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January 6, 2004

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission
DOCKETED

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Docket Control
Arizona Corporation Commission
1200 W. Washington
Phoenix, Arizona 85007

DOCKETED BY *CAK*

RE: DOCKET NO.'S ~~E-00000A-01-0630~~ E-01345A-01-0822; E-00000A-01-0630; E-01933A-02-0069
ARIZONA PUBLIC SERVICE COMPANY, REQUEST FOR PROPOSALS

Dear Sir/Madame:

At the request of the Administrative Law Judge, Lyn Farmer, Arizona Public Service Company ("APS") is hereby filing a copy of APS' Request for Proposals ("RFP") issued on December 3, 2003, in Docket Control. No action is requested at this time.

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

Sincerely,

Jana Van Ness
Manager
Regulatory Compliance

Attachment

JVN/srm

Cc: Docket Control (Original, plus 19 copies)

Arizona Public Service Company
Request for Proposals

Power Supply Resource Proposal For the
Procurement of Generating Capacity

December 3, 2003

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Arizona Public Service Company

Request for Proposals

Notice of Intent to Respond

Power Supply Resource Procurement Proposal

This form should be received no later than 5:00 P.M. (MST), December 10, 2003 via facsimile (602) 250-3393, or e-mail to patrick.dinkel@aps.com

The undersigned respondent acknowledges that (he/she) has read this Request for Proposal and intends to submit a proposal in response thereto.

Proposal by _____

Company Name

Street Address _____

City

State

Zip Code

Mailing Address _____

City

State

Zip Code

Contact Numbers (_____) _____ / (_____) _____

Phone Number

Fax Number

Individual(s) who plan to attend Bidders Conference _____

E-mail Address _____ @ _____

Signature _____ / _____

Date

Signed by _____

(Please Print) Name

Title

Arizona Public Service Company

Request for Proposals

Proposal Information

POWER SUPPLY RESOURCE PROCUREMENT

I. Scope and Purpose

Arizona Public Service Company ("APS") is a public service corporation with retail load in eleven (11) counties in Arizona, with approximately 70-80% of its load located in the Phoenix metropolitan area. During the normal course of its business operations, APS continuously evaluates alternatives to fulfill its need for generating resources to maintain reliable and cost-efficient resources for its customers. As detailed in the APS Summer Supply and Demand Balance Assessment calculations (see Attachment 1), APS is currently short of the necessary Summer peaking capacity to meet its anticipated customer needs for the years 2004 and beyond. At this time, APS contemplates meeting the peak shortfalls through a variety of means, including, but not limited to, this Request for Proposals ("RFP" or "RFP Process") and purchases under the Secondary Procurement Protocol that was created during the Track B Competitive Procurement Process developed by and through the Arizona Corporation Commission (the "ACC") and filed on April 4, 2003. In this RFP, APS requests competitive proposals ("Proposals") for at least 500 MW of power supply resources to be used for APS' anticipated retail load.

For purposes of this RFP, APS will only consider and review Proposals for power supplied from existing generating units and/or units which are currently permitted. As described in more detail in Section IV below, APS strongly prefers Proposals in which APS would purchase and operate the generating unit, but APS will consider and review proposals for long-term unit-specific purchase power agreements. Proposals for new generating units which are not yet permitted but which would be expressly built to meet APS generating needs will not be considered in this RFP. However, APS expressly reserves the right, outside of this RFP Process, to acquire, build and/or develop resources, including through a "self build" option, as it deems appropriate and necessary to secure reliable and cost-efficient service for its customers.

This RFP is presented in two parts: an outline of the Proposal process, and a Respondent Response Package.

APS invites Proposals from all potential suppliers who are capable of meeting the conditions of the RFP, and APS will evaluate all responsive bids. Bids from APS affiliates, however, will not be accepted.

II. Objectives

The purpose of the RFP is to solicit and screen competitive Proposals for supply-side alternatives for APS customers. If APS determines that one or more of the Proposals may help provide reliable, cost-efficient resources for APS customers, APS may at its discretion place such Proposals on the RFP short list for subsequent negotiations. APS' objective is to review and consider resources that offer the maximum value to APS and its customers based on reliability, cost and other non-cost attributes. This RFP shall not be construed as preventing APS from entering into any resource or other agreement that it deems appropriate at any time before, during or after this RFP Process is complete.

III. Changes to RFP, Schedules and Addenda

APS reserves the right to unilaterally revise, suspend, or terminate this RFP Process and any schedule related thereto at its sole discretion without liability to persons or entities responding to this RFP ("Respondents"). APS will in its discretion communicate in writing (via hard copy, facsimile, or e-mail) to prospective Respondents information regarding the status of this RFP Process, including any and all changes and addenda to this RFP or attendant schedules.

IV. Product Description

APS seeks to solicit Proposals through this RFP Process involving the purchase of generation assets, although APS will accept and consider proposals for a long-term (twenty (20) years or longer) purchase power agreement ("PPA") sourced from a defined generating unit. No shorter term PPAs will be considered in this RFP. The generation assets which are solicited in the Proposal, whether through an asset purchase agreement or a PPA, must (a) already be built and operating or currently be permitted, and (b) be capable of being used to serve APS retail load. Unless the Proposal involves an additional interest in a generating unit in which APS already has an interest, the Proposal must involve a full unit at a single site for which APS will have full scheduling and dispatch authority (i.e., APS will not accept Proposals which involve the "sharing" of a single unit except for units in which APS already owns an interest). The minimum size of any single generating unit bid is 35 MW and the maximum size is approximately 550 MW.

If the Proposal involves the sale to APS of a generating unit which is currently operating or which will be operating prior to June 1, 2007, APS anticipates entering into a Sale Back Agreement with the Respondent for the output of that generating unit prior to June 1, 2007. Through the Sale Back

Agreement, APS will take full ownership and operational authority of the applicable generating unit at the closing of the asset purchase transaction (or at the Commercial Operation Date ("COD") for the applicable generating unit if that unit is not operational at the closing) and then sell to Respondent the entire output from the applicable generating unit for the period up to and including May 31, 2007. The closing will occur after all necessary regulatory approvals, as described in Section V, have been met. The Respondent will have full and exclusive responsibility under the Sale Back Agreement for the acquisition and transportation of all fuel (whether natural gas, coal or otherwise) necessary for the operation of the applicable generating unit during the entire period of the Sale Back Agreement. The Sale Back Agreement will be structured to allow APS full recovery of its cost of owning and operating the applicable generating unit from the time APS takes ownership and operational authority of the applicable generating unit until June 1, 2007. In addition, APS will require full and complete financial protection relating to any Sale Back Agreement to prevent any adverse financial impact to APS or its customers prior to APS assuming responsibility for the output of the applicable generating unit, including credit considerations sufficient in APS' sole discretion to mitigate any credit risk for APS and its customers. A proposed Term Sheet for the Sale Back Agreement is included in this RFP as Attachment 2.

If the Proposal involves the sale to APS through a unit-specific PPA, in addition to the requirements established above, APS will require full dispatch authority and automatic generation control ("AGC") as to the applicable generating unit. In APS' view, credit and risk concerns with respect to long-term PPA's currently make a generation acquisition the preferable alternative for APS. Although APS will evaluate long-term PPA's in the RFP, efforts will be made in the evaluation process to adjust for and take into account credit and risk concerns in any comparison of Proposals.

V. Regulatory Approval Process

Any agreement between APS and the Respondent will be conditioned upon approval by any and all regulatory authorities that have, or claim to have, jurisdiction over any or all of the subject matter of this RFP, including, without limitation, the ACC and the Federal Energy Regulatory Commission (the "FERC").

Any final negotiated contract will be further specifically conditioned upon favorable regulatory action without substantial condition or qualification (including but not limited to temporal or other conditions or limitations on cost recovery) by any and all regulatory authorities from which regulatory approval may be required for the final contract. All consents and approvals of governmental authorities required for the consummation of the contemplated transactions shall have become "Final Orders" (as defined in the Asset Purchase Agreement) with such terms and

conditions acceptable in all respects to APS. In this regard, before any agreement becomes binding, the ACC shall have issued a Final Order, which order shall be acceptable in all respects to APS in its sole discretion, approving the transaction and the related documentation and the regulatory treatment of the purchased assets, including (a) to the extent APS, in its sole discretion determines such approval is necessary, for financing of the purchase price, and (b) the inclusion, on or before June 1, 2007, in APS' rate base of the purchased assets without any disallowance, as well as (i) the recovery in APS' retail rates of all reasonable costs associated with the acquisition, ownership and operation of the purchased assets and (ii) the deferral and recovery of any adverse earnings impact on APS attributable to the purchase during the sale back period.

VI. Respondent's Qualifications

APS will consider Proposals from electric utilities (e.g., investor-owned, municipal, co-operative, or tribal), independent power producers, qualifying facilities and/or exempt wholesale generators.

Each Respondent should include with its Proposal the most current Securities and Exchange Commission ("SEC") Form 10-K and 10-Q reports of any Respondent or its guarantor subject to SEC filing requirements, including a list, with names, addresses and other electric generation and transmission activities of all equity participants having 10% or greater ownership interest in the facilities from which power is to be supplied to APS.

Any Respondent, or guarantor for a Respondent, not subject to SEC filing requirements should provide with its Proposal, its most recently issued statement of financial condition, including balance sheet, income statement, cash flow statement and complete footnotes, with (if available) an unqualified statement certified by a nationally recognized certified public accounting firm for the three (3) most recent fiscal years, and its most recent unaudited interim statement.

VII. General Instructions/Bidders Conference

Respondents are required to meet all the terms and conditions of the RFP to be eligible to compete in the RFP Process. Respondents are required to follow all instructions contained in the RFP. Respondents must respond to all questions contained in the Response Package to APS' Generating Capacity RFP (the "Response Package"), use the provided schedules, organize their Proposals according to the structure specified in the Response Package, and provide supporting documentation in the format requested. If a question is not applicable to the type of Proposal submitted, Respondents should so indicate and specify why the required information is not applicable. It is the Respondent's responsibility to advise APS' Official Contact (identified below in Section X (c)) of any conflicting requirements, omissions of information, or the need for clarification before Proposals are due. Respondents should clearly organize and identify all information submitted in their Proposals to facilitate review and evaluation. **Failure to provide all the information requested in this solicitation process or failure to demonstrate that the**

Proposal satisfies all of the APS requirements will be grounds for disqualification. Prior to the short-listing of Respondents, all correspondence and communications between the Respondent and APS must be made in writing through the Official Contact.

APS currently plans on conducting a bidders conference for interested Respondents on Monday, December 15, 2003 at 9:30 a.m. in Phoenix. Only Respondents who have submitted a Notice of Intent to Respond will be invited to attend, and those Respondents will be notified of the location of the bidders conference. The purpose of the bidders conference is to allow potential interested Respondents the opportunity to ask questions and seek additional information or clarification about the RFP Process. In order to assist Respondents in reviewing transmission issues for preparation of Proposals, APS will provide potential Respondents at the bidders conference with APS' current deliverability analysis showing available transmission for designation of network resources. To make the meeting as productive and informative as possible, Respondents are encouraged to submit any questions in writing to the Official Contact prior to the conference. Each Respondent should state on the Notice of Intent to Bid Form if one or more representatives of its company plan to attend the bidders conference.

VIII. Proposal Submittal Fee

A non-refundable bid Proposal Submittal Fee of \$5,000 per Respondent will be required with the Proposal in order to qualify the Proposal for consideration. The fee should be payable in a check made out to "Arizona Public Service Company."

IX. Notification of Intent to Respond

In order to identify persons or entities interested in submitting a Proposal, and to assure that all those having such an interest receive any subsequent information distributed in the RFP Process, interested parties are requested to submit via e-mail or FAX a non-binding Notice of Intent to Respond ("Notification") on or before 5:00 P.M. MST on Wednesday, December 10, 2003. The form for the Notification is part of this RFP Package. A Respondent may submit a Notification of Intent to Respond at any time prior to the final Proposal submission dated January 14, 2004.

X. Proposal Content and Submission Instructions

- A. In addition to the information described elsewhere in this RFP, all Respondents must include as part of their Proposal all information described in the Response Package.
- B. Proposals that do not contain all required information or do not fully reflect the bid requirements may not be considered at APS' sole discretion. In addition to the required information, Respondents should include with their Proposals any other information that may be needed for a thorough understanding or evaluation of their Proposals.

- C. Complete Proposals, including all exhibits, must be received on or before 5:00 p.m. (MST) on Wednesday, January 14, 2004, by APS' Official Contact (identified below) at the address below. Respondents shall submit three (3) hard copies of the original proposal and one (1) "wet" original signature demonstrating that the signatory has full authority to bind the Respondent to all of the terms and conditions contained in the Proposal. **All Proposals must expressly confirm that the pricing and terms and conditions of the Proposal will be binding and held open in the manner described in Paragraph D below. APS will not accept late Proposals or Proposals delivered by e-mail, facsimile, or other electronic means. Only sealed Proposals will be accepted.** On the envelope, Respondent shall indicate "Response to APS RFP re. Power Supply Resources." Any Proposals received after the scheduled date and time will be returned unopened.

APS Official Contact:

Patrick Dinkel
Arizona Public Service Company
400 N. 5th Street- MS 9909
Phoenix, AZ 85004
602/250-3399 FAX
e-mail: Patrick.dinkel@aps.com

- D. **Except as specified in this Paragraph, all Proposals, including terms, conditions, and pricing, are binding through the close of business (5:00 p.m. MST) on Tuesday, March 30, 2004. Any accepted Proposal will be binding in accordance with the executed definitive agreement, including through the Regulatory Approval Process described in Section VI.** The Proposals may only be conditioned upon the subsequent receipt of the approval of the board of directors or similar governing body of the Respondent. Respondents will be notified by January 28, 2004 if their bid has been selected for the short list and further negotiation. At that time, any Respondent who wishes to continue in the negotiation process will be required to submit to APS within five (5) business days a written and executed assurance of the approval of its board of directors or similar governing body as to the binding nature of the Proposal. Respondents with Proposals not selected for the short list will be notified and such Proposals will no longer be considered firm or binding by APS.

- E. Although APS anticipates January 28, 2004 as the date on or before which it shall notify Respondents of the short-listed Proposals, this date may be advanced or delayed at APS' sole discretion. Respondents will be notified if the date is changed. Beginning at the time the short-list is selected, and through the end of the RFP Process, which APS currently contemplates completing by March 30, 2004 (although this date may change),

APS may contact Respondents to negotiate, if appropriate, any Proposals on the short-list.

F. Prices and dollar figures must be clearly stated in \$US.

G. None of the material received by APS from Respondents in response to this RFP will be returned. All Proposals and exhibits will become the property of APS, subject to the confidentiality provisions of Section XI.

XI. Confidentiality

APS will require all parties to execute the Confidentiality Agreement, which is found at Attachment 3, and APS will also execute the Confidentiality Agreement upon receipt of a signed Confidentiality Agreement from each Respondent. APS will use commercially reasonable efforts to protect any claimed proprietary and confidential information contained in a Proposal, provided that such information is clearly identified by the Respondent as "PROPRIETARY AND CONFIDENTIAL" on the page on which proprietary and confidential material appears. APS will be entitled to release such information, (a) to its external contractors, including lawyers and consultants, for the purpose of evaluating Proposals, but such contractors will be required to observe the same care with respect to disclosure as APS, and to others who have a need for such information for purposes of evaluating any transaction, including but not limited to the ACC, its employees, staff, consultants and/or agents, or (b) if APS is compelled to disclose such information (or portions thereof) (i) pursuant to subpoena or other court or administrative process, (ii) at the express direction of any agency with jurisdiction over APS, or (iii) as otherwise required by law. If APS becomes legally compelled to disclose any of the confidential information, APS will provide Respondent with written notice. APS holds no duty or requirement to Respondent to withhold such information if it is so requested as described in clause (b) above. Under no circumstances will APS, or its directors, management, employees, agents or contractors be liable for any damages resulting from the disclosure of Respondent's claimed confidential information during or after the RFP Process.

XII. No Affiliate Proposals

Proposals from APS affiliates will not be accepted in response to this RFP.

XIII. Proposal Threshold Requirements

APS will use several steps in the evaluation process to review Proposals and to determine the best alternatives. The initial stages of the evaluation process employed by APS will include a review of the "Threshold Requirements" described below.

Subsequent to the receipt of the bids, APS will thoroughly review and assess each Proposal to ensure that it meets the Threshold Requirements. The Threshold Requirements will represent the minimum requirements that all Proposals are required to meet and with which a Respondent's compliance can be easily assessed. APS may, at its discretion, seek clarification and/or remedy of a Respondent's Proposal at this stage of the evaluation process. Each Respondent must maintain a contact person available to APS throughout the evaluation process.

APS views the Threshold Requirements to be an important aspect of the evaluation process. The Respondent should ensure that its Proposal satisfies the Threshold Requirements listed below to be eligible for further consideration.

Threshold Requirements

1. General Requirements

- The Proposal is received on time and complies with the submission instructions.
- The Proposal is bona fide, and the Respondent (or its guarantor) has sufficient financial capacity to support the Proposal.
- Complete and accurate answers are provided to all questions in the Response Package.
- The Proposal Submittal Fee is included.
- Generating capacity must be available for delivery by June 1, 2007.
- The Proposal is backed by an asset that is an existing generating unit and/or a unit which is currently permitted.
- If a PPA, the proposed term is for a minimum of twenty (20) years from June 1, 2007.

2. Operating Performance Thresholds

- The Respondent must certify that it has all necessary permits in effect as to the identified generating unit.
- The Respondent must certify that the identified generating unit is in good working order, free of material defects, and has been operating in accordance with good utility practice and applicable maintenance schedules and in compliance with all applicable laws and regulations.
- The identified generating unit must be fully dispatchable and the Respondent must commit to install an Automatic Generator Control that is tied into APS' Energy Control Center.
- If a PPA, the Respondent must be willing to coordinate the generating unit's maintenance scheduling with APS.
- Proposals should involve a generating unit(s) of no less than thirty (35) MWs and no more than approximately five hundred and fifty (550) MWs.
- Proposals must involve generating units which are fully schedulable by APS.

3. Transmission Threshold

- If the generating unit is located outside of APS' control area, the Respondent must provide a transmission plan for wheeling services from those utilities which would be required to wheel the generating unit's power to APS and provide support that the host utility would be willing to grant APS the right to dispatch the output of the generating unit.
- If the generating unit is located inside of APS' control area, the Respondent must complete a Network Resource System Impact Study data request.

Respondents must ensure that their proposals contain sufficient documentation to demonstrate that they meet the Threshold Requirements. Failure to conform to the Threshold Requirements will be grounds for disqualification.

XIV. Proposal Review

- A. Respondents shall include sufficient detail to evaluate all costs associated with the Proposal(s). Respondents are advised that price will be a major factor in APS' evaluation, as well as credit and contract considerations, reliability, deliverability and other criteria. To ensure that Proposals will provide customer benefits, APS will compare Proposals with the benefits, including costs and reliability, of alternative resource scenarios, including generic "new build" capacity. In addition, Proposals will also be compared and evaluated in terms of other non-price characteristics as well. Therefore, the lowest price submittal may not be selected. The evaluation of Proposals will be based on the information provided by the Respondent, with special emphasis on APS being able to provide reliable service and maximize the economic value to APS' retail customers while minimizing the risk to those customers.
- B. The evaluation process will include analysis on a technical basis for each Proposal to assess the feasibility and viability of each bid. In particular, each Proposal will be analyzed to determine the technical, physical and operational capability of the applicable generating unit(s) to meet the operating parameters specified in the Proposal. Such technical analysis will include, but not be limited to, a review of transmission access (including existing transmission contracts), natural gas and/or fuel access and/or transportation (including existing contracts), environmental conditions, certification and permit conditions and/or restrictions, unit location, maintenance history and schedules, and operational flexibility and history.
- C. APS reserves the right to negotiate after submission of a Proposal with a Respondent, or with more than one Respondent. In the event negotiations with a Respondent or Respondents do not produce a final and fully executed contract satisfactory to APS, APS reserves the right to pursue any and all other resource options available to it.
- D. APS shall evaluate responsive Proposals and select for further review and negotiation a Proposal or Proposals, if any, that APS believes in its sole discretion provide the most value and/or reliability to APS' retail customers.
- E. Proposals may be combined with other Proposals at APS' sole discretion.
- F. APS shall determine at its sole discretion the value to APS and its customers of any and/or all Proposals.
- G. APS shall evaluate all Proposals in terms of price and non-price attributes and reject any Proposal that, in APS' sole discretion:

- 1) Does not meet the minimum requirements set forth in the RFP;
- 2) Is not economically competitive with other Proposals or resource alternatives;
- 3) Is submitted by Respondents who are determined by APS, in its sole discretion, to have insufficient creditworthiness, insufficient financial resources, and/or insufficient technical qualifications to provide dependable or reliable service; or
- 4) Fails to best meet the resource and reliability needs of APS.

H. APS reserves the right, without qualification and in its sole discretion, to accept or reject any or all Proposals for any reason at any time after submittal without explanation to the Respondent, or to make an award at any time to a Respondent who, in the sole opinion and discretion of APS provides a Proposal APS deems favorable. APS also reserves the right to make an award to other than the lowest price offer or other than the Respondent evidencing the greatest technical ability if APS, in its sole discretion, determines that to do so would result in the greatest value to APS' retail customers.

I. APS, in its sole discretion, may decline to enter into an agreement with any Respondent, to terminate negotiations with any Respondent, or to abandon the RFP Process in its entirety, at any time during the process.

J. Those Respondents who submit Proposals do so without legal recourse against APS or its directors, management, employees, agents or contractors based on APS' rejection, in whole or in part, of their Proposal or for failure to execute any agreement tendered by APS. APS shall not be liable to any Respondent or to any other party, in law or equity, for any reason whatsoever relating to APS' acts or omissions arising out of or in connection with the RFP.

K. The Respondent(s) whose proposal is (are) selected will be responsible for acquiring all necessary licenses, permits, certifications, and approvals required by federal, state and local government laws, regulations and policies for the design, construction, and operation of the project. In addition, the Respondent shall fully support all of APS' regulatory requirements associated with any potential power supply arrangement. The Respondent is also completely and solely responsible for securing financing for its project, prior to any time at which APS would acquire and own the resource. APS shall have no responsibility in identifying or securing any licenses, permits, or regulatory approvals or in securing any financing required for the construction or operation of the project, prior to any time at which APS would acquire and own the resource.

- L. In addition to the requirements detailed in Paragraph (K) above, if a selected Proposal involves a generating unit not yet operational, Respondent must provide APS with a full financial guarantee, including performance bonds and/or letters of credit, up to the level of product commitments and in an amount and at a level determined by APS in its sole discretion, expressly including replacement power costs and any related penalty fees, in the event generating facility does not become commercially operational as scheduled.
- M. Proposals will be subject to the Regulatory Approval Process of Section V herein.
- N. Respondent shall be liable for all of its costs, and APS shall not be responsible for any of Respondent's costs, incurred to prepare, submit, or negotiate its Proposal, a contract or any other activity related thereto.
- O. APS reserves the right, at any time, to alter the minimum and/or maximum amount of generating capacity to be acquired from any one Respondent.
- P. Selection and elimination of Proposals and subsequent notification of Respondents at all stages of the evaluation will remain entirely at APS' discretion.

XV. Selection of Short List

On or before January 28, 2004, APS will attempt to select Proposals which will be included on a short list. This date may be advanced or delayed at APS' sole discretion. Through the short-listing process, those Proposals which are inferior to other proposals, in APS' sole discretion based on the factors described in this RFP, will be eliminated from further consideration. APS anticipates selecting more than one Proposal for the short list in order to create more opportunities for comparison. APS will notify all short-listed Respondents that they have been included on the short list. Similarly, APS' intent is to notify Respondents of those Proposals that are eliminated from further consideration within a reasonable amount of time, which will be determined by APS in its sole discretion.

XVI. Detailed Evaluation of Short-Listed Proposals

Proposals that are included on the short list will be subjected to a more detailed assessment. In the detailed evaluation phase, APS will expressly incorporate, among other costs, the transmission cost impacts based on system impact studies. These studies will include load flow, stability and short circuit analyses and are necessary to determine the impacts on the transmission system of designating the Proposal as an APS network resource. In the analyses to be performed by APS, each proposed generating unit will be placed into the transmission system and the performance of

the system with and without the proposed unit will be evaluated. If overload situations are encountered in the simulations, determinations will be made as to what corrective actions would be required to integrate the proposed plant into the APS transmission system. The cost of these corrective actions will be included in the economic analysis of each Proposal.

APS plans to use production-costing models in evaluating the Proposals. The detailed evaluation will assess the impact of each Proposal on the APS Summer Supply and Demand Balance Assessment, including comparing the Proposal to the cost of other resource acquisition scenarios (e.g., market purchases and/or the construction of "new build" plants) and compatibility with APS' resource needs. The results of the production costing analyses will be incorporated into the detailed financial analysis of each short-listed Proposal.

For any short-listed Proposals, APS will perform (a) a facility operational due diligence review of the short-listed Respondents' in-service facilities and (b) an operational and engineering review of any generating facilities which are under construction. Similarly, APS will attend any pre-commercial operation testing of any short-listed generating facilities which are under construction.

APS may elect to schedule meetings or conference calls with each short-listed Respondent to review and clarify its Proposal. APS reserves the right to seek clarification or additional information from each Respondent regarding its Proposal. After the selection of the short-listed Proposals, APS will begin contract negotiations with such Respondent(s).

APS may select a final Respondent (or Respondents) based on the detailed evaluation of the short-listed Proposals. This selection will not automatically be based on the lowest price alternatives available amongst the Proposals. The price and non-price attributes described in part in this RFP solicitation document will be considered in their totality for each Proposal. APS will use its sole discretion, judgment and analyses in making the final selection(s) in the RFP Process. APS' objective is to select resources that have the potential to offer the maximum reliability and value, based on cost and non-cost attributes, to the company and its customers. The final Respondent (or Respondents) will be required to facilitate due diligence efforts by APS, including through immediate site access and the Respondent's compilation and production of related necessary documents (see Attachment 4).

XVII. Contract Negotiations

The contract format for this RFP will be based upon either the Proposed Asset Purchase Agreement, included herein as Attachment 5, or for a PPA, the Proposed Edison Electric Institute ("EEI") Purchase Power Agreement, included herein as Attachment 6. Although APS strongly prefers to use the foregoing documents as provided with this RFP, Respondents may expressly identify and include proposed changes to those agreements, as well as any proposed changes to the Proposed Term Sheet for the Sale Back Agreement (Attachment 2). Such proposed revisions will allow APS to assess in its evaluation process the significance and/or impact to any Proposal of the changes requested by Respondents.

XVIII. Definitive Agreement

As soon as practicable after APS completes negotiations as appropriate, APS expects the selected Respondent(s) to execute a definitive Asset Purchase Agreement or PPA, whichever is appropriate. Failure of the Respondent(s) to promptly execute a definitive written agreement after notification of a winning bid will, in APS' sole discretion, result in rejection of the Proposal.

XIX. Regulatory Filings

As described in Section V herein, in the event a successful Respondent is selected and a contract between that Respondent and APS has been executed, a filing with the ACC and potentially FERC will be required, along with any other necessary regulatory filings.

XX. Collusion

By submitting a Proposal for APS in response to this RFP, the Respondent certifies that the Respondent has not divulged, discussed, or compared its Proposal with other Respondents and has not colluded whatsoever with any other Respondent or parties with respect to this or other Proposals.

XXI. Compliance with Regulations

Each Respondent shall ensure that its Proposal is in full compliance with all applicable Federal, State and local laws, rules, regulations or other requirements.

RFP SCHEDULE

The RFP Process shall proceed in accordance with the following schedule:¹

	Day of Week	Date
Announcement of RFP	Wednesday	November 19, 2003
Circulation of Notice of Intent to Issue RFP	Monday	November 24, 2003
RFP Issuance	Wednesday	December 3, 2003
Notice of Intent to Respond to RFP Due	Wednesday	December 10, 2003
Bidders Conference	Monday	December 15, 2003
Proposal(s) Due Date and Submission of Bid Fee	Wednesday	January 14, 2004
Notification to Respondents of Short List and begin Due Diligence/Contract Negotiations with Short List Respondents	Wednesday	January 28, 2004
Execution of Definitive Agreements with Successful Respondent(s)	Tuesday	March 30, 2004
Arizona Corporation Commission ("ACC") Filing For Approval	Friday	April 2, 2004
ACC and Other Necessary Regulatory Approvals (45-90 days)		May 17 - June 30, 2004

¹ APS reserves the right to alter this schedule as it deems appropriate in its sole discretion.

Proposal Submission Agreement
Arizona Public Service Company
Request for Proposals
Power Supply Resource Proposal for
the Procurement of Generating Capacity
Beginning June 1, 2007

The undersigned hereby certifies that this proposal is genuine and not a sham or collusive or made in the interest of or on behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other respondent to put in a sham bid or any other person, firm or corporation to refrain from submitting a proposal, and that the undersigned has not by any manner sought by collusion to secure for himself an advantage over any other respondent.

