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Master Power Purchase & Sale Agreement



EDISON ELECTRIC
INSTITUTE



Version 2.1 (modified 4/25/00)
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MASTER POWER PURCHASE AND SALES AGREEMENT

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ATTACHMENTS:

- SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS
- SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS
- EXHIBIT A: CONFIRMATION LETTER
- EXHIBIT B. ENRON FORM OF GUARANTY
- EXHIBIT C: COUNTERPARTY FORM OF GUARANTY

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("Master Agreement") is made as of the following date: December 1, 2000 ("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." The Parties to this *Master Agreement* are the following:

Name: Enron Power Marketing, Inc. ("Party A")

All Notices: P.O. Box 4428
Houston, Texas 77210-4428

Street: 1400 Smith Street

City: Houston Zip: 77002

Attn: Power Contract Administration

Phone: (713) 853-1771

Facsimile: (713) 646-2443

Duns: 848921276

Federal Tax ID Number: 76-0413675

Invoices:

Enron Power Marketing, Inc.

1400 Smith

Houston, Texas 77002-7361

Attn: Power Settlements Manager

Phone: (713) 853-3163

Facsimile: (713) 646-4061

Scheduling:

Enron Power Marketing, Inc.

1400 Smith

Houston, Texas 77002-7361

Attn: Manager of Scheduling

Phone: (800) 349-5527 (East) (800) 684-1336 (West)

Facsimile: (713) 646-8272 (East) (503) 464-3740 (West)

Payments:

Enron Power Marketing, Inc.

1400 Smith

Houston, Texas 77002-7361

Attn: Power Settlements Manager

Phone: (713) 853-3163

Facsimile: (713) 646-4061

Wire Transfer:

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

Name: Black Hills Pepperell Power Associates, Inc. ("Party B")

All Notices:

Street: 1075 Noel Ave.

City: Wheeling, IL Zip: 60090

Attn: Brian Ferguson, Director, Business Management

Black Hills Energy Capital, Inc.

Phone: (847) 459-4250

Facsimile: (847) 459-4140

Federal Tax ID Number: 36-4033858

Invoices:

Attn: Mo Klefeker

Phone: (847) 465-3035

Facsimile: (847) 459-4140

Scheduling:

Attn: David Mousseau

Phone: Tel: (630) 482-2451

Facsimile: (630) 482-2452

Payments:

Attn: Mo Klefeker

Phone: (847) 465-3035

Facsimile: (847) 459-4140

Wire Transfer:

Black Hills 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

Black Hills Pepperell Power Associates, Inc.

Credit and Collections:

Enron Power Marketing, Inc.
1400 Smith
Houston, Texas 77002-7361
Attn: Power Settlements Manager
Phone: (713) 853-3163
Facsimile: (713) 646-4061

Credit and Collections:

Attn: Black Hills Energy Capital, Inc.
Accounting Department
Phone: (847) 459-4250
Facsimile: (847) 459-4140

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

Enron Power Marketing, Inc.
1400 Smith Street
Houston, Texas 77002-7361
Attn: Assistant General Counsel, Trading Group
Facsimile: (713) 646-4818

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

Attn: Mo Klefeker
Phone: (847) 465-3035
Facsimile: (847) 459-4140

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 FERC

Dated 12/2/93

Docket Number ER94-24-027

Party B Tariff Tariff N/A

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:

- Party A: _____ Cross Default Amount \$_____
- Other Entity: Enron Corp. Cross Default Amount \$100,000,000.00
- Cross Default for Party B:
- Party B: Black Hills Pepperell Power Associates, Inc. Cross Default Amount \$1,000,000.00
- Other Entity: _____ Cross Default Amount \$_____

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 (as amended below)
- Option B (as amended below): Black Hills North American Power Fund, L.P.
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Collateral Threshold: Not Applicable

Party B Independent Amount: Not Applicable

Party B Rounding Amount: Not Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:

Specify: _____

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: \$ Not Applicable

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: Enron Corp.
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: Not Applicable

Party A Independent Amount: Not Applicable

Party A Rounding Amount: Not Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:

Specify: _____

(e) Guarantor for Party A: Enron Corp.

Guarantee Amount: \$10,000,000.00

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

Specify, if any: Yes, the following changes shall be applicable:

Part 1. GENERAL TERMS AND CONDITIONS.

(a) **Definitions.** The following definitions are amended as set forth below:

- (1) Section 1.23 is amended by deleting the last sentence of the section.
- (2) Section 1.51 is amended to (i) add the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line and (ii) delete the phrase "at Buyer's option" from the fifth line and replace it with the following: "absent a purchase".
- (3) Section 1.53 is amended to (i) delete the phrase "at the Delivery Point" from the second line, (ii) delete the phrase "at Seller's option" from the fifth line and replace it with the following: "absent a sale", and (iii) insert after the phrase "commercially reasonable manner" in the sixth line, the following phrase "; provided, however if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such Product shall be deemed equal to zero (0)".
- (4) Section 1.60 is amended by replacing the existing definition with the following: "Transaction" has the meaning set forth in the Confirmation Agreement."

The following definitions are added to Article One:

"Confirmation Agreement" means the document dated as of December 1, 2000, attached hereto as Exhibit C.

"Debt" means, for Party B, at any time, (a) all obligations of Party B for borrowed money, (b) all obligations of Party B evidenced by bonds, debentures, notes or other similar instruments, (c) all other indebtedness (including capitalized lease obligations, other than usual and customary oil and gas leases) of Party B on which interest charges are customarily paid or accrued, (d) all guarantees by Party B, (e) the unfunded or unreimbursed portion of all letters of credit issued for the account of Party B, (f) any amount owed by Party B representing the deferred purchase price of property or services other than accounts payable incurred in the ordinary course of business and in accordance with customary trade terms, and (g) all liability of Party B as a general partner of a partnership for obligations of such partnership of the nature described in (a) through (f) preceding.

"Distribution" by Party B means (a) with respect to any stock issued by Party B, the retirement, redemption, purchase, or other acquisition for value of any such stock, (b) the declaration or payment of any dividend or other distribution on or with respect to any stock of Party B, and (c) any other payment by Party B with respect to such stock.

"Party B Lien" means, with respect to any of Party B's assets, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset. For the purposes of this Master Agreement, Party B shall be deemed to own subject to a Lien any asset which is acquired or held subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

(b) **Governing Terms.** Section 2.2 is hereby amended by replacing the current section with the following: "The Transaction between the Parties evidenced by the Confirmation Agreement attached hereto as Exhibit C shall be governed first by such Confirmation Agreement and to the extent such Confirmation Agreement is silent on any matter arising out of or relating to this Transaction, 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 the Transaction (including any Confirmations or Confirmation Agreements accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency or conflict between any terms of this Master Agreement and any terms of the Confirmation Agreement shall be resolved in favor of the terms of such Confirmation Agreement."

(c) **Events of Default.** Section 5.1(h)(ii) is hereby amended to delete the following phrase from the third and fourth line thereof: "and such failure shall not be remedied within three (3) Business Days after written notice".

(d) **Events of Default.** The following provisions (i), (j), and (k) are added to the end of Section 5.1 as additional Events of Defaults with respect to Party B:

- "(i) Party B incurs any Debt.
- (j) Party B, directly or indirectly, declares or pays, or incurs any liability to declare or pay, Distributions during the period from and including January 1, 2001 through and including September 20, 2001.
- (k) Party B creates, assumes or suffers to exist any Party B Lien on any asset of Party B except for liens that would occur by operation of law.
- (l) Power Fund's minimum partnership equity decreases below \$40,000,000.00 (Forty Million Dollars)."

