

Transaction Timeline

Step 1: Execution of Letter Agreement

Step 2: Receipt of final form of unexecuted Turbine Contract from GE acceptable to ENA and DAL (“Initial Delivery Date”)

Step 3: Funding by DAL of \$68,126,700 into Escrow (Initial Delivery Date plus funding period)(“Escrow Funding Date”)

a. Issuance of Demand Note by LLC to ENA

Step 4: Receipt of bank consents, etc; and execution and delivery of Turbine Contract (Funding Date plus 5 to 10 days)

a. Payment from Escrow of ENA fee to ENA to payoff ENA Demand Note

b. Execution of LLC Agreement and issuance of DAL Membership Interest

c. Extension of loan from DAL to LLC in return for note (or, alternatively, assumption by LLC of ENA payment obligations under Turbine Contract)

Step 5: Draw-downs from Escrow in accordance with payment schedule under Turbine Agreement

DRAFT 03-16-2001
FOR DISCUSSION PURPOSES ONLY

March __, 2001

PHJW Comments
3-20-01

[~~Delta Power Company~~ Affiliate] LLC
89 Headquarters Plaza
North Tower, 14th Floor
Morristown, New Jersey 07960

Re: ~~Newco~~, Salmon Energy LLC
Letter Agreement for Purchase of Membership Interests

Gentlemen:

This letter (the "Agreement"), when executed by the parties, Enron North America Corp. ("ENA") and [~~Delta Power Company~~ Affiliate] LLC ("~~Delta~~") ("DAL") (collectively, the "Parties" and individually, a "Party"), shall set forth the agreement between the Parties.

1. **Purchase of Membership Interests.** ENA is interested in causing the LLC to issue and sell, and ~~Delta~~ DAL is interested in acquiring, membership interests in ~~Newco~~, Salmon Energy LLC, a Delaware limited liability company (the "LLC") which is wholly-owned by ENA. Upon the closing of the transaction described herein, the LLC will be a party to a Turbine Contract (as defined herein) pertaining to the purchase of four LM 6000 Enhanced Sprint dual-fuel combustion turbine generator sets (the "GE Equipment").

2. **Transaction.** The parties agree to jointly engage in the transaction more particularly described in this Agreement (collectively, the "Transaction"). The Transaction shall close on a date mutually agreeable to the Parties at least five (5), but no later than ten (10), business days following the funding of the Escrow Account as set forth in Section 4. Upon the closing of the Transaction, the following events shall ~~occur~~ have occurred, each being a condition precedent to the others and each being deemed to have occurred simultaneously with the others:

(a) In consideration for the execution and delivery by the LLC of a demand promissory note payable to the order of ENA in the principal amount of [~~\$68,000,000.00 plus costs of power system stabilizers~~] \$68,126,700 (the "Purchase Price"), ENA shall cause the LLC to acquire rights and obligations associated with the purchase of the GE Equipment from GE Packaged Power, Inc. ("GE"), pursuant to an agreement between the LLC and GE (the "Turbine Contract").

Rider 1

(b) ~~Delta~~ DAL shall acquire, and ENA shall cause the LLC to issue to ~~Delta~~ DAL, membership interests in the LLC ("Membership Interests") representing 80% of the equity in the LLC (the "Delta" DAL Membership Interests") in exchange for a contribution to the capital of the LLC by ~~Delta~~ DAL in the amount of Eight Hundred and No/100 Dollars (\$800.00) cash.

(c) Simultaneously with the acquisition by ~~Delta~~ DAL of the ~~Delta~~ DAL Membership Interests, ENA and ~~Delta~~ DAL shall execute and deliver the First Amended and Restated Limited Liability Company Agreement of the LLC (the "LLC Agreement") in the form attached hereto as Exhibit A.

(d) Simultaneously with the acquisition by ~~Delta~~ DAL of the ~~Delta~~ DAL Membership Interests, ~~Delta~~ DAL shall extend a loan to the LLC in the amount of the Purchase Price, in consideration for

the execution and delivery by the LLC of a promissory note payable to the order of Delta DAL in the principal amount of the Purchase Price.

Rider 2
(e) Immediately upon the LLC's receipt of loan proceeds from Delta DAL, each of ENA and Delta DAL shall cause the LLC to repay in its entirety the demand promissory note previously issued by the LLC to ENA.