Proposal by _____
Company Name

Signature _____

Signed by _____
Name *Title*

Federal Employer's Identification Number of Firm _____

Name of person in your organization whom we should contact for questions, details, information and/or order placement.

Name *Area Code/Phone Number*

Please advise us of the following:

Mailing Address _____

Street Address _____

Phone Number (_____) _____

Fax Number (_____) _____

E-mail Address _____

ATTACHMENT 1

APS SUMMER SUPPLY & DEMAND BALANCE

	2004	2005	2006	2007	2008	2009	2010	2011	2012
A. LOAD REQUIREMENTS									
<u>SYSTEM DEMAND</u>									
1	6,114	6,488	6,764	7,067	7,359	7,654	7,958	8,211	8,462
2		6.1	4.3	4.5	4.1	4.0	4.0	3.2	3.1
<u>ANNUAL LOAD GROWTH %</u>									
<u>RELIABILITY</u>									
3	801	856	896	940	983	1,026	1,070	1,107	1,143
<u>RESERVE REQUIREMENTS @ 15%</u>									
4	6,915	7,344	7,660	8,007	8,342	8,679	9,028	9,318	9,605
<u>TOTAL LOAD REQUIREMENTS</u>									
B. EXISTING GENERATION & PURCHASED POWER RESOURCES									
<u>EXISTING GENERATION RESOURCES</u>									
5	5,688	5,684	5,710	5,710	5,736	5,736	5,736	5,736	5,736
6	(35)	(35)	(35)	(35)	(35)	(35)	(35)	(35)	(35)
<u>SEASONAL VARIATION</u>									
7	5,653	5,649	5,675	5,675	5,701	5,701	5,701	5,701	5,701
<u>PURCHASED POWER RESOURCES</u>									
8	295	302	310	318	326	334	342	351	360
9	62	62	62	62	62	62	62	62	62
10	12	20	23	26	27	22	23	23	24
11	480	480	480	480	480	480	480	480	480
12	150	150	0	0	0	0	0	0	0
13	175	50	0	0	0	0	0	0	0
<u>MARKET PURCHASE²</u>									
14	1,174	1,064	875	886	895	898	907	916	926
<u>TOTAL PURCHASES</u>									
15	6,827	6,713	6,550	6,560	6,596	6,599	6,608	6,617	6,626
<u>TOTAL RESOURCES</u>									
C. TOTAL RESOURCES OVER / (UNDER)									
	(88)	(631)	(1,110)	(1,447)	(1,746)	(2,081)	(2,420)	(2,701)	(2,979)

Note: 1) Assumes PWEC Arizona power plants are transferred to APS

2) Current market position as of Nov. 26, 2003

ATTACHMENT 2

Arizona Public Service Company
PROPOSED TERM SHEET

SALE BACK AGREEMENT WITH _____

Seller: Arizona Public Service Company ("APS")

Buyer: _____

Term: Asset Purchase Agreement transaction close date through May 31, 2007

Period of Delivery: Hour Ending ("HE") 0100 through HE 2400 Mountain Standard Time (MST), all days including NERC Holidays.

Contract Quantity: _____ MW – Nominal rating, actual output will vary based upon weather and other conditions

Product Type: Unit Firm Capacity

Applicable

Generating Units: _____, as defined in the associated Asset Purchase Agreement (the "Unit").

Available Capacity: The maximum amount of capacity available at specific atmospheric conditions from the Unit. Available Capacity shall be adjusted to reflect the actual atmospheric conditions, including temperature and humidity.

Delivery Point(s): _____

Contract Price: Buyer will pay APS a (i) monthly capacity payment for the fixed cost of APS' share of the Unit, (ii) monthly fixed O&M payment and (iii) monthly variable O&M payment.

Intermediate Calculations:

APS Gross Plant in Service: Initial capital costs for the Unit recorded by APS, including Land Value, plus the subsequent cumulative gross amount of capital additions placed in-service, including any applicable AFUDC and capitalized ad valorem taxes, through the prior month. The simplifying assumption will be made that gross tax basis is equal to gross book basis for depreciation purposes.

Monthly Book Depreciation: APS Gross Plant in Service less Land Value, divided by _____ years, divided by 12.

Book Depreciation Reserve: Sum of Book Depreciation from the inception of APS ownership through the end of the prior month.

Monthly Tax Depreciation: APS Gross Plant in Service less Land Value multiplied by the applicable MACRS Tax Depreciation Rate divided by 12. For the first year, the amount will be divided by the months of APS ownership in the year rather than 12.

Monthly Deferred Tax: Monthly Tax Depreciation minus Monthly Book Depreciation, multiplied by the Composite Income Tax Rate.

Accumulated Deferred Taxes: Sum of the Monthly Deferred Tax from the first month of APS ownership through the end of the prior month.

Working Capital: One-eighth multiplied by the prior month's total Fixed O&M and Variable O&M charges times 12.

Beginning Rate Base: APS Gross Plant in Service minus Book Depreciation Reserve minus Accumulated Deferred Taxes (all at prior month ending balances) plus Working Capital.

Composite Income Tax Rate: Forty percent (40%), based on Federal and State Income Tax Rates.

Cost of Capital: For purposes of this calculation, APS' cost of capital will remain constant as follows:

	Ratio	Cost	Weighted Cost	Pretax Weighted Cost
Long Term Debt	55%	7.5%	4.125%	4.125%
Equity	45%	11.5%	5.175%	8.625%
Total	100%		9.30 %	12.75 %

(i) Monthly Capacity Payment. The monthly capacity payment would be comprised of the following five items:

1. Financing Cost. Beginning Rate Base multiplied by APS' Pretax Weighted Cost of Capital rate of 12.75% per annum, divided by 12.
2. Monthly Book Depreciation. As defined above.
3. Administrative and General ("A&G") Expenses. Plant monthly Fixed O&M and Variable O&M charges (see below) multiplied by 12%.

4. Ad valorem taxes. APS Gross Plant in Service multiplied by ___%, divided by 12.

5. All other tax, assessment, payment, in lieu of taxes or other charge imposed by any governmental body assessed or charged against APS relating to the Unit,

(ii) Monthly Fixed O&M: The sum of actual operations costs, routine maintenance and obligation expenses, including insurance (property and liability coverage), as well as salary, benefits, and payroll taxes related to plant employees. Benefits and payroll taxes costs will be calculated by multiplying monthly Unit base payroll by forty-five percent (45%).

(iii) Monthly Variable O&M: A payment will be made based upon the number of starts per month multiplied by \$ ___ per start.

Starts: Buyer shall be permitted no more than _____ starts per calendar year. In addition, the unit dispatch must ensure compliance with any and all environmental permit requirements.

Fuel: Buyer is solely responsible for acquiring and delivering the necessary fuel to the Unit and for any and all expenses and costs incurred directly or indirectly therein. Buyer shall be solely responsible for such arrangements with third party(ies) and APS assumes no responsibility relating thereto.

Performance Guarantees:

During the term of the Sale Back Agreement, APS guarantees the following Equivalent Forced Outage Factors ("EFOFs"). The EFOF is defined as the Forced Outage Hours plus the Forced Derated Hours divided by the Total Hours per Period. EFOFs will be calculated and applied based upon the performance of the Unit for two periods during each calendar year: a summer period (June 1 through September 30) and a non-summer period (January 1 through May 31 and October 1 through December 31 combined) and expressly are not calculated or applied on a monthly or daily basis. The EFOF shall not be increased during any period if the outage or reduction in output from the Unit is the direct or indirect result of any breach or violation of any representation, warranty and/or covenant given by Buyer in the Asset Purchase Agreement between Buyer and APS. Consistent with and subject to the parameters discussed herein, the EFOFs shall be as follows:

Summer 2004- ___%; 2005- ___%; 2006- ___%
Non-Summer 2004- ___%; 2005- ___%; 2006- ___%; 2007- ___%

At the end of each of the two foregoing periods during each calendar year during the term of the Sale Back Agreement, the EFOF for such period will be calculated. For each percentage point the EFOF has risen above the

performance guarantee, the sum of the Monthly Capacity Payments for the period by Buyer to APS may be reduced by a corresponding one percent. At any time during the term of the Sale Back Agreement, APS may at its sole discretion provide Buyer with power from other sources, including but not limited to the market, and such replacement power shall be calculated and applied towards the EFOF for the Unit without penalty or restriction (including for purposes of limiting and/or eliminating any reduction in the capacity payment).

**Scheduled
Maintenance:**

Will be performed in accordance with original equipment manufacturer ("OEM") specifications as determined by APS in its sole discretion and will be scheduled at a time mutually agreeable between APS and Buyer.

Heat Rate:

An appropriate heat rate curve for the Unit will be prepared.

Escrow Account:

___% of the purchase price paid by APS to Buyer pursuant to the Asset Purchase Agreement between Buyer and APS relating to the Unit shall be deposited into an escrow account at the closing of that transaction. The sum deposited in the escrow account shall represent an amount sufficient to cover the present value of the estimated Monthly Capacity Payments due to APS by Buyer during the entire duration of the Sale Back Agreement. A rate of 10% per annum will be utilized for discounting purposes. Each month an amount from the escrow account, equal to the change in the present value of the future Monthly Capacity Payments, will be released as payment to APS for amounts owed by Buyer pursuant to the Sale Back Agreement. If the released funds exceed the monthly invoice amount billed to Buyer pursuant to the Sale Back Agreement, the excess amount shall be paid to Buyer. If the monthly invoice amount exceeds the released funds, Buyer shall pay the remaining balance to APS. APS will consider other collateral and/or security mechanisms that provide, in APS' sole discretion, equivalent financial protection.

Cross Default:

A cross default provision shall be included for the Buyer whereby the cross default amount shall mean an amount equal to two percent (2%) of the Buyer's shareholders' equity (howsoever so described), or that of the Buyer's guarantor, if applicable, as shown on the most recent annual audited financial statements of the Buyer or Buyer's guarantor, if applicable.

Set-Off:

In the event of the calculation of an early termination payment arising from a default under the Sale Back Agreement, the non-defaulting party, and any of its affiliates, shall be permitted to set-off any and all obligations of the defaulting party, and any of its affiliates, whether under the Sale Back Agreement or any other agreement. Specific relevant affiliates will execute the Sale Back Agreement specifying their consent to such cross-affiliate set-off provisions.

Attachment 2

Applicable Law
And Dispute
Resolution:

The Sale Back Agreement shall be governed by the laws of the State of New York without regard to principles of conflicts of law and any dispute relating thereto shall be resolved through an arbitration to be conducted in Phoenix, Arizona.

THIS TERM SHEET IS NON-BINDING AND SUBJECT TO (1) NEGOTIATION AND EXECUTION OF THE FOLLOWING AGREEMENTS BETWEEN APS AND BUYER (a) THE RELEVANT ASSET PURCHASE AGREEMENT AND (b) THE RELEVANT SALE BACK AGREEMENT AND (2) FINAL REVIEW AND APPROVAL OF THE FOREGOING AGREEMENTS BY THE SENIOR MANAGEMENT AND BOARD OF DIRECTORS OF APS.

ATTACHMENT 3

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement") is made as of the ____ day
2003 by and between ARIZONA PUBLIC SERVICE COMPANY ("APS")
and _____ ("Seller") (all of the foregoing
referred to individually as "Party" or collectively as the "Parties").

WHEREAS, the Parties are currently exploring a possible transaction (the
"Transaction") pursuant to the Request for Proposal dated December 3, 2003, through
which APS may acquire generation assets and/or capacity and/or energy from Seller (the
"Bidding Process").

WHEREAS, in order to evaluate the Transaction, the Parties may request of each
other that certain non-public, confidential or proprietary information be kept confidential
(the "Information").

THEREFORE, in consideration of the receipt by the Parties from each other of
such Information for their mutual benefit in connection with the Transaction, the Parties
hereby agree:

1. The Parties will make best efforts to safeguard the Information against
disclosure by employing the same means to protect the Information as that Party uses to
protect its own non-public, confidential or proprietary information.

2. No receiving Party shall itself, or permit its employees, consultants and/or
agents, to disclose to any person, corporation or other entity the Information without the
prior written consent of the Party providing the Information, except a receiving Party may
distribute the Information to its board members, officers, employees, agents and
consultants and others who have a need for such Information for purposes of evaluating
the Transaction, including but not limited to the Arizona Corporation Commission
("ACC"), its employees, staff, consultants and/or agents.

3. In the event that any Party receiving the Information becomes legally
compelled (by deposition, interrogatory, request for documents, subpoena, civil
investigative demand or similar process) to disclose any of the Information, the legally
compelled Party shall give the other Party providing the Information with prompt prior
written notice of such requirement so that the providing Party may seek a protective order
or other appropriate remedy and/or waive compliance with the terms of this Agreement.
In the event that such protective order or other remedy is not obtained, the providing
Party waives compliance with the terms hereof.

4. The term "Information" does not include any information which (i) at the
time of disclosure or thereafter is generally available to the public (other than as a result
of a disclosure by any Party in violation of this Agreement), (ii) was available to any
Party on a non-confidential basis from a source other than the Party hereto providing the
Information, provided that such source is not and was not known by the receiving Party
to be bound by a confidentiality agreement that protected the Information, or (iii) has
been independently acquired or developed by any Party without violating any of its
obligations under this Agreement.

5. This Agreement shall be interpreted, governed and construed under the laws of the State of Arizona as if it were executed and to be performed wholly within the State of Arizona without regard to its conflict of laws principles.

6. The Parties agree that in the event of a breach of this Agreement, the Party providing the Information shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

7. The Parties' obligations under this Agreement will expire one (1) year from the date hereof.

8. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

9. This Agreement shall in no way be construed to (i) preclude in any way either Party from pursuing any business opportunities; (ii) establish any relationship between the parties with respect to such business opportunities; or (iii) establish any relationship between the parties with respect to the Transaction that is the subject of this Agreement.

10. This Agreement (i) may only be amended by both Parties in writing, and (ii) represents the entire understanding of the Parties with respect to the matters that are the subject hereof.

IN WITNESS WHEREOF, the Parties have duly executed this Confidentiality Agreement as of the date first above written.

ARIZONA PUBLIC SERVICE COMPANY

By: _____

Title: _____

Dated: _____

By: _____

Title: _____

Dated: _____

ATTACHMENT 4

PRELIMINARY DUE DILIGENCE CHECKLIST

The following is a preliminary list of information and documentation related to _____ (the "Company") and its parent, or other financially sound affiliate ("Affiliate"), which Arizona Public Service Company ("APS") and its counsel would like to review in connection with a proposed purchase of generation and interconnection assets of the Company (the "Assets"). This information is in addition to the information required by the Response Package to APS' Generating Capacity RFP and the Disclosure Schedules to the Proposed Asset Purchase Agreement. APS reserves the right to request additional information.

1. Corporate Records.

- (a) The corporate charter (certificate or articles of incorporation) and bylaws for the Company and for the Affiliate.
- (b) List of the jurisdictions in which the Company and the Affiliate are qualified to do business, as well as a list of all jurisdictions in which each conducts business.
- (c) Addresses of the Company's and the Affiliate's principal and registered offices and their registered agents and addresses (in each state or jurisdiction, local or foreign).
- (d) List of any parties or entities whose consent to the proposed transaction will be required and copies of relevant documents.

2. Contracts.

- (a) Copies of all contracts that the Company believes are necessary to the operation of the Assets, including any maintenance or service agreements, interconnection agreements, and engineering, procurement and construction agreements.
- (b) Any other contract or agreement (or forms of related or similar contract) related to the Assets that involves payments by or to the Company of in excess of \$75,000 in the current fiscal year or is likely to involve payments by or to the Company in excess of \$75,000 in any one year including or after the current fiscal year.
- (c) Any written agreements and summaries of any unwritten arrangements or understandings between the Company and any of its officers, directors, affiliates and associates within the last three years, whether or not currently in effect, relating to the Assets.

3. Financial.

- (a) Audited consolidated and consolidating balance sheets, income statements and statements of cash flows of the Company and the Affiliate for the last three years, prepared in accordance with GAAP.

- (b) Interim financial data comparable to that called for in item 3(a) above for the most recently ended period subsequent to the date of the latest audited financial statements.
- (c) Copies of current budget and long range and/or operation plans or projections for the Assets, including memoranda or other documents summarizing the assumptions used in preparing such budgets, plans or projections.
- (d) Reports or management letters provided to the Company for the last three years by auditors and any and all management responses thereto, to the extent that they relate, directly or indirectly, to the Company or the Affiliate.

4. **Real and Personal Property and Other Assets.**

- (a) A list of all real property and interests in real property (including all leases) included within the Assets (the "Real Property"), including a complete legal description thereof and the name of the beneficial owner (as appropriate), and a brief description of the Real Property, the structures thereon and all improvements thereto, and all copies of deeds, leases, sales contracts, and construction contracts.
- (b) A list and legal description of all easements relating to the Real Property, whether granted to the Company, or granted by the Company.
- (c) Any appraisals of the Real Property obtained within the past three years.
- (d) Any surveys of the Real Property obtained within the past three years.
- (e) Any title reports and policies of title insurance or lawyer's abstract reports relating to the Real Property obtained or prepared within the past three years.
- (f) A list of all tangible personal property owned, leased or used by the Company and included in the Assets (the "Personal Property"), including without limitation, fixed assets, machinery, equipment, computers, furniture, raw materials and spare parts inventory. For each item, provide any related manuals, maintenance logs, warranty information and manuals.
- (g) All documents purporting to create liens, mortgages, security agreements, pledges, charges or other encumbrances on the Assets. Provide copies of all mortgages, Uniform Commercial Code (UCC) financing statements, or other lien documents recorded or filed with respect to the above.
- (h) A schedule of maintenance and repair expenses for the Assets covering the last three years. Provide a description of policies for maintenance, repair and replacement for fixed assets.
- (i) Copies of all maintenance and operation reports or similar documents relating to the maintenance and operation of the Assets for the last three years.

- (j) Descriptions of all interconnection facilities and any related documentation.
- (k) Schedule of trademarks, trade names, service marks, copyrights, or patents owned by, licensed to or applied for by or on behalf of the Company and included in the Assets (the "Intellectual Property") and correspondence files relating thereto, including dates of registration with state or federal agencies along with identifying registration numbers, if any. Copy of all licenses, assignments, royalty agreements and other contracts and instruments relating to the foregoing.

5. Employees.

- (a) Provide copies of all corporate policy manuals covering hiring, regulatory compliance, internal controls, affirmative action plans, and other employment matters covering employees whose employment responsibilities are primarily associated with the Assets (the "Employees").
- (b) Provide a listing of the names and number of Employees by department or other relevant classification. Provide for each the compensation paid to such Employee during the past year, the Employee's date of hire and current position or title.
- (c) Copies of employment contracts, collective bargaining agreements, confidentiality agreements, noncompetition agreements, management and consulting contracts, union contracts, employee manuals, benefit plan summaries, etc., relating to the Employees.
- (d) With respect to the Employees, (i) documents representing all profit sharing and savings plans, pension or retirement plans, deferred compensation plans, medical, dental or other health and welfare plans and any bonus, incentive, performance or similar plans or arrangements and related agreements, materials describing any of the foregoing, and the latest applicable trust accounting, actuarial reports and other applicable financial statements; (ii) summary plan descriptions for each of the foregoing, to the extent available; (iii) for each qualified plan, provide a copy of the most recent IRS favorable determination letter (including a copy of the request for such determination) with respect to such plan; (iv) for each plan for which Forms 5500 are required to be filed, please provide copies of the three most recently filed Forms 5500 with schedules attached; (v) calculation of estimated retiree medical liability (if any) and cash flow impact over next several years; and (vi) schedule of pension liabilities and assets (if any).
- (e) Copies of any other executive compensation plans or programs relating to the Employees.
- (f) Form of nondisclosure or proprietary information agreements used by the Company and a list of any Employees who are a party to such agreement.
- (g) With respect to the Employees, (i) description of any threatened or pending labor disputes, work stoppages, work slowdowns, walkouts, lockouts or union

organizing activities since inception, indicating disposition thereof, and (ii) copies of NLRB or Department of Labor filings, if any.

- (h) Description of Employee turnover over the last three years, including the number of voluntary resignations and involuntary terminations.
- (i) Schedule of all compensation paid during the last fiscal year to Employees, showing separately salaries, bonuses and non-cash compensation, including bonuses paid or accrued, direct or indirect benefits or perquisites, and all benefits paid or accrued under all employee benefit plans.

6. **Insurance/Bonds.**

- (a) A schedule of all policies or binders of insurance or self-insurance arrangements, including medical, workers compensation, disability, automobile, general liability, fire and casualty insurance relating to the Employees or the Assets.
- (b) A schedule of insurance claims related to the Assets in excess of \$ 100,000 over the last five years, and a summary of loss history for such period.
- (c) A schedule of threatened or potential claims.
- (d) A schedule of outstanding bonds (value and bonding company) relating to the Assets.

7. **Legal – Proceedings, Investigations and Litigation.**

- (a) Current list of all litigation, administrative or regulatory proceedings, investigations or governmental actions involving, or relating to, the Assets or the Employees, with brief description of each such matter, including but not limited to (i) any civil, criminal, administrative, arbitration or other similar proceeding or investigation pending or threatened, (ii) any governmental action involving the IRS, DOL, EEOC, OSHA, NLRB, EPA or any other environmental regulatory authority, or any other federal, state, local or foreign governmental authority, as well as (iii) any suits or actions or notices (oral or written) of any kind by any private party whether involving environmental or hazardous waste, labor practices or employment matters, warranty, occupational safety, employee pension plans, supplier, contract or other matters. Include name of court or agency in which the litigation proceeding is pending, date instituted, docket number (if available) and principal parties thereto.
- (b) Description of currently threatened litigation, legal claims, regulatory actions or other actions or proceedings, including any correspondence regarding any threatened governmental investigation or alleged violation of law or regulation, involving, or relating to, the Assets or the Employees.
- (c) To the extent not duplicative with responses to 7(a) and 7(b), a description of all actual and/or threatened litigation involving, or relating to, the Assets or the

Employees for the past five years and current description of the disposition and status thereof, including any settlement agreements.

- (d) Any currently effective consent decrees, judgments, other decrees or orders, settlement agreements and other similar agreements involving, or relating to, the Assets or the Employees to which the Company is a party or by which the Company or any of the Assets is bound.
- (e) A description of any challenge or threatened challenge, whether in writing or oral, against the Company or any of its affiliates regarding the validity or use of any patent, trademark, trade name, service mark, software, franchise, license or any intellectual property relating to the Assets. A description of any notice of, or any investigation regarding any violations or potential violations of the present or future rights of the Company or any of its affiliates in any patent, trademark, trade name, service mark, software, franchise, license or intellectual property relating to the Assets.

8. **Legal – Regulations, Filings, and Permits.**

- (a) A schedule of all authorizations, approvals, licenses, consents, permits and certificates of authority issued or required to be issued by any federal, state, local or foreign governmental authority and required by the Company for the ownership or operation of the Assets. A description (or discussion) of any current problems related to any such authorizations or permits or any such required authorizations or permits not obtained. Detail all assignments or other transfers, if any.
- (b) Reports filed and significant correspondence to and from any state or federal regulatory agencies (including, without limitation, the EPA and state level environmental regulators, OSHA and EEOC) relating to the Assets or the Employees.
- (c) Description of any inquiries, known noncompliance, violations or alleged violations of any laws, regulations, orders or decrees for the past five years and the disposition and status thereof, including without limitation, any OSHA, EPA or EEOC law or regulation, or any law or regulation relating to political contributions, payments to governmental officials, customers or suppliers or other unlawful payments, laws relating to pollution or environmental controls or applicable building, zoning or occupational safety, in each case relating to the Assets or the Employees.
- (d) Schedule of consent decrees and settlements with governmental authorities relating to the Assets or the Employees.
- (e) A schedule of all notices, correspondence, information requests or reports filed or required to be filed by the Company with any federal, state or local governmental authority as well as similar materials, if any, relating to applicable foreign

regulatory bodies during the last five years relating to the Assets or the Employees. Reports not filed should be separately identified.

- (f) Copies of any reports resulting from examinations made by, and any transcripts of any significant proceedings before, any federal or state regulatory authorities relating to the Assets of the Employees during the last five years.
- (g) Copies of all reports and correspondence involving the Company during the last five years to or from governmental authorities regarding EPA, hazardous waste matters, securities law matters, insurance matters, ERISA, EEOC, NLRB, DOL, OSHA, customs, health or safety matters, zoning, condemnation or other regulatory or statutory matters, including, without limitation, correspondence to or from any state or local equivalent of the above listed agencies, in each case relating to the Assets or the Employees.
- (h) A list of all consents, waivers, approvals or authorizations required from any federal, state, local or foreign governmental authority in connection with the Company's proposed sale of the Assets to APS.

9. **Environmental.**

- (a) With respect to all Real Property owned, leased or used, presently or at any time in the past, by the Company (or any predecessor in interest) (i) identify the Real Property, (ii) indicate the length of time that the Company had or has either owned or occupied the Real Property, (iii) indicate the approximate date, when any structures were built or major renovation completed, (iv) identify former and/or current operators and owners of the site(s) and the type of operations conducted at the site(s), (v) indicate whether the facility(s) contains asbestos containing material, and if so describe the steps that have to be taken to determine friability and/or the cost for abatement, and (vi) identify past and current uses of neighboring properties around the site(s).
- (b) Provide environmental compliance and cleanup costs of the Company for the latest three fiscal years and any available estimates of future annual compliance and cleanup costs associated with the Assets, and indicate current and reasonably probable future environmental compliance projects associated with the Assets.
- (c) Provide a list and documentation related to all past, present or possible future violations or alleged violations by the Company of any environmental laws in connection with the Company's ownership or use of the Real Property or its ownership or operation of the Assets.
- (d) Provide copies of all environmental reports, studies or audits on the Real Property that have been conducted or compiled by the Company or on its behalf or to which it has access, including copies of all Phase I and Phase II environmental reports performed on the Real Property within the past ten years.

- (e) List and provide details of any lawsuit or proceeding involving the Company and involving, or relating to, the Assets alleging (i) liability for disposal of hazardous wastes or for release of hazardous substances either at any of the site(s) owned or operated by the Company or its predecessors in interest or at any disposal sites that received hazardous wastes generated by the Company or its predecessors in interest, (ii) pollution of any kind (identify), (iii) causing or contributing to the exposure of person to any hazardous chemicals or substances (identify), or (iv) violations of any environmental laws (identify).
- (f) List and provide details of any investigation by or request for information from any regulatory agency relating to the Assets or the Real Property pursuant to any applicable federal, state, or local environmental law, regulation, or ordinance.
- (g) If the Company has an EPA generator ID number, please provide it.
- (h) If the Company has any permits relating to the Assets issued by any state, federal or local environmental agency, please identify them by number, year of issuance and type and the expiration dates of each permit, provide a copy of each, and, if any violation notices have been received under any of the permits, describe the nature of the violation and its resolution.
- (i) Has any of the Companies ever received a Potentially Responsible Party ("PRP") notice under CERCLA (Superfund) from the EPA or similar notice from any state agency, or been involved in a cost recovery or contribution lawsuit pursuant to CERCLA or corresponding state law, relating to the Assets? If so, describe.
- (j) If any facility owned, leased or used by any of the Company and included in the Assets presently has or ever had any underground storage tanks or facilities (UST), identify each UST and provide (i) its age, volume and type of material stored, (ii) whether it has been registered, (iii) whether it has been tested for leaks, and the results of any such tests.
- (k) Has any facility owned, leased or used the Company and included in the Assets been surveyed for PCBs? If PCBs were found, please list the locations, provide copies of any reports and describe the actions taken.
- (l) List by type and volume for each location included in the Real Property any hazardous substances generated during the last ten years and identify by location each transporter used to remove hazardous wastes from any of the site(s). Indicate the name and location of each solid and hazardous waste treatment, storage and disposal facilities currently or formerly owned or operated by the Company or any predecessor in interest and included in the Real Property or to which hazardous or potentially hazardous waste generated by the Company or any predecessor in interest from the Assets are or were taken for storage, treatment, disposal, recycling or reuse. Provide copies of hazardous waste manifests for all hazardous wastes that were removed from any of the Real Property site(s) and disposed at the locations identified above.

- (m) Please provide copies of all compliance reports, excess emissions reports and/or deviation reports filed with any regulatory agency pursuant to the Clean Air Act regulatory requirements, with respect to the Assets.
- (n) Please indicate if the Company has in effect an employee Hazard Communication and Training Program and/or a written safety program for its Employees.
- (o) Do any of the Company's operations associated with the Assets require the use of hazardous chemicals? If so, please identify by type and volume the chemical usage annually for the last ten years.
- (p) Do any of the Company's operations relating to the Assets discharge wastewater into something other than a public owned treatment works? If so, provide details of such discharges and any applicable permits.

