

ATTACHMENT C

**Amended and Restated Continuing Site/Interconnection Agreement By and Between
Orange and Rockland Utilities, Inc. and AER NY-Gen, LLC Pertaining To Hydroelectric
Generating Stations**

AMENDED AND RESTATED
CONTINUING SITE/INTERCONNECTION AGREEMENT
BY AND BETWEEN
ORANGE AND ROCKLAND UTILITIES, INC.
AND
AER NY-GEN, LLC
PERTAINING TO HYDROELECTRIC GENERATING STATIONS

August 12, 2010

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**AMENDED AND RESTATED
CONTINUING SITE/INTERCONNECTION AGREEMENT**

AMENDED AND RESTATED CONTINUING SITE/INTERCONNECTION AGREEMENT ("Agreement"), dated as of August 12, 2010, by and between Orange and Rockland Utilities, Inc. ("Seller"), a New York corporation with a principal place of business located at One Blue Hill Plaza, Pearl River, New York 10965, and AER NY-GEN, LLC (f/k/a Mirant NY-GEN, LLC (f/k/a Southern Energy NY-GEN, LLC)) ("Buyer"), a Delaware limited liability company with a principal place of business located at 613 Plank Road, Forestburgh, NY 12777.

WITNESSETH:

WHEREAS, Seller and Southern Energy NY-GEN, L.L.C. ("Southern Energy") entered into the Gas Turbine and Hydroelectric Generating Stations Sales Agreement dated as of November 24, 1998 ("ASA") for the sale of certain of Seller's generating assets to Southern Energy; and

WHEREAS, Seller has continued to operate its transmission and distribution business in the same locations as it did in 1998; and

WHEREAS, in the ASA, Seller agreed to transfer to Southern Energy certain Purchased Assets (hereinafter defined), including certain designated real and personal properties, contracts, and licenses pertaining to Seller's generating assets and to retain certain Excluded Assets (hereinafter defined) including designated real and personal properties, contracts and licenses all as to be more specifically set forth in the Separation Document (hereinafter defined); and

WHEREAS, Southern Energy needed certain Interconnection Services (hereinafter defined) from Seller for the Purchased Assets; and

WHEREAS, Seller needed access to parts of the Purchased Assets, and Southern Energy needed access to parts of the Excluded Assets; and

WHEREAS, Southern Energy and Seller entered into that certain Continuing Site/Interconnection Agreement, dated as of November 24, 1998, as amended by the First Amendment, dated as of May 10, 1999 (the "Original Agreement"); and

WHEREAS, Southern Energy changed its name to Mirant NY-GEN, LLC ("Mirant NY-GEN") on January 19, 2001; and

WHEREAS, the membership interests in Mirant NY-GEN were sold to Alliance Energy Renewables, LLC on May 7, 2007; and

WHEREAS, Mirant NY-GEN changed its name to AER NY-GEN, LLC on May 11, 2007; and

WHEREAS, Buyer and Seller wish to bifurcate the Original Agreement into two identical agreements that differ only in that Buyer's gas turbine generating stations are covered by one agreement and its hydroelectric generating stations are covered by a second agreement, so as to contractually segregate Buyer's distinct business lines; and

WHEREAS, Buyer and Seller have agreed to execute this mutually acceptable Agreement in order to provide certain Interconnection Services to Buyer for its hydroelectric generating stations and to define the continuing responsibilities and obligations of the Parties with respect to the use of the other Party's property, assets and facilities,

NOW THEREFORE, in consideration of the mutual representations, covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

ARTICLE 1 **DEFINITIONS**

1.0 **Definitions.** As used in this Agreement, the following terms shall have the meanings specified or referred to in this **Article 1**. Any term not defined herein has the meaning set forth in the ASA.

1.1 "**Affiliate**" means with respect to a corporation, partnership, or other entity, each other corporation, partnership or other entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

1.2 "**Agreement**" means this Amended and Restated Continuing Site/Interconnection Agreement, dated as of August 12, 2010, between Buyer and Seller.

1.3 "**Ancillary Agreements**" means the Operating Easement, the Load Pocket Agreement and the Transition Agreement.

1.4 "**Asset Sales Agreement**" or "ASA" means the Gas Turbine and Hydroelectric Generating Stations Sales Agreement dated as of November 24, 1998 by and between Seller and Southern Energy.

1.5 "Buyer" means AER NY-GEN, LLC.

1.6 "Closing Date" means the date and time at which the closing of the transactions contemplated by the ASA actually occurs.

1.7 "Excluded Assets" means those transmission, distribution, substation, and communication facilities and related support equipment of Seller located on, or adjacent to, the Purchased Assets which will not be sold to Buyer, but will be retained by Seller under the ASA, and which are described or referred to in the Separation Document.

1.8 "Good Utility Practices" means any of the practices, methods or acts engaged in or approved by a significant portion of the electric utility industry with respect to similar facilities during the relevant time period which in each case, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, law, regulation, environmental protection, and expedition. Good Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to delineate the acceptable practices, methods or acts generally accepted in such industry.

1.9 "Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, police, judicial, regulatory, taxation or administrative functions of or pertaining to a government.

1.10 "Interest Rate" means the publicly announced prime rate of The Chase Manhattan Bank on the date such amount was required to be paid.

1.11 "Interconnection Facilities" means facilities or portions of facilities that are identified as interconnection facilities and associated equipment in Schedule A, as amended from time to time.

1.12 "Interconnection Service" means the services provided by Seller to interconnect the Purchased Assets with the T&D System, such services being at least equivalent to that which the Seller currently provides to the Purchased Assets. Interconnection Service shall not mean the provision of capacity or energy, transmission service, ancillary services, or any other service which are available or required under any NYPP agreement, the ISO Tariff or Seller's Open Access Transmission Tariff, or any retail wheeling tariff, including any distribution service tariff or contract, in each case as amended from time to time.

1.13 "ISO" means the New York Independent System Operator, or its successor or its equivalent, which has assumed responsibility and operational control over certain electric transmission facilities located in New York State and the administration of the ISO Tariff, subject to regulation by the FERC.

1.14 "ISO Tariff" means the ISO's Open Access Transmission Tariff as filed with FERC by the NYPP member systems on December 19, 1997 in Docket Nos. ER97-1523-000,

NYISO Agreements --> O&R and AER NY-Gen - Hydro IA
ER97-1523-000, ER97-470-000, and ER97-4234-000, as it may be modified, amended, or superceded from time to time, and related agreements.

1.15 "Joint Tag List" means the personnel approved by Buyer and Seller in accordance with the Parties' Switching, Tagging and Grounding Rules.

1.16 "Maintain" means construct, reconstruct, install, inspect, test, repair, replace, operate, patrol, maintain, use, modernize, expand, upgrade, or other similar activities.

1.17 "NERC" means North American Electric Reliability Council or its successors.

1.18 "NPCC" means Northeast Power Coordinating Council, a regional reliability governing body or its successors.

1.19 "NYPP" means New York Power Pool or its successors.

1.20 "NYPSC" means the New York Public Service Commission.

1.21 "Operating Easement" means with respect to the Purchased Assets the easements to be granted or reserved by the Parties as contemplated by the ASA and the Separation Document.

1.22 "Parties" means Seller and Buyer and Party means either Seller or Buyer.

1.23 "Point of Interconnection" means each ownership point of demarcation, at each of the Purchased Assets, where capacity, energy and ancillary services each are transferred between the Purchased Assets and the T&D System, each point shall have a unique identifier, meter location, meter number, metered voltage and meter compensation terms, as shown in the Separation Document.

1.24 "Primary Equipment" means bulk power equipment such as transformers, circuit breakers, rigid or strain bus and other equipment operating at 2,400 volts or above, as set forth in Schedule A or the Separation Document.

1.25 "Purchased Assets" means the Mongaup Hydroelectric Station, Rio Hydroelectric Station, and Swinging Bridge Hydroelectric Station and related assets transferred by Seller to Buyer through the ASA and as more fully set forth in the ASA.

1.26 "Qualified Personnel" means individuals trained for their positions by Buyer and/or Seller in accordance with Good Utility Practices.

1.27 "Release" means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump, or allow to escape into or through the environment.

1.28 "Revenue Meters" means all Kwh, Kvah, Kvarh and demand meters, pulse isolation relays, pulse conversion relays, transducers used by the NYPP, ISO, the Seller or the Buyer for billing purposes, and associated totalizing and Remote Access Pulse Recorder

(RAPR) equipment required to measure the transfer of capacity, energy or ancillary services between the Parties, the current locations of which are set forth in Schedule F (Part I) hereto, and the anticipated meter locations of which are set forth in Schedule F (Part II) hereto.

1.29 "Secondary Systems" means control or power circuits that operate below 600 volts, AC or DC including but not limited to any hardware, control or protective devices, cables, conductor, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers where signals or energy may be used by Buyer, Seller and/or its affiliates, as set forth in Schedule A or the Separation Document.

1.30 "Seller" means Orange and Rockland Utilities, Inc.

1.31 "Seller's Open Access Transmission Tariff" means the Open Access Transmission Tariff of Seller on file with the FERC, as the same may be modified, amended or superseded from time to time.

1.32 "Separation Document" means the Separation Document to be agreed upon by the Parties under Section 3.5.2 including any documents or exhibits referred to or incorporated by reference in the Separation Document and any documents or exhibits otherwise indicated in any such document which shall set forth, with specificity, the demarcation of the Purchased Assets and Excluded Assets. The Separation Document shall (A) consist of one-line drawings, elementary diagrams, three-line diagrams, relay and control panel front view and wiring diagrams, and other physical drawings showing equipment layout and site plans (in each case, where available), (B) be consistent with Schedule A hereto, and Schedules to the ASA, as amended or supplemented, and (C) be mutually agreed upon as provided in Section 3.5.2 hereof. The Separation Document will also identify the Operating Easement which will be granted or reserved by the Parties.

1.33 "Switching, Tagging, and Grounding Rules" shall have the meaning set forth in Section 3.14.2.

1.34 "System Operator" means the energy control center staff responsible for central dispatch as provided in any NYPP agreement or the ISO Tariff, as amended or superseded.

1.35 "T&D System" means the facilities controlled or operated by Seller, including the Interconnection Facilities, for purposes of providing point-to-point transmission service, network integration service interconnection service and distribution service, including services under NYPP Agreement and the ISO Tariff.

1.36 "Transition Agreement" means the Transition Power Sales Agreement dated as of November 24, 1998, by and between Seller, Southern Energy, Southern Energy Bowline, L.L.C. and Southern Energy Lovett, L.L.C.

