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Docket#(s): G-03703A-06-0694

G-20471A-06-0694

Exhibit #: A¹, A², A³, A⁴, S¹

Arizona Corporation Commission

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EXHIBIT A-1

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

IN THE MATTER OF THE JOINT APPLICATION
OF BLACK MOUNTAIN GAS COMPANY, AND
SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
APPROVAL OF THE TRANSFER OF THE BLACK
MOUNTAIN PAGE DIVISION AND RELATED
ASSETS TO SEMSTREAM ARIZONA PROPANE,
L.L.C.

Black Mountain Gas Company
SemStream Arizona Propane, L.L.C.

DOCKET NO. _____

JOINT APPLICATION

In accordance with A.R.S. § 40-285, Black Mountain Gas Company ("BMG"), a wholly-owned subsidiary of Southwest Gas Corporation ("SWG"), and SemStream Arizona Propane, L.L.C. ("SemStream Arizona"), a wholly-owned subsidiary of SemStream, L.P., a Delaware limited partnership ("SemStream") (collectively "Applicants") apply jointly to the Arizona Corporation Commission ("Commission") for an Order approving the sale and transfer of the non-excluded regulated assets and property utilized in the Black Mountain Page Division (a regulated propane gas distribution system in and near the City of Page, Arizona, as more fully described below and as described in the September 26, 2006 *Purchase and Sale Agreement by and between Black Mountain Gas Company as "Seller" and SemStream, L.P. as "Buyer,"* which is attached as Appendix 1 to this Application), including the applicable Certificate of Convenience and Necessity ("CC&N") for BMG regulated propane operations, to SemStream Arizona. In support of their Joint Application, the Applicants state as follows.

I. Background of BMG and SWG Ownership of Black Mountain Page Division

1. Prior to June 6, 2002, the Black Mountain Page Division propane system was owned and operated by BMG, pursuant to a Commission-issued CC&N authorizing BMG's

EXHIBIT

A-1
admitted

1 operation of the propane utility in and around Page, Arizona, as well as BMG's natural gas service
2 within portions of Arizona.

3 2. In June 2002, SWG filed an application designated as Docket Nos. G-
4 01551A-02-0425 and G-01970-02-0425, requesting that the Commission approve the acquisition
5 of the common stock of BMG and the transfer of assets and the CC&N of BMG to SWG, and the
6 dissolution of BMG within 12 months.

7 3. In Decision No. 66101 dated July 25, 2003 (the "Decision") the
8 Commission issued its Opinion and Order finding SWG's acquisition of BMG's natural gas and
9 propane assets and CC&N to be in the public interest and approving the transfer of assets and the
10 CC&N to SWG, as conditioned in the Opinion and Order.

11 4. At the time of filing of the present Application, SWG, through BMG,
12 continues to own and operate the Black Mountain Page Division, which consists of the following
13 regulated propane distribution systems¹:

14 City of Page System

15 The underground propane distribution system located within the City of Page
16 consists of approximately 49 miles of distribution pipeline, including both
17 cathodically-protected steel and polyethylene pipe. The system also has
18 approximately 2,000 customer service lines that serve BMG's approximately 1,400
customers in the City of Page.

19 Greenhaven System

20 The propane distribution system located within the Greenhaven development near
21 the City of Page consists of one 18,000-gallon above-ground storage tank and
22 approximately 12 miles of distribution pipeline, including both cathodically-
23 protected steel and polyethylene pipe. The system also has approximately 160
24 customer service lines that serve BMG's approximately 130 customers in this area.

25
26 ¹ In addition to acquisition of the non-excluded regulated assets utilized in the Black Mountain Page Division,
nonregulated assets of BMG are also being conveyed as part of the September 26, 2006 *Purchase and Sale
Agreement by and between Black Mountain Gas Company as "Seller" and SemStream, L.P. as "Buyer."*

1 5. At the time of SWG's acquisition of BMG, the parties contemplated that
2 the Black Mountain Page Division would be sold to a suitable buyer, BMG's assets and the
3 CC&N for the regulated propane operations would be conveyed with Commission approval, and
4 BMG would be dissolved, as reflected in Decision No. 66101. The Decision further provided that
5 the BMG natural gas operations would be fully integrated into SWG's own natural gas system;
6 that BMG's CC&N would be transferred to SWG; and that BMG would remain intact for the sole
7 purpose of providing propane service in the Black Mountain Page Division. At the time of the
8 transfer approved in Decision No. 66101, BMG provided both natural gas and propane service
9 under its CC&N. The natural gas portion of the BMG CC&N was transferred to SWG and
10 subsumed into SWG's CC&N and certificated natural gas service territory. The propane portion
11 of the BMG CC&N for the areas served by the Black Mountain Page Division remained with
12 BMG for the provision of propane service, as a result of Decision No. 66101, until SWG could
13 sell the Black Mountain Page Division propane operations. The time frame for dissolution was
14 initially proposed to be twelve months, but the Commission recognized in its Decision that
15 SWG's "ability to sell the Page Division will affect whether it is able to dissolve BMG in twelve
16 months as anticipated." Decision, Findings of Fact Nos. 10, 17 and 24.c., pages 20, 21 and 22.

17 6. The Commission further ordered that, if SWG is unable to sell the Black
18 Mountain Page Division within the contemplated twelve month period, SWG should file "a report
19 amending Southwest Gas Corporation's filing in this case clarifying that Black Mountain Gas
20 Company as a corporate entity would remain intact for the sole purpose of providing propane
21 service as Black Mountain Gas Company's Page Division currently provides its propane
22 operations." Decision, page 26.

23 7. On June 24, 2004, SWG filed a "Clarifying Report" in the proceedings
24 docketed as G-01551A-02-0425 and G-01970-02-0425 informing the Commission that BMG
25 "will remain intact beyond July 1, 2004, for the sole purpose of providing propane service in the
26

1 Page Division." See Clarifying Report of Southwest Gas Corporation, dated June 24, 2004, at
2 page 1.

3 8. SWG further informed the Commission that "[a]lthough Southwest's
4 intention has been to sell the Black Mountain Page Division and to dissolve Black Mountain by
5 July 1, 2004, Southwest's efforts to do so have not resulted in the consummation of a transaction.
6 It continues to be Southwest's intention to sell the Black Mountain Page Division, and Southwest
7 is actively marketing the propane facilities." Id.

8 II. Sale to SemStream Arizona

9 9. On September 20, 2006, BMG entered into an agreement with SemStream
10 for the purchase and sale of the Black Mountain Page Division.

11 10. Under the September 20, 2006 *Purchase and Sale Agreement by and*
12 *between Black Mountain Gas Company as "Seller" and SemStream, L.P. as "Buyer"* (the
13 "Agreement"), the assets to be sold include all non-excluded property and assets utilized in
14 connection with the operation of the Black Mountain Page Division, including the pipeline
15 system, real property, lease interests, structures, fixtures, facilities, and appurtenances, easements,
16 rights-of-way, property use agreements, line rights and real property licenses, tools, parts, tanks,
17 machinery, equipment, computer hardware, inventory, and other items and contracts, as set forth
18 in the Agreement and schedules thereto. A redacted copy of the Agreement is attached hereto as
19 Appendix 1 to the Application. Complete (unredacted) copies of the Agreement are being
20 provided to the Utilities Division Staff and the Residential Utility Consumer Office.

21 11. SemStream assigned its rights to acquire the regulated assets utilized in the
22 Black Mountain Page Division under the Agreement to SemStream Arizona on October 26, 2006.

23 12. SemStream Arizona is a Delaware limited liability company that will
24 operate the Page Division and own the regulated assets to be purchased under the Agreement.
25 The current addresses for SemStream Arizona are 6120 South Yale, Suite 700, Tulsa, Oklahoma,
26 74136, and 1209 Orange Street, Wilmington, Delaware, 19801.

1 13. SemStream Arizona is registered with the Commission and is a limited
2 liability company in good standing. SemStream Arizona maintains a domestic address and local
3 statutory agent for service of process c/o CT Corporation System: 2394 E. Camelback Road,
4 Phoenix, Arizona 85016. Once SemStream Arizona takes over the operation of the Page Division
5 system from BMG, its local presence will include the offices where Black Mountain Page
6 Division propane system employees work today.

7 14. SemStream Arizona is a wholly owned subsidiary of SemStream.
8 SemStream is one of the largest private propane terminal operators in the industry and is engaged
9 nationally in natural gas liquids supply, marketing, propane terminal operations and risk
10 management services. SemStream is in turn a subsidiary of SemGroup, L.P. of Tulsa, Oklahoma.

11 15. SemStream owns and operates 10 private propane terminals with a
12 combined throughput in excess of 300 million gallons per year and more than 10 million gallons
13 of physical storage. In 2005, SemStream moved 6.8 million gallons per day of natural gas liquids
14 (NGLs) via truck, pipeline, and rail. Propane accounted for 42 percent of this volume. Further,
15 SemStream has access to more than 42 million gallons of storage capacity leased at multiple
16 locations in the United States and Canada. It also operates a fleet of 450 leased and owned
17 railcars. SemStream Arizona will have access to these assets and the management and staff that
18 support them.

19 III. Sale of the Black Mountain Page Division to SemStream Arizona is in the Public Interest

20 16. The sale of the Black Mountain Page Division assets and transfer of the
21 CC&N for the regulated propane operations to SemStream Arizona is in the public interest.
22 SWG, as the parent corporation of BMG, is principally engaged in the purchase, transport, and
23 distribution of natural gas as opposed to the acquisition and distribution of propane; whereas
24 SemStream Arizona and its affiliates are primarily propane and natural gas liquids companies.
25 SemStream focuses on the purchase and distribution of large quantities of propane and other
26 natural gas liquids, with access to significant storage and distribution resources, which can

1 increase supply diversity and alternatives. As a result, the parties anticipate that customers of the
2 Black Mountain Page Division will receive the benefit of SemStream's focus and expertise in the
3 propane industry.

4 17. Further, because SemStream has significant experience and resources in
5 the propane marketplace, it has the resources to ensure an adequate storage capability as well as
6 access to a large number of rail cars that can provide transportation flexibility to respond to
7 changing regional propane market conditions.

8 18. As a wholly owned subsidiary of SemStream, SemStream Arizona, along
9 with the customers of the Black Mountain Page Division, will benefit from the advantages
10 SemStream has in the propane and other natural gas liquids markets as one of the largest
11 operators in the industry.

12 19. SemStream Arizona intends to assume the existing BMG operations. The
13 BMG employees who currently operate the Black Mountain Page Division will be retained by
14 SemStream Arizona and will continue to conduct the propane operations. Further, SemStream
15 Arizona will comply with all applicable regulations of the Commission and will assume the
16 existing tariffs applicable to the Black Mountain Page Division after the acquisition, including the
17 existing low-income rate assistance and weatherization programs.

18 20. Acquisition of the Black Mountain Page Division and assets utilized in the
19 provision of propane operations and transfer of the CC&N related to the regulated propane
20 operations to SemStream Arizona will allow SWG to dissolve BMG as contemplated by the
21 Commission in its July 25, 2003 Decision.

22 21. Closing of the Agreement for the purchase and sale of the Black Mountain
23 Page Division is contingent on the Commission's consent to the transaction and the transfer of the
24 regulated assets and CC&N for propane operations to SemStream Arizona.
25
26

22. On September 28, 2006, representatives of SWG and SemStream met with members of the ACC Utilities Division to introduce the parties and discuss the proposed sale and transfer of the Black Mountain Page Division.

23. The Applicants request that this Application be considered and approved by the Commission as quickly as possible. The Applicants will work with Commission Staff to promptly provide additional information as needed to expedite consideration and approval.

WHEREFORE, having fully stated their Application, Applicants respectfully and jointly request that the Commission issue its Order:

A. Approving the sale of all non-excluded regulated property and assets utilized in the Black Mountain Page Division to SemStream Arizona, as described in the Agreement;

B. Approving the transfer to SemStream Arizona of the Certificate of Convenience and Necessity for the regulated propane operations of the Black Mountain Page Division;

C. Recognizing the retention by SWG of the natural gas portion of the BMG CC&N transferred to SWG pursuant to Decision No. 66101 and its incorporation into SWG's own CC&N for SWG's Arizona natural gas operations; and

D. Granting such other and further approvals as may be appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 30th day of October, 2006.

BLACK MOUNTAIN GAS COMPANY

By 

Karen S. Haller

Keith Brown

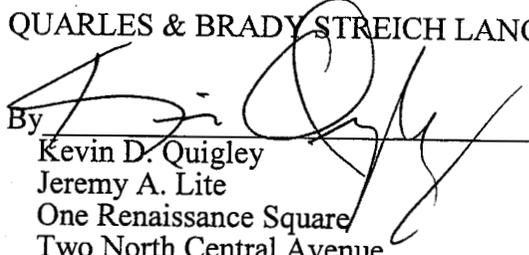
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1 **Original and fifteen copies** filed this
2 20th day of October, 2006, with:

3 Docket Control
4 Arizona Corporation Commission
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7 **Copies** of the foregoing delivered
8 this 20th day of October, 2006, to:

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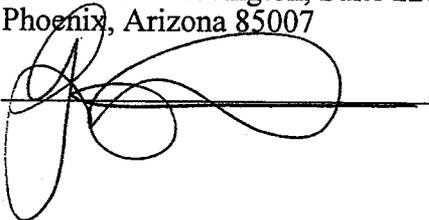
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PURCHASE AND SALE AGREEMENT

by and between

BLACK MOUNTAIN GAS COMPANY

as "Seller"

- and -

SEMSTREAM, L.P.

as "Buyer"

Dated: September 20, 2006

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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "*Agreement*") is made and entered into on this 20th day of September, 2006 by and between Black Mountain Gas Company, a Minnesota corporation ("*Seller*"), and SemStream, L.P., a Delaware limited partnership ("*Buyer*"). Seller and Buyer are sometimes herein referred to individually as a "*Party*" and collectively as the "*Parties*."

RECITALS

WHEREAS, Seller owns and operates a regulated propane gas distribution system in the City of Page, Arizona (the "*Regulated Business*") and Seller owns and operates certain "non-regulated" propane assets, in and near the City of Page, Arizona which are used in conjunction with, and independent of, the Regulated Business, but which assets are not part of the Regulated Business (the "*Non-Regulated Business*", and together with the Regulated Business, the "*Business*").

WHEREAS, Seller has notified Buyer and Buyer hereby acknowledges that Seller's Business has only been operating under existing management and ownership since October 23, 2003, as such Seller is selling the Business and the Purchased Assets "AS IS, WHERE IS" as further described in Section 5.18, subject to the representations and warranties made by Seller in Article 5.

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain regulated and non-regulated assets and liabilities of Seller which are associated with the Business on the terms and conditions set forth in this Agreement.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

1.01 *Definitions.* Each capitalized term used herein shall have the meaning given such term as set forth below.

"*ACC*" shall mean the Arizona Corporation Commission.

"*Affiliate*" shall mean, with respect to a specified Person, any other Person controlling, controlled by or under common control with that first Person. As used in this definition, the term "control" includes each of the following: (a) with respect to any Person having voting shares or the equivalent and elected directors, managers or Persons performing similar functions, the

ownership of or power to vote, directly or indirectly, shares or the equivalent representing 50% or more of the power to vote in the election of directors, managers or Persons performing similar functions, (b) ownership of 50% or more of the equity or equivalent interest in any Person and (c) the ability to direct the business and affairs of any Person by acting as a general partner, manager or otherwise.

"Agreement" shall have the meaning given such term in the introductory paragraph hereof.

"Business" shall have the meaning given such term in the Recital hereof.

"Business Day" shall mean any day except a Saturday, Sunday or any other day on which commercial banks in Tulsa, Oklahoma are required or authorized by a Legal Requirement to be closed.

"Business Personnel" shall have the meaning given such term in Section 5.15(a).

"Buyer" shall have the meaning given such term in the introductory paragraph hereof.

"Buyer Indemnified Parties" shall have the meaning given such term in Section 12.01(a).

"Buyer Organizational Documents" shall have the meaning given such term in Section 6.01.

"Cap" shall have the meaning given such term in Section 12.01.

"Certificates of Public Convenience and Tariffs" shall have the meaning given such term in Section 2.01(b)(x).

"Claim Notice" shall have the meaning given such term in Section 12.01(c).

"Claims" shall mean any and all claims, actions, suits, injunctions, citations, directives, summonses, investigations or other demands or proceedings, whether in the nature of judicial or prejudicial proceedings, arbitration or mediation proceedings, made or brought against a Person for recovery of Damages.

"Closing" shall have the meaning given such term in Section 4.01.

"Closing Date" shall have the meaning given such term in Section 4.01(b).

"Contracts" shall have the meaning given such term in Section 2.01(b)(vii).

"Creditors' Rights" shall have the meaning given such term in Section 5.02.

"Damages" shall mean any and all damages, losses, costs, liabilities, expenses (including expenses of investigation, defense and settlement of any Claim, including reasonable fees and disbursements of counsel, court costs, and consultants' and experts' fees), debts, accounts, liens, judgments, penalties and fines and consequential and incidental damages, lost profits, punitive

and special damages of a Party or a third party whose Claims are subject to indemnification under this Agreement, provided, however, that (a) the term "**Damages**" shall not include any consequential or indirect damages suffered by a Buyer Indemnified Party or a Seller Indemnified Party or punitive or special damages payable by a Buyer Indemnified Party or a Seller Indemnified Party, and (b) the amount of any Damage shall be offset by (i) the net tax effect of such Damages actually realized by the party receiving an indemnification payment hereunder on account of such Damages and provided that such net amount shall be increased to give effect to the income Taxes attributable to the receipt of any such indemnification payment, or (ii) any amounts received by the party receiving an indemnification payment hereunder from any third-party (including insurers or sureties) with respect to such Damages.

"**Deductible**" shall have the meaning given such term in Section 12.01(a).

"**Easements**" shall have the meaning given such term in Section 2.01(b)(v).

"**Effective Time**" shall have the meaning given such term in Section 4.01(b).

"**Encumbrance**" shall mean any lien, mortgage, deed of trust, pledge, charge, security interest, conditional sales arrangement, defect in title, option, preferential purchase right, right of first refusal, restriction on transferability or other encumbrance or title imperfection, including any restriction on the exercise of any attributes of ownership.

"**Environmental Condition**" shall mean any environmental condition or circumstance, including a Release of or the presence of Hazardous Materials, at or relating to any of the Purchased Assets.

"**Environmental Legal Requirements**" shall mean any and all Legal Requirements relating to the protection or conservation of human health or safety (whether of Seller's employees, Buyer's and its Affiliates' employees, members of the public, the public at large, or otherwise, but only as to such matters as arise out of exposure to Hazardous Materials or a Release of Hazardous Materials) or the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Clean Air Act, as amended, the Federal Water Pollution Control Act, as amended, The Oil Pollution Act of 1990, as amended, the Safe Drinking Water Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, as amended, and other environmental conservation or protection laws.

"**Environmental Liability**" shall mean any Liability, known or unknown, resulting from, relating to or arising out of an Environmental Condition.

"**Environmental Permits**" shall mean any and all permits, licenses, approvals, exemptions or authorizations, and any amendments, modifications, terminations, renewals or updates thereof required under Environmental Legal Requirements in connection with the ownership or operation of the Purchased Assets.

"Estimated Working Capital" shall mean \$700,000.00 as calculated by the formula presented on Schedule 1.01.

"Excluded Assets" shall have the meaning given such term in Section 2.01(c).

"Expenses" shall have the meaning given such term in Section 3.01(e).

"Fee Property" shall have the meaning given such term in Section 2.01(b)(ii).

"Governmental Entity" shall mean any court, governmental department, commission, council, board, bureau, agency or other judicial, administrative, regulatory, legislative or other instrumentality of the United States of America, any foreign country, tribal, state, county, municipality or local governmental body or political subdivision.

"Guaranties" shall have the meaning set forth in Section 5.14(b).

"Hazardous Materials" shall mean (a) any hazardous materials, hazardous wastes, solid wastes, hazardous substances or toxic substances, as those or similar terms are defined under any Environmental Legal Requirements; (b) any medical, infectious or special wastes, as those or similar terms are defined under any Environmental Legal Requirements; (c) any asbestos, whether friable or non-friable; (d) any polychlorinated biphenyls ("**PCBs**") or PCB-containing materials; (e) radon gas and (f) any petroleum, petroleum hydrocarbons, petroleum products, crude oil and any components, fractions or derivatives thereof, any oil or gas exploration or production waste and any natural gas, synthetic gas and any mixtures thereof.