10. **Water Rights.**

- (a) List and provide a description and documentation of all water rights related to or associated with the Assets or appurtenant to the Real Property, including all surface rights, ground water rights and contract water rights, and provide a description and history of the use of such rights.
- (b) List and provide a description and documentation of all filings, registrations and assessments for the water rights identified under item 10(a) above.
- (c) Provide evidence that all surface water rights listed under item 10(a) above have been exercised within the past five years and that all water rights listed under item 10(a) above currently are valid and exercisable.
- (d) List and provide a description of all wells and well sites relating to the Assets owned by Company, and provide a description and history of the use of such wells and well sites.
- (e) Provide copies of all statements of claimants filed in any pending water rights adjudication being conducted relating to the Assets, and any related documentation.
- (f) List and provide documentation related to any enforcement actions by the Arizona Department of Water Resources or any other state or federal agency relating to the Assets and any violations, or alleged violations, of water conservation or other related rules, regulations or requirements relating to the Assets.
- (g) Copies of all reports, if any, filed with the Arizona Department of Water Resources or any other state agency relating to the Assets.

11. Miscellaneous.

- (a) All correspondence and documents relating to contingent liabilities relating to the Assets exceeding \$ 75,000, not otherwise duplicative with responses to items listed above.
- (b) Any other documents, information or data which are significant with respect to the Assets or the Employees or which should be considered and reviewed in making disclosures regarding the Assets or the Employees to a potential purchaser of the Assets.

ATTACHMENT 5

ASSET PURCHASE AGREEMENT

by and among

as Seller¹

and

**ARIZONA PUBLIC SERVICE COMPANY,
as Purchaser**

dated as of _____, 2003

¹ As noted in the Request for Proposals, APS requires a creditworthy party, either as principal or guarantor, to be a party to this Asset Purchase Agreement.

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of _____, 20__ (this "Agreement") is made and entered into by and between _____, a _____ ("Seller") and Arizona Public Service Company, an Arizona corporation ("Purchaser").

RECITALS

Seller owns a _____ generating plant in _____ County, _____.

Seller desires to sell and assign to Purchaser, and Purchaser desires to purchase and assume from Seller, the Purchased Assets (as hereinafter defined) on the terms and subject to the conditions set forth herein.

STATEMENT OF AGREEMENT

Now, therefore, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. Capitalized terms used in this Agreement have the meanings given to them in Appendix I to this Agreement.

1.2 Construction.

(a) All article, section, subsection, schedule and exhibit references used in this Agreement are to articles, sections, subsections, schedules and exhibits to this Agreement unless otherwise specified. The exhibits and schedules attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise the singular shall include the plural and the plural shall include the singular wherever and as often as may be appropriate, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words "includes" or "including" shall mean "including without limitation," the words "hereof," "hereby," "herein," "hereunder" and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or article in which such words appear and any reference to a Law shall include any amendment thereof or any successor thereto and any rules and regulations promulgated thereunder. Currency amounts referenced herein, unless otherwise specified, are in U.S. Dollars.

below), in accordance with the respective terms and subject to the respective conditions thereof (collectively, but excluding the Excluded Liabilities, the "*Assumed Liabilities*"):

(a) all Liabilities of Seller under the Transferred Contracts, Transferred Permits and Transferred Intellectual Property, in each case in accordance with the terms thereof, except to the extent that such Liabilities, but for a breach or default by Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arise out of any such breach or default or out of any event which after the giving of notice would constitute a default by Seller;

(b) all Liabilities associated with Continued Employees, to the extent provided in **Section 6.5**; and

(c) any Liability of Seller described on **Schedule 2.3(c)**.

2.4 Excluded Liabilities. Except for the Assumed Liabilities, Purchaser shall not assume by virtue of this Agreement, the Assumption Agreement or any other Ancillary Agreement, or the transactions contemplated hereby or thereby, or otherwise, and shall have no liability for, any Liabilities of Seller (the "*Excluded Liabilities*"), including any of the following Liabilities:

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

(b) any Liabilities in respect of Taxes attributable to the Purchased Assets for taxable periods ending before the Closing Date;

(c) any Liabilities of Seller (i) arising from the breach or default by Seller, prior to the Closing Date, of any Transferred Contract, Transferred Permit or Transferred Intellectual Property or (ii) in respect of any other contract, agreement, personal property lease, permit, license or other arrangement or instrument entered into by Seller;

(d) subject to **Section 3.2**, any payment obligations of Seller, including accounts or notes payable, arising prior to the Closing Date;

(e) any fines and penalties imposed by any Governmental Authority resulting from any act or omission by Seller or its Affiliates that occurred prior to the Closing Date;

(f) any income Taxes attributable to income received by Seller;

(g) any Liability of Seller arising as a result of its execution and delivery of this Agreement or any Ancillary Agreement, the performance of its obligations hereunder or thereunder, or the consummation by Seller of the transactions contemplated hereby or thereby;

(h) any Liability of Seller based on Seller's acts or omissions after the Closing; and

(i) any and all Environmental Liabilities and Tort Liabilities accruing, arising, existing or occurring prior to the Closing Date.

ARTICLE III

PURCHASE PRICE; CLOSING

3.1 Purchase Price. At the Closing, Purchaser agrees to pay to Seller in cash the amount (the "**Purchase Price**") of \$_____.

3.2 Proration.

(a) Purchaser and Seller agree that all of the items normally prorated, including those listed below, relating to the Business and the Purchased Assets shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period through the Closing Date, and Purchaser liable to the extent such items relate to periods subsequent to the Closing Date:

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

(ii) any rent, Taxes and other items payable by or to Seller under any of the Transferred Contracts to be assigned to and assumed by Purchaser hereunder;

(iii) any permit, license or registration fees with respect to any Transferred Permit; and

(iv) charges for water, telephone, electricity and other utilities.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be reprorated upon request of either Seller or Purchaser made within 60 days of the date that the actual amounts become available. Seller and Purchaser agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this **Section 3.2**.

3.3 Closing. The Closing shall take place at the offices of Seller at 10:00 A.M. local time, on the third Business Day after the conditions to Closing set forth in **Articles VIII and IX** (other than actions to be taken or items to be delivered at Closing) have been satisfied or waived, or on such other date and at such other time and place as Purchaser and Seller mutually agree in writing. All actions scheduled in this Agreement for the Closing Date shall be deemed to occur simultaneously at the Closing. Subject to the provisions of **Article X**, failure to consummate the purchase and sale provided for in this Agreement on the date determined pursuant to this **Section 3.3** will not result in the termination of this Agreement and will not relieve any Party of any

obligation under this Agreement. The Closing shall be effective for all purposes as of 12:01 A.M. local time on the Closing Date.

3.4 Closing Deliveries by Seller to Purchaser. At the Closing, Seller shall deliver, or shall cause to be delivered, to Purchaser the following:

- (a) the Deed, duly executed and acknowledged by Seller and in recordable form;
- (b) the Bill of Sale and Assignment of Rights, duly executed by Seller;
- (c) the Affidavit of Property Value, duly executed and acknowledged by Seller;
- (d) the FIRPTA Affidavit, duly executed and acknowledged by Seller;
- (e) the Sale Back Agreement, duly executed and acknowledged by _____;

(f) a certificate of an officer of Seller, dated as of the Closing Date, setting forth and attesting to (i) the resolutions of the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby; and (ii) the incumbency and signature of the officer(s) of Seller executing this Agreement and the Ancillary Agreements;

(g) a certificate of an officer of Seller, dated as of the Closing Date, as to the matters set forth in **Sections 8.1 and 8.2**;

(h) a complete copy of the articles of incorporation, certificate of incorporation, certificate of formation or similar formation document (and all amendments thereto) of Seller, certified by the Secretary of State of Seller's jurisdiction of organization as of a date not more than five (5) Business Days prior to the Closing Date, and a complete copy of the Charter Documents (and all amendments thereto) as in effect on the Closing Date of Seller, certified by an officer of Seller;

(i) certificates from appropriate Governmental Authorities, dated no earlier than five (5) Business Days prior to the Closing Date, as to the good standing and legal existence of Seller in the State of _____ and as to the good standing and qualification to do business by Seller in the State(s) of _____;

(j) the consents, waivers, authorizations and approvals set forth on **Schedules 4.3(b) and 4.3(c)**, in form and substance reasonably satisfactory to Purchaser;

(k) a tax clearance certificate from the _____ Department of Revenue [or other similar document, if applicable], dated no earlier than five (5) Business Days prior to the Closing Date, with respect to Seller; and

(l) such other documents as Purchaser may reasonably request to carry out the purposes of this Agreement.

3.5 Closing Deliveries by Purchaser to Seller. At the Closing, Purchaser shall deliver to Seller the following:

(a) a wire transfer of immediately available funds (to such account as Seller shall have notified Purchaser of at least two (2) Business Days prior to the Closing Date) in the amount equal to the Purchase Price;

(b) [the Affidavit of Property Value] [or other appropriate document], duly executed and acknowledged by Purchaser;

(c) an assumption agreement (the "**Assumption Agreement**") in the form attached hereto as Exhibit A evidencing the assumption by Purchaser of the Assumed Liabilities, duly executed by Purchaser;

(d) the certificate of an officer of Purchaser, dated as of the Closing Date, setting forth and attesting to (i) the resolutions of the board of directors of Purchaser authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby, and (ii) the incumbency and signature of each officer of Purchaser executing this Agreement and the Ancillary Agreements to which it is a party;

(e) a certificate of an officer of Purchaser, dated as of the Closing Date, as to the matters set forth in **Sections 9.1 and 9.2**;

(f) a complete copy of Purchaser's articles of incorporation (and all amendments thereto), certified by the ACC as of a date not more than five (5) Business Days prior to the Closing Date and a complete copy of the bylaws (and all amendments thereto), certified by an officer of Purchaser;

(g) a certificate from the ACC, dated no earlier than five (5) Business Days prior to the Closing Date, as to the good standing and legal existence of Purchaser in Arizona; and

(h) such other documents as Seller may reasonably request to carry out the purposes of this Agreement.

3.6 Allocation of Purchase Price. Seller and Purchaser agree that prior to the Closing, the Purchase Price shall be allocated among the Purchased Assets in accordance with an allocation schedule (the "**Purchase Price Allocation Schedule**") agreed upon by Purchaser and Seller, which shall be prepared in a manner required by Section 1060 of the Code and any other applicable Law and delivered by Purchaser to Seller prior to the Closing. Seller and Purchaser each shall prepare a mutually acceptable and substantially identical IRS Form 8594 "Asset Acquisition Statements Under Section 1060" consistent with the Purchase Price Allocation Schedule which the Parties shall use to report the transactions contemplated by this Agreement to

the applicable Taxing Authorities. Each of Seller and Purchaser agrees to provide the other promptly with any other information required to complete Form 8594.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

The representations and warranties contained in this Article IV are qualified by the disclosure made with respect to such particular representations and warranties in the Schedules attached hereto, to the extent that such disclosure specifically identifies, or that it is reasonably apparent that such disclosure relates to, the subsections that it qualifies. This Article IV and the Schedules shall be read together as an integrated provision. Seller hereby represents and warrants to Purchaser that, except as disclosed in the Schedules:

4.1 Organization, Standing and Power. Seller is a duly formed, validly existing and in good standing under the Laws of and has all requisite power and authority to conduct its business as it is now being conducted and to own, lease and operate the Business and the Purchased Assets. Seller is duly qualified or licensed to do business in each jurisdiction in which the ownership or operation of the Purchased Assets or the nature of the business conducted by it make such qualification or licensing necessary. Seller has made available to Purchaser true, correct and complete copies of its Charter Documents.

4.2 Authority. Seller has all requisite [corporate] power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and each Ancillary Agreement to which it is a party, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary [corporate] action. This Agreement and each of the Ancillary Agreements to which Seller is a party have been duly and validly executed and delivered by Seller and constitute the legal, valid and binding obligation of Seller enforceable against Seller in accordance with their respective terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

4.3 No Conflicts. The execution, delivery and performance by Seller of this Agreement and each of the Ancillary Agreements to which it is a party and the completion of the transactions contemplated hereby and thereby do not and will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the Charter Documents of Seller;

(b) assuming the consents set forth on Schedule 4.3(b) (the "**Seller Consents**") have been obtained:

(i) violate, result in a breach of, constitute (with due notice or lapse of time or both) a default or cause any obligation, penalty, premium or right of termination, cancellation or acceleration to arise or accrue under, any Contract to

which Seller is a party or by which it or any of the Purchased Assets may be bound, except for any such defaults or consents (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(ii) result in the creation or imposition of any lien, charge or Lien of any kind whatsoever upon any of the Purchased Assets;

(iii) result in the cancellation, modification, revocation or suspension of any Transferred Contract, Transferred Permit or Transferred Intellectual Property;

(iv) require the consent, approval, or notification of, or registration or filing with, any third party;

(v) cause Purchaser, any of its Affiliates, or any of the Purchased Assets to become subject to, or liable for the payment of, any Tax relating to the operation of Seller, the Purchased Assets or the Business for any period ending or deemed to end on or before the Closing Date; and

(c) assuming all required filings, approvals, consents, authorizations and notices set forth on Schedule 4.3(c) (collectively, the "**Seller Approvals**") have been made, obtained or given, (i) conflict with or result in a violation or breach of any term or provision of any Law or writ, judgment, order or decree applicable to Seller or of its Assets, or (ii) require the consent, approval, or notification of, or registration or filing with, any Governmental Authority under any applicable Law.

4.4 Business. The Business is the only business operation carried on by Seller. Except for the Excluded Items, the Purchased Assets are sufficient to operate the Business as currently operated and constitute all the assets and rights that are used by Seller or any of its Affiliates in connection with the operation of the Business. All equipment included in the Purchased Assets (other than spare parts and other equipment not currently in service) and all buildings, structures and fixtures constituting part of the Project have been maintained by Seller in accordance with Good Operating Practices, except for ordinary wear and tear. There are no pending or threatened proceedings or governmental actions to condemn or take by power of eminent domain all or any part of the Purchased Assets.

4.5 Subsidiaries. [Seller does not have any subsidiaries or own equity interests in any Person.]

4.6 Legal Proceedings.

(a) Neither Seller nor any of its Affiliates has been served with notice of any Claim, and none has been threatened against any such Person that (a) affects Seller or the Purchased Assets and would, individually or in the aggregate, if pursued or resulting in a judgment against Seller, reasonably be expected to have a Material Adverse Effect or (b) seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement. Seller does not have any Knowledge of

any facts that would reasonably be expected to form the basis for any such Claim, writ, judgment, order or decree.

(b) Schedule 4.6(b) reflects all of the currently pending legal proceedings relating to the Project or the Business before any Governmental Authority. All currently effective filings relating to the Project or the Business heretofore made by Seller with any Governmental Authority were made in compliance with the Laws then applicable thereto and the information contained therein was true and correct in all respects as of the respective dates of such filings.

4.7 Compliance with Laws and Orders. Seller is in compliance with all Laws and orders applicable to it, except where any such non-compliance would not, in the aggregate, reasonably be expected to have a Material Adverse Effect; provided that this **Section 4.7** does not address Environmental Laws, which are exclusively addressed by **Sections 4.15** and **4.16**.

4.8 Liabilities. Except as disclosed on Schedule 4.8, Seller has no Liabilities that individually or in the aggregate exceed \$, excluding (i) Liabilities under the Material Contracts, (ii) liabilities under this Agreement, (iii) Liabilities under Seller's Permits listed on Schedule 4.15, (iv) Liabilities under this Agreement for which Seller is responsible, and (v) Liabilities incurred after the date hereof in accordance with the provisions contained in **Article VI**.

4.9 Absence of Certain Changes or Events. Except as set forth in Schedule 4.9, and except as otherwise contemplated by this Agreement, since , 20 , there has not been: (i) any Material Adverse Effect; (ii) any damage, destruction or casualty loss, whether covered by insurance or not, which had a Material Adverse Effect; (iii) any entry into any agreement, commitment or transaction (including, without limitation, any borrowing, capital expenditure or capital financing) by Seller or any of its Affiliates, which is material to the Business or operations of the Purchased Assets, except agreements, commitments or transactions in the ordinary course of business or as contemplated herein; or (iv) any action that would have been prohibited by **Article VI** had this Agreement been in effect at the time of such action.

4.10 Taxes. All Tax Returns that are required to be filed on or before the Closing Date by, on behalf of or relating to Seller or its financial results have been or will be duly and timely filed. All Taxes that are shown to be due on such Tax Returns have been or will be timely paid in full. All withholding Tax requirements imposed on Seller have been satisfied in full in all respects. Seller does not have in force any waiver of any statute of limitations in respect of Taxes or any extension of time with respect to a Tax assessment or deficiency. There are no pending or active audits or threatened audits or proposed deficiencies or other claims for unpaid Taxes of Seller.

4.11 Regulatory Status.

(a) [Seller is qualified as an "exempt wholesale generator" and the Project is an "eligible facility," each within the meaning of Section 32(a) of the Public Utility Holding Company Act of 1935. Except as set forth on Schedule 4.11(a), Seller is not subject to regulation as a public utility or public service company (or similar designation) by the United

States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.]

(b) Seller is not an "investment company," a company "controlled" by an "investment company" or an "investment advisor" within the meaning of the Investment Company Act of 1940.

4.12 *Contracts.*

(a) Schedule 4.12(a) sets forth a complete and accurate list as of the date of this Agreement of all of the following Transferred Contracts to which Seller is a party or by which the Purchased Assets may be bound (collectively, "**Material Contracts**" and individually a "**Material Contract**"):

- (i) Contracts for the future purchase, exchange or sale of gas;
- (ii) Contracts for the future purchase, exchange or sale of power or ancillary services;
- (iii) Contracts for the future purchase, exchange, or sale of steam;
- (iv) Contracts for the future transportation or transmission of gas or electric power;
- (v) interconnection Contracts;
- (vi) Contracts (A) for the sale of any Asset or (B) that grant a right or option to purchase any Asset, other than Contracts entered into in the ordinary course of business relating to Assets with a value of less than \$ _____ individually or \$ _____ in the aggregate;
- (vii) Contracts for the future provision of goods or services requiring payments in excess of \$ _____ for each individual Contract;
- (viii) Contracts under which Seller has created, incurred, assumed or guaranteed any outstanding indebtedness for borrowed money or any capitalized lease obligation, or under which Seller has imposed a security interest on any of its Assets, tangible or intangible, which security interest secures outstanding indebtedness for borrowed money;
- (ix) outstanding agreements of guaranty, surety or indemnification, direct or indirect, by Seller, or by any Affiliate of Seller for the benefit of Seller;
- (x) Contracts with Seller or any Affiliate of Seller relating to the future provision of goods or services;

(xi) Contracts for consulting providing annual compensation in excess of \$ _____ and which are not cancelable by Seller on notice of 90 days or less;

(xii) outstanding futures, swap, collar, put, call, floor, cap, option or other Contracts that are intended to benefit from or reduce or eliminate the risk of fluctuations in the price of commodities, including electric power, gas or securities;

(xiii) Contracts that purport to limit Seller's freedom to compete in any line of business or in any geographic area;

(xiv) partnership, joint venture or limited liability company agreements; and

(xv) Contracts conveying, granting, leasing or assigning an interest in real property to Seller.

(b) Seller has provided Purchaser with, or access to, true and complete copies of all Material Contracts.

(c) Each of the Material Contracts is in full force and effect in all material respects and constitutes a valid and binding obligation of Seller and of the other parties thereto and, except as disclosed in Schedule 4.12(c), may be transferred to Purchaser pursuant to this Agreement without the consent of the other parties thereto and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder.

(d) Except as set forth in Schedule 4.12(d), there is not under any Material Contract any default or event which, with notice or lapse of time or both, (i) would constitute a default by Seller or any other party thereto, (ii) would constitute a default by Seller or any other party thereto which would give rise to an automatic termination, or the right of discretionary termination thereof, or (iii) would cause the acceleration of any of Seller's obligations thereunder or result in the creation of any Lien (other than any Permitted Lien) on any of the Purchased Assets. There are no claims, actions, proceedings or investigations pending or threatened against Seller or any other party to any Transferred Contract before any Governmental Authority or body acting in an adjudicative capacity relating in any way to any Transferred Contract or the subject matter thereof. Seller has no Knowledge of any defense, offset or counterclaim arising under any Material Contract.

(e) Schedule 4.12(e) details all warranties by any vendor, materialman, supplier, contractor or subcontractor relating to the Purchased Assets or any component thereof and specifies the following information with respect to each such warranty: (i) the terms and conditions of the warranty and the item of equipment or other item of the Purchased Assets to which the warranty is applicable; (ii) the contract or agreement pursuant to which the warranty was given or made (a true and complete copy of each such contract or agreement has been provided to Purchaser); (iii) the entity giving or making the warranty and any entity assuming or otherwise liable for any part of the warranty obligation and the details of any such assumption or

liability, with a copy thereof; (iv) the entity to whom the warranty was originally given or made and each and every assignment of such warranty thereafter, with a copy thereof; (v) the date that the warranty period or any component thereof commenced and the action or event that caused the warranty period or such component to commence; (vi) the term of the warranty period and each component thereof and the anticipated last day of such warranty period or component; (vii) a description of any warranty work done under the applicable warranty, the date thereof and the applicable warranty period for the warranty work; and (viii) the names and contact information of each person or entity whose consent is required for the transfer of such warranties to Purchaser. Except as disclosed on Schedule 4.12(e), Seller has complied with all storage, installation, operation, maintenance and other requirements with respect to each item of equipment or other item of the Purchased Assets to which each warranty relates and each other condition to the continued effectiveness of each such warranty, and there are no events that have occurred or conditions applicable that constitute or may constitute a defense to the continuing effectiveness of each such warranty.

4.13 *Real Property.*

(a) Transferred Real Property. Schedule 4.13(a) contains a true and complete list of all Real Property of Seller that is part of the Purchased Assets (including, without limitation, all rights of Seller relating to any associated interconnection or similar facilities, rights of way, encumbrances or other such rights). Seller owns or leases (as tenant or lessee) all Real Property listed on Schedule 4.13(a), in each case free and clear of all Liens (except for Permitted Liens that do not affect the use or marketability of such Real Property) created by, through or under Seller, except as otherwise noted on Schedule 4.13(a).

(b) Encumbrances and Improvements. Schedule 4.13(b) includes a description of all land, and all encumbrances, easements, licenses or rights of way of record (or, if not of record, of which Seller has Knowledge) granted on or appurtenant to or otherwise affecting the Real Property, and all plants, buildings, structures or other Improvements located thereon. All Liens, easements or rights of way that are not of record, if any, would not have a Material Adverse Effect. There are now in full force and effect duly issued certificates of occupancy permitting the Real Property and Improvements located thereon to be legally used and occupied as the same are now constituted. No fact or condition exists which would prohibit or adversely affect the ordinary rights of access to and from the Real Property from and to the existing highways and roads and there is no pending or threatened restriction or denial, governmental or otherwise, upon such ingress and egress. There is not (i) any claim of adverse possession or prescriptive rights involving any of the Real Property, (ii) any structure located on any Real Property which encroaches on or over the boundaries of neighboring or adjacent properties or (iii) any structure of any other party which encroaches on or over the boundaries of any such Real Property. No public improvements have been commenced and none are planned which in either case may result in special assessments or otherwise would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Real Property Leases. Except as set forth in Schedule 4.13(c), there are no real property leases, recorded or unrecorded (the "*Real Property Leases*"), relating to the Purchased Assets under which Seller is a lessee, lessor or under which Seller has any interest.

(d) Approval. No state, municipal, or other governmental approval regarding the division, platting, or mapping of real estate is required as a prerequisite to the conveyance by Seller to Purchaser (or as a prerequisite to the recording of any conveyance document) of any Real Property pursuant to the terms hereof.

(e) Governmental Restrictions; Condemnation. Seller has not received, nor has Knowledge of, any notifications, restrictions, or stipulations from the United States of America, the State of _____, the County of _____, or any other governmental authority requiring any work to be done on the Real Property or threatening the use of the Real Property. There are no pending or threatened condemnation proceedings affecting any portion of the Real Property. Seller is not subject to, nor does any basis exist for, any order, judgment, decree or governmental restriction which would adversely affect this transaction, the Real Property or the use of the Real Property in the manner presently being conducted by Seller. Seller has no Knowledge of any plan, study, litigation, action, proceeding or effort by any governmental authority or private party which in any way challenges, affects or would challenge or affect the continuation of the present use and operation of the Real Property.

(f) Title and Access. Fee simple title to the Real Property is currently vested in Seller. Permanent, legal access as presently existing is available to the Real Property from a dedicated public right-of-way.

(g) Knowledge of Adverse Title Matters. Except as shown on the Survey, Seller has no Knowledge of any title defect, Lien, encumbrance, adverse claim, or other matter relating to the title to the Real Property or to the title insurance coverage for the Real Property which it has not disclosed in writing to the Title Insurer or which is not shown by the public records.

(h) Absence of Liens. No Liens against the Real Property are threatened, pending or has arisen or exists under Federal or state tax, environmental, or other Law.

(i) Utilities. Water, sewer, telephone, gas and electrical facilities are presently installed to the Real Property line, are available and in good working order, and are in compliance with all applicable Laws of all Governmental Authorities having jurisdiction and with the rules and regulations of the relevant public utilities.

(j) Zoning. The Real Property is zoned _____.

(k) Condition of Property. All of the improvements, buildings and fixtures on or part of the Real Property are constructed in a good and workmanlike manner, are structurally sound, are in good and proper working condition and repair, normal wear and tear excepted.

(l) Insurance. Seller has not received any notices from any insurance company of any defects or any inadequacies in the Real Property or any part thereof which would adversely affect the insurability of the Real Property. The Real Property is in compliance with the requirements of all insurance carriers currently providing insurance for the Real Property.

(m) Compliance. Seller has complied, in all respects, with all Laws, ordinances, rules, regulations, requirements and orders of federal, state, or local governments and/or their agencies with respect to the Real Property and the operations presently being conducted by Seller upon the Real Property. Neither the Real Property, nor any improvement or building upon the Real Property, nor the continued maintenance, operation or use of any portion of the Real Property, nor the current operations on the Real Property, violates, in any respect, any such Laws, ordinances, rules, regulations, requirements and orders, including, but not limited to zoning or building Laws, ordinances, orders or regulations. Seller has obtained all licenses, consents, permits and other governmental authorizations currently required for the conduct of the current operations on the Real Property. All such licenses, consents, permits and authorizations are in full force and effect, and Seller is in full compliance therewith.

(n) Archeological Artifacts and Endangered Species. To Seller's Knowledge, there are no historical or archeological materials or artifacts of any kind or any Indian ruins of any kind located on the Real Property. To Seller's Knowledge, no part of the Real Property is "critical habitat" as defined in the Federal Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*, as amended, or in regulations promulgated thereunder, nor are any "endangered species" or "threatened species" located on the Real Property, as defined therein.

(o) Americans with Disabilities Act. Seller has received no notices of violation of, and the Real Property is in compliance with, the Americans with Disabilities Act of 1990, as amended.

(p) Special Districts. The Real Property is not located within any water conservation, irrigation, soil conservation, weed or insect abatement, or other similar district, or any special improvement district. Except as shown on the Survey, the Real Property is not within a flood plain, flood way or flood control district.

(q) Taxes. Seller does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against Purchaser or that are or may become a Lien against the Real Property, other than the lien for current real property taxes not yet due and payable.

(r) Mechanics' Liens. Except as described in Schedule 4.13(r), no work has been performed on or about the Real Property or to any improvements located thereon within six (6) months prior to the date of this Agreement that could give rise to any mechanics' or materialmen's Liens.

(s) Water Rights.

(i) Seller holds all water rights appurtenant to the Property, including those certificated rights identified on Schedule 4.13(s)(i) attached hereto (collectively, the "Water Rights").

(ii) Seller owns those wells ("Wells") and well sites further identified on Schedule 4.13(s)(ii).

(iii) [For each of the last _____ years, that portion of the Real Property to which the Water Rights identified as Water No. _____ is appurtenant has been irrigated with groundwater pumped pursuant to those certificated rights. For each of the last five years, water has been withdrawn from the Real Property to which Water Right No. _____ is appurtenant and utilized for non-irrigation purposes.]

(iv) The Water Rights remain appurtenant to the Real Property; no Water Rights have been severed from that portion of the Real Property to which they are appurtenant.

(v) Seller has used all groundwater pumped pursuant to a Certificate of Grandfathered Groundwater Right (a "*Water Rights Certificate*") issued by the [_____ Department of Water Resources] ("*DWR*") solely for the purposes identified in such Certificate in such a manner that the Water Rights are not subject to claims of abandonment or forfeiture.

(vi) All filings, registrations and assessments for the Water Rights appurtenant to the Real Property have been made and are current with all appropriate governmental agencies, including but not limited to DWR. As used herein, the phrase, "filings, registrations and assessments" includes but is not limited to registrations of Wells and all notifications of change of ownership forms necessary to assign, transfer or otherwise convey the reported ownership of the Water Rights and Wells from any previous owner to the Seller.

(vii) As of the date hereof, there are no charges, pump taxes, groundwater withdrawal and use fees or assessments due or owing to any state agency including DWR for the Water Rights.