3. **Security.** Simultaneously with the execution of this Agreement, and as security for fulfillment of Delta's DAL's obligations under this Agreement and the LLC Agreement:

(a) Delta DAL has delivered to ENA a Guaranty Agreement executed by Delta Power Company, LLC, pursuant to which Delta guarantees payment and performance of the obligations of Delta DAL pursuant to this Agreement and the LLC Agreement. (Delta), in form and substance satisfactory to ENA

(b) ENA and Delta DAL have established an escrow account at Citibank N.A. (the "Escrow Account") for the purpose of Delta DAL fulfilling its pre-closing funding requirements set forth in Section 4, pursuant to an escrow agreement in the form attached hereto as Exhibit B providing that (i) interest income earned in the Escrow Account shall be distributed to Delta ENA upon termination of the escrow, and (ii) all acceptance, setup and administration fees associated with the Escrow Account shall be borne and paid by Delta ENA. (the "Escrow Agent")
until the closing of the Transaction
any such closing
Rider 3

4. **Pre-Closing Covenants and Agreements.** On the next business day following the date on which ENA delivers to Delta DAL the final form of the Turbine Contract which is, in all material respects, consistent with the form attached hereto as Exhibit C, Delta DAL shall deposit into the Escrow Account an amount equal to the Purchase Price. Upon the closing of the Transaction, the escrowed funds shall be applied toward the loan being funded by Delta DAL pursuant to Section 2(d), and the balance of the escrowed funds, including any interest earned thereon, shall be paid to Delta DAL. ENA and Delta DAL agree to promptly give the escrow agent instructions in accordance with this Agreement and the Escrow Agreement. the later to occur of (i)
third
held for the benefit of the LLC pursuant to
Rider 4

5. **Additional Covenants and Agreements.** Upon and subsequent to the closing of the Transaction, the parties covenant and agree as follows:

(a) ENA agrees to be responsible for, to promptly pay, and to hold Delta DAL and the LLC harmless from and against, any increase in the {Purchase Amount} payable to GE pursuant to the terms of the Turbine Contract (as of the date of closing), if such increased amount is caused by the act or omission by ENA or any as determined on the basis of facts and circumstances existing as of its affiliates occurring prior to the closing of the Transaction, expressly excluding any and all sales, transfer, use, ad valorem and other taxes which might arise in connection with the sale, transfer, assignment or ownership of the GE Equipment. and the Escrow Agreement
after all of the LLC Repayments have been made

(b) Delta DAL agrees to be responsible for, and to hold ENA and the LLC harmless from and against, payment of (i) any and all amounts which become due and payable to GE or its successors and assigns pursuant to the terms of the Turbine Contract, other than any amounts for which ENA is responsible pursuant to Section 5(a) hereof, and (ii) any and all sales, transfer, use, ad valorem and other taxes which might arise in connection with the sale, transfer, assignment or ownership of the GE Equipment. Delta to review scope of such taxes

December 31, 2001

st

(c) In accordance with the terms of the LLC Agreement, ~~Delta~~ **DAL** shall have the right to purchase the remaining Membership Interests in the LLC owned by ENA for the sum of \$200.00 (the "Call Right") at any time following the earlier of (i) the point at which the GE Equipment achieves Takeover, or ~~(ii) (i) [date to come per project schedule], 2002, and (iii)~~ the breach of the Turbine Contract by any party thereto, or as otherwise provided in the LLC Agreement. In accordance with the terms of the LLC Agreement, if ~~Delta~~ **DAL** fails to exercise its Call Right, ENA shall have the right to require ~~Delta~~ **DAL** to purchase the remaining Membership Interests in the LLC owned by ENA for the sum of \$200.00 (the "Put Right") at any time following the earlier of (i) the point at which the GE Equipment achieves Takeover, and (ii) [date to come per project schedule], 2002, or as otherwise provided in the LLC Agreement. Notwithstanding the foregoing, DAL may exercise the Call Right, and ENA may exercise the Put Right, at any time provided that, unless DAL waives such requirement, GE acknowledges and confirms to DAL that the transfer of interests pursuant to such exercise will not prejudice the Company's rights under the Turbine Contract.

LLC

in each case

(d) ENA may provide ~~Delta~~ **DAL** such development and technical assistance regarding the GE Equipment as ~~Delta~~ **DAL** reasonably requests; provided, however, that (i) ~~Delta~~ **DAL** shall have no recourse to ENA to the extent that ENA declines to provide such assistance in its sole and absolute discretion, (ii) should ENA choose to provide such assistance, it shall do so without any warranty whatsoever and ~~Delta~~ **DAL** shall have no recourse to ENA with respect to such assistance, and (iii) ~~Delta~~ **DAL** shall promptly pay ENA for any internal or reasonable third party costs it incurs or may incur with respect to any such assistance.

(e) At all times prior to the exercise of either the Put Option or the Call Option, ~~Delta~~ **DAL** shall obtain and maintain for the benefit of the LLC commercial general liability insurance, including contractual liability coverage, broad form property damage coverage, personal injury coverage, and products and completed operations coverage, written on an occurrence basis and issued by an insurer with a Best rating of A-XIII or better, with limits of liability not less than \$25,000,000 per occurrence, and a deductible no greater than \$25,000. Such insurance shall name ENA as an additional insured and be endorsed to provide for a waiver of all rights of subrogation against ENA. Such insurance shall be primary in respect to any other insurance maintained by ENA. ~~Delta~~ **DAL** shall be responsible for all premiums, and any co-insurance penalties, exclusions, sublimits, deductibles, or retentions. In addition, at all times from and after the closing of the Transaction, ~~Delta~~ **DAL** shall obtain and maintain for the benefit of the LLC such insurance as may be required pursuant to the Turbine Contract. ~~Delta~~ **DAL** shall procure from the insurer and deliver to ENA at closing of the Transaction certificates of insurance in form and substance reasonably satisfactory to ENA confirming that said insurance is in full force and effect and that the same shall not be cancelled or materially changed without thirty days prior written notice to ENA.

