

**Asset Purchase Agreement**

**by and between**

**Aquila, Inc.**

**and**

**The Empire District Electric Company**

**Dated: September 21, 2005**

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## ASSET PURCHASE AGREEMENT

Asset Purchase Agreement (“Agreement”), made as of September 21, 2005, by and between Aquila, Inc., a Delaware corporation (“Seller”), and The Empire District Electric Company, a Kansas corporation (“Buyer”).

WHEREAS, Buyer desires to purchase, and Seller desires to sell, the Purchased Assets (as hereinafter defined) upon the terms and conditions set forth in this Agreement;

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

### ARTICLE I DEFINITIONS

1.1 Definitions. (a) As used in this Agreement, the following terms have the meanings specified in this Section 1.1(a):

“Actionable Incident” means an incident or occurrence that (i) results in a Loss prior to the Effective Time to a Person other than Buyer or Seller, or their permitted assignees; and (ii) provides such Person with a legal basis to obtain damages or other relief for such Loss.

“Adjustment Amount” may be a positive or negative number, and will be determined in accordance with Exhibit 3.1.

“Affiliate” has the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934.

“Affiliated Group” means any affiliated group within the meaning of Code section 1504(a) or any similar group defined under a similar provision of Law.

“Ancillary Agreements” means the Assignment and Assumption Agreement, the Assignment of Easements, the Bill of Sale, the Special Warranty Deeds, and, if applicable, the Transition Services Agreement, assignments and any other agreements, documents, instruments or certificates to be executed by Buyer or Seller in connection with or as contemplated under this Agreement.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement to be executed and delivered by Seller and Buyer at Closing, in the form of Exhibit 1.1-A.

“Assignment of Easements” means the form of Assignment of Easements set forth on Exhibit 1.1-B.

“Bill of Sale” means the bill of sale to be executed and delivered by Seller at the Closing, in the form of Exhibit 1.1-C.

“Business” means the natural gas utility business conducted by Seller serving customers in the Territory.

“Business Agreements” means any contract, agreement, real or personal property lease, easement, commitment, understanding, or instrument (other than the Retained Agreements and

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the Shared Agreements) to which Seller is a party or by which it is bound that either (i) is listed or described on Schedule 5.9, Schedule 5.13(a), or Schedule 7.9(c), or (ii) relates principally to the Business or the Purchased Assets and (A) has been entered into, renewed, extended, or otherwise amended in the ordinary course of business, or (B) is entered into, renewed, extended, or otherwise amended after the date hereof consistent with the terms of this Agreement.

“Business Day” means any day other than Saturday, Sunday, and any day which is a legal holiday or a day on which banking institutions in Kansas City, Missouri are authorized by Law to close.

“Business Employees” means the employees of Seller set forth on Schedule 1.1-A, together with any persons who are hired by Seller after the date hereof for the Business, other than persons hired to perform Central or Shared Functions.

“Buyer Pension Plan” means one or more defined benefit plans within the meaning of section 3(35) of ERISA that are (i) maintained or to be established or maintained by Buyer, and (ii) qualified plans under section 401(a) of the Code.

“Buyer Required Regulatory Approvals” means (i) the filings by Seller and Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act, and (ii) the approvals set forth on Schedule 1.1-B.

“Buyer’s Representatives” means Buyer’s accountants, employees, counsel, environmental consultants, financial advisors, and other representatives.

“Central or Shared Functions” means any of the business functions set forth on Schedule 1.1-C.

“Claims” means any and all administrative, regulatory, or judicial actions or causes of action, suits, petitions, proceedings (including arbitration proceedings), investigations, hearings, demands, demand letters, claims, or notices of noncompliance or violation delivered by any Governmental Entity or other Person.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“COBRA Continuation Coverage” means the continuation of medical coverage required under sections 601 through 608 of ERISA, and section 4980B of the Code.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidentiality Agreement” means the Confidentiality Agreement, dated April 29, 2005, between Seller and Buyer.

“Documents” means all (including current and historical) files, documents, instruments, papers, books, reports, tapes, microfilms, photographs, letters, ledgers, journals, title policies, customer lists and information, regulatory filings, operating data and plans, technical documentation (such as design specifications, functional requirements, and operating instructions), user documentation (such as installation guides, user manuals, and training materials), marketing documentation (such as sales brochures, flyers, and pamphlets), Transferred Employee Records, accounting documents, and other similar materials related principally to the Business, the Purchased Assets, or the Assumed Obligations, in each case whether or not in electronic form; provided, that “Documents” does not include: (i) information which, if provided to Buyer, would violate any applicable Law or Order or the Governing



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Documents of Seller or any of its Affiliates, (ii) bids, letters of intent, expressions of interest, or other proposals received from others in connection with the transactions contemplated by this Agreement or otherwise and information and analyses relating to such communications, (iii) any information, the disclosure of which would jeopardize any legal privilege available to Seller or any of its Affiliates relating to such information or would cause Seller or any of its Affiliates to breach a confidentiality obligation by which it is bound (provided, that in the case of any items that would be Documents but for a confidentiality obligation, Seller will use commercially reasonable efforts at Buyer's request to obtain a waiver of such obligation), (iv) any valuations or projections of or related to the Business, the Purchased Assets, or the Assumed Obligations (other than customary studies, reports, and similar items prepared by or on behalf of Seller for the purposes of completing, performing, or executing unperformed service obligations, Easement relocation obligations, and engineering and construction required to complete scheduled construction, construction work in progress, and other capital expenditure projects, in each case related principally to the Business and the Purchased Assets), (v) any information management systems of Seller (other than accounting documents principally relating to the Business), or (vi) any rights, information, or other matters to the extent used for or on the Internet, including any web pages or other similar items.

“Electric Operation” means the electric utility business conducted by Seller in the State of Missouri.

“Encumbrances” means any mortgages, pledges, liens, claims, charges, security interests, conditional and installment sale agreements, preferential purchase rights, activity and use limitations, easements, covenants, encumbrances, obligations, limitations, title defects, deed restrictions, and any other restrictions of any kind, including restrictions on use, transfer, receipt of income, or exercise of any other attribute of ownership.

“Environment” means all or any of the following media: soil, land surface and subsurface strata, surface waters (including navigable waters, streams, ponds, drainage basins, and wetlands), groundwater, drinking water supply, stream sediments, ambient air (including the air within buildings and the air within other natural or man-made structures above or below ground), plant and animal life, and any other natural resource.

“Environmental Claims” means any and all Claims (including any such Claims involving toxic torts or similar liabilities in tort, whether based on negligence or other fault, strict or absolute liability, or any other basis) relating in any way to any Environmental Laws or Environmental Permits, or arising from the presence, Release, or threatened Release (or alleged presence, Release, or threatened Release) into the Environment of any Hazardous Materials, including any and all Claims by any Governmental Entity or by any Person for enforcement, cleanup, remediation, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation, or injunctive relief pursuant to any Environmental Law or for any property damage or personal or bodily injury (including death) or threat of injury to health, safety, natural resources, or the Environment.

“Environmental Laws” means all Laws relating to pollution or the protection of human health, safety, the Environment, or damage to natural resources, including Laws relating to Releases and threatened Releases or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials. Environmental Laws include the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7

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U.S.C. § 136 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Endangered Species Act, 16 U.S.C. § 1531 et seq.; the National Environmental Policy Act, 42 U.S.C. § 4321, et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; Atomic Energy Act, 42 U.S.C. § 2014 et seq.; Nuclear Waste Policy Act, 42 U.S.C. § 10101 et seq.; and their state and local counterparts or equivalents, all as amended from time to time, and regulations issued pursuant to any of those statutes.

“Environmental Permits” means all permits, certifications, licenses, franchises, approvals, consents, waivers or other authorizations of Governmental Entities issued under or with respect to applicable Environmental Laws and used or held by Seller for the operation of the Business.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person that, together with Seller, would be considered a single employer under section 414(b), (c), or (m) of the Code.

“FERC” means the Federal Energy Regulatory Commission.

“Final Regulatory Order” means, with respect to a Required Regulatory Approval, an Order granting such Required Regulatory Approval (irrespective of whether any rehearing or appeal thereof is pending) that has not been revised, stayed, enjoined, set aside, annulled, or suspended, and with respect to which (i) any required waiting period has expired, and (ii) all conditions to effectiveness prescribed therein or otherwise by Law or Order have been satisfied.

“Financing Agreement” means that certain Financing Agreement, dated as of April 22, 2005, by and among Seller, Union Bank of California, N.A., acting in its capacity as agent for the lenders and in its capacity as lender, and the other lenders that from time to time become party thereto.

“Good Utility Practice” means any practices, methods, standards, guides, or acts, as applicable, that (i) are generally accepted in the region during the relevant time period in the natural gas utility industry, (ii) are commonly used in prudent utility engineering, construction, project management, and operations, or (iii) would be expected if the Business is to be conducted at a reasonable cost in a manner consistent with Laws and Orders applicable to the Business and the objectives of reliability, safety, environmental protection, economy, and expediency. Good Utility Practice includes acceptable practices, methods, or acts generally accepted in the region, and is not limited to the optimum practices, methods, or acts to the exclusion of all others.

“Governing Documents” of a Party means the articles or certificate of incorporation and bylaws, or comparable governing documents, of such Party.

“Governmental Entity” means the United States of America and any other federal, state, local, or foreign governmental or regulatory authority, department, agency, commission, body, court, or other governmental entity.

“Hazardous Material” means (i) any chemicals, materials, substances, or wastes which are now or hereafter defined as or included in the definition of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic substance,” “extremely

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hazardous substance,” “pollutant,” “contaminant,” or words of similar import under any applicable Environmental Laws; (ii) any petroleum, petroleum products (including crude oil or any fraction thereof), natural gas, natural gas liquids, liquefied natural gas or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas), or oil and gas exploration or production waste, polychlorinated biphenyls, asbestos-containing materials, mercury, and lead-based paints; and (iii) any other chemical, material, substances, waste, or mixture thereof which is prohibited, limited, or regulated by Environmental Laws.

“Holding Company Act” means the Public Utility Holding Company Act of 1935, as amended.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“Income Tax” means any Tax based upon, measured by, or calculated with respect to (i) net income, profits, or receipts (including capital gains Taxes and minimum Taxes) or (ii) multiple bases (including corporate franchise and business license Taxes) if one or more of the bases on which such Tax may be based, measured by, or calculated with respect to is described in clause (i), in each case together with any interest, penalties, or additions to such Tax.

“Indenture” means the Indenture of Mortgage and Deed of Trust dated as of April 1, 1946, among St. Joseph Light & Power Company, Harris Trust and Savings Bank, as Trustee, and Bartlett Boder, of the City of St. Joseph, Missouri, as Individual Trustee, as amended or supplemented.

“Independent Accounting Firm” means any independent accounting firm of national reputation mutually appointed by Seller and Buyer.

“Law” means any statutes, regulations, rules, ordinances, codes, and similar acts or promulgations of any Governmental Entity.

“Loss” or “Losses” means losses, liabilities, damages, obligations, payments, costs, and expenses (including the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements, and compromises relating thereto and reasonable attorneys’ fees and reasonable disbursements in connection therewith).