- (e) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** Section 5.2 is amended as follows:
- (i) In the third line, the phrase, "no earlier than the day" shall be replaced with "no earlier than five (5) days after".
 - (ii) In the last two lines, the following phrase shall be deleted, "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable".
 - (iii) The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."
- (f) **Notice of Payment of Termination Payment.** Section 5.4 is amended in the last line by replacing "two (2)" with "five (5)".
- (g) **Disputes With Respect to Termination Payment.** The third line of Section 5.5 is amended by replacing "two (2)" with "five (5)".
- (h) **Timeliness of Payment.** Section 6.2 is amended to delete the first sentence in its entirety and to replace with the following: "Unless otherwise agreed by the Parties in a Transaction, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before five (5) days after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Notwithstanding the foregoing, neither party will be deemed to have paid "late" for purposes of this section if all or part of any payment is delayed as a result of non-payment by the New England Independent System Operator ("ISO-NE"), provided that such payment(s) are remitted promptly upon receipt of the corresponding payment from the ISO-NE, but in no event later than five (5) Business Days after the ISO-NE makes the relevant payment.
- (i) **Limitation of Remedies, Liability and Damages.** The fifteenth line of Section 7.1 is amended to delete the phrase "UNLESS EXPRESSLY HEREIN PROVIDED,".
- (j) **Financial Information.** Section 8.1 is amended by replacing paragraph (a) with the following:
- "Option 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, (ii) within 15 days after the end of each month, a copy of Party B's monthly report containing unaudited consolidated financial statements for such fiscal month and (iii) within 10 days after the end of the months of September 2001, October 2001 and November 2001, a copy of Party B's statements for such month in respect of its Operating Account with American Enterprise Bank (or such other bank as Party B may designate upon prior notice to Party A). With respect to (i) and (ii) above, these statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles. Should any of the statements listed in (i), (ii) or (iii) 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: 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 both parties specified on the Cover Sheet and (ii) within 15 days after the end of each month, a copy of the monthly report containing unaudited consolidated financial statements for such fiscal month for both parties 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."
- (k) **Downgrade Event.** Section 8.2(d) is amended to add the following phrase after the phrase "or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice": "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".
- (l) **Representations and Warranties.** Section 10.2 is amended to add the phrase "including, with respect to Party B, any necessary authorizations from the Federal Energy Regulatory Commission as a result of Party B's status as an Exempt Wholesale Generator" at the end of this clause.
- (m) **Confidentiality.** Section 10.11 is amended to add the phrase "or the completed Cover Sheet to this Master Agreement" immediately before the phrase "to a third party" and to add the phrase "or the Party's Affiliates" immediately after the phrase "(other than the Party's".

(n) **Arbitration.** The following provision is added as Section 10.12:

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 Parties and/or their respective representatives (for purposes of this Section 10.12 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 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 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 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 Party and does not have a direct or indirect interest in either Party or the subject matter of the arbitration. While the third arbitrator shall be neutral, the two party-appointed arbitrators are not required to be neutral, and it shall not be grounds for removal of either of the two party-appointed arbitrators or for vacating the arbitrators' award that either of such arbitrators has past or present minimal relationships with the Party that appointed such arbitrator. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties.

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

Party A - ENRON POWER MARKETING, INC.

By: Kevin Presto

Name: KEVIN PRESTO

Title: VICE PRESIDENT

Party B - BLACK HILLS PEPPERELL POWER ASSOCIATES, INC.

By: Maurice Klefeker

Name: Maurice Klefeker

Title: Vice President

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 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 _____, 2000 between Enron Power Marketing, Inc. ("Party A") and Black Hills Pepperell Power Associates, Inc. ("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 December 1, 2000, (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.

ENRON POWER MARKETING, INC.

**BLACK HILLS PEPPERELL POWER
ASSOCIATES, INC.**

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

EXHIBIT "B"

**to the
MASTER POWER PURCHASE AND SALE AGREEMENT
ENRON CORP. FORM OF GUARANTEE AGREEMENT**

ENRON CORP.

Guarantee Agreement

This Guarantee Agreement (this "Guarantee"), dated as of December 1, 2000 is made and entered into by Enron Corp., an Oregon corporation ("Guarantor").

WITNESSETH:

WHEREAS, Enron Power Marketing, Inc. (the "Company") will enter into a Master Power Purchase and Sale Agreement (the "Agreement") effective as of the date of this Guarantee with Black Hills Pepperell Power Associates, Inc. ("Counterparty") pursuant to which Company and Counterparty may enter into transactions related to the purchase and sale of energy; and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement.

NOW THEREFORE, in consideration of Counterparty entering into the Agreement, Guarantor hereby covenants and agrees as follows:

1. **GUARANTY.** Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company (the "Obligations") to Counterparty in accordance with the Agreement. To the extent that Company shall fail to pay any Obligations, Guarantor shall promptly pay to Counterparty the amount due. This Guarantee shall constitute a guarantee of payment and not of collection. The liability of Guarantor under the Guarantee shall be subject to the following:

(a) Guarantor's liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreement (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Agreement, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other damages, costs, or attorney's fees.

(b) The aggregate amount covered by this Guarantee shall not exceed Ten Million U.S. Dollars (\$10,000,000.00).

2. **DEMANDS AND NOTICE.** If Company fails or refuses to pay any Obligations, Counterparty shall notify Company in writing of the manner in which Company has failed to pay and demand that payment be made by Company. If Company's failure or refusal to pay continues for a period of fifteen (15) days after the date of Counterparty's notice to Company, and Counterparty has elected to exercise its rights under this Guarantee, Counterparty shall make a demand upon Guarantor (hereinafter referred to as a "Payment Demand"). A Payment Demand shall be in writing and shall reasonably and

briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured.

3. **REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Oregon and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guarantee;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee; and

(c) this Guarantee constitutes a valid and legally binding agreement of Guarantor, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **SETOFFS AND COUNTERCLAIMS.** Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Company or any other affiliate of Guarantor is or may be entitled to arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Company.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto.

6. **WAIVERS.** Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that Counterparty seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Counterparty in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreement.

Guarantor may terminate this Guarantee by providing written notice of such termination to Counterparty and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as provided in the last sentence of this paragraph. No such termination shall be effective until five (5) business days after receipt by Counterparty of such termination notice. No such termination shall affect Guarantor's liability with respect to any Transaction (as defined in the Agreement) entered into prior to the time the termination is effective, which Transaction shall remain guaranteed pursuant to the terms of this Guarantee.

7. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To Counterparty:

Black Hills Pepperell Power Associates, Inc.
1075 Noel Ave.
Wheeling, IL 60090
Fax No. (847) 459-4140

To Guarantor:

Enron Corp.
1400 Smith Street
Houston, Texas 77002
Attn.: Vice President, Finance and Treasurer
Fax No.: (713) 646-3422

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. **MISCELLANEOUS.** THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. This Guarantee shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by Counterparty, its successors and assigns. The Guarantee embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

ENRON CORP.

By: _____

Name: _____

Title: _____

456035



Enron Power Marketing, Inc.
P.O. Box 4428
Houston, Texas 77210-4428
(FAX) (713) 646-2491

December 1, 2000

Black Hills Pepperell Power Associates, Inc.
1075 Noel Ave.
Wheeling, IL 60090

Fax No. 847-459-4140

CONFIRMATION AGREEMENT
(Tolling)

This confirmation agreement ("Confirmation Agreement") shall confirm the agreement reached on December 1, 2000, (the "Trade Date") between Black Hills Pepperell Power Associates, Inc. ("Black Hills" or "Seller") and Enron Power Marketing, Inc. ("EPMI" or "Buyer") regarding a "tolling" transaction whereby EPMI has the exclusive right to dispatch Black Hill's Pepperell Facility ("Facility") and receive from Black Hills Firm (LD) Energy under the terms and conditions that follow. EPMI and Black Hills have entered into a Master Power Purchase and Sale Agreement dated December 1, 2000, ("Master Agreement"), which shall govern this Transaction. Notwithstanding any contrary provisions in the Master Agreement, in the event of any conflict between this Confirmation Agreement and the Master Agreement, the terms of this Confirmation Agreement shall control.

The Transaction. During the Term of this Confirmation Agreement, EPMI shall have the exclusive right (except as further described in Part I, Section 3) to dispatch the Energy Quantity of the Facility. During the Term of this Confirmation Agreement, EPMI and Black Hills agree that EPMI has no right to energy, if any, in excess of the Energy Quantity agreed upon pursuant to the terms set forth herein. If EPMI properly schedules the delivery of energy from the Facility ("Dispatch"), the energy to be supplied by Black Hills shall be "Firm (LD)". The terms of EPMI's purchase of Firm (LD) energy from the Facility are further set forth in Part I, Energy Deliveries. In partial consideration of EPMI's right to Dispatch and receive Firm (LD) energy from the Facility, EPMI agrees that EPMI shall provide or otherwise pay for the fuel necessary to produce the amount of Firm (LD) energy Dispatched by EPMI. Black Hills represents and warrants that the Facility is capable of operating at the Guaranteed Heat Rate set forth below. The terms of EPMI's supply of fuel are further set forth in Part II, Fuel Deliveries. In further consideration of EPMI's right to Dispatch the Facility, EPMI shall pay Black Hills the amounts set forth in Part III, Payments/Other Terms. Part III also sets forth other terms of this Transaction.

