had knowledge of such breach, untruth or other matter at or prior to the Closing, nor shall the other Party be entitled to rescission with respect to any such matter.

8.4 Defense of Claims.

(a) If any Indemnitee receives notice of the assertion or commencement of any Third Party Claim made or brought by any Person who is not a Party to this Agreement or any Affiliate of a Party to this Agreement with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than ten (10)

calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided that the counsel for the Indemnifying Party who shall conduct the defense of such Third Party Claim shall be reasonably satisfactory to the Indemnitee. The Indemnitee shall cooperate in good faith in such defense at such Indemnitee's own expense. If an Indemnifying Party elects not to assume or to participate in the defense of any Third Party Claim, the Indemnitee may compromise or settle such Third Party Claim over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the loss for which the Indemnified Party may seek indemnification from the Indemnifying Party pursuant to this Agreement.

(b) (i) If, within ten (10) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in Section 8.4(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnifying Party shall fail to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense and the Indemnifying Party shall be liable for all reasonable expenses thereof.

(ii) Without the prior written consent of the Indemnitee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten (10) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnitee may contest or defend such Third Party Claim at its own expense. In such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by Indemnitee up to the date of said notice.

(c) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event such notice shall not be given later than ten (10) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of thirty (30) calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such

thirty (30) calendar day period, the Indemnifying Party shall be deemed to have accepted such claim. If the Indemnifying Party rejects such claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement.

(d) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage or pursuant to any claim, recovery, settlement or payment by, from or against any other entity, the amount of such reduction (less any out-of-pocket costs incurred in connection therewith and the cost of any adjusted premium charges to the extent directly relating to the claim for such Indemnifiable Loss ("Recovery Costs"), together with interest thereon from the date of payment thereof at the publicly announced prime rate then in effect of Citibank, shall promptly be repaid by the Indemnitee to the Indemnifying Party.

(e) A failure to give timely notice as provided in this Section 8.4 shall not affect the rights or obligations of any Party hereunder except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

ARTICLE IX

TERMINATION

9.1 Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

(b) This Agreement may be terminated by Seller or Buyer if (i) any federal or state court of competent jurisdiction shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the Closing, and such order, judgment or decree shall have become final and nonappealable; (ii) any statute, rule, nonappealable order or regulation shall have been enacted or issued by any Governmental Authority which prohibits the consummation of the Closing; or (iii) the Closing shall have not occurred on or before the day which is fifteen (15) months from the date of this Agreement, subject to such extensions (not to exceed six months) as may be required by Seller to repair or replace lost or damaged Assets in accordance with Section 6.13(c) (the "Termination Date"); provided that the right to terminate this Agreement under this Section 9.1(b)(iii), and any other Section, shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in the event giving rise to the applicable termination right.

(c) Except as otherwise provided in this Agreement, this Agreement may be terminated by Buyer if any of the Buyer Required Regulatory Approvals, the receipt of which is a condition to the obligation of Buyer to consummate the Closing as set forth in Section 7.1(c), shall have been denied (and a petition for rehearing or refiling of an application initially denied without prejudice shall also have been denied) or, if such Required Regulatory Approval is obtained, contains terms or conditions that would have a Regulatory Material Adverse Effect for

Buyer (after Buyer's petition for rehearing objecting to such terms and conditions has been denied) or an Asset Material Adverse Effect, in either case that is not cured or otherwise addressed in a manner reasonably acceptable to Buyer by the Closing Date.

(d) Except as otherwise provided in this Agreement, this Agreement may be terminated by Seller if any of the Seller Required Regulatory Approvals, the receipt of which is a condition to the obligation of Seller to consummate the Closing as set forth in Section 7.2(c), shall have been denied (and a petition for rehearing or refiling of an application initially denied without prejudice shall also have been denied) or, if such Required Regulatory Approval is obtained, contains terms or conditions that would have a Regulatory Material Adverse Effect for Seller (after Seller's petition for rehearing objecting to such terms and conditions has been denied), in either case that is not cured or otherwise addressed in a manner reasonably acceptable to Seller by the Closing Date.

