

Exhibit No. 032
Case No(s). EM-2007-0374
Date 12-5-07 Rptr RF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Application of)
Great Plains Energy Incorporated, Kansas City)
Power & Light Company, and Aquila, Inc. for)
Approval of the Merger of Aquila, Inc. with a)
Subsidiary of Great Plains Energy Incorporated)
and for Other Related Relief)

Case No. EM-2007-0374

**JOINT APPLICATION OF GREAT PLAINS ENERGY INCORPORATED, KANSAS
CITY POWER & LIGHT COMPANY AND AQUILA, INC.**

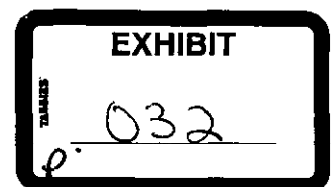
Great Plains Energy Incorporated ("Great Plains Energy"), Kansas City Power & Light Company ("KCPL") and Aquila, Inc. ("Aquila")¹ (collectively, "Joint Applicants"), pursuant to Sections 393.180, 393.190, 393.200, 393.210 and 393.220, RSMo. (2000), as amended,² and 4 CSR 240-2.060, 240-3.020, 240-3.110, 240-3.115, 240-3.120, 240-3.125, and 240-20.015, respectfully state the following for their Joint Application to the Missouri Public Service Commission ("the Commission"):

I. THE APPLICANTS

1. Applicant Great Plains Energy, 1201 Walnut, Kansas City, Missouri, is a Missouri corporation and the holding company for KCPL, a regulated public utility, and for Strategic Energy, L.L.C., a competitive electricity supplier located in Pittsburgh, Pennsylvania. Great Plains Energy was established on October 1, 2001, and its stock is traded on the New York Stock Exchange ("NYSE") as "GXP." Great Plains Energy is a public utility holding company regulated under the Public Utility Holding Company Act of 2005, which was enacted as part of the Energy Policy Act of 2005. Great Plains Energy's documents of incorporation are attached

¹ As used in this Joint Application, "Aquila" refers to Aquila both as currently named and as it will be renamed in the future.

² All statutory references are to the Missouri Revised Statutes (2000), as amended, unless otherwise noted.



hereto as Exhibit 1 and made a part hereof for all purposes. As a holding company, Great Plains Energy does not provide electric service to retail customers. Consequently, Great Plains Energy has no pending or final judgments or decisions against it from any state or federal agency or court that involve customer service or rates. Similarly, Great Plains Energy has no overdue Commission annual reports or assessment fees.

2. Applicant KCPL is a corporation duly organized and existing under the laws of the State of Missouri, and is also located at 1201 Walnut, Kansas City, Missouri. It is engaged in the generation, transmission, distribution and sale of electric energy. KCPL distributes and sells electric service to the public in its certificated areas in Missouri and Kansas, and is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. KCPL is not aware of any pending or final judgments or decisions against it from any state or federal agency or court that involve customer service or rates within the five years immediately preceding the filing of this Joint Application, other than *Cheryl L. Fabulae v. KCPL*, MPSC Case No. EC-2007-0146, a complaint case pending before the Commission. KCPL has no overdue Commission annual reports or assessment fees. KCPL's documents of incorporation have been filed with the Commission in Case No. EM-2000-0753 and are incorporated by reference and made a part hereof for all purposes in accordance with 4 CSR 240-2.060(1)(G).

3. Applicant Aquila is a Delaware corporation, with its principal office and place of business at 20 W. Ninth Street, Kansas City, Missouri. Aquila was established in 1985, and its stock is traded on the NYSE as "ILA". Aquila is authorized to conduct business in Missouri through its Aquila Networks-MPS and Aquila Networks-L&P operating divisions and, as such, is engaged in providing electric and steam utility service in Missouri to the public in its certificated

areas. Aquila is an "electrical corporation" and a "public utility" subject to the jurisdiction, supervision and control of the Commission under Chapters 386 and 393. Aquila also has regulated energy operations in Colorado, Iowa, Nebraska and Kansas. Aquila is not aware of any pending or final judgments or decisions against it from any state or federal agency or court that involve customer service or rates within the five years immediately preceding the filing of this Joint Application. Aquila has no overdue Commission annual reports or assessment fees. Aquila's documents of incorporation, including its authorization to do business in Missouri as a foreign corporation and its fictitious name registration, have been filed with the Commission in Case No. EU-2002-1053 and incorporated by reference and made a part hereof for all purposes in accordance with 4 CSR 240-2.060(1)(G).

4. Aquila and KCPL are co-owners, with certain other parties, of the coal-fired Iatan 1 generating plant ("Iatan 1") located at the Iatan Generating Station in Platte County, Missouri. Aquila and KCPL are also co-owners, with certain other parties, of the coal-fired Iatan 2 generating plant ("Iatan 2"), which is now under construction at the Iatan Generating Station.

5. Pleadings, Notices, Orders and other correspondence and communications concerning this Joint Application and proceeding should be addressed to the undersigned counsel, as well as to:

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II. THE TRANSACTIONS

A. Summary of the Transactions

6. Aquila currently operates regulated gas utilities in Iowa, Nebraska, Kansas, and Colorado, regulated electric utilities in Missouri and Colorado, and a regulated steam operation in Missouri. Aquila announced on February 7, 2007, that it reached a definitive agreement with Black Hills Corporation ("Black Hills") pursuant to which Black Hills will acquire Aquila's gas assets in Iowa, Nebraska, Kansas, and Colorado and electric assets in Colorado for \$940 million, subject to closing adjustments ("Black Hills Purchase").

7. In a separate but related transaction, Gregory Acquisition Corp., a Delaware corporation and direct, wholly-owned subsidiary of Great Plains Energy ("Merger Sub") will be merged with and into Aquila, with Aquila as the surviving entity ("Merger"). The result of the Merger is that Great Plains Energy will effectively acquire Aquila's Missouri electric and steam operations, as well as its merchant services operations, which primarily consist of the 340 MW Crossroads generating facility in Mississippi, and certain residual natural gas contracts.

8. As described more specifically herein, (i) each transaction is conditional upon the closing of the other transaction, meaning the Merger will not close unless the Black Hills Purchase closes, (ii) the transactions are subject to regulatory approval, and (iii) the Merger is subject to approval by the shareholders of Aquila and Great Plains Energy.