(viii) As of the date hereof, there are no enforcement actions by DWR threatened or pending against Seller relating to the Water Rights, and furthermore, Seller hereby warrants and represents that it is in total and absolute compliance with all water conservation rules, regulations and requirements as set forth in [the applicable management plans for the _____ active management area].

(ix) Seller has caused Annual Groundwater Withdrawal and Use Reports to be prepared and filed annually with DWR for each Water Right, pursuant to the rules and regulations promulgated by DWR.

4.14 Personal Property. Seller has good title to all of its tangible personal property, including the tangible personal property listed on Schedule 4.14, free and clear of all Liens, except for Permitted Liens. The foregoing shall not apply with respect to any item of Intellectual Property, which is governed exclusively by **Section 4.18**. Seller has good title, free and clear of Liens (other than Permitted Liens), to the spare parts in inventory listed on Schedule 4.14.

4.15 *Permits.*

(a) Seller has all Permits required for the ownership and operation of the Project by Seller in the manner in which it is currently owned and operated. All such Permits are set forth on Schedule 4.15, are in full force and effect, and have not been amended except for extensions in the ordinary course of business.

(b) Seller is in substantial compliance with all Permits set forth on Schedule 4.15, and Seller has not received any written notification from any Governmental Authority alleging that it is in violation of any such Permits.

4.16 *Environmental Matters.*

(a) Seller has made available to Purchaser, on a confidential basis, true and complete copies of all material environmental site assessment reports, studies and related documents in the possession of, or available to, Seller and that relate to environmental matters in connection with the operation of the Project or the Real Property.

(b) Except as set forth on Schedule 4.16(b):

(i) Seller has not been served with notice of any Environmental Claims, actions, proceedings or investigations and no Environmental Claims are threatened against Seller before any Governmental Authority or other Person (including any private citizen's group) under any Environmental Laws;

(ii) there has been no event or occurrence at or from the Project that has caused or would cause Seller to fail to comply with applicable Environmental Laws in any respect;

(iii) there has been no Release of any Hazardous Material at or from the Project that would result in an Environmental Claim;

(iv) there are no outstanding judgments, decrees or judicial orders relating to the Purchased Assets regarding compliance with any Environmental Law or to the investigation or cleanup of Hazardous Materials under any Environmental Law relating to the Purchased Assets;

(v) Seller is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law in connection with the Business or the Purchased Assets; and

(vi) there are no Environmental Liabilities.

(c) Seller makes no representation or warranty regarding any environmental matters except as expressly set forth in **Sections 4.15** and **4.16**.

4.17 Insurance. The Project and its tangible Assets are covered by insurance policies in such amounts and against such risks and losses as are consistent with Seller's historical

practices. Except as set forth in Schedule 4.17, all such policies purchased or held by and insuring the Business or the Purchased Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Seller has provided to Purchaser a summary of the loss experience under each insurance policy insuring the Business or the Purchased Assets. Except as described in Schedule 4.17, Seller has not been refused any insurance with respect to the Business or the Purchased Assets nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last twelve (12) months.

4.18 Intellectual Property. Except for the Excluded Items:

(a) Schedule 4.18 lists all issued patents and registered trademarks owned by Seller and currently used in the United States in the Business as currently conducted. As described on Schedule 4.18, Seller owns, or has the license or right to use for the Business, all material Intellectual Property currently used in the Business.

(b) Seller has not received from any third party a claim in writing that Seller is infringing the Intellectual Property of such third party. To Seller's Knowledge, no third party is infringing any Intellectual Property owned or exclusively licensed by Seller.

4.19 Related Persons. Except as set forth on Schedule 4.19, no Affiliate of Seller has any interest in any of the Purchased Assets, no Affiliate of Seller is a party to any Contract with Seller, excluding the Excluded Items.

4.20 Brokers. Seller does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Purchaser could become liable or obligated.

4.21 Employees.

(a) Schedule 4.21(a) sets forth, with respect to each employee of Seller (including any employee who is on a leave of absence or on layoff status): (i) the name and title of such employee; (ii) the aggregate dollar amounts of the compensation (including wages, salary, commissions, fringe benefits, bonuses, profit-sharing payments and other payments or benefits of any type) received by such employee from the Seller; (iii) such employee's annualized compensation as of the date of this Agreement; (iv) the number of hours of sick-time which such employee has accrued as of the date hereof and the aggregate dollar amount thereof; and (v) the number of hours of vacation time which such employee has accrued as of the date hereof and the aggregate dollar amount thereof.

(b) Except as set forth on Schedule 4.21(b), Seller is not a party to or bound by, and has never been a party to or bound by, any employment contract or any union contract, collective bargaining agreement or similar contract. The employment of the employees of Seller is terminable by Seller at will and no employee is entitled to severance pay or other benefits following termination or resignation, except as otherwise provided by Law.

(c) Seller has delivered to Purchaser accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of the current and former employees of Seller.

(d) Schedule 4.21(d) sets forth the name of, and a general description of the services performed by, each independent contractor to whom Seller has made any payment since January 1, 2003.

4.22 Employee Benefits. Set forth on Schedule 4.22 is a complete and correct list of all Benefit Plans. Seller has not assumed (voluntarily or by operation of Law or order) or incurred any Liabilities associated with employees or employee benefit plans, including without limitation under or pursuant to the ERISA. With respect to any "employee benefit plan," within the meaning of Section 3(3) of ERISA, that is sponsored, maintained or contributed to, or has been sponsored, maintained or contributed to within six years prior to the date of this Agreement, by any ERISA Affiliate, (a) no withdrawal liability, within the meaning of Section 4201 of ERISA, has been incurred, which withdrawal liability has not been satisfied, (b) no liability to the Pension Benefit Guaranty Corporation has been incurred by any such entity, which liability has not been satisfied, (c) no accumulated funding deficiency, whether or not waived, within the meaning of Section 302 of ERISA or Section 412 of the Code has been incurred, (d) all contributions (including installments) to such plan required by Section 302 of ERISA and Section 412 of the Code have been timely made, and (e) no condition exists or event or transaction has occurred with respect to any such plan which could result in Seller incurring any material liability, fine or penalty.

4.23 Improvements. Except as set forth in Schedule 4.23, Seller has not received any written notices from any Governmental Authority stating or alleging that any Improvements with respect to the Purchased Assets have not been constructed in compliance with applicable Law. Except as set forth in Schedule 4.23, no written notice has been received by Seller from any Governmental Authority requiring or advising as to the need for any repair, alteration, restoration or improvement in connection with the Purchased Assets.

4.24 Full Disclosure. None of the representations or warranties contained in this **Article IV**, including, without limitation, the Schedules, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller that:

5.1 Corporate Existence. Purchaser is a corporation duly organized, validly existing and in good standing under the Laws the State of Arizona and has all requisite corporate power and authority to enter into this Agreement and each of the Ancillary Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Purchaser is duly qualified or licensed to do business in each

other jurisdiction where the actions required to be performed by it hereunder makes such qualification or licensing necessary, except in those jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a material adverse effect on Purchaser's ability to perform its obligations hereunder.

5.2 Authority. The execution and delivery by Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party and the performance by Purchaser of its obligations hereunder and thereunder have been duly and validly authorized by all corporate action on behalf of Purchaser. This Agreement and each of the Ancillary Agreements to which Purchaser is a party have been duly and validly executed and delivered by Purchaser and constitute the legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with their terms except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

5.3 No Conflicts. The execution, delivery, and performance by Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party and the completion of the transactions contemplated hereby and thereby do not and will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of its Charter Documents;

(b) be in violation of or result in a default (or give rise to any right of termination, cancellation or acceleration) under any material contract to which Purchaser is a party or by which any of its Assets may be bound except for any such violations or defaults (or rights of termination, cancellation or acceleration) which are not, individually or in the aggregate, material; or

(c) assuming all required filings, approvals, consents, authorizations and notices set forth in Schedule 5.3(c) (collectively, the "**Purchaser Approvals**") have been made, obtained or given, (i) conflict with or result in a violation or breach of any term or provision of any Law or writ, judgment, order or decree applicable to Purchaser or any of its Assets or (ii) require the consent or approval of any Governmental Authority under any applicable Law.

5.4 Legal Proceedings. Purchaser has not been served with notice of any Claim, and to Purchaser's knowledge, none is threatened, against Purchaser which seeks a writ, judgment, order or decree restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement.

5.5 Compliance with Laws and Orders. Purchaser is not in violation of or in default under any Law or order applicable to Purchaser or its Assets the effect of which, individually or in the aggregate, could reasonably be expected to hinder or prevent Purchaser from performing its obligations hereunder.

5.6 Brokers. Purchaser does not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Seller could become liable or obligated.

5.7 Financial Resources. Subject to Purchaser's receipt of the ACC order referenced in **Section 8.7(b)**, Purchaser has cash or credit available, and will have cash available at the Closing, to enable it to purchase the Purchased Assets on the terms hereof.

ARTICLE VI

COVENANTS

The Parties hereby covenant and agree as follows:

6.1 Regulatory and Other Approvals. From the date hereof until Closing (the "*Interim Period*"):

(a) The Parties will, in order to consummate the transactions contemplated hereby (including, without limitation, the transfer of the Transferred Permits to Purchaser), (i) take such reasonable steps as are necessary or desirable, and proceed diligently and in good faith and use all reasonable efforts to obtain the Seller Approvals, Seller Consents, and Purchaser Approvals, and to make all filings with, and to give all notices to, Governmental Authorities, and (ii) provide such other information and communications to such Governmental Authorities or other Persons as such Governmental Authorities or other Persons may reasonably request in connection therewith. Without limiting the generality of the foregoing, the Parties shall provide, and cause their Affiliates to provide, true and accurate information in a timely manner with respect to all filings with and notices to Governmental Authorities. Nothing in this **Section 6.1(a)** shall be construed to require Purchaser to take any action with respect to filings with or notices to Governmental Authorities that in Purchaser's discretion could adversely affect any other proceeding with such Governmental Authorities.

(b) The Parties will provide prompt notification to each other when any such approval referred to in clause (a)(i) above is obtained, taken, made or given, as applicable, and will advise each other of any material communications with any Governmental Authority from which such approval is required regarding any pending application or request for approval by such Governmental Authority of any of the transactions contemplated by this Agreement.

(c) Each Party shall prepare, as soon as is practical following the execution of this Agreement, all necessary filings in connection with the transactions contemplated by this Agreement that may be required by FERC or under the HSR Act. Each Party shall submit such filings as soon as practicable, but in no event later than 15 days after the execution hereof for filings under the HSR Act. Unless the Parties agree otherwise at the time of filing, the Parties shall request expedited treatment of the HSR Act and FERC filings. The Parties shall promptly make any appropriate or necessary subsequent or supplemental filings and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate.

6.2 Access of Purchaser. During the Interim Period, Seller will provide Purchaser and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the Project, all Contracts to which Seller is a party or by which the Purchased Assets are bound, all books and records of Seller, including all environmental records, permits, and compliance audits, and the officers and employees of Seller or its Affiliates who have

significant responsibility for Seller, but only to the extent that such access does not unreasonably interfere with the Business of Seller and that such access is reasonably related to the requesting Party's obligations and rights hereunder; provided that Seller shall have the right to (i) have a Representative present for any communication with employees or officers of Seller or its Affiliates and (ii) impose reasonable restrictions and requirements for safety purposes. Purchaser shall be entitled, at its sole cost and expense, to have the Real Property surveyed and to conduct physical inspections (including, without limitation, invasive testing procedures) of the Real Property. Purchaser shall provide Seller with not less than five Business Days prior written notice of the date and time on which any such entry upon the Real Property shall occur. Promptly upon completion of any such entry, Purchaser shall repair any damage caused by such entry.

6.3 Certain Restrictions. Except as set forth in Schedule 6.3, during the Interim Period, Seller will operate and maintain the Business and the Purchased Assets in the usual and ordinary course consistent with Good Operating Practices. Without limiting the foregoing, except as consented to by Purchaser, during the Interim Period, Seller will not:

(a) permit, allow, or suffer to exist any Lien (other than a Permitted Lien) against any of the Purchased Assets;

(b) grant any waiver of any material term under, or give any material consent with respect to, any Material Contract;

(c) sell, lease (as lessor), transfer, convey or otherwise dispose of any Purchased Assets (including by way of merger, liquidation or dissolution), other than Assets used, consumed or replaced in the ordinary course of business consistent with Good Operating Practices;

(d) other than trade payables incurred in the ordinary course of business or accounts payable pursuant to the Material Contracts, incur, create, assume or otherwise become liable for indebtedness or issue any debt securities or assume or guarantee the obligations of any other Person;

(e) change any accounting method or practice in a manner that is inconsistent with past practice except as may be required to meet the requirements of applicable Law or GAAP, in a way that would adversely affect the Business or Seller;

(f) fail to maintain its [corporate] existence or consolidate with any other Person or acquire all of substantially all of the Assets of any other Person;

(g) issue or sell any [corporate] interests;

(h) liquidate, dissolve, recapitalize, reorganize, or otherwise wind up its business or operations;

(i) purchase any securities of any Person, except for short-term investments made in the ordinary course of business;

(j) except for the Sale Back Agreement, enter into, terminate, extend or amend any Contract involving total consideration throughout its term in excess of \$ _____ (other than Contracts entered into in the ordinary course which will be fully performed prior to Closing);

(k) cancel any debts or waive any claims or rights having a value, individually or in the aggregate, in excess of \$ _____;

(l) enter into any collective bargaining or labor agreement;

(m) make any material election with respect to Taxes;

(n) amend or modify its Charter Documents;

(o) make any material change in the operations of the Purchased Assets including, without limitation, the levels of inventory and materials and supplies customarily maintained by Seller;

(p) enter into, terminate, extend or amend any real or personal property Tax agreement, treaty or settlement;

(q) execute, enter into, terminate, extend or amend any agreement, order, decree or judgment relating to any Permit, except as required by applicable Law;

(r) prohibit payment of or delay payment of or prohibit or delay discharge of any Liability that will be an Assumed Liability;

(s) take any action that would cause Seller's representations and warranties to not be true and accurate; or

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

Notwithstanding the foregoing, Seller may take commercially reasonable actions with respect to emergency situations so long as Seller shall, upon receipt of notice of any such actions, promptly inform Purchaser of any such emergency actions taken outside the ordinary course of business.

6.4 Further Assurances. Subject to the terms and conditions of this Agreement, at any time, or from time to time, after the Closing, at any Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably request in order to consummate the transactions contemplated by this Agreement.

6.5 *Employee Benefit Matters.*

(a) Schedule 6.5(a) sets forth a list of employees of Seller or its Affiliates that Seller and such Affiliates will make available to Purchaser at least thirty (30) Business Days before the Closing Date (the "*Available Employees*") to discuss potential employment with Purchaser (which discussions the Parties agree shall not violate **Section 12.5**), which Schedule includes each employee's name, current annual base compensation, job title, work location, hire date, vacation balance and sick leave balance, as of the date hereof. Prior to the Closing Date, Purchaser may make an offer of employment to any Available Employee, and each such offer shall include terms and provisions determined by Purchaser that are consistent with the provisions of this **Section 6.5**; provided, that subject to the following provisions of this **Section 6.5**, the foregoing shall not be construed to prevent Purchaser from changing the terms and conditions of employment of any Continued Employee (as hereinafter defined) following the Closing Date. Seller shall be responsible for, and shall indemnify and hold Purchaser harmless from and against, (i) all severance benefits payable under Seller's applicable severance policies to any Available Employees (or any other employee of Seller or its Affiliates) who do not accept or are not provided with an offer of employment with Purchaser or its Affiliates prior to or at Closing, and (ii) any accrued salary or incentive compensation or outstanding vacation or sick pay balance as of the Closing owing to any employee of Seller or its Affiliates, whether or not any such employee is provided with or accepts an offer of employment with Purchaser or its Affiliates.

(b) On or before five (5) Business Days prior to the Closing Date, Purchaser shall deliver to Seller a Schedule 6.5(b) that sets forth the names of the Available Employees who have agreed to accept employment with Purchaser effective as of the Closing Date (each, a "*Continued Employee*"); provided, that to be a Continued Employee, such employee must (i) accept Purchaser's offer to transfer employment to Purchaser under the terms provided in Purchaser's offer, and (ii) on the Closing Date, be actively at work, on wellness or sickness leave, short-term disability or an approved leave of absence.

(c) Effective as of the Closing Date, the Continued Employees shall cease to participate in all "employee benefit plans" within the meaning of Section 3(3) of ERISA of Seller or its Affiliates providing benefits to any Continued Employees (the "*Seller Plans*"). Purchaser shall not assume any of the Seller Plans.

(d) From and after the Closing Date, Purchaser shall cause each Continued Employee to be provided with compensation and benefits on a basis substantially similar to those provided to similarly situated employees of Purchaser and its Affiliates. Purchaser shall cause each Continued Employee and his or her "eligible dependents" (as defined by the applicable group health plan of Purchaser or its Affiliates) to be covered under a group health plan maintained by Purchaser or an Affiliate of Purchaser that (i) provides medical benefits to the Continued Employee and such eligible dependents effective immediately upon the Closing Date and (ii) credits such Continued Employee, for the year during which such coverage under such group health plan begins, with any deductibles and co-payments already incurred during such year under a group health plan maintained by Seller or an Affiliate of Seller (provided, that for purposes of applying this clause (ii) with respect to any Continued Employee, the Continued Employee shall be responsible for providing the necessary information to Purchaser based on

explanation of benefit forms received by the Continued Employee from the group health plan maintained by Seller or an Affiliate of Seller). Purchaser shall cause the employee benefit plans and programs maintained after the Closing by Purchaser, Seller and the Affiliates of Purchaser to recognize each Continued Employee's years of service and level of seniority prior to the Closing Date with Seller, Seller and the Affiliates of Seller for purposes of terms of employment and eligibility and vesting under such plans and programs (other than benefit accruals under any defined benefit pension plan). Purchaser shall cause each employee welfare benefit plan or program sponsored by Purchaser or an Affiliate of Purchaser that the Continued Employees may be eligible to participate in on or after the Closing Date to waive any preexisting condition exclusion with respect to participation and coverage requirements applicable to Continued Employees.

(e) Claims of Continued Employees and their eligible beneficiaries and dependents for medical, dental, prescription drug, life insurance, and/or other welfare benefits ("*Welfare Benefits*") (other than disability benefits) that are incurred before the Closing Date shall be the sole responsibility of Seller and the Seller Plans. Claims of Continued Employees and their eligible beneficiaries and dependents for Welfare Benefits (other than disability benefits) that are incurred from and after the Closing Date shall be the sole responsibility of Purchaser and its Affiliates. For purposes of this paragraph, a medical/dental claim shall be considered incurred on the date when the medical/dental services are rendered or medical/dental supplies are provided, and not when the condition arose or when the course of treatment began. Claims of individuals receiving long-term disability benefits under a Seller Plan as of the Closing Date shall be the sole responsibility of Seller and the Seller Plans. Except as provided in the preceding sentence, claims of Continued Employees and their eligible beneficiaries and dependents for short-term or long-term disability benefits from and after the Closing Date shall be the sole responsibility of Purchaser and its Affiliates (without regard to whether the circumstances giving rise to such claim occurred before, on or after the Closing Date).

(f) All claims for health care and dependent care flexible spending account benefits submitted after the Closing Date for expenses incurred prior to the Closing Date by Continued Employees shall be paid by Seller's or its Affiliates' health care and dependent care flexible spending account plan to the extent permitted in accordance with the terms of such plan.

(g) Claims for workers' compensation benefits arising out of occurrences prior to the Closing Date shall be the responsibility of Seller. Claims for workers' compensation benefits for Continued Employees arising out of occurrences on or after the Closing Date shall be the responsibility of Purchaser.

6.6 Insurance. Seller shall maintain or cause to be maintained the insurance policies covering the Project until the Closing. Neither Seller nor any of its Affiliates shall have any liability for any claims made or reported under such insurance policies after the Closing.

6.7 Seller's Covenants and Closing Conditions. Except as contemplated by this Agreement or with the prior written consent of Purchaser, during the Interim Period Seller shall use commercially reasonable efforts to:

(a) take all actions to ensure that the representations and warranties in **Article IV** hereof remain true and correct in all respects at the Closing;

(b) promptly advise Purchaser of any facts of which Seller has Knowledge that would cause any of Seller's representations and warranties to be untrue or would make the satisfaction of the conditions in **Article VIII** impossible or unlikely; and

(c) bring about, as soon as practical after the date hereof, the satisfaction of all the conditions set forth in **Article VIII**.

6.8 Purchaser's Covenants and Closing Conditions. Except as contemplated by this Agreement or with the prior written consent of Seller, during the Interim Period Purchaser shall use commercially reasonable efforts to:

(a) take all actions to ensure that the representations and warranties in **Article V** remain true and correct in all material respects at the Closing;

(b) promptly advise Seller of any facts of which Purchaser has Knowledge that would cause any of Purchaser's representations and warranties to be untrue or would make the satisfaction of the conditions in **Article IX** impossible or unlikely; and

(c) bring about, as soon as practical after the date hereof, the satisfaction of all the conditions set forth in **Article IX**.

6.9 Exclusivity. Seller will not, and will not cause or permit its controlled Affiliates or any of their respective Representatives to, directly or indirectly, (a) discuss, negotiate, undertake, authorize, recommend, propose or enter into, either as the proposed surviving, merged, acquiring or acquired entity, any transaction involving a merger, consolidation, business combination, purchase or disposition of any amount of the assets or equity interest in Seller other than the transactions contemplated by this Agreement and the Ancillary Agreements (an "**Acquisition Transaction**"), (b) facilitate, encourage, solicit or initiate discussions, negotiations or submissions of proposals or offers in respect of an Acquisition Transaction, (c) furnish or cause to be furnished, to any Person, any information concerning the business, operations, properties or assets of Seller in connection with an Acquisition Transaction, or (d) otherwise cooperate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek any of the foregoing. Seller will inform Purchaser in writing immediately following the receipt by Seller or any Representative of any proposal or inquiry in respect of any Acquisition Transaction.

6.10 Risk of Loss.

(a) From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Purchased Assets shall be borne by Seller.

(b) If, before the Closing Date all or any portion of the Purchased Assets are taken by eminent domain, or is the subject of a pending or, to the Knowledge of Seller, contemplated taking which has not been consummated, Seller shall notify Purchaser promptly in writing of such fact.

(i) If such taking would have a Material Adverse Effect, Purchaser and Seller shall negotiate in good faith to settle the loss resulting from such taking (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and, upon such settlement, consummate the transaction contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after Seller has notified Purchaser of such taking, then Purchaser or Seller may, if such taking relates to the Purchased Assets, terminate this Agreement pursuant to **Section 10.1(d)** hereof.

(ii) If such taking would not have a Material Adverse Effect, Purchaser and Seller shall negotiate in good faith to settle the loss resulting from such taking (including, without limitation, by making a fair and equitable adjustment to the Purchase Price or by transferring certain rights to insurance proceeds, if any, to Purchaser) and, upon such settlement, consummate the transaction contemplated by this Agreement pursuant to the terms of this Agreement.

(c) If, before the Closing Date all or any material portion of the Purchased Assets are damaged or destroyed by fire or other casualty, Seller shall notify Purchaser promptly in writing of such fact.

(i) If such damage or destruction would have a Material Adverse Effect and Seller has not notified Purchaser of its intention to cure such damage or destruction within fifteen (15) days after its occurrence, Purchaser and Seller shall negotiate in good faith to settle the loss resulting from such casualty (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after Seller has notified Purchaser of such casualty, then Purchaser or Seller may terminate this Agreement pursuant to **Section 10.1(d)** hereof.

(ii) If such damage or destruction would not have a Material Adverse Effect and Seller has not notified Purchaser of its intention to cure such damage or destruction within fifteen (15) days after its occurrence, Purchaser and Seller shall negotiate in good faith to settle the loss resulting from such casualty (including, without limitation, by making a fair and equitable adjustment to the Purchase Price or by transferring certain rights to insurance proceeds, if any, to Purchaser) and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement.

(d) If the Parties fail to reach a settlement contemplated by **Section 6.10(b)(ii)** or **Section 6.10(c)(ii)** hereof, as applicable, within thirty (30) days after Seller has notified Purchaser of such taking or casualty, as the case may be, then the Purchase Price shall be adjusted downward by the amount of the fair market value of the portion of the Purchased Assets subject to the taking, as determined by a mutually acceptable firm of independent certified public accountants (the "*Independent Accountants*") for review and final determination of such fair

market value. The Independent Accountants may request of Seller and/or Purchaser such documents and information as may be necessary or appropriate for proper determination of any such matter, and such Parties will cooperate to promptly satisfy any such request. The determination by the Independent Accountants of such fair market value will be final and binding on the Parties. Seller and Purchaser will equally share the costs of the Independent Accountants in undertaking such review and determination.

6.11 *Current Evidence of Title.*

(a) As soon as is reasonably possible, and in no event later than thirty (30) Business Days after the date of this Agreement, Seller shall furnish to Purchaser, at Seller's expense, for each parcel, tract or subdivided land lot of Real Property set forth on Schedule 4.13(a):

(i) from _____ (the "*Title Insurer*"):

(A) title commitments issued by the Title Insurer to insure title to all Real Property and Improvements in the amount of that portion of the Purchase Price allocated to the Real Property, covering such Real Property, naming Purchaser as the proposed insured and having an effective date after the date of this Agreement, wherein the Title Insurer shall agree to issue an ALTA 1992 form owner's extended coverage policy of title insurance (each a "*Title Commitment*"); and

(B) complete and legible copies of all documents listed or disclosed in Schedule B (the "*Title Exception Documents*"); and

(ii) a survey of the Real Property made after the date of this Agreement by a land surveyor licensed by the State of Arizona and bearing a certificate, signed and sealed by the surveyor, certifying to Purchaser and the Title Insurer that:

(A) such survey was made (1) in accordance with "*Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys*," jointly established and adopted by ALTA and ACSM in 1992, and includes Items 1-4, 6, 7(a), 7(b)(1), 7(c), 8-11 and 13 of Table A thereof, and (2) pursuant to the Accuracy Standards (as adopted by ALTA and ACSM and in effect on the date of said certificate) of an "Urban" survey; and

(B) such survey reflects the locations of all building lines, easements and areas affected by any Title Exception Documents affecting such Real Property as disclosed in the Title Commitment (identified by issuer, commitment number, and an effective date after the date hereof) as well as any encroachments onto the Real Property or by the Improvements onto any easement area or adjoining property (each a "*Survey*"); and

(iii) Each Title Commitment shall include the Title Insurer's requirements for issuing its title policy, which requirements shall be met by Seller on or before the Closing Date (including those requirements that must be met by releasing or satisfying monetary Liens, but excluding requirements that are to be met solely by Purchaser).

(b) If any of the following shall occur (individually or collectively, a "**Title Objection**"):

(i) any Title Commitment or other evidence of title or search of the appropriate real estate records discloses that any party other than Seller has title to the insured estate covered by the Title Commitment;

(ii) any title exception is disclosed in Schedule B to any Title Commitment that is not one of the Permitted Liens or one that Seller specifies when delivering the Title Commitment to Purchaser as one that Seller will cause to be deleted from the Title Commitment concurrently with the Closing, including (A) any exceptions that pertain to Liens securing any loans that do not constitute Assumed Liabilities and (B) any exceptions that Purchaser reasonably believes have a Material Adverse Effect on Purchaser's use and enjoyment of the Real Property described therein; or

(iii) any Survey discloses any matter that Purchaser reasonably believes could have a Material Adverse Effect on Purchaser's use and enjoyment of the Real Property described therein;

then Purchaser shall notify Seller in writing ("**Purchaser's Notice**") of such matters within thirty (30) Business Days after receiving all of the Title Commitment, Survey and copies of Title Exception Documents for the Real Property covered thereby.

(c) Seller shall use commercially reasonable efforts to cure each Title Objection and take all steps required by the Title Insurer to eliminate each Title Objection as an exception to the Title Commitment. Any Title Objection that the Title Company is willing to insure over on terms acceptable to Seller and Purchaser is herein referred to as an "**Insured Exception**." The Insured Exceptions, together with any title exception or matters disclosed by the Survey not objected to by Purchaser in the manner aforesaid, shall be deemed to be acceptable to Purchaser and a Permitted Lien.

(d) Nothing herein waives Purchaser's right to claim a breach of **Section 4.13** or to claim a right to indemnification as provided in **Article XI** if Purchaser suffers Losses as a result of a misrepresentation with respect to the condition of title to the Real Property.

6.12 Transition Plan. Within ten (10) Business Days after the execution date of this Agreement, Purchaser shall deliver to Seller a list of its proposed representatives to a joint transition team. Seller will add its representatives to such team within five (5) Business Days after receipt of Purchaser's list. Such team will be responsible for preparing as soon as reasonably practicable after the execution date of this Agreement and timely implementing, a transition plan which will identify and describe substantially all of the various transition activities that the parties will cause to occur before and after the Closing and any other transfer of control matters that any party reasonably believes should be addressed in such transition plan. If requested by either party, the terms and conditions governing such transition activities will be more fully set forth in a Transition Agreement reasonably satisfactory to the parties. Purchaser and Seller shall use commercially reasonable efforts to cause their representatives on such

transition team to cooperate in good faith and take all reasonable steps necessary to develop a mutually acceptable transition plan by no later than sixty (60) days after the date of this Agreement.