Transaction Terms

Seller: Black Hills

Buyer: EPMI

Term: January 1, 2001 – December 31, 2001
Hour Ending (HE) 0100 through HE 2400 (24 Hours each day);
Eastern Prevailing Time (EPT)

Type of
Commodity: Firm (LD) Energy

Facility: The Black Hills-Pepperell Facility located in Pepperell, Massachusetts

Energy Rights: 35 MW during the months of January through April 2001 and the months of November through December 2001;
30 MW during the months of May through October 2001

Energy Quantity: EPMI has the right to Dispatch and receive up to the following amounts of Firm (LD) Energy:
- 35 MWs per hour during the months of January through April 2001, and the months of November through December 2001;
- 30 MWs per hour during the months of May through October 2001

Delivery Point(s): NEPOOL PTF

Fixed Tolling Premium: \$7.00/kW-month, multiplied by the applicable Energy Rights

Variable Tolling Fee: \$1.95/ MWh, for each MWh of Energy Dispatched by Buyer and delivered by Seller in accordance with the terms of this Transaction

Scheduling: EPMI Real Time Operations: 1-800-684-1336

Part I. ENERGY DELIVERIES

Conditions

1. Definitions.

"Firm (LD)" means, with respect to the 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 or as a result of Scheduled Maintenance Outages as provided for in Paragraph 4 of Part III of this Confirmation Agreement. Specifically with respect to Seller, in the event that the Facility is unavailable or unable in any hour for whatever reason to provide Buyer with all or any part of Buyer's requested Energy in accordance with EPMI's Dispatch (except if such unavailability or inability to provide the Dispatched energy is due to Buyer's failure to schedule and deliver sufficient oil or gas to the Gas Delivery Point or to request/arrange for use of backup fuel oil to accommodate its Dispatched energy from the Facility, in either case assuming a fuel requirement at the Guaranteed Heat Rate), then Seller shall be required to pay Buyer an amount equal to the sum of (1) the price at which Buyer is or would be able to secure replacement energy for the Firm (LD) Energy not delivered by Seller and (2) any penalties or costs (including transportation or other costs associated with resale of Buyer's gas) directly incurred by Buyer or any of its affiliates who may be supplying the applicable fuel (an "Affiliate Fuel Supplier") (as documented by invoices or other appropriate records) as a result of the Facility not being able to utilize the gas that Buyer had scheduled associated with its Dispatch (the "LD Amount"). In calculating the LD Amount, Seller shall be entitled to receive a credit for (1) the proceeds, if any, that Buyer secures by reselling the gas or oil not consumed at the Facility and (2) the Variable Tolling Fee.

In lieu of paying Buyer applicable LD Amount(s), Seller may provide Firm (LD) Energy from an alternative source than the Facility, so long as such replacement Firm (LD) Energy is delivered to the Delivery Point in the same quantity and timing as Buyer's requested Energy Dispatch from the Facility. In the event that Seller elects to provide Firm (LD) Energy from a source other than the Facility, Seller will be liable and pay for any costs incurred by Buyer, including but not limited to, any incremental electric transmission or related costs incurred as a result of Buyer receiving Firm (LD) Energy from a source other than the Facility, as well as any penalties or costs (including transportation or other costs associated with resale of Buyer's gas) directly incurred by Buyer or an Affiliate Fuel Supplier as a result of the Facility not utilizing the gas that Buyer had arranged to be delivered to the Facility associated with its requested Dispatch of the

Facility. If for any reason, Seller fails to deliver the replacement Firm (LD) Energy to Buyer, Seller shall be liable to Buyer for the LD Amount as calculated above.

"ISO-NE" means the New England Independent System Operator.

2. Buyer's Dispatch of the Facility. Buyer has the exclusive right to Dispatch Seller's Facility for the relevant Energy Quantity during the Term. Seller shall make or cause the Facility to be made available for Dispatch by Buyer for all hours during the Term except during Scheduled Maintenance Outages. The minimum Dispatch time of the Facility is six (6) consecutive hours from the beginning of any requested Facility Dispatch by Buyer. Notwithstanding the foregoing sentence, Buyer agrees that the start of any requested Dispatch by Buyer must provide for a Facility start up time not to exceed three hours if the Facility is not otherwise operating prior to the start of Buyer's requested Dispatch. In order to Dispatch the Facility, the Buyer must submit hourly energy bids and/or self-schedules (up to the applicable 35 or 30 MW per hour block) to Seller on day-ahead basis, with such bids/schedules to be provided to Seller not later than 11:00 am EPT so as to enable Seller to submit required bidding and scheduling information to the ISO-NE by the current 12:00 Noon EPT bidding deadline. The Facility may be started only one time per day. Seller is responsible for any and all expenses and costs required to start-up the Facility, including without limitation, all fuel expenses. In the event the bidding deadline for the Facility is made later in the day by the ISO-NE, the deadline for Buyer to Dispatch the Facility and provide the scheduling information to Seller shall also be modified to one (1) hour prior to ISO-NE bidding deadline. To the extent that ISO-NE Rules allow for Dispatch of Facility on a shorter-notice basis (e.g., 90 minutes ahead), Buyer shall be afforded the right to provide such short-notice Dispatch requests to Seller with as little notice to Seller as is necessary for Seller to coordinate such Dispatch with ISO-NE, with reasonable efforts on the part of Seller. In the case of a short-notice requested start-up of the Facility by Buyer, the minimum required notice by Buyer to Seller shall be deemed to be: (i) four (4) hours if the Facility is not already operating as a result of dispatch by Seller in accordance with Paragraph 3 of this Part I; or (ii) one (1) hour if the Facility is already operating in accordance with Paragraph 3 of this Part I. In the case of a short-notice requested shut-down of the Facility by Buyer, the minimum required notice by Buyer to Seller shall be deemed to be two (2) hours. Each hour Dispatched by Buyer must be for at least 30 MW, and the dispatch or bidding of any incremental energy above this 30 MW level by Buyer, to the extent Buyer has rights to such incremental energy in accordance with its Energy Rights, shall be in the form of a single 5 MW block. Buyer will be the sole beneficiary of any energy revenues, including any payments paid to the Facility by the ISO-NE (such as energy/congestion uplift payments), associated with Buyer's requested Dispatch of the Facility not to exceed the Energy Quantity.

3. Dispatch by Seller. In the event Buyer does not Dispatch any off-peak power (HE 0100 to HE 0700, and HE 2400) from the Facility, Seller shall have the right to run the Facility to mitigate next day start-up wear and tear. In such event, Buyer or an Affiliate Fuel Supplier will offer to provide the required gas volumes ("Seller's Gas") at the Gas Delivery Point, solely at the Seller's expense. In no event shall the dispatch by Seller pursuant to this Paragraph Three impede Buyer's right to Dispatch the Facility once per day as set forth in Paragraph Two above. Pricing for Seller's Gas will be provided day-ahead prior to 10:00 am EPT based on a daily index mutually agreed upon by Buyer and Seller. In any hour that Seller elects to run the Facility in accordance with this paragraph, Seller agrees to pay Buyer any positive difference between the NEPOOL Energy Clearing Price (in \$/MWh) less Buyer's energy bid price submitted by Seller to ISO-NE on Buyer's behalf for that hour (in \$/MWh), multiplied by the applicable energy quantity for that period during the Term.

4. Scheduling. Seller is responsible for bidding and/or self-scheduling the Facility with the ISO-NE in order to accommodate Buyer's requested Dispatch. Seller agrees that Buyer shall not be liable for any failure or error on the Seller's part in submitting the required information to the ISO-NE. Buyer agrees that Seller shall not be liable for any failure, error, or other action on the part of ISO-NE in connection with the scheduling of Buyer's Dispatch. Buyer agrees that it will communicate with Seller's scheduling coordinator on an as needed basis prior to each day to coordinate gas and energy scheduling for the following day.