1.37 Each of the following terms has the meaning specified in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
<u>ASA</u>	Recitals
<u>CEI</u>	15.4
<u>Direct Claim</u>	10.5.2
<u>Disclosing Party</u>	7.1
<u>EMS</u>	3.8.10
<u>Force Majeure Event</u>	12.2
<u>Indemnification Floor</u>	10.4.3
<u>Indemnifying Party</u>	10.4.2
<u>Indemnitee</u>	10.4.1
<u>Net Worth</u>	15.1
<u>Operating Metering and Equipment Protection Requirements</u>	3.1.2
<u>Parties' Switching, Tagging and Grounding Rules</u>	3.14.2
<u>RAPR</u>	3.6.4
<u>Recipient</u>	7.1
<u>RTU</u>	3.6.4
<u>SCADA</u>	3.6.4
<u>Seller's Incremental Cost</u>	3.8.10
<u>Seller Indemnifiable Losses</u>	10.1
<u>Third Party Claim</u>	10.5

ARTICLE 2

TERM

2.1 Except as provided herein, this Agreement shall become effective as of the Closing Date, and shall continue in full force and effect with respect to each specific Purchased Asset until the date that all of the generating units located at each such Purchased Asset are retired and not replaced or such other mutually agreeable termination date.

2.2 The applicable provisions of this Agreement shall continue in effect after cancellation or termination hereof to the extent necessary to provide for final billings, billing adjustments and payments pertaining to liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

ARTICLE 3
CONTINUING OBLIGATIONS AND RESPONSIBILITIES

3.1 Interconnection Service.

3.1.1 Seller shall provide Buyer with such Interconnection Service as Buyer determines that it requires under the terms and conditions specified in this Agreement and Seller's Open Access Transmission Tariff. Interconnection Service shall be provided under this Agreement only with respect to the Purchased Assets and any costs associated with establishing or providing Interconnection Service for or in connection with an expansion of generating capacity, including any costs associated with any reinforcements to or other capital expenditures with respect to the T&D System (or any studies regarding the same), shall be borne by the Parties in accordance with the ISO Tariff or Seller's Open Access Transmission Tariff, whichever is applicable.

3.1.2 Seller agrees to permit Buyer to interconnect the Purchased Assets to the T&D System as long as (a) Buyer continues to operate such facilities pursuant to Good Utility Practices and (b) the Buyer has not committed an event of default which it has failed to cure as provided hereunder. In the event of (a) or (b) above, Seller may interrupt Interconnection Service in accordance with Section 3.12. In the event Buyer fails to maintain the Purchased Assets in accordance with Good Utility Practices or has not cured an event of default, such interconnection right shall only be affected to the extent set forth in this Agreement.

3.1.3 Buyer shall be responsible for making arrangements and payments under the applicable tariffs for transmission, distribution and ancillary services associated with the delivery of capacity and/or energy from the Purchased Assets. Buyer shall also be responsible for making arrangements and payments for capacity, energy, transmission, distribution and ancillary services associated with the acquisition and/or delivery of capacity and/or energy to the Buyer's facilities for the Buyer's station service requirements, and Schedule G hereto identifies the electric and gas meters which Seller will use to measure the services which Seller itself will provide to Buyer under this Section 3.1.3. Seller shall cooperate with Buyer with respect to such arrangements. Buyer may deduct the amount of electric energy delivered to the Buyer's facilities for the Buyer's station service requirements from the gross metered amount of electric energy delivered from the Purchased Assets. In the event Buyer installs additional metering equipment for the purpose of calculating such adjustment, Buyer shall be responsible for the cost thereof.

3.2 Access Easements, Conveyances, Licenses, and Restrictions.

3.2.1 General. The dispatch and ownership points of demarcation for the Interconnection Facilities, the Purchased Assets and the T&D System are set forth in Schedule A and will be set forth in the Separation Document. The Parties hereby agree to provide each other access to facilities, properties, equipment, and records and to grant or reserve the easements comprising the Operating Easement as may be necessary and convenient to enable each other to maintain their respective facilities, equipment, and property in a manner consistent with Good Utility Practices, or to defend themselves in any litigation relating to the T&D System, the Purchased Assets or the Excluded Assets. Such access shall be provided in a manner so as not to interfere unreasonably with the ongoing business operations, rights, and obligations of the other Party.

3.2.2 Without limiting the generality of Section 3.2.1, Seller shall have access to all of its substation, telecommunication, transmission, or distribution systems, equipment and Secondary Systems and facilities located on the Purchased Assets, and Buyer shall have access to all of its equipment and property located on the Excluded Assets, according to the terms and conditions of the Operating Easement.

3.2.3 The easements comprising the Operating Easement granted to Seller by Buyer and by Buyer to Seller are intended to be of a permanent nature and shall not be revoked by the grantor, nor shall the grantor take any action that would impede, restrict, diminish, or terminate the rights of access or use granted by the Operating Easement. Notwithstanding the foregoing, (a) should the grantee, or its successors or assigns, decide to permanently abandon the use of any Operating Easement or portion thereof, the grantee shall send the grantor written notice of such intent, and the grantee shall cause a release of said Operating Easement or appropriate portion thereof to be recorded in the appropriate county clerk's office, or other office for recording real estate documents; and (b) either Party may request the other to relocate any or all of the Operating Easement locations within a generating station or upon a generating station site if such relocation is necessary for such Party to operate its facilities, whereupon the Parties shall negotiate in good faith an appropriate relocation; provided, however, that the Party requesting the relocation shall pay all reasonable costs and expenses associated with the relocation and the grantor shall execute or obtain, in a form reasonably satisfactory to the grantee and suitable for recording, all instruments necessary to establish the new easement location. Both Parties agree to use commercially reasonable efforts to establish a mutually agreeable new easement location if requested.

3.2.4 Buyer shall grant Seller and Seller shall grant Buyer additional conveyances, easements, or licenses as are necessary for ownership, possession, maintenance, operation, or repair of the grantee's equipment and facilities as long as said conveyances, easements or licenses do not have a material adverse effect upon grantor's operations and are consistent with the purpose of this Agreement and the ASA. The grantee of such easement shall use all reasonable measures to exercise its rights thereunder in a manner which does not interfere with grantor's operations.

3.2.5 During the six months following the execution of this Agreement, Buyer and Seller shall cooperate in the development of documentation necessary to prepare and record the Operating Easement. Seller shall be responsible for developing the initial draft of such documentation, which Seller shall submit to Buyer for comment within three months following the execution of this Agreement. If such documentation has not been agreed upon by Seller and Buyer within said six month period, those aspects of the Operating Easement which remain in dispute shall be resolved as provided in Article 13. The Operating Easement must be prepared prior to the Closing Date.

3.2.6 Both Parties shall provide keys, access codes, or other access methods necessary to enter each other's facilities for purposes of exercising rights under the Operating Easement. Access shall only be granted to Qualified Personnel and access shall be exercised to minimize interference with the grantor's operations.

3.3 Facility and Equipment Maintenance.

3.3.1 Each Party shall maintain, at its own expense, the roadways, property, equipment, and facilities and access to said facilities that it owns that are subject to this Agreement and the Operating Easement pursuant to Good Utility Practices.

3.3.2 Unless otherwise specified herein, or unless the Parties mutually agree to a different arrangement, neither Party shall be responsible for the maintenance of the other Party's Primary Equipment or Secondary Systems, as set forth in Schedule A hereto or the Separation Document, regardless of the location of the Primary Equipment or Secondary Systems.

3.3.3 Equipment Maintenance and Testing Obligations.

3.3.3.1 Buyer and Seller shall each Maintain, at its own expense, its own property, equipment, facilities, and appurtenances and access thereto in a safe and efficient manner and in accordance with Good Utility Practices.

3.3.3.2 Buyer shall test, calibrate, verify or validate the telemetering, data acquisition, protective relay, control equipment or systems or other equipment or software related to the Purchased Assets pursuant to Good Utility Practice. Buyer shall perform such additional testing as Seller may reasonably request, provided however, Seller shall pay the costs thereof unless such testing, calibration, verification or validation required by Seller reveals an inaccuracy by a margin of greater than that allowed under

applicable criteria, rules and standards under Good Utility Practices for the facilities being tested calibrated, verified or validated. Except as otherwise provided herein, Buyer shall be responsible for all costs to test, calibrate, verify or validate Buyer's equipment or software.

3.3.3.3 Pursuant to the foregoing Section 3.3.3.2 and subject to Section 3.6.1, Buyer shall make available to Seller for copying, at Seller's reasonable request and expense, copies of inspection reports, installation and maintenance documents, test and calibration records, verifications and validations of the telemetering, data acquisition, protective relay, control equipment or systems or other equipment or software connected to the T&D System.

3.4 New Construction or Modifications.

3.4.1 Seller may construct or modify the T&D System interconnected to the Purchased Assets pursuant to Good Utility Practices and Buyer may install, construct or modify the Purchased Assets interconnected to the T&D System pursuant to Good Utility Practices. Unless otherwise required by law, regulation, or Good Utility Practices, Seller shall not be required at any time to upgrade or otherwise modify the T&D System, provided however, Seller shall make such transmission upgrades as Buyer may request in connection with Buyer's addition of generating capacity at, or repowering of, any of the Purchased Assets. The Parties will bear the cost of such upgrades in accordance with the ISO Tariff or Seller's Open Access Transmission Tariff, whichever is applicable.

3.4.2 In the event the Seller plans to undertake additions, modifications, or replacements of the T&D System, including the Interconnection Facilities, Seller shall submit to Buyer all engineering plans and specifications that Buyer may reasonably request related to such modifications. If such additions, modifications, or replacements might affect the Buyer's operation of the Purchased Assets, Seller shall give Buyer not less than 120 days' prior written notice of the additions, modifications, or replacements prior to undertaking such additions, modifications, or replacements. Any such additions, modifications, or replacements shall comply with Good Utility Practices. Seller shall use all commercially reasonable efforts with respect to any such additions, modifications, or replacements to avoid any adverse impact on the Purchased Assets.

3.4.3 In the event the Buyer plans to increase or decrease the capacity of the Purchased Assets, the Buyer shall submit to Seller all engineering plans and specifications that Seller may reasonably request related to such increase. Such specifications and plans shall be submitted by the Buyer to Seller not later than 12 months prior to the respective commercial operation date for additions, modifications, or replacements to the Purchased Assets that will result in such increase, except as otherwise agreed to by Seller. All such

additions, modifications, or replacements shall comply with Good Utility Practices. Buyer shall use commercially reasonable efforts with respect to any such additions, modifications, or replacements to avoid any adverse impact on the T&D System.

