

## ESCROW AGREEMENT

This ESCROW AGREEMENT (this "Agreement"), dated as of December 27, 2000, by and among Enron Power Marketing, Inc., a Delaware corporation ("EPMI"), Indeck Pepperell Power Associates, Inc. a Delaware corporation ("Pepperell"), and LaSalle Bank National Association, a national banking association duly organized and existing under the laws of the United States of America, with its principal office in Chicago, Illinois, as escrow agent (in such capacity, the "Escrow Agent"). EPMI and Pepperell are sometimes referred to herein collectively as the "Interested Parties."

### RECITALS

EPMI and Pepperell have entered into that certain Master Power Purchase & Sale Agreement dated as of December 1, 2000 (the "Master Agreement") attached hereto as Schedule 1, and that certain Confirmation Agreement (Tolling) dated as of December 1, 2000 (the "Confirmation Agreement") attached hereto as Schedule 2, whereby Pepperell granted EPMI the exclusive right to dispatch Pepperell's facility located in Pepperell, Massachusetts (the "Facility") and receive from Pepperell Firm (LD) Energy as provided therein;

Pepperell and EPMI have agreed that all payments due from EPMI under and pursuant to Part III, Section 1 of the Confirmation Agreement—for the period between January 2001 and August 2001 would be deposited into an Escrow Account (hereinafter defined); and

Pepperell and EPMI desire to enter into this Agreement with the Escrow Agent in order to create the agreement with respect to the Escrow Account as contemplated by the Confirmation Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

#### Section 1. Definitions.

Terms used with initial capitals but not defined herein shall have the meanings given them in the Confirmation Agreement or, if not defined therein, in the Master Agreement. A copy of the Master Agreement is attached hereto as Schedule 1, and a copy of the Confirmation Agreement is attached hereto as Schedule 2. The attachment of the Master Agreement and the Confirmation Agreement hereto is solely for the purpose of enabling the Escrow Agent to refer to any such defined terms. The terms including the definitions in the Master Agreement and the Confirmation Agreement are hereby incorporated by reference. The following terms, as used in this Agreement, shall have the following meanings:

"Business Day" means any day that is not a Saturday, a Sunday or a day on which commercial banks in Chicago, Illinois are required or authorized to remain closed.

"Collateral" means all cash and investments held by the Escrow Agent pursuant to Section 3, and the proceeds thereof and income thereon received by the Escrow Agent from time

to time (provided that from time to time such amounts may be released from the Escrow Account and cease to constitute Collateral, and other amounts may be contributed to the Escrow Account and become Collateral, in accordance with the provisions of Section 3).

"Event of Default" has the meaning specified in Section 8.

"Person" means any natural person, firm, partnership, association, corporation, trust, public body, trustee, custodian or similar official.

## Section 2. Creation of Escrow Account; Pledge of and Security Interest in Collateral.

(a) There is hereby created and established with the Escrow Agent an escrow account (the "Escrow Account") to hold the Collateral in the custody of the Escrow Agent, as a segregated account for the benefit of EPMI, separate and apart from other accounts of the Escrow Agent. The Escrow Agent shall act as collateral agent on behalf of EPMI with respect to the funds and investments in the Escrow Account so long as and to the extent such funds remain in the Escrow Account.

(b) Pepperell hereby pledges, assigns, hypothecates, transfers and delivers to the Escrow Agent, as agent hereunder and as collateral agent for EPMI, all its right, title and interest in and to, and hereby grants to EPMI a first lien on, and security interest in, its right, title and interest in, and to, the Collateral and all proceeds thereof, as collateral security (i) for the prompt and complete payment when due of amounts that Pepperell may become obligated to pay to EPMI as damages pursuant to the Master Agreement and/or the Confirmation Agreement and (ii) to secure Pepperell's performance of its obligations under the Master Agreement and the Confirmation Agreement during the Term of the Transaction.