PART II. FUEL DELIVERIES

1. Supply of the Gas.

(a) For each requested Dispatch of Firm (LD) Energy from the Facility by EPMI, EPMI shall provide at no charge to Black Hills all gas required to produce the requested Dispatched Quantity (based on the Guaranteed Heat Rate applicable for gas and the applicable Energy Quantity). All gas shall be delivered to the Colonial Citygate (the "Gas Delivery Point").

(b) In addition to supplying the gas required to produce Buyer's requested Energy Dispatch, EPMI or its Affiliate Fuel Supplier shall offer to provide gas requested by Black Hills for use in the start-up of the Facility and the operation of the auxiliary steam boiler at the same location. Black Hills shall notify EPMI at least one (1) week prior to the start of each month during the term, of the estimated quantity of gas it will need to supply the auxiliary boiler for the following month ("Monthly Gas"). Should Black Hills accept EPMI's or its Affiliate Fuel Supplier's offer to provide Black Hill's requested quantity of Monthly Gas, Black Hills will be required to take and pay for such quantity of Monthly Gas at a mutually agreed upon price quoted by EPMI or its Affiliate Fuel Supplier. Notwithstanding the foregoing, EPMI agrees that Black Hills may adjust its gas requirements on a day-ahead basis both for Facility start up and the auxiliary steam boiler ("Day-Ahead Gas Adjustments"). Black Hills must notify EPMI of its requested Day-Ahead Gas Adjustments not later than 10 AM EPT the Business Day prior to day of delivery, except as related to gas requirements that may arise associated with requested start-ups of the Facility by EPMI which are not then known to Black Hills. EPMI or its Affiliate Fuel Supplier agrees to buy gas ("Day-Ahead Gas Purchase") or sell gas ("Day-Ahead Gas Sale") from/to Black Hills on a day-ahead basis as required to accommodate Black-Hills' requested Day-Ahead Gas Adjustments. The price to be paid by EPMI or its Affiliate Fuel Supplier for Day-Ahead Gas Purchases shall be the *Gas Daily*, daily midpoint price for Dominion South Point, under the heading "Appalachia," as published on the flow date, minus \$0.10/mmBtu. The price to be paid by Black Hills for Day-Ahead Gas Sales shall be the *Gas Daily*, daily midpoint price for Algonquin citygate, under the heading "Citygates," as published on the flow date, plus \$0.10/mmBtu. In order for Black Hills to be able to balance its gas requirements at the Facility, EPMI or its Affiliate Fuel Supplier agrees to buy or sell gas from/to Black Hills on an intra-day basis ("Intra-Day Gas Purchase" and "Intra-Day Gas Sale", respectively), provided that the net quantity of EPMI's obligations with respect to Day-Ahead Gas Purchases, Intra-Day Gas Purchases, Day-Ahead Gas Sales, and Intra-Day Gas Sales for a given day shall not exceed 1,750 Mcf/day. The price to be paid by EPMI or its Affiliate Fuel Supplier for Intra-Day Gas Purchases or by Black Hills for Intra-day Gas Sales shall be at a mutually agreed upon price. All gas purchases and/or sales made by EPMI or its Affiliate Fuel Supplier in accordance with this Paragraph 1(b) shall be made at the Gas Delivery Point, and all gas sales made by EPMI or its Affiliate Fuel Supplier shall be made on a secondary-firm basis.

2. Alternative Fuel Supply. In lieu of supplying gas, EPMI shall have the right, at its option, to require Black Hills to utilize Black Hills' own on-site supply of Number 2 Fuel Oil (at a rate assuming the Guaranteed Heat Rate set forth below). If EPMI elects to have Black Hills supply Number 2 Fuel Oil, EPMI shall reimburse Black Hills the costs of the commodity, including transportation costs, incurred in producing Buyer's requested Energy Quantity based upon the applicable Guaranteed Heat Rate. Black Hills shall notify EPMI of the costs to supply the commodity before purchasing the commodity. If EPMI requires Black Hills to purchase the commodity on behalf of EPMI, EPMI shall reimburse Black Hills within five days of receiving an invoice for the costs of such commodity. Such costs shall not be reimbursed to the Escrow Account but shall be paid directly to Black Hills in order that it may pay its third party vendors. Alternatively, EPMI shall also have the right, in its sole discretion, to utilize Seller's own on-site inventory of oil, if any, provided that Buyer agrees to deliver to Black Hills an equal quantity of 0.3% sulfur Number 2 Fuel Oil at Buyer's own expense within 15 Business Days of Buyer's consumption of oil from Seller's own inventory. Oil usage shall be limited based on the on-site storage capability of 60 hours, and total annual oil dispatch limits of 800 hours, with Buyer's right to utilize oil up to these limits not to be constrained by Seller's own use of oil for the Facility or auxiliary boiler located at the same location. In any event, Buyer's right to utilize Seller's on-site inventory of oil shall only be available to the extent there is at least 16 hours of oil remaining in storage (as calculated using the applicable Energy Rights and a heat rate of 9,800 Btu/kWh).

3. Guaranteed Heat Rate. Black Hills assigns to EPMI a heat rate (high heating value) at the Facility ("Heat Rate") of 9,600 Btu/kWh when burning natural gas, and 9,800 Btu/kWh when burning Number 2 Fuel Oil. To the extent that the actual Heat Rate varies from these assigned levels, thus requiring more or less fuel to achieve the output levels requested by EPMI than would be required at the Guaranteed Heat Rate, Black Hills agrees that it shall either pay or otherwise

reimburse EPMI for any and all costs or penalties associated with any resulting fuel imbalances, surpluses or deficiencies and shall be liable for the Firm (LD) energy that the Facility is unable to produce, if any, as a result of the lack of fuel.

4. Fuel Interruptions. Black Hills agrees that it will assume all risk of interruption on the Colonial Gas Company ("Colonial") Local Distribution System ("Colonial System") between the Gas Delivery Point and Facility burner tip. In the event that gas transmission or distribution service is interrupted on the Colonial System for any reason, and EPMI has Dispatched the Facility, Black Hills agrees that it will either: (1) pay EPMI a monetary amount for any Energy Quantity not provided by Seller as a result of such interruption on the Colonial System, such monetary amount to be established in accordance with the definition of "LD Amount" in Paragraph 1 of Part I of this Confirmation Agreement; or (2) utilize the oil from its own fuel reserves ("Substitute Fuel") in order to maintain Buyer's requested energy Dispatch schedule. In the event that Seller selects the latter remedy, EPMI may either: (i) elect to procure oil, at its own expense, to replace any oil used by Black Hills and agree to deliver such replacement oil within 15 Business Days from the day on which oil is consumed from Black Hills' inventory; or (ii) elect to have Black Hills supply the oil. If EPMI elects to have Black Hills supply the oil, EPMI agrees that it will compensate Black Hills an amount defined by the lesser of (x) the actual costs of the Substitute Fuel, including transportation costs, or (y) the cash equivalent of the Substitute Fuel Price Index as published on the date the gas was to have been delivered to the Facility times the applicable amount of gas. The amount that EPMI shall pay Black Hills in accordance with the preceding sentence shall be less any penalties or costs (including but not limited to potential transportation costs associated with re-selling the gas) that EPMI or its Affiliate Fuel Supplier directly incurs as a result of Colonial not accepting EPMI's gas for delivery to the burner tip, as evidenced by invoices or other appropriate records. If EPMI elects to have Black Hills supply the Substitute Fuel, EPMI shall reimburse Black Hills for the applicable amounts as selected by EPMI pursuant to either (i) or (ii) within five Business Days of receiving an invoice for the costs of such Substitute Fuel. Such costs shall not be reimbursed to the Escrow Account but shall be paid directly to Black Hills. Notwithstanding any of the foregoing, in the event of a fuel interruption on the Colonial System, EPMI shall have the right, at its option, to require Black Hills not to dispatch the Facility for some or all of the hours during which such interruption occurs, in which case Black Hills will not be required to provide Energy or pay any LD Amounts for the hours for which EPMI has elected Black Hills not to dispatch the Facility.

"Substitute Fuel Price Index" means *Gas Daily* Citygates, midpoint Tennessee Zone 6 (delivered).