B. The Black Hills Purchase

9. Black Hills, 625 Ninth Street, Rapid City, South Dakota, is a South Dakota corporation that owns both regulated and non-regulated businesses. Black Hills' regulated subsidiaries are Black Hills Power, Inc., an electric utility serving western South Dakota, northeastern Wyoming and southeastern Montana, and Cheyenne Light, Fuel & Power Co., an electric and gas distribution utility serving the Cheyenne, Wyoming area. The wholesale energy business unit of Black Hills is Black Hills Energy, Inc., which generates electricity, markets energy, and produces natural gas, oil and coal.

10. Attached as Exhibit 2 is a copy of the Asset Purchase Agreement dated February 6, 2007, entered into by and among Aquila, Black Hills, Great Plains Energy, and Merger Sub ("APA"). The APA controls Black Hills' purchase of Aquila's natural gas assets in Nebraska, Kansas and Iowa. Attached as Exhibit 3 is a copy of the Partnership Interests Purchase

Agreement dated February 6, 2007, entered into by and among Aquila, Aquila Colorado, LLC, a Delaware limited liability company and wholly-owned subsidiary of Aquila ("Limited Partner"), Black Hills, Great Plains Energy, and Merger Sub ("PIPA"). The PIPA controls Black Hills' purchase of Aquila's electric and natural gas assets in Colorado.

11. The Black Hills Purchase will be effectuated through the following series of transactions:

a. Aquila will transfer to Black Hills the assets associated with Aquila's natural gas operations in Kansas, Iowa and Nebraska pursuant to the terms of the APA.

b. Aquila will transfer to Black Hills the assets associated with Aquila's natural gas and electric operations in Colorado pursuant to the terms of the PIPA.

The transfer of the Colorado assets entails the actions described below:

(i) Aquila will form two Delaware limited partnerships, which for these purposes will be called "Electric Opco" and "Gas Opco". Aquila will be the general partner of, and Limited Partner will be the limited partner of, each of Electric Opco and Gas Opco.

(ii) Immediately before closing, Aquila will transfer its Colorado electric assets to Electric Opco and its Colorado natural gas assets to Gas Opco.

(iii) Aquila and Limited Partner will then sell their partnership interests in Electric Opco and Gas Opco to Black Hills.

12. Following the closing of the APA and PIPA transactions, Black Hills will own and operate the natural gas assets of Aquila in Nebraska, Kansas, Iowa, and Colorado. Black Hills will also own Aquila's Colorado electric assets.

13. The transactions contemplated by the APA are subject to a number of conditions, including (i) a waiver from, or the approval of, the Kansas Corporation Commission under the "standstill" obligations imposed on Aquila; (ii) the approval of the Kansas Corporation Commission, Iowa Utilities Board, and Nebraska Public Service Commission; (iii) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; (iv) the readiness of Great Plains Energy and Aquila to complete the Merger; and (v) the absence of a material adverse effect on the businesses being acquired by Black Hills, including the businesses being acquired by Black Hills under the PIPA.

14. The transactions contemplated by the PIPA are also subject to a number of conditions, including (i) a waiver from, or the approval of, the Kansas Corporation Commission under the "standstill" obligations imposed on Aquila; (ii) the approval of the Colorado Public Utilities Commission; (iii) the approval of the Federal Energy Regulatory Commission; (iv) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; (v) the readiness of Great Plains Energy and Aquila to complete the Merger; and (vi) the absence of a material adverse effect on the businesses being acquired by Black Hills, including the businesses being acquired by Black Hills under the APA.

C. The Merger

15. Attached as Exhibit 4 is a copy of the Agreement and Plan of Merger dated February 6, 2007, entered into by and among Aquila, Black Hills, Great Plains Energy and Merger Sub (the "Agreement and Plan of Merger").

16. Immediately following the consummation of the Black Hills Purchase, Merger Sub will merge with and into Aquila and, as the surviving entity, Aquila will become a direct, wholly-owned subsidiary of Great Plains Energy, as KCPL is today. Aquila stockholders will then receive the consideration of stock and cash called for under the Agreement and Plan of Merger. A diagram of the corporate organization of the Joint Applicants, both current and as expected post-Merger, is attached as Exhibit 5 and made a part hereof for all purposes.

17. As a result of the Merger, Great Plains Energy will acquire Aquila's Missouri-based utilities, Aquila Networks-MPS and Aquila Networks-L&P, expanding Great Plains Energy's utility service territory throughout and beyond the Kansas City metropolitan area. The Merger will result in Great Plains Energy's aggregate utility operations increasing by about 300,000 electric utility customers to approximately 800,000 customers, and its aggregate generation by about 1,700 MW to approximately 5,800 megawatts. These aggregate utility operations would cover a service territory in Missouri of approximately 18,000 square miles. Great Plains Energy will also acquire Aquila's steam operations in St. Joseph, Missouri, as well as its merchant services operations, which primarily consist of the 340 MW Crossroads generating facility in Mississippi, and certain residual natural gas contracts.

18. At the effective time of the Merger, each share of Aquila's common stock (other than shares owned by Aquila and Great Plains Energy, or by any shareholders who are entitled to

and who properly exercise appraisal rights under Delaware law) will be cancelled and will convert into the right to receive (i) 0.0856 of a share of common stock, no par value, of Great Plains Energy's common stock and (ii) a cash payment of \$1.80. The exchange ratio is fixed and will not be adjusted to reflect stock price changes prior to the completion of the Merger. Upon consummation of the Merger, the shareholders of Aquila and Great Plains Energy are expected to own approximately 27% and 73%, respectively, of the outstanding common stock of Great Plains Energy on a fully-diluted basis.

19. Based on Great Plains Energy's closing NYSE stock price of \$32.05 on February 6, 2007, the Great Plains Energy offer represents a value of \$4.54 per share of Aquila common stock, for a total indicated value of approximately \$1.7 billion. Great Plains Energy will also assume approximately \$1 billion of Aquila's net debt and other liabilities. The Merger is expected to have a modestly dilutive effect on Great Plains Energy's earning per share in 2008 and to be accretive to Great Plains Energy's earnings per share beginning in 2009.