6. **Term.** All representations and warranties of the Parties shall survive the closing of the Transaction until the later of (a) December 31, 2002, or (b) the 60th day following the date on which the GE Equipment achieves Takeover (such later date being referred to herein as the "Term"), except that, if written notice of a claim arising prior to the end of the Term is given to the other Party by the Party making the claim on or before thirty (30) days after the end of the Term, then the relevant representation or warranty shall survive as to such claim until the claim has been finally resolved. Except as otherwise specifically provided herein, all covenants, agreements and indemnities of the Parties shall survive the closing of the Transaction until expiration of the applicable statute of limitations.

7. **Termination.** Notwithstanding anything herein to the contrary:

(a) ENA shall have the right to terminate this Agreement at any time upon written notice by ENA to ~~Delta DAL~~ of ENA's determination that it will be unable to deliver the Turbine Contract as set forth in Section 4, in which event ~~Delta DAL~~ shall be entitled, as its sole and exclusive remedy, to the return of all funds, plus interest earned thereon, if any, in the Escrow Account.

Rider 5

(b) ENA shall ⁽ⁱ⁾ have the right to terminate this Agreement in the event that ~~Delta DAL~~ for any reason whatsoever fails to timely fund the Escrow Account or ~~fulfill any other undertaking or commitment provided for herein on the part of Delta that is required to be fulfilled by Delta between the date hereof and the date of closing. fails to timely close the Transaction in accordance with the terms of this Agreement, in which case the escrowed funds, plus interest earned thereon, if any, shall be released to ENA.~~

^(b) (c) Subject to Section 7(a) and (b), either Party shall have the right to terminate this Agreement, without prejudice to its rights or remedies at law or in equity, in the event that the closing of the Transaction shall not have occurred on or before April 30, 2001, in which case the escrowed funds, plus interest earned thereon, if any, shall be returned to ~~Delta DAL~~; provided, however, that such right to terminate this Agreement shall not be available to any Party whose failure to fulfill any of its obligations hereunder or whose misrepresentation or breach of warranty hereunder is the principal cause of such failure to close.

8. **Confidentiality.** The terms of that certain Confidentiality Agreement dated February 28, 2001 between ENA and ~~Delta DAL~~ are incorporated herein by reference and shall survive the closing of the Transaction or the earlier termination of this Agreement for a period of two years.

9. **Representations and Warranties.**

(a) ENA specifically represents and warrants, on the date hereof and the closing date, as follows:

(i) ENA is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. This Agreement (A) has been validly executed and delivered by ENA, (B) has been duly authorized by all action on the part of ENA necessary for the authorization hereof, and (C) is the legal, valid and binding obligation of ENA, enforceable against ENA in accordance with its terms.

(ii) Neither the execution, delivery nor performance of this Agreement or the Transaction by ENA will violate any provision of the Certificate of Incorporation or Bylaws of ENA, or violate, or be in conflict with, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or cause the acceleration of the maturity of any debt or obligation pursuant to, or result in the creation or imposition of any security interest, lien or other encumbrance upon any property or assets of ENA under, any agreement or commitment to which ENA is a party or by which ENA is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority by which ENA is bound.

(iii) No consent, approval or authorization of, or declaration, filing or registration with, any Person or any governmental or regulatory authority is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby by ENA, including, without limitation, consents from parties to loans, contracts, leases or other agreements, except such as have been obtained or will be obtained prior to closing.

(iv) There is no Action pending, or to the knowledge of ENA threatened, against ENA or the LLC relating to the Turbine Contract, the GE Equipment, the LLC or the LLC's business or assets.

(v) Neither ~~Delta~~ **DAL** nor the LLC shall directly or indirectly have any responsibility, liability or expense, as a result of undertakings or agreements of ENA or any affiliate of ENA, for brokerage fees, finder's fees, agent's commissions, or other similar forms of compensation in connection with this Agreement or the Transaction.

(vi) The LLC is a limited liability company duly organized and validly existing under the laws of the State of Delaware.

(vii) ENA has delivered to ~~Delta~~ **DAL** true and complete originals of (A) the limited liability company agreement and other governing instruments of the LLC, each as amended, and (B) all other records of the LLC.