5. LDC Balancing Requirements. EPMI shall be responsible for balancing on the Colonial System for gas volumes associated only with its requested Facility dispatch. EPMI agrees to pay any penalties associated with EPMI's failure to take or deliver gas associated with its requested Dispatch of the Facility at the Guaranteed Heat Rates and applicable Energy Quantity, including without limitations imbalance charges, overpull or unauthorized overrun penalties. Such balancing will be in accordance with the terms and conditions set forth in the interruptible transportation agreement between Pepperell Power Associates Limited Partnership and Colonial, attached hereto as Exhibit A. Seller represents and warrants that the current balancing penalties on the Colonial System are no more than \$10/Mcf, and Seller agrees to pay any penalties which may be assessed to Buyer at a rate in excess of \$10/Mcf.

6. Scheduling.

- (a) EPMI or its Affiliate Fuel Supplier agrees that it will schedule the fuel requirements associated with EPMI's requested Dispatch of the Facility with the relevant parties in accordance with industry practice.
- (b) EPMI or its Affiliate Fuel Supplier agrees that it will be responsible for scheduling with Colonial under the terms of the aforementioned agreement contained in Exhibit A.
- (c) EPMI or its Affiliate Fuel Supplier will be responsible for a \$0.10/mmBtu variable transportation cost on the Colonial System for gas deliveries from the Gas Delivery Point to the Facility burner tip associated with EPMI's requested Dispatch of the Facility based on the Guaranteed Heat Rate.

Part III. PAYMENTS/OTHER TERMS

1. Escrow Arrangement.

- a) Payments. In consideration of the Transaction described herein, EPMI agrees to pay Black Hills a monthly Fixed Tolling Premium for the duration of the Term as well as the applicable Variable Tolling Fee. In accordance with the terms of the Master Agreement, EPMI shall render to Black Hills and the Escrow Agent a monthly invoice

setting forth all amounts due from EPMI to Black Hills for Energy deliveries for the preceding month and any other amounts due and owing under the Master Agreement. For payments due from EPMI to Black Hills in respect of the months from January 2001 to and including August 2001 (hereinafter referred to as the "Escrow Period"), EPMI shall deposit or cause to be deposited the net payment due and owing to Black Hills on a monthly basis into an interest bearing account (the "Escrow Account") with La Salle Bank N.A. (the "Escrow Agent"). All amounts deposited into the Escrow Account together with any interest accrued thereon shall be deemed the escrowed funds (the "Escrowed Funds"). The Escrow Agent shall provide notice to Black Hills and EPMI as to the amounts deposited with it. The Escrow Agent shall hold the Escrow Account in its possession in accordance with the Escrow Agreement which is attached as Exhibit B (which shall promptly be negotiated in good faith between the parties). The Escrow Agreement shall provide provisions for the disbursement of the Escrowed Funds in accordance with the provisions set forth in paragraph (b) below. To secure its obligations under the Master Agreement, Black Hills shall grant to EPMI a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash held in the Escrow Account and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by the Escrow Agent, on behalf of, or for the benefit of, EPMI, and Black Hills shall agree to take such action as EPMI reasonably requires in order to perfect EPMI'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.

- b) Disbursements from the Escrow Account. The Escrow Agreement shall provide that the Escrowed Funds shall be disbursed by the Escrow Agent in accordance with the following terms:

1. Event of Default by Black Hills. 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 Black Hills 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 Black Hill's obligations, if any, under the Master Agreement (with Black Hills 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 Black Hills' obligations in respect of the remaining Term of the Transaction. The Surplus shall be held by EPMI through December 31, 2000, and shall be returned, less any additional amounts due EPMI in respect of any outstanding obligations owed by Black Hills under the Master Agreement, no later than January 12, 2001. 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, Black Hills reserves the right to contest whether the amounts EPMI states are due and owing but unpaid by Black Hills.

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

With regard to this paragraph 2 and in conjunction with Section 5.5 of the Master Agreement, if EPMI is the Defaulting Party and if EPMI disputes Black Hill's calculation of the Termination Payment, EPMI shall have the right to contest the calculation as set forth in Section 5.5 but if Black Hills calculates that the Termination

Payment is due from EPMI, EPMI shall transfer Performance Assurance to Black Hills in an amount equal to the amount by which the Termination Payment exceeds the disputed Escrowed Funds.

Notwithstanding this Section 2, if at any time Black Hills becomes Bankrupt (as such term is defined in Section 1.3 of the Master Agreement), EPMI shall have the right, upon notice to Black Hills and the Escrow Agent, to immediately have the Escrow Agent disburse to EPMI all the Escrowed Funds then held by the Escrow Agent.

3. Termination of the Escrow Agreement after September 20, 2001. Unless the Escrowed Funds are required to be held by the Escrowed Agent pursuant to Section 2 above or are otherwise required to be disbursed pursuant to Section 1 and/or 2 above, all funds remaining in the Escrowed Account after September 20, 2001, shall be automatically disbursed to Black Hills and the Escrow Agreement shall thereafter be terminated and EPMI shall be obligated to make payments otherwise required under the Master Agreement directly to Black Hills.

2. Additional Representations. Black Hills represents that as of the Trade Date, it has provided EPMI with true and accurate information relating to Facility availability and dispatch from the period starting June 1996 through and including September 2000, and represents that to the best of its knowledge no major maintenance overhauls will be needed at the Facility at any time during the year 2001.

3. Business Day Convention. With respect to the gas price indices referenced in paragraph 1(b) of Part II and the Substitute Fuel Price Index referenced in paragraph 4 of Part II, if the day for determining such price is a day which is not a Business Day, then the price shall be determined using the first following Business Day. However, if the NYMEX gas futures contract is not traded on such first following Business Day, then the price shall be determined using the next day that the NYMEX gas futures contract is traded.

4. Scheduled Maintenance Outages. EPMI agrees that during the Term of this Confirmation Agreement, Black Hills may schedule up to five twenty-four hour periods to perform scheduled maintenance of the Facility ("Scheduled Maintenance Outages"). However, Black Hills agrees to use best efforts to plan such scheduled maintenance to occur during the months of March, April, October, or November, recognizing however that unexpected maintenance needs at the Facility may preclude Black Hills from using its discretion to limit planned maintenance to these months. In any event, Black Hills shall use best efforts to provide EPMI with thirty days' prior written notice (but in no case less than 10 days) of any proposed Scheduled Maintenance Outage including the date and the length of such Scheduled Maintenance Outage. If EPMI objects to the date of such Scheduled Maintenance Outage, it may propose in writing within five days of the date of the notice of the proposed Scheduled Maintenance Outage, an alternative date provided that such alternative date is within 30 days of the proposed Scheduled Maintenance Outage. If the alternative date is agreeable to and approved by Black Hills (such approval shall not be unreasonably withheld) the Scheduled Maintenance Outage shall be rescheduled to occur on such date. Notwithstanding the above, Black Hills agrees to use best efforts to accommodate any subsequent requests by EPMI to modify a previously mutually agreed upon Scheduled Maintenance Outage period with notice by EPMI of as little as one day prior to the previously agreed upon Scheduled Maintenance Outage, provided that EPMI agrees to pay any reasonable expenses that Black Hills will incur as a result of Seller accommodating Buyer's requested change to the Scheduled Maintenance Outage. For purposes of the preceding sentence, the expenses that Buyer would be required to pay Seller would be based on a quote of such expenses to be provided by Seller to Buyer as soon as is practicable from the time Buyer requests Seller to modify the timing of the previously agreed upon Scheduled Maintenance Outage. These costs as quoted by Seller shall constitute the full extent of Buyer's obligations with respect to the costs associated with Seller accommodating Buyer's requested change to the Scheduled Maintenance Outage. Seller shall not be required to accommodate Buyer's requested changes to a previously mutually agreed upon Scheduled Maintenance Outage if to do so would cause undue risk of physical damage to the Facility or excessively delay the remedial works which were scheduled to take place during the Scheduled Maintenance Outage. Any extension of a Scheduled Maintenance Outage beyond periods mutually agreed upon in accordance with the above terms shall be considered a forced outage of the Facility and shall obligate Seller to pay Buyer any applicable LD Amount(s) for such period(s) beyond the agreed upon Scheduled Maintenance Outage.