3.4.4 If the Buyer plans any additions, modifications, or replacements to the Purchased Assets that may not increase or decrease their capacity, but could reasonably be expected to affect the T&D System, the Buyer shall give Seller reasonable notice, but not less than 60 days' prior written notice thereof; provided, however, that the Buyer shall provide Seller with at least six months' prior written notice, and shall submit to Seller the plans and specifications for such additions, modifications, or replacements if they will involve an outage of the Purchased Assets for 30 days or more. All such additions, modifications, or replacements shall comply with Good Utility Practices.

3.4.5 Seller shall inform the Buyer in writing within 60 days of any additions, modifications, or replacements to the T&D System that are necessary as a result of the addition, modification, or replacement to the Purchased Assets made pursuant to this Section 3.4.

3.4.6 Unless otherwise provided by law, regulation or rule, the Buyer shall reimburse Seller for reasonable and documented costs incurred by Seller in accordance with governing laws, regulations or rules for such additions, modifications, or replacements made to the T&D System (a) that is not a transmission facility under ISO operational control, including the Interconnection Facilities; (b) are a direct result of such additions, modifications, or replacements of the Purchased Assets, regardless of whether the Purchased Assets enter (or have entered into) service, or are interconnected with the T&D System; and (c) are necessary to ensure the reliability of the T&D System. Seller shall provide Buyer with the estimated cost of such additions, modifications, or replacements of the T&D System no later than 30 days prior to the initiation of such addition, modification, or replacement. Nothing herein shall affect Buyer's right to dispute the necessity or amount of such costs.

3.4.7 A Party's acceptance of another Party's interconnection plans and specifications for any proposed addition, modification or replacement of the Purchased Assets, and either Party's participation in interconnected operations with the other Party, are not and shall not be construed as: (a) confirmation or endorsement of the design of the other Party's facilities; (b) a warranty of safety, durability or reliability of the other Party's facilities; or (c) responsibility for strength, details of design, adequacy, or capability of the other Party's facilities.

3.4.8 Upon completion of any addition, modification, or replacement to the Purchased Assets that may reasonably be expected to affect the T&D System, but no later than 90 days thereafter, the Buyer shall issue "as built" drawings to Seller. Upon completion of any addition, modification, or replacement to the T&D System that may reasonably be

expected to affect the operation of the Purchased Assets, but no later than 90 days thereafter, Seller shall issue "as built" drawings to the Buyer.

3.5 Inspections.

3.5.1 General. Each Party shall, at its own expense, have the right, but not the obligation, to inspect or observe all maintenance activities, equipment tests, installation, construction, or other modifications to the other Party's equipment, systems, or facilities which might reasonably be expected to affect the observing Party's operations. The Party desiring to inspect or observe shall notify the other Party in accordance with the notification procedures set forth in Section 3.13.

3.5.1.1 If the Party inspecting the equipment, systems, or facilities observes any deficiencies or defects, which might reasonably be expected to adversely impact the operations of the observing Party, the observing Party shall notify the Party owning the equipment or systems and said owner shall make any corrections necessitated by Good Utility Practices. Notwithstanding the foregoing, the inspecting Party shall have no liability whatsoever for any failure to fully or adequately observe any deficiency or to give such notice, it being agreed that such owning Party shall be fully responsible and liable for all such deficiencies, activities, equipment tests, installation, construction or modification.

3.5.2 Development of Separation Document; Initial Inspection. During the three months following the execution of this Agreement, Buyer and Seller shall cooperate in the development of documentation necessary to prepare the Separation Document. Seller shall be responsible for developing the initial draft of such documentation, which Seller shall submit to Buyer for comment within three months following the execution of this Agreement. The Separation Document must be completed prior to the Closing Date. Buyer shall, without derogation of and in addition to any rights it may have under the ASA, be entitled prior to the Closing Date to inspect, in accordance with this Section 3.5.2, all Purchased Assets, and Excluded Assets to verify and/or determine the accuracy of the data, drawings, and records contained in Schedule A or the Separation Document and to ascertain the points of demarcation between the Purchased Assets and the Excluded Assets. The Parties shall cooperate to schedule Buyer's inspections at each generating station included in the Purchased Assets so that any interference with the operation of each generating station is minimized, to the extent reasonably feasible, and so that Buyer may complete, to the extent reasonably practicable, the inspections of (i) all generating stations/equipment included in the Purchased Assets within 30 working days of commencing the inspections and within four months after the execution of this Agreement, and (ii) all real estate, including any surveys that Buyer may elect to conduct, within 30 working days of commencing the inspections and within four months after the execution of this Agreement. Seller shall provide Buyer with

access to the generating stations at the times scheduled for the inspection. Buyer shall provide qualified engineering, operations, and maintenance personnel to conduct the inspections and Seller shall provide qualified engineering, operations, and maintenance personnel to escort Buyer's personnel and to assist Buyer's personnel in conducting the inspections.

3.5.2.1 At one or more mutually convenient times not more than three months after Buyer has completed its inspection, the Parties shall meet to discuss whether, as a result of the inspection, it is appropriate to modify the Separation Document to more adequately portray the Primary Equipment and ownership points of demarcation and the Secondary Systems ownership points of demarcation. Any modification to any portion of the Separation Document to which the Parties agree shall thereafter be deemed part of the Separation Document for all purposes under this Agreement and the ASA.

3.5.2.2 Each Party shall bear its own costs of participating in the inspections referred to in Section 3.5.2 and in the development of the Separation Document.

3.6 Information Reporting Obligations.

3.6.1 Notwithstanding anything to the contrary in this Agreement, any obligation set forth in this Agreement for Buyer to provide information, reports, or data to Seller shall be subject to the following limitations: (a) such information, reports, or data shall be subject to Section 7.1; (b) Buyer shall be required to provide such information, reports or data only to the extent Seller reasonably requires such information to operate, Maintain, or plan the T&D System pursuant to Good Utility Practices or to fulfill its obligations pursuant to this Agreements; (c) Seller shall request information, reports, and data from Buyer on a non-discriminatory basis with respect to generators interconnected to the T&D System, as necessary, in Seller's judgment, for the purposes set forth in clause (d), below; and (d) Seller shall use any information provided by Buyer pursuant to this Agreement only for the purposes of Maintaining the T&D System pursuant to Good Utility Practices.

3.6.2 Subject to Section 3.6.1, in connection with Seller's maintenance of Interconnection Service, Buyer shall promptly provide Seller with such information as is reasonably requested by Seller, the ISO, NYPP, NYPSC, NPCC, NERC, or the System Operator.

3.6.3 Subject to Section 3.6.1, Buyer shall supply such information as the Seller reasonably requests in connection with the operations, maintenance, regulatory

requirements and analysis of the T&D System. Such information may include metered values for MW, Mvar, voltage, current, amperage, frequency, breaker status indication, or any other information reasonably required by Seller for reliable operation of the T&D System pursuant to Good Utility Practices.

3.6.4 Subject to Section 3.6.1, reasonable information pertaining to generation, transmission and distribution operating parameters shall be gathered by Buyer for electronic transmittal to Seller, using one or more of the following: supervisory control and data acquisition ("SCADA"), remote terminal unit ("RTU") equipment, and remote access pulse recorders ("RAPR") or other analog or digital telemetering equipment.

3.7 Local Services.

3.7.1 General. The Parties agree that, due to the integration of certain control schemes, revenue metering applications, and communication networks, it is cost effective to provide each other with the services set forth in Sections 3.8 and 3.9 below at the prices referenced therein.

3.7.1.1 The Parties shall use commercially reasonable efforts to ensure that services provided by one Party to the other Party pursuant to Sections 3.8 and 3.9 shall be available at all times and in the manner and at the prices specified herein. Notwithstanding the foregoing, either Party may change the services, provided that (a) there is no cost to the receiving Party, and (b) the quality, reliability and integrity of the replacement services are equivalent to the existing services.

3.7.1.2 Neither party shall terminate any services set forth in Sections 3.8 and 3.9 below that it agrees to provide to the other Party, without the other Party's written consent, which shall not be unreasonably withheld, or without, in the case of the services set forth in Sections 3.9.4 and 3.9.5, at least one month's prior written notification, and, with respect to all other services set forth in Sections 3.8 and 3.9, at least 12 months' prior written notification; provided, however, that if either Party no longer needs or desires a particular service provided under Sections 3.8 and 3.9 said Party shall notify the other Party and the providing Party shall terminate said services as soon thereafter as practicable.

3.7.2 Temporary Suspension of Services. The Party providing the services set forth in Sections 3.8 and 3.9 below shall notify and obtain approval, which approval shall not be unreasonably withheld, from the affected Party of any scheduled temporary

suspension of services at least five working days in advance of such suspension. Such notification shall include an estimated time duration for a return to normal conditions.

3.7.2.1 In the event of any unscheduled or forced suspension of the services set forth in Sections 3.8 and 3.9 below, the providing Party shall promptly notify the other Party first verbally and then in writing in accordance with Article 20. The providing Party shall use all reasonable efforts to minimize the duration of said suspension.

3.7.2.2 The Parties agree to use commercially reasonable efforts to complete any repairs, modifications or corrections that are necessary to restore suspended services pursuant to Sections 3.8 and 3.9 below to the other Party as soon as reasonably practicable.

3.8 Seller Provided Local Services.

3.8.1 Substation Service Power. Seller shall provide Buyer at the Buyer's request and at no charge, with AC and DC substation service power in the quantities, at the levels, and in the substation locations where such power is provided from substation facilities immediately prior to Closing.

3.8.2 Building Services. At no cost to Buyer, Seller shall own, repair, Maintain, and provide Buyer with heating, ventilation, air conditioning, lighting, and other building services, at the levels in existence for winter and summer conditions immediately prior to Closing, to the Purchased Assets located within the Excluded Assets. If Buyer desires a higher level of service, Buyer and Seller shall mutually agree upon the upgrade and price for said upgrade. Buyer shall reimburse Seller for such upgrade.

3.8.3 Revenue Metering. Buyer shall own and Maintain all Revenue Meters, conduct meter accuracy and tolerance tests, and prepare all calibration reports required for equipment that measures energy transfers between Buyer and Seller. Said testing reports shall be in accordance with NYPP or ISO, as applicable, requirements, as amended from time to time, and any applicable State regulatory requirements, as amended from time to time. Seller shall have the opportunity to review and comment upon said reports prior to issuance. All Revenue Meters shall be sealed, and the seals shall be broken only by Buyer, upon occasions when the meters are to be inspected, tested or adjusted. The installations of any replacement metering required by Seller shall be at Seller's expense.