"Improvements" shall have the meaning given such term in Section 2.01(b)(iv).

"Indemnified Party" shall have the meaning given such term in Section 12.01(c).

"Indemnifying Party" shall have the meaning given such term in Section 12.01(c).

"Inventory" shall have the meaning given such term in Section 2.01(b)(viii).

"Knowledge" wherever used in the phrase "to the Knowledge of" Seller or to Seller's "Knowledge" or wherever it is said that a Party has or does not have "Knowledge," shall mean, the actual awareness, knowledge, information or belief of the senior manager(s) or other key employees of Seller, who have as a principal job responsibility as of the date of this Agreement and as of the Closing Date oversight for the subject matter of the relevant statement, representation or warranty.

"Leases" shall have the meaning given such term in Section 2.01(b)(iii).

"Legal Requirements" shall mean (a) any and all laws, statutes, codes, rules, regulations, ordinances, judgments, orders, writs, decrees, requirements or determinations of any Governmental Entity, and (b) to the extent not covered by clause (a) immediately above, any and all requirements of permits, licenses, certificates, authorizations, concessions, franchises or other approvals granted by any Governmental Entity, it being understood that the term

“Environmental Legal Requirements” is included within the scope of the term ***“Legal Requirements.”***

“Letters of Credit” shall have the meaning set forth in Section 5.14(a).

“Letter of Intent” shall mean that certain letter agreement by and between Seller and Buyer dated as of August 4, 2006.

“Liability” shall mean any direct or indirect liability, indebtedness, obligation, expense, claim, loss, damage, deficiency, guaranty or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, due or to become due, liquidated or unliquidated.

“Material Adverse Change” or ***“Material Adverse Effect”*** shall have the meaning set forth in Section 5.04(a).

“Material Contracts” shall mean any of the following type of contracts, oral or written:

- (i) the Leases;
- (ii) any contract, agreement or arrangement relating to the transportation, storage, distribution, or sale of propane that Seller is a party to;
- (iii) any contract, agreement or arrangement, that requires aggregate expenditures by or payments to Seller of more than \$25,000;
- (iv) any contract, agreement or arrangement that Seller is a party to that may be cancelled only with thirty (30) days or greater notice;
- (v) any contract, agreement or arrangement affecting the Purchased Assets, between Seller and any of its Affiliates;
- (vi) any contract, agreement or arrangement containing provisions that restrict the right of any Seller to engage in any type of business or compete in any geographic area and which provisions would be binding on Buyer following the Effective Time;
- (vii) any partnership or joint venture agreement covering the Purchased Assets;
- (viii) any security agreement, mortgage or other agreement creating an Encumbrance (other than Permitted Encumbrances) on the Purchased Assets;
- (ix) any contract, agreement or arrangement affecting the Purchased Assets, the performance of which by Seller is guaranteed by an Affiliate of Seller or any other third party or secured by a letter of credit, surety or other arrangements; or
- (x) any contract, agreement or arrangement affecting the Purchased Assets pursuant to which any Seller has guaranteed the performance by another Person of any obligation of such Person.

“Non-Regulated Business” shall have the meaning given such term in the Recital hereof.

"Notice Period" shall have the meaning given such term in Section 12.01(c).

"Offeree" shall have the meaning given such term in Section 9.02.

"Party(ies)" shall have the meaning given such term in the introductory paragraph hereof.

"Permits" shall have the meaning given such term in Section 2.01(b)(ix).

"Permitted Encumbrances" shall mean the following matters:

(i) all Legal Requirements that govern or apply to the ownership, operation or transfer of the Business or the Purchased Assets; and

(ii) any lien for Taxes that are not yet due and payable.

"Person" shall mean an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other legal entity or organization, including any Governmental Entity.

"Pipeline System" shall have the meaning given such term in Section 2.01(b)(i).

"Property Taxes" shall have the meaning given such term in Section 12.04.

"Purchased Assets" shall have the meaning given such term in Section 2.01(b).

"Real Property" shall have the meaning given such term in Section 2.01(b)(v).

"Receipts" shall have the meaning given such term in Section 3.01(e).

"Records" shall have the meaning given to such term in Section 2.01(b)(xi).

"Regulated Business" shall have the meaning given such term in the Recital hereof.

"Release" shall mean any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal or leaching into the indoor or outdoor environment.

"Required Consents" shall mean those waivers, approvals, consents, filings and notices, which are required to be made by Seller or given to Seller to transfer Seller's rights in the Purchased Assets, excluding Governmental Entities.

"Retained Worker Liabilities" shall have the meaning given such term in Section 9.06.

"Seller" shall have the meaning given such term in the introductory paragraph hereof.

"Seller Indemnified Parties" shall have the meaning given such term in Section 12.01(b).

"Seller Organizational Documents" shall have the meaning given such term in Section 5.01.

"Settlement Statement" shall have the meaning given such term in Section 3.01(c).

"Tangible Personal Property" shall have the meaning given such term in Section 2.01(b)(vi).

"Tangible Real Assets" shall have the meaning given such term in Section 5.06(d).

"Taxes" shall mean any and all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, leases, service, service use, withholding, payroll, property, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any and all penalties, additions to tax or additional amounts with respect thereto; provided, however, that the term "Taxes" shall not include Transfer Taxes.

"Tax Return" shall mean any return, declaration, report, claim for refund, information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Transfer Date" shall have the meaning given such term in Section 9.02.

"Transfer Taxes" shall mean any sales, use, transfer, excise, stock, stamp, document, filing, recording, authorization and similar taxes, fees and charges levied by a Governmental Entity.

"Transferred Worker" shall have the meaning given such term in Section 9.02.

"Unassumed Liabilities" shall have the meaning given such term in Section 2.01(d).

"Working Capital" shall mean the book value of current assets less current liabilities recorded on the Closing Date, calculated by the formula presented on Schedule 1.01.

ARTICLE 2

PURCHASE AND SALE

2.01 **Purchase and Sale.** (a) On the Closing Date, but effective as of the Effective Time and subject to the terms and conditions set forth in this Agreement, Seller shall sell, assign, transfer and convey or cause to be sold, assigned, transferred or conveyed, to Buyer and Buyer shall assume, purchase and pay for the Purchased Assets and Working Capital of the Business.

(b) As used herein, the term **"Purchased Assets"** shall mean any and all of the property and assets (other than the Excluded Assets), whether real, personal, tangible, intangible or mixed, that are owned by Seller in connection with the ownership and operation of the Business, as more particularly described below:

(i) Any and all right, title and interest of Seller in the propane pipeline system used in connection with the Business, which is more fully described on Schedule 2.01(b)(i) (the "*Pipeline System*");

(ii) All property held in fee by Seller including, but not limited to, the fee property depicted and described on Schedule 2.01(b)(ii) (collectively, the "*Fee Property*");

(iii) All leases of real property held by Seller including, but not limited to, the leases depicted and described on Schedule 2.01(b)(iii) (collectively, the "*Leases*");

(iv) All structures, fixtures, facilities and appurtenances to the Fee Property, Leases and Easements, including, without limitation, any buildings, unloading facilities, maintenance facilities, pipelines, valves, fittings, distribution racks, storage tanks and pumping and compression facilities, including any of the foregoing that make up the Pipeline System, (collectively, the "*Improvements*"), which shall be treated as real property for all purposes of this Agreement;

(v) All easements, rights-of-way, property use agreements, line rights and real property licenses (including right-of-way permits from Governmental Entities) including, but not limited to, those listed as "easements," "permits" or "rights-of-way" on Schedule 2.01(b)(v) (the "*Easements*," which, together with the Fee Property, Leases and Improvements are sometimes referred to collectively herein as the "*Real Property*");

(vi) To the extent same do not constitute Improvements, any and all tools, spare parts, racks, rectifiers, storage tanks, machinery, rolling stock, equipment, pumps, engines, pipes, lab equipment, computer hardware, miscellaneous parts and all other tangible personal property wherever located, to specifically include, but not be limited to, the Mid-Com system (the "*Tangible Personal Property*");

(vii) All contracts, agreements, purchase contracts, distribution agreements, transportation agreements, gathering agreements, storage agreements, and other legally binding rights and obligations of Seller used in the ownership and operation of the Business (the "*Contracts*");

(viii) All hydrocarbon inventory of Seller in such quantities as set out on Schedule 2.01(b)(viii) hereto (the "*Inventory*");

(ix) All permits, licenses, sublicenses, certificates, authorizations, registrations, orders, waivers, variances and approvals granted by any Governmental Entity to Seller or its respective predecessors in interest for the ownership and operation of the Purchased Assets to the extent that they are transferable or assignable (the "*Permits*");

(x) Any and all tariffs that are effective as of the date of Closing and certificates of public convenience granted to Seller in connection with its operation of the Business, to the extent they are transferable or assignable, including, but not limited to, such certificates of public convenience that are more fully described on Schedule 2.01(b)(x) (the "*Certificates of Public Convenience and Tariffs*"); and

(xi) Such records and documents as Buyer and Seller may determine pursuant to Section 2.03 to be a part of the Purchased Assets (the "*Records*").

(c) As used herein, the term "*Excluded Assets*" shall mean all property and assets, whether real, personal, tangible, intangible or mixed that are not owned or held for use by Seller in connection with the ownership and operation of the Business, or which cannot be legally transferred, including, but not limited to, the following:

(i) policies of insurance, fidelity, surety or similar bonds and the coverage afforded thereby, causes of action and third-party indemnities; and

(ii) cash and cash equivalents;

(iii) causes of action relating to the ownership or operation of the Business prior to the Closing Date;

(iv) all issued and outstanding stock of Seller;

(v) any refund of taxes for periods ended on or prior to the Effective Time;

(vi) All software, tradenames, and other intangible personal property identified on Schedule 2.01(c)(vi);

(vii) ML370 Server with Netware;

(viii) Canon Imager Runner 3587 copy machine;

(ix) Canon IKON H12249 facsimile machine;

(x) One Digi PortServer (8 port);

(d) Except as specifically provided for herein, Buyer is not assuming under this Agreement or any other document contemplated hereby and Seller expressly acknowledges that Seller is retaining any and all Liabilities with respect to the Business and the Purchased Assets for all periods prior to the Effective Time and that Seller is retaining all other Liabilities of Seller with respect to the other properties and operations of Seller and each of its Affiliates, whether existing prior to, on or after the Effective Time (the "*Unassumed Liabilities*"), including, without limitation, any of the following: (i) any liability for federal, state or local income or other Tax payable with respect to the Business or the Purchased Assets, for any period prior to the Effective Time or any liability for federal, state or local income or other Tax payable with respect to the other properties or operations of Seller for a period prior to or after the Effective Time; (ii) any Liabilities under or in connection with any Excluded Asset; (iii) any Liability of Seller, including, but not limited to, Environmental Liabilities or Environmental Conditions, with respect to the Purchased Assets or Business for any period prior to the Effective Time; (iv) any of Seller's Liabilities for money borrowed, and (v) the Retained Worker Liabilities.

(e) At the Effective Time, Buyer will assume: (i) all other Liabilities, with the exception of the Unassumed Liabilities identified in Section 2.01(d) including, without limitation, the current liabilities utilized in the calculation of Working Capital; (ii) the future payment and performance of the obligations accruing and arising after the Closing Date under the assumed contracts; (iii) the obligation of operating the Regulated Business in accordance with all Legal Requirements of the ACC, all Certificates of Public Convenience and all applicable Tariffs made in connection with the Regulated Business and in effect on the Closing Date; (iv) all obligations accruing and arising after the Closing Date from Buyer's employment of Seller's employees, as described in Section 9.06 below; and (v) customer service deposits as set forth in Schedule 1.01.

2.02 *Further Assurances.* (a) If at any time after the Closing Date, any further action is reasonably necessary to carry out the purposes of this Agreement, Buyer and Seller shall execute such additional conveyances or other instruments and take such other action, as may be reasonably necessary to more effectively transfer, convey and assign to Buyer title to, and to put Buyer in actual possession and operating control of all of the Purchased Assets.

(b) The Parties shall supplement or revise the Schedules referred to in Section 2.01 as necessary prior to and after Closing in order to insure that the Purchased Assets are fully and properly described.

2.03 *Agreement Regarding Records.* Prior to Closing, Buyer and Seller shall use all reasonable efforts to identify those records and documents that shall constitute a part of the Records. On the Closing Date, Seller shall provide to Buyer originals of the Records or copies if originals are not available. Seller shall deliver any Records relating to the Business and the Purchased Assets that are discovered by Seller to be in their possession after the date on which the Records are delivered to Buyer pursuant to the provisions hereof and promptly notify Buyer as to such discovery.

ARTICLE 3

PURCHASE PRICE; EARNEST MONEY, SETTLEMENT STATEMENT

3.01 *Purchase Price*

(a) The purchase price for the Purchased Assets, excluding Inventory which shall be accounted for in Working Capital, shall be \$1,800,000.00 (the "*Purchase Price*") plus Working Capital. The Purchase Price shall be paid by Buyer to Seller at Closing in accordance with Section 3.01(b) hereof. The Working Capital amount shall be paid by Buyer to Seller in accordance with Sections 3.01(b) and 3.01(c) hereof.

(b) Payment of the Purchase Price and payment of the Estimated Working Capital amount shall be made by wire transfer of immediately available funds on the Closing Date to a bank account(s) which shall be designated in writing by Seller to Buyer two (2) Business Days prior to Closing.

(c) As soon as commercially practicable, but not later than sixty (60) days after the Closing Date, Seller shall prepare and deliver to Buyer a statement (the "*Settlement*")

Statement") setting forth the amount of the Receipts and Expenses to be accounted for in accordance with Section 3.01(e) hereof and the difference between the Working Capital amount and the Estimated Working Capital amount. On or before the 30th day after receipt of the Settlement Statement or the first Business Day thereafter if such 30th day is not a Business Day, Seller shall pay any and all amounts owed by Seller to Buyer under the Settlement Statement or Buyer shall pay any and all amounts owed by Buyer to Seller under the Settlement Statement less any amounts that Buyer disputes as owing to Seller under the Settlement Statement. Seller shall make all work papers and back-up materials used in preparing the Settlement Statement, as well as the books, records and financial staff of Seller available to Buyer and its accountant in connection with its review of the Settlement Statement.

(d) Should Buyer dispute any amount showing payable by Buyer or payable by Seller under the Settlement Statement, Buyer shall deliver to Seller a written report containing any changes that Buyer proposes to be made to the Settlement Statement on or before the date that Buyer or Seller, as applicable, owes a payment under the Settlement Statement. Buyer and Seller shall undertake to agree upon a final resolution of the amounts owing under the Settlement Statement not later than ninety (90) days after the Closing Date should Buyer dispute any amount thereunder. If Buyer timely proposes changes to Seller's Settlement Statement and thereafter Seller and Buyer are unable to agree upon the final resolution Settlement Statement within one hundred fifty (150) days from the Closing Date, a mutually acceptable, nationally recognized, accounting firm not performing services for either Buyer or Seller shall be designated to act as an arbitrator and to decide all points of disagreement with respect to the Settlement Statement, such decision to be binding upon both Parties. The costs and expenses of the arbitrator, shall be shared equally by Seller and Buyer. If the Settlement Statement, after resolution of all disputes, reflects an amount due to Seller, Buyer shall within five (5) Business Days pay to Seller in immediately available funds such amount. If the Settlement Statement, after resolution of all disputes, reflects an amount due to Buyer, Seller shall within five (5) Business Days pay to Buyer, in immediately available funds such amount.

(e) All monies, proceeds, receipts, credits and income attributable to the Business and the Purchased Assets (as determined in accordance with generally accepted accounting principles) ("*Receipts*") (i) for all periods of time from and after the Effective Time, shall be the sole property and entitlement of Buyer, and (ii) for all periods of time prior to the Effective Time, shall be the sole property and entitlement of Seller. All invoices, direct costs, expenses, disbursements and payables attributable to the Business and the Purchased Assets (as determined in accordance with generally accepted accounting principles) ("*Expenses*"), (iii) for all periods from and after the Effective Time, shall be the sole obligation of Buyer and (iv) for all periods prior to the Effective Time, shall be the sole obligation of Seller.

ARTICLE 4

CLOSING

4.01 *Time and Place of Closing.* Subject to the terms and conditions stated in this Agreement, and except as otherwise agreed to by the Parties, the consummation of the transactions contemplated hereby (the "*Closing*") shall take place as follows:

(a) **Place.** The Closing shall take place at Southwest Gas Corporation, 5241 Spring Mountain Road, Las Vegas, Nevada 89150.

(b) **Date and Time.** Unless extended to a later date by mutual agreement of the Parties, the Closing shall take place at 10:00 a.m. local time on the first day of the month immediately following the month in which Buyer receives the following: (a) Certificates of Public Convenience and Tariffs and (b) the ACC's consent to the transaction contemplated hereby (the "**Closing Date**"). The Closing shall be effective as of 12:01 a.m. on the Closing Date, or at such other time as the Parties may mutually designate in writing (the "**Effective Time**").

4.02 **Closing Obligations.** At the Closing, the following events shall occur:

(a) Seller shall execute, acknowledge and deliver to Buyer one or more Deeds substantially in the form of Exhibit A attached hereto conveying to Buyer the Real Property (other than the Leases), the Contract Assignment and Assumption Agreement substantially in the form attached hereto as Exhibit B assigning to Buyer the Contracts and one or more Assignments and Bills of Sale substantially in the form of Exhibit C attached hereto conveying to Buyer the other Purchased Assets all effective as of the Effective Time. Such Deeds, Contract Assignment and Assumption Agreement and Assignments and Bills of Sale shall be in form acceptable to Seller and Buyer and shall convey the Purchased Assets free and clear of any Encumbrance except for Permitted Encumbrances;

(b) Seller and Buyer shall exchange the certificates described in Sections 11.01(b) and 11.02(b);

(c) Buyer shall pay the Purchase Price and the Estimated Working Capital to Seller as described in Section 3.01;

(d) Seller shall deliver written evidence to Buyer that all Required Consents have been obtained;

(e) Seller shall deliver to Buyer and Buyer shall deliver to Seller, incumbency certificates with respect to any Persons executing documents at Closing on the Parties' behalf;

(f) Seller shall deliver to Buyer certificates of the proper officers, certifying that a reasonable inquiry has been made with respect to any representation contained herein that is qualified by "Knowledge";

(g) Seller shall have delivered to Buyer a Resolution of the Board of Directors authorizing the execution and delivery of this Agreement by Seller and the performance of its obligations hereunder, certified by the secretary of Seller, and Buyer shall have delivered to Seller a Resolution of the General Partner of Buyer authorizing the execution and delivery of this Agreement by Buyer and the performance of its obligations hereunder, certified by the secretary of the General Partner of Buyer;

(h) Seller shall have delivered to Buyer the appropriate Foreign Investment in Real Property Tax Act affidavit(s) substantially in the form of Exhibit D attached hereto;

(i) Seller shall deliver to Buyer and Buyer shall deliver to Seller a certificate of good standing or existence from its state of formation, as the case may be, dated not more than ten (10) days prior to the Closing Date;

(j) Seller shall deliver to Buyer Uniform Commercial Code search certificates and lien search certificates reflecting that the Purchased Assets are free and clear of all Encumbrances except Permitted Encumbrances or, to the extent such Encumbrances are reflected in such search certificates and/or other security documents encumbering the Purchased Assets, appropriate releases of such Encumbrances in recordable form;

(k) To the extent obtained by Seller, Seller shall deliver to Buyer orders from the ACC approving the sale of the Purchased Assets;

(l) To the extent obtained by Seller, Seller shall deliver to Buyer assignments of any Arizona Public Utility Tariffs;

(m) Seller shall deliver certificates of title free and clear of all Encumbrances for the rolling stock, motor vehicles and trailers being purchased by Buyer hereunder; and

(n) Each Party shall execute such other instruments and take such other actions as may be reasonably requested by the other Party in order to give full effect to the obligations of such Party under this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to the survival provisions set forth in Section 11.05, the qualification provisions set forth in Section 13.18, and the limitations of Liability set forth in Article 12 and Article 13, Seller hereby represents and warrants to Buyer that:

5.01 *Organization and Qualification.* Seller is a corporation duly organized, validly existing and is, and will be at the time of Closing, in good standing under the laws of the State of Minnesota, and Seller has the requisite power to own, lease and operate its properties and to carry on its business as now being conducted. Seller is duly qualified to do business and is, or will be at the time of Closing, in good standing as a foreign corporation in each of the states in which the Purchased Assets are located. Seller has furnished to Buyer a true, correct and complete copy of the Articles of Incorporation and Bylaws of Seller (collectively, the "*Seller Organizational Documents*"). The Seller Organizational Documents are in full force and effect as of the date hereof and, together with all other documents and agreements referenced therein, constitute all of the current organizational and governing documents for Seller. There are no proceedings or actions pending or contemplated to dissolve Seller.