5. Notices to EPMI.

All Notices and Correspondence to EPMI in respect of this Transaction shall be sent to:

Real Time Operations: EPMI Real Time Operations: 1-800-684-1336

All Gas Scheduling Issues: Jim Homco Tel: (713) 853-7898

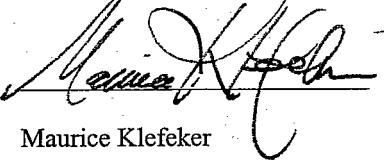
All Energy Scheduling Issues: Gerald Gilbert Tel: (713) 853-3932

Notices to Black Hills. All Notices and Correspondence to Black Hills in respect of this Transaction shall be sent to:

David Mousseau Tel: (630) 482-2451/ Fax: (630) 482-2452

Please confirm that the terms stated herein accurately reflect the agreement reached on December 1, 2000, between you and Enron Power Marketing, Inc. by returning an executed copy of this letter by facsimile to Enron Power Marketing, Inc. at (713) 646-2491. Your response should reflect the appropriate party in your organization who has the authority to enter into this transaction. If you have any questions please call (713) 853-1886.

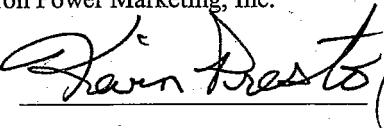
Black Hills Pepperell Power Associates, Inc.

By: 

Name: Maurice Klefeker

Title: Vice President

Enron Power Marketing, Inc.

By: 

Name: KEVIN PRESTO

Title: VICE PRESIDENT

LG-sss

EXHIBIT A

INTERRUPTIBLE TRANSPORTATION SERVICE AGREEMENT

This agreement is made as of the first day of April, 1988 by and between Colonial Gas Company, a Massachusetts corporation with its principal place of business at 40 Market Street, Lowell, Massachusetts 01852 ("Colonial"), and Pepperell Power Associates Limited Partnership, a Massachusetts limited partnership with its principal place of business at 200 Boylston Street, Chestnut Hill, Massachusetts 02167 ("Buyer").

WITNESSETH:

WHEREAS, Buyer has arranged delivery of natural gas by one or more pipeline companies to one or more city gate delivery points of Colonial for account of Buyer;

WHEREAS, Buyer desires to have Colonial transport for and deliver to Buyer, by means of Colonial's natural gas distribution system, such volumes of gas as may be accepted for the account of Buyer by Colonial at a designated receipt point;

WHEREAS, a primary purpose of this agreement is to establish a rate approved by regulatory authorities for interruptible transportation service as and when such service is provided by Colonial to Buyer hereunder;

WHEREAS, Colonial, subject to the terms, conditions, limitations, and provisions hereof, is willing to transport and deliver to Buyer on an interruptible basis such volumes of natural gas so accepted by Colonial.

WHEREAS, Buyer and Colonial have entered into an Interruptible Service Agreement dated as even date herewith, pursuant to which Buyer may purchase

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natural gas from Colonial on an interruptible basis during certain of the periods when Colonial does not accept gas hereunder for transport to Buyer or when Colonial permits Buyer to take more gas than Colonial has received from the Pipeline Company for the account of Buyer;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements included herein, the parties do covenant and agree as follows:

ARTICLE I

This agreement shall be subject to the Terms and Conditions of Gas Service filed from time to time with the Massachusetts Department of Public Utilities (the "Department") to the extent such terms and conditions apply to the transportation of natural gas. In the event of a conflict between said Terms and Conditions applicable to transportation services and the provisions of this agreement, this agreement shall govern. This agreement shall be further subject to any Department order affecting transportation services.

ARTICLE II

Definitions

1. The term "British Thermal Unit" or "BTU" shall mean the amount of heat required to raise the temperature of one pound of water one degree Fahrenheit at 60 degrees Fahrenheit.
2. The term "csgf" is defined as one hundred (100) cubic feet of gas with a thermal value of not less than (1,000) British Thermal Units per cubic foot.

3. The term "cubic foot of gas" shall mean the volume of gas which occupies one cubic foot when measured at a base pressure of 14.73 pounds absolute and a base temperature of 60 degrees Fahrenheit.
4. The term "curtail" shall mean to reduce, and the term "curtailment" shall mean a reduction in, the Transportation Volume delivered to Buyer, which may continue indefinitely.
5. The term "day" shall mean a period of twenty-four (24) consecutive hours, beginning and ending at 8:00 AM local time in the Commonwealth of Massachusetts. The reference date for any day shall be the date of the beginning of such day.
6. The term "Delivery Point" shall mean the first pipefitting in the gas line on Buyer's side of Colonial's meter located at the Facility.
7. The term "Department" shall mean the Massachusetts Department of Public Utilities.
8. The term "Facility" shall mean the facility of Buyer located in Pepperell, Massachusetts adjacent to the property of James River Corporation.
9. The term "interrupt" shall mean to discontinue completely, and the term "interruption" shall mean the complete discontinuance of, delivery of the Transportation Volume to Buyer, which may continue indefinitely.
10. The term "Interruptible Service Agreement" shall mean the Interruptible Service Agreement between Colonial and Buyer identified in the forepart of this agreement.
11. The term "mcf" shall mean 1,000 cubic feet of gas with a thermal value of not less than one thousand (1,000) British Thermal Units per cubic foot.

12. The term "MMBTU" shall mean one million (1,000,000) British Thermal Units.
13. The term "month" shall mean a period beginning at 9:00 AM local time in the Commonwealth of Massachusetts on the first day of the calendar month and ending at the same hour on the first day of the next succeeding calendar month.
14. The term "Pipeline Company" shall mean the company identified by Buyer pursuant to Article VI, Section 1 as the pipeline company which shall deliver Buyer's supply of natural gas to Colonial.
15. The term "Pipeline Transportation Agreement" shall mean Buyer's agreement with the Pipeline Company identified in the forepart of this agreement.
16. The term "PSI" shall mean pounds per square inch, gauge pressure.
17. The term "Receipt Point" shall mean the applicable city gate station determined pursuant to Article VI, Section 1.
18. The term "Transportation Volume" shall have the meaning set forth in Article III, Section 1.

ARTICLE III

Transportation Volumes

1. Obligation to Transport: Subject to the conditions hereinafter set forth, Colonial agrees to transport and deliver to Buyer at the Delivery Point volumes of natural gas thermally equivalent to those volumes of natural gas delivered each day to Colonial by the Pipeline Company for Buyer's account, up to a volume of 9,695 mcf per day (the "Transportation Volume"); provided, however, that the Transportation Volume may, subject to availability of surplus interruptible

transportation capacity on Colonial's system, be adjusted upward to a volume not to exceed 10,500 mcf per day upon approval of Colonial after Buyer has demonstrated that it has firm contracts for the purchase and the transportation to Colonial's system of at least the amount of the proposed adjusted Transportation Volume, which approval shall not be unreasonably withheld thirty days following the date notice of the proposed adjustment is given to Colonial.

2. Limitations: Subject to a maximum delivery obligation of 402 mcf per hour at the Delivery Point (which amount will be adjusted pro rata upon any adjustment to the Transportation Volume), Colonial shall provide interruptible transportation service in the manner described herein only when in Colonial's sole judgement Colonial has sufficient capacity to provide such service. Colonial may curtail or interrupt the delivery of the Transportation Volume to Buyer at any time in whole or in part at the option and discretion of Colonial. Colonial will give Buyer at least five (5) hours' advance notice by telephone of any such curtailment or interruption at Buyer's telephone number to be supplied to Colonial by written notice given no later than the Commencement Date; and Buyer shall be available to receive such notice 24 hours a day, seven (7) days a week. Upon receipt of such notice, Buyer shall curtail or discontinue the use of gas coming from the delivery point within such five hours, and in the event of any failure to do so, Buyer will pay Colonial an additional charge of ten dollars (\$10.00) for each mcf of gas used thereafter over and above all other payments to be made by Buyer to Colonial hereunder. Notwithstanding any payment of such additional charge, Colonial may discontinue transportation service to

Buyer if Buyer fails to comply with its obligations to discontinue use in accordance with this paragraph or in the event of a situation in which Colonial believes its capacity to service its firm customers may be jeopardized.

It is understood that Colonial has no obligation to provide service under this agreement other than on the interruptible basis described above. Buyer warrants and agrees that it shall maintain complete alternate standby fuel and equipment available for use in the event of curtailment or interruption of service.

Notwithstanding the foregoing, Colonial shall not be liable to Buyer or to Buyer's customers for any loss or damage incurred by Buyer resulting from (a) any curtailment or interruption, including a permanent interruption in the delivery of the Transportation Volume, whether or not notice of such curtailment or interruption is given, or (b) any variation in the quality or pressure of the Transportation Volume delivered.