“Material Adverse Effect” means a material adverse effect on the business, assets, properties, results of operations, or financial condition of the Business or the Purchased Assets (taken as a whole) other than an effect (i) resulting from an Excluded Matter, (ii) cured (including by payment of money or credit to the Purchase Price) before the Closing Date, or (iii) the cost of which is reasonably expected to be substantially recovered through rates. “Excluded Matter” means any one or more of the following: (A) any change in the international, national, regional, or local markets or industries in which the Business operates or of which the Business is a part, (B) any Law or Order (other than a Law adopted or an Order issued specifically with respect to the transactions contemplated by this Agreement), (C) any change in accounting standards, principles, or interpretations, (D) this Agreement or the transactions contemplated hereby (including any announcement with respect to this Agreement or the transactions contemplated hereby or the performance by the Parties of their obligations hereunder), (E) any change in international, national, regional, or local economic, regulatory, or political conditions, including prevailing interest rates, (F) weather conditions or customer use patterns, (G) any matter disclosed in this Agreement, or any Schedule or Exhibit hereto, or any

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other certificate or instrument delivered to Buyer under or in accordance herewith, (H) any change in the market price of commodities or publicly traded securities, or (I) any action permitted under this Agreement.

“Order” means any order, judgment, writ, injunction, decree, directive, or award of a court, administrative judge, or other Governmental Entity acting in an adjudicative or regulatory capacity, or of an arbitrator with applicable jurisdiction over the subject matter.

“Party” means either Buyer or Seller, as indicated by the context, and “Parties” means Buyer and Seller.

“Permits” means all permits, certifications, licenses, franchises, approvals, consents, waivers or other authorizations of Governmental Entities issued under or with respect to applicable Laws or Orders and used or held by Seller for the operation of the Business, other than Environmental Permits.

“Permitted Encumbrances” means (i) those Encumbrances set forth in Schedule 1.1-D; (ii) Encumbrances securing or created by or in respect of any of the Assumed Obligations; (iii) statutory liens for current Taxes or assessments not yet due or delinquent or the validity or amount of which is being contested in good faith by appropriate proceedings, none of which contested matters is material; (iv) mechanics’, carriers’, workers’, repairers’, landlords’, and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Seller or the validity or amount of which is being contested in good faith by appropriate proceedings, none of which contested matters is material, or pledges, deposits, or other liens securing the performance of bids, trade contracts, leases, or statutory obligations (including workers’ compensation, unemployment insurance, or other social security legislation); (v) zoning, entitlement, restriction, and other land use and environmental regulations by Governmental Entities which do not materially interfere with the present use of the Purchased Assets; (vi) any Encumbrances set forth in any state, local, or municipal franchise or governing ordinance under which any portion of the Business is conducted; (vii) all rights of condemnation, eminent domain, or other similar rights of any Person; and (viii) such other Encumbrances (including requirements for consent or notice in respect of assignment of any rights) which do not materially interfere with Seller’s use of the Purchased Assets for the Business, and do not secure indebtedness or the payment of the deferred purchase price of property (except for Assumed Obligations).

“Person” means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Entity.

“Prime Rate” means, for any day, the per annum rate of interest quoted as the “Bank Prime Rate” rate for the most recent weekday for which such rate is quoted in the statistical release designated as H.15(519), or any successor publication, published from time to time by the Board of Governors of the Federal Reserve System.

“PSC” means the Missouri Public Service Commission.

“Regulatory Order” means an Order issued by the PSC that affects or governs the rates, services, or other utility operations of the Business.

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Materials into the Environment.

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“Required Regulatory Approvals” means the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals.

“SEC” means the Securities and Exchange Commission.

“Seller Disclosure Schedule” means, collectively, all Schedules other than Schedule 1.1-B and Schedule 6.3.

“Seller Marks” means the names “Aquila,” “Aquila Networks,” “Energy One,” “UtiliCorp,” “Peoples Natural Gas,” “Missouri Public Service,” “St. Joseph Light & Power Company,” and any derivative of any of the foregoing, and any related, similar, and other trade names, trademarks, service marks, and logos of Seller.

“Seller Pension Plan” means the Aquila, Inc. Retirement Income Plan, as amended from time to time.

“Seller Required Regulatory Approvals” means (i) the filings by Seller and Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act, and (ii) the approvals set forth on Schedule 1.1-E.

“Seller’s Knowledge,” or words to similar effect, means the actual knowledge of the persons set forth in Schedule 1.1-F.

“Seller’s Representatives” means Seller’s accountants, employees, counsel, environmental consultants, financial advisors, and other representatives.

“Special Warranty Deed” means the special warranty deed or deeds to be executed and delivered by Seller at the Closing, substantially in the form set forth on Exhibit 1.1-D attached hereto.

“Subsidiary,” when used in reference to a Person, means any Person of which outstanding securities or other equity interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such Person are owned directly or indirectly by such first Person.

“Tax” and “Taxes” means all taxes, charges, fees, levies, penalties, or other assessments imposed by any foreign or United States federal, state, or local taxing authority, including income, excise, property, sales, transfer, franchise, license, payroll, withholding, social security, or other taxes (including any escheat or unclaimed property obligations), including any interest, penalties, or additions attributable thereto.

“Tax Affiliate” of a Person means a member of that Person’s Affiliated Group and any other Subsidiary of that Person which is a partnership or is disregarded as an entity separate from that Person for Tax purposes.

“Tax Return” means any return, report, information return, or other document (including any related or supporting information) required to be supplied to any Governmental Entity with respect to Taxes.

“Territory” means the service territory described in Schedule 1.1-G.

“Transferred Employee Records” means the following records relating to Transferred Employees: (i) skill and development training records and resumes, (ii) seniority histories, (iii) salary and benefit information, (iv) Occupational, Safety and Health Administration medical

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reports, (v) active medical restriction forms, and (vi) job performance reviews and applications; provided that such records will not be deemed to include any record which Seller is restricted by Law, Order, or agreement from providing to Buyer; provided, however, that if Seller is permitted by Law, Order or agreement to disclose such records only with the consent of such Transferred Employee, then upon the request of Buyer, Seller will use its reasonable efforts to obtain such consent.

“Transition Services Agreement” the Transition Services Agreement in the form of Exhibit 1.1-E.

“WARN Act” means the Worker Adjustment Retraining and Notification Act of 1988, as amended.

“9.44% Series Bonds” means the 9.44% Series of First Mortgage Bonds due 2021, issued by St. Joseph Light & Power Company under the Seventeenth Supplemental Indenture, dated as of February 1, 1991, to the Indenture.

(b) In addition, each of the following terms has the meaning specified in the Exhibit or Section set forth opposite such term:

<u>Term</u>	<u>Reference</u>
Accounting Principles	Exhibit 3.1
Accounts Payable	Section 2.4(c)
Accrued Liability	Exhibit 7.9(e)(ii)(C)
Acquisition Proposal	Section 7.2(e)
Adjustment Dispute Notice	Section 3.2(c)
Allocated Rights and Obligations	Section 7.4(e)
Allocated VEBA Amount	Section 7.9(e)(ii)(D)(2)
Assumed Environmental Liabilities	Section 2.3(f)
Assumed Obligations	Section 2.3
Base Net Plant Amount	Exhibit 3.1
Base Price	Section 3.1
Benefit Continuation Period	Section 7.9(e)(ii)(D)(1)
Benefit Plan	Section 5.12(a)
Book Value	Exhibit 3.1
Buyer Pension Plan Trust	Exhibit 7.9(e)(ii)(C)
Buyer’s VEBA	Section 7.9(e)(ii)(D)(2)
Closing	Section 4.1
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Extraordinary Expenditures Reference Amount	Exhibit 3.1
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FERC Accounts	Exhibit 3.1
Financial Hedge	Section 7.4(c)(ii)
Franchises	Section 5.13(b)
GAAP	Exhibit 3.1
Grandfathered Active Employees	Section 7.9(e)(ii)(D)(1)
Grandfathered Individuals	Section 7.9(e)(ii)(D)(1)
Indemnifiable Loss	Section 9.2(a)
Indemnifying Party	Section 9.3(a)
Indemnitee	Section 9.2(c)
Initial Transfer Amount	Exhibit 7.9(e)(ii)(C)
Initial Transfer Date	Exhibit 7.9(e)(ii)(C)
Lease Buy-Out Amount	Exhibit 3.1
Local 695	Section 7.9(a)(i)
Local 814	Section 7.9(a)(i)
Material Business Agreement	Section 5.13(a)
Net Plant	Exhibit 3.1
Net Plant Adjustment	Exhibit 3.1
Net Plant at Closing	Exhibit 3.1

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New Pension Plan	Exhibit 7.9(e)(ii)(C)
New Plan Section 4044 Amount	Exhibit 7.9(e)(ii)(C)
Other Arrangements	Section 7.4(e)
Other Plan Participants	Exhibit 7.9(e)(ii)(C)
Post-Closing Adjustment Statement	Section 3.2(b)
Post-Retirement Welfare Benefits	Section 7.9(e)(ii)(D)(1)
Purchase Price	Section 3.1
Purchased Assets	Section 2.1
Purchased Gas Cost Disallowances	Section 7.15
Qualifying Offer	Section 7.9(b)
Real Property	Section 2.1(a)
Reduction Amount	Exhibit 7.9(e)(ii)(C)
Retained Agreements	Section 2.2(l)
Savings Plan	Section 7.9(e)(ii)(E)
Section 4044 Amount	Exhibit 7.9(e)(ii)(C)
Selected Balance Sheet Information	Section 5.5(a)
Seller Pension Plan Trust	Exhibit 7.9(e)(ii)(C)
Seller's VEBA	Section 7.9(e)(ii)(D)(2)
SFAS 132 Assumptions	Exhibit 7.9(e)(ii)(C)
Shared Agreements	Section 7.4(e)
Shared Easement Rights	Section 7.4(b)
Shared Easements	Section 7.4(b)
Spin-Off Date	Exhibit 7.9(e)(ii)(C)
Substitute Arrangements	Section 7.4(e)
Termination Date	Section 10.1(b)
Third Party Claim	Section 9.3(a)
Transferable Environmental Permits	Section 2.1(h)
Transferable Permits	Section 2.1(g)
Transferred Employee	Section 7.9(c)
Transition Committee	Section 7.1(b)
True-Up Amount	Exhibit 7.9(e)(ii)(C)
True-Up Date	Exhibit 7.9(e)(ii)(C)



1.2 Other Definitional and Interpretive Matters. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation apply:

(a) Calculation of Time Period. When calculating the period of time before which, within which, or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a non-Business Day, the period in question will end on the next succeeding Business Day.

(b) Dollars. Any reference in this Agreement to “dollars” or “\$” means U.S. dollars.

(c) Exhibits and Schedules. Unless otherwise expressly indicated, any reference in this Agreement to an “Exhibit” or a “Schedule” refers to an Exhibit or Schedule to this Agreement. The Exhibits and Schedules (including the preamble thereto) to this Agreement are hereby incorporated and made a part hereof as if set forth in full herein and are an integral part of this Agreement. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein are defined as set forth in this Agreement.

(d) Gender and Number. Any reference in this Agreement to gender includes all genders, and the meaning of defined terms applies to both the singular and the plural of those terms.

(e) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections, and other subdivisions, and the insertion of headings are for convenience of reference only and do not affect, and will not be utilized in construing or interpreting, this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

(f) “Herein”. The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement (including the Schedules and Exhibits to this Agreement) as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(g) “Including”. The word “including” or any variation thereof means “including, without limitation” and does not limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) “To the extent”. The words “to the extent” when used in reference to a liability or other matter, means that the liability or other matter referred to is included in part or excluded in part, with the portion included or excluded determined based on the portion of such liability or other matter exclusively related to the subject. For example, if 40 percent of a liability is attributable to the Business, then a statement that Buyer will assume the liability “to the extent related to the operation of the Business” means that Buyer will assume 40 percent of the liability. As an additional example, if a performance obligation attributable to the Business is by its terms to be performed prior to and following the Effective Time, a statement that Buyer will assume the obligation “to the extent such obligation relates to the period from and after the Effective Time” means that Buyer will assume all liability for the performance from and after the Effective Time, and

that Seller would remain liable for any failure to perform such obligations prior to the Effective Time.