3.8.4 Seller shall, at its own expense, Maintain and have the right to use a back-up metering system.

3.8.5 The Parties agree that if the metering equipment and the Point of Interconnection are not at the same location electrically, the metering equipment shall be compensated to record the delivery of electricity in a manner that accounts for energy losses occurring between the metering point and the Point of Interconnection both when the generating unit is delivering energy to the Seller and when Seller is delivering energy to Buyer.

3.8.6 If at any time, any primary metering equipment is found to be inaccurate by a margin of greater than that allowed under the applicable criteria, rules and standards, such metering equipment shall be made accurate or replaced at Buyer's expense. Meter readings for the period of inaccuracy shall be adjusted so far as the same can be reasonably ascertained based upon Seller's back-up metering system; provided, however, no adjustment shall be made prior to the point of time halfway between the time of the last successful test and the time the inaccuracy is corrected, except by agreement of the Parties. Each Party shall comply with any reasonable request of the other concerning the sealing of meters, the presence of a representative of the other Party when the seals are broken and tests are made, and other matters affecting the accuracy of the measurement of electricity delivered from each Purchased Asset. If either Party believes that there has been a meter inaccuracy, failure or stoppage, it shall immediately notify the other.

3.8.7 The Parties shall each keep and maintain accurate and detailed records relating to the delivery of energy for a period of not less than six years. Such records shall be made available for inspection by either Party or any governmental agency having jurisdiction with respect thereto during normal business hours upon reasonable notice.

3.8.8 Seller shall own and maintain equipment for real-time communications, real-time reactive power, hourly KWH information, and such other information as required by the NYPP, ISO, and/or the System Operator or as reasonably required by Seller. The Buyer shall Maintain operating telephone links to provide information deemed necessary by the NYPP, ISO, and/or the System Operator to integrate operation of the Purchased Assets with the T&D System.

3.8.9 Line Operation Information. Both Parties shall require remote access to site specific line operation information at Seller's facilities. Seller shall make such information available to Buyer at no cost in accordance with FERC Order 889 and 889-A and any successor orders thereto.

3.9 Buyer Provided Local Services.

3.9.1 Substation Service AC and DC Power. Buyer shall provide Seller, at no charge, with AC and DC substation service power in the quantities, at the levels, and in the substation locations where such power is provided from generation facilities sold to Buyer immediately prior to Closing. If Seller desires a higher level of service, Seller and Buyer shall mutually agree upon the upgrade and price for said upgrade. Seller shall pay Buyer for the upgrade.

3.9.2 Building Services. At no cost to Seller, Buyer shall own, repair, maintain and provide Seller with heating, ventilation, air conditioning, lighting, and other building services at the levels in existence for winter and summer conditions immediately prior to Closing to the Excluded Assets located within the Purchased Assets. If Seller desires a higher level of service, Seller and Buyer shall mutually agree upon the upgrade and price of said upgrade. Seller shall pay Buyer for the upgrade.

3.9.3 Line Operation Information. Both Parties shall require remote access to site specific line operations information at Buyer's facilities. Buyer shall make such information available to Seller at no cost, as permitted in accordance with FERC Order 889 and 889-A and any successor orders thereto.

3.9.4 Meter Reader Services. Buyer may provide Seller, at a cost to be mutually agreed upon by the Parties, with meter reading services at locations which require a manual read.

3.10 Spare Parts.

3.10.1 Where practicable and available, and subject to applicable regulatory and other approvals, each Party shall provide the other Party with spare parts in the event of emergencies or equipment failures. The Parties shall mutually agree upon payment for or replacement of said spare parts. Seller presently occupies a minimal amount of space at the Purchased Assets for the purpose of storage of spare substation parts.

3.10.2 Seller has the right to Maintain the storage of spare parts at the levels as of the time of the Closing. Such storage shall not interfere unreasonably with the Buyer's ongoing business operations, rights and obligations. The specific arrangements for the storage of spare parts by Seller shall be set forth in the Separation Document. If Buyer desires Seller to maintain spare parts that are not in Seller's possession, if Seller has the physical space to do so, Seller shall maintain said parts.

3.11 Emergency Procedures.

3.11.1 Seller shall provide Buyer with prompt verbal notification of T&D System emergencies which may reasonably be expected to affect Buyer's operation of its facilities, and Buyer shall provide Seller with prompt verbal notification of generation equipment emergencies which may reasonably be expected to affect Seller's operations. Said verbal notification shall be followed within 24 hours with written notification. The written notification shall describe the extent of damage or deficiency, anticipated length of outage and the corrective action.

3.11.2 If a Party determines in its good faith judgment that an emergency endangers or could endanger life or property, the Party recognizing the problem shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss. If, however, the emergency involves transmission or distribution electrical equipment, Buyer shall notify the System Operator, and shall obtain the consent of such personnel, prior to performing any switching operations.

3.11.3 Buyer and Seller each may, consistent with Good Utility Practices, have the System Operator take whatever actions or inactions it deems necessary during emergency operating conditions, without liability to the other Party for such actions or inactions, in order to: (i) preserve public safety; (ii) preserve the integrity of the T&D System or Buyer's equipment or property, (iii) limit or prevent damage, or (iv) expedite restoration of service.

3.12 Service Interruptions.

3.12.1 If at any time, in the reasonable exercise of (i) the System Operator's judgment, or (ii) with respect to portions of the T&D System subject to Seller's dispatch, the Seller's judgment, operation of Buyer's equipment might reasonably be expected to have an adverse impact on the quality of service or interfere with the safe and reliable operation of the T&D System, Seller may discontinue Interconnection Service until the condition has been corrected. Unless the System Operator, or Seller perceives that an emergency exists or the risk of one is imminent, Seller shall give Buyer reasonable notice of its intention to discontinue Interconnection Service and, where practical, allow suitable time for Buyer to remove the interfering condition. Seller's judgment with regard to the interruption of service under this paragraph shall be made pursuant to Good Utility Practices. In the case of such interruption, Seller shall promptly confer with Buyer regarding the conditions causing such interruption and its recommendation concerning timely correction thereof. In the event Interconnection Service is interrupted under this Section due to Buyer's events of default, Buyer shall compensate Seller for all costs reasonably incurred by Seller attributable to the interruption and restoration of Interconnection Service.

3.13 Scheduled Maintenance Notification and Coordination.

3.13.1 T&D System Maintenance. Subject to applicable FERC regulations and policy, and the requirements of the NYPP or the ISO Tariff, Seller shall consult with Buyer regarding timing of scheduled maintenance of the transmission facilities which might reasonably be expected to affect the normal operations of the Purchased Assets. Seller shall, to the extent reasonably practicable, schedule any testing, shutdown, or withdrawal of said facilities to coincide with Buyer's scheduled outages. To facilitate such consultation, within 60 days after the Closing Date, each Party shall provide the other Party, a non-binding schedule of planned outages and planned overhauls (including expected commencement date and duration) for the following calendar year. In addition, each Party shall provide a non-binding two-year forecast of planned overhauls in accordance with ISO procedures. Buyer shall furnish Seller with non-binding updates to such schedules to reflect significant changes thereto.

3.13.1.1 If Buyer desires Seller to perform maintenance during a time period other than a scheduled outage, Seller shall use commercially reasonable efforts to meet Buyer's request as long as it might not reasonably be expected to have an adverse economic impact upon Seller or Seller's other transmission customers. If Buyer's request has, or is estimated in Seller's reasonable opinion to have, an adverse economic impact upon Seller, and Buyer is willing to reimburse Seller for the costs incurred by Seller, Seller shall make best efforts to comply with Buyer's request.

3.13.1.2 In the event Seller is unable to schedule the outage of its facilities to coincide with Buyer's schedule, Seller shall promptly notify Buyer, in advance, of reasons for the outage, the time scheduled for it to take place, and its expected duration. Seller shall restore the facilities to service as quickly as possible.

3.13.2 Routine Inspection and Maintenance. Seller and the Buyer agree that, due to the integration of certain control and protective relaying schemes between the Purchased Assets and Interconnection Facilities, it will be necessary for the Parties to cooperate in the inspection, maintenance and testing of these areas of integration. Each Party shall provide advance notice to the other Party before undertaking any work in these areas, especially in electrical circuits involving circuit breaker trip and close control, and current transformers or potential transformers. Seller shall provide advance notice by telephone to the Buyer's security personnel before Seller's employees, including contractors or agents, enter the Buyer's facilities. The Buyer shall provide advance notice by telephone to Seller's dispatch personnel (or equivalent) before the Buyer's employees, including authorized contractors or agents, enter Seller's facilities.

3.14 Safety.

3.14.1 General. Subject to Article 9, the Parties agree to be solely responsible for and assume all liability for the safety and supervision of their own employees, agents, representatives, and subcontractors.

3.14.1.1 The Parties agree that all work performed by either Party which could reasonably be expected to affect the operations of the other Party shall be performed in accordance with all applicable laws, rules, and regulations pertaining to the safety of persons or property, including without limitation, compliance with the safety regulations and standards adopted under the Occupational Safety and Health Act of 1970 as amended from time to time, the National Electric Safety Code as amended from time to time and Good Utility Practices.

3.14.2 Switching, Tagging and Grounding. Each Party shall comply with the Switching, Tagging and Grounding Rules set forth in Schedule H hereto (the "Parties' Switching, Tagging and Grounding Rules") at all utility Primary Equipment and Secondary System equipment interconnections or demarcation points.

3.14.2.1 Each Party, in accordance with the Parties' Switching, Tagging and Grounding Rules, shall be responsible for training, testing, and certifying operations for inclusion on a Joint Tag List. Every three months, each Party shall provide the other Party with an updated list of employees qualified for inclusion on the Joint Tag List. Buyer shall be responsible for all switching, tagging and grounding on Buyer's side of the demarcation point, as set forth in the Separation Document; and Seller shall be responsible for all switching, tagging and grounding at the demarcation point and on Seller's side of the demarcation point.

3.14.2.2 Each Party, in accordance with the Parties' Switching, Tagging and Grounding Rules, shall be responsible for training, testing, and certifying operators for inclusion on a Joint Tag List. Every three months, each Party shall provide the other Party with an updated list of employees qualified for inclusion on the Joint Tag List. Either Party may request the other Party to remove an employee from the Joint Tag List in its reasonable discretion, and such other Party shall comply with such request.