(e) This Agreement may be terminated by Buyer if there has been a violation or breach by Seller of any covenant, representation or warranty contained in this Agreement provided that such violation or breach would have an Asset Material Adverse Effect or a Buyer Material Adverse Effect that is not cured or otherwise addressed by Seller in a manner reasonably acceptable to Buyer by the Closing Date and such violation or breach has not been waived by Buyer.

(f) This Agreement may be terminated by Seller, if there has been a violation or breach by Buyer of any covenant, representation or warranty contained in this Agreement provided that such violation or breach would have a Seller Material Adverse Effect, (including, without limitation, Buyer's failure to pay the Purchase Price on the Closing Date) and such violation or breach is not cured or otherwise addressed by Buyer in a manner reasonably acceptable to Seller by the Closing Date, and such violation or breach has not been waived by Seller.

9.2 Procedure and Effect of Termination. In the event of termination of this Agreement by either or both Seller and Buyer pursuant to this Article IX, written notice thereof shall forthwith be given by the terminating Party to the other Party, whereupon the liabilities of the Parties hereunder will terminate, except as otherwise expressly provided in this Agreement (including Section 9.3), and thereafter none of the Parties shall have any recourse against any other Party by reason of this Agreement. If prior to Closing either Party resorts to legal proceedings to enforce this Agreement, the prevailing Party in such proceedings shall be entitled to recover all costs incurred by such Party, including reasonable attorney's fees, in addition to any other relief to which such Party may be entitled; provided, however, and notwithstanding anything to the contrary in this Agreement, in no event shall either Party be entitled to receive any punitive, indirect or consequential damages. If a Party terminates this Agreement pursuant to this Article IX, the Arizona Electric Purchase Agreement shall be automatically terminated, without any further liability to the parties thereto (including payment of liquidated damages or termination fees pursuant to Section 9.3 of the Arizona Electric Purchase Agreement, and both Parties agree that if the Arizona Electric Purchase Agreement is terminated pursuant to Article IX of the Arizona Electric Purchase Agreement, this Agreement shall be automatically terminated, without any further liability to the parties thereto.

9.3 Liquidated Damages; Termination Fees.

(a) Seller shall pay to Buyer \$10,000,000 if (i) Buyer terminates this Agreement pursuant to Section 9.1(e) or (ii) Buyer terminates this Agreement pursuant to Section 9.1(c) due to a Regulatory Material Adverse Effect on Buyer which is due in whole or in substantial part to concern by the ACC about the condition of the Assets and which is reasonably expected to have an aggregate economic impact on Buyer, taking into consideration all relevant circumstances, in excess of \$25,000,000.

(b) Buyer shall pay to Seller \$25,000,000 if (i) Seller terminates this Agreement pursuant to Section 9.1(f), (ii) Seller terminates this Agreement pursuant to Section 9.1(d) because the requisite Required Regulatory Approval from the ACC or the FERC has not been obtained due in whole or in substantial part to concerns about Buyer's financial qualifications or capabilities, or (iii) Buyer terminates this Agreement pursuant to Section 9.1(c), because the requisite Required Regulatory Approval from the ACC or the FERC has not been obtained, due in whole or in substantial part to concerns about Buyer's financial qualifications or capabilities, or has been obtained and contains financial terms and conditions that are unacceptable to Buyer.

(c) Buyer may terminate this Agreement upon payment of a \$25,000,000 termination fee upon any of the following events:

(i) There shall have occurred an Asset Material Adverse Effect having or reasonably expected to have a financial or economic impact, taking into account all relevant considerations, in excess of \$25,000,000;

(ii) Regulatory Exceptions (after Buyer's petition for rehearing objecting to such Regulatory Exceptions has been denied) shall have been imposed against Buyer having a financial or economic impact on Buyer, taking into account all relevant considerations in excess of \$25,000,000; or

(iii) There shall have occurred a casualty loss to the Assets having an aggregate financial or economic impact, taking into account all relevant considerations, in excess of \$25,000,000.

(d) Seller may terminate this agreement upon payment of a \$10,000,000 termination fee if there shall have occurred a casualty loss to the Assets having or reasonably expected to have an aggregate financial or economic impact, taking into account all relevant considerations, in excess of \$25,000,000.