(c) The Escrow Agent is hereby directed to invest and reinvest the Escrowed Funds solely in certificates of deposit issued by LaSalle Bank National Association. The Escrow Agent will, nevertheless, purchase certificates of deposit issued by LaSalle Bank National Association only in specific amounts and with specific maturities directed by EPMI. The Escrow Agent shall not be responsible to EPMI, Pepperell or any other person or entity for any loss or liability arising in respect of any investment made pursuant to this Section 2.(c) except to the extent that such loss or liability arose from the Escrow Agent's gross negligence or willful misconduct.

## Section 3. Administration of Collateral.

(a) Deposit of Collateral. From time to time pursuant to Part III, Section 1(a) of the Confirmation Agreement, EPMI shall deposit or cause to be deposited with the Escrow Agent, and the Escrow Agent shall acknowledge receipt of, funds for deposit in the Escrow Account (together with any interest accrued thereon, collectively, the "Escrowed Funds") in accordance with Section 13.

(b) Disbursements from the Escrow Account. The Escrow Agent shall disburse the Escrowed Funds in accordance with the following terms:

(i) If on or before September 20, 2001, an Event of Default occurs pursuant to Section 5.1 of the Master Agreement where EPMI is the Non-Defaulting Party, EPMI shall notify Pepperell and the Escrow Agent of such and the Escrow Agent shall, upon receipt of an officer's certificate from EPMI stating that an Event of Default pursuant to Section 5.1 of the Master Agreement has occurred and is continuing, disburse to EPMI all Escrowed Funds then held by the Escrow Agent. (For the avoidance of doubt, EPMI need not designate an Early Termination Date in order to receive the Escrowed Funds.) EPMI shall apply the proceeds of the Escrowed Funds to reduce Pepperell's obligations, if any, under the Master Agreement (with Pepperell remaining liable for any amounts owing to EPMI after such application). Any surplus proceeds (hereinafter referred to as "Surplus") shall be held by EPMI as collateral to secure Pepperell's obligations in respect of the remaining Term of the Transaction. The Surplus shall be held by EPMI through December 31, 2001, and shall be returned, less any additional amounts due EPMI in respect of any outstanding obligations owed by Pepperell under the Master Agreement, no later than January 12, 2002. The Surplus shall be repaid with interest at the daily Federal Funds Overnight Rate as set forth in The Wall Street Journal. Notwithstanding the foregoing, Pepperell reserves the right to contest whether the amounts EPMI states are due and owing but unpaid by Pepperell.

(ii) Upon or at any time after the occurrence of an Early Termination Date on or before September 20, 2001, where Pepperell is the Non-Defaulting Party, Pepperell shall notify EPMI and the Escrow Agent of such and the Escrow Agent shall, upon receipt of an officer's certificate from Pepperell that an Early Termination Date pursuant to Section 5.2 has occurred, disburse to Pepperell all Escrowed Funds then held by the Escrow Agent, unless within five (5) Business Days after EPMI's receipt of Pepperell's notification and requested disbursement pursuant to this section, the Escrow Agent receives written notice from an officer of EPMI that EPMI believes that pursuant to Article 5 of the Master Agreement that certain amounts are due and payable from Pepperell to EPMI. The undisputed portion of the Escrowed Funds, if any, shall be disbursed to Pepperell. With regard to the disputed portion, if EPMI timely sends such written notice to the Escrow Agent, the disputed portion of the Escrowed Funds shall remain in the Escrow Account until either (a) the Escrow Agent receives an officer's certificate from both Pepperell and EPMI which sets forth a mutual agreement as to the distribution of such Escrowed Funds, in which case such funds shall be disbursed as set forth in accordance with the written instructions contained therein or (b) a party presents a written determination of arbitrators as to the final resolution of the amounts due and owing to the parties as a result of the Early Termination Date pursuant to an arbitration proceeding conducted in accordance with and pursuant to Section 10.12 of the Master Agreement.

With regard to this paragraph 3(b)(ii) and in conjunction with Section 5.5 of the Master Agreement, if EPMI is the Defaulting Party and if EPMI disputes Pepperell's calculation of the Termination Payment, EPMI shall have the right to contest the calculation as set forth in Section 5.5 but if Pepperell calculates that the Termination Payment is due from EPMI, EPMI shall transfer Performance Assurance to Pepperell in an amount equal to the amount by which the Termination Payment exceeds the disputed Escrowed Funds.