Nothing herein shall be construed to limit Colonial, during the term hereof, in contracting to provide to other customers transportation services, whether of a like or different nature.

Nothing herein shall be construed as obligating Colonial to construct additional facilities.

3. Responsibility: Buyer shall be solely responsible for securing faithful performance by the Pipeline Company in all matters which may affect Colonial's performance hereunder, and Colonial shall not be liable hereunder to Buyer or to any other person as a result of the failure of the Pipeline Company so to perform.

ARTICLE IV

Term

The term of this agreement shall commence on its effective date as provided in Article XI, Section 6 below, and shall continue until the fifteenth anniversary of the Commencement Date as defined in and determined pursuant to the Power Sale Agreement dated April 13, 1987 between Commonwealth Electric Company ("ComElectric") (the "Commencement Date") and Buyer unless it is (i) earlier terminated in accordance with Article IX or Section 6 of Article XI below or (ii) the Fuel Agreement (as defined herein) is terminated for any reason other than a default thereunder by Colonial; provided that if Buyer does not give Colonial confirmation from ComElectric that the Commencement Date has occurred within one year of the date Buyer begins delivering natural gas to Colonial hereunder (the "Delivery Date"), the "Commencement Date" shall be deemed to be such earlier Delivery Date. This agreement shall further continue thereafter for successive one-year periods ending on the anniversary of the Commencement Date (as determined pursuant to this section) in each subsequent year subject to the right of Colonial or Buyer to terminate this agreement by written notice delivered to the other at least 120 days prior to the end of the respective one-year period.

ARTICLE V

Measurement of Transportation Volumes

1. Measurement and Measuring Equipment: The volumes of gas delivered hereunder shall be determined by use of measuring equipment which Colonial will own and operate for purpose of deliveries of gas to Buyer. Any metering required to provide service hereunder shall be

selected, installed and maintained by Colonial at Buyer's expense, including remote-controlled telephone monitoring equipment required to allow Colonial to monitor instantaneously Buyer's usage.

In the event any meter fails to register or registers incorrectly, Colonial shall reasonably determine the length of the period during which such meter failed to register or registered incorrectly and, based upon records of Buyer indicating the prior gas usage of its equipment and other information, the quantity of gas delivered during such period, and Colonial will make an appropriate adjustment based thereon. For the purpose of this section, any meter which registered not more than two (2) percent high or low shall be deemed correct.

In addition, Buyer shall furnish and maintain, at no cost to Colonial, the necessary space, housing, fencing and foundations for the meters, regulators, and other gas equipment owned by Colonial as are installed upon Buyer's premises, whether such equipment be furnished by Buyer or Colonial. Such space, housing, fencing and foundations shall be in conformity with public laws and regulations, and subject to Colonial's specifications and approval.

2. Meter Readings: Meter readings for normal billing purposes will be taken, so far as practicable, daily at approximately 8:00 a.m. through the remote-controlled telephone monitoring equipment referred to in Section 1 of this Article. In addition, Colonial shall make at least one on-site meter reading each month at Buyer's Facility to check the accuracy of the telephone monitoring equipment. To the extent there is any inconsistency between an on-site meter reading and any readings through the remote-controlled telephone monitoring equipment, Colonial

shall make reasonable adjustments in the latter type of readings to make them consistent with the on-site readings.

3. Meter Test: Colonial, at its expense, shall periodically inspect and test its meters and shall replace its meters at intervals not exceeding the period designated for replacement in Chapter 164, Section 115A of the Massachusetts General Laws as amended or superseded from time to time. At the written request of Buyer, Colonial shall make additional tests of any or all such meters in the presence of Buyer's representatives. With respect to any meter, the cost of such additional tests shall be borne by Buyer if the percent of error is found to register not more than two (2) percent high or low.
4. Buyer's System: Buyer shall furnish, own, maintain, and operate at its expense the complete system of such piping and appurtenances on Buyer's side of the Delivery Point as is sufficient for the proper utilization of the gas to be transported hereunder.

ARTICLE VI

Delivery and Receipt Points - Pressure and Quality

1. Delivery and Receipt Points: The natural gas to be transported hereunder shall be received by Colonial from a pipeline company (the "Pipeline Company") to be designated by Buyer among Tennessee Gas Pipeline Company ("Tennessee") and Champlain Pipeline Company ("Champlain") at a point (the "Receipt Point") which shall be a city gate delivery point or points to be designated by Colonial for the designated Pipeline Company. Buyer shall give Colonial written notice of its designation of the Pipeline Company at least twenty (20) days before entering into an agreement with a designated Pipeline Company.

and Colonial within ten (10) days after receipt of such notice shall notify Buyer of the designated Receipt Point for such Pipeline Company. Colonial shall deliver such natural gas to Buyer at the Delivery Point.

2. Quality: The natural gas delivered hereunder by the Pipeline Company to Colonial shall be of at least the same quality as that specified in the Pipeline Company's FERC Gas Tariff governing deliveries by the Pipeline Company to Colonial. The gas delivered hereunder by Colonial to Buyer shall be the same quality as that delivered generally by Colonial to its firm customers. It is understood by Buyer that Colonial from time to time may supplement its system supply with other alternative sources of gas, including without limitation vaporized liquified natural gas and propane gas.

ARTICLE VII

Rates and Billing

1. Rate for Transportation of Gas: The rate per mcf of gas transported by Colonial for Buyer hereunder to the Delivery Point will be (i) nine cents (\$0.09) per mcf if the Receipt Point is that designated for Tennessee in Article VI, Section 1, or (ii) fourteen cents (\$0.14) per mcf if the Receipt Point is that so designated for Champlain.
2. Billing and Late Payment Charge: Buyer shall pay monthly and within the due date stated on Colonial's bill for all such gas delivered since the preceding billing date at the applicable rates determined in accordance with this agreement. If Buyer fails to pay in full within fifteen (15) days after the due date stated on any bill rendered by Colonial for gas received by Colonial for Buyer, a late payment charge at the rate of one and one-half percent (1-1/2%) per month, measured

from the due date, on the unpaid balance until paid in full shall be added and Buyer agrees to pay such late payment charge. The "due date" shall not be earlier than ten days following the mailing of the bill.

3. Bill Adjustments: In the event of a revision to the Pipeline Company invoice adjusting the quantity of transportation gas delivered to Colonial for the account of Buyer, a corresponding adjustment shall occur in the next Colonial bill to Buyer rendered after such invoice.
4. Access to Premises: Buyer shall provide Colonial such reasonable rights of way on and rights of entry to Buyer's Facility as may be required by Colonial in connection with this agreement, including without limitation access for any use, maintenance and periodic inspection of all Colonial's pipe and metering.
5. Provision for Future Taxes: In addition to other payments provided for herein, Buyer shall pay to Colonial the amount of any sales tax or excise tax on the transportation of gas, not now in effect, which Colonial may hereafter be required to collect by any federal, state or local law.

ARTICLE VIII

Imbalances in Deliveries

It is both parties' intent that the quantity of gas delivered by Colonial to Buyer on any day equal the quantity of gas received by Colonial from the Pipeline Company on that day for transport to Buyer. However, operating conditions in the fields of production or in the delivery facilities of Buyer or a third party may prevent this and cause imbalances between receipts and deliveries. Accordingly, any imbalance, as measured

daily in cubic feet, will be handled through a balancing mechanism as follows:

- a. When Colonial receives at the Receipt Point on any day more gas for transport to Buyer than Buyer accepts at the Delivery Point, the amount of such excess gas shall be credited to Buyer's account for subsequent delivery to Buyer; provided, however, that (i) any such credit shall not result in Buyer ever being entitled to receive more than the Transportation Volume on any one day, (ii) Colonial's obligation to deliver such excess gas shall be subject to the same limitations provided for the Transportation Volume in Article III and (iii) at no time shall Buyer's accumulated excess gas credits exceed 2000 acf except as authorized by Colonial from time to time in its sole discretion. Notwithstanding the foregoing, Colonial shall also have the right, but not the obligation, to prevent Buyer's accumulated credits from exceeding the 2000 acf limitation by (i) requiring Buyer to adjust downward the quantities being delivered to Colonial by the Pipeline Company to the volume of gas then being taken by Buyer at the Delivery Point and/or (ii) refusing further deliveries from the Pipeline Company on behalf of Buyer in order to prevent Buyer's accumulated excess gas credits from exceeding 2000 acf. If Colonial refuses any deliveries from the Pipeline Company in accordance with this section, Buyer agrees to reimburse Colonial the amount of any penalties, fees or other additional costs it suffers or incurs as a result of Buyer's refusal or inability to accept gas from Colonial that Buyer has ordered for delivery by the Pipeline

Company at the Receipt Point. In any event, upon termination of this agreement pursuant to Article IX hereof or upon expiration of its term, any unused excess gas credits of Buyer shall be forfeited.