(i) “Principally in the Business”. With reference to assets owned by Seller, and liabilities of Seller, which are used by, in, or for, or relate to, the Business, the phrases “principally in the Business,” “principally for the Business,” and other statements of similar import will be construed to refer to assets or liabilities that are: (A) specifically listed in a Schedule setting forth Purchased Assets or Assumed Obligations; or (B) otherwise are devoted principally to (or in the case of liabilities, are related principally to) the Business other than Excluded Assets and Excluded Liabilities.

1.3 Joint Negotiation and Preparation of Agreement. The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties hereto and no presumption or burden of proof favoring or disfavoring any Party will exist or arise by virtue of the authorship of any provision of this Agreement.

## ARTICLE II PURCHASE AND SALE

2.1 The Sale. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer, and deliver to Buyer, and Buyer will purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances), all of Seller’s right, title, and interest in, to, and under the real and personal property, tangible or intangible, described below, as the same exists at the Effective Time (and, as applicable and as permitted or contemplated hereby, with such additions and deletions as may occur from the date hereof through the Effective Time), except to the extent that such assets are Excluded Assets (collectively, the “Purchased Assets”):

(a) the real property and real property interests described on Schedule 2.1(a), including buildings, structures, other improvements, and fixtures located thereon, the leasehold and subleasehold interests under the leases described on Schedule 5.9 (to the extent such leasehold and subleasehold interests are assignable), and the Easements and Shared Easement Rights to be conveyed at the Closing pursuant to Section 7.4(b) (to the extent such Easements and Shared Easement Rights are assignable) (collectively, the “Real Property”);

(b) the accounts receivable, billed and unbilled, inventories, and other assets, in each case, as reflected in the applicable FERC Accounts;

(c) the Documents;

(d) all assets reflected in Net Plant as set forth on Exhibit 3.1. and, to the extent not reflected in Net Plant, the machinery, equipment, vehicles, furniture, pipeline system and other tangible personal property owned by Seller and used principally in the Business, including the vehicles and equipment listed on Schedule 2.1(d), and all warranties against manufacturers or vendors relating thereto, to the extent that such warranties are freely transferable;

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- (e) the Business Agreements and the Franchises, in each case, to the extent the same are assignable;
- (f) the Allocated Rights and Obligations to the extent transferred to Buyer pursuant to Section 7.4(e);
- (g) the Permits listed on Schedule 5.15, in each case to the extent the same are assignable (the “Transferable Permits”);
- (h) the Environmental Permits listed on Schedule 5.10(a)-2, in each case to the extent the same are assignable (the “Transferable Environmental Permits”);
- (i) Claims and defenses of Seller to the extent such Claims or defenses arise solely with respect to the Assumed Obligations, provided that any such Claims and defenses will be assigned to Buyer without warranty or recourse;
- (j) any assets acquired by Seller pursuant to Section 7.4(d) for inclusion in the Purchased Assets;
- (k) assets transferred pursuant to Section 7.9; and
- (l) any other assets owned by Seller and used principally in the Business.

2.2 Excluded Assets. The Purchased Assets do not include any property or assets of Seller not described in Section 2.1 and, notwithstanding any provision to the contrary in Section 2.1 or elsewhere in this Agreement, the Purchased Assets do not include the following property or assets of Seller (all assets excluded pursuant to this Section 2.2, the “Excluded Assets”):

- (a) cash, cash equivalents, and bank deposits;
- (b) certificates of deposit, shares of stock, securities, bonds, debentures, evidences of indebtedness, and any other debt or equity interest in any Person;
- (c) the Seller Marks;
- (d) properties and assets used in or for the conduct of the Electric Operation which are not used principally in the Business;
- (e) subject to Section 3.4 hereof, any refund or credit (i) related to Taxes paid by or on behalf of Seller, whether such refund is received as a payment or as a credit against future Taxes payable, or (ii) relating to a period before the Closing Date;
- (f) all books, records, or the like other than the Documents;
- (g) any assets that have been disposed of in the ordinary course of business or otherwise in compliance with this Agreement prior to Closing;
- (h) except as expressly provided in Section 2.1(d) and Section 2.1(i), all of the Claims or causes of action of Seller against any Person;

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- (i) assets used for performance of the Central or Shared Functions;
- (j) all insurance policies, and rights thereunder, including any such policies and rights in respect of the Purchased Assets or the Business, except as otherwise provided in Section 7.10(b);
- (k) the rights of Seller arising under or in connection with this Agreement, any certificate or other document delivered in connection herewith, and any of the transactions contemplated hereby and thereby;
- (l) all (i) agreements and contracts set forth on Schedule 2.2(l) (the “Retained Agreements”), (ii) Shared Agreements (except to the extent provided by Section 7.4(e)), and (iii) other agreements and contracts not specifically included in the Business Agreements and Franchises that are not principally used for (or do not exist principally for the benefit of) the Business;
- (m) all software, software licenses, information systems, and any items set forth in or generally described in subparts (i) through (vi) of the definition of “Documents” in Section 1.1(a); and
- (n) the assets and other rights set forth on Schedule 2.2(n).

2.3 Assumed Obligations. On the Closing Date, Buyer will deliver to Seller the Assignment and Assumption Agreement pursuant to which Buyer will assume and agree to discharge all of the debts, liabilities, obligations, duties, and responsibilities of Seller of any kind and description, whether absolute or contingent, monetary or non-monetary, direct or indirect, known or unknown, or matured or unmatured, or of any other nature, to the extent principally related to the Purchased Assets or the Business, other than Excluded Liabilities (the “Assumed Obligations”), in accordance with the respective terms and subject to the respective conditions thereof, including the following liabilities and obligations:

- (a) all liabilities and obligations of Seller under the Business Agreements, the Transferable Permits, the Transferable Environmental Permits, and the Allocated Rights and Obligations transferred to Buyer pursuant to Section 7.4(e), and any other agreements or contractual rights assigned to Buyer pursuant to the terms of the Agreement, except as provided in Section 2.4(b);
- (b) all liabilities and obligations of Seller with respect to customer deposits, customer advances for construction and other similar items to the extent reflected in the applicable FERC Accounts;
- (c) all liabilities and obligations relating to unperformed service obligations, Easement relocation obligations, and engineering and construction required to complete scheduled construction, construction work in progress, and other capital expenditure projects, in each case related principally to the Business and outstanding on or arising after the Effective Time;
- (d) all liabilities and obligations associated with the Purchased Assets or the Business in respect of Taxes for which Buyer is liable pursuant to Section 3.4;

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(e) all liabilities and obligations for which Buyer is responsible pursuant to Section 7.9;

(f) all liabilities, obligations, Environmental Claims, and demands arising under, in respect of, or relating to compliance or non-compliance by Seller with past, present, and future Environmental Laws, existing, arising, or asserted with respect to the Business or the Purchased Assets, whether before, on, or after the Closing Date (the “Assumed Environmental Liabilities”). For avoidance of doubt, the Assumed Environmental Liabilities include all liabilities and obligations (including liabilities and obligations based upon the presence, Release, or threatened Release of Hazardous Materials at any location) of Seller directly or indirectly relating to, caused by, or arising in connection with the operation, ownership, use, or other control of or activity of or relating to any installation, facility, plant (including any manufactured gas plant), or site (including any manufactured gas plant site) that at the Closing is, or at any time prior to the Closing was, (i) operated, owned, leased, or otherwise under the control of or attributed to any of Seller, the Business, or any predecessor in interest of Seller or the Business, and (ii) located in the Territory or any areas previously served by the Business or any predecessor of the Business; provided, however, that the Assumed Environmental Liabilities do not include any such liabilities, obligations, Environmental Claims, or demands in respect of real property that is both (A) owned or leased by Seller as of the date of this Agreement, and (B) not included in the Purchased Assets;

(g) all liabilities and obligations of Seller or Buyer arising on or after the Effective Time under (i) any Regulatory Orders applicable to the Business or the Purchased Assets, or (ii) imposed on Buyer or the Purchased Assets or Business in connection with any Required Regulatory Approval; and

(h) the liabilities and obligations set forth on Schedule 2.3(h).

2.4 Excluded Liabilities. Buyer does not assume and will not be obligated to pay, perform, or otherwise discharge any of the following liabilities or obligations (collectively, the “Excluded Liabilities”):

(a) any liabilities or obligations of Seller to the extent related to any Excluded Assets;

(b) any liabilities or obligations of Seller for any breach or default by Seller prior to the Effective Time, or any event prior to the Effective Time, which after the giving of notice or passage of time or both (it being understood that the giving of notice or passage of time may occur prior to or after the Effective Time) would constitute a default or breach by Seller, of or under the Business Agreements, the Permits, or the Environmental Permits, except to the extent that such liability or obligation is taken into account in determining the Adjustment Amount;

(c) all trade accounts payable and other accrued and unpaid expenses in respect of goods and services incurred by or for the Business in the ordinary course of business or otherwise, to the extent attributable to the period prior to the Effective Time (the “Accounts Payable”);

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(d) any liabilities or obligations of Seller in respect of indebtedness for borrowed money;

(e) any liabilities or obligations in respect of Taxes of Seller or any Tax Affiliate of Seller, or any liability of Seller for unpaid Taxes of any Person under Treasury Regulation section 1.1502-6 (or similar provision of state, local, or foreign law) as a transferee or successor, by contract or otherwise, except for Taxes for which Buyer is liable pursuant to Section 3.4 or Section 7.7;

(f) any obligations of Seller for wages, employment Taxes, or severance pay to the extent attributable to the period prior to the Effective Time (except, with respect to vacation days and severance pay, as otherwise provided in Section 7.9);

(g) except for the Assumed Environmental Liabilities, Losses from an Actionable Incident related to the Purchased Assets or Business;

(h) except as otherwise provided in Section 7.9, any liability or obligation of Seller under any deferred compensation arrangement or severance policy or any obligation to make any parachute or retention payment;

(i) any liabilities or obligations of Seller arising under or in connection with this Agreement or the Ancillary Agreements delivered in connection herewith, and any of the transactions contemplated hereby and thereby;

(j) any Claims or Losses arising out of, in connection with or related to (i) the lawsuit filed on September 4, 2004 and pending, with consolidated lawsuits, in the U.S. District Court for the Western District of Missouri as described on Schedule 5.12(d), Item 2 (including indemnification obligations owed or claimed to be owed to members of Seller's Board and/or employees); (ii) any liabilities of the Business owed or claimed to be owed to Seller as of the Effective Time (including intercompany or interdivisional accounts payable); (iii) any actions or inactions by Seller or any employee of Seller prior to Closing which constitute illegal or criminal activity in connection with Seller's (A) receipt of any rebates, payments, commissions, promotional allowances or any other economic benefit, regardless of its nature or type, from any customer, supplier, trading company, shipping company, governmental employee or other Person with whom Seller has done business directly or indirectly, or (B) giving or agreeing to give any gift or similar benefit to any customer, supplier, trading company, shipping company, governmental employee or other person or entity who is or may be in a position to help or hinder the business of Seller (or assist Seller in connection with any actual or proposed transaction); or (iv) customer deposits, customer advances for construction and other similar items to the extent not reflected in the FERC Accounts; and

(k) any criminal fines, penalties, or sanctions imposed as a result of actions or omissions by Seller or any employee of Seller prior to the Closing.

**ARTICLE III  
PURCHASE PRICE**

3.1 Purchase Price. The purchase price for the Purchased Assets (the “Purchase Price”) will be an amount equal to \$84,000,000 (the “Base Price”), adjusted as follows: (i) the Base Price will be increased by the Adjustment Amount if the Adjustment Amount is a positive number; and (ii) the Base Price will be reduced by the Adjustment Amount if the Adjustment Amount is a negative number. The Adjustment Amount will be determined in accordance with the requirements set forth on Exhibit 3.1.