20. Consummation of the Merger is subject to a number of conditions, including (i) approval by Aquila's shareholders and Great Plains Energy's shareholders; (ii) approval by the Federal Energy Regulatory Commission, the Kansas Corporation Commission and this Commission; (iii) the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended; (iv) the completion of the Black Hills Purchase; and (v) the absence of a material adverse effect on the Aquila businesses that remain after giving effect to the Black Hills Purchase.

21. The Agreement and Plan of Merger contains certain termination rights for both Aquila and Great Plains Energy, including the right to terminate the agreement if the Merger has

not closed within twelve (12) months following the date of the merger agreement (subject to extension to up to eighteen (18) months for receipt of regulatory approvals required to consummate the Merger and the Black Hills Purchase). If the Agreement and Plan of Merger is terminated under specified circumstances (including a termination to enter into a superior transaction), then Aquila or Great Plains Energy will pay to the other a \$45 million termination fee. In the event Great Plains Energy pays a termination fee to Aquila, Great Plains Energy would also be obliged to pay a termination fee of up to \$15 million to Black Hills.

22. Chronologically, the Black Hills Purchase will close first. None of the assets subject to the Black Hills Purchase are regulated Missouri property or assets, except for certain "shared" corporate assets of Aquila that are not necessary for Great Plains Energy to operate KCPL and Aquila following the Merger. These "shared" corporate assets are described on Schedule 2.1(n) of the APA, attached as Exhibit 6.

23. Following the Merger, Aquila will be renamed. Aquila will continue to operate as a regulated Missouri utility with respect to its electric and steam operations under Aquila's existing Commission-approved tariffs. The new name and a copy of the registration of the name change with the Missouri Secretary of State will be filed as a late-filed exhibit. An adoption notice and revised tariff title sheet will be filed at a later date.

24. A portion of the \$940 million in proceeds from the Black Hills Purchase, with additional cash from Great Plains Energy, will be used to fund the \$677 million cash element of the consideration to be received by Aquila's stockholders under the terms of the Merger. Under purchase price accounting principles, Aquila's retained earnings account balance will be set to zero as of the closing of the Merger. Because this capital distribution by Aquila, directly or

indirectly, to its shareholders will not come from Aquila's retained earnings, Joint Applicants request that the Commission approve this distribution under Section 393.210 and other pertinent provisions of Chapter 393.

25. A certified copy of the Resolutions of the Board of Directors of Great Plains Energy authorizing the Merger and related transactions contemplated by the Agreement and Plan of Merger is marked Exhibit 7, attached hereto, and made a part hereof for all purposes.

26. A certified copy of the Resolutions of the Board of Directors of Aquila authorizing the Merger and related transactions contemplated by the Agreement and Plan of Merger is marked Exhibit 8, attached hereto, and made a part hereof for all purposes.

27. Great Plains Energy will submit a late-filed exhibit containing the balance sheet and income statement of both Great Plains Energy and Aquila as of and for the twelve (12) months ending December 31, 2006, showing the *pro forma* effect of the Merger.

28. Joint Applicants seek approval under Section 393.190 of Great Plains Energy's acquisition of Aquila's stock and, as a result thereof, the sale of Aquila's Missouri-based regulated utility properties and all other of Aquila's Missouri franchise works or system, pursuant to the Merger.

29. Great Plains Energy, Black Hills and Merger Sub have entered into a Transition Services Agreement dated February 6, 2007 ("TSA"). The TSA provides that Great Plains Energy and Merger Sub, or its successor, may continue to receive certain shared services from Black Hills and Black Hills may receive certain shared services from Great Plains Energy or Merger Sub, or its successor, following the Merger. It is expected that KCPL employees (either

current employees or Aquila employees who become KCPL employees subsequent to the Merger) will be involved in providing services to Black Hills. Although it is the intention of these parties to minimize the number of transition services required to be provided under the TSA following the completion of the Black Hills Purchase and Merger, these shared services might include, among other things, customer support, information technology, and accounting services. Under the TSA, the parties have composed a transition service committee to examine these transition service issues, and the parties have agreed to finalize a transition service plan setting forth the steps to be taken by each party in order to resolve the transition service issues by July 30, 2007. The parties will provide the Commission with the transition plan after the parties finalize the services to be provided under the TSA.

III. THE PUBLIC INTEREST

30. The Merger is not detrimental to the public interest and, in fact, will be consistent with and advance the public interest. Great Plains Energy is fully qualified, in all respects, to own Aquila and oversee the operation of Aquila's Missouri electric and steam systems, and otherwise to ensure the provision of safe, adequate and reliable electric service at just and reasonable rates.

31. Joint Applicants submit the pre-filed, written testimony of eleven (11) witnesses in support of this Joint Application. The names of the witnesses and the subject of each witness's testimony are as follows:

William Downey	Overview of Merger benefits from Great Plains Energy's and KCPL's perspective
Thomas Fleener	Overview of the process that Aquila and its investment bankers conducted in conjunction with Aquila's proposed sale
Terry Bassham	Transaction mechanics and financial overview of the Merger
John Marshall	Overview of Merger-related synergies and transition-related issues
Robert Zabors	Synergy savings attributable to the Merger
Michael Cline	Significance of credit ratings
Lori Wright	Accounting for the Merger and synergy savings
William Herdegen	Distribution operations post-Merger
Richard Spring	Transmission operations post-Merger
Dana Crawford	Generation operations post-Merger
Kevin Bryant	Products and services, energy efficiency and demand response post-Merger.

32. Except as otherwise provided in this Joint Application and/or testimony in support thereof and as authorized by the Commission, Aquila will utilize the rates, rules, regulations and other tariff provisions currently on file with and approved by the Commission, and will continue to provide service to its customers under those rates, rules, regulations and other tariff provisions until such time as they may be modified according to law. As a consequence, existing Aquila customers will continue to experience quality day-to-day utility service at just and reasonable rates without incident or interruption. Similarly, KCPL will continue to operate in its existing Missouri service territories under the rates, rules, regulations and other tariff provisions applicable to it until such time as they may be modified according to law. Accordingly, KCPL

customers will also continue to experience quality day-to-day utility service at reasonable rates without incident or interruption.

33. The financial condition of Aquila subsequent to the Merger, including the refinancings of Aquila debt contemplated by Great Plains Energy, is anticipated to satisfy the financial metrics necessary to support an investment-grade credit rating, which will result in lower actual debt costs to Aquila. The anticipated credit rating improvement and Great Plains Energy credit support will also allow greater access to capital markets on more reasonable terms for Aquila.