5.02 *Authority, Approval and Enforceability.* Seller has all requisite power and authority to execute and deliver this Agreement and to perform any covenant and obligation required of it hereunder. The execution and delivery of this Agreement by Seller and the performance of the transactions contemplated hereunder by Seller have been, or will be at the

time of Closing, duly and validly approved by all requisite action necessary on behalf of Seller. This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency or other similar laws relating to or affecting the enforcement of creditors' rights generally and to general principles of equity ("*Creditors' Rights*"). At the Closing all documents required hereunder to be executed and delivered by Seller will have been duly authorized, executed and delivered and will constitute legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, subject to Creditors' Rights.

5.03 *No Violation or Consent.* To Seller's Knowledge, the execution and delivery by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby will not:

(a) conflict with or result in a default under the Seller Organizational Documents or entitle any Person to exercise any preferential purchase right, option to purchase or similar right with respect to any of the Purchased Assets;

(b) conflict with or result in a material default under any Contract to which Seller is a party or to which any of the Purchased Assets are bound or subject;

(c) conflict with or result in a material default under any material Legal Requirement or any material judgment, decree, order, governmental permit, certificate or license that Seller is a party to or is subject to or by which any of the Purchased Assets is bound or subject to (other than Environmental Legal Requirements that are covered by Section 5.10);

(d) result in the creation of any Encumbrance upon any of the Purchased Assets;

(e) conflict with or result in a material default under any Easement or Lease; or

(f) require Seller to obtain or make any material waiver, consent, notice, action, approval, clearance or authorization of, or registration, declaration or filing with, any Governmental Entity, except for the ACC and except for the consent of the City of Page, Arizona to transfer the Page franchise agreement from Seller to Buyer.

5.04 *Absence of Certain Changes and Operation of the Business.* From the date of this Agreement and through Closing:

(a) there will not be any Material Adverse Change in the makeup, condition or composition of the Business or the Purchased Assets, whether taken as a whole or as to any material part thereof. For purposes of this Agreement, the term "Material Adverse Change or Material Adverse Effect" shall be defined as a material adverse effect on the business, results of operations, assets or financial condition of the Business or the Purchased Assets, taken as a whole (after taking into account insurance recoveries available to Seller and applied pursuant to Section 7.01 (e) hereof), but shall exclude any change, effect or circumstance resulting or arising from: (i) any change in economic conditions, generally or in any of the industries or markets in which the Business operates; (ii) to the extent not causing direct physical damage

or destruction to the Business or the Purchased Assets, national or international political or social conditions; (iii) changes in Legal Requirements, accounting requirements or principles, or other binding directives issued by any Governmental Entity; (iv) the entry into or announcement of this Agreement, actions contemplated by this Agreement, or the consummation of the transactions contemplated hereby; (v) any omission to act or action taken with the consent of Buyer (including those omissions to act or actions taken which are permitted by this Agreement); or (vi) changes in cash flow, net income and/or gross margin resulting from seasonal fluctuations similar to those which have historically occurred in the Business;

(b) there will not be any damage, destruction or loss, whether covered by insurance or not, to the Purchased Assets that will have, or is reasonably likely to have, a Material Adverse Effect on the ownership or operation of the Business or the Purchased Assets;

(c) there will not be any waiver by Seller of any rights that, singularly or in the aggregate, will have, or is reasonably likely to have, a Material Adverse Effect on the ownership or operation of the Business or the Purchased Assets; and

(d) except to the extent the failure to do so will not have, and is not reasonably likely to have, a Material Adverse Effect on the ownership or operation of the Purchased Assets, Seller will operate the Purchased Assets in the ordinary course of business consistent with past practices.

5.05 *Material Contracts.*

(a) Schedule 5.05(a) lists all Material Contracts. Seller has furnished or made available to Buyer complete and correct copies of all written Material Contracts (excluding applications from customers for propane service and Arizona Office Technologies agreement) together with all amendments thereto.

(b) Seller is not in default under any Material Contracts listed on Schedule 5.05(a). To Seller's Knowledge, Seller has not received any written communication from or given any written communication to any other party indicating that Seller or such other party, as the case may be, is in default under any Material Contract.

(c) Seller has notified Buyer and Buyer hereby acknowledges that with respect to the Wahweap propane distribution system (as further described in Schedule 2.01(b)(i)) Seller has no Knowledge of any property rights, licenses, permits, or right-of-ways associated with this distribution system. Further, Seller has no Knowledge of any long term written contracts associated with the continued supply of propane by Seller to Lake Powell Resorts & Marinas. Notwithstanding anything contained in this Agreement to the contrary, Seller's only representation with respect to the Wahweap distribution system is that Seller has a verbal or an "implied in fact" agreement with Lake Powell Resorts & Marinas to supply propane to the Wahweap propane distribution system on a month-to-month basis. As such, Buyer hereby acknowledges, accepts and agrees that it will assume any and all risks associated with the potential for an immediate cancellation or termination of propane supply to Lake Powell

Resorts & Marinas, and any and all risks associated with whether there will be a continued operation of the Wahweap propane distribution system.

5.06 *Real Property.*

(a) To Seller's Knowledge, Schedule 2.01(b)(ii), Schedule 2.01(b)(iii) and Schedule 2.01(b)(v) collectively contain a complete and accurate description of all Fee Property, Leases and Easements, and the property listed on Schedule 2.01(b)(ii), Schedule 2.01(b)(iii) and Schedule 2.01(b)(v) include all of Seller's interest in all real property owned and used in the operation of the Business.

(b) To Seller's Knowledge, all Improvements to the Real Property are located within the boundary lines of the Real Property that constitutes part of the Purchased Assets and no structure, fixture, facility or improvement on any parcel adjacent to the Real Property encroaches onto any portion of the Real Property.

(c) To Seller's Knowledge, Seller has good and valid rights of physical and legal ingress and egress to and from the Real Property from and to the public systems for all usual street, road and utility purposes and no conditions exist that would reasonably be expected to result in the termination of such ingress and egress rights.

(d) Seller has not received notice or otherwise been formally advised that any Real Property, or any present use or operation of the Real Property, does not comply with all applicable Legal Requirements (other than Environmental Legal Requirements which are covered by Section 5.10) (including, those relating to zoning, land use, safety, health, employment and employment practices and access by the handicapped); and all valid covenants, conditions, restrictions, easements and similar matters affecting the Real Property. To Seller's Knowledge, and except for Environmental Permits that are covered by Section 5.10, Seller has obtained all approvals of governmental authorities (including certificates of use and occupancy, licenses and other Permits) required in connection with the construction, repair, maintenance, ownership, use and occupation of the Real Property.

(e) Except for environmental matters that are covered by Section 5.10, to Seller's Knowledge there are no pending or threatened, condemnation, fire, health, safety, building, zoning or other land use regulatory proceedings, lawsuits or administrative actions relating to any portion of the Real Property that would reasonably be expected to adversely affect the current use or occupancy thereof, and Seller has no Knowledge of any pending or threatened special assessment proceedings affecting any portion of the Real Property.

(f) To Seller's Knowledge, there are no approvals, consents, waivers, filings or notices required to be made or given by Seller or given to Seller to transfer Seller's rights to any Real Property under any Permit, Easement, Lease or Contract, which will not, prior to the Closing Date, have been so made or given.

(g) Except for Real Property Taxes with respect to the tax period in which the Effective Time occurs which shall be subject to the provisions of Section 12.04, all Property Taxes (and applicable penalties and interest, if any) that are due and payable with respect to

the Seller's interest in the Real Property have been paid or will be paid at or prior to the Closing Date.

(h) To Seller's Knowledge, all contracts pursuant to which Seller has obtained the right to use any Real Property are valid and effective in accordance with their respective terms and there is no material default under any such contract.

(i) To Seller's Knowledge, Seller has not granted a third party possession of any Real Property or any portion thereof, and Seller is not a party to any lease, sublease, license, concession or other contract granting to any third party the right to use or occupy any portion of the Real Property.

(j) To Seller's Knowledge, there are no outstanding options, rights of first offer, rights of first refusal or other similar contracts or rights to purchase the Real Property or any portion thereof or interest therein granted by Seller.

(k) Seller has not received written notice of a default under any Easement or Lease and Seller has no Knowledge of any pending modification or cancellation of same.

(l) Except as otherwise disclosed by Seller in writing prior to Closing, no work, repairs, installation, construction or other services outside the ordinary course of business have been performed on any of the Real Property or materials supplied to the Real Property in the four (4) months prior to the Effective Time that could give rise to a materialmen's, mechanic's, repairmen's, contractor's, tax or other similar lien or if such work, repairs, installation, construction or other services have been performed on any of the Real Property or materials supplied to the Real Property, all providers of such work or materials have been paid in full.

5.07 Tangible Personal Property. To Seller's Knowledge, all of the Tangible Personal Property conforms with any Legal Requirements material to its use and operation (except for Environmental Legal Requirements that are covered by Section 5.10). Except for ordinary wear and tear, there are no developments affecting any of such Tangible Personal Property that would have a Material Adverse Effect on the Business.

5.08 Compliance with Law. Seller has not received any complaint or notice from any Governmental Entity alleging that it has violated any law, ordinance, regulation or order applicable to the ownership, use or operation of the Business and the Purchased Assets, and Seller has no Knowledge that such complaint or notice is threatened. To Seller's Knowledge, Seller is in compliance in all material respects with all Legal Requirements (other than Environmental Legal Requirements that are covered by Section 5.10 and Legal Requirements that relate to tax matters that are covered by Section 5.11) applicable to the ownership, use or operation of the Business and the Purchased Assets.

5.09 Litigation. (a) To Seller's Knowledge there are no civil, criminal, administrative, arbitration or other proceedings or governmental investigations pending or threatened against Seller or any of its Affiliates relating to the ownership or operation of the Business or any of the Purchased Assets that could materially adversely affect Buyer's ownership or operation of the Business or the Purchased Assets or that seek to restrain or

enjoin the transactions contemplated by this Agreement or which would reasonably be expected to have a Material Adverse Effect on the financial condition or results of operations, of the Business, and (b) Seller has not received notice of any demand, suit, action, investigation or proceeding (whether civil, criminal, administrative or otherwise) from any Person regarding compliance with Legal Requirements in connection with the ownership and operation of the Business and the Purchased Assets.

5.10 *Environmental Matters.* (a) Seller has not received written notification that the Purchased Assets and all operations thereon are not currently in compliance in all material respects with all applicable Environmental Legal Requirements and there are no known conditions existing on or resulting from activities on or use of the Purchased Assets (including any use, transportation, disposal or arrangement for transportation or disposal of Hazardous Materials by Seller) that give rise to any required on-site or offsite remedial action under any applicable Environmental Legal Requirements.

(b) To Seller's Knowledge, all Environmental Permits required to be obtained or filed in connection with the operation or use of the Purchased Assets have been obtained or filed, are valid and effective or applications for same have been filed.

(c) Seller has delivered, or will deliver prior to Closing, to Buyer all audits, assessments, spill reports, risk assessments and other material reports and studies relating to Environmental Conditions associated with the Purchased Assets that are in the possession of Seller or its Affiliates.

(d) Seller has not received notice of any demand, suit, action, investigation or proceeding (whether civil, criminal or administrative) from any Governmental Entity regarding a violation of Environmental Legal Requirements in connection with the ownership or operation of the Business or the Purchased Assets.

(e) To Seller's Knowledge, the execution and delivery by Seller of this Agreement or any other documents required hereunder to be executed and delivered by Seller at the Closing, or otherwise, and the consummation by Seller of the transactions contemplated hereby or thereby will not conflict with or result in a default under any Environmental Legal Requirement.

5.11 *Taxes.* Seller has filed or will file in a timely manner all Tax reports, returns and forms affecting the Purchased Assets or the Business as may have been required under applicable Legal Requirements, including, all required federal, state and local income, sales, use, property and franchise Tax Returns and have paid or will pay all required Taxes or similar assessments affecting the Purchased Assets and the Business including any interest, penalties or additions attributable thereto shown as due on all such filings for the periods ending on or before the Closing Date. There are no Encumbrances (other than Permitted Encumbrances), proceedings, lawsuits, investigations known to Seller, inquiries known to Seller or other actions which are pending, threatened or that seek the assessment or collection of additional Taxes of any kind from Seller specifically relating to any portion of the Purchased Assets, and to the best of Seller's Knowledge, no other examination by the Internal Revenue Service or any other taxing authority affecting the Business or any portion of the Purchased Assets is

now pending. Taxes which Seller was required by Legal Requirements to withhold or collect in respect to the Purchased Assets or the Business have been withheld or collected and have been paid over to the proper Governmental Entities or are properly held by Seller for such payment when due and payable.

5.12 **Brokers.** Neither Seller nor any of its Affiliates have incurred any Liability for brokers' or finders' fees in respect to the matters provided for in this Agreement that will be the responsibility of Buyer.

5.13 **Title to Personal Property, Sufficiency of Assets.** Seller has, or will have at Closing, good and indefeasible title to all of the Tangible Personal Property and such Tangible Personal Property is not or will not prior to the Closing Date be subject to any Encumbrances (other than Permitted Encumbrances).

5.14 **Credit Support.**

(a) Schedule 5.14(a) lists all letters of credit posted by Seller, its Affiliates or third parties in connection with the ownership and operation of the Business (the "**Letters of Credit**") specifying the amounts, term and the counterparties thereto.

(b) Schedule 5.14(b) lists all guaranties posted by Seller, its Affiliates or third parties on behalf of Seller in connection with ownership and operation of the Business (the "**Guaranties**") specifying the amounts, term and the counterparties thereto.

(c) Schedule 5.14(c) lists all cash collateral, cash equivalents and surety bonds posted by Seller, its Affiliates or third parties on behalf of Seller in connection with ownership and operation of the Business (the "**Cash Collateral**") specifying the amounts, term and the counterparties thereto.

5.15 **Employees and Employee Benefits.**

(a) Schedule 5.15(a) sets forth a list of the names, titles, hire date and the approximate years of service as of the date of this Agreement of all of Seller's employees performing services with respect to the Business (the "**Business Personnel**").

(b) None of the Business Personnel is covered by any collective bargaining agreement or any other arrangement with any labor union with respect to his or her services in connection with the Business. No labor union or organization is representing any of the Business Personnel in connection with their employment for the Business and there has not been any effort to organize any of the Business Personnel.

5.16 **Regulatory Matters.** To Seller's Knowledge, Seller has all permits, licenses, certificates of authority, orders and approvals of, and has made all material filings and applications with, all Governmental Entities, including, without limitation, the ACC, required in order to permit Seller to carry on the Regulated Business and the Non-Regulated Business as presently conducted. Except as otherwise disclosed on Schedule 5.16, to Seller's Knowledge, it has not been a party to any investigation or proceeding instituted by any such state public utilities commission since October 10, 2003, and Seller has no Knowledge of any

such proceedings prior to that date. To Seller's knowledge, Seller is not in violation of, and has not infringed, any statute, regulation, ordinance, license or been subject to any judgment, ruling, injunction or order of any Governmental Entity which violation would result in a Material Adverse Change on the ability of Seller to consummate the transactions contemplated hereby, or would result in a Material Adverse Change upon the Purchased Assets or the Business of Seller. To Seller's Knowledge, and except for conditions set forth in Section 5.03(f), Seller does not need to provide any notice to, or obtain the authorization of or exemption by, or consent or approval of, any Governmental Entity for the consummation of the transactions contemplated by this Agreement. Seller, or its Affiliates, are the lawful licensee or permittee under all Permits and Certificates of Public Convenience and Tariffs, each such Permit and Certificates of Public Convenience and Tariffs is in full force and effect and, to Seller's Knowledge, Seller is in compliance with all material obligations with respect thereto and none of the Permits and Certificates of Public Convenience and Tariffs have been assigned, transferred, revoked or permitted to lapse. All fees and other payments due and owing in connection with the Permits and Certificates of Public Convenience and Tariffs have been or will be prior to the Closing Date paid in full, and there are no unpaid fees or other payments that would reasonably be expected to cause the lapse or revocation of any of the Permits or Certificates of Public Convenience and Tariffs.

5.17 *Financial Schedules.* All financial schedules provided by Seller to Buyer are prepared internally and as a courtesy to Buyer, only. The content of such financial schedules were derived from financial statements that were prepared in accordance with Generally Accepted Accounting Principles. These schedules fairly present the assets and liabilities available for purchase by Buyer in all material respects, provided that these interim unaudited schedules do not reflect normal year-end type adjustments and are not necessarily indicative of results for a full fiscal year. Buyer acknowledges and agrees that any projections for future performance of the Business provided by Seller were Seller's good faith estimates of the future operations of the Business, but are not to be relied upon by Buyer in connection with the Closing of this transaction, and Seller makes no representations or warranties of any kind as to whether the actual results of future operations of the Business will be consistent with said projections.

5.18 *Disclaimer.* Except for the representations and warranties set forth in this Article 5 above, Buyer hereby acknowledges that Seller's Business has only been operating under existing management and ownership since October 23, 2003, as such the Business and the Purchased Assets are being transferred "AS IS, WHERE IS," and Seller expressly disclaims any and all representations or warranties of any kind or nature not specifically contained in this Article 5, whether express or implied, as to liabilities, operations of the Assets, condition, value or quality of the Purchased Assets, or the prospects (financial or otherwise), risks and other incidents of the Purchased Assets, and except for the representations and warranties set forth in this Article 5, Seller specifically disclaims any representation or warranty of merchantability, usage, suitability or fitness for any particular purpose with respect to the Business and Purchased Assets, or any part thereof, or as to the workmanship thereof, or the absence of any defects therein, whether latent or patent.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF BUYER

Subject to the survival provisions set forth in Section 11.05 and the limitations provided for in Article 12, Buyer represents and warrants to Seller that:

6.01 *Organization and Qualification.* Buyer is a limited partnership duly organized, validly existing and is in good standing under the laws of the State of Delaware and has the requisite power to own, lease and operate its properties and to carry on its business as now being conducted. Buyer is duly qualified to do business and in good standing as a foreign limited partnership in all jurisdictions in which the character of the properties now owned or leased by it or the nature of the business conducted by it requires it to be so licensed or qualified. Buyer has furnished to Seller a true, correct and complete copy of the Certificate of Limited Partnership of Buyer and Buyer's Agreement of Limited Partnership, together with all amendments thereto (collectively, the "*Buyer Organizational Documents*"). The Buyer Organizational Documents are in full force and effect as of the date hereof and, together with all other documents and agreements referenced therein, constitute all of the organizational and governing documents for Buyer. There are no proceedings or actions pending or contemplated to dissolve Buyer.

6.02 *Authority, Approval and Enforceability.* Buyer has all requisite power and authority to execute and deliver this Agreement and to perform its covenants and obligations hereunder. The execution and delivery of this Agreement by Buyer and the performance of the transactions contemplated hereby have been duly and validly approved by all requisite partnership action on behalf of Buyer. This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to Creditors' Rights. At the Closing, all documents required hereunder to be executed and delivered by Buyer will have been duly authorized, executed and delivered by Buyer and will constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, subject to Creditors' Rights.

6.03 *No Violation or Consent.* To Buyer's Knowledge, execution and delivery of this Agreement by Buyer or the consummation of the transactions contemplated hereby or thereby will not:

(a) conflict with or result in a breach, default or violation of the Buyer Organizational Documents;

(b) conflict with or result in a breach, default or violation of, or require a consent under, any material Legal Requirement or any material agreement, document, instrument, judgment, decree, order, governmental permit, certificate or license to which Buyer is a party or to which it is subject; or

(c) require Buyer to obtain or make any material waiver, consent, action, approval, clearance or authorization of, or registration, declaration or filing with, any Governmental

Entity, except for the ACC and except for the consent of the City of Page, Arizona to transfer the Page franchise agreement from Seller to Buyer.