6.13 Monthly Operational Report. During the Interim Period, Seller shall provide Purchaser with monthly Operational Reports to ensure that Purchaser has access to current and complete information relating to the results of the Business Operations. Such Operational Reports shall be provided to Purchaser (a) on or before the fifth (5th) Business Day of each calendar month during the Interim Period and (b) two (2) Business Days prior to Closing.

ARTICLE VII

TAX MATTERS

7.1 Proration. With respect to Taxes to be prorated in accordance with **Section 3.2** hereof only, Purchaser shall prepare and timely file all Tax Returns required to be filed with respect to the Purchased Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Purchaser shall make such Tax Returns available for Seller's review and comment no later than twenty (20) days prior to the due date for filing such Tax Return, but shall be under no obligation to accept any such comments or request changes. Within ten (10) days after receipt of such Tax Return, Seller shall pay to Purchaser its proportionate share of the amount shown as due on such Tax Return determined in accordance with **Section 3.2** hereof.

7.2 Cooperation. Each of Seller, on the one hand, and Purchaser, on the other, shall provide the other with such assistance as may reasonably be requested by the other party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each shall retain and provide the requesting party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Except as required by applicable Law, any information obtained pursuant to this **Section 7.2** or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the parties hereto.

ARTICLE VIII

PURCHASER'S CONDITIONS TO CLOSING

The obligation of Purchaser to close under this Agreement is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Purchaser in its sole discretion):

8.1 Representations and Warranties. The representations and warranties made by Seller in **Article IV** of this Agreement shall be true and correct in all respects as of the date of this Agreement and shall be true and correct in all respects as of the Closing Date as if made on the Closing Date or, in the case of representations and warranties made as of a specified date earlier than the Closing Date, on and as of such earlier date.

8.2 Performance. Seller shall have performed and complied, in all respects, with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

8.3 Deliveries. Seller shall have made all deliveries required of it under **Section 3.4** hereof.

8.4 Orders and Laws. There shall not be any litigation or proceedings (filed by a Person other than Purchaser or its Affiliates) or Law or order restraining, enjoining or otherwise prohibiting or making illegal or threatening to restrain, enjoin or otherwise prohibit or make illegal the consummation of any of the transactions contemplated by this Agreement.

8.5 Consents and Approvals. The consents and approvals listed on Schedule 8.5 shall have been duly obtained, made or given and shall be in full force and effect.

8.6 Material Adverse Effect. There shall not have occurred and be continuing a Material Adverse Effect.

8.7 Approvals of Governmental Authorities.

(a) All consents and approvals of Governmental Authorities required for the consummation of the transactions contemplated hereby or by the Ancillary Agreements, including, without limitation, the Seller Approvals and the Purchaser Approvals, shall have become Final Orders with such terms and conditions as shall have been imposed by the Governmental Authority issuing such Final Order, and such terms or conditions shall be acceptable in all respects to Purchaser in its sole discretion.

(b) The ACC shall have issued one or more orders, which shall be acceptable in all respects to Purchaser in its sole and absolute discretion and each of which shall have become a Final Order, approving the transactions contemplated hereby and by the Ancillary Documents and the regulatory treatment of the Purchased Assets, including, without limitation, (i) to the extent Purchaser, in its sole discretion, determines such approval is necessary, Purchaser's financing of the Purchase Price, and (ii) the inclusion, on or before June 1, 2007, in Purchaser's rate base of the Purchased Assets at Net Book Value without any direct or indirect disallowance, as well as (A) the timely recovery in Purchaser's retail rates of all reasonable costs of owning and operating the Purchased Assets after the termination or expiration of the term of the Sale Back Agreement, and (B) the deferral and recovery of any adverse earnings impact on Purchaser attributable to the Sale Back Agreement.

8.8 Transferred Permits. Purchaser shall be satisfied that all Environmental Permits and Permits will be transferred to Purchaser or obtained by Purchaser on or before the Closing Date.

8.9 Title Insurance. Purchaser shall have received unconditional and binding commitments to issue policies of title insurance consistent with **Section 6.11**, dated the Closing Date, in an aggregate amount equal to the amount of the Purchase Price allocated to the Real Property, deleting all requirements listed in ALTA Schedule B-1, amending the effective date to the date and time of recordation of the Deed conveying title to the Real Property to Purchaser

with no exception for the gap between closing and recordation, deleting or insuring over Title Objections as required pursuant to **Section 6.11**, attaching all endorsements required by Purchaser in order to ensure provision of all coverage required pursuant to **Section 6.11** and otherwise in form satisfactory to Purchaser insuring Purchaser's interest in each parcel of Real Property or interest therein to the extent required by **Section 6.11**.

8.10 Environmental Diligence. Purchaser shall have, within ninety (90) days following the date of this Agreement, completed, at its sole expense, an environmental investigation of the Real Property (which may, in Purchaser's discretion, include environmental audits or any other similar invasive or non-invasive procedures, subject to **Section 6.2**), and Purchaser shall be satisfied, in its sole discretion, with respect to the results of such investigation as detailed in a letter provided by Purchaser to Seller prior to Closing. No such investigation or assessment shall in any manner be deemed to relieve Seller of any obligations with respect to any warranties, representations, covenants or other undertakings made hereunder or to qualify any such warranties, representations or covenants. Purchaser shall have the right to extend the time deadline set forth above, at its sole discretion, upon a showing of good cause or mutual agreement by the Parties (which shall not be unreasonably withheld).

8.11 Legal Opinion. Purchaser shall have received an opinion from _____, dated the Closing Date and satisfactory in form and substance to Purchaser and its counsel, substantially to the effect that:

(a) Seller is a _____ duly formed, existing and in good standing under the Laws of the State of _____ and has the requisite power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly authorized by requisite action taken on the part of Seller;

(b) This Agreement and the Ancillary Agreements have been executed and delivered by Seller and (assuming that the required approvals of Governmental Authorities are obtained) are valid and binding obligations of Seller, enforceable against it in accordance with their terms, except that such enforcement thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting creditors' rights generally, and (ii) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity) and except to the extent that the right to indemnification and contribution contained therein may be limited by state or federal securities Laws or the public policy underlying such Laws;

(c) The execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller shall not (i) constitute a violation of the Charter Documents of Seller or (ii) to such counsel's knowledge, constitute a violation of or default under the Applicable Contracts. "**Applicable Contracts**" means those agreements or instruments set forth on a schedule attached to such counsel's opinion and which have been identified to such counsel as all of the agreements and instruments which are material to the business or financial condition of Seller; and

(d) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for the consummation by Seller of the Closing other than those that have been obtained and are in full force and effect with such terms and conditions as shall have been imposed by any applicable Governmental Authority, (ii) such declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and (iii) such declarations, filings or registrations with, or notices to, or authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate have a Material Adverse Effect. Any opinions relied upon by such counsel shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by Seller and by public officials.

ARTICLE IX

SELLER'S CONDITIONS TO CLOSING

The obligation of Seller to close under this Agreement is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller in its sole discretion):

9.1 Representations and Warranties. The representations and warranties made by Purchaser in **Article V** of this Agreement shall be true in all material respects (except for representations and warranties that contain a qualification as to materiality, which shall have been true and correct in all respects) as of the date of this Agreement and shall be true and correct in all material respects (except for representations and warranties that contain a qualification as to materiality, which shall have been true and correct in all respects) as of the Closing Date as if made on the Closing Date as though made on and as of the Closing Date.

9.2 Performance. Purchaser shall have performed and complied, in all material respects, with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing.

9.3 Deliveries. Purchaser shall have taken all actions and made all deliveries required of it under **Sections 3.5**.

9.4 Orders and Laws. There shall not be any litigation or proceedings (filed by a Person other than Seller or its Affiliates) or Law or order restraining, enjoining or otherwise prohibiting or making illegal or threatening to restrain, enjoin or otherwise prohibit or make illegal the consummation of any of the transactions contemplated by this Agreement.

9.5 Consents and Approvals. The consents and approvals listed on Schedule 9.5 shall have been duly obtained, made or given and shall be in full force and effect.

9.6 Approvals of Governmental Authorities. All consents and approvals of Governmental Authorities required for the consummation of the transactions contemplated hereby or by the Ancillary Agreements, including, without limitation, the Seller Approvals and the Purchaser Approvals, shall have become Final Orders with such terms and conditions as shall have been imposed by the Governmental Authority issuing such Final Order, and such terms or

conditions, in the aggregate, could not reasonably be expected to have a material adverse effect on the business, assets, operations or condition (financial or otherwise) of Seller.

ARTICLE X

TERMINATION

10.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, as follows:

(a) at any time before the Closing, by Seller or Purchaser, by notice to the other, in the event that any Law or order becomes effective and continues in effect for 15 days restraining, enjoining or otherwise prohibiting or making illegal the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements;

(b) at any time before the Closing, by Seller or Purchaser, by notice to the other, if there has been a material violation or breach by Seller, on the one hand, or by Purchaser, on the other, of any representation, warranty or obligation made or owed to such Party hereunder and such breach or violation (other than a breach of Purchaser's obligation to pay the Purchase Price in accordance with the terms of **Article III**) has not been cured within 30 days following written notification thereof;

(c) by either Party that is not in breach of this Agreement, by notice to the other Party, if (i) the condition described in **Section 8.7(b)** has not been satisfied on or prior to the close of business on _____, 20__ or (ii) the Closing shall not have occurred within ___ days after the satisfaction of the condition described in **Section 8.7(b)** (the "**Termination Date**"); provided, however, that the right to terminate this Agreement under this **Section 10.1(c)** shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur on or before such date; or

(d) by Purchaser or Seller pursuant to **Section 6.10**, by notice to the other Party.

10.2 Effect of Termination.

(a) If this Agreement is validly terminated pursuant to **Section 10.1**, except as set forth in **Section 10.2(b)**, there will be no liability or obligation on the part of Seller or Purchaser (or any of their respective Representatives or Affiliates), except that **Section 1.2** (Construction), **Sections 4.20** and **5.6** (Brokers), **Section 6.2(b)** (Access Indemnification), **Section 11.3(b)** (Non-reimbursable Damages), **Section 11.3(c)** (No Personal Liability), **Section 11.3** (Arbitration), **Section 12.3** (Expenses), **Section 12.4** (Public Announcements), **Section 12.5** (Confidential Information), and **Section 12.14** (Governing Law; Venue; and Jurisdiction) will survive any such termination.

(b) Subject to **Section 11.3** but notwithstanding any other provision of this Agreement to the contrary, if this Agreement is validly terminated pursuant to **Section 10.1(b)** by Purchaser or Seller as a result of a violation or breach by the non-terminating Party, the

terminating Party shall be entitled to all rights and remedies available to it, except that no Party shall have any liability for a breach of a representation or warranty if such Party used commercially reasonable efforts to cure such breach prior to the date of termination.

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ARTICLE XI

INDEMNIFICATION, LIMITATIONS OF LIABILITY, WAIVERS AND ARBITRATION

11.1 *Indemnification.*

(a) Subject to the limitations set forth elsewhere in this **Article XI**, after the Closing Seller agrees to indemnify and hold Purchaser and its Affiliates harmless from and against any and all Losses, whether or not involving a third-party claim, arising from or in connection with:

(i) any breach of a representation or warranty made by Seller in this Agreement (disregarding for purposes of this clause (i) and clause 11.1(a)(ii) below (A) all references to, and exceptions for "materiality," "in all material respects," "Material Adverse Effect" or similar materiality qualifications appearing herein and (B) the matters disclosed on Schedule 11.1(a);

(ii) the breach by Seller of, or default in the performance by Seller of, any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or in any other certificate, document, writing or instrument delivered by Seller pursuant to this Agreement;

(iii) any Benefit Plan established or maintained by Seller; and

(iv) any Excluded Liability.

(b) Subject to the limitations set forth elsewhere in this **Article XI**, after the Closing Purchaser hereby agrees to indemnify and hold Seller harmless from and against any and all Losses incurred by Seller arising from or in connection with:

(i) any breach of a representation or warranty made by Purchaser in this Agreement;

(ii) the breach by Purchaser of, or default in the performance by Purchaser of, any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement; and

(iii) the Assumed Liabilities.

11.2 *Waiver of Remedies.*

(a) The Parties hereby agree to limit their recourse for all matters, and not make any Claim for any Loss or other matter, under, relating to or arising out of this Agreement or any other document, agreement, certificate or other matter delivered pursuant hereto, whether based on contract, tort, strict liability, other Laws or otherwise, except (i) for Claims for indemnification pursuant to **Article XI**, (ii) as permitted in **Article X**, or (iii) as permitted under **Section 12.15** (Attorneys' Fees).

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NO PARTY SHALL BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, OR LOST PROFITS, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM THE OTHER PARTY'S SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT ("*Non-reimbursable Damages*").

(c) Notwithstanding anything to the contrary contained in this Agreement, no Representative of Seller or Affiliate of Seller shall have any personal liability to Purchaser or any other Person as a result of the breach of any representation, warranty, covenant or agreement of Seller contained herein and no Representative or Affiliate of Purchaser shall have any personal liability to Seller or any other Person as a result of the breach of any representation, warranty, covenant or agreement of Purchaser contained herein.

11.3 Arbitration.

(a) Any and all disputes between the Parties arising out of or relating to this Agreement (a "*Dispute*") must be resolved through the use of binding arbitration using three arbitrators, selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("*AAA*"), as supplemented to the extent necessary to determine any procedural appeal questions by the Federal Arbitration Act (Title 9 of the United States Code). If there is any inconsistency between this Section 11.3 and the Commercial Arbitration Rules or the Federal Arbitration Act, the terms of this Section 11.3 will control the rights and obligations of the Parties. If there is more than one Arbitrable Dispute that involves the same facts and parties as the facts and parties with respect to which an arbitration has been initiated pursuant to this Agreement, such disputes shall be consolidated into the first arbitration initiated pursuant to this Agreement. No other arbitration shall be consolidated with any arbitration initiated pursuant to this Agreement without the agreement of the Parties or parties thereto.

(b) Arbitration must be initiated within the applicable time limits set forth in this Agreement and not thereafter or if no time limit is given, within the time period allowed by the applicable statute of limitations. Arbitration may be initiated by either Seller or Purchaser ("*Claimant*") serving written notice on Purchaser or Seller, respectively ("*Respondent*") that Claimant elects to refer the Dispute to binding arbitration (the "*Arbitrable Dispute*").

(c) Claimant's notice initiating binding arbitration must describe in reasonable detail the nature of the Arbitrable Dispute and the facts and circumstances relating thereto and identify the arbitrator Claimant has appointed. Respondent shall respond to Claimant within 60 days after receipt of Claimant's notice, identifying the arbitrator Respondent has appointed. If Respondent fails for any reason to name an arbitrator within the 60 day period, Claimant will name the arbitrator for Respondent's account. The two arbitrators so chosen shall select a third arbitrator within 30 days after the second arbitrator has been appointed. If the two arbitrators are unable to agree on a third arbitrator within 90 days from initiation of arbitration, then a third arbitrator shall be selected by the AAA office in Phoenix, Arizona, with due regard for the selection criteria set forth below and input from the Parties and other arbitrators.

(d) The AAA shall select the third arbitrator not later than 120 days from initiation of arbitration. In the event AAA should fail to select the third arbitrator within 120 days from initiation of arbitration, then either Party may petition the Chief United States District Judge for the State of Arizona to select the third arbitrator. Due regard shall be given to the selection criteria set forth below and input from the Parties and other arbitrators.

(e) Subject to the arbitrators' award of costs to the prevailing party, Claimant shall pay the compensation and expenses of the arbitrator named by or for it, Respondent shall pay the compensation and expenses of the arbitrator named by or for it, and Claimant and Respondent shall each pay one-half of the compensation and expenses of the third arbitrator. All arbitrators must be neutral parties who have never been officers, directors or employees of the Parties or any of their Affiliates. Each of the three arbitrators must have not less than seven years experience as an attorney or accountant handling complex business transactions and have formal training in dispute resolution.

(f) The hearing will be conducted in Phoenix, Arizona, and commence within 60 days after the selection of the third arbitrator. The Parties and the arbitrators should proceed diligently and in good faith in order that the award may be made as promptly as possible. The arbitrators shall determine the Arbitrable Disputes of the Parties and render a final award in accordance with the choice of Law set forth in this Agreement. The arbitrators shall render their decision within 60 days following completion of the hearing. The arbitrators' decision shall be in writing and set forth the reasons for the award and shall include an award of costs to the prevailing Party (or an allocation of such costs between the Parties based upon the extent to which each prevails), including reasonable attorneys' fees and disbursements and the fees and expenses of the arbitrators. All statutes of limitations and defenses based upon passage of time applicable to any Arbitrable Dispute (including any counterclaim or setoff) shall be interrupted by the filing of the arbitration and suspended while the arbitration is pending. The terms of this Section 11.3 shall not create nor limit any obligations of a Party hereunder to defend, indemnify or hold harmless another Party against Claims or Losses. In order to prevent irreparable harm, the arbitrators shall have the power to grant temporary or permanent injunctive or other equitable relief. A Party may, notwithstanding any other provision of this Agreement, seek temporary injunctive relief from any court of competent jurisdiction; provided, that the Party seeking such relief shall (if arbitration has not already been commenced) simultaneously commence arbitration. Such court-ordered relief shall not continue more than ten days after the appointment of the arbitrators and in no event for longer than 60 days. Except as provided in the Federal Arbitration Act, the decision of the arbitrators will be binding on and non-appealable by the Parties. Each Party agrees that any arbitration award against it may be enforced in any court of competent jurisdiction and that any Party may authorize any such court to enter judgment on the arbitrators' decisions. The arbitrators may not grant or award Non-reimbursable Damages.

11.4 Procedure for Indemnification – Third-Party Claims.

(a) If any Party shall claim indemnification hereunder arising from any Claim of a third party, the Party seeking indemnification (the "*Indemnified Party*") shall notify the Party from whom indemnification is sought (the "*Indemnifying Party*") in writing of the basis for such Claim setting forth the nature of the Claim in reasonable detail. The failure of the Indemnified Party to so notify the Indemnifying Party shall not relieve the Indemnifying Party of

any indemnification obligation hereunder except to the extent that the defense of such Claim is materially prejudiced by the failure to give such notice.

(b) If any proceeding is brought by a third party against an Indemnified Party and the Indemnified Party gives notice to the Indemnifying Party pursuant to **Section 11.4(a)**, the Indemnifying Party shall be entitled to participate in such proceeding and, to the extent that it wishes, to assume the defense of such proceeding, if (i) the Indemnifying Party provides written notice to the Indemnified Party that the Indemnifying Party intends to undertake such defense, (ii) the Indemnifying Party conducts the defense of the third-party Claim actively and diligently with counsel reasonably satisfactory to the Indemnified Party and (iii) if the Indemnifying Party is a party to the proceeding, the Indemnifying Party has not determined in good faith that joint representation would be inappropriate because of a conflict in interest. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by the Indemnified Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Indemnified Party. The Indemnified Party shall fully cooperate with the Indemnifying Party and its counsel in the defense or compromise of such Claim. If the Indemnifying Party assumes the defense of a proceeding, no compromise or settlement of such Claims may be effected by the Indemnifying Party without the Indemnified Party's consent unless (A) there is no finding or admission of any violation of Law or any violation of the rights of any Person and no effect on any other Claims that may be made against the Indemnified Party and (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Party.

(c) If (i) notice is given to the Indemnifying Party of the commencement of any third-party legal proceeding and the Indemnifying Party does not, within ten days after the Indemnified Party's notice is given, give notice to the Indemnified Party of its election to assume the defense of such legal proceeding, (ii) any of the conditions set forth in clauses (i) through (iii) of **Section 11.4(b)** above become unsatisfied or (iii) an Indemnified Party determines in good faith that there is a reasonable probability that a legal proceeding may adversely affect it other than as a result of monetary damages for which it would be entitled to indemnification from the Indemnifying Party under this Agreement, the Indemnified Party shall (upon notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such claim; provided that the Indemnifying Party shall reimburse the Indemnified Party for the costs of defending against the third-party claim (including reasonable attorneys' fees and expenses) and the Indemnifying Party shall remain responsible for any indemnifiable amounts arising from or related to such third-party claim to the fullest extent provided in this **Article XI**. The Indemnifying Party may elect to participate in such legal proceedings, negotiations or defense at any time at its own expense.

ARTICLE XII

MISCELLANEOUS

12.1 Notices.

(a) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall

be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Purchaser, to:

Arizona Public Service Company
P.O. Box 53999
Phoenix, Arizona 85072
Facsimile No.: (602) 250-3002
Attn: Corporate Secretary

With a copy to:

Snell & Wilmer LLP
One Arizona Center
Phoenix, Arizona 85004
Facsimile No.: (602) 382-6070
Attn: Matthew P. Feeney

If to Seller, to:

Attn: _____

(b) Notice given by personal delivery, mail or overnight courier pursuant to this Section 12.1 shall be effective upon physical receipt. Notice given by facsimile pursuant to this Section 12.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 p.m. Central Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 p.m. Central Time on any Business Day or during any non-Business Day.

12.2 Entire Agreement. This Agreement and the Ancillary Agreements supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof and thereof and contain the sole and entire agreement between the Parties hereto with respect to the subject matter hereof and thereof.

12.3 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party will pay its own costs and expenses incurred in anticipation of, relating to and in connection with the negotiation and execution of this Agreement and the transactions contemplated hereby.

12.4 Public Announcements. Except as may be required by Law or any applicable stock exchange rules, Seller, on the one hand, and Purchaser, on the other, will not issue or make any press releases or other public disclosures concerning this Agreement or the

transactions contemplated hereby without first obtaining consent from the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

12.5 Confidential Information.

(a) For two years from and after the expiration or termination of the Sale Back Agreement, Seller shall cause any data or information received at any time by Seller, its Affiliates or their Representatives from Purchaser, any data or information regarding Seller or its businesses, operations, financial conditions or prospects, and any data or information regarding the Purchase Price and other key financial terms (including, without limitation, the terms and conditions of the Sale Back Agreement) of the transactions contemplated hereby and the discussions among the Parties relating thereto, to be maintained by Seller, its Affiliates and their Representatives in confidence, not to be utilized for any purpose and not to be disclosed for any purpose. Without limiting the generality of the foregoing, Seller and Purchaser acknowledge that, during the Interim Period, Purchaser may conduct one or more solicitations or requests for proposals from third parties and that the foregoing restrictions concerning the Purchase Price and other financial terms are necessary in order to protect Purchaser's interest in the integrity of its acquisition activities.

(b) With respect to all data and information, from the date hereof until Closing (or, if this Agreement is earlier terminated, then with respect to all data and information until two years after the date of such termination), Purchaser shall cause any such data or information received at any time by Purchaser, its Affiliates or their Representatives from Seller, its Affiliates or their Representatives and any such data or information regarding Seller or its businesses, operations, financial conditions or prospects, to be maintained by Purchaser, its Affiliates and their Representatives in confidence, not to be utilized for any purposes (except pending Closing, to prepare therefor) and not to be disclosed for any purpose.

(c) Purchaser and Seller acknowledge that the approvals of the Governmental Authorities that are required by this Agreement will likely necessitate the provision of confidential information to third parties in proceedings to obtain such approvals. Where a filing is made with any Governmental Authority for approval of this Agreement, the Party responsible for the filing shall request that the Governmental Authority approve a reasonable confidentiality agreement or protective order that will provide appropriate protections for confidential information.

(d) Other than as provided in **Section 12.5(c)** and with respect to the obligations under **Sections 12.5(a)** and **12.5(b)**, in the event that any Person subject to confidentiality thereunder is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any such information, Seller or Purchaser, as applicable, shall use commercially reasonable efforts to cause such Person to notify the Parties to whom such confidential information relates promptly of such request or requirement so that such Parties may seek an appropriate protective order or waive compliance with the provisions of this **Section 12.5**. If, in the absence of a protective order or the receipt of a waiver hereunder, such Person, on the advice of counsel, is compelled (or, in the case of any such disclosure to the ACC, is required or requested to make such disclosure as a condition to the approval by the ACC

contemplated by **Section 8.7(b)**) to disclose any such information to any Governmental Authority or else stand liable for contempt, such Person may disclose such information to such Governmental Authority; provided that Seller or Purchaser, as applicable, shall cause such disclosing Person to use its commercially reasonable efforts to obtain an order or other assurance that confidential treatment will be accorded to such portion of such information required to be disclosed.

(e) Notwithstanding the foregoing, the confidentiality obligations set forth in this **Section 12.5** shall not apply to any disclosure of information:

(i) which at the time of disclosure is already in the public domain through no fault of the applicable Parties, their Affiliates or their respective Representatives;

(ii) which after disclosure becomes part of the public domain through no act or fault of the applicable Parties or their Affiliates or their respective Representatives;

(iii) if such information subsequently becomes known to the applicable Parties or their Affiliates through no breach of their obligations hereunder;

(iv) which is independently developed by the applicable Parties or their Affiliates through no breach of their obligations hereunder;

(v) required by Law or stock exchange rules; provided that the applicable Parties shall use, and shall cause their applicable Affiliates, if any, to use, commercially reasonable efforts to give the other Parties prior notice of such disclosure in sufficient time to enable such other Parties to protect any such information; or

(vi) regarding the U.S. federal income tax treatment and tax structure of the transaction contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the Parties relating to such tax treatment and tax structure.

12.6 Disclosure. Seller may, at its option, include in the Schedules items that are not material in order to avoid any misunderstanding, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement.

12.7 Waiver. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

12.8 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

12.9 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary or similar rights upon any other Person or Governmental Authority.

12.10 Assignment; Binding Effect. Purchaser may assign its rights and obligations hereunder to an Affiliate but such assignment shall not release Purchaser from its obligations hereunder. Except as provided in the preceding sentence, neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Party, and any attempt to do so will be void, except for assignments and transfers by operation of Law. Subject to this **Section 12.10**, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

12.11 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

12.12 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby, such provision will be fully severable, this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12.13 Counterparts; Facsimile. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile copies hereof or signature hereon shall, for all purposes, be deemed originals.

12.14 Governing Law; Venue; and Jurisdiction.

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Arizona, without giving effect to any conflict or choice of law provision that would result in the imposition of another state's Law.

(b) WITH RESPECT TO THE ENFORCEMENT OF ANY ARBITRATION AWARD PURSUANT TO **SECTION 11.3**, THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN PHOENIX, ARIZONA.

(c) WITH RESPECT TO THE ENFORCEMENT OF ANY ARBITRATION AWARD PURSUANT TO **SECTION 11.3**, EACH PARTY HEREBY WAIVES, TO THE

FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY.

12.15 Attorneys' Fees. If either of the Parties shall bring an action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and expenses incurred in such action from the unsuccessful Party.

[signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

SELLER

By: _____
Name: _____
Title: _____

PURCHASER

ARIZONA PUBLIC SERVICE COMPANY

By: _____
Name: _____
Title: _____

APPENDIX I

DEFINITIONS

“*AAA*” has the meaning given to it in **Section 11.3(a)**.

“*ACC*” means the Arizona Corporation Commission or any successor agency with jurisdiction over the rates and charges of Purchaser.

“*Acquisition Transaction*” has the meaning given to it in **Section 6.9**.

[“*Affidavit of Property Value*” means the form of Affidavit of Property Value attached hereto as Exhibit B.]

“*Affiliate*” means any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by contract or otherwise, and specifically with respect to a corporation, partnership or limited liability company, means direct or indirect ownership of more than 50% of the voting securities in such corporation or of the voting interest in a partnership or limited liability company.

“*Agreement*” has the meaning given to it in the recitals.

“*Ancillary Agreements*” means the Sale Back Agreement, the Assumption Agreement, the Affidavit of Property Value, the Deed, the Bill of Sale and Assignment of Rights, the Form of Certification of Non-Foreign Status and such other documents, instruments, certificates or agreements as may be executed and delivered in connection with this Agreement or the foregoing.

“*Applicable Contracts*” has the meaning given to it in **Section 8.11(c)**.

“*Arbitrable Dispute*” has the meaning given to it in **Section 11.3 (b)**.

“*Assets*” of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person.

“*Assumption Agreement*” has the meaning given to it in **Section 3.5(c)**.

“*Assumed Liabilities*” has the meaning given to it in **Section 2.3**.

“*Available Employees*” has the meaning given to it in **Section 6.5(a)**.

“*Benefit Plans*” means (a) each “employee benefit plan,” as such term is defined in Section 3(3) of ERISA, (b) each plan that would be an “employee benefit plan”, as such term is defined in Section 3(3) of ERISA, if it was subject to ERISA, such as foreign plans and plans for

directors, (c) each stock bonus, stock ownership, stock option, stock purchase stock appreciation rights, phantom stock, or other stock plan (whether qualified or nonqualified), and (d) each bonus or incentive compensation plan.