34. Great Plains Energy anticipates that the Merger will result in significant synergies, economies of scale, and efficiencies from the elimination of duplicate corporate and administrative services, all of which will ultimately result in a lower cost of operations. The Merger is expected to produce savings, which should translate into rates for utility service that would be lower than if Aquila operated on a stand-alone basis. Total pre-tax synergies for KCPL and Aquila are estimated to reach approximately \$500 million over a five-year period (2008 - 2012). As more fully described in the Joint Applicants' pre-filed testimony, the anticipated synergies are expected to result from:

- a. Elimination of redundant corporate overhead costs such as executive compensation, directors and officers liability insurance, and certain corporate governance costs and public company compliance costs;
- b. Reduction in overlapping employee positions and associated salaries and benefits (Great Plain Energy, however, expects to retain Aquila's field employees, including all unionized personnel).

- c. Savings related to Aquila's reduced actual cost of debt as a result of achieving the financial metrics necessary to support an investment-grade credit rating.
- d. More efficient procurement, including the reduction in the number of suppliers, as well as an improvement in the terms and conditions contained in supplier contracts;
- e. Savings resulting from the elimination of duplicative costs relating to insurance, software licenses, and industry dues and fees;
- f. Operational savings related to improvements at Aquila's generation units; and
- g. Integration and enhancement of information technology systems, as well as additional investments in infrastructure and energy efficiency.

Although Great Plains Energy does not anticipate that the synergies or costs to achieve will change significantly, it will provide an update of Merger-related synergy savings and costs in August of 2007.

35. The headquarters of both Great Plains Energy and KCPL will remain in downtown Kansas City, where they have been since KCPL's founding 125 years ago. Great Plains Energy has no plans to move from downtown Kansas City. Once the Merger is finalized, Aquila corporate employees will relocate to Great Plains Energy's existing office space and other facilities, and the future of Aquila's corporate headquarters building will be evaluated.

IV. REGULATORY PLAN

36. As described above, the Merger will produce economies of scale and significant savings, the benefits of which will flow to Aquila's customers, KCPL's customers and Great Plains Energy's shareholders alike. Accordingly, the Joint Applicants request that the Commission approve the following Regulatory Plan.

37. The rate structures for Aquila and KCPL shall be kept separate until the Commission approves the integration of KCPL's and Aquila's service territories into one unified territory.

38. Because Aquila's credit metrics, after the Merger, are expected to be sufficient to meet the criteria established by credit rating agencies for investment-grade status, the Joint Applicants expect that the Merger will result in Aquila being upgraded to an investment-grade credit rating, after the credit rating agencies assess the effects of the Merger. Once Aquila achieves financial metrics necessary to support an investment-grade credit rating, Great Plains Energy and Aquila request that the Commission authorize Aquila to utilize the mechanism of Additional Amortizations to Maintain Financial Ratios ("Additional Amortizations") in its next general rate case to preserve and maintain investment-grade financial metrics. As explained in the Joint Applicants' pre-filed testimony, it is in the best interest of the Joint Applicants, as well as Aquila's retail customers, to have Aquila maintain an investment-grade credit rating while implementing its utility infrastructure projects. Thus, the use of Additional Amortizations to achieve these financial goals is imperative. The Additional Amortizations mechanism will only be an element of a future Aquila rate case if Aquila's revenue requirement in such case fails to satisfy certain defined financial ratios through the application of a process similar to that utilized by the Commission in Case No. ER-2006-0314, KCPL's 2006 general rate case. Any such

Additional Amortizations approved by the Commission in a general rate case would ultimately serve as an off-set to rate base.

39. Therefore, Great Plains Energy and Aquila request that the Commission approve the use of the Additional Amortizations mechanism as a reasonable and appropriate regulatory policy in the same manner and on the same terms and conditions as implemented by the Commission in its Report and Order of December 21, 2006 in KCPL's 2006 general rate case. This approval should be granted because the Additional Amortizations mechanism will give Aquila the opportunity to protect and maintain the investment-grade financial metrics that should result after the Merger while Aquila pursues its current capital plan relating to the construction of Iatan 2, environmental upgrades at Iatan 1, and the environmental upgrades at Aquila's Sibley Unit and Lake Road Unit.

40. Great Plains Energy and Aquila understand that it is incumbent upon them to take prudent and reasonable actions that do not place Aquila's investment-grade financial metrics at risk. Great Plains Energy agrees that any negative impact from its failure to adequately insulate Aquila from non-regulated Great Plains Energy business risks, as perceived by the credit rating agencies, will not negatively impact Aquila's customers. The Joint Applicants recognize their obligation to continue to manage costs prudently, improve productivity continuously, and maintain adequate service quality while the Merger is consummated, as well as during the construction projects and associated expenditures planned by Aquila and KCPL.

41. Great Plains Energy and Aquila recognize that any finding by the Commission that Aquila has failed to manage costs prudently, improve productivity continuously, or maintain adequate service quality with regard to the regulated properties will adversely affect any request

for Additional Amortizations. Any Additional Amortizations permitted by the Commission will exclude any amounts related to imprudent actions, as determined by the Commission. Great Plains Energy and Aquila agree that if Aquila is unable to meet an investment-grade credit rating because of imprudent cost management, or any risk associated with Aquila or Great Plains Energy that is unrelated to Aquila's regulated operations, neither Great Plains Energy nor Aquila will argue for or receive increased cash flow in the form of Additional Amortizations.

42. The Joint Applicants do not request authorization to recover any acquisition premium associated with the Merger.

43. The Joint Applicants request that the Commission authorize KCPL and Aquila to establish a regulatory asset and amortize costs associated with the Merger into cost of service, including both transaction and transition-related costs, as properly allocated to KCPL's and Aquila's Missouri-regulated operations and excluding the non-incremental labor costs of the integration team, over a five (5) year period beginning on January 1, 2008, or the month immediately following consummation of the Merger, whichever occurs later. Both transaction and transition-related costs are necessary in order to achieve for customers the anticipated synergies described above, and as further described in the Joint Applicants' pre-filed testimony.