(iii) Unless the Escrowed Funds are required to be held by the Escrow Agent pursuant to paragraph 3(b)(ii) above or are required to be distributed pursuant to paragraph 3(b)(i) or 3(b)(ii) above, all funds remaining in the Escrow Account after September 20, 2001 shall be automatically disbursed to Pepperell, and this Agreement shall thereafter terminate.

(c) Fees and Expenses of Escrow Agent.

(i) In consideration for its services as Escrow Agent, the Escrow Agent shall be entitled to receive the compensation set forth in Schedule 3 hereto, as well as the reimbursement of all reasonable out-of-pocket costs and expenses actually incurred by the Escrow Agent in the performance of its duties hereunder. Pepperell shall pay such compensation and expenses.

(ii) Pepperell agrees to indemnify the Escrow Agent (its corporate parent, its subsidiary corporations or any of its related companies, and its directors, officers and employees) and hold it (and such corporate parent, subsidiary corporations or related companies, directors, officers and employees) harmless from and against any loss, liability, damage, cost and expense of any nature reasonably incurred by the Escrow Agent arising out of or in connection with this Agreement or with the administration of its duties hereunder, including without limitation, reasonable attorneys' fees and other costs and expenses of defending or preparing to defend against any claim of liability unless and except to the extent such loss, liability, damage, cost and expense shall be caused by the Escrow Agent's gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement or the resignation or substitution of the Escrow Agent.

Section 4. Rights and Duties of the Escrow Agent.

(a) Nothing herein shall be construed to obligate the Escrow Agent to exercise any degree of care or respect for the safekeeping of the Collateral which is greater than that which it uses in respect of its own similar property. Nothing contained in this Agreement shall be construed as obligating the Escrow Agent, and the Escrow Agent shall not be required or obligated, to (i) ascertain or take any action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, or (ii) present or file any claim or notice or take any action with respect to any Collateral or in connection therewith, provided that the Escrow Agent shall promptly forward to the Interested Parties such communications with respect to the Collateral as call for voting or the exercise of rights or other specific action (including, without limitation, material relative to the legal proceedings intended to be transmitted to the security holders). The Escrow Agent shall have no liability, and Pepperell and EPMI agree to hold the Escrow Agent harmless from, and indemnify the Escrow Agent against, any liability, as a result of any losses, penalty or fees that may be incurred as a result of liquidation of any of the Collateral, except in connection with the Escrow Agent's gross negligence or willful misconduct or the Escrow Agent's failure to exercise the same degree of care and skill as is customarily exercised by the Escrow Agent in receipt and disbursement of money. As between Pepperell and EPMI, such parties' obligation to jointly and severally

indemnify the Escrow Agent as provided above shall not in any manner limit any right or cause of action for contribution that may be available to either Pepperell or EPMI as against the other by reason of the payment of any indemnified loss hereunder.

(b) Each Interested Party further acknowledges and agrees that the Escrow Agent (i) shall not be responsible for any of the agreements referred to or described herein (including without limitation the Master Agreement and the Confirmation Agreement), or for determining or compelling compliance therewith, and shall not otherwise be bound thereby, (ii) shall be obligated only for the performance of such duties as are expressly and specifically set forth in this Agreement on its part to be performed, and no implied duties or obligations of any kind shall be read into this Agreement against or on the part of the Escrow Agent, (iii) shall not be obligated to take any legal or other action hereunder which might in its reasonable judgment involve or cause it to incur any expense or liability unless it shall have been furnished with reasonably acceptable indemnification and (iv) may consult counsel satisfactory to it (including in-house counsel), and may rely in good faith upon the written advice or written opinion of such counsel in taking any action hereunder (or omitting to take any such action) in conformity with such advice or opinion, provided that the Escrow Agent shall make reasonable efforts to consult with Pepperell and EPMI prior to taking any action (or omitting to take any such action) in reliance upon such written advice or written opinion, if reasonably practicable and so long as such consultation would not result in the relinquishment of any attorney-client privilege otherwise available to the Escrow Agent; and provided further, that Pepperell and EPMI acknowledge that any decision by the Escrow Agent to rely upon such written advice or written opinion shall be entirely within the Escrow Agent's discretion.