3.15 Environmental Compliance and Procedures.

3.15.1 Except as otherwise provided in the ASA, the Buyer and Seller shall each be responsible for (a) complying with all Environmental Laws applicable to the Purchased Assets and the Excluded Assets, respectively, (b) obtaining and maintaining in

force all applicable and required permits and approvals under such Environmental Laws and regulations applicable to the Purchased Assets and the Excluded Assets, respectively, and (c) making all required reports and notifications applicable to the Purchased Assets and the Excluded Assets, respectively, required by those laws and regulations.

3.15.2 Each Party shall notify the other first verbally and then in writing, of any Release of Hazardous Substances (as defined in the ASA) or any type of remediation activities, relating to the Purchased Assets and/or the Excluded Assets, within 24 hours of occurrence, and shall promptly furnish to the other Party copies of any reports filed with any governmental agencies relating to such releases or remediation.

3.15.3 Buyer shall not knowingly take any actions which might reasonably be expected to have a material adverse environmental impact upon the operations of the T&D System without prior written notification and agreement from Seller. Seller shall not knowingly take any actions which might reasonably be expected to have a material adverse environmental impact upon the operations of the Purchased Assets without prior written notification and agreement from Buyer.

3.16 Compliance with Laws. Seller will comply with all applicable laws, rules, regulations, codes, and standards of all Federal, state, and local governmental agencies having jurisdiction over Seller or the transactions under this Agreement, including the ISO, and with which failure to comply could reasonably be expected to have a material adverse effect on the Purchased Assets. Buyer will comply with all applicable laws, rules, regulations, codes, and standards of all Federal, state, and local governmental agencies having jurisdiction over Buyer or the transactions under this Agreement, including the ISO, and with which failure to comply could reasonably be expected to have a material adverse effect on the T&D System.

ARTICLE 4 **OPERATIONS**

4.1 General. Buyer agrees to conduct all its operations that could reasonably be expected to have a material impact on the operations of the T&D System in a safe and efficient manner and in accordance with all applicable Federal, state, and local laws, and the rules, regulations, and codes of governmental agencies, and Good Utility Practices. Seller agrees to conduct all its operations that could reasonably be expected to have a material impact on the operations of the Purchased Assets in a safe and efficient manner and in accordance with all applicable Federal, state, and local laws, and the rules, regulations, and codes of governmental agencies, and Good Utility Practices.

4.2 Buyer's Operating Obligations.

4.2.1 General. Buyer shall request permission from Seller's dispatch personnel or the System Operator, to the extent required by applicable rules or regulations, prior to opening and/or closing circuit breakers in accordance with applicable switching and operations procedures. The Buyer agrees to operate the Purchased Assets in accordance with the directives of the System Operator, and in accordance with Good Utility Practices.

4.2.1.1 Buyer shall carry out all switching orders from Seller's dispatch personnel, or the System Operator in a timely manner, to the extent required by applicable rules or regulations.

4.2.1.2 Buyer shall keep the System Operator, to the extent required by applicable rules or regulations, advised of its generating units' capabilities of participation in system restoration and/or if it has black start capability. Upon Seller's request, Buyer will participate in system restoration and/or provide black start capability to Seller if reasonably available and Seller will compensate Buyer according to the applicable provisions of the ISO Tariff.

4.2.1.3 The electrical supply to the Point of Interconnection shall be in the form of three-phase 60 HERTZ alternating current at a voltage class determined by mutual agreement of the Parties.

4.2.1.4 Buyer's equipment shall conform with industry standards for harmonic distortion and voltage fluctuation.

4.2.2 Voltage or Reactive Control Requirements. Unless otherwise agreed to by the Parties, Buyer shall operate its existing interconnected generation facilities with automatic voltage regulators. The voltage regulators will control voltage at the Points of Interconnection consistent with the range of voltage set forth in Schedule C as may be amended by the Parties, or the System Operator. Compensation to Buyer, if any, for providing such reactive power and voltage support shall be in accordance with the applicable provisions the ISO Tariff, or as otherwise agreed by the Parties.

4.2.2.1 Buyer acknowledges that the System Operator may direct Buyer to deactivate the automatic voltage regulator and to supply reactive power pursuant to a schedule provided by the System Operator and Seller will compensate Buyer according to the applicable provisions of the ISO Tariff.

4.2.2.2 If Buyer fails to operate a generating facility included in the Purchased Assets in accordance with Schedule C and to the extent the generating facility is operating, Seller will provide written notice to Buyer of Seller's intent to remedy that situation. If Buyer does not promptly commence appropriate action after receiving such notice, Seller may then take necessary action, to remedy such failure, including the installation of capacitor banks or other reactive compensation equipment necessary to ensure the proper voltage or reactive supply at the generating facility. The cost of such Seller remedy shall be borne by the Parties in accordance with the ISO Tariff. Seller shall, to the extent feasible, minimize the impact of such action on Buyer's generation operations, including, at a minimum, by installing such equipment outside any building housing a generating unit. Nothing in this Section 4.2.2.2 shall obligate Buyer to operate any Purchased Asset beyond the available design capability of such Purchased Asset.

4.2.2.3 Buyer shall notify the System Operator, to the extent required by the System Operator, if a generating unit(s) reaches a VAR limit, if there is any deviation from the assigned voltage schedule, or if any automatic voltage regulator is removed from or restored to service.

4.2.2.4 In addition to voltage regulation, Buyer shall adhere to the System Operator's Service Restoration Plan, as amended from time to time. A copy of the Service Restoration Plan in existence immediately prior to Closing is attached hereto as Schedule D and incorporated by reference as if fully set forth herein.

4.2.3 Seller or the System Operator in accordance with Good Utility Practices may from time to time reasonably request, order, or direct the Buyer to adjust generator controls that impact the T&D System, such as excitation, droop, and automatic generation control settings. The Buyer agrees to comply with such requests, orders, or directions.

4.2.4 Buyer acknowledges that the System Operator may have the right to require reduced or increased generation from the Purchased Assets in accord with the NYPP requirements or the ISO Tariff, as applicable, or in accordance with the applicable rules of the System Operator.

4.3 Seller's Operating Obligations.

4.3.1 General. All operations, including start-up, shutdown and determination of hourly generation, will be coordinated by the System Operator.

4.3.2 Seller's system operator may, pursuant to the ISO reliability criteria, Seller's Open Access Transmission Tariff, any applicable rule or practice of Seller's system operator, require reduced or increased generation in accordance with Good Utility Practices, at times when T&D System conditions threaten transmission system reliability. The Seller shall not request a reduction or increase in generation except to solve a transmission line energy limit violation so that voltage reduction or load shedding is not required. Seller will use best efforts to resolve any such conditions in order to allow Buyer to return to the operating level prior to the notice to reduce or increase generation.

4.4 Auditing of Accounts and Records. Within two years following the end of a calendar year, during normal business hours, either Party, or a public accounting firm designated to represent said Party, shall have the right to audit the other Party's accounts and records pertaining to transactions under this Agreement at the offices where such accounts and records are maintained; provided that appropriate notice shall have been given prior to any audit and provided that the audit shall be limited to those portions of such accounts and records that relate to services provided to the other under this Agreement for said calendar year. The Party being audited will be entitled to review the audit report and any supporting materials, which shall be subject to the provisions of Article 7.

4.5 Seller shall use commercially reasonable efforts to operate and maintain the T&D System, or cause the T&D System to be operated and maintained, in accordance with all material laws and Good Utility Practices. Seller shall notify Buyer promptly of any event affecting the T&D System that would cause Buyer to be unable to deliver power to any of Buyer's customers or would adversely affect the Facility, and, as soon as possible thereafter, of the expected duration of such event. Seller shall use best efforts to alleviate any such event.

ARTICLE 5

COST RESPONSIBILITIES AND BILLING PROCEDURES

5.1 Cost Responsibilities for Local Services.

5.1.1 Each Party shall be responsible for the costs for services provided to the other Party in Sections 3.8 and 3.9 as set forth in said Sections.

5.1.2 For services which have identified price/rate Schedules set forth herein, said payment shall be in accord with said Schedules as in effect from time to time. For services which require reimbursement but do not have identified price/rate schedules, the Parties shall agree upon the price/rate to be paid prior to performing or providing said services.

5.2 Billing Procedures.

5.2.1 General. Within ten days after the first day of each month, each Party shall prepare an invoice for those reimbursable services provided to the other Party under this Agreement during the preceding month.

5.2.2 Each invoice shall delineate the month in which the services were provided, shall fully describe the services rendered and shall be itemized to reflect the services performed or provided.

5.2.3 The invoice shall be paid within 30 days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named by the invoicing Party.

5.2.4 Disputed amounts shall be placed in an interest bearing escrow account, subject to resolution.

5.3 Payment Not a Waiver. Payment of invoices by either Party shall not relieve the paying Party from any responsibilities or obligations it has under this Agreement; nor shall it constitute a waiver of any claims arising hereunder.

5.4 Interest on Unpaid Balances. The rate of interest on any unpaid amounts (including amounts placed in escrow) shall be equal to the Interest Rate in effect from time to time plus two percent per annum. Interest on delinquent amounts shall be calculated from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by the other Party.

5.5 Default. In the event either Party fails to make payment to the other Party on or before the due date as described above, and such failure of payment is not corrected within ten calendar days after the Party notifies the Party in default to cure such failure, a default by said Party shall be deemed to exist and the provisions of Article 8 shall apply. If Buyer defaults upon an Interconnection Facilities charge payment, Seller may initiate a proceeding with the FERC, as set forth below, to terminate such service but shall not terminate service until the FERC authorizes any such request. If the Parties default on any other payment, the provisions of Article 13 shall apply.

5.5.1 In the event of a billing dispute between Seller and Buyer, Seller and Buyer will continue to provide services as long as the other Party (i) continues to make all payments not in dispute, and (ii) pays into an escrow account the portion of the invoice in

dispute, pending resolution of such dispute. If Buyer fails to meet these two requirements for continuation of Interconnection Service, then Seller may provide notice to Buyer of its intention to suspend such service in 60 days, in accordance with the FERC's policy. If neither party disputes a bill within six months after the due date of such bill, such bill shall be deemed correct.

ARTICLE 6

DOCUMENTATION

6.1 Drawings.

6.1.1 Drawings that exclusively describe the Purchased Assets will be transferred by Seller to the Buyer prior to the Closing Date. Copies of drawings that exclusively describe the Excluded Assets, including the Interconnection Facilities and the T&D System shall be made available to Buyer upon reasonable request. Drawings describing the Purchased Assets and the Excluded Assets on the same drawing will be identified and marked as "common drawings." Seller shall retain a copy of the common drawings and shall provide a copy of same to the Buyer prior to the Closing Date. A list of drawings common to both Parties will be developed prior to the Closing Date.