(e) In view of the difficulty of determining the amount of damages which may result to the non-terminating Party from a termination pursuant to any of Sections 9.3(a) through 9.3(d) or pursuant to any of the Sections of this Agreement referenced in Section 9.3(a) through 9.3(d), and the failure of the terminating Party to consummate the transactions contemplated by this Agreement, Buyer and Seller have mutually agreed that each of the payments set forth in Section 9.3(a) through 9.3(d) shall be made to the non-terminating Party as liquidated damages, and not as a penalty, and this Agreement shall thereafter become null and void except for those provisions which by their terms survive termination of this Agreement. In the event of any such

termination, the Parties have agreed that each of the payments set forth in Section 9.3(a) through Section 9.3(d) shall be the non-terminating Party's sole and exclusive remedy. ACCORDINGLY, THE PARTIES HEREBY ACKNOWLEDGE THAT (1) THE EXTENT OF DAMAGES TO THE NON-TERMINATING PARTY CAUSED BY THE FAILURE OF THIS TRANSACTION TO BE CONSUMMATED WOULD BE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN, (2) THE AMOUNT OF THE LIQUIDATED DAMAGES PROVIDED FOR IN EACH OF SECTIONS 9.3(a) THROUGH 9.3(d) ARE FAIR AND REASONABLE ESTIMATES OF SUCH DAMAGES UNDER THE CIRCUMSTANCES AND (3) RECEIPT OF SUCH LIQUIDATED DAMAGES BY THE NON-TERMINATING PARTY DOES NOT CONSTITUTE A PENALTY. THE PARTIES HEREBY FOREVER WAIVE AND AGREE TO FOREGO TO THE FULLEST EXTENT UNDER APPLICABLE LAW ANY AND ALL RIGHTS THEY HAVE OR IN THE FUTURE MAY HAVE TO BRING ANY ACTION OR ARBITRAL PROCEEDING DISPUTING OR OTHERWISE OBJECTING TO ANY OR ALL OF THE FOREGOING PROVISIONS OF THIS SECTION 9.3.

(f) All payments under this Section 9.3 shall be from payor to payee by wire transfer of immediately available funds to a bank account in the United States of America designated in writing by payee not later than three (3) business days following payor's receipt of such account designation from payee.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by written agreement of the Parties.

10.2 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but any such waiver of such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith.

10.3 [Intentionally Omitted]

10.4 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile transmission with completed transmission acknowledgment, or mailed by overnight delivery via a nationally recognized courier or registered or certified first class mail (return receipt requested), postage prepaid, to the recipient Party at its address (or at such other address or facsimile number for a Party as shall be specified by like notice; provided; however, that notices of a change of address shall be effective only upon receipt thereof):

(a) If to Seller, to:

Citizens Communications Company
1460 Poydras Street, Suite 1800
New Orleans, LA 70112
Attention: Kenneth L. Cohen
Telephone: (504) 299-4501
Telecopier: (504) 544-5822

with a copy to:

Citizens Communications Company
High Ridge Park
Stamford, CT 06905
Attention: L. Russell Mitten
Telephone: (203) 614-5047
Telecopier: (203) 614-4651

and:

Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
Attention: Jeffry L. Hardin
Telephone: (202) 939-7914
Telecopier: (202) 387-3467

(b) if to Buyer, to:

Tucson Electric Power Company
One South Church Avenue, Suite 100
Tucson, Arizona 85701
Attention: Vincent Nitido, Jr.
Telephone: (520) 884-3670
Telecopier: (520) 884-3612

with a copy to:

Thelen Reid & Priest LLP
40 West 57th Street
New York, NY 10019
Attention: J. Anthony Terrell
Telephone: (212) 603-2108
Attention: John T. Hood
Telephone: (212) 603-2140
Telecopier: (212) 603-2001