(viii) Except for the ~~Delta~~ **DAL** Membership Interests to be issued to ~~Delta~~ **DAL** pursuant to this Agreement, ENA owns and holds of record and beneficially all Membership Interests in the LLC free and clear of any security interests, liens, options, warrants, purchase rights or other encumbrances, except (A) as contemplated by this Transaction and (B) any restrictions on sales of the Membership Interests under applicable securities laws. Upon the purchase of the ~~Delta~~ **DAL** Membership Interests as contemplated by this Agreement and payment therefor as contemplated by this Agreement, the ~~Delta~~ **DAL** Membership Interests will be fully paid and non-assessable, and ~~Delta~~ **DAL** will obtain good and valid title to the ~~Delta~~ **DAL** Membership Interests free and clear of all security interests, liens, options, warrants, purchase rights or other encumbrances, except (A) the LLC Agreement and (B) any restrictions on sales of the Membership Interests under applicable securities laws. Upon issuance of the ~~Delta~~ **DAL** Membership Interests against payment therefor as contemplated by this Agreement, the ~~Delta~~ **DAL** Membership Interests will have been validly issued, without violation of the preemptive rights of any Person. Following the issuance of the ~~Delta~~ **DAL** Membership Interests, the Membership Interests in the LLC will consist solely of (A) the ~~Delta~~ **DAL** Membership Interests, which shall constitute 80% of the limited liability company membership interests in, and the equity of, the LLC and (B) the issued and outstanding Membership Interests which are owned and held solely by ENA, which shall constitute 20% of the limited liability company membership interests in, and the equity of, the LLC. Neither ENA nor the LLC is a party to any option, warrant, purchase right or other contract or commitment that would require the LLC to issue or ENA to sell, transfer or otherwise dispose of any Membership Interests in the LLC, except **as contemplated by** this Agreement and the LLC Agreement.

(ix) The LLC does not directly or indirectly own any capital stock or other equity interest in any corporation, partnership or other entity.

(x) The LLC has no employees and has never had any employees.

(xi) Since its formation, the LLC has not made any tax elections.

(xii) Since its formation, the LLC has engaged in no business other than the Transaction (including execution of the Turbine Contract and related documents associated with acquisition of

the GE Equipment) and has complied with all laws, rules, regulations and orders of governmental authority applicable to the LLC or its assets and business. Since its formation, the LLC has not entered into any contracts or agreements or incurred any liabilities, other than the obligations of the LLC under (A) the Turbine Contract and related documents associated with acquisition of the GE Equipment, and (B) the promissory notes contemplated by Sections 2(a) and 2(d) hereof.

(xiii) The Turbine Contract, when delivered by the parties thereto and at the closing of the Transaction, will constitute the legal, valid and binding agreement of the LLC, enforceable against the LLC in accordance with its terms.

(xiv) As of the date of closing, the Turbine Contract will be in ~~all material respects in~~ the same form as Exhibit C, unless otherwise approved by DAL.

(xv) As of the date of closing, neither the LLC nor, to the best of ENA's knowledge, ~~neither the LLC nor~~ GE will be in breach of any of the terms of the Turbine Contract.

(xvi) At closing, the LLC will own and hold good and valid title to all rights and interests of the "Purchaser" under the Turbine Contract free and clear of any security interests, liens, options, purchase rights or other encumbrances, and will not have transferred, or entered any agreement to transfer, any of its rights, title and interests under the Turbine Contract to any Person.

(xvii) Except as disclosed on Schedule A, there have been no change orders issued under the Turbine Contract, no change orders under the Turbine Contract are currently pending, and ENA has no knowledge of any circumstances that are likely to lead to a change order. ENA has provided DAL with true and complete copies of all change orders and all notices received or delivered by ENA under the Turbine Contract

(xviii) The unpaid portion of the Purchase Amount, as determined on the basis of facts and circumstances existing as of the closing of the Transaction, is \$50,912,600. [confirm #]

(b) DAL ~~(b) Delta~~ specifically represents and warrants, on the date hereof and the closing date, as follows:

(i) ~~Delta~~ DAL is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. This Agreement (A) has been validly executed and delivered by ~~Delta~~ DAL, (B) has been duly authorized by all action on the part of ~~Delta~~ DAL necessary for the authorization hereof, and (C) is the legal, valid and binding obligation of ~~Delta~~, DAL, enforceable against ~~Delta~~ DAL in accordance with its terms.

(ii) Neither the execution, delivery nor performance of this Agreement or the Transaction by ~~Delta~~ DAL will violate any provision of the articles of organization, limited liability company agreement or other governing documents of ~~Delta~~ DAL, or violate, or be in conflict with, or constitute a default (or an event that, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, or accelerate the performance required by, or cause the acceleration of the maturity of any debt or obligation pursuant to, or result in the creation or imposition of any security interest, lien or other encumbrance upon any property or assets of ~~Delta~~ DAL under, any agreement or commitment to which ~~Delta~~ DAL is a party or by which ~~Delta~~ DAL is

bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority by which ~~Delta~~ DAL is bound.