"Bill of Sale and Assignment of Rights" means the form of Bill of Sale and Assignment of Rights from Seller to Purchaser attached hereto as Exhibit E.

"Business" means the ownership and operation of the Project, including the generation and sale of electricity and capacity by Seller at or from the Project and the conduct of other activities by Seller related or incidental to the foregoing.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of Arizona and the State of New York are authorized or obligated to close.

"Charter Documents" means with respect to any Person, the articles of incorporation or organization and by-laws, the limited partnership agreement, the partnership agreement or the limited liability company agreement, or such other organizational documents of such Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of such Person and which establish the legal personality of such Person.

"Claim" means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

"Claimant" has the meaning set forth in **Section 11.3(b)**.

"Closing" means the closing of the transactions contemplated by this Agreement, as provided for in **Section 3.3**.

"Closing Date" means the date on which Closing occurs.

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

"Continued Employee" has the meaning set forth in **Section 6.5(b)**.

"Contract" means any written contract, lease, license, evidence of indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other legally binding arrangement.

"Deed" means the form of Special Warranty Deed from Seller to Purchaser attached hereto as Exhibit D.

"Dispute" has the meaning given to it in **Section 11.3(a)**.

"DWR" has the meaning given to it in **Section 4.13(s)(v)**.

"Environmental Claim" means any claim, loss, cost, expense, liability, penalty or damage arising out of or related to any violation of Environmental Law.

"Environmental Condition" means the presence or Release to the environment, whether at the Real Property or otherwise, of Hazardous Materials, including any migration of Hazardous Materials through air, soil or groundwater at, to or from the Real Property or at, to or from any Off-Site Location, regardless of when such presence or Release occurred or is discovered.

"Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; Occupational Safety and Health Act; National Environmental Policy Act; Comprehensive Air Quality Act, A.R.S. §§ 49-401 et seq.; Arizona Emergency Planning and Community Right-to-Know Act, A.R.S. §§ 26-341 et seq.; Water Quality Control, A.R.S. §§ 49-201 to 391; Solid Waste Management, A.R.S. §§ 49-701 to 881; Hazardous Waste Disposal, A.R.S. §§ 49-901 to 971; Underground Storage Tank Act, A.R.S. §§ 49-1001 to 1073; Groundwater Management Act, A.R.S. §§ 45-401 to 704 and all similar Laws of any Governmental Authority having jurisdiction over the assets in question addressing pollution or protection of the environment and all amendments to such Laws and all regulations implementing any of the foregoing.

"Environmental Liabilities" means all Liabilities with respect to the Purchased Assets or the Business arising under or relating to Environmental Laws or relating to any claim in respect of Environmental Conditions or Hazardous Materials, including settlements, judgments, costs and expenses, including reasonable attorneys fees, whether based on common law or Environmental Laws.

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

"ERISA Affiliate" means any entity, trade or business that is a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes Seller, or that is a member of the same "controlled group" as Seller pursuant to Section 4001(a)(14) of ERISA; provided, that Seller shall not be considered to be an ERISA Affiliate from and after the Closing Date.

"Excluded Assets" has the meaning given to it in **Section 2.2**.

"Excluded Items" has the meaning given to it in **Section 2.2(d)**.

"Excluded Liabilities" has the meaning given to it in **Section 2.4**.

"FERC" means the Federal Energy Regulatory Commission.

"Final Order" means an action by a Governmental Authority as to which: (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has passed; (b) no

petition for rehearing, reconsideration or application for review of the action is pending and the time for filing any such petition or application has passed; (c) such Governmental Authority does not have the action under reconsideration or subject to rehearing on its own motion or otherwise and the time in which such reconsideration or rehearing is permitted has passed; and (d) no appeal to a court, or a request for stay by a court of the Governmental Authority's action is pending or in effect and the deadline for filing any such appeal or request has passed.

"FIRPTA Affidavit" means an affidavit, signed and acknowledged by Seller under penalties of perjury, certifying that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986, as amended, and the associated Treasury Regulations.

"GAAP" means generally accepted accounting principles in the United States of America applied on a consistent basis.

"Good Operating Practices" means, with respect to the Project or the Purchased Assets, the practices, methods and acts generally engaged in or approved by a significant portion of the independent electric power industry in the United States for similarly situated facilities in the United States during a particular time period, or any of such practices, methods, and acts, which, in the exercise of reasonable judgment in light of the facts known or that reasonably should be known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with applicable Law, reliability, safety, environmental protection, economy and expedition, and taking into consideration the requirements of this Agreement, the Material Contracts and the other Contracts affecting the operation of the Project. Good Operating Practices are not intended to be limited to the optimum practices, methods or acts, to the exclusion of all others, but rather to include a spectrum of possible practices, methods or acts generally acceptable in the region during the relevant period in light of the circumstances.

"Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, or any domestic state, province, county, city or other political subdivision or similar governing entity, and including any governmental, quasi-governmental or non-governmental body administering, regulating or having general oversight over gas, electricity, power or other markets.

"Hazardous Material" means and includes each substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, chemical, contaminant or toxic substance under any Environmental Law and any petroleum or petroleum products.

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

"Improvements" means all buildings, structures, fixtures and improvements located on the Real Property or included in the Purchased Assets, including those under construction.

"Indemnified Party" has the meaning given to it in **Section 11.4(a)**.

"Indemnifying Party" has the meaning given to it in **Section 11.4(a)**.

"Independent Accountants" has the meaning given to it in Section 6.10(d).

"Insured Exception" has the meaning given to it in Section 6.11(c).

"Intellectual Property" means the following intellectual property rights, both statutory and common law rights, if applicable: (a) copyrights, and registrations and applications for registration thereof, (b) trademarks, service marks, trade names, slogans, domain names, logos and trade dress, and registrations and applications for registrations thereof, (c) patents, as well as any reissued and reexamined patents and extensions corresponding to the patents, and any patent applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom and (d) trade secrets and confidential information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

"Interim Period" has the meaning given to it in Section 6.1.

"Knowledge" when used in a particular representation herein with respect to Seller means the actual knowledge of the [directors and officers/members of management] of Seller or its Affiliates, after reasonable inquiry by them of selected individuals whom they believe, in good faith, to be the persons generally responsible for the subject matters to which the knowledge is pertinent as of the date of this Agreement, or with respect to any certificate delivered pursuant to this Agreement, the date of such certificate.

"Laws" means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any Governmental Authority.

"Liability" with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Lien" means any mortgage; deed of trust; pledge; security interest; adverse possessory right; mechanic's, materialmen's or other lien; covenant, condition or restriction; charge or assessment; lease; easement; license; option; first refusal; or any other matter affecting title of any nature whatsoever.

"Loss" means any and all judgments, losses, liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, losses and expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment). For all purposes in this Agreement the term **"Losses"** does not include any Non-reimbursable Damages.

"Material Adverse Effect" means any event, circumstance, condition, development, or occurrence, individually or in the aggregate with all other adverse effects, that is or is reasonably likely to be materially adverse to the Business, Purchased Assets or operations of Seller, taken as a whole; provided that the following shall not be considered when determining whether a

Material Adverse Effect has occurred: any effect resulting from (a) any change in the financial condition or results of operations of Seller caused by the pending sale of the Purchased Assets to Purchaser; or (b) any actions to be taken pursuant to or in accordance with this Agreement, excluding any actions taken by Seller pursuant to the "emergency situations" provision in the last paragraph of **Section 6.3**.

"Material Contract" or **"Material Contracts"** has the meaning given to it in **Section 4.12(a)**.

"Net Book Value" means the original cost of the Purchased Assets as recorded on Purchaser's books in accordance with generally accepted accounting principles less accrued depreciation and deferred taxes.

"Non-reimbursable Damages" has the meaning given to it in **Section 11.2(b)**.

"Operational Report" means a report which includes the following:

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

"Parties" means each of Purchaser and Seller.

"Permits" means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted by a Governmental Authority.

"Permitted Lien" means (a) any Lien for Taxes not yet due or delinquent; (b) imperfections or irregularities of title and other Liens that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (c) zoning, planning, and other similar governmental limitations and restrictions; (d) any Lien to be released on or prior to Closing; and (e) the matters identified on Schedule 2.1(a).

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

"Project" means the _____ generating plant located on a site owned by Seller in _____ County, _____, together with all auxiliary equipment, ancillary and associated facilities and equipment, electrical transformers, pipeline and electrical interconnection and metering facilities (whether owned or leased) that are located at such site, together with all other improvements that are located at such site.

"Purchase Price" has the meaning given to it in **Section 3.1**.

"Purchase Price Allocation Schedule" has the meaning given to it in **Section 3.6**.

"Purchased Assets" means, subject to the Permitted Liens, all of the right, title and interest in, to and under the real and personal property, tangible or intangible constituting the Project or used principally for generation purposes in connection with the Project including,

without limitation, the following assets owned by Seller: (i) the Real Property described on Schedule 4.13(a) as associated with the Project, together with all easements, rights of way and privileges (including water rights) relating to the Project; (ii) all inventories of fuels, supplies, materials and spares located on or in transit to the Real Property on the Closing Date or otherwise held for use principally in connection with the Project on the Closing Date; (iii) the machinery, equipment, vehicles, furniture and other personal property located on the Real Property or held for use principally in connection with the Project on the Closing Date, including, without limitation, the items of personal property included in Schedule 4.15 as being associated with the Project, and all warranties against manufacturers or vendors relating thereto, to the extent that such warranties are transferable including, but not limited to, those set forth on Schedule 4.12(e); (iv) the Transferred Contracts; (v) the Transferred Permits; (vi) the Transferred Intellectual Property; (vii) all books, operating records, operating, safety and maintenance manuals, engineering design plans, blueprints and as-built plans, specifications, procedures and similar items relating specifically to the aforementioned assets; (viii) all financial records relating primarily to the Purchased Assets, and plant in service, construction work in process, fuel inventory, spares and materials and supplies in inventory records; (ix) any emission reduction credits paid for or obtained for the Purchased Assets; (x) except for prepaid expenses and deposits attributable to Excluded Assets, all prepaid expenses, progress payments and deposits of Seller, rights to receive prepaid expenses, deposits or progress payments relating to the ownership, operation and maintenance of the Purchased Assets; and (xi) all rights, privileges, claims, causes of action and options against any third parties (including indemnification, contribution and insurance claims) relating to any Purchased Assets or Assumed Liabilities.

"Purchaser" has the meaning given to it in the introduction to this Agreement.

"Purchaser Approvals" has the meaning given to it in **Section 5.3(c)**.

"Purchaser's Notice" has the meaning given to it in **Section 6.11(b)**.

"Real Property" means the real property of which any of the Project is a part or on which the Project is located, together with all rights, privileges, easements and rights-of-way appurtenant thereto and Improvements thereon, including, without limitation, the real property described in Schedule 4.13(a).

"Real Property Leases" has the meaning given to it in **Section 4.13(c)**.

"Release" means any actual or threatened release, spill, emission, migration, leaking, pumping, injection, deposit, disposal or discharge of any Hazardous Materials into the environment, to the extent prohibited under applicable Environmental Laws.

"Representatives" means officers, directors, employees, counsel, accountants, financial advisers or consultants of either Seller or Purchaser, as applicable.

"Respondent" has the meaning given to it in **Section 11.3(b)**.

"Sale Back Agreement" means the form of Sale Back Agreement between _____ and Purchaser attached hereto as Exhibit C.

“**Schedules**” means the disclosure schedules prepared by Seller and attached to this Agreement.

“**Seller**” has the meaning given to it in the introduction to this Agreement.

“**Seller Approvals**” has the meaning given to it in **Section 4.3(c)**.

“**Seller Consents**” has the meaning given to it in **Section 4.3(b)**.

“**Seller Plans**” has the meaning given to it in **Section 6.5(c)**.

“**Survey**” has the meaning given to it in **Section 6.11(a)(ii)(B)**.

“**Tax**” or “**Taxes**” means any federal, state, local or foreign income, gross receipts, ad valorem, sales, transaction privilege or use, employment, social security, disability, occupation, rent, property, severance, value added, transfer, capital stock, excise or other taxes imposed by or on behalf of any Taxing Authority, including any interest, penalty, or addition thereto.

“**Tax Return**” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto.

“**Taxing Authority**” means, with respect to any Tax, the governmental entity or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

“**Termination Date**” has the meaning given to it in **Section 10.1(c)**.

“**Title Commitment**” has the meaning given to it in **Section 6.11(a)(i)(A)**.

“**Title Exception Documents**” has the meaning given to it in **Section 6.11(a)(i)(B)**.

“**Title Insurer**” has the meaning given to it in **Section 6.11(a)(i)**.

“**Title Objection**” has the meaning given to it in **Section 6.11(b)**.

“**Tort Liabilities**” means all Liabilities to third parties for personal injury or tort, or similar causes of action arising out of the Business or the ownership, lease, maintenance or operation of the Purchased Assets.

“**Transferred Contracts**” means the Material Contracts identified on Schedule 4.12 as “Transferred Contracts,” subject to receipt of necessary consents and approvals.

“**Transferred Intellectual Property**” means the Intellectual Property identified on Schedule 4.18 as “Transferred Intellectual Property,” subject to receipt of necessary consents and approvals, and any plant drawings, equipment performance data, design criteria or maintenance records collected by the Seller’s data collection or other information technology systems or software, whether or not identified on Schedule 4.18 as “Transferred Intellectual Property.”

"Transferred Permits" means the Permits identified on Schedule 4.15 as "Transferred Permits," subject to receipt of necessary consents and approvals.

"Water Rights" has the meaning given to it in **Section 4.13(s)(i)**.

"Water Rights Certificate" has the meaning given to it in **Section 4.13(s)(v)**.

"Welfare Benefits" has the meaning given to it in **Section 6.5(e)**.

"Wells" has the meaning given to it in **Section 4.13(s)(ii)**.

EXHIBIT A

**FORM OF ASSUMPTION
OF CERTAIN LIABILITIES**

ASSUMPTION OF CERTAIN LIABILITIES

Pursuant to that certain Asset Purchase Agreement dated as of _____, 20____ (the "Agreement"), by and between _____, a _____ ("Seller") and Arizona Public Service Company, an Arizona corporation ("Purchaser") for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Purchaser does hereby assume the Assumed Liabilities as such term is defined in the Agreement by and subject to the terms and conditions of the Agreement. Except as expressly assumed herein, Purchaser does not assume and shall not in any manner be responsible for any other liability, obligation, lien or encumbrance of Seller, including, without limitation, the Excluded Liabilities (as defined in the Agreement).

Dated this _____ day of _____, 20____.

Arizona Public Service Company, an Arizona corporation

By: _____
Its: _____

EXHIBIT B

**[FORM OF AFFIDAVIT
OF PROPERTY VALUE]**

EXHIBIT C

FORM OF SALE BACK AGREEMENT

Notary Public

My Commission Expires:

EXHIBIT E

FORM OF BILL OF SALE AND ASSIGNMENT OF CONTRACT RIGHTS

Bill of Sale and Assignment of Contract Rights

Sale and Transfer of Assets and Contract Rights. For good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and as contemplated by Section 3.4 of that certain Asset Purchase Agreement dated as of _____, _____ (the "Purchase Agreement"), to which _____ a _____ ("Seller"), and Arizona Public Service Company, an Arizona corporation ("Purchaser"), are parties, Seller hereby sells, transfers, assigns, conveys, grants and delivers to Purchaser, effective as of _____: _____m. (_____ time) on _____, 20__ (the "Effective Time"), all of Seller's right, title and interest in and to all of the Purchased Assets (as defined in the Purchase Agreement).

1. *Further Actions.* Seller covenants and agrees to warrant and defend the sale, transfer, assignment, conveyance, grant and delivery of the Purchased Assets hereby made against all persons whomsoever, to take all steps reasonably necessary to establish the record of Purchaser's title to the Purchased Assets and, at the request of Purchaser, to execute and deliver further instruments of transfer and assignment and take such other action as Purchaser may reasonably request to more effectively transfer and assign to and vest in Purchaser each of the Purchased Assets, all at the sole cost and expense of Seller.

2. *Power of Attorney.* Without limiting Section 2 hereof, Seller hereby constitutes and appoints Purchaser the true and lawful agent and attorney in fact of Seller, with full power of substitution and resubstitution, in whole or in part, in the name and stead of Seller but on behalf and for the benefit of Purchaser and its successors and assigns, from time to time:

(a) to demand, receive and collect any and all of the Purchased Assets and to give receipts and releases for and with respect to the same, or any part thereof;

(b) to institute and prosecute, in the name of Seller or otherwise, any and all proceedings at law, in equity or otherwise, that Purchaser or its successors and assigns may deem proper in order to collect or reduce to possession any kind of the Purchased Assets and in order to collect or enforce any claim or right of any kind hereby assigned or transferred, or intended so to be; and

(c) to do all things legally permissible, required or reasonably deemed by Purchaser to be required to recover and collect the Purchased Assets and to use Seller's name in such manner as Purchaser may reasonably deem necessary for the collection and recovery of same.

Seller hereby declaring that the foregoing powers are coupled with an interest and are and shall be irrevocable by Seller.

3. *Terms of the Purchase Agreement.* The terms of the Purchase Agreement, including but not limited to Seller's representations, warranties, covenants, agreements and indemnities relating to the Purchased Assets, are incorporated herein by this reference. Seller acknowledges and agrees that the representations, warranties, covenants, agreements and indemnities contained in the Purchase Agreement shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.

IN WITNESS WHEREOF, Seller has executed this Bill of Sale and Assignment of Contract Rights as of _____, 20__.

[INSERT NAME OF SELLER]

By:

Its:

EXHIBIT F

FORM OF CERTIFICATION
OF NON-FOREIGN STATUS

CERTIFICATION OF NON-FOREIGN STATUS

INTERNAL REVENUE CODE SECTION 1445

Section 1445 of the Internal Revenue Code provides that the transferee of a United States real property interest must withhold the tax if the transferor is a foreign person. To inform Arizona Public Service Company, an Arizona corporation ("Transferee") that withholding of tax is not required upon the disposition of a United States real property interest by _____, a _____ ("Seller"), and with the knowledge that the Transferee will rely upon the following statements, the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, foreign estate or foreign person (as those terms are defined in the internal revenue code and income tax regulations);
2. Seller's United States Employer Identification Number/Social Security Number is _____; and
3. Seller's office address is:

Seller understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

DATED: _____, 20____

TRANSFEROR:
[INSERT NAME OF SELLER]

By _____
Its _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of _____, a _____

Notary Public

My commission expires: _____

Schedule 2.1(a)

Permitted Liens

Schedule 2.2(d)

Excluded Items

Schedule 2.3(c)

Specified Assumed Liabilities

Schedule 4.3(b)

Seller's Consents

Schedule 4.3(c)

Seller's Approvals

[Filings and the expiration of the waiting period required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.]

[All necessary approvals and authorizations required pursuant to Section 203 the Federal Power Act of 1935, as amended, and Part 33 of the Federal Energy Regulatory Commission Regulations (18 CFR Part 33).]

[Approvals and authorizations required under the statutes or regulations of the State of Arizona and other states, if any.]

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud.

2. The second part of the document outlines the specific requirements for record-keeping, including the need to maintain original documents and to keep copies of all supporting documents. It also discusses the importance of ensuring that records are accessible and retrievable at all times.

3. The third part of the document discusses the consequences of non-compliance with the record-keeping requirements. It notes that failure to maintain accurate records can result in severe penalties, including fines and imprisonment.

Schedule 4.6(b)

Legal Proceedings

Schedule 4.8

Liabilities

Schedule 4.9

Material Adverse Changes

Schedule 4.11(a)

Regulatory Status

Schedule 4.12(a)

Material Contracts

Transferred Contracts:

Non-Transferred Contracts:

Schedule 4.12(c)
Certain Required Consents

Schedule 4.12(d)

Defaults

Schedule 4.12(e)

Warranties Relating to the Purchased Assets

Schedule 4.13(a)

Real Property

Schedule 4.13(b)

Encumbrances, Improvements, etc.

Schedule 4.13(c)
Real Property Leases

Schedule 4.13(r)

Mechanics' Liens

Schedule 4.13(s)(i)

Water Rights

Schedule 4.13(s)(ii)

Wells

Schedule 4.14
Personal Property

Schedule 4.15

Permits

Schedule 4.16(b)
Environmental Matters

Schedule 4.17

Insurance

Schedule 4.18

Intellectual Property

Schedule 4.19

Related Persons

Schedule 4.21(a)

Employees

Schedule 4.21(b)

Employment-Related Contracts

Schedule 4.21(d)
Independent Contractors

Schedule 4.22

Employee Benefit Plans

Schedule 5.3(c)

Purchaser Approvals

1. [Filings and the expiration of the waiting period required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.]
2. [All necessary approvals and authorizations required pursuant to Section 203 the Federal Power Act of 1935, as amended, and Part 33 of the Federal Energy Regulatory Commission Regulations (18 CFR Part 33).]
3. [Approvals and authorizations required under the statutes or regulations of the State of Arizona or any other state, if any.]

Schedule 6.3
Certain Restrictions

Schedule 6.5(a)

Available Employees

Schedule 6.5(b)

Continued Employees

Schedule 8.5

Consents and Approvals (Purchaser Condition)

Schedule 9.5

Consents and Approvals (Seller Condition)

Schedule 11.1(a)

Excluded Schedule Items

ATTACHMENT 6

Master Power Purchase & Sale Agreement



**EDISON ELECTRIC
INSTITUTE**



MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement (Version 2.1; modified 04/25/00) ("Master Agreement") is made as of the following date: _____ ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." This Master Agreement shall cover only the sales and purchases of energy executed in furtherance of the APS Power Supply Resource Request for Proposals ("RFP") dated December 3, 2003, by and through which APS may acquire generation assets and/or capacity. The terms herein shall not replace, supercede or amend any prior or subsequent agreements for the purchase or sale of energy and/or any other commodity between the parties hereto. The Parties to this Master Agreement are the following:

Name ARIZONA PUBLIC SERVICE COMPANY, a Corporation organized under the laws of the State of Arizona ("APS" or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: 400 North 5th Street

Street: _____

City: Phoenix, Zip: 85004

City: _____ Zip: _____

Attn: Contracts Department
Phone: (602) 250-2780
Facsimile: (602) 250-3199
Duns: 00-690-1995
Federal Tax ID Number: 86-0011170

Attn: Contract Administration
Phone: _____
Facsimile: _____
Duns: _____
Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: Energy Settlement
Phone: (602) 250-3150
Facsimile: (602) 250-2325

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

Scheduling:

Attn: N/A
Phone: (602) 250-4601
Facsimile: (602) 250-3199

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Payments:

Attn: Energy Settlements
Phone: (602) 250-3150
Facsimile: (602) 250-2325

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: Wells Fargo Bank
ABA: 121 000 248
ACCT: 415 954 0921

BNK: _____
ABA: _____
ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: Credit Risk Manager
Phone: (602) 250-3433
Facsimile: (602) 250-2663

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: Law Department, Mail Station 8695
Phone: (602) 250-2052
Facsimile: (602) 250-2663

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____
Party B Tariff Tariff TBD Dated _____ Docket Number ER

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

Cross Default for Party A: _____ Cross Default Amount \$ _____

Party A: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B:

Party B: _____ Cross Default Amount means an amount equal to three percent (3%) of shareholders' equity (howsoever described) of Party B as shown on the most recent annual audited financial statements of Party B.

Other Entity: Party B's Guarantor, if any Cross Default Amount means an amount equal to three percent (3%) of shareholders' equity (howsoever described) of Party B's Guarantor as shown on the most recent annual audited financial statements of Party B's Guarantor.

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

Option C (No Setoff)

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- Option A: Unless guaranteed, in which case Option B is applicable with the Guarantor specified.
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Maximum Collateral Threshold:

Credit Rating* (S&P / Moody's)	Collateral Threshold
AA- / Aa3 or better	\$100 Million
A- to A+ / A3 to A1	\$50 Million
BBB+ / Baa1	\$20 Million
BBB / Baa2	\$10 Million
BBB- / Baa3 or below	\$Zero

*Credit Rating, as that term is used herein, shall mean the Credit Rating in effect for Party B or Party B's Guarantor at any time during the term of any Transaction. In determining the Credit Rating, APS shall utilize the better of the credit ratings for long term senior unsecured debt as published by S&P and Moody's or, if not rated by at least one of these rating agencies, APS's internal credit rating as determined by APS's credit department.

Party B's Collateral Threshold shall be zero, however, if an Event of Default or Potential Event of Default with respect to Party B or Party B's Guarantor has occurred and is continuing.

If the amount of the guarantee provided by Party B's Guarantor is less than the Maximum Collateral Threshold amount as described above, then the Collateral Threshold amount applicable for Party B shall be the guarantee amount provided by Party B's Guarantor.

Party B Rounding Amount: \$250,000

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating or Party B's Guarantor's Credit Rating falls below B- from S&P and B3 from Moody's or if Party B or Party B's Guarantor is not rated by either S&P or Moody's.

Other:

Specify: It shall be a Downgrade Event for Party B if, during the term of this Agreement, APS, in its reasonably exercised discretion, determines that the creditworthiness, financial responsibility or performance viability of Party B has become unsatisfactory.

(e) Guarantor for Party B: _____

Guarantee Amount: See Section 8.1(c) above.

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable*
- Applicable

* Except in the event Party B has, as of the date of execution of this Agreement, a Credit Rating of either A- or better by S&P or A3 or better by Moody's, in which case and for so long as Party B maintains such rating, the Collateral Threshold matrix applicable to Party B shall apply to Party A.

If applicable, complete the following:

Party A Collateral Threshold: \$ N/A; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Rounding Amount: \$ N/A

(d) Downgrade Event:

- Not Applicable*

Applicable

* Except in the event Party B has as of the date of execution of this Agreement a Credit Rating of either A- or better by S&P or A3 or better from Moody's, in which case and for so long as Party B maintains such rating, the Downgrade Event provision shall be applicable to Party A as follows: It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P and Baa3 from Moody's.

If applicable, complete the following:

It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P and Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:
Specify: _____

(e) Guarantor for Party A: NOT APPLICABLE

Guarantee Amount: NOT APPLICABLE

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

Other Changes

The following changes shall be applicable

Article One - General Definitions

Section 1.1: is amended to include "or a governmental entity" after the word "individual".

Section 1.3: is amended in its entirety to read as follows:

"Bankrupt" means, with respect to a Party, that such Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the

case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within thirty (30) days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts. "

Section 1.4: is amended by adding the following after "holiday" in the second line: "or, if applicable, Canadian bank holiday".

Section 1.11: is amended by adding the following after "Party" in the third line: "after using commercially reasonable efforts to mitigate costs."

Section 1.12: is amended by deleting in the fourth line the word "issues" and replacing it with the word "issuer".

Section 1.23: is amended by inserting the following at the beginning of the second sentence: "Notwithstanding the foregoing,".

Section 1.27: is amended in its entirety to read as follows:

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. or Canadian commercial bank or a non-U.S. or non-Canadian bank with a U.S. branch with such bank having a rating of at least A- from S&P or A3 from Moody's and a stockholder's equity of at least USD \$3,000,000,000 as of December 31, 2002, in a form and in an amount acceptable to the Party in whose favor the letter of credit is issued. Cost of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

Section 1.45: is amended by inserting the phrase "(subject to a form of account control agreement reasonably acceptable to both parties)" in the first line after the word "cash".

Section 1.46: is amended by adding before the period at the end thereof the following:

"provided that the failure to comply with any requirement of this Agreement or a Transaction, including the requirements of Article 8, before the expiration of the time period expressly specified for such compliance in this Agreement or the Transaction, if any, shall not be

considered a Potential Event of Default unless and until the applicable time period has expired without compliance”.

Section 1.50: is amended by deleting the reference to “Section 2.4” and replacing it with “Section 2.5”.

Section 1.51: is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point”; and (ii) inserting in the second line, the phrase “or at an alternate Delivery Point acceptable to Buyer in Buyer’s sole discretion” after the phrase “at Delivery Point”.

Section 1.53: is amended by (i) deleting the phrase “at the Delivery Point” in the second line, and (ii) deleting the phrase “at Seller’s option” in the fifth line and inserting in its place the following: “absent a sale, assuming a sale could not have been made in a commercially reasonable manner”.

Section 1.60: is amended by inserting the words “in writing” immediately following the words “agreed to”.

Section 1.62: The following definition is added as **Section 1.62:** ““Merger Event” means, with respect to a Party, that such Party consolidates or amalgamates with, or merges into or with, or transfers substantially all of its assets to another entity and (i) the resulting entity fails to assume all of the obligations of such Party hereunder or (ii) the benefits of any credit support provided pursuant to Article 8 fail to extend to the performance by such resulting, surviving or transferee entity of its obligations hereunder or (iii) the resulting entity’s credit rating is lower than that of such Party immediately prior to such action.”

Article Two - Transaction Terms and Conditions

Section 2.1: is hereby amended by deleting the phrase in the second line “orally or, if expressly required by either Party with respect to a particular Transaction,”.