44. A significant portion of the savings resulting from the Merger will be used to reduce costs for Aquila's retail customers in future rate cases. Additionally, savings resulting from the Merger will benefit customers of KCPL and Aquila, therefore, the Joint Applicants request that the Commission authorize KCPL and Aquila, collectively, to retain for a five (5) year period fifty percent (50%) of the synergy savings that result from the Merger, as discussed in the Joint Applicants' pre-filed testimony.

V. REQUEST FOR WAIVER OF AFFILIATE RULES

45. The Joint Applicants request a waiver from the provisions of the affiliate transactions rule under 4 CSR 240.20.015, as it might pertain to transactions between Aquila and KCPL.

46. According to the "PURPOSE" section at the beginning of the electric affiliate rule, the rule is "intended to prevent regulated utilities from subsidizing their non-regulated operations." Because Aquila and KCPL will continue to be regulated by the Commission, the affiliate transaction rule is not applicable to transactions between KCPL and Aquila. Furthermore, shared services and other transactions between KCPL and Aquila will result in efficiencies that will benefit KCPL's and Aquila's retail customers. To the extent deemed necessary by the Commission, the Joint Applicants therefore request waiver from the affiliate transactions rule in order to facilitate transactions between KCPL and Aquila.

VI. IMPACT ON MISSOURI OPERATIONS

47. As indicated, the Merger will have no detrimental impact on either Aquila's or KCPL's Missouri customers. Those customers will see no change in their day-to-day utility service as a result of the Merger, and will continue to receive safe, reliable and efficient service at just and reasonable rates. In this regard, Aquila's Missouri field operations personnel will be retained by Great Plains Energy.

48. As required by Section 393.190, the Joint Applicants state that the Merger will have no impact on the property tax revenues of the Missouri political subdivisions in which any of the structures, facilities or equipment of Aquila or KCPL are located, although a decrease in earnings or income tax revenues may occur as certain positions are eliminated.

49. The Commission will retain jurisdiction over Aquila after the completion of the Merger. The Merger will not restrict the Commission's access to Aquila's books and records as is reasonably necessary to carry out the responsibilities of the Commission relating to Aquila's regulated operations, including the conduct of proper audits.

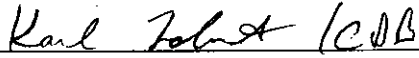
50. Great Plains Energy agrees that Aquila's books and records will be maintained so that Merger costs are segregated and reported separately. Great Plains Energy will submit to the Commission's Utility Services Division verified journal entries reflecting the Merger within forty-five (45) days of the closing.

WHEREFORE, pursuant to Sections 393.180, 393.190, 393.200, 393.210 and 393.220, as well as 4 CSR 240-2.060, 240-3.020, 240-3.110, 240-3.115, 240-3.120, 240-3.125, and 240-20.015, Joint Applicants request the Commission to issue an order:

- (a) Authorizing Great Plains Energy and Aquila to perform in accordance with the terms and conditions of the Agreement and Plan of Merger, APA, PIPA, and all other transaction-related instruments, and to take any and all other actions that may be reasonably necessary and incidental to the performance of the Merger;
- (b) Authorizing Great Plains Energy, via the Merger, to acquire and assume the stocks, bonds, and other indebtedness and obligations of Aquila, all as more particularly described in the Agreement and Plan of Merger;
- (c) Authorizing Aquila to merge with Merger Sub, a wholly-owned subsidiary of Great Plains Energy, with Aquila being the surviving corporation, all as more particularly described in the Agreement and Plan of Merger;
- (d) Finding that the Merger and other relief sought in this Joint Application are not detrimental to the public interest;

- (e) Approving the Regulatory Plan, including Aquila's use of the Additional Amortizations mechanism in its next general rate case after achieving the financial metrics necessary to support an investment-grade credit rating;
- (f) Authorizing KCPL and Aquila to establish a regulatory asset and amortize into cost of service costs associated with the Merger, including both transaction and transition-related costs, as properly allocated to KCPL's and Aquila's Missouri-regulated operations and excluding the non-incremental labor costs of the integration team, over a five (5) year period beginning on January 1, 2008, or the month immediately following consummation of the Merger, whichever occurs later;
- (g) Authorizing KCPL and Aquila, collectively, to retain for a five (5) year period fifty percent (50%) of the synergy savings that result from the Merger, as properly allocated to their Missouri-regulated operations;
- (h) Authorizing Aquila to distribute approximately \$677 million of the proceeds from the sale of Aquila's non-Missouri properties in a direct or indirect cash distribution to Aquila's shareholders, pursuant to Sections 393.210 and 393.220, as a result of the sale of such properties to Black Hills;
- (i) Authorizing Aquila to change its name;
- (j) Granting KCPL and Aquila a waiver from the affiliate transaction rule to the extent deemed necessary; and
- (k) Granting such other relief as may be necessary and appropriate to accomplish the purposes of the Merger and this Joint Application, and to consummate the Merger and related transactions in accordance with the Agreement and Plan of Merger and this Joint Application.

Respectfully submitted,

CDB

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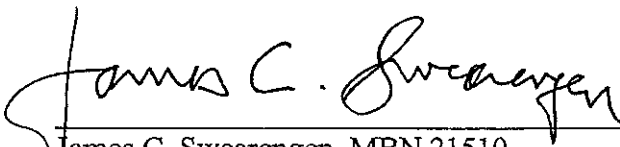
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CDB

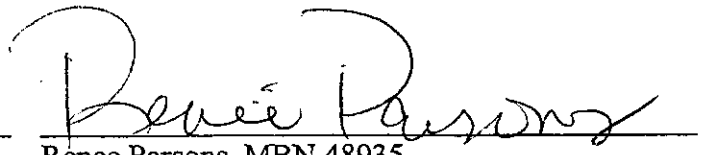
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Attorneys for Aquila, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent via email on this 4th day of April 2007 to:

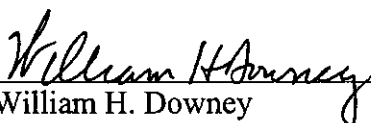
Lewis Mills
Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 2230
Governor Office Bldg.
Jefferson City, MO 65101

Nicole A. Wehry
~~Curtis D. Blanc~~ Nicole A. Wehry

VERIFICATION

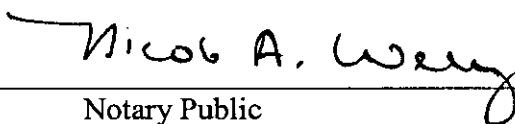
STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

I, William H. Downey, having been duly sworn upon my oath, state that I am the President and Chief Operating Officer of Great Plains Energy Incorporated and President and Chief Executive Officer of Kansas City Power & Light Company, that I am duly authorized to make this affidavit on behalf of Great Plains Energy Incorporated and Kansas City Power & Light Company, and that the matters stated in the foregoing Joint Application and Exhibits thereto are true and correct to the best of my information, knowledge and belief.