3.2 Determination of Purchase Price.

(a) No later than 15 days prior to the Closing Date, Seller will prepare and deliver to Buyer a good faith estimate of the Purchase Price, based on Seller’s good faith estimates of the Adjustment Amount (such estimated Purchase Price being referred to herein as the “Closing Payment Amount”).

(b) Within 90 days after the Closing Date, Seller will prepare and deliver to Buyer a statement (the “Post-Closing Adjustment Statement”) that reflects Seller’s determination of (i) the Adjustment Amount, and (ii) the Purchase Price based on the Adjustment Amount. In addition, Seller will provide Buyer with supporting calculations, in reasonable detail, for such determinations at the time it delivers the Post-Closing Adjustment Statement. Buyer agrees to cooperate with Seller in connection with Seller’s preparation of the Post-Closing Adjustment Statement and related information, and will provide Seller with access to its books, records, information, and employees as Seller may reasonably request.

(c) The amounts determined by Seller as set forth in the Post-Closing Adjustment Statement will be final, binding, and conclusive for all purposes unless, and only to the extent, that within 60 days after Seller has delivered the Post-Closing Adjustment Statement Buyer notifies Seller of any dispute with matters set forth in the Post-Closing Adjustment Statement. Any such notice of dispute delivered by Buyer (an “Adjustment Dispute Notice”) will identify with specificity each item in the Post-Closing Adjustment Statement with respect to which Buyer disagrees, the basis of such disagreement, and Buyer’s position with respect to such disputed item.

(d) If Buyer delivers an Adjustment Dispute Notice in compliance with Section 3.2(c), then (i) the undisputed portion of the total proposed Adjustment Amount set forth in the Post-Closing Adjustment Statement (together with interest thereon for the period commencing on the Closing Date through the date of payment calculated at the Prime Rate in effect on the Closing Date) will be paid by the appropriate Party, in accordance with the payment procedures set forth in Section 3.2(e); and (ii) Buyer and Seller will attempt to reconcile their differences and any resolution by them as to any disputed amounts will be final, binding, and conclusive for all purposes on the Parties. If Buyer and Seller are unable to reach a resolution with respect to all disputed items within 45 days of delivery of the Adjustment Dispute Notice, Buyer and Seller will submit any items remaining in dispute for determination and resolution to the Independent Accounting Firm, which will be instructed to determine and report to the Parties, within

30 days after such submission, upon such remaining disputed items. The report of the Independent Accounting Firm will be final, binding, and conclusive on the Parties for all purposes. The fees and disbursements of the Independent Accounting Firm will be allocated between Buyer and Seller so that Buyer's share of such fees and disbursements will be in the same proportion that the aggregate amount of such remaining disputed items so submitted to the Independent Accounting Firm that is unsuccessfully disputed by Buyer (as finally determined by the Independent Accounting Firm) bears to the total amount of such remaining disputed amounts so submitted to the Independent Accounting Firm.

(e) Within five days following the final determination of the Purchase Price pursuant to Sections 3.2(c) and 3.2(d), (i) if the Purchase Price is greater than the Closing Payment Amount, Buyer will pay the difference (adjusted to reflect any payment pursuant to Section 3.2(d)(i)) to Seller; or (ii) if the Purchase Price is less than the Closing Payment Amount, Seller will pay the difference (adjusted to reflect any payment pursuant to Section 3.2(d)(i)) to Buyer. Any amount paid under this Section 3.2(e) will be paid with interest for the period commencing on the Closing Date through the date of payment, calculated at the Prime Rate in effect on the Closing Date, in cash by wire transfer of immediately available funds to the account specified by the Party receiving payment.

3.3 Allocation of Purchase Price. The sum of the Purchase Price and the Assumed Obligations will be allocated among the Purchased Assets on a basis consistent with section 1060 of the Code and the Treasury Regulations thereunder. The Parties will work together in good faith to agree upon such allocation as soon as practicable following the Closing Date. In the event that such agreement has not been reached within 30 days after the final determination of the Purchase Price pursuant to Sections 3.2(c) and 3.2(d), the allocation will be determined by the Independent Accounting Firm, and such determination will be binding on the Parties. Each Party will pay one-half of the fees and expenses of the Independent Accounting Firm in connection with such determination. Each Party will report the transactions contemplated by the Agreement for federal Income Tax and all other Tax purposes in a manner consistent with such allocation. Each Party will provide the other promptly with any other information required to complete Form 8594 under the Code. Each Party will notify the other, and will provide the other with reasonably requested cooperation, in the event of an examination, audit, or other proceeding regarding the allocations provided for in this Section 3.3.



3.4 Proration.

(a) All Taxes, utility charges, and similar items customarily prorated, including those listed below, to the extent relating to the Business or the Purchased Assets will be prorated as of the Effective Time, with Seller liable to the extent such items relate to any period prior to the Effective Time, and Buyer liable to the extent such items relate to any period from and after the Effective Time. To the extent that Seller determines in good faith that amounts to be prorated under this Section 3.4 can be reasonably estimated at Closing, Seller will provide Buyer with such estimate and the Parties will adjust the amounts paid at Closing to reflect such prorations. Such items to be prorated will include:

(i) personal property and real property Taxes, assessments, franchise Taxes, and other similar charges, including charges for water, telephone, electricity, and other utilities;

(ii) any permit, license, registration, compliance assurance fees or other fees with respect to any Transferable Permits and Transferable Environmental Permits; and

(iii) rents under any leases of real or personal property.

(b) In connection with any real property Tax prorations, including installments of special assessments, Buyer will be credited with an amount equal to the amount of the current real property Tax or installment of special assessments, as the case may be, multiplied by a fraction, in each instance (i) the numerator of which is the number of days from the first day of the tax or assessment period in which the Closing Date occurs to the day before the Closing Date, and (ii) the denominator of which is the total number of days in the tax or assessment period in which the Closing Date occurs. In connection with any other prorations, in the event that actual amounts are not available at the Closing Date, the proration will be based upon the Taxes, assessments, charges, fees, or rents for the most recent period completed prior to the Closing Date for which actual Taxes, assessments, charges, fees, or rents are available. All prorations will be based upon the most recent available Tax rates, assessments, and valuations. Any prorations will be made so as to avoid duplication of any items, and will not include items which are otherwise taken into account in determining the Purchase Price, including the Adjustment Amount.

(c) The proration of all items under this Section 3.4 will be recalculated by Buyer within 60 days following the date upon which the actual amounts become available to Buyer. Buyer will notify Seller promptly of such recalculated amounts, and will provide Seller with all documentation relating to such recalculations, including tax statements and other notices from third parties. The Parties will make such payments to each other as are necessary to reconcile any estimated amounts prorated as of the Effective Time with the final amounts to be prorated. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all proration calculations made pursuant to this Section 3.4.

**ARTICLE IV  
THE CLOSING**

4.1 Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in Article VIII of this Agreement, the closing of the purchase and sale of the Purchased Assets and assumption of the Assumed Obligations (the "Closing") will take place at the offices of Blackwell Sanders Peper Martin LLP in Kansas City, Missouri, beginning at 10:00 A.M. (Kansas City, Missouri time) on the first Business Day of the calendar month following the calendar month during which the conditions set forth in Article VIII (other than conditions to be satisfied by deliveries at the Closing) have been satisfied or waived, or at such other place or time as the Parties may agree. The date on which the Closing occurs is referred to herein as the "Closing Date." The purchase and sale of the Purchased Assets and assumption of the Assumed Obligations will be effective as of 12:01 A.M., Kansas City, Missouri time, on the Closing Date (the "Effective Time").

4.2 Payment of Closing Payment Amount. At the Closing, Buyer will pay or cause to be paid to Seller the Closing Payment Amount, by wire transfer of immediately available funds or by such other means as may be agreed upon by Seller and Buyer.

4.3 Deliveries by Seller. At or prior to the Closing, Seller will deliver the following to Buyer:

- (a) the Bill of Sale, duly executed by Seller;
- (b) the Assignment and Assumption Agreement and the Transition Services Agreement, duly executed by Seller;
- (c) all consents, waivers or approvals, in form reasonably satisfactory to Buyer, obtained by Seller from third parties in connection with this Agreement;
- (d) the certificate contemplated by Section 8.2(d);
- (e) one or more deeds of conveyance of the parcels of Real Property with respect to which Seller holds fee interests, substantially in the form of the Special Warranty Deed, duly executed and acknowledged by Seller and in recordable form;
- (f) one or more (as reasonably requested by Buyer) instruments of assignment or conveyance, substantially in the form of the Assignment of Easements, as are necessary to transfer the Easements and the Shared Easement Rights pursuant to Section 7.4(b);
- (g) all such other instruments of assignment or conveyance as are reasonably requested by Buyer in connection with the transfer of the Purchased Assets to Buyer in accordance with this Agreement;
- (h) certificates of title for certificated motor vehicles or other titled Purchased Assets, duly executed by Seller as may be required for transfer of such titles to Buyer pursuant to this Agreement;

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(i) terminations or releases of Encumbrances on the Purchased Assets other than the Permitted Encumbrances; and

(j) such other agreements, documents, instruments, and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement.

4.4 Deliveries by Buyer. At or prior to the Closing, Buyer will deliver the following to Seller:

(a) the Assignment and Assumption Agreement and the Transition Services Agreement, duly executed by Buyer;

(b) the certificate contemplated by Section 8.3(c);

(c) a notarized statement in a form provided by Seller that satisfies the requirements of 10 CSR 25-10.010(3)(B)(3) relating to the former manufactured gas plant site in Chillicothe, Missouri;

(d) all consents, waivers, or approvals, in form reasonably satisfactory to Seller, obtained by Buyer from third parties in connection with this Agreement;

(e) all such other documents, instruments, and undertakings as are reasonably requested by Seller in connection with the assumption by Buyer of the Assumed Obligations in accordance with this Agreement; and

(f) such other agreements, documents, instruments and writings as are required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

### ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Buyer to enter into this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby, except as set forth in, or qualified by any matter set forth in, the Seller Disclosure Schedule (as the same may be supplemented or amended pursuant to Section 7.8), Seller represents and warrants to Buyer as set forth in this Article V.

5.1 Organization; Qualification. Seller is a corporation duly organized, validly existing, and in good standing under the laws of Delaware and has all requisite corporate power and authority to own, lease, and operate the Purchased Assets and to carry on the Business as presently conducted. Seller is duly qualified or licensed to do business as a foreign corporation and is in good standing in each jurisdiction in which the conduct of the Business, or the ownership or operation of any Purchased Assets, by Seller makes such qualification necessary.

5.2 Authority Relative to this Agreement and the Ancillary Agreements. Seller has all corporate power and authority necessary to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation

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of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors of Seller and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement and the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement has been, and the Ancillary Agreements at Closing will be, duly and validly executed and delivered by Seller, and constitute (and will constitute in the case of the Ancillary Agreements) valid and binding agreements of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

5.3 Consents and Approvals; No Violation. Except as set forth in Schedule 5.3, the execution and delivery of this Agreement and the Ancillary Agreements by Seller, and the consummation by Seller of the transactions contemplated hereby and thereby, do not:

- (a) conflict with or result in any breach of Seller's Governing Documents;
- (b) result in a default (including with notice, lapse of time, or both), or give rise to any right of termination, cancellation, or acceleration, under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Seller or any of its Affiliates is a party or by which Seller or any of its Affiliates, the Business or any of the Purchased Assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been, or will prior to the Effective Time be, obtained or which if not obtained or made would not, individually or in the aggregate, prevent or materially delay the consummation of the transactions contemplated by this Agreement;
- (c) violate any Law or Order applicable to Seller, any of its Affiliates, the Business or any of the Purchased Assets;
- (d) require any declaration, filing, or registration with, or notice to, or authorization, consent, or approval of any Governmental Entity, other than (i) the Seller Required Regulatory Approvals, (ii) such declarations, filings, registrations, notices, authorizations, consents, or approvals which, if not obtained or made, would not, individually or in the aggregate, prevent or materially delay the consummation of the transactions contemplated by this Agreement, or (iii) any requirements which become applicable to Seller as a result of the specific regulatory status of Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to any business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged.