Section 2.3: is hereby amended by deleting the text in its entirety and substituting the following:

"Buyer shall confirm a Transaction by forwarding to Seller by facsimile within five (5) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer in writing of such objections within five (5) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Buyer fails to send a Confirmation within five (5) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Seller to Buyer. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller of such objections within five (5) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Buyer and Seller each send a Confirmation and neither Party objects to the other Party’s Confirmation within five (5) Business Days of receipt, Buyer’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Buyer’s Confirmation was sent more than five (5) Business Days after the Transaction was entered into

and (ii) Seller's Confirmation was sent prior to Buyer's Confirmation, in which case Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties."

Section 2.6: A new **Section 2.6** is added to Article Two, worded as follows:

"2.6 No Oral Agreements or Modifications. Notwithstanding any thing to the contrary in this Agreement, including in this Article Two, no Transaction or other binding commitment between the Parties shall be entered into unless such Transaction or commitment is in writing, including through electronic communication, and signed by both Parties, and this Agreement and any and all Transactions may not be orally amended or modified, including by Recording pursuant to Section 2.5."

Article Three - Obligations and Deliveries

Section 3.4: A new **Section 3.4** is added to Article Three, worded as follows:

Section 3.4: Regulatory Approval Provisions. The obligation of APS to make any purchases or relating payments pursuant to this Agreement is subject to the timely fulfillment, as determined by APS in its sole discretion, of the following regulatory conditions:

All consents and approvals of any governmental authorities, including without limitation, the Arizona Corporation Commission (the "ACC") and the Federal Energy Regulatory Commission ("FERC"), required for the consummation of the transaction(s) contemplated pursuant to this Agreement shall have become Final Orders, with such terms and conditions as shall have been imposed by the governmental authority issuing such Final Order acceptable in all respects to APS in its sole discretion, including the issuance by the ACC of one or more orders which shall have become a Final Order, approving the transactions contemplated hereby and the regulatory treatment of APS' purchases through this Agreement, including, without limitation, the inclusion on or before June 1, 2007 in APS' rate base of all of APS' costs incurred in making the purchases contemplated in this Agreement without any disallowance. As used herein, "Final Order" means an action by a governmental authority as to which: (a) no request for stay of the action is pending, no such stay is in effect and if any time period is permitted by statute or regulation for filing any request for such stay, such time period has passed; (b) no petition for rehearing, reconsideration or application for review of the action is pending and the time for filing any such petition or application has passed; (c) such governmental authority does not have the action under reconsideration or subject to rehearing on its own motion or otherwise and the time in which such reconsideration or rehearing is permitted has passed; and (d) no appeal to a court, or a request for stay by a court of the governmental authority's action is pending or in effect and the deadline for filing any such appeal or request has passed.

Section 3.5: A new **Section 3.5** is added to Article Three worded as follows:

"3.5 Failure to Provide Minimum Capacity and/or Power for Unit Firm Products. If Party B is supplying Unit Firm products, Party B must meet the minimum Equivalent Availability Factor,

as that term is defined in the NERC Generating Unit Availability Data System ("GADS"), (the "Availability Factor") which is established in the Confirmation of the Transaction for each period (specifically, on-peak, off-peak and super-peak) of each month throughout the proposed Delivery Period. If Party B falls below the minimum Availability Factor during any period of any month during the term of the Transaction under this Agreement, except in the event that such failure is excused by Force Majeure, it will be responsible to APS for the Accelerated Payment of Damages as described in Article 4.1 of this Agreement, specifically to include the highest cost Replacement Price incurred by APS in obtaining substitute power and/or capacity up to that minimum Availability Factor for each period of each month.

Article Four - Remedies for Failure to Deliver or Receive

Section 4.1: is amended by including the following paragraph:

"In the event Seller's Failure is related to the failure to meet the minimum monthly Availability Factor, including as described in Section 3.4 of this Agreement, Buyer shall be permitted to use the highest of the actual costs incurred in obtaining replacement power during each of the periods in which Seller failed to meet the minimum monthly Availability Factor as its Replacement Price."

Section 4.3: A new Section 4.3 is added to Article Four, worded as follows:

"4.3 Suspension of Performance. Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of this Agreement, by the other Party's failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement for, other remedies specified in this Agreement."

Article Five - Events of Default; Remedies

Section 5.1(b): is amended by adding at the end of that paragraph “, if such failure is not remedied within three (3) Business Days.”

Section 5.1(f): is amended in its entirety as follows: “a Merger Event occurs with respect to such Party;”

Section 5.1(h)(i): is amended by adding at the end of that paragraph “, if such failure is not remedied within three (3) Business Days.”

Section 5.1: is amended by adding a new subsection “(i)” which reads as follows:

(i) “if, during any consecutive ninety (90) day period under any Transaction, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, regarding which the Seller shall be deemed to be the Defaulting Party and regarding which Buyer shall also be entitled to its remedies under Section 4.1;

Section 5.2: is amended by adding the following sentence to the end of that provision:

“In the Event of a Default based upon Section 5.1 (d), (e), (h), (i) or (j) of this Agreement, if the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Settlement Amount shall be zero, notwithstanding any provision of this Agreement to the contrary. However, if the Settlement Amount (based on the present value of the forward position) is \$0 pursuant to the foregoing, the Buyer would still owe the Seller under Section 5.3 of the EEL, the full amount of payment due and owing for Product already provided by the Seller to the Buyer prior to the Event of Default by either Party under this Master Agreement.”

Section 5.3: is amended by inserting the phrase:

“plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight,” between the words “that are due to the Non-Defaulting Party,” and “plus any and all other amounts” in the sixth line thereof.

Section 5.8: a new Section 5.8 is added to Section Five worded as follows:

“Section 5.8: APS’ Rights in the Event of the Failure by Party B to Make Necessary Termination Payments. In the event of an Event of Default by Party B and the subsequent failure by Party B to make APS whole through payment of any and all necessary Termination Payments, Party B shall transfer to APS its ownership interest and rights as of the date of this Agreement in the applicable generating unit(s) identified in the underlying transactions. In this regard, prior to the execution of this Agreement, APS and Party B shall prepare any and all documents necessary, as determined by APS in its sole discretion, to assign, convey, transfer and deliver to

APS all of Party B's right, title and interest in, to and under the real and personal property, tangible or intangible, constituting the applicable generating unit as of the date of this Agreement. The referenced documents shall provide APS with first priority against any and all future liens or restrictions (specifically excepting any liens or restrictions existing prior to the execution of this Agreement) as to Party B's right, title and interest in, to and under the real and personal property constituting the applicable generating."

Article Eight - Credit and Collateral Requirements

Section 8.1(c): shall be further amended by inserting the following additional paragraph:

"If at the time of the request by Party A for Performance Assurance, Party B's Collateral Threshold is determined by the guarantee amount when the Credit Rating applicable to Party B's Guarantor would otherwise have resulted in a higher Collateral Threshold, rather than providing Performance Assurance, Party B may at its option, increase the Collateral Threshold up to the maximum amount applicable to Party B's Guarantor based upon its Credit Rating. No such increase, however, shall become effective until Party B has provided to Party A a new guarantee or an amended guarantee executed by Party B's Guarantor (in form and substance acceptable to Party A at its sole discretion). If the operation of the foregoing results in the sum of Party B Performance Assurance and Party B's Collateral Threshold being in excess of its Termination Payment (rounding upwards for any fractional amount to the next Party B Rounding Amount), Party B shall have the right to request that Party B's Performance Assurance be reduced accordingly."

Section 8.4: a new **Section 8.4** is added to Article 8 as follows:

8.4 Disputes Regarding Requested Performance Assurance. For purposes of Sections 8.1 and 8.2 (Collateral Threshold), if a Party which has been asked to provide Performance Assurance pursuant to Section 8.1 or 8.2 (the "Posting Party"), disputes the other Party's (the "Requesting Party's") calculation of the amount of Performance Assurance due, then the Posting Party shall deliver to the Requesting Party the undisputed portion of the Performance Assurance requested within three (3) Business Days of the original request. Regarding the disputed portion of the Performance Assurance originally requested, the Parties agree to negotiate in good faith for a period not to exceed two (2) Business Days to determine the amount the Posting Party shall be required to deliver. If the Parties cannot mutually agree upon such amount after such time, then the Requesting Party shall obtain quotations from three independent brokers for the marked-to-market value of all of the relevant Transactions and shall provide copies of such quotations to the Posting Party. The Requesting Party shall then use the arithmetic average of the broker quotations to compute the amount of additional Performance Assurance, if any, due to the Requesting Party in addition to the undisputed portion of the Performance Assurance originally requested. The additional Performance Assurance, if any, shall be delivered to the Requesting Party within two (2) Business Days of the computation thereof.

Section 8.5: a new **Section 8.5** is added to Article 8 as follows:

8.5 Holding Posted Performance Assurance. To the extent the Pledgor provides Performance Assurance to the Secured Party pursuant to the terms of this Article Eight, the following provisions shall apply:

(a) The Secured Party shall exercise reasonable care to assure the safe custody of all Performance Assurance delivered by the Pledgor ("Posted Performance Assurance") to the extent required by applicable law, and, in any event, the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Performance Assurance, including without limitation, any duty to collect any distributions, or to enforce or preserve any rights pertaining thereto.

(b) In the event and for the duration that the Secured Party or its Guarantor (i) is either a Defaulting Party, or (ii) fails to maintain either a Moody's rating of Baa3 or a S&P rating of BBB-, at the request of the Pledgor the Secured Party shall promptly appoint a Custodian as its agent on its behalf to hold Performance Assurance, and promptly transfer to said Custodian said Performance Assurance. "Custodian" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least \$1,000,000,000. The holding of Performance Assurance by a Custodian will be deemed to be the holding of that Performance Assurance by the Secured Party for which the Custodian is acting. The exposed party will not be liable for the acts or omissions of its Custodian so appointed.

(c) To the extent the Pledgor delivers Performance Assurance in the form of cash to the Secured Party and the Pledgor requests that such Performance Assurance be returned pursuant to Section 8.1 or 8.2, as applicable, then the Secured Party shall return such Performance Assurance to the Pledgor within three (3) Business Days of such Pledgor's request with interest at the Fed Funds Rate (as defined below) calculated from and including the date such Performance Assurance was delivered to the Secured Party to but excluding the date such Performance Assurance was returned to the Pledgor. "Fed Funds Rate" means, for any day, the "Federal Funds (Effective)" rate in effect for such day as displayed on Telerate page 118 for such day under the caption "Effective" or, if such rate is not so published for any day which is a Business Day, then the overnight Federal Funds Rate as reported in Federal Reserve Publication H.15-519 or any successor publication, published by the Board of Governors of the Federal Reserve System.

(d) To the extent the Pledgor requests that Performance Assurance be substituted, then the Pledgor shall be entitled to substitute one form of Performance Assurance for another form of Performance Assurance upon one (1) Business Day's notice to the Secured Party and the Secured Party shall take all reasonable steps at the Pledgor's expense to facilitate the substitution of such Performance Assurance.

Article Ten - Miscellaneous

Section 10.2: shall be amended by (a) inserting immediately following the words "other Party" in the second line the following: "(except in connection with the representations in clause (ix), which is made only by Party B); (b) inserting a new Section (xiii) as follows:

(xiii) in addition, Seller represents and warrants that it is providing power and/or capacity through a specific generating unit for this Transaction, it has met and will continue to meet all applicable material federal, state, and local regulatory and environmental requirements, and possesses all required and relating certificates, permits, and approvals with respect to such generating unit. In the event Seller is notified that it is or may be in violation of any such requirements, certifications and/or permits it shall immediately notify APS and the ACC in writing of the same.

Section 10.4: shall be amended by inserting the phrase "To the extent permitted by law" at the beginning of each of the first two sentences.

Section 10.5: is hereby amended by deleting the text in its entirety and substituting the following:

10.5 Assignment. Neither Party shall assign this Agreement, or any Transactions or rights hereunder without the prior written consent of the other.

Section 10.8: shall be further amended by deleting its penultimate sentence in its entirety and replacing it with the following sentences: "The indemnity provisions of this Agreement shall survive the termination of this Agreement for the period of the applicable statute of limitations. The audit provisions of this Agreement shall survive the termination of this Agreement for a period of twelve (12) months."

Section 10.11: is amended by inserting the following after the word "law" in the sixth line: ", including as necessary as to the tax treatment and tax structure of the transaction,"

Section 10.12: New Section 10.12 shall be added to Article 10 as follows:

10.12 Venue. Each party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the County of Maricopa, State of Arizona; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum.

Section 10.13: New Section 10.13 shall be added to Article 10 as follows:

10.13 FERC Standard of Review; Certain Covenants and Waivers.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Master Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power

Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the "Mobile-Sierra" doctrine).

(b) The Parties, for themselves and their successors and assigns, (i) agree that the "public interest" standard described in Section 10.13(a) shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Master Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard.

(c) The Parties agree that in the event that any portion of this Section 10.13 is determined to be invalid, illegal or unenforceable for any reason, the provisions of Section 10.13(a) shall be unaffected and unimpaired thereby, and shall remain in full force and effect, to the fullest extent permitted by applicable law."

Section 10.14: A new **Section 10.14** is added to Article 10 as follows:

10.14 Alternative Dispute Resolution. All disputes arising from any Transaction under this Agreement are subject to the provisions of this Section 10.14.

(a) Mediation. Any disputes between the Parties shall first be submitted to a non-binding mediation. The mediation shall be commenced by written request of either Party and shall begin within fifteen (15) calendar days of such written notice. The mediator shall be chosen by mutual agreement of the Parties within fifteen (15) calendar days of submission of the above written notice. Any discussions or materials presented during or for purposes of the mediation shall be confidential and governed by the limitations and restrictions of Rule 408 of the Federal and Arizona Rules of Evidence and/or any like regulatory rules. Any arbitration commenced under this Article shall not be initiated until following the completion of the mediation detailed herein; provided, however, that (i) in the event the Parties are unable to agree on a mediator despite their good faith efforts within fifteen (15) calendar days of submission of the above-written notice, or (ii) in the event such mediation extends for longer than sixty (60) days following commencement, then either Party may proceed directly to arbitration.

(b) Arbitration. Any disputes between the Parties and/or their respective representatives involving or arising under claim, counterclaim, demand, cause of action, dispute, and/or controversy relating to the terms of this Agreement, or the breach thereof (collectively "Claims"), shall be submitted to binding arbitration, whether such Claims sound in contract, tort or otherwise. The arbitration shall be conducted in accordance with the Federal Arbitration Act and the then prevailing 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 arbitrator(s). Submission shall be made upon the request of either Party. Within twenty (20) calendar days of the receipt by the respondent of service of the notice of arbitration, the Parties shall select one (1) arbitrator by mutual consent. If the Parties are unable to agree upon a single arbitrator, there shall be three (3) arbitrators. Specifically, in the event the Parties cannot agree upon a single arbitrator, both the claimant and the respondent shall appoint one (1) arbitrator within ten (10)

calendar days after written notice by either Party that three (3) arbitrators shall be necessary. The two (2) arbitrators so appointed shall then select the third arbitrator within twenty (20) calendar days, who shall be the chairperson, of the tribunal. The chairperson shall be a person who has over eight (8) years of experience in energy-related Transactions, and none of the arbitrators shall have been previously employed by either Party or have any direct interest in either Party or the subject matter of the arbitration, unless such conflict is expressly acknowledged and waived in writing by both Parties. The chairperson shall be bound to schedule and hear the dispute within six (6) months after his/her appointment and shall render the panel's decision within thirty (30) calendar days after the hearing concludes. It is agreed that the arbitrator(s) shall have no authority to award consequential, treble, exemplary, or punitive damages of any type or kind regardless of whether such damages may be available under any law or right, with the Parties hereby affirmatively waiving their rights, if any, to recover or claim such damages. The compensation and any costs and expenses of the arbitrators shall be borne equally by the Parties. The arbitration shall take place in Phoenix, Arizona. Any arbitration proceedings, decision or award rendered hereunder and the validity, effect and interpretation of this arbitration provision shall be governed by the Federal Arbitration Act. The award shall be final and binding on the Parties and judgment upon any award may be entered in any court of competent jurisdiction. The Parties agree that all information exchanged as a result of any proceeding as described herein shall be deemed confidential.

(c) **Judicial Relief.** Either Party may petition a court of appropriate jurisdiction, as described in Section 10.14, for non-monetary relief relating to any claim of breach of this Agreement solely to prevent undue hardship relating to any such claimed breach pending the appointment of an arbitration panel as described in this Section 10.14.

Schedule M - Governmental Entity or Public Power System

N/A Party A is NOT a Governmental Entity or Public Power System

____ Party B is a Governmental Entity, Schedule M Applicable. In the event Party B is a Governmental Entity, the provisions of Schedule shall apply in their entirety.

Schedule M: Paragraph (B) which amends the definition of "Force Majeure" shall be further amended by inserting the words "or proprietary" between "government" and "capacity."

Schedule P - Products and Related Definitions

Schedule P: The paragraph relating to "Capacity" is deleted in its entirety.

Schedule P: The paragraph relating to "Firm (LD)" shall be amended by inserting immediately following the words "Force Majeure" on lines 4 and 5, the following words: "or the failure of the occurrence of the regulatory approval as described in Section 3.4 of this Agreement".

Schedule P: The paragraph relating to "Firm (No Force Majeure)" is deleted in its entirety.

Schedule P: The paragraph relating to "Into _____ (the "Receiving Transmission Provider"), of Schedule P (8th paragraph of definitions beginning on Page 1) and all relating provisions thereto are deleted in their entirety:

Schedule P: The paragraph relating to "System Firm" is deleted in its entirety.

Schedule P: The paragraph relating to "Transmission Contingent" is deleted in its entirety.

Schedule P: The paragraph relating to "Unit Firm" shall be amended by inserting, at the close of that paragraph, the following words "Performance by APS shall be excused without any recourse whatsoever by Party B, however, by reason of the failure of the occurrence of the regulatory approvals as described in Section 3.4 of this Agreement."

Schedule P: The paragraph relating to "Unit Firm" shall further be amended by inserting the following additional paragraph: "In addition, Party B shall specifically identify the unit(s) from which the Product will be provided, and affirmatively represent and warrant to APS that:

- (i) At the time of the execution of this Agreement, Party B has good defensible title, or valid and effective leasehold rights in the case of leased property, to the Applicable Generating Unit(s), free and clear of all liens, charges, claims, pledges, security interests, equities and encumbrances of any nature whatsoever other than the lien of current taxes not delinquent, liens, charges, claims, pledges, security, interests, equities and encumbrances that in the aggregate do not detract from or interfere with the ability of Party B to deliver the contract quantity of the Product.
- (ii) As a condition precedent to the execution of this Agreement, Party B shall provide the historical operating and performance data of the Applicable Generating Unit(s), including (a) the date of Party B's most recent recorded measurement of dependable operating capacity of such unit; (b) the date of Party B's most recent annual wide open valve heat rate test for each such unit and the outcome of such tests recorded; and (c) the date of the last major scheduled turbine overhaul recorded for each unit and the results recorded by Party B, if any (as part of its customary overhaul procedures), of a wide open valve heat rate test immediately prior to overhaul and immediately after such overhaul."
- (iii) Party B shall maintain and operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice. In the event Party B fails to maintain and/or operate the Applicable Generating Unit(s) pursuant to Reasonable Utility Practice, Party B shall be deemed to be in default and APS shall be entitled to all appropriate remedies under this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

ARIZONA PUBLIC SERVICE COMPANY

APS or Buyer

_____ or Seller

By: _____
Name: David A. Hansen
Title: Vice President Marketing & Trading

By: _____
Name: _____
Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

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

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is

due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

- 1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.
- 1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.
- 1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.
- 1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.
- 1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.
- 1.39 "Party A Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.40 "Party B Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.
- 1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.
- 1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.
- 1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.
- 1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.
- 1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.
- 1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g.,

price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its

obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the

resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-

Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting

Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the

Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction

occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any

such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges, which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms

survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any

Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If

requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____² SHALL APPLY.

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer ("Seller's Notification") of Seller's immediate upstream counterparty and the Interface (the "Designated Interface") where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer's immediate downstream counterparty.

2. Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission," "ADI" and "Available Transmission." In determining availability to Buyer of next-day firm transmission ("Firm Transmission") from the Designated Interface, a "Timely Request for Transmission" shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller's Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller's Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an "ADI") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as "Available Transmission") within the Receiving Transmission Provider's transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface

ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of

Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer,

Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to

provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent

Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____,
between _____ ("Party A") and _____ ("Party B")
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

Into _____, Seller's Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

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RESP. PACKAGE A

**Arizona Public Service Company
Power Supply Resource Proposal for the
Procurement of Generating Capacity**

**Response Package
Alternative A
Ownership Acquisition of Capacity**

Form A-1: Ownership Acquisition

The generating resource offered to APS must involve a full unit or units at a single site for which APS will have full scheduling and dispatch authority. Sharing of the output of the offered unit(s) will not be accepted unless APS already has an interest in such unit(s). Capacity is measured at the delivery point, which shall be the interconnection point for units located inside the APS control area and a delivery point on an interface with the APS control area for units located outside the APS control area.

A-1: COVER SHEET

Proposal Name: _____

Respondent Contact: Name: _____

Company: _____

Street/P.O. Box: _____

City, State, Zip Code: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

State of Incorporation: _____

By signing in the space provided below, the undersigned Respondent confirms that the within proposal is (a) final and binding, except to the extent described in the RFP, and (b) irrevocable until (i) 5:00 p.m. MST on January 28, 2004 or, (ii) if APS notifies Respondent on or prior to such date to that the proposal has been selected for the RFP short list negotiation, through the notification of a successful Respondent(s) or, (iii) if the Respondent is a Successful Respondent, through the finalization of the Regulatory Approval Process described in the RFP.

SIGNED: _____
(Name of Respondent)

By: _____
(Signature of Authorized Representative of Respondent)

Name: _____

Title: _____

Date Signed: _____

Form A-2: Ownership Acquisition

A-2: PROPOSAL SUMMARY

Name of Generating Resource: _____

Type of Generating Resource: _____

Size of Generating Resource
(Summer and Winter Dependable
Capacity in MW; specify
temperature, humidity and other
relevant ambient conditions) **Summer:** _____
Winter: _____

Commercial Operation Date -
Actual (if in-service): _____

Scheduled (if not yet in-service): _____

Control Area: _____

Location -
County: _____

State: _____

Fuel Type (Primary): _____

Multiple Fuel Capability
(identify types if applicable): _____

Form A-3: Ownership Acquisition

A-3: ECONOMIC/OPERATIONAL

Instructions: If more than one generating resource at a single-site is offered by this proposal, furnish the information requested in Form A-3 separately for each resource.

Capacity Quantity	_____ MW, net (summer) _____ MW, net (winter)
Power Sale Commitments	If applicable, provide a detailed description of any existing or future commitments of energy and/or Capacity of the generating resource. _____ _____ _____
Purchase Price	\$ _____ /kW (net summer), or \$ _____ flat price
Heat Rate Curve	Attach actual Heat Rate Curve (fuel energy input (Btu) versus net electrical output (kW) at various operating points of the generating resource) for the generating resource across all operating ranges. If there are special considerations associated with alternative operational configurations of this generation resource, provide details.
Fuel Use	If available, provide actual historical average fuel use in mmBtu for the last three (3) years: 2003 _____ mmBtu 2002 _____ mmBtu 2001 _____ mmBtu
Net Generation	If available, provide the generating resource's actual net generation in GWh for the last three (3) years: 2003 _____ GWh 2002 _____ GWh 2001 _____ GWh

APS Response Package A: Ownership Acquisition

O&M Costs (Provide actual historical fixed O&M costs and variable O&M costs for the past three years.)	2003
	\$ _____ Total fixed O&M costs
	\$ _____ Total variable O&M costs
	2002
	\$ _____ Total fixed O&M costs
	\$ _____ Total variable O&M costs
	2001
	\$ _____ Total fixed O&M costs
	\$ _____ Total variable O&M costs
	For units not yet in service, provide estimates of O&M costs for the first year in service: Total fixed O&M costs \$ _____ Total variable O&M costs \$ _____ Assumed Net Generation (GWh) _____
Energy Costs (Provide average annual energy cost information for the past three years expressed as \$ per MWh of fuel costs, \$ per MWh of variable O&M costs and \$ per MWh of total costs.)	2003
	\$ _____ /MWh of fuel costs
	\$ _____ /MWh of variable O&M costs
	\$ _____ /MWh total
	2002
	\$ _____ /MWh of fuel costs
	\$ _____ /MWh of variable O&M costs
	\$ _____ /MWh total
	2001
\$ _____ /MWh of fuel costs	
\$ _____ /MWh of variable O&M costs	
\$ _____ /MWh total	
Dispatch	Can the resource operate on AGC? (Yes/No) _____ If yes, please describe what type of control equipment is utilized (i.e., ESCA or other). AGC Maximum: _____ AGC Minimum: _____ (If multiple ranges, please specify)

APS Response Package A: Ownership Acquisition

<p>Start-up Fuel per generating unit</p>	<p>_____ mmBtu per Hot Start</p> <p>_____ mmBtu per Cold Start</p>
<p>Start-up Costs per generating unit (non-fuel)</p>	<p>Hot Start: average \$ _____ per start over the last three (3) years</p> <p>Cold Start: average \$ _____ per start over the last three (3) years</p> <p>For units not yet in services, provide estimates of average start-up costs for the first year in service:</p> <p>Hot Start: average per start \$ _____</p> <p>Cold Start: average per start \$ _____</p> <p>If there is more than one turbine associated with the proposal or there are other considerations regarding start-up costs, provide details:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Start-up Time per generating unit</p>	<p><u>2003 (avg.)</u></p> <p>Cold Start: _____ hours/minutes (select one)</p> <p>Hot Start: _____ hours/minutes (select one)</p> <p><u>2002 (avg.)</u></p> <p>Cold Start: _____ hours/minutes (select one)</p> <p>Hot Start: _____ hours/minutes (select one)</p> <p><u>2001 (avg.)</u></p> <p>Cold Start: _____ hours/minutes (select one)</p> <p>Hot Start: _____ hours/minutes (select one)</p> <p>For units not yet in service, provide estimates of average start-up time for the first year in service:</p> <p>Cold Start: average hour/minutes per start _____</p> <p>Hot Start: average hours/minutes per start _____</p>

APS Response Package A: Ownership Acquisition

Ramp Rate	_____ MW per minute, averaged over the Capacity of the generating resource
Equivalent Forced and Scheduled Outage Rates	<p>Average over life of generating resource from its Commercial Operation Date to _____, 2003 (specify current date): _____ %</p> <p>If available, include historical Equivalent Forced and Scheduled Outage Rates for last three (3) years and attach the calculation of such rates.</p> <p>Year Ended <u>December 31</u>:</p> <p><u>SOR</u></p> <p>2003 _____ %</p> <p>2002 _____ %</p> <p>2001 _____ %</p> <p><u>EFOR</u></p> <p>2003 _____ %</p> <p>2002 _____ %</p> <p>2001 _____ %</p>
Compliance with WECC Underfrequency Protection Requirement	Describe
Membership in Reserve Sharing Group	Describe

APS Response Package A: Ownership Acquisition

<p>Provide the following information for each unit at a single-site offered in this proposal</p>	<p>CT Manufacturer: CT Model: Power Augmentation (Y/N): Inlet Filtration Type: Inlet Cooling Type: Wet Compression (Y/N): Emission Limits (NOx, CO): Emission Controls DLN (Y/N): Emission Controls Water Injection (Y/N): Emission Controls SCR (Y/N): Emission Controls CO Catalyst (Y/N): LTSA (Y/N): LTSA Length: Inspection Completed: Fired Hours (Actual, Factored): Starts (Actual, Factored): On-Line Water Wash Hours: Number of Start-up Hours Permitted per Year: Generating Cooling (Air/Hydrogen): Generator Rating (MVA, kV): Excitation Type: HRSG Manufacturer: HRSG Design (Pressure Levels): HRSG Control System: Duct Burners (Y/N): Bypass Stack and Dampers (Y/N): 100% Steam Bypass Capacity (Y/N): SCR with or without CO Catalyst: Chemically Cleaned (Y/N):</p>
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APS Response Package A: Ownership Acquisition

<p>Provide the following information for each unit at a single-site offered in this proposal</p>	<p>Steam Turbine Manufacturer: Steam Turbine Model: Steam Turbine Rating (MW): Steam Turbine Control System:</p> <p>Exhaust (Downward, Axial): LSB Length:</p> <p>Condenser Tube Material: Cooling Tower:</p> <p>GSU (Individual/Shared): GSU Terminal Voltages:</p> <p>Water Treatment (Demin, other):</p> <p>Brine Concentrator (Y/N): Crystallizer (Y/N)</p> <p>Evaporation Ponds (Y/N): Size and Expected Service Life:</p> <p>Make-up Water Source:</p> <p>Available Transferable Water Rights:</p>
<p>Provide Actual Historical Water Usage and Water Cost for the Past 3 Years</p>	<p><u>2003</u> Acre Feet: Total Cost:</p> <p><u>2002</u> Acre Feet: Total Cost:</p> <p><u>2001</u> Acre Feet Total Cost</p>

APS Response Package A: Ownership Acquisition

<p>Contract Terms and Conditions</p>	<p>Specify any exceptions or changes to terms or conditions contained in the Asset Purchase Agreement and Sale Back Agreement contained in Attachment 2 (preferably by attaching marked or red-lined changes to the document), or confirm that the Respondent does not require any such exceptions or changes</p> <p>_____ No exceptions or changes required.</p> <p>_____ Exceptions marked on attached Attachment 5</p> <p>_____ Exceptions listed below:</p>
<p>Special Considerations</p>	<p>Please describe in detail below any special items which APS should take into consideration including but not limited to:</p> <ol style="list-style-type: none"> 1. Physical operating constraints (issues such as number of start-ups, Hot Start and Cold Start criteria, etc.); 2. Any considerations which will limit or restrict the ability of APS to dispatch the resource; 3. Whether this proposal and one or more other proposals being submitted by Respondent are mutually exclusive and, if so, the product(s) to which the other proposal(s) relate; 4. Any other items Respondent deems appropriate.