(iii) No consent, approval or authorization of, or declaration, filing or registration with, any Person or any governmental or regulatory authority is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby by ~~Delta~~ DAL, including, without limitation, consents from parties to loans, contracts, leases or other agreements, except such as have been obtained.

(iv) There is no Action pending, or to the knowledge of ~~Delta~~ DAL threatened, against ~~Delta~~ DAL relating to the Turbine Contract, the GE Equipment, the LLC or the LLC's business or assets.

(v) ENA shall not directly or indirectly have any responsibility, liability or expense, as a result of undertakings or agreements of ~~Delta~~ DAL or any affiliate of ~~Delta~~ DAL, for brokerage fees, finder's fees, agent's commissions, or other similar forms of compensation in connection with this Agreement or the Transaction. ~~Delta~~ DAL shall bear and timely pay, and shall hold ENA harmless from and against, all amounts due to any brokers, finders or agents engaged by ~~Delta~~ DAL in connection with the execution, delivery and performance of this Agreement.

(c) ~~Delta~~ DAL specifically represents and warrants that ~~Delta~~ DAL is acquiring its Membership Interest in the LLC solely for investment and for ~~Delta's~~ DAL's own account, with the intention of holding such interest for investment, without any intention of participating directly or indirectly in any distribution of any portion of such interest, and without the financial participation of any other person. Furthermore ~~Delta~~ DAL specifically acknowledges that (i) ~~Delta~~ DAL is aware that its Membership Interest in the LLC is subject to restrictions on transfer and other terms and conditions set forth in the LLC Agreement and may not be offered for sale, pledged, hypothecated, sold, assigned, or transferred at any time except in compliance with the terms and conditions thereof; (ii) ~~Delta~~ DAL will be required to bear the risk of its investment for an indefinite period of time; (iii) the issuance of ~~Delta's~~ DAL's Membership Interest in the LLC has not been registered under (A) the Securities Act of 1933, as amended (the "Securities Act"), (B) any state securities laws (the "State Acts"), or (C) the securities laws of any foreign jurisdiction (the "Foreign Acts"), and neither such interest nor any part thereof may be offered for sale, pledged, hypothecated, sold, assigned, or transferred at any time except in compliance with the terms and conditions of the LLC Agreement and (1) pursuant to an effective registration statement under any applicable State Acts or in a transaction that is exempt from registration under such State Acts or for which such registration otherwise is not required, (2) pursuant to an effective registration statement under the Securities Act or in a transaction that is exempt from registration under the Securities Act or for which such registration otherwise is not required, and (3) pursuant to an effective registration statement under any applicable Foreign Acts or in a transaction that is exempt from registration under any applicable Foreign Acts or for which such registration is not otherwise required. ~~Delta~~ DAL further understands and acknowledges that its representations and warranties contained in this Section 9(c) are being relied upon by the LLC as the basis for the exemption of the purchase by ~~Delta~~ DAL of its interest in the LLC from the registration requirements of the Securities Act, the applicable State Acts, and the applicable Foreign Acts.

10. **Expenses.** Except as specifically stated otherwise herein or in the LLC Agreement, each Party shall bear its own costs associated with negotiating and performing under this Agreement.

11. Entire Agreement. This Agreement constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior discussions, agreements or understandings, whether oral or written, relating to such subject matter. There are no other written or oral agreements or understandings among the Parties. Any amendment of this Agreement must be written and signed by both Parties.

12. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ~~TEXAS~~ NEW YORK, WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES.

13. Relationship of the Parties; No Third Party Beneficiaries. The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of any other. No Party shall have any authority to bind any other to any agreement. Nothing in this Agreement shall be deemed to stipulate any benefit for third parties not signatories hereto or a permitted assign of a signatory hereto; provided that, the LLC shall be a third party beneficiary of this Agreement.

14. Limitation of liability.

(a) Notwithstanding anything herein to the contrary, it is the explicit intent of each Party that neither Party is making any representations or warranties whatsoever, express or implied, beyond those expressly set forth in this Agreement, and it is understood that, except for the representations and warranties contained herein or in the LLC Agreement and without limiting any rights, claims and remedies against GE, the LLC is acquiring the GE Equipment "AS IS, WHERE IS." Without limiting the generality of the foregoing, except for the representations and warranties contained in this Agreement or in the LLC Agreement, ENA hereby disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the GE Equipment (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials).

(b) Notwithstanding anything herein to the contrary, no Party or their respective directors, officers, shareholders, managers, or employees will be liable to any other Party, or its directors, officers, shareholders, managers or employees, whether under breach of contract, breach of warranty, tort liability (including without limitation both negligence and strict liability), strict liability or otherwise, for any incidental, special, indirect or consequential damages whatsoever (including without limitation lost profits or revenue) of any nature connected with or resulting from performance of this Agreement, but rather shall be liable only for direct actual damages arising from the breaching Party's breach or sole, joint or concurrent negligence.