5.4 Governmental Filings. Since December 31, 2004, Seller has filed or caused to be filed with the PSC all material forms, statements, reports, and documents (including all exhibits, amendments, and supplements thereto) required by Law or Order to be filed by Seller with the PSC with respect to the Business and the Purchased Assets. As of the respective dates on which such forms, statements, reports, and documents were filed, each (to the extent prepared by Seller and excluding information prepared or provided by third parties) complied in all material

respects with all requirements of any Law or Order applicable to such form, statement, report, or document in effect on such date.

5.5 Financial Information.

(a) Schedule 5.5(a) sets forth the Book Values, as of December 31, 2004, and June 30, 2005, respectively, of selected balance sheet information with respect to the Purchased Assets and the Business. The information set forth in Schedule 5.5(a) is referred to herein as the “Selected Balance Sheet Information.”

(b) Schedule 5.5(b) sets forth the division income statements for the Business for the 12-month period ended December 31, 2004, and the six-month period ended June 30, 2005. The information set forth in Schedule 5.5(b) is referred to herein as the “Division Income Statement Information.”

(c) The Selected Balance Sheet Information and the Division Income Statement Information fairly present as of the dates thereof or for the periods covered thereby, in all material respects, the items reflected therein, all in accordance with (i) FERC Accounting Rules applied on a consistent basis in accordance with the Seller’s normal accounting practices, and (ii) except as indicated in the notes thereto, the basis upon which the financial information set forth on Schedule 3.1-C was prepared.

5.6 No Material Adverse Effect. Except as set forth in Schedule 5.6, or as otherwise contemplated by this Agreement, since December 31, 2004, and until the date hereof, no change or event has occurred which, either individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

5.7 Operation in the Ordinary Course. Except as otherwise disclosed herein or set forth in Schedule 5.7, or otherwise contemplated or permitted pursuant to the terms hereof, since December 31, 2004, and until the date hereof, the Business has been operated in the ordinary course of business consistent with Good Utility Practice.

5.8 Title. Except as set forth on Schedule 5.8, Seller (i) owns good and marketable title to (or in the case of leased property, to Seller’s knowledge, has a valid and enforceable leasehold interest in) the Real Property, the Easements, and the Shared Easements, and (ii) has good title to the other Purchased Assets, in each case, free and clear of all Encumbrances other than Permitted Encumbrances. The Easements and the Shared Easements are all of the easements, railroad crossing rights and rights-of-way, and similar rights (other than public rights-of-way) necessary for the operation of the Business as currently conducted.

5.9 Leases. Schedule 5.9 lists all real property leases under which Seller is a lessee or lessor that relate principally to the Business or the Purchased Assets.

5.10 Environmental. The only representations and warranties given in respect to Environmental Laws, Environmental Permits, Environmental Claims, or other environmental matters are those contained in this Section 5.10, and none of the other representations and warranties contained in this Agreement will be deemed to constitute, directly or indirectly, a representation and warranty with respect to Environmental Laws, Environmental Permits, Environmental Claims, other environmental matters, or matters incident to or arising out of or in

connection with any of the foregoing. All such matters are governed exclusively by this Section 5.10 and by Articles II and IX.

(a) Except as set forth on Schedule 5.10(a)-1, to Seller's Knowledge, (i) Seller presently possesses all Environmental Permits necessary to operate the Business as it is currently being operated, and (ii) the Purchased Assets and the Business are in compliance, in all material respects, with the requirements of such Environmental Permits and Environmental Laws. Schedule 5.10(a)-2 sets forth a list of all material Environmental Permits held by Seller for the operation of the Business.

(b) Except as set forth on Schedule 5.10(b), to Seller's Knowledge, neither Seller nor any Affiliate of Seller has received within the last three years any written notice, report, or other information regarding any actual or alleged violation of Environmental Laws or any liabilities or potential liabilities, including any investigatory, remedial, or corrective obligations, relating to the operation of the Business or the Purchased Assets arising under Environmental Laws.

(c) Except as set forth on Schedule 5.10(c), (i) to Seller's Knowledge, there is and has been no Release from, in, on, or beneath the Real Property that could form a basis for an Environmental Claim, and (ii) there are no Environmental Claims related to the Purchased Assets or the Business, which are pending or, to Seller's Knowledge, threatened against Seller.

(d) Seller has advised Buyer of the existence of, or made available to Buyer, all material correspondence, studies, audits, reviews, investigations, analyses, and reports on material environmental matters relating to the Purchased Assets or the Business that are in the possession or reasonable control of Seller.

5.11 Labor Matters. Schedule 5.11 lists each collective bargaining agreement covering any of the Business Employees to which Seller is a party or is subject (each, a "Collective Bargaining Agreement"). Except to the extent set forth in Schedule 5.11, (i) Seller is in compliance with all Laws applicable to the Business Employees respecting employment and employment practices, terms and conditions of employment, and wages and hours; (ii) Seller has not received written notice of any unfair labor practice complaint against Seller pending before the National Labor Relations Board with respect to any of the Business Employees; (iii) Seller has not received notice that any representation petition respecting the Business Employees has been filed with the National Labor Relations Board; (iv) Seller is in compliance with its obligations under the Collective Bargaining Agreements; (v) no arbitration proceeding arising out of or under the Collective Bargaining Agreements is pending against Seller; and (vi) there is no labor strike, slowdown, work stoppage, or lockout actually pending or, to Seller's Knowledge, threatened against Seller in respect of the Purchased Assets or the Business. Except for obligations to be assumed or undertaken by Buyer pursuant to Section 7.9, there are no employment, severance, or change in control agreements or contracts between Seller and any Business Employee under which Buyer would have any liability.

5.12 ERISA; Benefit Plans.

(a) Schedule 5.12(a) lists each employee benefit plan (as such term is defined in section 3(3) of ERISA) and each other plan, program, or arrangement providing benefits to employees that is maintained by, contributed to, or required to be contributed to by Seller as of the date hereof on account of current Business Employees or persons who have retired or may retire from the Business (each, a “Benefit Plan”). Copies of such plans and all amendments thereto, together with the most recent annual report and actuarial report with respect thereto, if any, have been made available to Buyer.

(b) Each Benefit Plan that is intended to be qualified under section 401(a) of the Code has received a determination from the Internal Revenue Service that such Benefit Plan is so qualified, and each trust that is intended to be exempt under section 501(a) of the Code has received a determination letter that such trust is so exempt. Nothing has occurred since the date of such determination that would materially adversely affect the qualified or exempt status of such Benefit Plan or trust, nor will the consummation of the transactions provided for by this Agreement have any such effect. Seller has made available to Buyer a copy of the most recent determination letter of the IRS with respect to each such Benefit Plan or trust.

(c) Each Benefit Plan has been maintained, funded, and administered in material compliance with its terms, the terms of any applicable Collective Bargaining Agreements, and all applicable Laws, including ERISA and the Code. There is no “accumulated funding deficiency” within the meaning of section 412 of the Code with respect to any Benefit Plan which is an “employee pension benefit plan” as defined in section 3(2) of ERISA. No reportable event (within the meaning of section 4043 of ERISA) and no event described in sections 4041, 4042, 4062 or 4063 of ERISA has occurred in connection with any Benefit Plan other than events which would not, individually or in the aggregate, have an adverse effect on the Purchased Assets or Business. No proceeding has been initiated to terminate the Seller Pension Plan. Neither Seller nor any ERISA Affiliate has any obligation to contribute to or any other liability under or with respect to any multiemployer plan (as such term is defined in section 3(37) of ERISA). No liability under Title IV or section 302 of ERISA has been incurred by Seller or any ERISA Affiliate that has not been satisfied in full, and no condition exists that presents a material risk to Seller or any ERISA Affiliate of incurring any such liability, other than liability for premiums due to the Pension Benefit Guaranty Corporation. No Person has provided or is required to provide security to the Seller Pension Plan under section 401(a)(29) of the Code due to a plan amendment that results in an increase in current liability.

(d) Except as set forth on Schedule 5.12(d), the administrator and the fiduciaries of each Benefit Plan have in all material respects complied with the applicable requirements of ERISA, the Code, and any other requirements of applicable Laws, including the fiduciary responsibilities imposed by Part 4 of Title I, Subtitle B of ERISA. Except as set forth on Schedule 5.12(d), there have been no non-exempt “prohibited transactions” as described in section 4975 of the Code or Title I, Part 4 of ERISA involving any Benefit Plan, and to Seller’s Knowledge there are no facts or circumstances

which could give rise to any tax imposed by section 4975 of the Code with respect to any Benefit Plan.

(e) All contributions (including all employer matching and other contributions and all employee salary reduction contributions) for all periods ending prior to the Effective Time (including periods from the first day of the current plan year to the Effective Time) have been paid to the Benefit Plans within the time required by Law or will be paid to the Benefit Plans prior to or as of the Closing, notwithstanding any provision of any Benefit Plan to the contrary. All returns, reports, and disclosure statements required to be made under ERISA and the Code with respect to the Benefit Plans have been timely filed or delivered. No amount of income or any assets of any Benefit Plan, is subject to tax as unrelated business taxable income.

(f) Each Benefit Plan that is a group health plan (within the meaning of section 5000(b)(1) of the Code) in all material respects complies with and has been maintained and operated in material compliance with each of the health care continuation requirements of section 4980B of the Code and Part 6 of Title I, Subtitle B of ERISA and the requirements of the Health Insurance Protection and Portability Act of 1996.

(g) Schedule 5.12(g) sets forth the medical and life insurance benefits currently provided by Seller to any currently retired or former employees of the Business other than pursuant to Part 6 of Subtitle B of Title I of ERISA, section 4980B of the Code, or similar provisions of state law.

(h) Except as provided in Section 7.9, no provision of any Benefit Plan would require the payment by Buyer of any money or other property, or the provision by Buyer of any other rights or benefits, to any employee or former employee of Seller as a result of the transactions contemplated by this Agreement, whether or not such payment would constitute a parachute payment within the meaning of section 280G of the Code.

#### 5.13 Certain Contracts and Arrangements.

(a) Except for contracts, agreements, leases, commitments, understandings, or instruments which (i) are listed on Schedule 5.9, Schedule 5.11, or Schedule 5.13(a) (the “Material Business Agreements”), or (ii) have been entered into in the ordinary course of business and do not individually involve annual payment obligations in excess of \$50,000, Seller is not a party to any contract, agreement, lease, commitment, understanding, or instrument which is principally related to the Business or the Purchased Assets other than the Retained Agreements, the Shared Agreements, and any other contracts, agreements, personal property leases, commitments, understandings, or instruments which are Excluded Assets. Except as disclosed in Schedule 5.13(a), each Material Business Agreement constitutes a valid and binding obligation of Seller and, to Seller’s Knowledge, constitutes a valid and binding obligation of the other parties thereto and is in full force and effect. Seller is not in breach or default (nor has any event occurred which, with notice or the passage of time, or both, would constitute such a breach or default) under, and has not received written notice that it is in breach or default under, any Material Business Agreement, except for such breaches or defaults as to which requisite waivers or consents have been obtained. Except as set forth in



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Schedule 5.13(a), to Seller's Knowledge, no other party to any Material Business Agreement is in breach or default (nor has any event occurred which, with notice or the passage of time, or both, would constitute such a breach or default) under any Material Business Agreement.