6.1.2 Each Party shall be responsible for drawing updates and corrections to their respective drawings and all shall provide copies to the other Party as soon as practicable thereafter to the extent such update or connection impacts the operation of the other Party's assets.

6.2 Maintenance or Operations Documentation. Seller shall provide Buyer with technical maintenance or operations documentation, if available, for protection, communications and primary electrical equipment.

ARTICLE 7

CONFIDENTIALITY

7.1 General. Each Party (the "Recipient") and its representatives shall hold in confidence, unless compelled or required to disclose by judicial or administrative process or other provisions of law, all documents and information furnished by the other Party (the "Disclosing Party") or its representatives in connection with this Agreement. Except to the extent that such information or documents are (i) generally available to the public other than as a result of a disclosure by the Recipient in violation of this Agreement, (ii) available to the Recipient on a non-confidential basis prior to disclosure to the Recipient by the Disclosing Party, or (iii) available to the Recipient on a non-confidential basis from a source other than

the Disclosing Party provided that such source is not known, and by reasonable effort could not be known, by the Recipient to be bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from transmitting the information to the Recipient by a contractual, legal or fiduciary obligation, Recipient shall not release or disclose such information to any other person, except to its Affiliates and their respective directors, officers, employees, contractors and agents on a need-to-know basis for the purpose of assisting the Recipient with respect to its obligations under this Agreement who has not first been advised of the confidentiality provisions of this Section 7.1 and has agreed in writing to comply with such provisions. In no event shall such information be disclosed in violation of the requirements of FERC Orders 889 and 889-A, and any successor thereto. The Recipient shall promptly notify the Disclosing Party if it receives notice or otherwise concludes that the production of any information subject to this Section 7.1 is being sought under any provision of law (by regulation, rules, deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, civil investigative demand or similar process) so that the Disclosing Party may seek an appropriate protective order or other remedy and/or waive compliance with the provisions of this Article, and the Parties shall cooperate, at the Disclosing Party's expense, to obtain such protective order. In the event that such protective order or other remedy is not obtained or the Disclosing Party waives compliance with the relevant provisions of this Article, the Recipient will furnish only that portion of material which is legally required to be disclosed and, upon the Disclosing Party's request, cooperate, at the Disclosing Party's expense, to obtain assurances that confidential treatment will be accorded to such information. A Party may utilize information subject to this Section 7.1 in any arbitration proceeding or litigation relating to this Agreement and pursuant to Article 13, provided that with respect to arbitration, the arbitrator(s) and other participants enter into a confidentiality agreement regarding the materials that will be disclosed.

7.2 Confidentiality of Audits. The independent auditor performing any audit, as referred to in Section 4.4, shall be subject to a confidentiality agreement between the auditor and the Party being audited. Such information shall be treated as confidential except to the extent that its disclosure is required by regulatory or judicial order, for reliability purposes pursuant to Good Utility Practices, pursuant to the FERC's rules and regulations, as amended from time to time, or as required by the System Operator pursuant to ISO information sharing policies. Except as provided herein, neither Party will disclose the audit information to any third party, without the other Party's prior written consent. Audit information in the hands of the Party not being audited shall be subject to all provisions of Section 7.1 or 7.2, as applicable.

7.3 Remedies. The Parties agree that monetary damages by themselves would be inadequate to compensate a Party for the other Party's breach of its obligations under this Article 7. Each Party accordingly agrees, subject to Section 19.1, that the Disclosing Party shall be entitled to specific performance and other equitable relief, by way of injunction or otherwise if the Recipient breaches or threatens to breach its obligations under this Article, which specific performance or other equitable relief shall be granted without bond or proof of damages and in addition to any other remedies that the Disclosing Party may have under

applicable law, and the Recipient shall not plead in defense that there would be an adequate remedy at law.

ARTICLE 8 **DEFAULT**

8.1 Events of Default. Any one of the following shall constitute an event of default under this Agreement, unless such event is otherwise excused hereunder or is due to the action or inaction of the non-defaulting Party:

8.1.1 (a) The failure to pay any amount when due;

(b) A breach of any material term or condition of this Agreement, including but not limited to any material breach of a representation, warranty or covenant made in this Agreement, including the Schedules. Failure by a Party to provide any required schedule, report or notice hereunder may constitute a material breach hereof if such failure is not cured within 30 days after notice to the defaulting Party;

(c) The appointment of a receiver or liquidator or trustee for either Party or of any property of a Party, and such receiver, liquidator or trustee is not discharged within 60 days;

(d) The entry of a decree adjudicating a Party or any substantial part of the property of a Party bankrupt or insolvent, and such decree is continued undischarged and unstayed for a period of 60 days;

(e) The filing of a voluntary petition in bankruptcy under any provision of any Federal or state bankruptcy law by a Party; or

(f) The failure or refusal of the Buyer to permit Seller's representatives access to information, or the Purchased Assets, to the extent required hereunder for Seller to operate the T&D System in order to examine, inspect and test such information and the Purchased Assets.

(g) The failure or refusal of the Seller to permit the Buyer's representatives access to information, or the Excluded Assets, to the

extent required hereunder for Buyer to examine, inspect and test such information and the Excluded Assets.

8.1.2 (a) Upon the occurrence of an event of default, the Party not in default may give written notice of the default to the defaulting Party. Such notice shall set forth, in reasonable detail, the nature of the default and, where known and applicable, the steps necessary to cure such default. Except with respect to a payment default as described in Section 8.1.1(a), the defaulting Party shall have 30 days following receipt of such notice either to (i) cure such default, or (ii) commence in good faith all such steps as are reasonable and appropriate to cure such default in the event such default cannot, in the reasonable judgment of such non-defaulting Party, be completely cured within such 30 day period. With respect to the payment default described in Section 8.1.1(a), the defaulting party, shall have ten days from receipt of such default notice to cure such default.

(b) If the defaulting Party fails to cure such default or take such steps as provided under subparagraph (a) above, this Agreement may be terminated by written notice to the Party in default hereof. This Agreement shall thereupon terminate and the non-defaulting Party may exercise all such rights and remedies as may be available to it to recover damages, subject to Article 19 of this Agreement, caused by such default.

(c) Notwithstanding the foregoing, upon the occurrence of any such event of default, the non-defaulting Party shall be entitled (i) to commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, and (ii) to exercise such other rights and remedies as it may have at equity or at law.

8.2 Rights Cumulative. The rights and remedies of both Parties in this Article 8 and elsewhere set forth in this Agreement are cumulative and non-exclusive.

8.2.1 Seller shall be entitled to operate such DC power systems, protection and metering circuit components, SCADA equipment, transformers, Secondary Systems, communications equipment, building facilities, software, documentation, structural components; and other facilities and appurtenances that are necessary for Seller to Maintain the T&D System if: (a) the Buyer shall commence any case under Federal bankruptcy laws or other proceeding under any similar law of any jurisdiction for the relief of debtors, or a decree or order shall be entered appointing a trustee or other custodian, liquidator, or receiver

for the Buyer or for any substantial part of the Purchased Assets, and such decree or order shall not be dismissed within 60 days after it is entered; or (b) the Buyer shall cease its operations without having as assignee, successor, or transferee in place, which cessation shall remain in place for a period of 30 days; or (c) the Buyer, or the Buyer's assignee, successor, or transferee, shall fail to comply with the material obligations or duties set forth in this Agreement, which failure adversely affects the T&D System and remains uncorrected for a period of 30 days.

8.2.2 Seller shall give the Buyer or the Buyer's assignee, successor or transferee written notice, pursuant to Article 20, of its intent to implement its rights under this Section 8.2, which notice shall specify the event giving rise to such implementation. If the event endangers life or property, or impairs or creates a significant risk to the safety, reliability, stability, or integrity of the T&D System, Seller may implement this Section 8.2 without such prior notice as necessary in its reasonable judgment to avert such condition. Seller shall return operational control of such facilities to the Buyer as soon as practicable after the event permitting Seller to exercise such operational control has ceased. Seller shall operate such facilities in accordance with law, Good Utility Practices and agreements to which the Buyer is a party.

ARTICLE 9

DAMAGE TO EQUIPMENT, FACILITIES AND PROPERTY

9.1 Buyer's Responsibility. Except to the extent of Seller's or its Affiliates', or their respective officers', directors', employees', agents' or subcontractors', gross negligence or willful misconduct, and subject to Sections 10.2 and 10.3, Buyer shall be responsible for all physical damage to or destruction of property, equipment and/or facilities owned by Buyer and/or its Affiliates, employees, agents, or subcontractors, regardless of who brings the claim and regardless of who caused the damage and Buyer shall not seek recovery or reimbursement from Seller for such damage.

9.2 Seller's Responsibility. Except to the extent of Buyer's or its Affiliates', or their respective officers', directors', employees', agents' or subcontractors', gross negligence or willful misconduct and subject to Section 10.1, Seller shall be responsible for all physical damage to or destruction of property, equipment and/or facilities owned by Seller and/or its affiliates, regardless of who brings the claim and regardless of who caused the damage and Seller shall not seek recovery or reimbursement from Buyer for such damage.

ARTICLE 10
INDEMNIFICATION

10.1 Buyer's Indemnification. The Buyer shall indemnify, hold harmless, and defend Seller, its parent, Affiliates, and successors, and their respective officers, directors, employees, agents, subcontractors, and successors, from and against any and all claims, demands, liabilities, costs, losses, judgments, damages, and expenses (including, without limitation, reasonable attorneys' and experts' fees, and disbursements incurred by Seller in any action or proceeding between Seller and a third party, the Buyer, or any other party) for damage to property, injury to or death of any person, including Seller's employees, the Buyer's employees and their Affiliates' employees, or any third parties, to the extent not covered by insurance and to the extent caused by the gross negligence or willful misconduct of the Buyer and/or its officers, directors, employees, agents, contractors and subcontractors arising out of this Agreement and not caused by the negligence or willful misconduct of any such Indemnatee (collectively, "Seller Indemnifiable Losses").

10.2 Seller's Indemnification. Seller shall indemnify, hold harmless, and defend the Buyer, its parent, Affiliates, and successors, and their respective officers, directors, employees, agents, subcontractors, and successors from and against any and all claims, liabilities, costs, damages, and expenses (including, without limitation, reasonable attorneys' and experts' fees and disbursements incurred by the Buyer in any action or proceeding between the Buyer and a third party, Seller, or any other party), arising out of (i) Seller's operation of any of the Buyer's Facilities pursuant to Section 8.2 or (ii) damage to property, injury to or death of any person, including Seller's employees, the Buyer's employees and their Affiliates' employees, to the extent not covered by insurance and to the extent caused by the gross negligence or willful misconduct of Seller and/or its Affiliates, or their respective officers, directors, employees, agents, and subcontractors arising out of this Agreement and not caused by the negligence or willful misconduct of any such Indemnatee.