William H. Downey

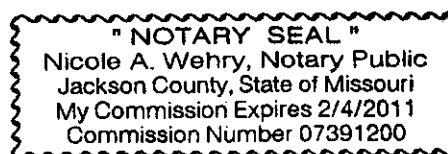
Subscribed and sworn to before me this 2nd day of April, 2007.



Notary Public

My commission expires:

Feb. 4, 2011

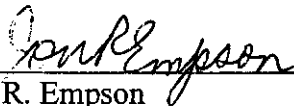


Verification

STATE OF NEBRASKA)
)ss:
COUNTY OF DOUGLAS)

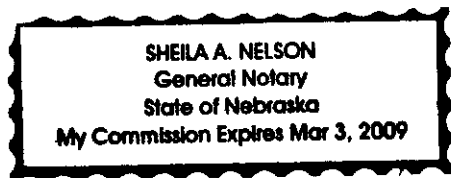
Jon R. Empson, of lawful age, being first duly sworn on oath, states:

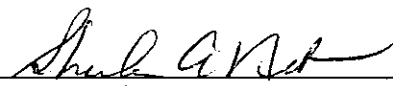
That he is the Senior Vice President-Regulated Operations for Aquila, Inc., named in the foregoing Application, and is duly authorized to make this affidavit; that he has read the foregoing Application, and knows the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge, information and belief.



Jon R. Empson

Subscribed and sworn to before me this 30 day of March, 2007.





Notary Public

My commission expires:

EXHIBITS

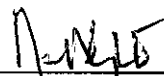
1. Documents of incorporation of Great Plains Energy Incorporated
2. Asset Purchase Agreement
3. Partnership Interests Purchase Agreement
4. Agreement and Plan of Merger
5. Diagram of Corporate Organization of Joint Applicants: Current and Pro Forma
6. Schedule 2.1(n) of the Asset Purchase Agreement
7. Certified copy of the Resolution of the Board of Directors of Great Plains Energy Incorporated
8. Certified copy of the Resolution of the Board of Directors of Aquila, Inc.

GREAT PLAINS ENERGY INCORPORATED

CERTIFICATE OF SECRETARY

I, Mark G. English, General Counsel and Assistant Secretary of GREAT PLAINS ENERGY INCORPORATED (the "Company"), do hereby certify that attached hereto is a true and correct copy of the Articles of Incorporation of the Company as now in force and as in force and effect at all times since February 26, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company as of this 4th day of April, 2007.



General Counsel and Assistant Secretary

(SEAL)

Exhibit 1



State of Missouri
Robin Carnahan, Secretary of State

Corporations Division
P.O. Box 778 / 600 W. Main Street, Rm 322
Jefferson City, MO 65102

File Number: 200629811209
00493596
Date Filed: 10/13/2006
Robin Carnahan
Secretary of State

**Statement of Correction for a
General Business or Nonprofit Corporation**
(Submit with filing fee of \$10)

- (1) The name of the corporation is: Great Plains Energy Incorporated
- (2) The state/country under whose laws it was organized is: Missouri
- (3) Type of document being corrected (or filed copy attached): Articles of Incorporation
- (4) The error is corrected as follows: In paragraph (a) of Exhibit 2 to the Articles of Incorporation, the number contained in the last sentence thereof is corrected from "100,00" to "100,000"
- (5) The reason for such correction is: Exhibit 2 to the Articles of Incorporation, as originally filed on February 26, 2001, contained an inadvertent typographical error omitting the last "0" in the number of shares of the company's series of 4.50% cumulative preferred stock. Correction of the error makes the aggregate amount of all series of cumulative preferred stock authorized consistent with Article Three.
- (6) Date the original document was filed with the Missouri Secretary of State: February 26, 2001

In Affirmation thereof, the facts stated above are true and correct:
(The undersigned understands that false statements made in this filing are subject to the penalties provided under Section 575.040, RSMo)

Mark G. English

General Counsel and Asst. Sec. 10/10/2006

Authorized Signature

Printed Name

Title

month/day/year

Name and address to return filed document:

Name: Mark G. English
Address: Great Plains Energy, 1201 Walnut
City, State, and Zip Code: Kansas City, MO 64106

State of Missouri
Statement of Correction 1 Page(s)



T0628606578

STATE OF MISSOURI



Matt Blunt
Secretary of State

CORPORATION DIVISION
CERTIFICATE OF INCORPORATION

WHEREAS, duplicate originals of Articles of Incorporation of
GREAT PLAINS ENERGY INCORPORATED

have been received and filed in the office of the Secretary of
State, which Articles, in all respects, comply with the
requirements of General and Business Corporation Law;

NOW, THEREFORE, I, MATT BLUNT, Secretary of State of the
State of Missouri, by virtue of the authority vested in me
by law, do hereby certify and declare this entity a body
corporate, duly organized this date and that it is entitled to
all rights and privileges granted corporations organized under
the General and Business Corporation Law.

IN TESTIMONY WHEREOF, I have set my
hand and imprinted the GREAT SEAL of
the State of Missouri, on this, the
26th day of FEBRUARY, 2001.

Matt Blunt

Secretary of State

\$101788.00



FILED

FEB 26 2001

ARTICLES OF INCORPORATION
OF
GREAT PLAINS ENERGY INCORPORATED

Mat B. Blum
SECRETARY OF STATE

The undersigned natural person(s) of the age of eighteen years or more for the purpose of forming a corporation under the General and Business Corporation Law of Missouri adopts the following Articles of Incorporation:

ARTICLE ONE

The name of this corporation shall be GREAT PLAINS ENERGY INCORPORATED.

ARTICLE TWO

The address, including street and number, if any, of the corporation's initial registered office in this state is 1201 Walnut, Kansas City, Jackson County, Missouri 64106, but it shall have power to transact business anywhere in Missouri, and also in several states of the United States if and when so desired under the respective laws thereof regarding foreign corporations. The name of its initial agent at such address is Jeanie Sell Latz.