(b) Schedule 5.13(b) sets forth a list of each municipal or county franchise agreement relating to the Business to which Seller is a party (the "Franchises"). Except as disclosed in Schedule 5.13(b), Seller (i) has all Franchises necessary for the operation of the Business as presently conducted, and (ii) is not in default under such agreements and, to Seller's Knowledge, each such agreement is in full force and effect.

5.14 Legal Proceedings and Orders. Except as set forth in Schedule 5.14, there are no material Claims relating to the Purchased Assets or the Business, which are pending or, to Seller's Knowledge, threatened against Seller. Except for any Regulatory Orders, or as set forth in Schedule 5.14, Seller is not subject to any outstanding Orders that would reasonably be expected to apply to the Purchased Assets or the Business following Closing.

5.15 Permits. Schedule 5.15 sets forth a list of all material Permits held by Seller and required for the operation of the Business as presently conducted. Except as disclosed in Schedule 5.15, Seller (i) has all Permits required by Law for the operation of the Business as presently conducted, and (ii) is not in breach or default (nor has any event occurred which, with the giving of notice or the passage of time, or both, would constitute such a breach or default) under such Permits and, to Seller's Knowledge, each such Permit is in full force and effect.

5.16 Compliance with Laws. Seller is in material compliance with all Laws and Orders applicable to the Purchased Assets or the Business.

5.17 Insurance. Except as set forth on Schedule 5.17, since December 31, 2004, the Purchased Assets have been continuously insured with financially sound insurers in such amounts and against such risks and losses as are customary in the natural gas utility industry, and Seller has not received any written notice of cancellation or termination with respect to any material insurance policy of Seller providing coverage in respect of the Purchased Assets. All insurance policies of Seller covering the Purchased Assets are in full force and effect; however, coverage of the Purchased Assets under Seller's insurance policies will terminate as of the Effective Time.

5.18 Taxes.

(a) All Tax Returns relating to the Business or the Purchased Assets required to be filed by or on behalf of Seller have been filed in a timely manner, and all Taxes required to be shown on such Tax Returns have been paid in full, except to the extent being contested in good faith by appropriate proceedings. None of the Purchased Assets is (i) an asset or property that is or will be required to be treated as described in section 168(f)(8) of the Internal Revenue Code of 1954 as in effect immediately before the enactment of the Tax Reform Act of 1986, or (ii) tax-exempt use property within the meaning of section 168(h)(1) of the Code.

(b) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee or independent

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contractor of the Business, and all forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(c) None of the Assumed Obligations is an obligation to make a payment that is not or will not be deductible under Code section 280G. Seller is not a party to any Tax allocation or sharing agreement relating to the Business or the Purchased Assets.

5.19 Regulation as a Utility. Neither Seller nor any of its Affiliates is a “Holding Company,” a “Subsidiary Company,” or an “Affiliate” of a “Holding Company” within the meaning of the Holding Company Act. The Business is regulated as a public utility only in the State of Missouri.

5.20 Fees and Commissions. No broker, finder, or other Person is entitled to any brokerage fees, commissions, or finder’s fees for which Buyer could become liable or obligated in connection with the transactions contemplated hereby by reason of any action taken by Seller.

### ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Seller to enter this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby, Buyer represents and warrants to Seller as follows:

6.1 Organization. Buyer is a Kansas corporation duly organized, validly existing, and in good standing under the laws of Missouri and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted.

6.2 Authority Relative to this Agreement and the Ancillary Agreements. Buyer has all corporate power and authority necessary to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement and the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Buyer, and constitute valid and binding agreements of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, or other similar laws affecting or relating to enforcement of creditors’ rights generally or general principles of equity.

6.3 Consents and Approvals; No Violation. Except as set forth in Schedule 6.3, the execution and delivery of this Agreement and the Ancillary Agreements by Buyer, and the consummation by Buyer of the transactions contemplated hereby and thereby, do not:

- (a) conflict with or result in any breach of Buyer’s Governing Documents;

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(b) result in a default (including with notice, lapse of time, or both), or give rise to any right of termination, cancellation, or acceleration, under any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation to which Buyer or any of its Affiliates is a party or by which Buyer or any of its Affiliates or any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation, or acceleration) as to which requisite waivers or consents have been, or will prior to the Effective Time be, obtained or which if not obtained or made would not, individually or in the aggregate, prevent or materially delay the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements;

(c) violate any Law or Order applicable to Buyer, any of its Affiliates, or any of their respective assets;

(d) require any declaration, filing, or registration with, or notice to, or authorization, consent, or approval of any Governmental Entity, other than (i) the Buyer Required Regulatory Approvals, or (ii) such declarations, filings, registrations, notices, authorizations, consents, or approvals which, if not obtained or made, would not, individually or in the aggregate, prevent or materially delay the consummation of the transactions contemplated by this Agreement or the Ancillary Agreements.

6.4 Regulation as a Utility. Neither Buyer nor any of its Affiliates is a “Holding Company,” a “Subsidiary Company,” or an “Affiliate” of a “Holding Company” within the meaning of the Holding Company Act.

6.5 Buyer’s Knowledge. Buyer represents that it is a sophisticated party, and has conducted a full due diligence investigation of the Business, the Purchased Assets, and the Assumed Obligations. Buyer understands and agrees that any financial forecasts or projections relating to the Business prepared by or on behalf of Seller have been provided to Buyer with the understanding and agreement that Seller is making no representation or warranty with respect to such forecasts or projections and that actual future results will vary from those forecast or projected based upon numerous factors.

6.6 Fees and Commissions. No broker, finder, or other Person is entitled to any brokerage fees, commissions, or finder’s fees for which Seller could become liable or obligated in connection with the transactions contemplated hereby by reason of any action taken by Buyer.

6.7 Financial Capability. Buyer (i) has, and at the Closing will have, sufficient internal funds (without giving effect to any unfunded financing regardless of whether any such financing is committed) available to pay the Purchase Price and any expenses incurred by Buyer in connection with the transactions contemplated by this Agreement, (ii) has, and at the Closing will have, the resources and capabilities (financial or otherwise) to perform its obligations hereunder, and (iii) has not incurred any obligation, commitment, restriction, or liability of any kind, which would impair or adversely affect such resources and capabilities.

**ARTICLE VII  
COVENANTS OF THE PARTIES**

7.1 Conduct of Business.

(a) Except as contemplated in this Agreement, required by any Business Agreement, Law, or Order, or otherwise described in Schedule 7.1, during the period from the date of this Agreement to the Closing Date, Seller will operate the Purchased Assets and the Business in the ordinary course consistent with Good Utility Practice and will use commercially reasonable efforts to preserve intact the Business, and to preserve the goodwill and relationships with customers, suppliers, and others having business dealings with the Business. Without limiting the generality of the foregoing, except as contemplated in this Agreement, required by any Business Agreement, Law, or Order, or otherwise described in Schedule 7.1, prior to the Closing Date, without the prior written consent of Buyer, which will not be unreasonably withheld, delayed or conditioned, Seller will not:

(i) create, incur, assume, or suffer to exist any Encumbrance (other than Permitted Encumbrances) upon the Purchased Assets;

(ii) make any material change in the level of inventories customarily maintained by Seller with respect to the Business, other than in the ordinary course of business or consistent with Good Utility Practice;

(iii) other than any such sales, leases, transfers, or dispositions involving any Purchased Assets involving less than \$25,000 on an individual basis, or \$100,000 in the aggregate, sell, lease (as lessor), transfer, or otherwise dispose of any of the Purchased Assets, other than (A) in the ordinary course of business, (B) consistent with Good Utility Practice, or (C) to the extent that any such sales, leases, transfers, or dispositions are reflected in the Adjustment Amount;

(iv) other than in the ordinary course of business or consistent with Good Utility Practice, (A) enter into, terminate, extend, renew, or otherwise amend any material Business Agreement, or (B) waive any material default by, or release, settle, or compromise any material claim against, any other Person who is a party thereto; provided, that with respect to Financial Hedges, the protocol set forth on Schedule 7.1(a)(iv) will also apply;

(v) grant severance or termination pay to any present or former employee of the Business that would be the responsibility of Buyer;

(vi) enter into any collective bargaining agreement in which the terms and conditions to be applicable to Transferred Employees materially differ from those currently applicable to Business Employees, except where such differences are appropriate based upon job classifications or seniority;

(vii) grant any increase in the compensation of or grant or agree to any bonus for Business Employees not covered by collective bargaining who will

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become Transferred Employees, except for increases and bonuses in the ordinary course of business and consistent with past practice; or

(viii) agree or commit to take any action which would be a violation of the restrictions set forth in Section 7.1(a)(i) through Section 7.1(a)(vii).

(b) A committee comprised of one Person designated by Seller and one Person designated by Buyer, and such additional Persons as may be appointed by the Persons originally appointed to such committee (the "Transition Committee") will be established promptly following the execution of this Agreement to examine transition issues relating to or arising in connection with the transactions contemplated hereby. From time to time, the Transition Committee will report its findings to the senior management of each of Seller and Buyer.

### 7.2 Access to Information.

(a) Between the date of this Agreement and the Closing Date, Seller will, during ordinary business hours and upon reasonable notice, (i) give Buyer and Buyer's Representatives reasonable access to the Purchased Assets to which Buyer is not denied access by Law and to which Seller has the right to grant access without the consent of any other Person (and in the case where consent of another Person is required, only on such terms and conditions as may be imposed by such other Person); (ii) permit Buyer to make such reasonable inspections thereof as Buyer may reasonably request; (iii) furnish Buyer with such financial and operating data and other information with respect to the Business as Buyer may from time to time reasonably request; and (iv) furnish Buyer with a copy of each material report, schedule, or other document principally relating to the Business filed by Seller with, or received by Seller from, any Governmental Entity; provided, however, that (A) any such investigation will be conducted in such a manner as not to interfere unreasonably with the operation of the Business or any other Person, (B) Buyer will indemnify and hold harmless Seller from and against any Losses caused to Seller by any action of Buyer or Buyer's Representatives while present on any of the Purchased Assets or other premises to which Buyer is granted access hereunder (including restoring any such premises to the condition substantially equivalent to the condition such premises were in prior to any such investigation), (C) Seller will not be required to take any action which would constitute a waiver of the attorney-client privilege, and (D) Seller need not supply Buyer with any information which Seller is under a contractual or other legal obligation not to supply; provided, however, if Seller relies upon clauses (C) or (D) as a basis for withholding information from disclosure to Buyer, to the fullest extent possible without causing a waiver of the attorney-client privilege, or a violation of a contractual or legal obligation, as the case may be, Seller will provide Buyer with a description of the information withheld and the basis for withholding such information. Notwithstanding anything in this Section 7.2 to the contrary, (x) Buyer will not have access to personnel and medical records if such access could, in Seller's good faith judgment, subject Seller to risk of liability or otherwise violate the Health Insurance Portability and Accountability Act of 1996, and (y) any investigation of environmental matters by or on behalf of Buyer will be limited to visual inspections and site visits commonly included in the scope of "Phase 1" level

environmental inspections, and Buyer will not have the right to perform or conduct any other sampling or testing at, in, on, or underneath any of the Purchased Assets.