10.3 Limitation on Seller's Responsibility. Buyer acknowledges that Seller's sale of the Purchased Assets was on an "as is" basis (except as expressly provided in the ASA), and the parties agree and acknowledge that any claims arising out of or caused by Seller's ownership, use or maintenance of the Purchased Assets during the period of Seller's ownership, regardless of who brings the claims shall be governed solely by the ASA.

10.4 Indemnification Procedures.

10.4.1 Any person entitled to receive indemnification under this Agreement (the "Indemnatee") having a claim under these indemnification provisions shall make a good faith effort to recover all losses, damages, costs and expenses from insurers of such Indemnatee under applicable insurance policies so as to reduce the amount of any Indemnifiable Loss hereunder. The amount of any Indemnifiable Loss shall be reduced (i) to

the extent that Indemnatee receives any insurance proceeds with respect to an Indemnifiable Loss and (ii) to take into account any Tax or Income Tax benefit recognized by the Indemnatee arising from the recognition of the Indemnifiable Loss, net of any Tax or Income Tax detriment, and any payment actually received with respect to an Indemnifiable Loss.

10.4.2 The expiration, termination or extinguishment of any covenant, agreement, representation or warranty shall not affect the parties' obligations under this Section 10 if the Indemnatee provided the person required to provide indemnification under this Agreement (the "Indemnifying Party") with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

10.4.3 The Seller and the Buyer shall have indemnification obligations with respect to Indemnifiable Losses asserted against or suffered by the Seller or the Buyer, as the case may be, to the extent that the aggregate of all such Indemnifiable Losses exceed the Indemnification Floor. It is agreed and understood that neither the Seller nor the Buyer, as the case may be, shall have any liability at any time for Indemnifiable Losses asserted against or suffered by the other party until the aggregate amount of Indemnifiable Losses asserted or suffered by such other party under this Section 10.4 shall exceed the Indemnification Floor, and then only to the extent that the aggregate amount of Indemnifiable Losses exceeds the Indemnification Floor. The term "Indemnification Floor" means an amount equal to \$200,000.

10.5 Defense of Claims. If any Indemnatee receives notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a party to this Agreement or any affiliate of a party to this Agreement (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnatee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than ten calendar days after the Indemnatee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and will indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnatee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnatee, to elect to assume the defense of any Third Party Claim at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel, and the Indemnatee will cooperate in good faith in such defense at such Indemnatee's own expense.

10.5.1 If within ten calendar days after an Indemnatee provides written notice to the Indemnifying Party of any Third Party Claim the Indemnatee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 10.5, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof; provided, however, that if the Indemnifying Party fails

to take reasonable steps necessary to defend diligently such Third Party Claim within 20 calendar days (unless waiting 20 calendar days would prejudice the Indemnitee's rights) after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defense, and the Indemnifying Party will be liable for all reasonable expenses thereof. Without the prior written consent of the Indemnitee, the Indemnifying Party will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten calendar days after its receipt of such notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice. Notwithstanding the foregoing, the Indemnitee shall have the right to pay, compromise or settle any Third Party Claim at any time, provided that in such event the Indemnitee shall waive any right to indemnity hereunder, unless the Indemnitee shall have first sought the consent of the Indemnifying Party in writing to such payment, settlement, or compromise and such consent was unreasonably withheld or delayed, in which event no claim for indemnity hereunder shall be waived.

10.5.2 Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event not later than ten calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party will have a period of 30 calendar days within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such 30 calendar day period, the Indemnifying Party will be deemed to have accepted such Direct Claim. If the Indemnifying Party rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

10.5.3 If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the prime rate then in effect of the Chase Manhattan Bank), will promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of

the Indemnifiable Loss to which the indemnity payment relates; provided, however, that (i) the Indemnifying Party will then be in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment is hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights. Nothing in this Section 10.5 shall be construed to require any Party to obtain or maintain any insurance coverage.

10.5.4 A failure to give timely notice as provided in this Section 10.5 will not affect the rights or obligations of any Party except if, and only to the extent that, as a result of such failure, the Party which was entitled to receive such notice was actually prejudiced as a result of such failure.

10.6 Survival; No Limitation. The indemnification obligations of each Party under this Article 10 shall continue in full force and effect regardless of whether this Agreement has expired or been terminated or canceled and shall not be limited in any way by any limitation on insurance, on the amount or types of damages, or by any compensation or benefits payable by the Parties under any applicable workers' compensation acts, disability benefit acts or other employee acts.

ARTICLE 11 **INSURANCE**

11.1 General. The Parties agree to maintain at their own cost and expense, fire, liability, workers' compensation, and other forms of insurance relating to their property and facilities in the manner and amounts set forth in Schedule E, as both Parties may from time to time agree to amend. A Party may utilize self insurance to the extent such self insurance is consistent with then current industry practice, and all deductibles, self-insured amounts under any insurance set forth in Schedule E shall be for the account of the Party placing the insurance.

11.2 Certificates of Insurance. The Parties agree to furnish each other at the Closing with certificates of insurance evidencing the insurance coverage set forth in Schedule E and additional insured status.

11.3 Notice of Cancellation. Every contract of insurance providing the coverages required in Schedule E shall contain the following or equivalent clause: "No reduction,

cancellation or expiration of the policy shall be effective until 90 days from the date written notice thereof is actually received by said Party." Upon receipt of any notice of reduction, cancellation or expiration, the Party shall immediately notify the other Party in accordance with Article 20.

11.4 Additional Insureds. Each Party and its Affiliates shall be named as additional insureds on the general liability insurance policies set forth in Schedule E under this Agreement; and each Party shall waive its rights of recovery against the other for any loss or damage covered by such policy.

11.5 Waiver of Subrogation. The Parties on behalf of themselves, their parents, and Affiliates, each waive any right of subrogation under their respective insurance policies for any liability each has agreed to assume under this Agreement. Evidence of this requirement shall be noted on all certificates of insurance.

11.6 Each Party shall have the right to inspect the original policies of insurance applicable to this Agreement at the other Party's place of business during regular business hours.

ARTICLE 12 **FORCE MAJEURE**

12.1 General. Notwithstanding anything in this Agreement to the contrary, Buyer and Seller shall not be liable in damages or be otherwise responsible to the other for a failure to carry out any of its obligations under this Agreement, other than any obligation to pay an amount when due, if and only to the extent that they are unable to so perform or are prevented from performing by a Force Majeure Event. Such exclusion from liability shall extend for the period of time necessitated by such Force Majeure Event.

12.2 Content of Term. The term "Force Majeure Event" means any occurrence beyond the reasonable control of a Party which causes such Party to be delayed in or prevented from performing or carrying out any of its obligations under this Agreement and which by the exercise of due diligence in accordance with Good Utility Practices, that Party is unable to prevent, avoid, mitigate, or overcome, including any of the following: any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, ice, explosion, breakage or accident to machinery or equipment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities provided that a Force Majeure Event shall not include lack of finances or change in market conditions, and provided further that any failure of Buyer to obtain fuel or services for the Facility due to the failure of any supplier or subcontractor of Buyer to perform any obligation to Buyer will not constitute a Force Majeure Event hereunder unless such subcontractor or

supplier is unable to perform for reasons that would constitute a "Force Majeure Event" hereunder.

12.3 Procedures. If a Party shall rely on the occurrence of an event or condition described above as a basis for being excused from performance of its obligations under this Agreement, then the Party relying on the event or condition shall: (i) provide prompt written notice of a Force Majeure Event to the other Party giving a detailed written explanation of the event, an estimation of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) exercise all reasonable efforts in accordance with Good Utility Practices to continue to perform its obligations under this Agreement; (iii) expeditiously take commercially reasonable action to correct or cure the event or condition excusing performance; provided that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strike or labor dispute; (iv) exercise all reasonable efforts to mitigate or limit damages to the other Party; and (v) provide prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

ARTICLE 13 **DISPUTES**

13.1 Any disagreement between Seller and the Buyer as to their rights and obligations under this Agreement shall first be addressed by the Parties. If within 30 days the representatives of the Buyer and Seller are unable in good faith to resolve their disagreement satisfactorily, they shall refer the matter to their respective senior management. If after using their good faith efforts to try to resolve the dispute, senior management cannot resolve the dispute in 30 days, either Party may exercise any right or remedy available under this Agreement, at law or in equity. The Parties agree to cooperate in good faith to expedite the resolution of any disputes arising under this Agreement.

13.2 Nothing in this Agreement shall preclude, or be construed to preclude, any Party from filing a petition or complaint with the FERC with respect to any claim over which the FERC has jurisdiction, provided however, that any Party filing a petition or complaint with the FERC provide written notice to the other Party no less than ten days prior to such filing.

ARTICLE 14 **REPRESENTATIONS AND WARRANTIES**

14.1 Representations of Seller. Seller represents and warrants to Buyer as follows:

14.1.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and Seller has the requisite corporate power and authority to carry on its business as now being conducted;

14.1.2 Authority Relative to this Agreement. Seller has the requisite corporate power and authority to execute and deliver this Agreement, subject to the procurement of applicable regulatory approvals, and to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by all required corporate action. The Agreement has been duly and validly executed and delivered by Seller and, assuming it is duly and validly executed and delivered by the Buyer, constitutes a legal, valid and binding Agreement of Seller; and

14.1.3 Compliance With Law and Agreements. (A) Seller is not in violation of any applicable law, statute, order, rule, or regulation promulgated or judgment entered by any Federal, state, or local governmental authority, which violation individually or in the aggregate would adversely affect Seller's entering into or performance of its obligations under this Agreement; and (B) Seller's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which it is a party.

14.2 Representations of Buyer. Buyer represents and warrants to Seller as follows:

14.2.1 Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, and Buyer has the requisite power and authority to carry on its business as now being conducted;

14.2.2 Authority Relative to this Agreement. Buyer has the requisite power and authority to execute and deliver this Agreement and, subject to the procurement of applicable regulatory approvals, to carry out the actions required of it by this Agreement. The execution and delivery of this Agreement and the actions it contemplates have been duly and validly authorized by the Managers or Members of the Buyer and no other Company proceedings on the part of the Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and, assuming it is duly and validly executed and delivered by the Seller, constitutes a legal, valid and binding Agreement of Buyer; and

14.2.3 Compliance With Law and Agreements. (A) Buyer is not in violation of any applicable law, statute, order, rule, or regulation promulgated or judgment entered by any Federal, state, or local governmental authority, which, individually or in the aggregate, would adversely affect Buyer's entering into or performance of its obligations under this

Agreement; and (B) Seller's entering into and performance of its obligations under this Agreement will not give rise to any default under any agreement to which it is a party.