15. Assignment. This Agreement shall be binding upon the successors and assigns of the Parties, but no Party may assign this Agreement without the prior written approval of the other Party, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, however, ENA may assign its rights and obligations hereunder without the approval of ~~Delta~~ DAL to any subsidiary or affiliate of ENA. No assignment by any Party of this Agreement or any of its rights or obligations hereunder shall operate to release the assigning Party from its obligations under this Agreement, unless an express written release is then obtained from all other Parties.

16. Indemnity.

(a) Indemnification By Delta DAL. FROM AND AFTER THE CLOSING OF THE TRANSACTION, DELTA DAL SHALL INDEMNIFY AND HOLD HARMLESS ENA, ITS DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS, AND THE HEIRS, EXECUTORS, SUCCESSORS AND ASSIGNS OF ANY OF THE FOREGOING (COLLECTIVELY HEREIN REFERRED TO AS THE "ENA INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL COVERED LIABILITIES RESULTING FROM ANY MISREPRESENTATION, BREACH OF WARRANTY OR NONFULFILLMENT OF ANY COVENANT OR AGREEMENT ON THE PART OF DELTA DAL HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY COVERED LIABILITY BASED ON NEGLIGENCE, GROSS NEGLIGENCE, OR STRICT LIABILITY OF THE ENA INDEMNIFIED PARTY OR ANY OTHER THEORY OF LIABILITY, WHETHER IN LAW (WHETHER COMMON OR STATUTORY) OR EQUITY.

(b) Indemnification By ENA. FROM AND AFTER THE CLOSING OF THE TRANSACTION, ENA SHALL INDEMNIFY AND HOLD HARMLESS DELTA DAL, ITS DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS, AND THE HEIRS, EXECUTORS, SUCCESSORS, AND ASSIGNS OF ANY OF THE FOREGOING (COLLECTIVELY HEREIN REFERRED TO AS THE "DELTA DAL INDEMNIFIED PARTIES") FROM AND AGAINST ANY AND ALL COVERED LIABILITIES RESULTING FROM ANY MISREPRESENTATION, BREACH OF WARRANTY, OR NONFULFILLMENT OF ANY COVENANT OR AGREEMENT ON THE PART OF ENA HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY COVERED LIABILITY BASED ON NEGLIGENCE, GROSS NEGLIGENCE, OR STRICT LIABILITY OF THE DELTA DAL INDEMNIFIED PARTY OR ANY OTHER THEORY OF LIABILITY, WHETHER IN LAW (WHETHER COMMON OR STATUTORY) OR EQUITY.

(c) Third Party Claims. If a claim by a third party is made against a ENA Indemnified Party or a Delta DAL Indemnified Party (herein referred to as an "Indemnified Party"), and if such party intends to seek indemnity with respect thereto under this Section 16, such Indemnified Party shall promptly notify Delta DAL or ENA, as the case may be (herein referred to as the "Indemnitor"), of such claims. The Indemnitor shall have thirty (30) days after receipt of such notice to undertake, conduct, and control, through counsel of its own choosing and at its own expense, the settlement or defense thereof, and the Indemnified Party shall cooperate with it in connection therewith; provided that the Indemnitor shall permit the Indemnified Party to participate in such settlement or defense through counsel chosen by such Indemnified Party at the expenses of such Indemnified Party. So long as the Indemnitor, at Indemnitor's cost and expense, (1) has undertaken the defense of, and assumed full responsibility for all Covered Liabilities with respect to, such claim, (2) is reasonably contesting such claim in good faith by appropriate proceedings, and (3) has taken such action (including the posting of a bond, deposit, or other security) as may be necessary to prevent any action to foreclose a lien against or attachment of the property of the Indemnified Party for payment of such claim, the Indemnified Party shall not pay or settle any such claim. Notwithstanding compliance by the Indemnitor with the preceding sentence, the Indemnified Party shall have the right to pay or settle any such claim, provided that, if the Indemnitor is in compliance with the preceding sentence at the time of such payment or settlement by the Indemnified Party then in such event the Indemnified Party shall waive any right to indemnity therefor by the Indemnitor for such claim. If, within thirty (30) days after the receipt of the Indemnified Party's notice of a claim of indemnity hereunder, the Indemnitor does not notify the Indemnified Party that it elects, at Indemnitor's cost and expense, to undertake the defense thereof and assume full responsibility for all Covered Liabilities with respect thereto, or gives such notice and thereafter fails to contest such claim in good faith or to prevent action to foreclose a lien against or attachment of the Indemnified Party's property as contemplated above, the Indemnified Party shall have the right to contest,

settle, or compromise the claim but shall not thereby waive any right to indemnity therefor pursuant to this Agreement.

17. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed sufficiently given for all purposes hereof if (i) delivered in person, by courier or by registered or certified United States Mail to the Person to be notified, with receipt obtained, or (ii) sent by telecopy, telefax or other facsimile or electronic transmission, with "answer back" or other "evidence of receipt" obtained, in each case to the appropriate address or number as set forth below (or at such other address or number for a Party as shall be specified by like notice). Each notice shall be deemed effective on receipt by the addressee as aforesaid; provided that, notice received by telex, telecopy, telefax or other facsimile or electronic transmission after 5:00 p.m. at the location of the addressee of such notice shall be deemed received on the first business day following the date of such electronic receipt. Until changed pursuant to the foregoing, notices to the Parties shall be addressed as follows:

~~[Delta Power Company~~ **Affiliate]** LLC

89 Headquarters Plaza

North Tower, 14th Floor

Morristown, New Jersey 07960

Attention: _____ **Richard Vicens**

Facsimile: _____ **973-326-1821**

Enron North America Corp.

and

Enron North America Corp.

121 Southwest Salmon Street

1400 Smith Street

Portland, Oregon 97204

Houston, Texas 77002

Attention: Mr. _____ **Jake Thomas**

Attention:

Sheila Tweed

Facsimile: (713) _____ **Facsimile: 503-464-3740**

Facsimile: 713-646-3393

18. **Dispute Resolution.**

(a) **Binding Arbitration.** Any dispute, controversy or claim arising under this Agreement (a "Claim") shall be resolved by binding arbitration as provided herein, and judgment on an award rendered therein may be entered in any court of competent jurisdiction.

(i) Arbitration shall be initiated by the delivery of a written demand for arbitration by the demanding Party to the other Party. The demand shall set out the nature of the dispute and the resolution sought by the demanding Party.

(ii) The respondent Party shall have twenty (20) days (the "**Response Period**") to respond to the demand, in writing, setting out its answer and/or counterclaims.

(iii) After the arbitration demand and response have been exchanged, a three-member arbitration panel shall be selected as follows:

(1) Only persons with substantial experience in the substantive matter at issue may serve as arbitrators. No person may be selected or serve as an arbitrator who at the outset is employed by, or under the control or management of, either Party;

(2) Each Party shall, within thirty (30) days after expiration of the Response Period, appoint one arbitrator of its own choosing and provide written notice of the appointment to the other Party. If either Party fails or refuses to appoint an arbitrator during the period for doing so, the other Party may appoint the second arbitrator; and

(3) The two arbitrators so chosen shall confer and, within thirty (30) days after their appointment, mutually select a third arbitrator. If the Party-chosen arbitrators cannot agree on a third arbitrator, each of them shall, within the thirty (30) day period stated above, name three (3) choices. Of the three choices named by each arbitrator, the other arbitrator shall then reject two (2). Lots shall be drawn to appoint the third arbitrator from the two remaining candidates.

(iv) In addition to its authority to hear the dispute presented by the Parties, the arbitration panel may, subject to the terms of this section, make rulings in connection with the procedures and timetable to be followed by the Parties hereunder.

(v) Within thirty (30) days after the final appointment to the arbitration panel, the arbitration hearing shall proceed, subject to the following requirements and procedures:

(1) The arbitration hearing shall be held in ~~Houston, Texas~~ New York, New York, at a location mutually agreed by the Parties, or failing such agreement, at a location determined by the arbitration panel;

(2) Strict rules of evidence shall not be applied in the arbitration hearing. The parties may offer such evidence as they desire and the arbitrators shall accept such evidence and accord it such weight as the arbitrators deem appropriate. Cross-examination of witnesses and rebuttal testimony shall be permitted; and

(3) Each Party may, but is not required to, submit one (1) pre-arbitration hearing brief (of not more than ten (10) pages (excluding exhibits)) no later than five (5) days prior to commencement of the arbitration hearing, and may also submit one (1) post-arbitration hearing brief (of not more than ten (10) pages (excluding exhibits)) no later than ten (10) days after the close of the arbitration hearing. A copy of any brief submitted to the arbitration panel shall also be served on the other Party.

(vi) After submission of any post-arbitration hearing briefs and within thirty (30) days after the close of the arbitration hearing, the arbitrators shall render an award upon a majority vote, subject to the following requirements and procedures:

(1) The arbitration panel shall weigh evidence and make its award, taking into account, to the extent it deems applicable, custom and usage of the industry;

(2) The arbitration panel's award shall be issued in writing and shall state the factual bases and reasoning of the award; and

(3) The arbitrators may award costs of the arbitration proceeding, excluding attorneys' fees and also excluding the costs apportioned pursuant to clause (vii) below.

(vii) Each Party shall pay the reasonable expense of the arbitrator of its selection. The amount or rate to be paid by the selecting Party shall be disclosed to the other Party upon engagement of the arbitrator. The Parties shall jointly and equally pay the expense of the arbitrators-selected arbitrator.