(b) Unless and until the transactions contemplated hereby have been consummated, each Party will, and will cause its Affiliates and Representatives to, hold in strict confidence and not use or disclose to any other Person all Confidential Information. As to each Party, “Confidential Information” means all information in any form heretofore or hereafter obtained from the other Party in connection with such Party’s evaluation of the Business or in connection with the negotiation of this Agreement, whether pertaining to financial condition, results of operations, methods of operation or otherwise, other than information which is in the public domain through no violation of this Agreement or the Confidentiality Agreement. Notwithstanding the foregoing, either Party may disclose Confidential Information to the extent that such information is required to be disclosed by it by Law or in connection with any proceeding by or before a Governmental Entity, including any disclosure, financial or otherwise, required to comply with any SEC rules or Required Regulatory Approvals. In the event that a Party believes any such disclosure is required, that Party will give the other Party notice thereof as promptly as possible and will cooperate with the other Party in seeking any protective orders or other relief as the other Party may determine to be necessary or desirable. In no event will the Party contemplating disclosure make or permit to be made any disclosure of Confidential Information other than to the extent its legal counsel has advised in writing is required by Law, and such Party will use its best efforts to assure that any Confidential Information so disclosed is protected from further disclosure to the maximum extent permitted by Law. If the transactions contemplated hereby are not consummated, each Party will promptly return to the other Party all copies of any Confidential Information, including any materials prepared by the returning Party’s Representatives incorporating or reflecting Confidential Information, and an officer of each Party will certify in writing compliance with the foregoing. The provisions of this Section 7.2(b) supersede the Confidentiality Agreement. If the Closing occurs, the obligations of Buyer under Section 7.2(b) will as of the Closing expire with respect to any information to the extent related to the Purchased Assets and the Business. If the Closing occurs, the Parties will (except as provided in the preceding sentence) continue to be bound by the provisions of this Section 7.2(b) for two years following the Closing. If the Closing does not occur, Buyer will continue to be bound by the provisions of this Section 7.2(b) for three years after the date of this Agreement.

(c) Buyer agrees that, without Seller’s written consent, except as otherwise provided for in this Agreement, commencing on the date hereof and continuing for a period of one year following the earlier of (i) the Closing Date and (ii) the date on which this Agreement is terminated, neither Buyer nor any Affiliate of Buyer will directly or indirectly solicit for employment or employ any person who is now employed by Seller; provided, that Buyer and its Affiliates are not prohibited from: (A) employing a person who contacts Buyer or its Affiliates on his own initiative and without any direct or indirect solicitation by Buyer or its Affiliates; or (B) conducting generalized solicitations for employees that are not specifically targeted at Seller’s employees, through the use of media advertisements, professional search firms, or otherwise. The provisions of this Section 7.2(c) supersede the Confidentiality Agreement.

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(d) Seller agrees that for the two-year period immediately following the Closing Date, Seller will, and will cause its Affiliates and Representatives to, hold in strict confidence and not disclose to any other Person all Confidential Business Information. “Confidential Business Information” means all commercially sensitive information in any form heretofore or hereafter obtained by Seller to the extent relating to the Business or the Purchased Assets, whether pertaining to financial condition, results of operations, methods of operation or otherwise, other than information which is in the public domain through no violation of this Agreement. Notwithstanding the foregoing, Seller may disclose Confidential Business Information to the extent that such information is required to be disclosed under contracts existing as of the Closing Date, by Law, or in connection with any proceeding by or before a Governmental Entity, including any disclosure, financial or otherwise, required to comply with any SEC rules or Required Regulatory Approvals. In the event that Seller believes any such disclosure is required by Law or in connection with any proceeding by or before a Governmental Entity, Seller will give the Buyer notice thereof as promptly as possible and will cooperate with Buyer in seeking any protective orders or other relief as Buyer may determine to be necessary or desirable. In no event will Seller make or permit to be made any disclosure of Confidential Business Information other than to the extent Seller determines in good faith to be required pursuant to SEC rules, or rules governing required disclosure in other regulatory proceedings, or its legal counsel has advised is required to comply with the terms of a contract existing as of the Closing Date or required by Law, or is required in connection with any proceeding by or before a Governmental Entity, and Seller will use its commercially reasonable efforts to assure that any Confidential Business Information so disclosed is protected from further disclosure.

(e) Seller will, and will cause its Affiliates and Representatives, to cease immediately and cause to be terminated any and all existing activities, discussions or negotiations, if any, with any third party to acquire all or a material portion of the Business or the Purchased Assets (an “Acquisition Proposal”) and, after Closing, will use its commercially reasonable efforts to cause any such party (or its Affiliates or Representatives) in possession of confidential information about the Business that was furnished to such party (or its Affiliates or Representatives) by or on behalf of the Seller to return or destroy all such information. Seller agrees that, until the earlier of the Closing or termination of this Agreement, it will not, directly or indirectly through any officer, subsidiary, director, representative, or agent (i) seek, initiate, or solicit any Person to make an Acquisition Proposal, (ii) engage in negotiations or discussion concerning an Acquisition Proposal with any Person, or (iii) disclose any confidential, non-public information related to the Business or give access to the properties, employees, books or records of the Seller with respect to the Business to any Person in connection with an Acquisition Proposal. Notwithstanding the foregoing, in no event will an Acquisition Proposal include discussions, negotiations or any other activities (including the execution of, and performance under, definitive transaction documents), if any, involving either or both of (A) a merger, consolidation, or other reorganization of Seller with a third party or (B) the acquisition by a third party of any assets or operations of Seller other than the Business or the Purchased Assets, in each case, to the extent any such transaction will not impair the Parties’ rights and obligations with respect to the transactions contemplated by this Agreement. Seller will notify Buyer of any Acquisition Proposal as soon as

commercially practicable following Seller's receipt of, or Seller otherwise becoming aware of, any Acquisition Proposal.

(f) For a period of seven years after the Closing Date, each Party and its representatives will have reasonable access to all of the books and records relating to the Business or the Purchased Assets, including all Transferred Employee Records, in the possession of the other Party to the extent that such access may reasonably be required by such Party in connection with the Assumed Obligations or the Excluded Liabilities, or other matters relating to or affected by the operation of the Business and the Purchased Assets. Such access will be afforded by the Party in possession of such books and records upon receipt of reasonable advance notice and during normal business hours; provided, however, that (i) any review of books and records will be conducted in such a manner as not to interfere unreasonably with the operation of the business of any Party or its Affiliates, (ii) no Party will be required to take any action which would constitute a waiver of the attorney-client privilege, and (iii) no Party need supply the other Party with any information which such Party is under a contractual or other legal obligation not to supply. The Party exercising the right of access hereunder will be solely responsible for any costs or expenses incurred by it pursuant to this Section 7.2(f). If the Party in possession of such books and records desires to dispose of any such books and records prior to the expiration of such seven-year period, such Party will, prior to such disposition, give the other Party a reasonable opportunity at such other Party's expense to segregate and take possession of such books and records as such other Party may select.

7.3 Expenses. Except to the extent specifically provided herein, and irrespective of whether the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby will be borne by the Party incurring such costs and expenses. For the avoidance of doubt, Buyer will be solely responsible for payment of (i) all filing fees in connection any Required Regulatory Approvals, and (ii) all other filing, recording, transfer, or other fees or charges of any nature payable pursuant to any provision of Law or any Order or Franchise in connection with the sale, transfer, and assignment of the Purchased Assets and the Assumed Obligations, except as expressly provided in Section 7.7; provided, that (A) Buyer will be responsible for the first \$100,000 of all amounts described under Section 7.3(ii) and (B) each Party will be responsible for one-half of all amounts described under Section 7.3(ii) in excess of \$100,000.

7.4 Further Assurances; Procedures with Respect to Certain Agreements and other Assets.

(a) Subject to the terms and conditions of this Agreement, each of the Parties will use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper, or advisable to consummate and make effective the transactions contemplated hereby, including using commercially reasonable efforts to obtain satisfaction of the conditions precedent to each Party's obligations hereunder within its reasonable control. Neither Party will, without the prior written consent of the other Party, take any action which would reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement. From time to time on or after the Closing Date, Seller will, at its own expense, execute and deliver such documents to Buyer as Buyer may reasonably request



in order to more effectively consummate the transactions contemplated hereby. From time to time after the date hereof, Buyer will, at its own expense, (i) execute and deliver such documents to Seller as Seller may reasonably request in order to more effectively consummate the transactions contemplated hereby, and (ii) cooperate with Seller in connection with obtaining any releases or discharges of Seller from any of the Assumed Obligations.

(b) Seller has easements, license agreements (including railroad crossing rights), rights-of-way, and leases for rights-of-way, some of which relate solely to the Business and Purchased Assets (the “Easements”) and others of which relate to both the Business and Purchased Assets and Seller’s other businesses (the “Shared Easements”). At the Closing, Seller will convey and assign to Buyer, subject to the obtaining of any necessary consents, (i) by the Assignment of Easements, all Easements, and (ii) by separate sub-easement or other document, sufficient rights under the Shared Easements to permit Buyer to use the same, as presently used by Seller with respect to the Business, on a nonexclusive basis (the “Shared Easement Rights”).

(c) (i) To the extent that Seller’s rights under any Business Agreement may not be assigned without the consent of another Person which consent has not been obtained, this Agreement will not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. Seller will use its commercially reasonable efforts (without being required to make any payment to any third party or to incur any economic burden other than as provided under Section 7.3) to obtain any such required consent as promptly as possible. Buyer agrees to cooperate with Seller in its efforts to obtain any such consent (including the submission of such financial or other information concerning Buyer and the execution of any assumption agreements or similar documents reasonably requested by a third party) without being required to make any payment to any third party (other than as provided under Section 7.3) or to incur any economic burden (other than the assumption of Seller’s obligations under the applicable Business Agreement). Seller and Buyer agree that if any consent to an assignment of any Business Agreement is not obtained or if any attempted assignment would be ineffective or would impair Buyer’s rights and obligations under the Business Agreement in question so that Buyer would not acquire the benefit of all such rights and obligations, then (A) Seller may elect to exercise its rights under Section 7.4(d) with respect to any such Business Agreement that is a personal property lease, or (B) if Seller does not exercise such rights or if such Business Agreement is not a personal property lease, then at the Closing the Parties will, to the maximum extent permitted by Law and such Business Agreement, enter into such arrangements with each other as are reasonably necessary to provide Buyer with the benefits and obligations of such Business Agreement from and after the Effective Time.

(ii) To the extent that any Business Agreement consisting of a futures contract, options contract, or other derivatives transaction (but not including contracts for physical delivery) (each, a “Financial Hedge”) is not assignable due to the rules and regulations of the Commodities Futures Trading Commission, the New York Mercantile Exchange (or other futures or options exchange on which

the Financial Hedge was entered into), or the relevant clearinghouse, the Parties agree that the Financial Hedge will be liquidated at the Closing. Liquidation proceeds will be paid as follows: (A) In the event Seller's aggregate mark-to-market value of the Financial Hedges is positive, Seller will pay Buyer the mark-to-market value of the Financial Hedges; or (B) in the event Seller's aggregate mark-to-market value of the Financial Hedges is negative, Buyer will pay Seller the mark-to-market value of the Financial Hedges. On or before the Closing, the Parties will mutually agree on a specific procedure to liquidate the Financial Hedges, and any payment due as a result of such liquidation under this Section 7.4(c)(ii) will be made at the Closing. Seller will calculate the mark-to-market value of the Financial Hedges in accordance with its usual and customary practice.

(d) With respect to equipment or other personal property that is used principally for the Business and that is leased by Seller either (i) pursuant to a personal property lease that is a Business Agreement that cannot be assigned to Buyer, or (ii) pursuant to any other agreements, Seller will prior to the Effective Time purchase the assets leased under such lease and used principally for the Business, and such assets will be included in the Purchased Assets, if such purchase can be accomplished on a commercially reasonable basis.