6.04 **Brokers.** Neither Buyer nor any of its Affiliates has incurred any Liability for brokers' or finders' fees in respect of the matters provided for in this Agreement that will be the responsibility of Seller.

6.05 **Litigation.** To Buyer's Knowledge, as of the date of this Agreement, there is no action, suit or proceeding pending against, or to the Knowledge of Buyer threatened against or affecting, Buyer or the General Partner of Buyer or any of their respective properties before any court or arbitrator of any governmental body, agency or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated hereby.

6.06 **Financing.** Buyer currently has and at the Closing will have adequate capital and available funds to fulfill its obligations hereunder on the Closing Date.

6.07 **ACC Regulations.** Buyer acknowledges that the Assets being acquired are primarily associated with a regulated business under the ACC and as such are subject to the Legal Requirements of the ACC. Buyer acknowledges that neither Seller has made any representations whatsoever as to what effect, if any, its prior business practices, its asset valuations, and/or the terms and conditions of this Agreement will have on any rate application Buyer may make with the ACC following the Closing Date.

ARTICLE 7

COVENANTS OF SELLER

7.01 **Operation of Purchased Assets Prior to the Closing Date.** Seller covenants and agrees that, except as expressly provided in this Agreement or as otherwise approved by Buyer in writing, at all times from the date hereof through the Closing Date, it shall comply with the following with respect to the Purchased Assets and the Business:

(a) The Purchased Assets shall in all material respects be kept, operated and maintained in the ordinary course of business in accordance with industry standards and the past operating and maintenance practices of Seller;

(b) Seller shall use commercially reasonable efforts to continue to preserve the present customer and supplier relations and business development programs that have heretofore been developed by Seller in connection with the ownership and operation of the Business;

(c) Seller shall, in all material respects and in a timely manner, make all payments due under and otherwise perform all its other obligations under all Easements, Leases, Material Contracts and Permits in accordance with their respective terms. Notwithstanding the preceding, should Seller cancel, amend, modify, abandon, extend or renew any of the same or permit any of the same to lapse, other than in the ordinary course of business, Seller shall

provide Buyer written notification of such event within three (3) Business Days from the occurrence thereof or prior to the Closing Date, whichever occurs first;

(d) Seller shall not dispose of any interest in any of the Purchased Assets or take any action (including the entry into any contract, agreement or instrument) the taking of which, or omit to take any action the omission of which, would reasonably be expected to (i) cause an Encumbrance to arise with respect to any of the Purchased Assets (other than Permitted Encumbrances) (ii) bind Buyer or the Purchased Assets in a manner that would reasonably be expected to require capital expenditures in excess of Four Thousand Dollars (\$4,000), provided, however, said capital expenditures shall not include any and all customary ordinary operating and maintenance expenses that are incurred in the ordinary course of business in accordance with industry standards and that are similar in nature to the operating and maintenance expenses that the Seller incurred during the thirty-six (36) month period prior to the Closing Date; or (iii) be outside of the normal scope of maintaining and operating the Purchased Assets;

(e) Seller shall carry, maintain and continue in full force through the Closing, all fire, casualty, property, theft, environmental and other insurance policies currently maintained by Seller for the Purchased Assets. In the event the Purchased Assets, or any portion thereof, are damaged by fire, explosion or other unavoidable casualty and Seller receives insurance proceeds on account of such event, Seller, in Seller's sole discretion, agrees to either use such proceeds to purchase or construct replacement assets for the Purchased Assets that were damaged or destroyed (so long as the replacement assets are in as good of order and condition as that in which they were before the fire, explosion, or other unavoidable casualty that resulted in their need to be replaced), or assign the right to such proceeds to Buyer at Closing.

7.02 Fulfillment of Closing Conditions. Prior to the Closing, Seller shall:

(a) on a timely basis, give or cause to be given all such notices and obtain or cause to be obtained all consents, approvals and waivers that are required to be given or obtained by Seller in connection with the consummation of the transactions contemplated hereunder including, without limitation, the Required Consents; and

(b) use its best efforts to complete the transactions contemplated in this Agreement and to fulfill or cause to be fulfilled all conditions to Closing set forth in Sections 11.01 and 11.02 to the extent of its ability to influence same.

7.03 Access to the Business and the Purchased Assets. From and after the date hereof, upon reasonable advance notice and during reasonable business hours, Buyer, at its own risk and expense, shall be given full and complete access to the facilities, properties, books and records of Seller pertaining to the Business and the Purchased Assets; provided, however, that such access may not unreasonably interfere with the ongoing operations of Seller or its Affiliates. Seller shall furnish to Buyer, at Buyer's expense, copies of such books and records pertaining to the Business and Purchased Assets as Buyer shall reasonably request in connection with its investigation of the Purchased Assets. Prior to Closing, Buyer, at its own risk and expense, shall have the right to inspect the Real Property and other Purchased

Assets, to the extent Buyer deems it necessary in performing its environmental or operational review and due diligence of the Business and the Purchased Assets.

7.04 ***Title Commitments and Policies.*** Seller acknowledges that Buyer shall have the right to obtain, at Buyer's own cost and expense, commitments for title insurance and title policies for all the Real Property on or prior to the Closing Date. Seller agrees to cooperate in a commercially reasonable manner with Buyer in connection with Buyer's efforts to obtain such commitments and policies, including, but not limited to, allowing Buyer or its authorized representatives to survey the Real Property, Seller updating all abstracts for the Real Property and providing Buyer with copies of any prior surveys or title commitments that Seller may have for the Real Property.

7.05 ***Cooperation with Respect to Permits.*** Seller shall cooperate in a commercially reasonable manner with Buyer in connection with Buyer's efforts to obtain such Permits that are not assignable to Buyer by their respective terms.

7.06 ***Governmental Approvals.*** Between the date of this Agreement and the Closing Date, Seller (i) will use its reasonable best efforts to obtain as promptly as practicable, all approvals, authorizations and clearances of Governmental Entities required of them to consummate the transactions contemplated hereby, (ii) will provide such other information and communications to Governmental Entities as such authorities may reasonably request; (iii) will assist and cooperate with the Buyer, its representatives and counsel in obtaining, as soon as practicable, all other approvals, authorizations and clearances of Governmental Entities which Buyer reasonably deems necessary or appropriate to consummate the transactions contemplated hereby and in the preparation of any document or other material which may be required by any Governmental Entity as a predicate to or result of the transactions contemplated hereby, and (iv) will submit to the ACC within 30 days of the execution of this Agreement such documents as may be reasonably necessary to comply with all Legal Requirements of the ACC in order to obtain the approvals thereof and to consummate the transactions described herein.

ARTICLE 8

COVENANTS OF BUYER

8.01 ***Fulfillment of Closing Conditions.*** Buyer shall use its best efforts to complete the transactions contemplated in this Agreement and to fulfill or cause to be fulfilled all conditions to Closing set forth in Sections 11.01 and 11.02 to the extent of its ability to influence same.

8.02 ***Governmental Approvals.*** Between the date of this Agreement and the Closing Date, Buyer (i) will use its reasonable best efforts to obtain as promptly as practicable, all approvals, authorizations and clearances of Governmental Entities required of them to consummate the transactions contemplated hereby, (ii) will provide such other information and communications to Governmental Entities as such authorities may reasonably request; (iii) will assist and cooperate with Seller and their representatives and counsel in obtaining, as soon as practicable, all other approvals, authorizations and clearances of Governmental Entities

which Seller reasonably deems necessary or appropriate to consummate the transactions contemplated hereby and in the preparation of any document or other material which may be required by any Governmental Entity as a predicate to or result of the transactions contemplated hereby; and (iv) will submit to the ACC within 30 days of the execution of this Agreement such documents as may be reasonably necessary to comply with all Legal Requirements of the ACC in order to obtain the approvals thereof and to consummate the transactions described herein. All filing fees and other costs associated with the foregoing shall be borne by Buyer.

ARTICLE 9 EMPLOYEE MATTERS

9.01 *Changes to Business Employees.* Seller will promptly disclose in writing to Buyer any information contained in Schedule 5.15(a) hereto which, because of an event occurring after the date hereof, is incomplete or is no longer correct as of all times from the date of this Agreement until the Closing Date.

9.02 *Offers of Employment.* On or prior to Closing, Buyer or one of its Affiliates may, in its sole and absolute discretion, convey offers of employment to any of the Business Personnel or other employees of Seller providing services with respect to the Business whom Buyer or its Affiliates desire to employ as of Closing (each an "*Offeree*," collectively, the "*Offerees*"). Such offers of employment shall be on terms and conditions determined in Buyer's or its Affiliates' sole and absolute discretion. Each Offeree who accepts Buyer's or its Affiliates' offer of employment and commences and/or maintains employment with Buyer or its Affiliates shall hereinafter be referred to as a "*Transferred Worker*," and the date on which each such Transferred Worker commences employment with Buyer or its Affiliates shall hereinafter be referred to as the "*Transfer Date*" with respect to such Transferred Worker. Notwithstanding anything to the contrary contained herein, each Transferred Worker who is not subject to an employment contract with Buyer or its Affiliates, shall be employed by Buyer or its Affiliates on an at will basis and nothing shall prohibit Buyer or its Affiliates from terminating such employment at any time after the Transfer Date of any such Transferred Worker.

9.03 *Benefits.* Buyer or its Affiliates, in each such Party's sole discretion, may permit each Transferred Worker to participate, on the same basis that similarly situated employees of Buyer or its Affiliates participate, in the employee benefit plans, policies, practices, arrangements and programs regularly made available to the employees of Buyer and its Affiliates who hold similar positions.

9.04 *Seller's Benefit Plans.* No assets or Liabilities with respect to any Transferred Worker shall be transferred as a result of this Agreement from any benefit arrangement of Seller to that of Buyer, including, without limitation, any employee benefit arrangements of Seller for health, medical, dental, disability and workers' compensation benefits, any bonus and incentive compensation benefits, any pension, retirement or deferred compensation benefits, and any stock option or other equity based award plans, to any plan maintained or established by Buyer. As of the Closing Date, the Transferred Workers shall cease to participate as active employees, but may continue participation, if eligible, as permitted by

Seller's or its Affiliates' applicable employee benefit plans and arrangements as former employees, in any and all benefit arrangements of Sellers.

9.05 **COBRA.** In no event shall Buyer be responsible for providing group health coverage under the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**") for any "qualifying event" (as defined under COBRA) with respect to any of the Business Personnel who are not Transferred Workers and any qualifying beneficiary of any such Business Personnel. In no event shall Buyer be responsible for providing COBRA coverage for each Transferred Worker and any qualifying beneficiary of any Transferred Worker electing such coverage in connection with such Transferred Worker's termination of employment with any Seller to accept employment with Buyer or otherwise in connection with the Closing. Buyer shall be responsible for providing COBRA coverage for each Transferred Worker and any qualified beneficiary of any Transferred Worker who becomes entitled to such COBRA coverage as a result of a qualifying event that occurs after such Transferred Worker commences employment with Buyer.

9.06 **Retained Employee Liabilities.** Buyer shall not assume, and Seller shall indemnify, defend and hold Buyer harmless with respect to, all Liabilities relating to Seller's employee benefit arrangements, including, without limitation, all Liabilities arising under Seller's employee benefit arrangements for health, medical, dental, disability and workers compensation benefits, accrued and unpaid bonus and incentive compensation for any year (or portion thereof) prior to the Transfer Date, and any unfunded pension, retirement or deferred compensation benefits. Buyer shall not assume any other employment-related Liabilities (i) with respect to each employee and former employee of the Business who does not become a Transferred Worker and (ii) with respect to each Transferred Worker, to the extent that such Liabilities arise, accrue or are incurred before the Transfer Date of such Transferred Worker (the "**Retained Worker Liabilities**").

9.07 **Non-Solicitation of Seller's Employees in the Event of Termination.** In the event that the transaction contemplated by this Agreement is not consummated for any reason, Buyer shall refrain from soliciting and/or employing any of Seller's employees for a period of two years after the date that this Agreement is terminated, provided, however, nothing contained herein shall prohibit Buyer or its Affiliates from employing any of Seller's employees that respond to Buyer's or its Affiliates advertisements for employment directed to the public.

ARTICLE 10

COVENANTS REGARDING CREDIT SUPPORT

10.01 **Substitution of Credit Support.** Seller and Buyer hereby acknowledge that nothing contained herein shall be deemed to cause Buyer or any of its Affiliates to be substituted for Seller or any of their respective Affiliates with respect to any Guaranties, Letters of Credit or Cash Collateral. Should Seller desire to have Buyer or any of its Affiliates substitute or replace any of the Guaranties, the Letters of Credit or Cash Collateral, Seller shall disclose in writing such instruments to Buyer prior to the Closing Date. Such Guaranties,

Letters of Credit or Cash Collateral shall not have Buyer or its Affiliates substituted thereunder unless and until specifically agreed to in writing by Buyer or its Affiliates.

ARTICLE 11

CONDITIONS TO CLOSING AND TERMINATION

11.01 *Conditions to Obligation of Buyer.* The obligation of Buyer to perform its obligations hereunder at the Closing shall be subject to the satisfaction of the conditions set forth below (which conditions may be waived in whole or in part by Buyer in its sole and absolute discretion in writing on or before the Closing Date):

(a) The representations and warranties of Seller hereunder shall be true and correct in all material respects as of the Closing Date (without regard to any materiality qualifier contained therein) and Seller shall have performed in all material respects all covenants and obligations required of Seller by this Agreement to be performed on or before the Closing Date (without regard to any materiality qualifier contained therein);

(b) Seller shall have delivered to Buyer a certificate of a corporate officer or other authorized person, dated as of the Closing Date, certifying on behalf of Seller that the conditions set forth in Section 11.01(a) have been fulfilled;

(c) Seller shall have given or caused to be given all such notices, and obtained or caused to be obtained all consents, approvals and waivers from any third parties, including, but not limited to, the Required Consents;

(d) There shall not be in effect any Legal Requirement that makes it illegal for Buyer to perform its obligations hereunder at Closing or any judgment, order, writ or decree that enjoins Buyer from performing such obligations;

(e) The ACC shall have approved the transfer of the Regulated Business to Buyer, on terms and conditions that are mutually acceptable to both Buyer and Seller, and shall have issued Buyer a Certificate of Public Convenience;

(f) All documents, instruments, certificates or other items required to be delivered by Seller pursuant to Section 4.02 shall have been delivered, including, but not limited to, the Required Consents;

(g) Buyer shall have become qualified to do business in the various states required to operate the Business and shall have obtained licenses to operate the Business as required by all applicable Legal Requirements;

(h) The City of Page shall have approved the transfer of the Franchise Agreement to Buyer, on terms and conditions that are mutually acceptable to both Buyer and Seller; and

(i) The Purchased Assets shall be free and clear of all Encumbrances other than Permitted Encumbrances.

11.02 *Conditions to Obligation of Seller.* The obligation of Seller to perform its obligations hereunder at the Closing shall be subject to the satisfaction of the conditions set forth below (which conditions may be waived in whole or in part by Seller in writing on or before the Closing Date):

(a) The representations and warranties of Buyer hereunder shall be true and correct in all material respects (without regard to any materiality qualifier contained therein) as of the Closing Date and Buyer shall have performed in all material respects all covenants and obligations required of Buyer by this Agreement to be performed on or before the Closing Date (without regard to any materiality qualifier contained therein);

(b) Buyer shall have delivered to Seller a certificate of its general partner or proper officer, dated as of the Closing Date, certifying on behalf of Buyer that the conditions set forth in Section 11.02(a) have been fulfilled;

(c) Seller shall have given or caused to be given all such notices and obtained or caused to be obtained, all consents, approvals and waivers from any third parties not constituting Governmental Entities, including, without limitation, the Required Consents;

(d) There shall not be in effect any Legal Requirement that makes or will make it illegal for Seller to perform its obligations hereunder at Closing or any judgment, order, writ or decree that enjoins Seller from performing such obligations;

(e) The ACC shall have approved of the transfer of the Regulated Business to Buyer, on terms and conditions that are mutually acceptable to both Buyer and Seller, and shall have issued Buyer a Certificate of Public Convenience;

(f) All documents, instruments, certificates or other items required to be delivered by Buyer pursuant to Section 4.02 shall have been delivered; and

(g) The City of Page shall have approved the transfer of the franchise agreement to Buyer, on terms and conditions that are mutually acceptable to both Buyer and Seller.

11.03 *Termination.* Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time without Liability of any of the Parties to the other Party, except as set forth in Section 11.04, for any of the following reasons:

(a) by either Buyer or Seller if the Closing shall not have occurred on or before March 1, 2007, unless the Closing Date is extended by mutual agreement of Buyer and Seller;

(b) by Buyer, if there has been a material breach by Seller of any covenant, representation or warranty hereunder which has prevented the satisfaction of any material condition to the obligations of Buyer at the Closing and such breach has not been cured by Seller within fifteen (15) days after written notice thereof from Buyer;

(c) by Seller, if there has been a material breach by Buyer of any covenant, representation or warranty hereunder which has prevented the satisfaction of any material

condition to the obligations of Seller at the Closing and such breach has not been cured by Buyer within fifteen (15) days after written notice thereof from Seller;

(d) by any Party at any time prior to Closing, upon delivery of five (5) Business Days prior written notice to the other Party, if a final non-appealable order has been issued by a judicial or governmental authority with appropriate jurisdiction prohibiting the consummation of the transactions contemplated by this Agreement;

(e) by mutual agreement of the Parties; or

(f) the ACC fails to approve the transfer of the Purchased Assets pursuant to the terms and conditions of this Agreement or fails to issue Buyer a Certificate of Public Convenience by February 28, 2007.

Provided, however, no Party may exercise any right of termination pursuant to this Agreement if the event giving rise to such termination right resulted from the failure by such Party to fulfill any material undertaking or commitment provided for herein and that is required to be fulfilled by such Party prior to the Closing.

11.04 *Effect of Termination.* If this Agreement is terminated pursuant to Section 11.03 or otherwise pursuant to the terms hereof, this Agreement shall become void and of no further force or effect (except for the provisions of Sections 5.12, 6.04, 12.01, 12.02, 13.01, 13.07, 13.11, 13.12, 13.14 and 13.16, which shall, except to the extent otherwise specifically provided, survive such termination and continue in full force and effect). If this Agreement is terminated pursuant to the provisions hereof, nothing contained herein (other than the succeeding sentence) shall relieve any Party from liability for any willful breach of this Agreement occurring prior to such termination. Notwithstanding anything contained herein to the contrary, no termination fees or costs are payable from Seller to Buyer or from Buyer to Seller if this Agreement is terminated pursuant to the provisions hereof.

11.05 *Survival.* The representations, warranties, covenants and obligations of the Parties under this Agreement shall survive the Closing and may be enforced within the time periods specified herein. The facts giving rise to any and all Damages from the breach of a representation, warranty, covenant or obligation hereunder or to a Claim in connection therewith must have occurred, and the Party seeking a remedy pursuant to Section 12.01 must commence a Claim for such Damages, on or prior to eighteen (18) months from the Closing Date.

In the event that a Claim for indemnification is properly brought under Section 12.01, the applicable survival period under this Section 11.05 with respect to the breach of the representation, warranty, covenant or obligation shall be deemed to toll, with respect to such Claim only, until such Claim is ultimately resolved by a written instrument executed by each of the Parties or finally resolved by a court of competent jurisdiction.