10.5 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party hereto, including by operation of law, without the prior written consent of each other Party, nor is this Agreement intended to confer upon any other Person except the Parties hereto any rights, interests, obligations or remedies hereunder; provided, however, in the event of any such assignment by a Party by operation of law without the consent of the other Party, this Agreement and all the provisions hereof shall be binding upon the Person receiving such assignment by operation of law. Notwithstanding the foregoing, Buyer may (i) assign any or all of its rights and obligations hereunder to a UniSource Designee, or (ii) make a security assignment to any lender providing financing in respect of the Buyer's acquisition of the Assets. Upon receipt of notice by Seller from Buyer of any such assignment to a UniSource Designee, such assignee will be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Buyer" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the Parties hereto or such assignee; provided, however, that no such assignment shall relieve or discharge UniSource from any of its obligations hereunder.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of Arizona (without giving effect to conflict of law principles) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies (except to such matters of real estate law that must be governed by the law of the State of Arizona). THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE STATE AND FEDERAL COURTS IN AND FOR PHOENIX, ARIZONA, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE, AND THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS AND IRREVOCABLY WAIVE THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF ANY SUCH ACTION OR PROCEEDING. SERVICE OF PROCESS MAY BE MADE IN ANY MANNER RECOGNIZED BY SUCH COURTS. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

10.7 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 instrument.

10.8 Interpretation. The articles, section and schedule headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

10.9 Schedules and Exhibits. Except as otherwise provided in this Agreement, all Exhibits and Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any matter or item disclosed on any Schedule shall not be deemed to give rise to circumstances which result in an Asset Material Adverse Effect or a Material

Adverse Effect solely by reason of it being so disclosed. Any matter or item disclosed pursuant to any Schedule shall be deemed to be disclosed for all purposes under this Agreement reasonably related thereto and any matter disclosed in one Schedule will be deemed disclosed with respect to another Schedule if such disclosure is made in such a way as to make its relevance with respect to such other Schedule readily apparent.

10.10 Entire Agreement. This Agreement, the Ancillary Agreements and the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein, embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. This Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties other than the Confidentiality Agreement with respect to such transactions.

10.11 U.S. Dollars. Unless otherwise stated, all dollar amounts set forth herein are United States (U.S.) dollars.

10.12 Bulk Sales Laws. Buyer acknowledges that, notwithstanding anything in this Agreement to the contrary, Seller will not comply with the provision of the bulk sales laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales laws of all applicable jurisdictions to the extent permitted by law.

10.13 Construction of Agreement. The terms and provisions of this Agreement represent the results of negotiations between Buyer and Seller, each of which has been represented by counsel of its own choosing, and neither of which has acted under duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and Buyer and Seller hereby waive the application in connection with the interpretation and construction of this Agreement of any rule of law to the effect that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party whose attorney prepared the executed draft or any earlier draft of this Agreement. It is understood and agreed that neither the specification of any dollar amount in the representations and warranties contained in this Agreement nor the inclusion of any specific item in the Schedules or Exhibits is intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and none of the Parties shall use the fact of the setting of such amounts or the fact of any inclusion of any such item in the Schedules or Exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter is or is not material for purposes hereof.

10.14 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good

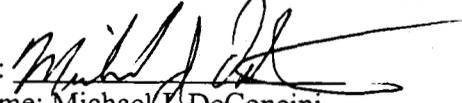
faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

10.15 Third Party Beneficiary. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependant thereof) in respect of continued employment or resumed employment, and no provision of this Agreement shall create any rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement.

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

UNISOURCE ENERGY CORPORATION

CITIZENS COMMUNICATIONS COMPANY

By: 
Name: Michael J. DeConcini
Title: Senior Vice President

By: _____
Name:
Title:

IN WITNESS WHEREOF, Buyer and Seller have caused this Agreement to be signed by their respective duly authorized officers as of the date first above written.

UNISOURCE ENERGY CORPORATION

CITIZENS COMMUNICATIONS COMPANY

By: _____
Name:
Title:

By: Kenneth L. Cohen
Name: Kenneth L. Cohen
Title: President and C.O.O.

F

Because of the voluminous nature of the 2001 Annual Report and the 10K, a copy of the documents is attached only to the original of the Joint Application. Upon request, Joint Applicants will provide a copy to Commission Staff and intervenors.