(e) The Parties have agreed that the agreements set forth on Schedule 7.4(e) (the "Shared Agreements") will be governed by this Section 7.4(e) and are not Business Agreements. Seller's rights and obligations under the Shared Agreements, to the extent such rights and obligations relate to the Business, are described on Schedule 7.4(e), and are referred to herein as the "Allocated Rights and Obligations." Unless Seller elects to enter into Other Arrangements, the Parties agree to cooperate with each other and use commercially reasonable efforts to enter into agreements with the other party or parties to each Shared Agreement providing for (i) assignment to and assumption by Buyer, effective from and after the Effective Time, of the Allocated Rights and Obligations, and (ii) retention by Seller of all rights and obligations of Seller under the Shared Agreements other than the Allocated Rights and Obligations (such agreements set forth in (i) and (ii) being referred to as "Substitute Arrangements"); provided, that neither Seller nor Buyer will be obligated to enter into or agree to any such Substitute Arrangements unless such Substitute Arrangements have the effect of transferring to the Buyer the Allocated Rights and Obligations (and reserving to Seller the rights and obligations which are not Allocated Rights and Obligations) on a fair and equitable basis, as determined in the reasonable discretion of Seller and Buyer. In connection with the foregoing, the Parties agree, as reasonably requested, to submit such financial or other information concerning themselves, and to execute such assumption agreements or similar documents reasonably requested by a third party; provided that neither Party will be required to make any payment to any third party or to incur any economic burden (other than the assumption of the Allocated Rights and Obligations by Buyer, and the retention of the other rights and obligations under the Shared Agreements by Seller). In the event that (x) the Parties are unable to enter into Substitute Arrangements with respect to a Shared Agreement in accordance with the foregoing, or (y) Seller notifies Buyer that it elects not to pursue Substitute Arrangements with respect to such Shared Agreement, then in either case at the Closing the Parties will, to the maximum extent permitted by Law and such Shared

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Agreement, enter into such arrangements with each other as are necessary to provide Buyer with the benefits and obligations of the Allocated Rights and Obligations under such Shared Agreement, with Seller retaining the other benefits and obligations under such Shared Agreement from and after the Effective Time (the “Other Arrangements”).

(f) Seller from time to time provides collateral or other security to certain other Persons in connection with the Business pursuant to certain Business Agreements and Shared Agreements. Seller and Buyer agree to use commercially reasonable efforts to cause such collateral or other security to be returned to Seller (including in the case of a letter of credit a return of the letter of credit to Seller) at the Closing, or released (in the case of other credit support previously provided by Seller). In the event that such collateral or other security is not returned to Seller or otherwise released at the Closing, Buyer will (i) pay to Seller an amount equal to any cash collateral posted by Seller; and (ii) in the case of a letter of credit, provide to Seller a back-up letter of credit in the same amount and for a period expiring no earlier than 10 days following the expiration of the letter of credit previously provided by Seller. The provisions of this Section 7.4(e) will apply to collateral or other security provided in connection with Shared Agreements to the extent such collateral or other security is related to the Allocated Rights and Obligations under such Shared Agreements.

(g) Following the Closing, each Party will promptly remit to the other any payments such Party receives that are in satisfaction of any rights or assets belonging to the other Party.

(h) At least 60 days prior to the Closing Date, Buyer will provide to Seller a list setting forth (i) any services that Buyer requests be provided by Seller following the Closing Date pursuant to the Transition Services Agreement, and (ii) the period of time following the Closing Date during which Buyer requests such services be provided. Upon delivery of such list, the Parties will use commercially reasonable efforts to reach agreement on the contents of Schedule 1.1 to the Transition Services Agreement, which sets forth the services to be provided, the fees and expenses to be paid and reimbursed by Buyer in connection with the services, and the periods during which the services will be provided by Seller following the Closing Date (it being understood that the form of Transition Services Agreement attached hereto as Exhibit 1.1-E will be used without modification, other than the inclusion of the Schedule 1.1 to be negotiated by the Parties as provided above).

7.5 Public Statements. Each Party will consult with the other prior to issuing, and will consider in good faith any comments by the other to or in respect of, any public announcement, statement, or other disclosure with respect to this Agreement or the transactions contemplated hereby, except as may be required by Law or stock exchange rules and provided that any such public announcement, statement, or other disclosure issued by either Party will be subject to Section 7.2(b).

### 7.6 Consents and Approvals.

(a) Seller and Buyer will each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice, Antitrust Division any

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notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. The Parties will consult and cooperate with each other as to the appropriate time of filing such notifications and will (i) make such filings at the agreed upon time, (ii) respond promptly to any requests for additional information made by either of such agencies, and (iii) use their commercially reasonable efforts to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of such filings.

(b) Seller and Buyer will cooperate with each other and use commercially reasonable efforts to (i) promptly prepare and file all necessary applications, notices, petitions, and filings, and execute all agreements and documents to the extent required by Law or Order for consummation of the transactions contemplated by this Agreement (including the Required Regulatory Approvals), (ii) obtain the transfer to Buyer of all Transferable Permits and Transferable Environmental Permits, and the reissuance to Buyer of all Permits that are not Transferable Permits and all Environmental Permits that are not Transferable Environmental Permits, (iii) obtain the consents, approvals, and authorizations of all Governmental Entities to the extent required by Law or Order for consummation of the transactions contemplated by this Agreement (including the Required Regulatory Approvals) (including by taking all structural corporate actions necessary to consummate the transactions contemplated hereby in a timely manner), and (iv) obtain all consents, approvals, and authorizations of all other Persons to the extent necessary to consummate the transactions contemplated by this Agreement as required by the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease, or other instrument to which Seller or Buyer is a party or by which either of them is bound. Seller and Buyer each will have the right to review in advance all characterizations of the information relating to it or the transactions contemplated by this Agreement which appear in any filing made by the other in connection with the transactions contemplated hereby.

(c) Neither Party will on an *ex parte* basis initiate, directly or indirectly, any communications, meetings, or other contacts with any Governmental Entity in connection with the transactions contemplated hereby or any matters relating to any declaration, filing, or registration with, notice to, or authorization, consent, or approval of any such Governmental Entity in connection with this Agreement. In connection with any communications, meetings, or other contacts, formal or informal, oral or written, with any Governmental Entity in connection with the transactions contemplated hereby or any such declaration, filing, registration, notice, authorization, consent, or approval, each Party agrees: (i) to inform the other in advance of any such communication, meeting, or other contact which such Party proposes or intends to make, including the subject matter, contents, intended agenda, and other aspects of any of the foregoing; (ii) to consult and cooperate with the other Party, and to take into account the comments of such other Party in connection with any of the matters covered by Section 7.6(c)(i); (iii) to arrange for representatives of the other Party to participate to the maximum extent possible in any such communications, meetings, or other contacts; (iv) to notify the other Party of any oral communications with any Governmental Entity relating to any of the foregoing; and (v) to provide the other Party with copies of all written communications with any Governmental Entity relating to any of the foregoing. Notwithstanding the foregoing, nothing in this Section 7.6 will apply to or restrict communications or other actions by

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Seller with or with regard to Governmental Entities in connection with (x) the Purchased Assets or the Business in the ordinary course of business, or (y) the transactions contemplated by Section 7.9.

(d) Seller and Buyer will cooperate with each other and promptly prepare and file notifications with, and request Tax clearances from, state and local taxing authorities in jurisdictions in which a portion of the Purchase Price may be required to be withheld or in which Buyer would otherwise be liable for any Tax liabilities of Seller pursuant to such state and local Tax Law (other than any such liabilities which under the terms hereof are to be paid by Buyer).

### 7.7 Tax Matters.

(a) All transfer, documentary, stamp, registration, sales and use Taxes, including real property conveyance Taxes, incurred in connection with this Agreement and the transactions contemplated hereby will be paid by Seller, and Seller, at its own expense, will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to all such transfer or sales and use Taxes, and, if required by applicable Law, Buyer will join in the execution of any such Tax Returns or other documentation.

(b) Seller will be responsible for the preparation and timely filing of all Tax Returns reflecting Taxes payable by Seller and the timely payment of all Taxes shown to be due on such returns. Buyer will be responsible for the preparation and timely filing of all Tax Returns reflecting Taxes payable by Buyer and the timely payment of all Taxes shown to be due on such returns. Any Tax Return that reflects Taxes to be prorated in accordance with Section 3.4 will be subject to the approval of the Party not preparing such return, which approval will not be unreasonably withheld or delayed. Each Party will make any such Tax Return prepared by it available for the other Party's review and approval no later than 20 Business Days prior to the due date for filing such Tax Return. Within 15 Business Days after receipt of such Tax Return, the approving Party will pay to the Party preparing the Tax Return the amount of such prorated Taxes shown as due on such approved Tax Return for which such approving Party is responsible under Section 3.4.

(c) Buyer and Seller will provide each other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each Party will retain and provide the other with any records or information which may be relevant to such return, audit or examination or proceedings. Any information obtained pursuant to this Section 7.7(c) or pursuant to any other Section hereof providing for the sharing of information in connection with the preparation of, or the review of, any Tax Return or other schedule relating to Taxes will be kept confidential by the Parties hereto in accordance with Section 7.2(b).

7.8 Supplements to Schedules. Prior to the Closing Date, Seller may supplement or amend the Schedules furnished by it under this Agreement to properly reflect matters arising

after the date hereof (or, in the case of items that are based on Seller's Knowledge, matters of which Seller first acquires Knowledge after the date hereof), except that Schedule 7.1 may not be supplemented or amended. In the event that the changes to the Schedules resulting from such supplements and amendments, considered collectively, give rise to (or could reasonably be expected to give rise to) a Material Adverse Effect (considered without giving effect to part (G) of the definition of "Excluded Matter" set forth in the definition of "Material Adverse Effect"), Buyer may either (i) terminate this Agreement without liability to either Party, or (ii) not so terminate this Agreement (in which event any breach of any representation or warranty made by Seller which would otherwise exist absent such supplements and amendments will be deemed cured for all purposes of this Agreement). In order to terminate this Agreement pursuant to this Section 7.8, Buyer must give notice of such termination to Seller within 10 Business Days following receipt of such supplemented or amended Schedules from Seller. In the event that Buyer terminates this Agreement pursuant to this Section 7.8, such termination will be Buyer's sole remedy hereunder, and Seller will have no further liability or obligation to Buyer.

7.9 Employees and Employee Benefits.

(a) (i) From and after the Closing, Buyer will recognize the International Brotherhood of Electrical Workers, Local Union No. 695 ("Local 695") and the International Brotherhood of Electrical Workers, Local Union No. 814 ("Local 814") as the exclusive bargaining representatives of the bargaining units that include Transferred Employees.

(ii) If the clerical Business Employees that are members of Local 695 will not be accreted into an existing bargaining unit of Buyer, then Buyer will either (A) no later than 20 Business Days prior to Closing, negotiate and reach agreement with Local 695 on the terms and conditions of a new collective bargaining agreement to be effective from and after the Closing, or (B) at Closing, enter into a replacement collective bargaining agreement with Local 695 containing terms and conditions substantially similar to the terms and conditions of the existing Collective Bargaining Agreement applicable to such clerical Business Employees.

(iii) If the "physical" or field Business Employees that are members of Local 695 will not be accreted into an existing bargaining unit of Buyer, then Buyer will either (A) no later than 20 Business Days prior to Closing, negotiate and reach agreement with Local 695 on the terms and conditions of a new collective bargaining agreement to be effective from and after the Closing, or (B) at Closing, enter into a replacement collective bargaining agreement with Local 695 containing terms and conditions substantially similar to the terms and conditions of the existing Collective Bargaining Agreement applicable to such physical or field Business Employees.

(iv) If the Business Employees that are members of Local 814 will not be accreted into an existing bargaining unit of Buyer, then Buyer will either (A) no later than 20 Business Days prior to Closing, negotiate and reach agreement with Local 814 on the terms and conditions of a new collective bargaining agreement to be effective from and after the Closing, or (B) at Closing, enter into