ARTICLE 15

ASSIGNMENT/CHANGE IN CORPORATE IDENTITY

15.1 General. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned, except to an Affiliate of Seller that owns the T&D System or to the Purchased Assets, by either Party hereto, whether by operation of law, without the prior written consent of the other Party, said consent not to be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void. Notwithstanding the foregoing, Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of its rights and interests hereunder to (i) a trustee or lending institution(s) for the purposes of financing or refinancing the Purchased Assets, including upon or pursuant to the exercise of remedies under such financing or refinancing, or by way of assignments, transfers, conveyances or dispositions in lieu thereof; provided, however, that no such assignment or disposition shall relieve or in any way discharge Buyer or such assignee from the performance of its duties and obligations under this Agreement, (ii) an affiliate of the Buyer or (iii) a purchaser, transferee or lessor of all or substantially all of Buyer's right, title and interest in and to the Purchased Assets, provided such purchaser, transferee or lessor (A)(1) has a "net worth", or "consolidated net worth", if applicable, as determined in accordance with U.S. generally accepted accounting principles and reflected in an audited balance sheet (or consolidated balance sheet, if applicable) ("Net Worth") at least equal to an amount equal to one-third of the Purchase Price (as described in Section 3.1 of the ASA), or (2) provides a guaranty from an affiliate which has a net worth at least equal to the amount specified in (A)(1) above and (B) demonstrates its ability to operate the Purchased Assets to O&R's reasonable satisfaction in accordance with Good Utility Practices. Seller agrees to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, conveyance, pledge or disposition of rights hereunder for purposes of the financing or refinancing of the Purchased Assets, so long as Seller's rights under this Agreement are not thereby altered, amended, diminished or otherwise impaired.

15.2 Party to Remain Responsible. No assignment, transfer, pledge, conveyance, or disposition of rights or obligations under this Agreement by a Party shall relieve that Party from liability and financial responsibility for the performance thereof after any such assignment, transfer, conveyance, pledge, or disposition unless and until the transferee or assignee shall agree in writing to assume the obligations and duties of that Party under this Agreement and the non-assigning Party under this Agreement has consented in writing to such assumption and to a release of the assigning Party from such liability, such consent shall not be unreasonably withheld.

15.3 Termination of Corporate Existence. If either Party terminates its existence as a corporate entity, by merger, acquisition, sale, consolidation, or otherwise, or if all or substantially all of such Party's assets are transferred to another person or business entity, without complying with Section 15.1 above, the other Party shall have the right enforceable in a court of competent jurisdiction, to enjoin the first Party's successor from using the property in any manner that interferes with, impedes, or restricts such other Party's ability to carry out its ongoing business operations, rights and obligations.

15.4 Merger with Con Edison. The Buyer acknowledges that Seller has entered into an Agreement and Plan of Merger whereby Seller will become a wholly-owned subsidiary of Consolidated Edison, Inc. ("CEI"). Notwithstanding any other provision of this Article 15, the Buyer agrees that this Agreement may be assigned to CEI, or a wholly-owned affiliate of CEI without the Buyer's consent.

15.5 Regulatory Approval; Effective Date. This Agreement shall not become effective and binding upon the Parties until it has been: (i) signed by each of the Parties hereto, (ii) the FERC and NYPSC have entered a final order in form and substance satisfactory to the Parties approving this Agreement, and (iii) the Closing Date shall have occurred. The Parties agree to use their best efforts to obtain such regulatory approval as promptly as practicable following execution of this Agreement.

ARTICLE 16

SUBCONTRACTORS

16.1 Use of Subcontractors Permitted. Nothing in this Agreement shall prevent the Parties from utilizing the services of subcontractors as they deem appropriate, provided, however, that all said subcontractors shall comply with the applicable terms and conditions of this Agreement including but not limited to compliance with Good Utility Practices.

16.2 Party to Remain Responsible. The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. Each Party shall be fully responsible to the other Party for the acts and/or omissions of any subcontractor it hires as if no subcontract had been made. Any obligation imposed by this Agreement upon the Parties, where applicable, shall be equally binding upon and shall be construed as having application to any subcontractor.

16.3 Liability for Conduct of Subcontractors. The Parties shall each be liable for, indemnify, and hold harmless the other Party, their affiliates and their officers, directors, employees, agents, servants, and assigns from and against any and all claims, demands, or actions, from the other Party's subcontractors to the extent not caused by the negligence or willful misconduct of the other Party or its Affiliates, or their respective officers, directors,

employees, agents or subcontractors; and shall pay all costs, expenses and legal fees associated therewith and all judgments decrees and awards rendered therein.

16.4 No Limitation by Insurance. The obligations under this Article 16 shall not be limited in any way by any limitation on subcontractor's insurance.

ARTICLE 17 **LABOR RELATIONS**

17.1 Each Party agrees promptly to notify the other Party, verbally and then in writing, of any labor dispute (including a strike) or anticipated labor dispute which may reasonably be expected to affect the operations of the other Party.

ARTICLE 18 **INDEPENDENT CONTRACTOR STATUS**

18.1 Nothing in this Agreement shall be construed as creating any relationship between Seller and Buyer other than that of independent contractors. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

ARTICLE 19 **LIMITATION OF LIABILITY**

19.1 Consequential Damages. Neither Seller nor Buyer, nor their respective officers, directors, agents, employees, parent or affiliates, successors or assigns or their respective officers, directors, agents or employees, successors or assigns, shall be liable to the other Party or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, for claims, suits, actions or causes of action for incidental, punitive, special, indirect, multiple or consequential damages (including without limitation, attorneys' fees and other litigation costs, or claims for lost profits) connected with or resulting from performance or non-performance of this Agreement, or any actions undertaken in connection with or related to this Agreement, including without limitation any such damages which are based upon causes of action for breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law, or any other theory of recovery. The provisions of this Section 19.1 shall apply regardless of fault and shall survive termination, cancellation, suspension, completion or expiration of this Agreement.

ARTICLE 20
NOTICES

20.1 At or prior to the Closing Date, each Party shall indicate to the other Party, by notice, the appropriate person during each eight-hour work shift to contact in the event of an emergency, a scheduled or forced interruption or reduction in services. The notice last received by a Party shall be effective until modified in writing by the other Party.

20.2 All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed effective upon receipt when delivered either by hand delivery, cable, telecopy (confirmed in writing) or telex, or by mail (registered or certified, postage prepaid) to the respective Parties as follows:

If to the Seller, to:
Orange and Rockland Utilities, Inc.
c/o Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1810-S
New York, New York 10003
Attention: General Counsel
Fax: (212) 674-7329

With a copy to:

Orange and Rockland Utilities, Inc.
390 West Route 59 – Dept SVOC
Spring Valley, New York 10977
Attention: Vice President - Operations
Fax: (845) 577-3074

If to the Buyer to:

AER NY-GEN, LLC
613 Plank Road
Forestburgh, NY 12777

or such other address as is furnished in writing by such Party.

ARTICLE 21
HEADINGS

21.1 The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and do not affect the meaning or interpretation of this Agreement.

ARTICLE 22
WAIVER

22.1 Except as otherwise provided in this Agreement, any failure of any of the Parties to comply with any obligation, covenant, agreement, or condition herein may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE 23
COUNTERPARTS

23.1 This Agreement may be executed in two or more counterparts, all of which will be considered one and the same Agreement and each of which will be deemed an original.

ARTICLE 24
GOVERNING LAW

24.1 This Agreement and all rights, obligations, and performances of the Parties hereunder, are subject to all applicable Federal and state laws, and to all duly promulgated orders and other duly authorized action of governmental authority having jurisdiction.

24.2 When not in conflict with or pre-empted by Federal law, this Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of law principles thereof. Except for those matters covered in this Agreement and jurisdictional to FERC or the appellate courts having jurisdiction over FERC matters, any action arising out of or concerning this Agreement must be brought in the Federal or State courts of the State of New York. Both Parties hereby consent to the jurisdiction of the State of New York for the purpose of hearing and determining any action not pre-empted by Federal law; and to the jurisdiction of FERC for those matters governed by FERC rules and regulations or by the Federal Power Act.

ARTICLE 25
CONFLICT WITH ASA

25.1 In the event there is a conflict between the provisions of this Agreement and the ASA, the provisions of the ASA shall prevail.

ARTICLE 26
SEVERABILITY

26.1 In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement, with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

ARTICLE 27
AMENDMENTS

27.1 Seller may unilaterally make application to FERC under Section 205 of the Federal Power Act and pursuant to the FERC's rules and regulations promulgated thereunder for a change in any rates, terms and conditions, charges, classification of service, rule or regulation for any services Seller provides under this Agreement over which FERC has jurisdiction.

27.2 Buyer may exercise its rights under Section 206 of the Federal Power Act and pursuant to FERC's rules and regulations promulgated thereunder with respect to any rate, term, condition, charge, classification of service, rule or regulation for any services provided under this Agreement over which FERC has jurisdiction.

27.3 In addition to the terms set forth in Sections 27.1 and 27.2, this Agreement may be amended, modified, or supplemented by written agreement of both Seller and Buyer.

ARTICLE 28
ENTIRE AGREEMENT

28.1 This Agreement, the ASA, the Ancillary Agreements and the Separation Document constitute the entire understanding between the Parties, and supersede any and all previous understandings, oral or written, which pertain to the subject matter contained herein or therein. If there is any conflict in said documents, the ASA shall control over this Agreement.

ARTICLE 29
NO THIRD PARTY BENEFICIARIES

29.1 Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties, any rights or remedies under or by reason of this Agreement.

ARTICLE 30
FURTHER ASSURANCES

30.1 The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further information, instruments and documents that may be reasonably requested in order to effectuate the transactions contemplated hereby, including but not limited to, such instruments or documents to establish, if necessary, an alternative arrangement, for access to services under this Agreement.

NYISO Agreements --> O&R and AER NY-Gen - Hydro IA

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date and year first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

/s/James W. Tarpey

By: James W. Tarpey

Title: Vice President, Operations

AER NY-GEN, LLC

/s/Joseph Klimaszewski, Jr.

By: Joseph Klimaszewski, Jr.

Title: Vice President, OPs and New Development