ARTICLE 12

ADDITIONAL AGREEMENTS OF THE PARTIES

12.01 *Indemnification.* (a) Subject to the survival provisions set forth in Section 11.05 and the limitations set forth in this Section, and except to the extent any such Claims or Damages are covered by Buyer's indemnity in favor of the Seller Indemnified Parties (as that term is hereinafter defined) pursuant to Section 12.01(b), Seller shall indemnify, defend, hold harmless and release Buyer, its general and limited partners and Affiliates and its respective directors, officers, employees, legal counsel, financial advisors and agents (collectively, the "*Buyer Indemnified Parties*") from and against any and all Claims and Damages suffered or incurred by the Buyer Indemnified Parties that arise out of, result from or are payable as a result of the following:

(i) the breach of any representation or warranty made by Seller in this Agreement or in any certificate or other document or instrument delivered by or on behalf of Seller to Buyer pursuant to this Agreement (except for Section 5.10 that will be covered by the indemnity obligation set forth in Section 12.01(a)(iii));

(ii) the failure of Seller to perform any covenant or obligation required to be performed by Seller pursuant to this Agreement;

(iii) any Claims made by third parties (including Governmental Entities) against the Buyer Indemnified Parties to the extent such Claims arise out of, result from, relate to or are payable as a result of (A) any Environmental Condition resulting from the ownership, use, condition or operation of the Business or any of the Purchased Assets prior to the Effective Time or (B) the breach of any representation or warranty made by Seller in Section 5.10;

(iv) any Claims made by third parties (including Governmental Entities) against the Buyer Indemnified Parties to the extent such Claims arise out of or are attributable to the ownership, use, condition or operation of the Business or any of the Purchased Assets prior to the Effective Time (except for any Claims relating to environmental matters that are covered by the indemnity obligation set forth in Section 12.01(a)(iii));

(v) any Excluded Asset; and

any Unassumed Liability (except for any Claims relating to environmental matters that are covered by the indemnity obligation set forth in Section 12.01(a)(iii)).

IN EACH CASE WITHOUT REGARD TO THE SOLE, PARTIAL OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY (BUT NOT THE WILLFUL AND WANTON MISCONDUCT) OF THE BUYER INDEMNIFIED PARTIES; provided, however, that the indemnity obligations of Seller under this Section 12.01(a) shall be subject to the following limitations:

Notwithstanding anything to the contrary in this Agreement, Seller shall not be obligated to indemnify the Buyer Indemnified Parties for any Damages pursuant to (A) Section 12.01(a) above to the extent (i) the aggregate amount of such Damages suffered or incurred by the Buyer Indemnified Parties does not exceed \$25,000 (the "*Deductible*") or (ii) exceeds

\$1,000,000 (the "*Cap*"). All Liability and responsibility for amounts outside the limits set forth in the preceding sentence shall be borne by Buyer.

(b) Subject to the survival provisions set forth in Section 11.05 and except to the extent that any such Claims or Damages are covered by Seller's indemnity in favor of the Buyer Indemnified Parties pursuant to Section 12.01(a), Buyer shall indemnify, defend, hold harmless and release Seller, its general and limited partners and Affiliates and their respective directors, officers, employees, legal counsel, financial advisors and agents (collectively, the "*Seller Indemnified Parties*") from and against all Claims and Damages arising out of or resulting from or payable as a result of the following:

(i) the breach of any representation or warranty made by Buyer in this Agreement or in any certificate or other document or instrument delivered by or on behalf of Buyer to Seller pursuant to this Agreement;

(ii) the failure of Buyer to perform any covenant or obligation required to be performed by it pursuant to this Agreement;

(iii) any Claims made by third parties (including Governmental Entities) against the Seller Indemnified Parties to the extent such Claims arise out of or are attributable to the ownership, use, condition or operation of the Business or any of the Purchased Assets after the Effective Time (including Claims relating to environmental matters);

(iv) any Purchased Asset after the Effective Time; and

(v) any Assumed Liability identified in Section 2.01(e) after the Effective Time.

IN EACH CASE WITHOUT REGARD TO THE SOLE, PARTIAL OR CONCURRENT NEGLIGENCE, GROSS NEGLIGENCE OR STRICT LIABILITY (BUT NOT THE WILLFUL AND WANTON MISCONDUCT) OF THE SELLER INDEMNIFIED PARTIES; provided, however, that the indemnity obligations of Buyer under this Section 12.01(b) shall be subject to the following limitation:

Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to indemnify the Seller Indemnified Parties for any Damages pursuant to Section 12.01(b) above to the extent the aggregate amount of such Damages suffered or incurred by the Seller Indemnified Parties (i) does not exceed the Deductible or (ii) does exceed the Cap. All liability and responsibility for amounts outside the limits set forth in the preceding sentence shall be borne by Seller.

(c) In the event that any Claim for which Seller, on the one hand, or Buyer, on the other hand (each an "*Indemnifying Party*"), could be liable to the other Party or another indemnified Person (each collectively, an "*Indemnified Party*") under this Section 12.01 is asserted against or sought to be collected from such Indemnified Party by a third party, the Indemnified Party shall notify the Indemnifying Party of such Claim within thirty (30) days of

the Indemnified Party's Knowledge of said Claim and within the time periods specified in Section 11.05 hereof, specifying the nature of and specific basis for such Claim and the amount or the estimated amount of the Damages thereof to the extent then feasible (the "Claim Notice"). Provided, however, that in the event there is any delay or failure on the part of the Indemnified Party to give such Claim Notice, to the extent the Indemnifying Party is not prejudiced as a result of such delay or failure, the Indemnifying Party shall not be relieved of any obligation or Liability hereunder. The Indemnifying Party shall have thirty (30) days from the delivery of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not it desires, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against such Claim; provided, however, that any Indemnified Party is hereby authorized prior to and during the Notice Period to file any motion, answer or other pleading that it shall deem necessary or appropriate to protect its interests or those of the Indemnifying Party and which is not prejudicial to the defense of such Claim. If the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such Claim or demand and except as hereinafter provided, then the Indemnifying Party shall have the right, at its own expense and after reasonable coordination with the Indemnified Party, to assume the defense of any such Claim either directly or through its insurer. In such case, but subject to Section 12.01(d) below, (i) the Indemnifying Party shall control the course of and make all decisions concerning any such proceeding, select and employ counsel (with the approval of the Indemnified Party, not to be unreasonably withheld), and expeditiously settle or prosecute such proceeding to a final conclusion, and (ii) the Indemnified Party may participate in, but not control, any such defense or settlement at its own cost and with its own counsel, and (iii) if requested by the Indemnifying Party, the Indemnified Party agrees to cooperate with the Indemnifying Party and its counsel in contesting any Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Claim in question, in making any counterclaim against the Person asserting the third-party Claim or any cross-complaint against any Person. To the extent the Indemnifying Party elects not to assume the defense of any Claim, the Indemnified Party shall, at the cost and for the account of the Indemnifying Party, assume all obligations with respect thereto and shall take such prudent steps as may be required in connection therewith as though the indemnities did not exist and such Claim were the Indemnified Party's responsibility. In such case, the Indemnified Party shall have the right with respect to any Claim for which it is assuming the defense to choose counsel and make decisions regarding any such proceeding, provided that it shall keep the Indemnifying Party advised with respect thereto. Subject to Section 12.01(e) below, the Indemnifying Party shall be bound by any and all rulings, judgments, compromises and settlements reached by the Indemnified Party in good faith.

(d) If a Party becomes an Indemnified Party, it shall, at the Indemnifying Party's expense, cooperate with the Indemnifying Party and permit the Indemnifying Party reasonable access to the Indemnified Party's books, records, facilities and employees for the purpose of permitting the Indemnifying Party to perform its obligations under this Section 12.01; provided, however, that the Indemnified Party shall not be required to disclose to the Indemnifying Party any documents or correspondence covered by the attorney-client privilege or the work product doctrine, except pursuant to a joint defense agreement. To the extent that any documents or correspondence are covered by the attorney-client privilege or the work product doctrine, the Indemnified Party shall notify the Indemnifying Party if the Indemnified

Party seeks to protect such privilege with respect to third parties. The Indemnified Party shall disclose to the Indemnifying Party the non-privileged contents of any such documents or correspondence. If requested by the Indemnifying Party, the Indemnified Party and the Indemnifying Party shall negotiate in good faith a joint defense agreement with respect to the matter that is the subject of the privileged communication or work product.

(e) No third party Claim may be made the subject of a consent decree or otherwise settled or compromised by an Indemnified Party without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. No consent decree or other settlement or compromise of any such Claim involving (i) the entry of a plea of guilty or nolo contendere to any criminal charge, or (ii) any admission of responsibility for which the Indemnified Party could be held criminally liable, may be entered into without the prior written consent of the Indemnified Party. Any consent decree or other settlement or compromise involving or affecting Buyer's ownership, operation or use of the Purchased Assets shall require the prior consent of Buyer, which shall not be unreasonably withheld.

(f) Subject to the terms hereof, no investigation by an Indemnified Party at or prior to the Closing shall relieve an Indemnifying Party of any Liability hereunder.

(g) There shall be no right of set off with respect to amounts payable as a result of a Claim for indemnity against any amount owed to the Party which is required to provide indemnification pursuant to this Agreement.

(h) The Indemnified Party shall use commercially reasonable efforts to mitigate all losses relating to a Claim under these indemnification provisions, including availing itself of any defenses, limitations, rights or contribution, claims against third persons and other rights at law or equity. The Indemnified Party's commercially reasonable efforts shall include the reasonable expenditure of money to mitigate or otherwise reduce or eliminate any losses from a Claim for which indemnification would otherwise be due, and the Indemnifying Party shall reimburse the Indemnified Party for the Indemnified Party's reasonable expenditures in undertaking the mitigation.

(i) Notwithstanding anything to the contrary contained herein, in the event of a third party Claim, no Party (including an Indemnified Party) shall be entitled to recover from any other Party (including an Indemnifying Party) for any losses, Damages, Liabilities, obligations, payments, costs, or expenses under this Agreement any amount in excess of the actual compensatory damages, court costs and reasonable attorneys' fees incurred by such Party. Each of Buyer and Seller waive any right to recover from the other Party punitive, incidental, special, exemplary and consequential damages arising in connection with or with respect to any third party Claim unless Buyer or Seller, as the case may be, are liable to a third party for such incidental, special, exemplary and consequential damages and Buyer or Seller, as the case may be, are required to indemnify such Party for the same. Additionally, the amount of any Damage resulting from a third party Claim shall be offset by (i) the net tax effect of such damages actually realized by the Party receiving an indemnification payment hereunder on account of such damages and provided that such net amount shall be increased to give effect to the income taxes attributable to the receipt of any such indemnification payment, or (ii) any amounts received by the Indemnified Party from any third-party (including insurers

or sureties) with respect to such Damages. Damages resulting from a breach of this contract by Buyer or Seller shall be governed by Section 13.16.

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

12.02 *Exclusive Remedy.* In the absence of actual fraud, Section 12.01 shall be the exclusive remedy of all Parties for monetary damages for breach of this Agreement and each of the Parties hereby waives any other Claim, cause of action or remedy for monetary Damages that it might assert against the other, whether under statutory or common law or any other Legal Requirement.

12.03 *Cooperation and Preservation of Books and Records.* The Parties shall provide such assistance to each other as the other Party may reasonably request in connection with the preparation of any Tax Return required to be filed with respect to the Business, any audit or other examination by a taxing authority, any judicial or administrative proceeding relating to Liability for federal, foreign, state or local Taxes or any claim for refund in respect of such Taxes. The Parties shall retain, and upon request provide, any records or information that may be reasonably relevant to such return, audit, examination, proceeding or claim. Such assistance shall include, but is not limited to, (a) making employees or counsel available at and for reasonable times to provide additional information and explanation of any material to be provided hereunder and (b) subject to the right of each Party to refrain from disclosing or making available any proprietary information, any written or oral communications that are subject to the attorney-client privilege and any documents that are covered by the work product doctrine, furnishing access to, and permitting the copying of any records, returns, schedules, documents, work papers or other relevant materials which might reasonably be expected to be of use in connection with such return, audit, examination, proceeding or claim.

The Parties recognize that the Parties and their respective Affiliates may need access, from time to time, after the Closing Date, to certain accounting and Tax records and information held by the other Parties; therefore, the Parties shall (a) use commercially reasonable efforts to properly retain and maintain such records until the 30th day following the last date on which the period to which such records relate is subject to audit, and (b) subject to the right of each Party to refrain from disclosing or making available any proprietary information, any written or oral communications that are subject to the attorney-client privilege and any documents that are covered by the work product doctrine, allow the requesting Party and its respective agents and other representatives, at times and dates mutually acceptable to the Parties, to inspect, review, and make copies of such records as the requesting Party may deem necessary or appropriate from time to time, such activities to be conducted during normal business hours and at the requesting Party's expense.

12.04 *Apportionment of Ad Valorem and Property Taxes.* (a) All ad valorem taxes, real property taxes, personal property taxes and similar obligations ("*Property Taxes*") attributable to the Purchased Assets shall be apportioned as of the Effective Time between

Seller and Buyer determined by prorating such Property Taxes on a daily basis over the entire tax period.

12.05 *Transfer Taxes.* Buyer shall be responsible for and shall pay (or remit to Seller for payment if required by applicable Legal Requirements) all recording fees, Transfer Taxes, and fees and expenses if any, required to be paid in connection with the sale, conveyance, assignment and transfer of the Purchased Assets pursuant to this Agreement.

12.06 *Removal of Decals, Logos and Signs.* As soon as practicable after the Closing Date, Buyer shall cease to use and shall remove or cause to be removed the names and marks used by Seller and its Affiliates and all variations and derivatives thereof and logos relating thereto from the Purchased Assets and shall not thereafter make any use whatsoever of such names, marks, and logos in the existing service territory whether as identification for the Purchased Assets or in connection with documentation and correspondence relating thereto, except as may be necessary to complete the transfer of the Purchased Assets and any consents related thereto. In the event Buyer has not completed such removal within thirty (30) calendar days after the Closing Date, Seller shall have the right, but not the obligation, to cause such removal and Buyer shall reimburse Seller for any costs or expenses reasonably incurred by Seller in connection therewith. Notwithstanding the foregoing, Buyer shall have sixty (60) calendar days after the Closing Date to remove or cause to be removed Seller's carsonite labels that identify the location of the Pipeline System.

12.07 *Fees for Transfer of Permits.* Seller shall be responsible for and shall pay (or remit to Buyer for payment if required by applicable Legal Requirements) all fees, if any, required to be paid in connection with the transfer of the Permits pursuant to this Agreement.

12.08 *Access to Business; Transition Services.* From and after the date hereof, upon reasonable advance notice and during reasonable business hours, Buyer, at its own risk and expense, shall be given full and complete access to the facilities, properties, books and records of Seller pertaining to the Purchased Assets; provided, however, that such access may not unreasonably interfere with the ongoing operations of Seller or its Affiliates. Seller shall furnish to Buyer, at Buyer's expense, copies of such books and records pertaining to the Purchased Assets as Buyer shall reasonably request. Prior to Closing, Buyer, at its own risk and expense, shall have the right to inspect the Real Property and other Purchased Assets, and Buyer shall notify Seller in writing if Buyer finds any condition as a result of its inspection which would constitute a breach of a representation or warranty by Seller under this Agreement, and pursuant to Section 11.03(b), Seller shall have fifteen (15) days to remedy or cure the condition(s) identified by Buyer. Within thirty (30) days of the date hereof, Buyer and Seller shall reasonably cooperate with the other Party to identify such transition services that Buyer may require to transition the operations of the Business to that of Buyer upon Close. From the date hereof and for a period of 180 days following Closing, Seller shall make their personnel, including IT and accounting, available to Buyer during normal business hours to assist Buyer in transitioning such services identified in the aforementioned time period and Seller shall provide Buyer such transition services. Such costs and expenses associated with such transitional services shall be borne by Buyer, except for Seller's normal and customary general overhead expenses.

ARTICLE 13

MISCELLANEOUS

13.01 *Governing Law.* This Agreement and all instruments executed in accordance with it shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Arizona, without regard to conflict of law rules that would direct application of the laws of another jurisdiction (except to the extent that such instruments otherwise provide that the laws of another state mandatorily apply to the conveyance hereunder of the Real Property located within such state).

13.02 *Entire Agreement.* This Agreement (including the documents, schedules, attachments, exhibits, annexes and instruments referred to herein and therein) constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous discussions, negotiations, representations, agreements, documents or other instruments, including the Letter of Intent, with respect to the matters covered hereby. The Parties make, and have made, no oral agreements or undertakings pertaining to the subject matter of this Agreement, except for any that are no longer in effect. In the event of any irreconcilable conflict between the terms of this Agreement and any conveyancing documents contemplated hereby, the terms of this Agreement shall be controlling.

13.03 *Non-Waiver.* No failure by any Party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, the first Party's right to insist upon such compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default; nor shall any custom or practice of the Parties at variance with any provision of this Agreement affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

13.04 *Captions.* The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

13.05 *Assignment.* This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but except as provided below, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party without the prior written consent of all other Parties hereto and any such assignment that is not consented to shall be null and void; provided, however, that any Party may assign this Agreement upon prior written notice to the other Party to (a) an Affiliate of that Party, provided said Affiliate is financially capable of performing the obligations under this Agreement, or (b) a Person who (i) purchases all or substantially all of the assets of that Party, or (ii) merges with that Party, provided, further; however, that any assignment under clause (a) or (b) shall not release, affect or reduce in any way that Party's obligations under this Agreement. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties and their respective permitted successors and assigns, any rights, benefits or obligations hereunder.

13.06 *Notices.* Any notice provided or permitted to be given under this Agreement shall be in writing and may be served by personal delivery or by depositing same in the mail, addressed to the Party to be notified, postage prepaid and registered or certified with a return receipt requested. Notice deposited in the mail in the manner hereinabove described shall be deemed to have been given and received on the date of the delivery as shown on the return receipt. Notice served in any other manner shall be deemed to have been given and received only if and when actually received by the addressee (except that notice given by facsimile shall be deemed given and received upon receipt only if received during normal business hours and if received other than during normal business hours shall be deemed received as of the opening of business on the next Business Day). For purposes of notice, the addresses and facsimile numbers of the Parties shall be as follows:

For Seller to: Black Mountain Gas Company
5241 Spring Mountain Road
Las Vegas, Nevada 89150
Attn: Edward A. Janov
Facsimile: 702-364-8597

With a copy to: Black Mountain Gas Company
5241 Spring Mountain Road
Las Vegas, Nevada 89150
Attn: Karen S. Haller
Facsimile: 702-252-7283

For Buyer to: SemStream, L.P.
6120 South Yale, Suite 700
Tulsa, Oklahoma
Attn: Larry C. Payne

With a copy to: Hall, Estill, Hardwick, Gable,
Golden & Nelson, P.C.
320 South Boston, Suite 400
Tulsa, Oklahoma 74103
Attn: Michael D. Cooke
Facsimile: (918) 594-0505

Each Party shall have the right, upon giving five (5) days prior notice to the other in the manner hereinabove provided, to change its address for purposes of notice.

13.07 *Expenses.* Each Party shall be solely responsible for all expenses incurred by it in connection with this transaction (including fees and expenses of its own counsel, accountants and consultants).

13.08 *Severability*. The intention of the Parties to this Agreement is to comply fully with all laws and public policies, and this Agreement shall be construed consistently with all laws and public policies to the extent possible. If any court of competent jurisdiction determines it is impossible to construe any provision of this Agreement consistently with any law or public policy and consequently holds that provision to be invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect.

13.09 *Amendment*. This Agreement (including the documents, schedules, attachments, exhibits, annexes and instruments referred to herein) may not be amended except by an instrument in writing signed by each of the Parties.

13.10 *Further Actions*. Each Party shall execute and deliver such other certificates, agreements and other documents and take such other actions as may reasonably be requested by the other Parties in order to consummate or implement the transactions contemplated by this Agreement.

13.11 *Third-Party Beneficiaries*. Except as expressly set forth in Section 12.01 with respect to Buyer Indemnified Parties or Seller Indemnified Parties, nothing in this Agreement is intended to create any third-party beneficiary rights respecting any Person or to confer upon any Person, other than the Parties and their respective successors and permitted assigns, any rights, remedies or obligations under or by reason of this Agreement and the Parties specifically negate any such intention.

13.12 *Injunctive Relief*. In the event of a breach or threatened breach by Seller or Buyer of the provisions of this Agreement, Seller and Buyer agree that the non-breaching Party shall be entitled to equitable relief, including an injunction and specific performance, alone or in combination, in addition to all other remedies available pursuant to this Agreement to such Party in the event of any breach of the provisions of this Agreement by another Party or any of such Party's Affiliates. If a court exercising applicable jurisdiction determines that a Party is entitled to such injunctive or equitable relief, such Party or Parties against whom relief is sought agrees to waive any requirement for the securing or posting of any bond or other security in connection with such remedy.