(c) In no event shall the Escrow Agent be liable for indirect, punitive, special or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Escrow Agent has been informed of the likelihood of such loss or damage and regardless of the form of action.

(d) The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as a subagent of the Escrow Agent or for any third person or dealing as principal for its own account, provided any such transactions are effected on an arms-length basis.

(e) Except as provided in Section 3(b), in no instance shall the Escrow Agent be required or obligated to distribute any Escrowed Funds (or take other action that may be called for hereunder to be taken by the Escrow Agent) sooner than two (2) Business Days after it has received any applicable documents required under this Agreement in good form.

Section 5. Representations and Covenants of Pepperell Relating to the Collateral. Pepperell represents that: (i) it has, and on each date of delivery by EPMI to the Escrow Agent of any Collateral will have, full power, authority and legal right to pledge all of its right, title and interest in and to such Collateral pursuant to this Agreement; (ii) the pledge, assignment and delivery of Collateral as contemplated by this Agreement (A) will create a first priority security interest in favor of EPMI in and to the Collateral, prior to any right or claim of any other Person and (B) will not be subject to any prior pledge, lien, mortgage, hypothecation, security interest,

charge, option or encumbrance or to any agreement purporting to grant to any Person a security interest in the Collateral; and (iii) Pepperell will use commercially reasonable efforts to defend EPMI's right, title and security interest in and to the Collateral and the proceeds thereof against the claims and demands of all Persons.

Section 6. No Disposition of Collateral, Etc. Without the prior written consent of EPMI, Pepperell will not sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, the Collateral, nor will it create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance with respect to any of the Collateral, or any interest therein, or any proceeds thereof, except for the lien and security interest provided for by this Agreement until after September 20, 2001. Notwithstanding the foregoing, nothing in this Section 6 prohibits the release of the Collateral to the Non-Defaulting Party pursuant to Section 3.

Section 7. Further Assurances With Respect to Collateral.

(a) Pepperell from time to time upon the written request of EPMI will execute and deliver such further documents and do such further acts and things as EPMI may reasonably request in order to perfect, preserve or protect EPMI's rights with respect to the Collateral and any remedy of EPMI in connection therewith.

(b) From time to time upon the written request of Pepperell, which request is made in connection with or following the release of the Collateral pursuant to Section 3, EPMI will execute and deliver such documents and do such acts and things as Pepperell may reasonably request in order to release (or evidence the release of) EPMI's security interest in such Collateral, but at no out-of-pocket cost to EPMI.

Section 8. Event of Default.

(a) General. An "Event of Default" under this Agreement shall have the meaning set forth in Section 5.1 of the Master Agreement.

(b) Authorization Upon Notice of Event of Default. In the event that the Escrow Agent and Pepperell receive an officer's certificate from EPMI certifying that an Event of Default has occurred and is continuing, and specifying in reasonable detail the nature of such default, the Escrow Agent shall be authorized, without further inquiry, to act upon any written instructions from EPMI with respect to the exercise of remedies pursuant to Section 9.

Section 9. Remedies. Upon the occurrence of an Event of Default, and upon receipt by the Escrow Agent and Pepperell of an officer's certificate from EPMI in accordance with Section 8(b) above that an Event of Default has occurred and is continuing and that EPMI intends to exercise its remedies hereunder, then or at any time during the continuance of such occurrence, EPMI shall be entitled to exercise its rights hereunder. In such event, EPMI (and at the written direction of EPMI, the Escrow Agent) is hereby authorized and empowered, at EPMI's election, (i) to transfer and register in EPMI's or EPMI's nominee's name the whole or any part of the Collateral, not theretofore so transferred or registered; (ii) to demand, sue for, collect, receive and give acquittance for any and all interest, cash dividends or other distributions or monies due or to become due upon or by virtue thereof, and to settle, prosecute or defend any action or

proceeding with respect thereto; (iii) otherwise to act with respect to the Collateral or the proceeds thereof as though EPMI (or the Escrow Agent) were the outright owner thereof; and (iv) to exercise any other remedy available to EPMI in accordance with law (including without limitation Article 9 of the Uniform Commercial Code), and Pepperell hereby irrevocably constitutes EPMI (and the Escrow Agent) as its proxy and attorney-in-fact, with full power of substitution to do so (such appointment, being coupled with an interest, shall be irrevocable).