- b. When Buyer on any day takes more gas at the Delivery Point than Buyer, after applying its existing credits for excess gas deliveries to Colonial, has had delivered by the Pipeline Company to Colonial for transport, such additional gas shall be treated as an interruptible sale under the Interruptible Service Agreement and shall be subject to the terms provided therein (including any penalty rate in effect if Colonial has previously notified Buyer that interruptible service is curtailed or interrupted). If Buyer breaches the Interruptible Service Agreement, then Buyer shall be deemed to be in default of this agreement.

ARTICLE IX

Default

If either party shall fail to perform or otherwise be in default of any of its obligations under (i) this agreement, other than Buyer's obligations under Article VIII(b), (ii) the Interruptible Service Agreement or (iii) the fuel purchase rights agreement (the "Fuel Agreement") of even date between Buyer and Colonial regarding the rights of Colonial to purchase certain gas supply under agreements of Buyer and to have it transported pursuant to certain transportation facilities of Buyer, the other party may terminate this agreement by giving the defaulting party written notice stating specifically the nature of the default and giving notice of termination; whereupon the party in default shall have thirty (30) days after receipt of

the notice in which to remedy or remove the default, and if within the period, the default is remedied or removed and the notifying party is made whole and fully indemnified for any and all consequences of such default, then the notice of termination shall be withdrawn, and this agreement shall continue in full force and effect. If the default is not remedied or removed within said thirty (30) day period and the notifying party is not made whole and indemnified for any and all consequences of such default, or if Buyer is in default of its obligations under Article VIII(b) at any time, the notifying party (or in the latter instance, Colonial) shall upon ten (10) days' written notice have the right to terminate this agreement immediately. Any termination of this agreement pursuant to the provisions of this section shall be without prejudice to the right of Colonial to collect any amounts then due Colonial for transportation service prior to the time of termination, including any properly applied charges for imbalances. No waiver by either party of any default of the other under this agreement shall operate as a waiver of any future default, whether of like or different character or nature.

ARTICLE X

Return to Utility Service

If upon termination of this agreement Buyer should seek to become a customer of Colonial under its approved rates for firm service, the Facility shall be treated as a "new customer" of Colonial and the availability of full utility service for it shall be subject to any limitations in Colonial's priority of service or its suppliers priority of service applicable to Buyer that may exist at such time.

ARTICLE XI

Miscellaneous

1. Responsibility for Gas: Buyer shall be deemed to be in exclusive control and possession of the transportation gas until such gas has been delivered to Colonial by the Pipeline Company. Colonial shall be deemed to be in control and possession of gas delivered to it by the Pipeline Company for Buyer in accordance with this agreement until such gas shall have been delivered to Buyer at the Delivery Point, after which Buyer shall be deemed to be in control and possession thereof. Buyer shall have no responsibility with respect to the gas from the Receipt Point until it passes the Delivery Point or on account of anything which may be done, happen or arise with respect to the gas between the Receipt Point and the Delivery Point and Colonial shall have no responsibility with respect to the gas, or on account of anything which may be done, happen or arise with respect to the gas, before it passes the Receipt Point or after it passes the Delivery Point.
2. No Special or Consequential Damages: Neither Colonial nor the Buyer shall be liable to the other or any party claiming through the other for special or consequential damages.
3. Projected Transportation Volumes: Buyer will provide Colonial five (5) calendar days prior to the month of delivery with notice of the projected daily transportation volumes for the month, which daily volumes shall not exceed the Transportation Volume stated in Article III of this agreement. Any such projection may be for more than one month in advance, but any change from such projection shall

meet the 5-day notice requirement. The only purpose of such projections is to provide Colonial with notice of Buyer's expected transportation requirements; it in no way alters the other provisions of this agreement or obligates Colonial to transport such projected volumes. It is Buyer's responsibility to ensure that volumes delivered by the Pipeline Company to Colonial conform with the terms of this agreement.

4. Warranty of Title: Buyer warrants that it will at the time of delivery to Colonial from the Pipeline Company, have good and merchantable title to all gas so delivered to Colonial, free and clear of all liens, encumbrances and claims. Buyer will indemnify Colonial and save it harmless from all suits, actions, debts, accounts damages, costs, losses and expenses arising out of the adverse claims of any and all persons to said gas and/or to royalties, taxes, licenses, or charges thereon which are applicable to such gas and/or the delivery of such gas to Colonial for transportation hereunder. Title to the gas received, transported and delivered shall at all times remain with Buyer and shall not pass to Colonial.
5. Modification of Pipeline Transportation Agreement: Buyer shall give Colonial written notice of any modification to the Pipeline Transportation Agreement (identified in the forepart hereof) occurring or made effective after the execution of this agreement. Such modification shall not obligate Colonial to modify this agreement in accordance therewith, but Colonial retains the right to do so.
6. Public Regulation: Colonial is a public utility subject to regulation by the Department. This agreement must be filed with the Department in

accordance with Section 94 of Chapter 164 of the Massachusetts General Laws and shall, subject to any disapproval or limitations imposed by the Department, become effective on the thirty-first day after the date of such filing or on such later date as may be ordered by the Department. Compliance by Colonial with any order of the Department or any other federal, state or local governmental authority acting under claim of jurisdiction issued before or after the effective date of this agreement shall not be deemed to be a breach hereof. The price provisions in this agreement shall be subject to review and determination by the Department in any proceeding brought under the provisions of Section 93 or 94 of Chapter 164 of the Massachusetts General Laws. In the event of the issuance of any order of the Department under Chapter 164 of the Massachusetts General Laws, which modifies the provisions of this contract, either Colonial or Buyer, if affected adversely by such order, shall have the option within thirty (30) days after the issuance of such order to terminate this agreement by giving notice of termination to the other party.

7. Limitation of Liability. Colonial shall not be liable to Buyer for failure to deliver gas, nor shall Buyer be liable to Colonial for failure to receive and use gas, if such failure results from strikes, lockouts, governmental restrictions or regulations, acts of God or the public enemy, fires, explosions, breakage or accident to machinery or lines of pipe, line freezups, temporary failure of gas supply, or any causes whatsoever which Colonial or Buyer, as the case may be, is unable to prevent by the exercise of ordinary diligence.

Notwithstanding the foregoing, Buyer shall not be relieved of any obligation to pay for the services rendered by Colonial hereunder.

8. Notices: Except for telephone notices expressly provided for herein, all notices required or permitted to be given hereunder shall be deemed given upon mailing such notices by registered or certified mail, postage prepaid, addressed as follows:

If to Buyer: Pepperell Power Associates Limited Partnership
c/o Energy Management Inc.
200 Boylston Street
Chestnut Hill, Massachusetts 02167
Attention: President

If to Colonial: Colonial Gas Company
40 Market Street
Lowell, Massachusetts 01852
Attn: Vice President-Rates

9. Prior Agreements: This agreement supersedes and terminates any prior agreements, written or oral, if any, between the parties relating to the subject matter of this agreement.
10. Assignment and Successors: This agreement may not be assigned, by operation of law or otherwise, by either of the parties without the prior written consent of the other party, which consent shall not be unreasonably withheld provided that, in the case of Buyer, such assignment is to an entity operating a facility at the Delivery Point designated herein. This agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns.
11. Amendments: NO PROMISES, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES SHALL BE BINDING UPON COLONIAL OR BUYER UNLESS THE SAME HAVE BEEN MADE IN WRITING AS PART OF THIS AGREEMENT.

12. Governing Law: This agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as an instrument under seal by their authorized officers as of the date first written above.

COLONIAL GAS COMPANY

By: Hector A. Fournier

Title: Vice President

PEPPERELL POWER ASSOCIATES LIMITED PARTNERSHIP

By: Energy Management, Inc.
general partner

By: James M. Jordan
President