13.13 *Counterparts; Exhibits*. This Agreement may be executed in one or more counterparts (delivery of which may be made by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. All attachments, Schedules and Exhibits attached hereto are hereby made a part of this Agreement and incorporated herein by reference.

13.14 *Publicity*. Prior to making any public announcement with respect to the transactions contemplated hereby, each Party shall consult with the other Parties and use reasonable efforts to agree upon the text of a proposed joint announcement or obtain the other Parties' approval of the text of such announcement (which approval shall not be unreasonably withheld); provided, however, that any Party may make such disclosures or statements as it reasonably believes may be required by applicable Legal Requirements, including any rules or regulations of any stock exchange.

13.15 **Construction.** (a) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. If the date specified in this Agreement for giving any notice or taking any action is not a Business Day (or if the period during which any notices required to be given or any action taken expires on a date which is not a Business Day), then the date for giving such notice or taking such action (and the expiration date for such period during which notice is required to be given or action taken) shall be the next day which is a Business Day.

(b) Unless the context requires otherwise: (i) the gender (or lack of gender) of all words used in this Agreement includes the masculine and feminine; (ii) references to Articles and Sections refer to Articles and Sections of this Agreement; (iii) references to attachments, Schedules or Exhibits refer to the attachments, Schedules and Exhibits attached to this Agreement, each of which is made a part hereof for all purposes; and (iv) the word "including" means "including, without limitation."

(c) Any item disclosed in one Section or Schedule will be deemed to be disclosed in any other Section or Schedule where such disclosure is relevant, even if there is no express cross-reference, provided that the nature and the relevance of the disclosure is reasonably apparent. Disclosure of items that may or may not be required to be disclosed by this Agreement does not mean that such items are material or create a standard of materiality and will not be deemed an admission that any such disclosed matter is or may give rise to a breach of any Contract or violation of any Legal Requirement.

13.16 **Limitation of Liability.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, IN NO EVENT SHALL ANY PARTY HERETO BE LIABLE TO ANY OTHER HEREUNDER FOR EXEMPLARY, PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, ARISING DIRECTLY OR INDIRECTLY FROM, INCIDENT TO OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, REGARDLESS OF SOLE OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR DEFECT IN PREMISES, EQUIPMENT OR MATERIAL AND REGARDLESS OF WHETHER PRE-EXISTING THIS AGREEMENT. This Section shall in no way limit or qualify the Parties' indemnification obligations under Section 12.01 with respect to Claims made against any Party by a third person.

13.17 **Schedules.** In the event information from one Schedule is also appropriate to be included on another Schedule, such information need not be repeated and a reference to the other Schedule will have the same effect as if the information were specifically repeated on that Schedule.

13.18 **Qualification as to All Representations, Warranties and Schedules.** Except for the representations and warranties given in Article 5, all representations and warranties made by Sellers herein and all information contained in the Schedules and Exhibits attached hereto shall pertain and be limited to the Business and Purchased Assets only. Seller shall

have no obligation to disclose any information or to make any representations or warranties regarding any of Seller's other assets or businesses.

13.19 *Arbitration.*

(i) *Agreement to Arbitrate.* Any claim, counterclaim, demand, cause of action, dispute, and controversy arising out of or relating to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of this Agreement, involving the Parties and/or their respective representatives, even though some or all of such claims allegedly are extra-contractual in nature, whether such claims sound in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration. Notwithstanding the foregoing, any action taken by either Party pursuant to Section 13.12 shall not be subject to the requirements set forth in this Section 13.19.

(ii) *Conduct of the Arbitration, and Authority of the Arbitrators.* Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this Agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' claims, the arbitrators shall refer to the governing law. It is agreed that the arbitrators shall have no authority to award, treble, exemplary, or punitive damages of any type under any circumstances, whether or not such damages may be available under state or federal law, or under the Commercial Arbitration Rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages.

(iii) *Forum for the Arbitration and Selection of Arbitrators.* The arbitration proceeding shall be conducted in Arizona, unless the Parties agree to an alternate venue. Within thirty (30) days of the notice of initiation of the arbitration procedure, each Party shall select one arbitrator. The two arbitrators shall select a third arbitrator. The third arbitrator shall not previously been employed by either Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two Party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two Party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

SELLER:

BLACK MOUNTAIN GAS COMPANY

By:  _____

Name: Jeffrey W. Shaw

Title: Chief Executive Officer

BUYER:

SEMSTREAM, L.P.,
by SemOperating G.P., L.L.C.,
its General Partner

By: _____

Name: Larry C. Payne

Title: President of SemStream, L.P.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

SELLER:

BLACK MOUNTAIN GAS COMPANY

By: _____

Name: Jeffrey W. Shaw

Title: Chief Executive Officer

BUYER:

SEMSTREAM, L.P.,
by SemOperating G.P., L.L.C.,
its General Partner

By: _____

Name: Larry C. Payne

Title: President of SemStream, L.P.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

SELLER:

BLACK MOUNTAIN GAS COMPANY

By: _____

Name: Jeffrey W. Shaw

Title: Chief Executive Officer

BUYER:

SEMSTREAM, L.P.,
by SemOperating G.P., L.L.C.,
its General Partner

By:  _____

Name: Larry C. Payne

Title: President of SemStream, L.P.



EXHIBIT A-2

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2007 FEB -8 P 12:00

1
2 COMMISSIONERS
3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MIKE GLEASON
6 KRISTIN K. MAYES
7 GARY PIERCE

AZ CORP COMMISSION
DOCUMENT CONTROL

8 IN THE MATTER OF THE APPLICATION OF
9 BLACK MOUNTAIN GAS COMPANY AND
10 SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
11 APPROVAL OF THE TRANSFER OF THE BLACK
12 MOUNTAIN PAGE DIVISION AND RELATED
13 ASSETS TO SEMSTREAM ARIZONA PROPANE
14 L.L.C.

DOCKET NO. G-03703A-06-0694

DOCKET NO. G-20471A-06-0694

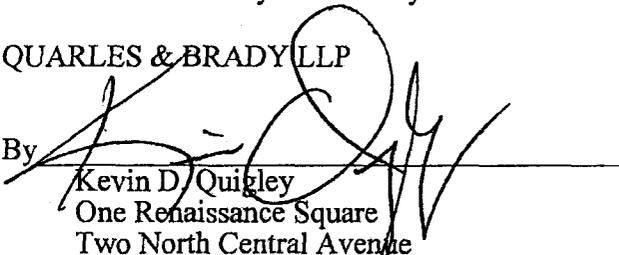
**NOTICE OF FILING OF DIRECT
TESTIMONY**

15 SemStream Arizona Propane, L.L.C., through undersigned counsel, hereby files the
16 attached, direct testimony of Larry C. Payne in support of the above-captioned Application.

17 RESPECTFULLY SUBMITTED this 8th day of February 2007.

18 QUARLES & BRADY LLP

19 By

20 
Kevin D. Quigley

21 One Renaissance Square

22 Two North Central Avenue

23 Phoenix, Arizona 85004-2391

24 Attorneys for SemStream Arizona Propane, L.L.C.

EXHIBIT

A-2
Admitted

1 **Original and fifteen copies** filed this
8th day of February 2007, with:

2
3 Docket Control
4 Arizona Corporation Commission
1200 West Washington
5 Phoenix, Arizona 85007

6 **Copies of the foregoing delivered**
7 this 8th day of February 2007, to:

8 Chairman Jeff Hatch-Miller
9 Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, Arizona 85007

12 Commissioner William A. Mundell
13 Arizona Corporation Commission
14 1200 West Washington
15 Phoenix, Arizona 85007

16 Commissioner Mike Gleason
17 Arizona Corporation Commission
18 1200 West Washington
19 Phoenix, Arizona 85007

20 Commissioner Kristin K. Mayes
21 Arizona Corporation Commission
22 1200 West Washington
23 Phoenix, Arizona 85007

24 Commissioner Gary Pierce
25 Arizona Corporation Commission
26 1200 West Washington
Phoenix, Arizona 85007

Maureen Scott, Legal Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Barbara Keene, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Bob Gray, Utilities Division
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

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Copy of the foregoing mailed
this 8th day of February 2007 to:

Karen S. Haller
Keith Brown
5421 Spring Mountain Road
Las Vegas, Nevada 89150-0002
Attorneys for Black Mountain Gas Company

M. Wells

BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS
JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
APPROVAL OF THE TRANSFER OF THE BLACK
MOUNTAIN PAGE DIVISION AND RELATED
ASSETS TO SEMSTREAM ARIZONA PROPANE
L.L.C.

DOCKET NO. G-03703A-06-0694
DOCKET NO. G-20471A-06-0694

DIRECT TESTIMONY OF
LARRY C. PAYNE
ON BEHALF OF
SEMSTREAM ARIZONA PROPANE, L.L.C.
FEBRUARY 8, 2007

1 Question 1: Please state your name and address.

2 Answer 1: My name is Larry C. Payne. My business address is SemStream, L.P.,
3 6120 South Yale, Suite 700, Tulsa, Oklahoma, 74136.

4

5 Q2: What is your position with SemStream, L.P.?

6 A2: I am the President and Chief Operating Officer of SemStream, L.P., and the chief
7 officer for its subsidiary, SemStream Arizona Propane, L.L.C. ("SemStream Arizona"). In this
8 capacity, I am responsible for overall management and growth of SemStream, L.P. and
9 subsidiaries.

10

11 Q3: Please summarize your education and experience.

12 A3: I have a Bachelor of Science degree in Business from Grambling State University
13 and a Master of Business Administration degree (MBA) with concentration in Finance and
14 Economics from Texas Southern University. I have over 30 years of total work experience. Over
15 the last 20 years, I have served in key senior officer level positions in the energy industry. I have
16 been responsible for Retail Propane Supply, Hedging and Risk Management; Natural Gas Liquid
17 ("NGL") Supply and Marketing; Petrochemical Marketing; Commodity Management; and
18 management of various NGL assets, such as terminals, pipelines, fractionators, storage and
19 transportation equipment.

20

21 Q4: On whose behalf are you filing your direct testimony in this matter?

22 A4: My testimony is filed on behalf of SemStream Arizona. SemStream Arizona is a
23 joint applicant, along with Black Mountain Gas Company, for approval of the transfer of the
24 Certificate of Convenience and Necessity ("CC&N") and other regulated assets of Black
25 Mountain Gas Company Page Division ("Black Mountain Page Division") in connection with the

26

1 contemplated sale of the Black Mountain Page Division propane distribution system and business
2 to SemStream Arizona.

3
4 Q5: Can you describe the contemplated sale?

5 A5: Black Mountain Gas Company, as a wholly-owned subsidiary of Southwest Gas
6 Corporation ("Southwest"), and SemStream, L.P. entered into a Purchase and Sale Agreement
7 dated September 20, 2006 (the "Agreement") for the sale of the Black Mountain Page Division
8 propane system in and near the City of Page, Arizona. A copy of the Agreement was filed with
9 the Joint Application. SemStream, L.P. assigned its rights to acquire the regulated businesses
10 assets of the Black Mountain Page Division to SemStream Arizona on October 26, 2006.

11 If the Joint Application is approved, then under the Agreement SemStream Arizona will
12 take over the ownership and operation of the Black Mountain Page Division propane gas
13 distribution system within its service area in and near the City of Page, Arizona. SemStream
14 Arizona will assume the existing propane system operations of the Black Mountain Page Division
15 and, to assure a seamless transition and continuity of service, intends to retain Black Mountain
16 Page Division's current employees and management, subject to these employees' own desire to
17 remain employed in the business.

18
19 Q6: If the Joint Application is approved, who will run the Arizona business being
20 acquired from Black Mountain?

21 A6: It is SemStream Arizona's intent to retain the employees of the Black Mountain
22 Page Division currently involved in the propane business. These employees would continue to
23 operate the business. Floyd Elmore, who currently runs the day-to-day business, would be
24 retained as the supervisor for SemStream Arizona's daily operations in Page. In addition, Doug
25 Mann, who formerly ran the Energy West propane business in and around Payson, Arizona, will
26 be involved in purchasing propane for use in the Page system and will report to David Wunch,

1 who is the Executive Vice President for SemStream, L.P. and is responsible for all of SemStream,
2 L.P.'s assets. Our proposed purchase of the Payson system from Energy West is discussed in
3 Docket Nos. G-02696A-06-0515 and G-20471A-06-0515, and closing of that transaction is
4 dependent on approval by the Arizona Corporation Commission ("Commission").
5

6 Q7: What is the SemStream Arizona entity?

7 A7: SemStream Arizona is a Delaware limited liability company in good standing that
8 will operate the propane system and own the assets currently held by Energy West. The current
9 address for SemStream Arizona is 6120 South Yale, Suite 700, Tulsa, Oklahoma, 74136;
10 SemStream Arizona also maintains a statutory agent but has no physical presence at 1209 Orange
11 Street, Wilmington, Delaware, 19801. SemStream Arizona is registered with the Commission
12 and is considered to be a limited liability company in good standing. SemStream Arizona
13 maintains a domestic address and local statutory agent for service of process at CT Corporation
14 System, 2394 E. Camelback Road, Phoenix, Arizona 85016. If SemStream Arizona's purchase of
15 the Payson-area regulated propane system from Energy West is approved by the Commission,
16 then SemStream Arizona's local presence will include the offices where Energy West's propane
17 system employees work today. If SemStream Arizona's purchase of the Black Mountain Page
18 Division regulated propane system is approved by the Commission, its local presence will expand
19 further to include the offices where the Black Mountain Page Division's employees work today.

20 SemStream Arizona is a wholly-owned subsidiary of SemStream, L.P., which is one of the
21 largest private propane terminal operators in the industry and is engaged nationally in natural gas
22 liquids supply, marketing, propane terminal operations and risk management services.

23 SemStream, L.P. is, in turn, a subsidiary of SemGroup, L.P. of Tulsa, Oklahoma.
24

25 Q8: Can you tell us more about SemStream, L.P.?

26 A8: SemStream, L.P. is a Delaware limited partnership that owns and operates 10

1 private propane terminals with a combined throughput in excess of 300 million gallons per year
2 and owns and leases more than 10 million gallons of physical storage. In 2005, SemStream, L.P.
3 moved 6.8 million gallons per day of NGLs via truck, pipeline, and rail. Propane accounted for
4 42% of this volume. SemStream, L.P. has access to more than 42 million gallons of storage
5 capacity leased at multiple locations in the United States and Canada. It also operates a fleet of
6 450 leased and owned railcars. As its subsidiary, SemStream Arizona has access to all these
7 assets and the management and staff that support them.

8
9 Q9: What experience does SemStream, L.P. or SemStream Arizona have in serving
10 individual customers of a propane distribution system?

11 A9: Each member of the senior management team at SemStream, L.P. has over 30
12 years of work experience and more specifically, each has retail propane experience in one of the
13 top two retail companies, which served individual customers with their propane distribution
14 systems. I was responsible for retail propane supply at Ferrellgas for about 12 years; David
15 Wunch was responsible for running a retail area for AmeriGas Propane as well as propane supply.
16 The third member of the senior management team is Vance Harrington who is a Vice President
17 for SemStream, L.P. Vance spent over 8 years running propane supply for Thermogas Propane,
18 which was later sold to Ferrellgas. In addition, if SemStream Arizona's acquisition of the Payson-
19 area regulated assets of Energy West is approved by the Commission, then by the time the Joint
20 Application for the transfer of Black Mountain Page Division assets and CC&N could be
21 approved, Doug Mann, who has considerable experience operating the day-to-day businesses of
22 providing propane to customers in Arizona, would be an executive of SemStream Arizona and a
23 member of the team that would manage the Black Mountain Page Division.

24 Further, the Black Mountain Page Division employees currently involved in the existing
25 propane distribution system which serves the Page area will, we intend, be retained and will bring
26 their own considerable experience to SemStream Arizona.

1 Q10: Will approval of the transfer of the system to SemStream Arizona have any
2 benefits to Black Mountain Page Division's propane customers in Arizona?

3 A10: Propane supply and storage have become increasingly uncertain in recent years.
4 SemStream, L.P. has significant experience and resources in the propane marketplace. It has the
5 resources to ensure an adequate storage capability as well as access to a large number of rail cars
6 that can provide transportation flexibility to respond to changing regional propane market
7 conditions.

8 In this regard, approval of the transfer of the system and CC&N to SemStream Arizona
9 will have several benefits. Black Mountain Page Division is owned by Southwest, which is
10 primarily a natural gas company, whereas SemStream Arizona and SemStream, L.P. are primarily
11 propane and NGLs companies. Through its parent, SemStream Arizona has access to significant
12 storage and distribution resources, as I have discussed above. Since SemStream, L.P. focuses on
13 the purchase and distribution of large quantities of propane and other NGLs, customers of the
14 Black Mountain Page Division can expect to benefit from the advantages and expertise that
15 SemStream, L.P. has in the propane and other NGLs markets as one of the largest operators in the
16 industry.

17
18 Q11: What is SemStream Arizona asking of the Commission?

19 A11: SemStream Arizona seeks an Order approving the transfer and sale of the
20 regulated assets in the propane system operated by the Black Mountain Page Division, including
21 its CC&N for the regulated propane operations, to SemStream Arizona.

22
23 Q12: Is there any urgency to having the Commission decide whether to approve the sale
24 and transfer of the regulated Black Mountain Page Division assets and CC&N to SemStream
25 Arizona?

26 A12: Yes, there is urgency. Planning for procurement and supply of propane for the

1 next winter season begins in February and March each year. The contracts are typically
2 negotiated in March with a start date of April 1st of the current year through March 31st of the
3 next year. It is essential to start the supply planning process as early as possible to properly
4 identify needs, evaluate supply options and negotiate pricing. We are approaching these critical
5 months when SemStream Arizona will want to be in position as the owner and operator of the
6 Black Mountain Page Division propane system to plan for procurement and supply for the winter
7 of 2007-2008. Generally, it has been my experience that contracts entered into earlier in the year
8 provide an opportunity for more favorable terms than contracts entered into closer to the period of
9 demand. The sooner the Commission is able to approve the transfer of the regulated Page assets
10 to SemStream Arizona, the sooner we can begin to enter into contracts for next winter.

11 An expeditious decision would be beneficial to the supply planning process and ensure the
12 customers of the Page propane system secure and adequate supply. An expeditious decision
13 would also be beneficial to the Page employees who are aware of the pending Joint Application
14 before the Commission and, I understand, would appreciate learning about the status of the
15 business as soon as possible. SemStream Arizona will offer the employees of the Page propane
16 system continued employment with a company primarily involved in the propane and natural gas
17 liquids business and will offer employee benefits and health care which may be advantageous to
18 these employees. An expeditious decision would also eliminate the employee anxiety associated
19 with change.

20 A decision to approve the Joint Application would be followed by a period during which
21 SemStream Arizona and Black Mountain Page Division will close the transaction and transition
22 operations. For all of these important reasons, we are requesting a decision in this matter as
23 quickly as possible.

24
25 Q13: Does this conclude your prepared direct testimony?

26 A13: Yes it does.

EXHIBIT A-3

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2007 MAR 16 P 2:20

COMMISSIONERS

MIKE GLEASON, Chairman
KRISTIN K. MAYES
JEFF HATCH-MILLER
WILLIAM A. MUNDELL
GARY PIERCE

AZ CORP COMMISSION
DOCUMENT CONTROL

IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
APPROVAL OF THE TRANSFER OF THE BLACK
MOUNTAIN PAGE DIVISION AND RELATED
ASSETS TO SEMSTREAM ARIZONA PROPANE
L.L.C.

DOCKET NO. G-03703A-06-0694

DOCKET NO. G-20471A-06-0694

**NOTICE OF FILING OF JOINT
RESPONSE TO STAFF REPORT**

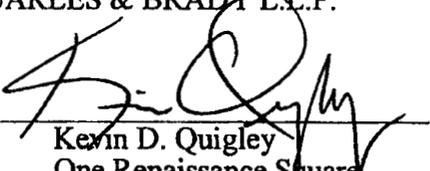
(Assigned to the Hon. Teena Wolfe,
Administrative Law Judge)

SemStream Arizona Propane, L.L.C. and Black Mountain Gas Company, through undersigned counsel and pursuant to the Commission's Procedural Order dated January 22, 2007, hereby file the attached Joint Response to the Utilities Division Staff Report in the above-captioned matter.