Section 10. Waiver. No delay on the part of any party in exercising any right hereunder, shall constitute a waiver thereof, or limit or impair the right of such party to take any action or to exercise any right hereunder, or prejudice the rights of such party as against another party in any respect.

Section 11. Acceptance by Escrow Agent; Liability.

(a) By execution of this Agreement, the Escrow Agent accepts the duties and obligations as Escrow Agent hereunder. The Escrow Agent represents that it has all requisite power, and has taken all corporate actions necessary, to execute the escrow agreement hereby created.

(b) The Escrow Agent shall have no lien whatsoever and agrees not to assert any lien upon any of the moneys or investments in the Escrow Account for the payment of fees and expenses for services rendered by the Escrow Agent under this Agreement.

(c) The Escrow Agent shall not be liable for the accuracy of the calculations as to the sufficiency of moneys deposited. So long as the Escrow Agent applies any moneys and the earnings therefrom as provided herein, and complies fully with the terms of this Agreement, the Escrow Agent shall not be liable for any deficiencies in the amounts necessary to reimburse Pepperell and/or EPMI caused by such calculations.

(d) The Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument. The Escrow Agent shall not be liable in any manner for the sufficiency or correctness as to the form, manner of execution, or validity of any instrument or as to the identity, authority, or right of any person executing the same; and the Escrow Agent's duties hereunder shall be limited to the receipt of such moneys, instruments or other documents received by it as the Escrow Agent, and for the disposition of the same in accordance herewith.

Section 12. Resignation or Replacement of Escrow Agent.

(a) The present Escrow Agent may resign by giving written notice to Pepperell and EPMI not less than thirty (30) days before such resignation is to take effect. Such resignation shall take effect only upon the appointment of a successor qualified as provided in Section 12(b) below.

(b) In the event the present Escrow Agent shall at any time resign or otherwise become incapable of acting, a successor may be appointed by Pepperell, provided such successor is an independent, nationally recognized commercial bank or other financial institution and is

reasonably acceptable to EPMI. If Pepperell shall fail to name such a successor escrow agent within fifteen (15) calendar days after the notice of resignation from the Escrow Agent, the Escrow Agent may apply to a court of competent jurisdiction for appointment of a successor escrow agent.

(c) Every successor shall always be a bank or trust company in good standing, which is qualified to act hereunder. Any successor appointed hereunder shall execute, acknowledge and deliver to Pepperell and EPMI an instrument accepting such appointment, and thereupon such successor shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its predecessor in the escrow hereunder with like effect as if originally named as Escrow Agent herein; but the Escrow Agent retiring shall, nevertheless, on the written demand of its successor, execute and deliver an instrument conveying and transferring to such successor, all the estates, properties, rights and powers of the predecessor, which shall assign, transfer and deliver to the successor all properties and moneys held by it under this Agreement. The Escrow Agent retiring shall be paid any outstanding fees and expenses prior to transferring properties and moneys to a successor escrow agent. Should any instrument in writing from Pepperell and/or EPMI be required by any successor for more fully and certainly vesting in and confirming to it the said deeds, conveyances and instruments, such writing shall be made, executed, acknowledged and delivered by Pepperell and/or EPMI on the reasonable request of such successor.

Section 13. Escrow Agent Reports. Within three (3) Business Days after receipt by the Escrow Agent of any funds for deposit into the Escrow Account, the Escrow Agent shall furnish Pepperell and EPMI with a statement of the amount of such deposit and the total value of the Escrowed Funds as of the date of such deposit.

Section 14. Notice; Wiring Instructions.