ARTICLE THREE

The amount of authorized capital stock of the Company is One Hundred Sixty-Two Million Nine Hundred Sixty-Two Thousand (162,962,000) shares divided into classes as follows:

Three Hundred Ninety Thousand (390,000) shares of Cumulative Preferred Stock, of the par value of One Hundred Dollars (\$100) each.

One Million Five Hundred Seventy-Two Thousand (1,572,000) shares of Cumulative No Par Preferred Stock without par value.

Eleven Million (11,000,000) shares of Preference Stock without par value.

One Hundred Fifty Million (150,000,000) shares of Common Stock without par value.

The preferences, qualifications, limitations, restrictions, and special or relative rights of the Cumulative Preferred Stock, the Cumulative No Par Preferred Stock, the Preference Stock and the Common Stock shall be as follows:

CUMULATIVE PREFERRED STOCK AND
CUMULATIVE NO PAR PREFERRED STOCK

(i) Series and Variations Between Series of Cumulative Preferred Stock. The Cumulative Preferred Stock may be divided into and issued in series. The Board of Directors is hereby expressly authorized to cause such shares to be issued from time to time in series, and, by resolution adopted prior to the issue of shares of a particular series, to fix and determine the following with respect to such series, as to which matters the shares of a particular series may vary from those of any or all other series:

- (a) The distinctive serial designation of the shares of such series;
- (b) The dividend rate thereof;
- (c) The redemption price or prices and the terms of redemption (except as fixed in this Division A);
- (d) The terms and amount of any sinking fund for the purchase or redemption thereof; and
- (e) The terms and conditions, if any, under which said shares may be converted.

Except as the shares of a particular series of Cumulative Preferred Stock may vary from those of any or all other series in the foregoing respects, all of the shares of the Cumulative Preferred Stock, regardless of series, shall in all respects be equal and shall have the preferences, rights, privileges and restrictions herein fixed.

(ii) Series and Variations Between Series of Cumulative No Par Preferred Stock. The Cumulative No Par Preferred Stock may be divided into and issued in series. The Board of Directors is hereby expressly authorized to cause such shares to be issued from time to time in series, and, by resolution adopted prior to the issue of shares of a particular series, to fix and determine the following with respect to such series, as to which matters the shares of a particular series may vary from those of any or all other series:

- (a) The distinctive serial designation of the shares of such series;
- (b) The dividend rate thereof;
- (c) The redemption price or prices and the terms of redemption (except as fixed in this Division A);

- (d) The terms and amount of any sinking fund for the purchase or redemption thereof;
- (e) The terms and conditions, if any, under which said shares may be converted;
- (f) The rights of the shares of the series in the event of involuntary dissolution or liquidation of the Company;
- (g) The consideration to be paid for the shares of such series, and the portion of such consideration to be designated as stated value or capital; and
- (h) Any other powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, of the shares of such series, as the Board of Directors may deem advisable and as shall not be inconsistent with the provisions of these Articles of Incorporation.

Except as the shares of a particular series of Cumulative No Par Preferred Stock may vary from those of any or all other series in the foregoing respects, all of the shares of the Cumulative No Par Preferred Stock, regardless of series, shall in all respects be equal and shall have the preferences, rights, privileges and restrictions herein fixed.

(iii) Dividends. The holders of shares of each series of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall be entitled to receive, as and when declared payable by the Board of Directors from funds legally available for the payment thereof, preferential dividends in lawful money of the United States of America at the rate per annum fixed and determined as herein authorized for the shares of such series, but no more, payable quarterly on the first day of each of the months of December, March, June and September (the quarterly dividend payment dates) in each year with respect to the quarterly period ending on the day prior to each such respective dividend payment date. Such dividends shall be cumulative with respect to each share from and including the quarterly dividend payment date next preceding the date of issue thereof unless (a) the date of issue be a quarterly dividend payment date, in which case dividends shall be cumulative from and including the date of issue, (b) issued during an interval between a record date for the payment of a quarterly dividend on shares of such series and the payment date for such dividend, in which case dividends shall be cumulative from and including such payment date, or (c) the Board of Directors shall determine that the first dividend with respect to shares of a particular series issued during an interval between quarterly dividend payment dates shall be cumulative from and including a date during such interval, in which event

dividends shall be cumulative from and including such date. No dividends shall be declared on shares of any series of Cumulative Preferred Stock or Cumulative No Par Preferred Stock in respect of accumulations for any quarterly dividend period or portion thereof unless dividends shall likewise be or have been declared with respect to accumulations on all then outstanding shares of each other series of Cumulative Preferred Stock and Cumulative No Par Preferred Stock for the same period or portion thereof; and the ratios of the dividends declared to dividends accumulated with respect to any quarterly dividend period on the shares of each series outstanding shall be identical. Accumulations of dividends shall not bear interest.

So long as any shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock remain outstanding, no dividend shall be paid or declared, or other distribution made, on shares of junior stock, nor shall any shares of junior stock be purchased, redeemed, retired or otherwise acquired for a consideration (a) unless preferential dividends on outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock for the current and all past quarterly dividend periods shall have been paid, or declared and set apart for payment, provided, however, that the restrictions of this subparagraph (a) shall not apply to the declaration and payment of dividends on shares of junior stock if payable solely in shares of junior stock, nor to the acquisition of any shares of junior stock through application of proceeds of any shares of junior stock sold at or about the time of such acquisition, nor shall such restrictions prevent the transfer of any amount from surplus to stated capital; and (b) except to the extent of earned surplus, provided, however, that the restrictions in this subparagraph (b) shall not apply to any of the acts described in the proviso set forth in subparagraph (a) above and shall not apply either to the acquisition of any shares of junior stock issued after December 1, 1946, to the extent of the proceeds received for the issue of such shares, or to the payment of any dividend within 60 days after the date of declaration thereof, if at said date of declaration said dividend conforms with the provisions of this subparagraph (b).