RESPECTFULLY SUBMITTED this 16th day of March 2007.

QUARLES & BRADY L.L.P.

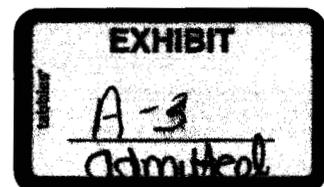
By


Kevin D. Quigley
One Renaissance Square
Two North Central Avenue
Phoenix, Arizona 85004-2391
Attorneys for SemStream Arizona
Propane, L.L.C.

BLACK MOUNTAIN GAS COMPANY

By


Karen S. Haller
Keith Brown
5421 Spring Mountain Road
Las Vegas, Nevada 89150-0002
Attorneys for Black Mountain Gas
Company



**Original and fifteen copies filed this
16th day of March, 2007, with:**

**Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007**

**Copies of the foregoing hand-delivered
this 16th day of March, 2007, to:**

**Hon. Teena Wolfe
Administrative Law Judge
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007**

**Maureen Scott, Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007**

**Bob Gray, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007**

**Alexander Ihade Igwe, Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007**



BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON, Chairman
KRISTIN K. MAYES
JEFF HATCH-MILLER
WILLIAM A. MUNDELL
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF
BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C. FOR
APPROVAL OF THE TRANSFER OF THE BLACK
MOUNTAIN PAGE DIVISION AND RELATED
ASSETS TO SEMSTREAM ARIZONA PROPANE
L.L.C.

DOCKET NO. G-03703A-06-0694

DOCKET NO. G-20471A-06-0694

JOINT RESPONSE

BY SEMSTREAM ARIZONA PROPANE L.L.C.

AND BLACK MOUNTAIN GAS COMPANY

TO

UTILITIES DIVISION STAFF REPORT

DATED MARCH 5, 2007

MARCH 16, 2007

I. INTRODUCTION

Pursuant to the Commission's Procedural Order dated January 22, 2007, SemStream Arizona Propane, L.L.C. ("SemStream Arizona") and Black Mountain Gas Company ("BMG") (collectively the "Applicants") submit this Joint Response to the Utilities Division Staff Report in this docket dated March 5, 2007 ("Staff Report"). BMG, a subsidiary of Southwest Gas Corporation ("Southwest" or "SWG") operates a regulated propane distribution system in and near the City of Page, Arizona (the "Page Division") pursuant to a Certificate of Convenience and Necessity ("CC&N") approved for that purpose by the Commission in Decision No. 66101 dated July 25, 2003.

The Staff Report finds SemStream Arizona to be a fit and proper entity to acquire the assets of the BMG Page Division propane system and concludes that the transaction is in the public interest. Moreover, Staff finds that the acquisition is consistent with the intent of Commission Decision No. 66101 ordering Southwest to divest the BMG Page Division. Staff therefore recommends approval of the Joint Application filed on October 31, 2006 (the "Application") to transfer BMG's regulated assets and CC&N related to the Page Division to SemStream Arizona, subject to several proposed conditions. In this response, the Applicants seek to clarify several factual matters and comment on Staff's recommended conditions.

II. FACTUAL CLARIFICATIONS

To ensure the accuracy of the record on this matter, Semstream Arizona notes the following clarifications to the Staff Report:

1) In the fifth sentence of the third paragraph of the Background section, page 1, it should be clarified that SemStream, L.P. owns and leases in excess of 10 million gallons of physical storage.

2) In the tenth sentence of the Background section, beginning on page 1 and carrying over to page 2 of the Staff Report, it should be clarified that SemStream, L.P.'s management team

has extensive experience in the natural gas liquids industry, as opposed to the "gas industry" as stated in the Staff Report.

III. RESPONSE TO STAFF'S RECOMMENDED CONDITIONS

At pages 6-8 of the Staff Report, Staff recommends that the Commission approve the Joint Application subject to sixteen (16) conditions. For the most part, the Applicants believe the recommended conditions are reasonable and take few exceptions. The Applicants are prepared to accept Staff's recommended Condition Nos. 1 through 4; 7 through 14; and 16 without amendment. However, SemStream Arizona objects to Staff's recommended conditions pertaining to acquisition costs and adjustment (Condition Nos. 5-6) and also proposes a minor amendment to Condition No. 15.

A. Exception to Recommended Condition Nos. 5 and 6

In Condition Nos. 5 and 6, Staff recommends that "SemStream Arizona shall not seek regulatory recovery of any costs arising from this transaction in a future rate proceeding" and that "the Commission deny SemStream Arizona recovery of any acquisition adjustment resulting from this transaction." In the alternative, Staff recommends in Condition No. 7:

That if the Commission decide[s] to defer consideration of regulatory recovery of acquisition costs and acquisition adjustment in a future proceeding, that SemStream Arizona be required to "demonstrate that clear, quantifiable and substantial net benefits to ratepayers have resulted from the acquisition of the Page Division's systems that would not have been realized had the transaction not occurred, before the Commission would consider recovery of any acquisition adjustment in a future rate proceeding."

In the event that an acquisition adjustment appears to be justified after SemStream Arizona is permitted to operate the Page Division, then adoption of Condition No. 7 is more consistent with the Commission's findings and orders in Southwest's initial acquisition of BMG in 2003 (Docket Nos. G-01551A-02-0425; G-01970A-02-0425) and reiterated in the decision reached by the Commission during its March 13, 2007 Open Meeting in the matter of SemStream Arizona's acquisition of the Payson-area propane system previously operated by Energy West

(Docket Nos. G-20471A-06-0515; G-02696A-06-0515). Conditions 5 and 6 are not consistent with the Commission's position rejecting a similar Staff proposed condition in connection with Southwest's acquisition of BMG in 2003. In its Decision No. 66101 – a direct precursor to the present proceedings – the Commission found as follows:

We recognize that Staff's position is premised on Staff's belief that it is in the public interest to protect ratepayers from bearing the costs of the transaction in the absence of a showing of significant benefit to consumers. However, we do not believe it is in the public interest to make a final decision on these issues without having all relevant information before us. Until SWG is able to operate the BMG system, we do not know if there will be significant efficiencies that would warrant recovery [of] a portion of the acquisition premium from ratepayers. We do not want to foreclose SWG from being able to bring forth evidence of significant improved efficiencies from acquisitions. To do so might discourage transactions that would benefit the public.

(Decision No. 66101, July 25, 2003, page 13, lines 20-27.)¹ The Commission reiterated this position when it adopted the Recommended Opinion and Order in the SemStream Arizona-Energy West matter on March 13, 2007. Although this issue was a topic of discussion among the Commissioners during their deliberations on March 13, 2007, it was ultimately decided that, since SemStream Arizona would retain the burden of proving that a cost recovery or adjustment could be justified in a later rate proceeding, it was not necessary to preclude SemStream Arizona from having the opportunity to assert its case at a later time.

As found by the Commission in these decisions, a condition automatically prohibiting future cost recovery is not in the public interest if it might act to discourage transactions that could produce net consumer benefits or if it counteracts the incentive for regulated companies to strive toward peak efficiency and denies an acquiring utility the opportunity to establish and demonstrate operational and administrative efficiencies and consumer benefits justifying an acquisition adjustment in a later, publicly noticed rate proceeding. Nothing in these Commission decisions suggests that the acquiring utility shall be automatically entitled to cost recovery, but

¹ For the Commission's convenience, the relevant pages of Decision No. 66101, dated July 25, 2003.

this does not equate to an automatic denial, as would be the effect of adopting Staff's Recommended Condition Nos. 5 and 6.

Staff finds SemStream Arizona to be a suitable buyer and concludes "that this transaction could positively impact ratepayers, in terms of propane price stability, supply security, and quality of service." Staff Report, page 3. Imposing Staff's Recommended Condition Nos. 5 and 6 on SemStream Arizona would be contrary to the public interest and otherwise counterproductive. For these reasons, SemStream requests the Commission approve the transfer of the Page Division assets without imposing Staff's Recommended Condition Nos. 5 and 6 and instead adopt Staff's alternative Condition No. 7.

B. Requested Amendment To Recommended Condition No 15

Condition No 15: In Recommended Condition No. 15, Staff proposes to require "[t]hat SemStream Arizona upgrades the existing manuals to more correctly reflect Page Division's operation within 30 days after the completion of sale." SemStream Arizona does not object to the proposed requirement that it upgrade the existing manuals for the BMG Page Division. However, SemStream Arizona believes the requested 30-day timeframe is insufficient. SemStream Arizona and BMG's mutual goal is to provide for as smooth a transition as possible for Page Division employees and customers alike. Before it can accurately update the manuals, SemStream Arizona must be in position to operate the Page Division propane system for more than a few days. There also may be opportunities to improve operation of the system that will become apparent only after SemStream Arizona takes over the system, assuming the Application is approved. SemStream Arizona requests that Staff's Recommended Condition No. 15 be amended to provide for six months after completion of the sale for SemStream Arizona to upgrade the existing manuals to more correctly reflect the Page Division's operation.

IV. CONCLUSION

The Applicants appreciate the efforts made by Staff in its review and expeditious processing for this Joint Application. SemStream Arizona and BMG request that the Commission

enter its Order approving the Joint Application subject to the Staff Report's Condition Nos. 1 through 4 and 7 through 16, with the requested amendment to Condition No. 15 identified above. For the benefit of Page Division customers and employees, it is important that the Applicants be permitted to close the transaction as soon as possible so that SemStream Arizona can commence the planning, procurement, supply and other operational arrangements for the next winter season, a process that normally begins in March. For that reason, the Applicants request the Recommended Opinion and Order be prepared in time for this matter to be decided at the Commission's May 2007 Open Meeting, or, if at all possible, in time for the April 2007 Open Meeting. To assist in that regard, the Applicants will order an expedited transcript of the March 26 hearing and are agreeable to abide by a five-day exception period in place of the ten-day exception period under A.A.C. R14-3-110.B.

The Applicants look forward to a prompt approval of the Joint Application so that SemStream Arizona can begin serving the propane needs of the Page area customers.

DECISION NO. 66101

EXCERPTS



000025982

BEFORE THE ARIZONA CORPORATION COMMISSION
Arizona Corporation Commission

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

DOCKETED

JUL 25 2003

DOCKETED BY *Mac*

IN THE MATTER OF THE APPLICATION OF
SOUTHWEST GAS CORPORATION FOR
APPROVAL OF ACQUISITION PLAN AND, IF
APPROPRIATE, WAIVER OF SELECTED
PROVISION OF THE AFFILIATE RULES.

DOCKET NO. G-01551A-02-0425
DOCKET NO. G-01970A-02-0425
DECISION NO. 66101
OPINION AND ORDER

DATE OF HEARING: February 24, 2003 and March 3, 2003
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Jane L. Rodda
APPEARANCES: Mr. Andrew Bettwy, Attorney, on behalf of Southwest Gas Corporation;
Mr. Timothy Berg, Fennemore Craig, on behalf of Black Mountain Gas;
Mr. Daniel Pozefsky, Attorney, on behalf of the Residential Utility Consumer Office;
Mr. Walter Meek, President, Arizona Utility Investors Association; and
Ms. Lisa Vandenberg and Jason Gellman, Staff Attorneys, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Southwest Gas Corporation ("SWG") is a public service corporation that is engaged in the business of purchasing, transporting and distributing natural gas in portions of Arizona, Nevada and California. SWG serves over 800,000 customers in Arizona, a rapidly growing service territory that adds approximately 30,000 new customers per year. In 2001, SWG had total assets of \$2.3 billion, generated revenues of \$1.4 billion and earned a net income of \$37 million.

Black Mountain Gas Company ("BMG") is a public service corporation that provides retail

1 convenience and necessity require." A.R.S. § 40-282 permits the Commission to attach conditions to
2 a CC&N that are necessary to promote the public interest.

3 The Commission must consider all of relevant standards in considering whether to approve
4 this transaction. The public interest includes the safety and adequacy of service certainly, but also
5 involves the impact of disparate rates, the reasonableness of those rates, the impact of Commission
6 policy on utility operations in the state, advancement of Commission policy goals and legal
7 precedent, as well as other factors. The Commission has the authority to impose conditions on the
8 transaction that mitigate potential harm to the public interest or which may be required by the public
9 necessity and convenience, as those interests are broadly defined. We believe that although Staff
10 couches its recommendations in terms of providing an immediate and substantial consumer benefit
11 which some parties have interpreted as creating a novel standard for reviewing acquisitions, in fact,
12 we find many of Staff's recommendations are terms and conditions required by the public
13 convenience and necessity or to prevent harm to the public interest.

14 Acquisition Adjustment and Cost of Acquisition

15 Conditions Nos. 1 and 2

16 Staff recommends that the Commission preclude SWG from seeking recovery of the
17 acquisition premium paid for BMG and from recovering the costs of the acquisition in its next rate
18 case. All other parties advocate deferring a decision on these issues until the next rate case when
19 SWG will have an opportunity to provide evidence that might support such recovery.

20 We recognize that Staff's position is premised on Staff's belief that it is in the public interest
21 to protect ratepayers from bearing the costs of the transaction in the absence of a showing of
22 significant benefit to consumers. However, we do not believe it is in the public interest to make a
23 final decision on these issues without having all relevant information before us. Until SWG is able to
24 operate the BMG system, we do not know if there will be significant efficiencies that would warrant
25 recovery a portion of the acquisition premium from ratepayers. We do not want to foreclose SWG
26 from being able to bring forth evidence of significant improved efficiencies from acquisitions. To do
27 so might discourage transactions that would benefit the public. Our decision here does not mean that
28 ratepayers should or will bear any portion of the costs associated with this acquisition, only that when

66101

1 the relevant information becomes available, SWG should have an opportunity to show sufficient
2 consumer benefits to justify recovery of the acquisition premium or other costs from ratepayers.
3 SWG will bear the burden of proving clear and quantifiable savings for all ratepayers directly related
4 to the acquisition and SWG's management/operation of the BMG system.

5 SWG's Rates
6 Condition No. 5

7 The most contentious of Staff's proposed conditions is the requirement that SWG charge its
8 margin rates in the BMG service area by July 1, 2004, or file a rate case. Staff believed that because
9 SWG did not adequately address Staff's questions about future benefits to BMG consumers and
10 concerns about maintaining service and safety quality in the BMG area, that SWG should provide an
11 immediate and substantial consumer benefit in the form of lower margin rates. Staff also argued that
12 it is potentially confusing and not in the public interest for neighboring SWG and BMG consumers to
13 pay different rates.

14 SWG's approach to wait to adjust the BMG customers' rates until the next SWG (as yet
15 unscheduled) rate case ignores its own arguments in favor of the transaction. SWG will begin
16 integrating the BMG operations into its own as soon as the Commission approves the acquisition.
17 Such integration will alter the very basis of BMG's current rates which were set based upon that
18 company's rate base, operating costs and return on capital. It is not in the public interest for BMG
19 customers to pay unreasonable rates. Neither do we believe having neighboring customers pay
20 different rates to be in the public interest.

21 We find that it is not in the public interest for current BMG customers to continue to pay the
22 higher BMG margin rates after July 1, 2004. Once the current assets and CC&N are transferred to
23 SWG, and BMG is dissolved, the customers of BMG become customers of SWG. At that point,
24 BMG ceases to exist as a public service corporation and there is no reason to differentiate one SWG
25 customer from another. SWG has not provided evidence that in this case it is reasonable for it to
26 continue charging the rates of a dissolved public service corporation once the acquisition and
27 integration is complete.

28 The Scates and Rio Verde cases cited by opponents in support of the contention the

EXHIBIT A-4

JOINT APPLICANTS' POSITION ON STAFF'S RECOMMENDED CONDITIONS AS PROPOSED IN STAFF REPORT DATED MARCH 5, 2007

1. That SemStream Arizona retains the tariff, rates and charges approved by the Commission for the Page Division in Decision No. 66101, pending conclusion of a future rate case.

2. That SemStream Arizona retains Page Division's PGA surcharge of \$0.2562 per therm, as approved in Decision No. 68816, dated June 29, 2006, pending any change by the Commission in a future PGA surcharge proceeding.

3. That SemStream Arizona maintains a separate account record for the Page Division and retains a copy of the related books and records in Arizona.

4. That SemStream Arizona and its parents make available to Staff their books and records, upon request during a rate case or other proceedings.

~~5. That SemStream Arizona shall not seek regulatory recovery of any costs arising from this transaction in a future rate proceeding.~~

~~6. That the Commission deny SemStream Arizona recovery of any acquisition adjustment resulting from this transaction.~~

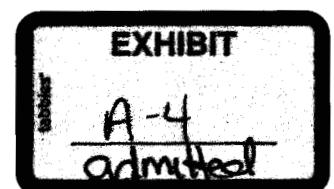
7. That if the Commission decide to defer consideration of regulatory recovery of acquisition costs and acquisition adjustment in the future proceeding, that SemStream Arizona be required to "demonstrate that clear, quantifiable and substantial net benefits to ratepayers have resulted from the acquisition of the Page Division's systems that would not have been realized had the transaction not occurred, before the Commission would consider recovery of any acquisition adjustment in a future rate proceeding."

8. That SWG assumes full responsibility for any gain or loss arising from the sale of its Page Division and transfers of related CC&N.

9. That SemStream Arizona assumes responsibility for the balance of Page Division's prepayments, customer deposits and the refundable portion of AIAC, at the close of this transaction.

10. That SemStream Arizona maintains adequate level of staffing, including qualified technical personnel, sufficient to avoid degradation of service to its customers in Arizona.

11. That SemStream Arizona complies with all Commission rules, orders and other requirements relevant to the provision of service in Arizona.



12. That SemStream Arizona timely files financial and other reports required by the Commission in the proper format.

13. That SemStream Arizona adds an additional page to its monthly PGA report, listing any propane purchases made during that month from any affiliate. Also, Staff recommends that as part of SemStream Arizona's monthly PGA report, filed in April of each year, that it provides a summary of the previous calendar year's propane purchases from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.

14. That SemStream Arizona maintains all procedures and records needed to demonstrate compliance with pipeline safety regulations at the Page office.

15. That SemStream Arizona upgrades the existing manuals to more correctly reflect Page Division's operation, within ~~30 days~~ six months after completion of sale.

16. That Black Mountain or Southwest Gas Corporation corrects all non-compliance items noted during the 2007 code compliance audit before completion of sale.

LEGAL

S-1

MEMORANDUM

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TO: Docket Control
FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

2007 MAR -5 A 11:00

AZ CORP COMMISSION
DOCUMENT CONTROL

Date: March 5, 2007

RE: STAFF REPORT FOR THE JOINT APPLICATION OF BLACK MOUNTAIN GAS COMPANY AND SEMSTREAM ARIZONA PROPANE, LLC FOR A SALE OF ASSETS AND TRANSFER OF CERTIFICATE OF CONVENIENCE AND NECESSITY. (DOCKET NOS. G-03703A-06-0694 AND G-20471A-06-0694)

Attached is the Staff Report for the joint application of Black Mountain Gas Company and SemStream Arizona Propane, LLC for the sale of Black Mountain Gas Company, Page Division's assets and transfer of its Certificate of Convenience & Necessity to SemStream Arizona Propane, LLC. Staff recommends approval, subject to certain conditions.

EGJ: AII:tdp

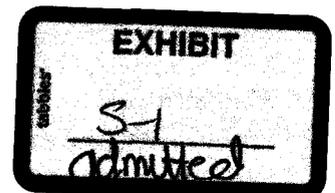
Originator: Alexander Ibhade Igwe

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MAR - 5 2007

LEGAL DIV.
ARIZ. CORPORATION COMMISSION

FILE COPY



Service List for: Black Mountain Gas Company & SemStream Arizona Propane, LLC
Docket Nos. G-03703A-06-0694 & G-20471A-06-0694

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Chief, Hearing Division
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Phoenix, Arizona 85007

STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

BLACK MOUNTAIN GAS COMPANY
DOCKET NO. G-03703A-06-0694

&

SEMSTREAM ARIZONA PROPANE, LLC
DOCKET NO. G-20471A-06-0694

APPLICATION FOR A
SALE OF ASSETS AND TRANSFER OF CERTIFICATE OF
CONVENIENCE AND NECESSITY

MARCH 05, 2007

STAFF ACKNOWLEDGMENT

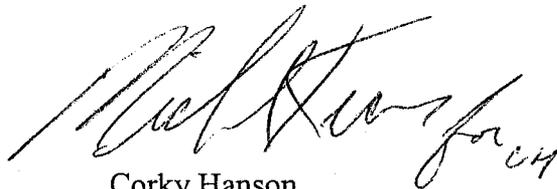
The Staff Report for Black Mountain Gas Company & SemStream Arizona Propane, LLC, Docket Nos. G-03703A-06-0694 & G-20471A-06-0694, was prepared by the Staff members shown below. In this proceeding, Alexander Ibhade Igwe was responsible for reviewing the application and performing pertinent financial analysis; Robert Gray analyzed the Propane Supply Acquisition issues; Corky Hanson reviewed the Pipeline Safety issues and Alfonso Amezcua researched the Consumer Service issues.