(a) Notice. All notices, demands and requests to be given to or made under this Agreement by Pepperell, EPMI or the Escrow Agent shall be given or made in writing and shall be deemed to be properly given or made if (i) delivered by personal delivery, (ii) sent by overnight delivery by a nationally recognized courier or delivery service, (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid or (iv) sent by confirmed facsimile accompanied by mailing of the original on the same day by first class mail, postage prepaid, in any such case addressed as set forth below (or to such other address as any party may hereafter designate by written notice to all other parties in conformity with this Section 14); provided, that no notice to the Escrow Agent shall be deemed properly given or made until such notice is actually received by the Escrow Agent.



As to Pepperell:

Indeck Pepperell Power Associates, Inc  
1075 Noel Avenue  
Wheeling, Illinois 60090  
Attn.: Brian Ferguson, Director, Business Management  
Telephone: (847) 459-4520  
Facsimile: (847) 459-4140

As to EPMI:

Enron Power Marketing, Inc.  
P.O. Box 4428  
Houston, Texas 77210-4428  
1400 Smith Street  
Houston Texas 77002.  
Attn.: Power Contract Administration  
Telephone: (713) 853-1771  
Facsimile: (713) 646-2443

As to the Escrow Agent:

LaSalle Bank National Association  
135 South LaSalle Street, Suite 1960  
Chicago, Illinois 60603  
Attention: Stacy M. Coleman  
Telephone: (312) 904-2936  
Facsimile: (312) 904-2236

(b) Wiring Instructions. Any funds to be paid to or by the Escrow Agent hereunder shall be sent by wire transfer pursuant to the following instructions (or by such method of payment and pursuant to such instruction as may have been given in advance and in writing to or by the Escrow Agent, as the case may be, in accordance with Section 14(a) above):

As to Pepperell:

Indeck Pepperell Power Associates, Inc.  
BNK: Firstar Bank Milwaukee  
ABA# 0750-0002-2  
For credit to the account of:  
American Enterprise Bank  
Account# 112-908-902  
For further credit to Acct.#001002796 in the name of  
Indeck Pepperell Power Associates, Inc.

As to EPMI:

BNK: Bank of America  
for: Enron Power Marketing, Inc.  
ABA: Routing # 111000012  
ACCT: #375 046 9312  
Confirmation: Enron Power Marketing, Inc.  
Credit and Collections  
(713) 853-5667

As to the Escrow Agent:

LaSalle Bank, N.A., Chicago, Illinois  
ABA# 071000505  
For Credit to: Trust GL 2090067  
For Further Credit to: Trust No. 62-8680-40-7  
Enron Power Marketing/Black Hills  
Attn: Stacy M. Coleman x42936

Section 15. Amendment and Waiver. None of the terms or provisions of this Agreement may be altered, modified or amended except in writing duly signed for and on behalf of EPMI, the Escrow Agent and Pepperell. None of the terms and provisions of this Agreement may be waived, except by a written instrument executed by the party waiving such term or provision.

Section 16. Miscellaneous.

(a) Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of Pepperell, EPMI or the Escrow Agent should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.

(b) Counterparts. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable law of the State of Illinois.

(d) Interpretation. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

(e) Dispute Resolution. It is understood and agreed that, should any dispute arise with respect to the delivery, ownership, right of possession and/or disposition of the Escrowed Funds, or should any claim be made upon the Escrow Agent or the Escrowed Funds by a third

party, the Escrow Agent, upon receipt of written notice of such dispute or claim, is authorized and shall be entitled (at its sole option and election) to retain in its possession without liability to anyone, all or any of said Escrowed Funds until such dispute shall have been settled either by the mutual written agreement of the parties involved, by a written determination of arbitrators or, if the claim made upon the Escrow Agent or the Escrowed Funds is by a third party, by a final order, decree or judgment of a court in the United States of America, the time for perfection of an appeal of such order, decree or judgment having expired. The Escrow Agent shall be under no duty whatsoever to institute or defend any legal proceedings which relate to the Escrowed Funds.