Form A-4: Ownership Acquisition

A-4: TRANSMISSION SERVICE/INTERCONNECTION

Instructions: APS requires generating resources that will qualify as a Firm Network Resource under APS's current pro forma OATT Part III. Respondents are thereby encouraged to provide as much information as possible regarding transmission service associated with the specific generating resource so as to allow APS to appropriately evaluate each proposal. In addition to the items mentioned below, please detail any other transmission considerations or other appropriate information that typically would be considered for the proposed acquisition.

<u>Transmission Information Requirements</u>	<u>Information/Location of Information</u>
ALL RESOURCES	
Size of generating resource (Summer and Winter Dependable Capacity in MW)	
Commercial operation date	
Location (county and state)	
Describe in detail any special items which APS should take into consideration including, but not limited to: 1. generator operating limits; 2. transfer capability; 3. delivery flexibility; 4. known or potential constraints; and 5. any other items Respondent deems appropriate.	
RESOURCES OUTSIDE THE APS SYSTEM CONTROL AREA	
APS System Interface	
Control Area	
Specify transmission path and identity of each provider of transmission service that is providing or will provide firm transmission path	
Status of contract providing (or to provide) for transmission path from generating resource into the APS System (e.g., contract signed and in effect or proposed contract submitted to transmission provider). Specify contract information that is to include but not limited to type (e.g. firm, non-firm), point of receipt, point of delivery, length, capacity and any special operational restrictions or provisions.	

APS Response Package A: Ownership Acquisition

Transmission Information Requirements	Information/Location of Information
<p>Status of contract(s) providing (or to provide) for transmission path(s) from the generating resource to systems other than APS's (e.g., contract signed and in effect or proposed contract submitted to transmission provider). Specify contract information that is to include but not limited to type (e.g. firm, non-firm), point of receipt, point of delivery, length, capacity and any special operational restrictions or provisions.</p>	
<p>RESOURCES INSIDE THE APS SYSTEM CONTROL AREA</p>	
<p>Voltage level</p>	
<p>Existing rights to the busbar</p>	
<p>Net maximum output (MW) of generating resource to the busbar (summer/winter)</p> <p>Net minimum output (MW) of generating resource to the busbar (summer/winter)</p>	
<p>Power system stabilizer on each unit</p>	
<p>Maximum +/- Output VAR</p>	
<p>Substation where resource is connected</p>	
<p>Copy of Interconnection Feasibility Study</p>	
<p>Copy of detailed Interconnection Study</p>	
<p>Copy of Interconnection Facility Study</p>	
<p>Copy of Interconnection Agreement</p>	
<p>Detailed description of any analysis of the generation interconnection or transmission service performed by Respondent, APS or any other party on behalf of the Respondent. In addition, the description should include but not limited to facilities identified as necessary for the resource to qualify as a network resource for APS.</p>	

Form A-5: Ownership Acquisition

A-5. FUEL SUPPLY AND TRANSPORTATION

Instructions: Respondents are encouraged to provide as much information as possible regarding fuel supply associated with the specific generating resource so as to allow APS to appropriately evaluate each proposal. In addition to providing detailed information on the items mentioned below, please detail any other fuel supply considerations that may be relevant to APS's consideration of the proposed acquisition.

<u>Fuel Supply Information Requirements</u>	<u>Information/Location of Information</u>
Location (County, State)	
Interconnected pipelines/rail lines and delivery capacities of each	A. Existing Pipelines/ Rail Lines: B. Planned Pipelines/Rail Lines: C. Pipelines/Rail Lines Under Construction:
Pipeline pressures/unit pressure requirements or comparable coal unit requirements along with any capacity concerns	
Fuel supply sources	
Other potential pipeline/ rail line connections	
Alternative fuels	
Alternative fuels storage facilities (on-site; off-site)	
Fuel supply and transportation constraint issues (Please indicate whether dispatchability of the generating resources has ever been constrained due to fuel supply or transportation constraints or other fuel supply or transportation issues)	

APS Response Package A: Ownership Acquisition

Fuel Supply Information Requirements	Information/Location of Information
Swing, seasonal and load limitations of the fuel supply	
Fuel quality and measurement requirements/issues	
Imbalance procedures	
Provide a map of the fuel supply infrastructures in place for the generating resource.	
If current fuel supply contracts are in place, please provide the key terms of all Fuel, Storage and Transportation Contracts including the following: (Respondents invited to be on short-list will be required to provide access to all Fuel, Storage and Transportation contracts that would accompany the generation resource after sale to APS)	
Primary receipt points	
Alternate receipt and delivery points (and any additional costs associated with these points)	
Hourly and Daily Swing Capabilities	
Pricing terms	
Rights of assignment or Capacity release	

Form A-6: Ownership Acquisition

A-6: PROJECT EVALUATION

Instructions: A Respondent who is proposing a product from a generating resource that is not yet fully operational must provide certain additional evaluation information. If the generating resource for the proposed product is fully operational and currently capable of generating the full specified Capacity Quantity, Respondent should state so in this form.

<u>Criteria</u>	<u>Information/Location of Information</u>
Unit(s) Operating History (including but not limited to the following):	
<ul style="list-style-type: none"> ■ Environmental/regulatory compliance 	
<ul style="list-style-type: none"> ■ Staffing and labor issues 	
<ul style="list-style-type: none"> ■ Provide information on whether the unit being offered is co-located with any other units that are owned by other companies, and whether or not these other units share common facilities or systems with the unit being offered. 	
Permits, Licenses, Authorizations:	
<ul style="list-style-type: none"> ■ Describe any permits, licenses or authorizations that are necessary for the operation of the generating resource and that have not yet been obtained or, if lapsed or required to be renewed, that have not yet been renewed. Alternatively, confirm that all permits, licenses and authorizations that are necessary for the operation of the generating resource have been obtained, are in effect, and no renewals of any of them are pending (including environmental permits and any emissions credits or special circumstances relating thereto). 	
<ul style="list-style-type: none"> ■ Schedule for obtaining any permits, licenses or authorizations or renewals of any of them that are required or expected to be required to be obtained for the generating resource to operate. 	

APS Response Package A: Ownership Acquisition

<u>Criteria</u>	<u>Information/Location of Information</u>
Operations and Maintenance:	
<ul style="list-style-type: none"> ■ Provide a brief description of the maintenance and operations processes/plans for the generating resource, including the identity of the party(ies) responsible for operating and maintaining the generating resource for inspection and testing of all major equipment. 	
<ul style="list-style-type: none"> ■ Detail specific maintenance performed in the last three years by year, including the number of hours the resource was unavailable for planned maintenance. 	
<ul style="list-style-type: none"> ■ Provide maintenance schedule estimates for next three years. 	
<ul style="list-style-type: none"> ■ Provide a detailed description of any mid- or long-term maintenance contracts or agreements for the generating resource. 	
<ul style="list-style-type: none"> ■ Provide detailed information on all major capital expenditures (over \$200 thousand) made on the generating resource over the last three years, and planned in the next three years. 	
Engineering Information:	
<ul style="list-style-type: none"> ■ Do the generation protective relay equipment and settings meet WECC requirements? 	
<ul style="list-style-type: none"> ■ Does the generation resource have Automatic Voltage Regulators and Power System Stabilizers and does the resource meet the mandatory reliability compliance agreement with the WECC? 	
Design Information:	
<ul style="list-style-type: none"> ■ Provide a heat and material balance diagram. 	
<ul style="list-style-type: none"> ■ Provide a plot plan showing the layout of the generating resource. 	

APS Response Package A: Ownership Acquisition

<u>Criteria</u>	<u>Information/Location of Information</u>
<ul style="list-style-type: none"> ■ Provide a map of the facility and surrounding area. 	
<ul style="list-style-type: none"> ■ Provide a detailed description of the Respondent's rights to expand the generating resource; including maximum potential increase in capacity, any preliminary engineering studies and any material limitations on such ability. 	
Ownership and Financing Structure:	
<ul style="list-style-type: none"> ■ Provide a description of the ownership of the generating resource, including the direct and indirect ownership of the equity of Respondent and any other owner or holder of any ownership interest in the generating resource. 	
<ul style="list-style-type: none"> ■ Provide a description of the material terms of current financing relating to the generating resource. Information provided should include: principal amount(s) outstanding, name of lender(s), interest rate(s), collateral security, maturity date(s), priority (vs. other debt), assumability by a purchaser of the generating resource, and change-in-control provisions (if any). 	
Seller Approvals:	
<ul style="list-style-type: none"> ■ Provide information on any approvals that may be required to consummate a transaction including, but not limited to, approvals by lenders, co-owners and/or landlords. 	
Operational Status:	
<p>Is the generating resource currently capable of generating at the full specified Capacity Quantity as of the date of submission of the proposal? (Yes/No)</p>	

APS Response Package A: Ownership Acquisition

<u>Criteria</u>	<u>Information/Location of Information</u>
<u>Additional information for resources not fully operational</u>	
Interconnection:	
<ul style="list-style-type: none"> ■ Provide details with respect to the status of negotiations towards the execution of an Interconnection Agreement. 	
<ul style="list-style-type: none"> ■ Provide details on the status of requests for firm transmission service across the applicable transmission system(s). 	
Completion:	
<ul style="list-style-type: none"> ■ Provide information about the cost to complete construction of the generating resource. 	
<ul style="list-style-type: none"> ■ Indicate if Respondent will accept the risk of cost overruns. 	

In addition to the information requested above, the Respondent is encouraged to identify any other material information in its possession relating to the generating unit(s) being bid.

RESP. PACKAGE B

**Arizona Public Service Company
Power Supply Resource Proposal for the
Procurement of Generating Capacity**

**Response Package
Alternative B
Long-Term Unit Capacity Purchase Agreement**

Form B-1: Unit Capacity Purchase Agreement

The unit capacity offered to APS must involve a full unit or units at a single site for which APS will have full scheduling and dispatch authority. Sharing of the output of the offered unit(s) will not be accepted unless APS already has an interest in the unit(s). Capacity is measured at the delivery point, which shall be the interconnection point for units located inside the APS control area and a delivery point on an interface with the APS control area for units located outside the APS control area.

B-1: COVER SHEET

Proposal Name: _____

Respondent Contact: Name: _____

Company: _____

Street/P.O. Box: _____

City, State, Zip Code: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

State of Incorporation: _____

By signing in the space provided below, the undersigned Respondent confirms that the within proposal is (a) final and binding, except to the extent described in the RFP, and (b) irrevocable until (i) 5:00 p.m. MST on January 28, 2004 or, (ii) if APS notifies Respondent on or prior to such date to that the proposal has been selected for the RFP short list negotiation, through the notification of a successful Respondent(s) or, (iii) if the Respondent is a Successful Respondent, through the finalization of the Regulatory Approval Process described in the RFP.

SIGNED: _____
(Name of Respondent)

By: _____
(Signature of Authorized Representative of Respondent)

Name: _____

Title: _____

Date Signed: _____

Form B-2: Unit Capacity Purchase Agreement

B-2: PROPOSAL SUMMARY

Product Type: _____

Name of Generating Resource: _____

Type of Generating Resource: _____

Net Capacity of Generating Resource
(Summer and Winter Dependable Capacity in
MW, specify temperature, humidity and other
relevant ambient conditions, The amount must
be specified as net capacity and energy at the
delivery point.) _____

Commercial Operation Date -
Actual (if in-service): _____

Scheduled (if not yet in-service): _____

Control Area: _____

Location --
County: _____

State: _____

Delivery Term: _____

Fuel Type (Primary): _____

Multiple Fuel Capability
(identify types if applicable): _____

Form B-3: Unit Capacity Purchase Agreement

B-3: ECONOMIC/OPERATIONAL

Except to the extent historical information is requested, Respondents should provide information on the performance terms to which they are committing in this proposal, not the actual performance attributes of the generating resource, e.g., a Guaranteed Heat Rate, not the actual Heat Rate Curve.

APS is seeking a fully dispatchable product in which APS has the ability to schedule and dispatch energy and all other associated electric products from the entire specific generating resource(s) on an hour-ahead basis with no minimum annual energy dispatch requirements and the ability to start-up and shutdown the generating resource(s) at APS's discretion. Pricing for this product should be based on (i) a capacity payment, expressed in \$/kW-year, and (ii) an energy payment based on (x) the guaranteed heat rate, expressed in Btu/kWh, as specified by Respondent, or the guaranteed heat rate curve expressed in Btu/kWh and adjusted to ambient conditions, as specified by Respondent, (y) multiplied by the fuel price (whether gas, coal or other fuel used for the specified generating unit(s)), as specified by Respondent. Respondent shall provide all fuel.

Capacity Quantity (measured at delivery point)	_____ MW, net (summer) _____ MW, net (winter)
Power Sale Commitments	If applicable, provide a detailed description of any existing or future commitments of energy and/or capacity of the generating resource:
Delivery Term	___ Years (must be greater than or equal to 20) The start date of the term is June 1, 2007.
Capacity Payment (Note, includes all fixed charges, and start-up costs up to the number of starts specified below.)	\$___/kW (net summer) Year One Annual Escalation (select one): <input type="checkbox"/> None <input type="checkbox"/> Annual Fixed Escalation of _____ % per year <input type="checkbox"/> Index (identify) _____
Variable O&M Payment	\$___/MWh Year One Annual Escalation (select one): <input type="checkbox"/> None <input type="checkbox"/> Annual Fixed Escalation of _____ % <input type="checkbox"/> Index (identify) _____

APS Response Package B: Unit Capacity Purchase Agreement

Capacity Quantity (measured at delivery point)	_____ MW, net (summer) _____ MW, net (winter)												
Guaranteed Heat Rate / Fuel Pricing	(Select one) <input type="checkbox"/> fixed Guaranteed Heat Rate of _____ Btu/kWh <input type="checkbox"/> Guaranteed Heat Rates for different dispatch levels <table border="0"> <tr> <td>Dispatch Level</td> <td>Heat Rate</td> </tr> <tr> <td>0- _____ %</td> <td>_____ Btu/kWh</td> </tr> <tr> <td>- _____ %</td> <td>_____ Btu/kWh</td> </tr> <tr> <td>- _____ %</td> <td>_____ Btu/kWh</td> </tr> <tr> <td>- _____ %</td> <td>_____ Btu/kWh</td> </tr> <tr> <td>-100%</td> <td>_____ Btu/kWh</td> </tr> </table> Or other ranges as specified by Respondent. <input type="checkbox"/> Guaranteed Heat Rate Curve (attach, fuel energy input (Btu) versus net electrical output (kW) at various operating points of the generation resource).	Dispatch Level	Heat Rate	0- _____ %	_____ Btu/kWh	- _____ %	_____ Btu/kWh	- _____ %	_____ Btu/kWh	- _____ %	_____ Btu/kWh	-100%	_____ Btu/kWh
Dispatch Level	Heat Rate												
0- _____ %	_____ Btu/kWh												
- _____ %	_____ Btu/kWh												
- _____ %	_____ Btu/kWh												
- _____ %	_____ Btu/kWh												
-100%	_____ Btu/kWh												
(Specify the basis adjustment, if any, and gas price index (e.g., <i>Inside FERC Gas Market Report</i> or <i>Gas Daily Average</i>), which must be tied for gas to either the Houston Ship Channel or Henry Hub Indexes, which constitutes Respondent's proposed Gas Price.)	Basis Adjustment: Day-ahead - \$ _____ /mmBtu Intraday - \$ _____ /mmBtu Gas Price Index: _____ _____ _____												
Starts per generating unit in Capacity Payment (Specify the maximum number of starts per generating unit, if applicable, allowed for each period that will be included in the Capacity Payment.)	_____ per Day _____ per Week _____ per Month _____ per Year												
Start-up Fuel Payments per generating unit (Amount to be payable for fuel for each Hot Start or Cold Start of a generating unit in excess of specified maximum starts included in Capacity Payment)	_____ mmBtu per Hot Start _____ mmBtu per Cold Start												
Start-up Payments per generating unit (non-fuel) (Amount to be payable for each Hot Start or Cold Start of a generating unit in excess of specified maximum starts)	Hot Start \$ _____ Cold Start \$ _____ If there is more than one turbine associated with the proposal or there are other considerations regarding start-up payments provide details: _____ _____ _____												

APS Response Package B: Unit Capacity Purchase Agreement

Capacity Quantity (measured at delivery point)	_____ MW, net (summer) _____ MW, net (winter)
included in Capacity Payment.)	
Start-up Time per generating unit	Cold Start: _____ hours / minutes (select one) Hot Start: _____ hours / minutes (select one)
Guaranteed Ramp Rate per generating unit	_____ MW per minute, averaged over the specified Capacity Quantity
Minimum Run Requirements	Minimum run time per generating unit (including ramping), if any _____ hours Minimum generation level per generating unit _____ MW The minimum down time after a shutdown of a generating unit before the generating unit may be re-started is _____ hours.
Equivalent Scheduled and Forced Outage Rates	Average over life of generating resource from its Commercial Operation Date to _____, 2003, (specify current date): _____ % If available, include historical Equivalent Forced and Scheduled Outage Rates for last three (3) years and attach the calculation of such rates. Year ended <u>December 31:</u> <u>Rate:</u> <u>SOR</u> 2003 _____ % 2002 _____ % 2001 _____ % <u>EFOR</u> 2003 _____ % 2002 _____ % 2001 _____ %
Availability Requirement (Summer and Annual) (Specify Respondent's proposed availability requirements that would apply, below which availability penalties would apply)	_____ % (summer, June through September) _____ % (annual)
Maximum Annual Planned Maintenance (Specify Respondent's proposed maximum number of hours per year during which the generating resource and/or proposed Capacity Quantity will be unavailable due to Planned Maintenance activities during approved periods and which hours.)	

APS Response Package B:Unit Capacity Purchase Agreement

Capacity Quantity (measured at delivery point)	_____ MW, net (summer) _____ MW, net (winter)
Maximum Annual Forced Majeure Hours (Specify Respondent's proposed maximum number of hours per year during which the generating resource and/or proposed Capacity Quantity will be unavailable due to Force Majeure.)	
Daily Scheduling/Dispatch Notification Requirements (APS shall have the right to change the daily dispatch schedule on a real time basis based on the ramping capabilities of the resource and other limitations specified herein)	Specify Respondent's requirement for time of delivery of Daily Energy Dispatch Notice. _____ A.M./P.M. (no earlier than 9:30 A.M.) on Business Day immediately preceding dispatch.
AGC (Indicate whether the proposal provides AGC capability to APS for the entire proposed Capacity Quantity.)	Yes _____ No _____ If yes, please describe what type of control equipment is utilized (<i>i.e.</i> , ESCA or other)
Compliance with WECC Underfrequency Protection Requirement	Describe
Membership in Reserve Sharing Group	Describe
Contract Terms and Conditions	Specify any exceptions or changes to terms or conditions contained in the EEI Agreement contained in Attachment 6 (preferably by attaching marked or red-lined changes to the document), or confirm that the Respondent does not require any such exceptions or changes _____ No exceptions or changes required. _____ Exceptions marked on attached Attachment 6 _____ Exceptions listed below:
Special Considerations	Please describe in detail below any special items which APS should take into consideration including but not limited to: <ol style="list-style-type: none"> 1. whether unit sales are backed by an alternate generating resource at the same site; 2. physical operating constraints (issues such as number of start-ups, Hot Start and Cold Start criteria, etc.); 3. any considerations which will limit or restrict the ability of APS to

APS Response Package B: Unit Capacity Purchase Agreement

Capacity Quantity (measured at delivery point)	_____ MW, net (summer) _____ MW, net (winter)
	<p>dispatch the resource;</p> <p>4. whether this proposal and one or more other proposals being submitted by Respondent are mutually exclusive and, if so, the product(s) to which the other proposal(s) relate; and</p> <p>5. any other items Respondent deems appropriate.</p>

Form B-4: Unit Capacity Purchase Agreement

B-4: TRANSMISSION SERVICE/INTERCONNECTION

Instructions: APS requires generating resources that qualify as a Firm Network Resource. Respondents are thereby encouraged to provide as much information as possible regarding transmission service associated with the specific generating resource so as to allow APS to appropriately evaluate each proposal. In addition to the items mentioned below, please detail any other transmission considerations or other appropriate information that would typically be considered for the proposed product.

<u>Transmission Information Requirements</u>	<u>Information/Location of Information</u>
ALL RESOURCES	
Size of generating resource (Summer and Winter Dependable Capacity in MW)	
Commercial operation date	
Location (county and state)	
Maximum Capacity offered from this generating resource	
Describe in detail any special items which APS should take into consideration including, but not limited to: 1. generator operating limits; 2. transfer capability; 3. delivery flexibility; 4. known or potential constraints; and 5. any other items Respondent deems appropriate.	
RESOURCES OUTSIDE THE APS SYSTEM CONTROL AREA	
APS System Interface	
Control Area	
Specify transmission path and identity of each provider of transmission service that is providing or will provide firm transmission path.	

APS Response Package B:Unit Capacity Purchase Agreement

Transmission Information Requirements	Information/Location of Information
Status of contract providing (or to provide) for transmission path from generating resource into the APS System (e.g., contract signed and in effect or proposed contract submitted to transmission provider). Specify contract information that is to include but not limited to type (e.g. firm, non-firm), point of receipt, point of delivery, length, capacity and any special operational restrictions or provisions.	
Status of contract(s) providing (or to provide) for transmission path(s) from the generating resource to systems other than APS's (e.g., contract signed and in effect or proposed contract submitted to transmission provider). Specify contract information that is to include but not limited to type (e.g. firm, non-firm), point of receipt, point of delivery, length, capacity and any special operational restrictions or provisions.	
RESOURCES INSIDE THE APS SYSTEM CONTROL AREA	
Voltage level	
Existing rights to the busbar	
Net maximum output (MW) of generating resource to the busbar (summer/winter)	
Net minimum output (MW) of generating resource to the busbar (summer/winter)	
Power system stabilizer on each unit	
Maximum +/- Output VAR	
Substation where generating resource is connected	
Copy of Interconnection Feasibility Study	
Copy of detailed Interconnection Study	
Copy of Interconnection Facility Study	
Copy of Interconnection Agreement	
Detailed description of any analysis of the generation interconnection or transmission service performed by Respondent, APS or any other party on behalf of the Respondent. In addition, the description should include but not limited to facilities identified as necessary for the resource to qualify as a network resource for APS.	

Form B-5: Unit Capacity Purchase Agreement

B-5: FUEL SUPPLY AND TRANSPORTATION

Instructions: Respondents are encouraged to provide as much information as possible regarding fuel supply associated with the specific generating resource so as to allow APS to appropriately evaluate each proposal. In addition to providing detailed information on items mentioned below, please detail any other fuel supply considerations that may be applicable to APS's consideration of the proposed product. Respondent shall provide all fuel for the duration of the term.

Fuel Supply Information Requirements	<u>Information/Location of Information</u>
Location (County, State)	
Interconnected pipelines/rail lines and delivery capacities of each	A. Existing Pipelines/Rail Lines: B. Planned Pipeline/Rail Lines: C. Pipelines/Rail Lines Under Construction:
Pipeline pressures/unit pressure requirements or corresponding coal requirements along with any Capacity concerns	
Other potential pipeline connections	
Alternative fuels	
Alternative fuels storage facilities (on-site; off-site)	
Fuel supply and transportation constraint issues (Please indicate whether dispatchability of the generating resources has ever been constrained due to fuel supply or transportation constraints or other fuel supply or transportation issues)	
Swing, seasonal and load limitations of the fuel supply	
Fuel quality and measurement	

APS Response Package B: Unit Capacity Purchase Agreement

Fuel Supply Information Requirements	Information/Location of Information
requirements/issues	
Imbalance procedures	
Proved a map of the fuel supply infrastructures in place for the generation resource	
If current fuel supply contracts are in place, please provide the key terms of all Fuel, Storage and Transportation Contracts including the following:	
Primary receipt points	
Alternate receipt and delivery points (and any additional costs associated with these points)	
Hourly and Daily Swing Capabilities	
Pricing terms	
Rights of assignment or Capacity release	

Form B-6: Unit Capacity Purchase Agreement

B-6: PROJECT EVALUATION

Instructions: If the generating resource for the proposed product is fully operational and currently capable of generating the offered product, Respondent should state so in this form. A Respondent who is proposing a capacity purchase from a generating resource that is not yet fully operational must provide certain additional evaluation information.

<u>Criteria</u>	<u>Information/Location of Information</u>
Unit Operating History (including but not limited to the following):	
<ul style="list-style-type: none"> ■ Environmental/regulatory compliance 	
<ul style="list-style-type: none"> ■ Staffing and labor issues 	
Permits, Licenses, Authorizations:	
<ul style="list-style-type: none"> ■ Describe any permits, licenses or authorizations that are necessary for the operation of the generating resource and that have not yet been obtained or, if lapsed or required to be renewed, that have not yet been renewed. Alternatively, confirm that all permits, licenses and authorizations that are necessary for the operation of the generating resource have been obtained, are in effect, and no renewals of any of them are pending. 	
<ul style="list-style-type: none"> ■ Schedule for obtaining any permits, licenses or authorizations or renewals of any of them that are required or expected to be required to be obtained for the generating resource to operate during the proposed Delivery Term(s). 	
Operations and Maintenance:	
<ul style="list-style-type: none"> ■ Provide a detailed description of any mid- or long-term maintenance contracts or agreements for the generating resource. 	
<ul style="list-style-type: none"> ■ Provide a brief description of the maintenance and operations processes/plans for the generating resource, including the identity of the party(ies) responsible for operating and maintaining the generating resource and for inspection and testing of all major equipment. 	

APS Response Package B: Unit Capacity Purchase Agreement

<u>Criteria</u>	<u>Information/Location of Information</u>
<ul style="list-style-type: none"> ■ Provide a proposed schedule for planned maintenance activities with an indication of which parts of the proposed schedule are necessary and which have flexibility in terms of timing and what constraints apply to the schedule. 	
Ownership and Financing Structure:	
<ul style="list-style-type: none"> ■ Provide a description of the ownership of the generating resource, including additional information on owners other than Respondent. 	
Operational Status:	
<p>Is the generating resource currently capable of generating at the full specified Capacity Quantity as of the date of submission of the proposal? (Yes/No)</p>	
<u>Additional information for resources not fully operational</u>	
Engineering information:	
<ul style="list-style-type: none"> ■ Generating technology, including the make/model/supplier's name and expected in-service date 	
<ul style="list-style-type: none"> ■ Availability of AGC: If available, provide a description of the type of control equipment that is expected to be utilized (<i>i.e.</i>, ESCA or other). 	
<ul style="list-style-type: none"> ■ Emission control equipment, including the make/model/supplier's name 	
<ul style="list-style-type: none"> ■ Major equipment to be employed, including the make/model/supplier's name and expected in-service date 	
<ul style="list-style-type: none"> ■ Do the generation protective relay equipment and settings meet WECC requirements? 	
<ul style="list-style-type: none"> ■ Will the generation resource have Automatic Voltage Regulators and Power System Stabilizers and will the resource meet the mandatory reliability compliance agreement with the WECC? 	
<ul style="list-style-type: none"> ■ Major equipment vendors 	

APS Response Package B:Unit Capacity Purchase Agreement

<u>Criteria</u>	<u>Information/Location of Information</u>
<ul style="list-style-type: none"> ■ Whether new or refurbished equipment will be used 	
<p>Design information:</p>	
<ul style="list-style-type: none"> ■ Provide a heat and material balance diagram. 	
<ul style="list-style-type: none"> ■ Provide a plot plan showing the layout of the proposed generating source. 	
<ul style="list-style-type: none"> ■ Provide a map of the facility and surrounding area. 	
<p>Interconnection:</p>	
<ul style="list-style-type: none"> ■ Provide details with respect to the status of negotiations towards the execution of an Interconnection Agreement. 	
<ul style="list-style-type: none"> ■ Provide details on the status of requests for firm transmission service across the applicable transmission system(s). 	

In addition to the information requested above, the Respondent is encouraged to identify any other material information in its possession relating to the generating unit(s) being bid.