Alexander Ibhade Igwe
Executive Consultant III



Robert Gray
Public Utilities Analyst V



Corky Hanson
Senior Pipeline Inspector



Alfonso Amezcua
Public Utilities Consumer Analyst II

EXECUTIVE SUMMARY
BLACK MOUNTAIN GAS COMPANY AND
SEMSTREAM ARIZONA PROPANE, L.L.C.
DOCKET NOS. G-03703A-06-0694 AND G-20471A-06-0694

On October 31, 2006, Black Mountain Gas Company, a subsidiary of Southwest Gas Corporation and SemStream Arizona Propane, LLC filed a joint application for the approval of the sale of Black Mountain Gas Company, Page Division's assets and transfer of its Certificate of Convenience and Necessity ("CC&N") to SemStream Arizona Propane, LLC.

Black Mountain Gas Company, Page Division serves approximately 1,530 customers, consisting of 1,400 customers in the City of Page System and 130 customers in the Greenhaven System. Its current rates and charges were approved in Decision No. 66101.

SemStream Arizona Propane, LLC is a Delaware Limited Liability Company, located in Tulsa, Oklahoma. The Company maintains a statutory agent as well as a local address in Phoenix, Arizona. SemStream Arizona Propane, LLC is a wholly owned subsidiary of SemStream, L. P., one of the largest wholesale distributors of propane in the industry. SemStream, L. P. reportedly owns, operates and has access to vast resources, including 10 private propane terminals with a combined throughput in excess of 300 million gallons a year. Also, SemStream, L. P. has access to excess of 10 million gallons of physical storage. In 2005, SemStream, L. P. transported 6.8 million gallons of natural gas liquids per day, of which 42% was propane. SemStream Arizona Propane, LLC states that its parent's assets and management expertise would be available to its operations in Arizona. In addition, SemStream Arizona Propane, LLC would retain the current employees of Black Mountain Gas Company, Page Division to insure a seamless transition. Thus, the current customers would continue to receive service from the existing management team, customer service and technical support personnel. Also, SemStream Arizona Propane, LLC agrees to retain the current rates and charges approved for Black Mountain Gas Company, Page Division in Decision No. 66101. In summary, SemStream Arizona Propane, LLC claims that its access to ample resources would enable it to bargain for the best propane rates, transport and store sufficient quantity to insure supply security during peak demands. The Applicants contend that this transaction is consistent with the intent of Decision No. 66101, and that it is in the public interest.

Staff finds that SemStream Arizona Propane, LLC is a fit and proper entity to acquire the assets of Black Mountain Gas Company, Page Division and retain its CC&N. The Company has adequate resources and management expertise to operate propane distribution in Arizona. Staff recommends approval of the sale of Black Mountain Gas Company, Page Division's assets and transfer of its CC&N to SemStream Arizona Propane, LLC, subject to the conditions listed in the recommendation section of this report.

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Background

On October 31, 2006, Black Mountain Gas Company ("Black Mountain" or "Company") and SemStream Arizona Propane, LLC ("SemStream Arizona") filed a joint application (collectively, "Applicants") with the Arizona Corporation Commission ("Commission") for approval of a proposed sale of the regulated assets of Black Mountain Gas Company, Page Division ("Page Division") and transfer of the related Certificate of Convenience and Necessity ("CC&N") to SemStream Arizona.

Black Mountain is wholly owned subsidiary of Southwest Gas Corporation ("SWG"). It is certificated to own and operate propane distribution systems through the Page Division, in and around the City of Page, Arizona. SWG acquired the common stocks of Black Mountain pursuant to Decision No. 66101, dated July 25, 2003. The decision approved transfer of Black Mountain's natural gas and propane assets as well as the related CC&N to SWG. Black Mountain states that Decision No. 66101 contemplated that SWG would absorb its natural gas operation and that the related CC&N would transfer and subsume into SWG's certificate. Further, the decision required Black Mountain to retain the CC&N relating to the operation of propane distribution in the Page Division and remain in existence for a period no longer than 19 months, from the effective date of the decision. The decision intended that Black Mountain would exist solely for the purpose of operating the Page Division's propane distribution system, until such a time that SWG was able to divest the Page Division. Decision No. 66101 ordered dissolution of Black Mountain as a legal entity and cancellation of its CC&N upon consummation of a sale of the Page Division. Also, the decision states that in the event that SWG was unable to divest its Page Division within the stipulated time, it should amend the 2002 filing to indicate that Black Mountain would subsist for the purpose of providing propane service to its certificated area. On June 24, 2004, SWG filed a report informing the Commission that it could not dissolve Black Mountain due to its inability to divest the Page Division. SWG claims that its proposed sale of the Page Division is consistent with the intent of Decision No. 66101.

SemStream Arizona is a Delaware Limited Liability Company located in Tulsa, Oklahoma, with a statutory agent in Wilmington, Delaware. Also, it maintains a local address and a statutory agent in Phoenix, Arizona. SemStream Arizona is a wholly owned subsidiary of SemStream, L.P., one of the largest private propane operators in the industry. SemStream, L. P. engages in natural gas liquids supply, marketing, propane terminal operations and risk management services. It reportedly owns and operates 10 private propane terminals with a combined throughput in excess of 300 million-gallons a year and excess of 10 million gallons of physical storage. In addition, it has access to over 42 million gallons of storage capacity leased at various locations in the United States and Canada, as well as a fleet of 450 rail cars. In 2005, SemStream, L. P. transported 6.8 million gallons of natural gas liquids per day, with propane accounting for 42% of that volume. SemStream Arizona states that the assets of its parent company would be available to its operation in Arizona. These resources would enable it to purchase propane at competitive rates, transport and store adequate quantity to insure supply security and price stability. Aside from the above assets, SemStream, L. P. claims that its management team has vast experience in the gas industry, some of which was acquired at

Ferrelgas, Amerigas and Thermogas Propane, large retailers of propane. SemStream Arizona proposes to retain Page Division's current employees, thus enabling the current customers to continue to receive service from the same management, customer service and technical personnel. SemStream Arizona asserts that its proposal to acquire the assets and CC&N of the Page Division is in the public interest.

The Transaction

On September 20, 2006, Black Mountain and SemStream, L. P. entered into a Purchase and Sale Agreement (the "Agreement") for the sale of Page Division's assets, including non-excluded property and assets utilized for propane distribution, and transfer of its remaining CC&N in Arizona. The assets to be conveyed by this agreement include the pipeline system, real property, lease interests, structures, fixtures, facilities, and appurtenances, easements, right of way, property use agreement, line rights and real property licenses, tools, parts, tanks, machinery, equipment, computer hardware, inventory, and other items and contracts identified in the Agreement. As of December 31, 2006, the Page Division had a net book value of approximately \$2.103 million. Also, the Agreement provides for a purchase price of \$1.8 million, to be adjusted by the Page Division's working capital at the close of this transaction. On October 26, 2006, SemStream, L. P. assigned its right under this Agreement to SemStream Arizona.

Staff Analysis

Our review of Decision No. 66101 confirms Black Mountain's assertion that the decision intended divestiture of the Page Division and cessation of its operation as a public service company. On the other hand, our investigation indicates that SemStream, L. P. is a major distributor of propane in the gas industry and that its vast assets could benefit SemStream Arizona's prospective customers in and around the City of Page. Staff finds that SemStream Arizona is a fit and proper entity to acquire the assets and CCN of the Page Division.

SemStream, L. P. reports significant storage capacity as well as distribution assets that are located throughout United States and Canada. SemStream Arizona asserts that these assets would enable it transport and store adequate propane to mitigate price fluctuation and supply insecurity, especially during the winter months. Staff agrees with SemStream Arizona that assured propane supply could positively impact ratepayers by mitigating price swings.

Staff was initially concerned about SemStream Arizona's limited experience in operating a propane retail system. SemStream Arizona states that its parent's management team has significant experience, some of which were acquired at the largest propane retailers in the industry. Also, SemStream Arizona has committed to retain the current employees of the Page Division. SemStream Arizona states that by retaining the Page Division's employees, customers would continue to receive quality service from the same team, upon conclusion of this transaction. Staff finds that SemStream Arizona's proposal to retain the Page Division's current

employees would result in availability of adequate and experienced personnel to operate propane distribution in the certificated territory.

The Applicants' Purchase Agreement provides for a purchased price of \$1.8 million, to be adjusted by the Page Division's working capital at the close of this transaction. The adjustment relating to working capital will encompass the balance of prepayments and customer deposits, at the close of this transaction. SemStream Arizona will then assume liability for the Page Division's prepayments and customer deposits, on a going forward basis. Staff finds that the arrangement whereby SemStream Arizona assume obligation for existing prepayments and customer deposits provides adequate protection for Arizona ratepayers.

As of December 31, 2006, the Page Division reported a net book value of approximately \$2.103 million. Based on the tentative figures, it appears that the sale of the Page Division would result in a loss. However, in the event that this transaction results in a net gain to SWG or an acquisition adjustment to SemStream Arizona, Staff recommends that the Applicants' shareholders be responsible for the net impact of this transaction, and that Arizona ratepayers be held harmless. Ordinarily, the Commission does not permit recovery of any acquisition adjustment arising from a sale of assets, especially, when the Applicants have not demonstrated any extraordinary circumstances compelling this transaction. Accordingly, Staff recommends that any acquisition adjustment arising from this transaction be absorbed by the shareholders of SemStream Arizona or that the Commission denies SemStream Arizona of any recovery of this acquisition adjustment, in future rate proceedings. Also, Staff recommends that SWG assume full responsibility for any gain or loss arising from this transaction. However, in the event that the Commission determines it appropriate to defer consideration of the treatment of acquisition adjustment to a future proceeding, Staff recommends that the Commission require SemStream Arizona to meet the minimum standard for recovery, as espoused in Decision No. 63584. Decision No. 63584 required Arizona-American Water Company to "demonstrate that clear, quantifiable and substantial net benefits to ratepayers have resulted from the acquisition of Citizens' systems that would not have been realized had the transaction not occurred before the Commission would consider recovery of any acquisition adjustment in a future rate proceeding."

SemStream Arizona indicated in this filing that it would retain Page Division's current rates and charges, as approved by the Commission in Decision No. 66101. In addition, it proposes to retain Page Division's existing low-income rate assistance and weatherization programs. Staff finds SemStream Arizona's proposal to retain Page Division's current rates and charges to be reasonable.

Based on the above analysis, Staff agrees with the Applicants that SemStream Arizona is a fit and proper entity to acquire the assets and CC&N of the Page Division. Staff's conclusion is driven by the ample resources reportedly available to SemStream Arizona as well as the depth of its parent company's experience in the distribution of propane. We find that this transaction could positively impact ratepayers, in terms of propane price stability, supply security and quality of service.

Propane Supply Acquisition Issues

Black Mountain currently acquires its propane supplies from a number of suppliers in New Mexico and Arizona, having the propane supplies delivered via truck to its northern Arizona service territory. Sources of propane supplies for Black Mountain include the Adamana storage facility, east of Flagstaff, and the Ignacio and Wingate gas plants in northwestern New Mexico. Black Mountain purchases its propane supplies on the spot market, with some supplies purchased during the summer months being placed into storage for later access during the winter heating season. SemStream Arizona has indicated in response to a data request that it expects its propane acquisition activities to essentially remain the same, with certain potential benefits resulting from the possible affiliation with SemStream, L. P. Benefits in the area of propane supply procurement that have been cited by SemStream Arizona include having a wider range of supply options, greater supply security, and verification of third party pricing. SemStream Arizona's discussion of future propane acquisition activities for the Page Division parallels the propane acquisition discussions that have taken place to date in its pending acquisition of Energy West propane operations, currently before the Commission in Docket Numbers G-20471A-06-0515 and G-02696A-06-0515.

Certainly SemStream, L. P. is a large energy company with significant facilities and a sizable presence in the propane industry. While the Applicants have indicated that ownership of the Page Division by such a large energy company will have benefits for its acquisition of propane supplies, specific benefits have not been clearly identified and quantified in the application or supporting materials. However, it is certainly possible that SemStream, L. P.'s presence in the propane market could provide benefits to SemStream Arizona and its future procurement of propane supplies.

Black Mountain's propane costs are passed through to its customers via its purchased gas adjustor (PGA) mechanism, and the acquisition will not impact the operation of the PGA mechanism. Black Mountain currently has a PGA surcharge of \$0.2562 per therm, effective through January 2008, with a \$0.10 per therm PGA surcharge replacing the \$0.2562 per therm PGA surcharge in February 2008, pursuant to Decision Number 68816 (June 29, 2006). These surcharges are subject to the condition that they expire when the PGA bank balance reaches zero. Staff recommends that the existing PGA mechanism and PGA surcharge be retained by SemStream Arizona, as previously approved by the Commission.

In response to a Staff data request, Black Mountain indicated that during the 2005-2006 and 2006-2007 periods, Black Mountain did not acquire any propane supplies from any SemStream affiliate. While there have been no recent propane purchases from a SemStream affiliate, SemStream, L. P. is a potential source of propane supplies in the future. Therefore, there is the potential for SemStream Arizona to acquire propane supplies in the future from a SemStream affiliate.

Staff fully supports SemStream Arizona pursuing the best portfolio of propane supplies to meet the needs of its customers, whether such supplies come from an affiliated supplier or a non-

affiliated supplier, while recognizing the goal of having a diversified portfolio of supplies. However, by nature, making purchases from an affiliate creates a concern regarding possible favorable treatment of an affiliated supplier in comparison to how non-affiliated suppliers are treated.

In the Energy West acquisition, Staff recommended additional reporting requirements regarding propane acquisition to provide additional monitoring of possible acquisitions from an affiliate. Staff believes that adoption of such additional reporting requirements in this proceeding is also warranted, and in response to a Staff data request, SemStream Arizona indicated that it was willing to follow the same reporting requirements for the Page Division if the acquisition is consummated. Specifically, Staff recommends that if the acquisition is approved, SemStream Arizona should be required to file an additional page with each monthly PGA report, documenting any purchases made from an affiliate. Staff further recommends that, if the acquisition is approved, as part of SemStream Arizona's monthly PGA report for the Page Division, filed in April each year, that SemStream Arizona provides a summary of the previous calendar year's propane purchases each year from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.

Staff does not believe any additional requirements regarding record retention are required in regard to SemStream Arizona's acquisition of propane supplies from affiliates, as Black Mountain is already required to retain its records documenting how it acquires its propane supplies. Such records would reflect matters such as the various bids SemStream Arizona receives at the time it selects an affiliate bid, as well as other related records. The Commission would continue to have full authority to review SemStream Arizona, Page Division's propane procurement activities, as it deems appropriate.

One additional issue for consideration is the potential that SemStream Arizona's acquisition of the Energy West and Black Mountain service areas will result in SemStream Arizona operating two propane companies in Arizona. In response to a Staff data request, SemStream Arizona indicated propane purchasing activities for the Page Division will be coordinated amongst personnel at Page, Arizona; Payson, Arizona; and Tulsa, Oklahoma. This would indicate that there will be at least some overlap in propane purchasing activities between the Page and Payson Divisions, two separate entities. It is not clear to Staff at this time how such coordination would occur or how propane purchases might be allocated between the two entities. Therefore, Staff recommends that within 90 days of the approval of this acquisition, subject to the Commission also approving its acquisition of Energy West, that SemStream Arizona file a report with the Commission in this docket, providing a detailed explanation of how propane supplies will be purchased for the Page Division and how such purchases will be coordinated and allocated between the Page and Payson service areas.

Pipeline Safety Issues

As previously discussed, SemStream Arizona will retain Page Division's current employees, upon conclusion of this transaction. Although it is not our policy to dictate who a

pipeline operator employs to perform pipeline activities, such personnel are required to have pertinent knowledge and skills as well as to be qualified in accordance with the Code of Federal Regulations 192 Subpart N. Staff finds that Page Division's current employees are qualified to run the day to day propane operation, if retained by SemStream Arizona.

Staff recommends that SemStream Arizona maintains all procedures and records needed to demonstrate compliance with pipeline safety regulations at the Page office.

Staff further recommends that SemStream Arizona upgrades the existing manuals to more correctly reflect Page Division's propane operation within 30 days after completion of sale.

Also, Staff recommends that Black Mountain or Southwest Gas Corporation corrects all non-compliance items noted during the 2007 code compliance audit before completion of sale.

Consumer Service Issues

Staff's inquiry confirmed that Black Mountain and SemStream Arizona are in good standing with the Corporation Division of the Arizona Corporation Commission.

Our search of Consumer Services database for the past three years from January 1, 2003 though November 7, 2006, shows that there were no complaints, inquiries and opinions filed against Black Mountain or SemStream Arizona.

Public Notice

On February 12, 2007, Southwest filed an Affidavit of Publication, indicating that notice of this transaction was mailed to Page Division's customers of record, on January 31, 2007. The same notice was published in the Lake Powell Chronicle and Navajo Times Weekly, on January 31, 2007 and February 1, 2007, respectively.

Recommendations

Staff recommends approval of the Applicants request for transfer of Page Division's assets and the related CC&N to SemStream Arizona, subject to the following conditions:

1. That SemStream Arizona retains the tariff, rates and charges approved by the Commission for the Page Division in Decision No. 66101, pending conclusion of a future rate case.
2. That SemStream Arizona retains Page Division's PGA surcharge of \$0.2562 per therm, as approved in Decision No. 68816, dated June 29, 2006, pending any change by the Commission in a future PGA surcharge proceeding.

3. That SemStream Arizona maintains a separate accounting record for the Page Division and retains a copy of the related books and records in Arizona.
4. That SemStream Arizona and its parents make available to Staff their books and records, upon request during a rate case or other proceedings.
5. That SemStream Arizona shall not seek regulatory recovery of any costs arising from this transaction in a future rate proceeding.
6. That the Commission deny SemStream Arizona recovery of any acquisition adjustment resulting from this transaction.
7. That if the Commission decide to defer consideration of regulatory recovery of acquisition costs and acquisition adjustment in a future proceeding, that SemStream Arizona be required to "demonstrate that clear, quantifiable and substantial net benefits to ratepayers have resulted from the acquisition of the Page Division's systems that would not have been realized had the transaction not occurred, before the Commission would consider recovery of any acquisition adjustment in a future rate proceeding."
8. That SWG assumes full responsibility for any gain or loss arising from the sale of its Page Division and transfers of the related CC&N.
9. That SemStream Arizona assumes responsibility for the balance of Page Division's prepayments, customer deposits and the refundable portion of AIAC, at the close of this transaction.
10. That SemStream Arizona maintains adequate level of staffing, including qualified technical personnel, sufficient to avoid degradation of service to its customers in Arizona.
11. That SemStream Arizona complies with all Commission rules, orders and other requirements relevant to the provision of service in Arizona.
12. That SemStream Arizona timely files financial and other reports required by the Commission in the proper format.
13. That SemStream Arizona adds an additional page to its monthly PGA report, listing any propane purchases made during that month from any affiliate. Also, Staff recommends that as part of SemStream Arizona's monthly PGA report, filed in April each year, that it provides a summary of the previous calendar year's propane purchases from any affiliate, as well as noting any other affiliate transactions related to its acquisition of propane supplies.

14. That SemStream Arizona maintains all procedures and records needed to demonstrate compliance with pipeline safety regulations at the Page office.
15. That SemStream Arizona upgrades the existing manuals to more correctly reflect Page Division's operation, within 30 days after completion of sale.
16. That Black Mountain or Southwest Gas Corporation corrects all non-compliance items noted during the 2007 code compliance audit before completion of sale.