(f) Arbitration. Any claim, counterclaim, demand, cause of action, dispute, and controversy arising out of or relating to this Agreement or the relationship established by this Agreement, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of this Agreement, involving the Interested Parties and/or their respective representatives (for purposes of this Section 16(f) only, collectively the "Claims"), whether such Claims sound in contract, tort, or otherwise, at law or in equity, under state or federal law, whether provided by statute or the common law, for damages or any other relief, shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the rules of arbitration of the Federal Arbitration Act and, to the extent an issue is not addressed by the federal law on arbitration, by the Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Interested Parties' Claims, the arbitrators shall refer to the governing law. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, the Interested Parties hereby waiving their right, if any, to recover any such damages. The arbitration proceeding shall be conducted in New York, New York. Within thirty (30) days of the notice of initiation of the arbitration procedure, each Interested Party shall select one arbitrator. The two (2) arbitrators shall select a third arbitrator. The third arbitrator shall be a person who has over eight years professional experience in electrical energy-related transactions and who has not previously been employed by either Interested Party and does not have a direct or indirect interest in either Interested Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Interested Party that appointed such arbitrator. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Interested Parties.

(g) Force Majeure. The Escrow Agent shall not be responsible for delays or failures in performance to the extent resulting from, and only for the duration of, acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, fire, communication line failures, power failures, earthquakes or other disasters.

(h) Binding Effect; Successors. This Agreement shall be binding upon the respective parties hereto and their heirs, executors, successors and assigns. If the Escrow Agent

consolidates, merges or converts into, or transfers all or substantially all of its corporate trust business to, another corporation, the successor corporation without any further act shall be the successor Escrow Agent.

(i) Reproduction of Documents. This Agreement and all documents relating thereto, including without limitation, (i) consents, waivers and modifications which may hereafter be executed and (ii) certificates and other information previously or hereafter furnished, may be reproduced by any photographic, photostatic, microfilm, optical disk, micro-card, miniature photographic or other similar process. The parties agree that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding, whether or not the original is in existence and whether or not such reproduction was made by a party in the regular course of business, and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

(j) The Escrow Agent assumes no responsibility for the sufficiency of this Agreement or the arrangement contemplated hereby, including without limitation with respect to the creation, attachment, perfection or priority of any lien or security interest hereunder; and the Escrow Agent undertakes no responsibility hereunder to take any action that may be necessary to perfect, maintain, preserve or continue any security interest or lien hereunder (including without limitation with respect to the filing of any financing statements, continuation statements or similar actions, or with respect to any change in law that may occur from time to time). In the event of any Event of Default pursuant to Section 8 hereof, it shall be the sole responsibility of EPMI to determine, and to give all necessary instruction to the Escrow Agent with respect to, any action necessary to comply with any applicable requirements of Article 9 of the Uniform Commercial Code.

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

ENRON POWER MARKETING, INC.

(LH-855)

*Kevin Presto*

Name: **Kevin Presto**  
Title: **Vice President**

INDECK PEPPERELL POWER  
ASSOCIATES, INC.

*Maurice T. Kloeker*

Name: **Maurice T. Kloeker**  
Title: **Asset Manager**

LASALLE BANK NATIONAL ASSOCIATION,  
as Escrow Agent

*RC Bergman*

Name: **RC BERGMAN**  
Title: **FIRST VICE PRESIDENT**

**Schedule 1**

[Insert Master Agreement]

**Schedule 2**

[Insert Confirmation Agreement]

**LASALLE BANK NATIONAL ASSOCIATION**  
**Schedule of fees for Services as Escrow Agent**

Acceptance Fee: \$ 500.00

Administration Fee: \$ 2,500.00\*

**The Acceptance and Administration Fees are due upon execution of the Escrow Agreement.**

\*Should the Escrow Account remain open for less than a full year after an initial twelve-month period, the Administration Fee will be prorated on a six-month basis.

Any investment transaction not in a money market fund will incur a \$100.00 per transaction fee. The parties to the agreement understand and agree that LaSalle may receive certain revenue in the form of 12b-1 or shareholder servicing fees on certain mutual fund investments. Such fees are disclosed in the prospectus for any such fund. These fees are paid to LaSalle directly from the mutual fund provider and are not fees paid by the parties to the Agreement.

All out-of-pocket expenses will be billed at our cost. Out-of-pocket expenses include, but are not limited to, professional services (e.g. legal or accounting), travel expenses, telephone and facsimile transmission costs, postage (including express mail and overnight delivery charges), and copying charges.