(viii) Neither Party may disclose the progress, content, findings or award of any arbitration commenced or completed hereunder without the prior written consent of the other Party. Nor may the arbitrators disclose such information without the written consent of both Parties.

(ix) All time limits stated in this section are for the convenience of the Parties and may be altered upon mutual agreement of the parties.

(b) Sole and Exclusive Remedy. The procedures specified in this Section 18 shall be the sole and exclusive procedures for the resolution of any Claim between the Parties arising out of or relating to this Agreement; provided, however, that a Party may seek a preliminary injunction or other preliminary judicial relief if in its judgment such action is necessary to avoid irreparable damage. Despite such action the Parties will continue to participate in good faith in the procedures specified in this Section. All applicable statutes of limitation shall be tolled while the procedures specified in this Section are pending. The Parties will take such action, if any, required to effectuate such tolling.

19. Defined Terms.

(a) Unless the context otherwise requires, the respective terms defined in this Section 19 or defined in another Section of this Agreement shall, when used in this Agreement, have the respective meanings specified in this Section 19 or such other Section of this Agreement, with each such definition to be equally applicable both to the singular and the plural forms of the term so defined.

(b) "Action" shall mean an action, suit, proceeding, governmental investigation, governmental notice of violation, governmental inquiry or any arbitration proceeding.

(c) "Covered Liabilities" shall mean any and all debts, losses, liabilities, duties, claims, damages, obligations, payments (including, without limitation, those arising out of any demand, assessment, settlement, judgment, or compromise relating to any actual or threatened Action), taxes, costs, and expenses (including, without limitation, any attorneys' fees and any and all expenses whatsoever incurred in investigating, preparing, or defending any Action), matured or unmatured, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, known or unknown, including, without limitation, any of the foregoing arising under, out of, or in connection with any Action, any order or consent decree of any governmental authority, any award of any arbitrator, or any law, rule, regulation, order, contract, commitment, or undertaking.

(d) "Person" shall mean governmental authority or any individual, firm, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, or other entity or organization.

(e) {"Purchase Amount" shall have the meaning given to such term in the Turbine Contract.}

(f) “Takeover” shall have the meaning given to such term in the Turbine Contract as of the date of closing.

20. Interpretation. In construing this Agreement:

(a) Examples. Examples shall not be construed to limit, expressly or by implication, the matter they illustrate;

(b) Including. The word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions;

(c) Location of Definitions. A defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place where it is defined;

(d) Controlling Provisions. Each Exhibit and Schedule to this Agreement is a part of this Agreement, but if there is any conflict or inconsistency between the main body of this Agreement and any Exhibit or Schedule, the provisions of the main body of this Agreement shall prevail; and

(e) Neutral Interpretation. This Agreement is the result of arm's-length negotiations from equal bargaining positions by both Parties. It is expressly agreed that this Agreement shall not be construed against any Party, and no consideration shall be given or presumption made on the basis of who drafted this Agreement or any particular provision hereof or who supplied the form of Agreement.

[Remainder of page intentionally blank]

[Delta Affiliate] LLC

March __, 2001

Page 14

If the foregoing provisions correctly set forth our binding agreement, please execute both originals of this Agreement in the space provided below. This Agreement may be executed in counterparts, and all such counterparts together shall constitute but one agreement.

ENRON NORTH AMERICA CORP.

By: _____

Printed Name: _____

Title: _____

Agreed and accepted this
_____ day of March, 2001

[DELTA POWER COMPANY AFFILIATE] LLC

By: _____

Printed Name: _____

Title: _____

Schedule A - List of Change Orders

Exhibit A - Form of LLC Agreement

Exhibit B - Form of Escrow Agreement

Exhibit C = Form of Turbine Contract

Rider 1

The ENA Demand Note shall be deemed to be repaid in full upon repayment on behalf of the LLC by the Escrow Agent to ENA (for its full ENA Transaction Fee) or to GE (for all progress payments in accordance with the payment schedule under the Turbine Contract) (such payments, collectively, the “LLC Repayments”).

Rider 2

Upon the execution and delivery of the final Turbine Contract and the receipt of any required consents, approvals or waivers pursuant thereto, (i) DAL shall promptly instruct the Escrow Agent to pay, and the Escrow Agent shall have paid, to ENA funds in the amount of [\$17,214,100] (the “ENA Transaction Fee”) on behalf of the LLC and (ii) DAL and ENA shall each promptly instruct the Escrow Agent to pay to GE the progress payments on behalf of the LLC in accordance with the payment schedule under the Turbine Contract.

Rider 3

and, (b) arranging for the payment of the LLC Repayments.

Rider 4

and (ii) the date on which DAL secures a financing commitment from a third party lender under terms and conditions satisfactory to DAL to proceed with the transactions contemplated in this Agreement

Rider 5

(ii) in a timely manner upon request execute and deliver the final form of the Turbine Contract (as contemplated by Section 4) on behalf of the LLC.