(iv) Liquidation Preferences. In the event of voluntary dissolution or liquidation of the Company, the holders of outstanding shares of each series of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall be entitled to receive out of the assets of the Company an amount per share equal to that which such holders would have been entitled to receive had shares held by them been redeemed (otherwise than through operation of a sinking fund) on the date fixed for payment, but no more. In the event of involuntary dissolution or liquidation of the Company, (a) the holders of shares of Cumulative Preferred Stock of each series outstanding shall be entitled to receive out of the assets of the Company \$100 per share, plus preferential dividends at the rate fixed and

determined for such series as herein authorized, accrued, and unpaid to the date fixed for payment, but no more; and (b) the holders of shares of Cumulative No Par Preferred Stock of each series shall be entitled to receive out of the assets of the Company the amount per share fixed and determined for such series as herein authorized, plus preferential dividends at the rate fixed and determined for such series as herein authorized, accrued and unpaid to the date fixed for payment, but no more. Until payment to the holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock as aforesaid, or until moneys or other assets sufficient for such payment shall have been set apart for payment by the Company, separate and apart from its other funds and assets for the account of such holders, so as to be and continue to be available for payment to such holders, no payment or distribution shall be made to holders of shares of junior stock in connection with or upon such dissolution or liquidation. If upon any such dissolution or liquidation the assets of the Company available for payment and distribution to shareholders are insufficient to make payment in full, as hereinabove provided, to the holders of shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock, payment shall be made to such holders ratably in accordance with the payment each such holder would have been entitled to receive as hereinabove provided.

Neither a consolidation nor merger of the Company with or into any other corporation, nor a merger of any other corporation into the Company, nor the purchase or redemption of all or any part of the outstanding shares of any class or classes of stock of the Company, nor the sale or transfer of the property and business of the Company as or substantially as an entirety shall be construed to be a dissolution or liquidation of the Company within the meaning of the foregoing provisions.

(v) Redemption and Repurchase. The Company may, at its option expressed by vote of the Board of Directors, at any time or from time to time redeem the whole or any part of the Cumulative Preferred Stock, or of any series thereof, or Cumulative No Par Preferred Stock, or any series thereof, at the redemption price or prices at the time in effect, any such redemption to be on such redemption date and at such place in the City of Kansas City, State of Missouri, or in the City, County and State of New York, as shall likewise be determined by vote of the Board of Directors. Notice of any proposed redemption of shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock shall be given by the Company by mailing a copy of such notice, not more than 60 or less than 30 days prior to the redemption date, to the holders of record of the shares to be redeemed, at their respective addresses then appearing on the books of the Company; and by publishing such notice at least once in each week for four successive weeks in a newspaper customarily published at least on each business day, other than Sundays and holidays, which is printed in the English language and published

and of general circulation in the Borough of Manhattan, City and State of New York, and in such a newspaper so printed which is published and of general circulation in the City of Kansas City, State of Missouri. Publication of such notice shall be commenced not more than 60 days, and shall be concluded no less than 30 days, prior to the redemption date, but such notice need not necessarily be published on the same day of each week or in the same newspaper. In case less than all of the shares of any series are to be redeemed, the shares so to be redeemed shall be determined by lot in such manner as may be prescribed by the Board of Directors, and the certificates evidencing such shares shall be specified by number in the notice of such redemption. On the redemption date the Company shall, and at any time within 60 days prior to such redemption date may, deposit in trust, for the account of the holders of shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock to be redeemed, funds necessary for such redemption with a bank or trust company in good standing, organized under the laws of the United States of America or of the State of Missouri or of the State of New York, doing business in the City of Kansas City, Missouri, or in the City, County and State of New York and having combined capital, surplus and undivided profits of at least \$5,000,000, which shall be designated in such notice of redemption. Notice of redemption having been duly given, or said bank or trust company having been irrevocably authorized by the Company to give such notice, and funds necessary for such redemption having been deposited, all as aforesaid, all shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock with respect to which such deposit shall have been made shall forthwith, whether or not the date fixed for such redemption shall have occurred or the certificates for such shares shall have been surrendered for cancellation, be deemed no longer to be outstanding for any purpose, and all rights with respect to such shares shall thereupon cease and terminate, excepting only the right of the holders of the certificates for such shares to receive, out of the funds so deposited in trust, on the redemption date (unless an earlier date is fixed by the Board of Directors), the redemption funds, without interest, to which they are entitled, and the right to exercise any privilege of conversion not theretofore expiring, the Company to be entitled to the return of any funds deposited for redemption of shares converted pursuant to such privilege. At the expiration of six years after the redemption date such trust shall terminate. Any such moneys then remaining on deposit, together with any interest thereon which may be allowed by the bank or trust company with which the deposit shall have been made, shall be paid by it to the Company, free of trust, and thereafter the holders of the certificates for such shares shall have no claim against such bank or trust company but only claims as unsecured creditors against the Company for the amounts payable upon redemption thereof, without interest. Interest, if any, allowed by the bank or trust company as aforesaid shall belong to the Company.

Subject to applicable law, the Company may from time to time purchase or otherwise acquire outstanding shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock at a price per share not exceeding the amount (inclusive of any accrued dividends) then payable in the event of redemption thereof otherwise than through operation of a sinking fund, if any.

Any and all shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock which shall at any time have been redeemed or purchased through operation of any sinking fund with respect thereto, or which shall have been converted into or exchanged for shares of any other class or classes or other securities of the Company pursuant to a right of conversion or exchange reserved in such Cumulative Preferred Stock or Cumulative No Par Preferred Stock, shall be canceled and shall not be reissued, and the Company shall, from time to time, take such corporate action as may be appropriate or necessary to reduce the authorized number of shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock accordingly.

(vi) Voting Rights. So long as any shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock are outstanding, the Company shall not, without the consent (given by vote in person or by proxy at a meeting called for that purpose) of the holders of at least two-thirds of the outstanding shares of Cumulative Preferred Stock and at least two-thirds of the outstanding shares of Cumulative No Par Preferred Stock, voting separately as classes:

- (a) Increase the amount of Cumulative Preferred Stock or Cumulative No Par Preferred Stock at the time authorized;
- (b) Create or authorize any shares of senior or parity stock, or create or authorize any obligation or security convertible into any such shares;
- (c) Alter or change the preferences, priorities, special rights or special powers of then outstanding Cumulative Preferred Stock or Cumulative No Par Preferred Stock so as to affect the holders thereof adversely, provided, however, if any such alteration or change would adversely affect the holders of one or more, but not all, of the series of Cumulative Preferred Stock or Cumulative No Par Preferred Stock at the time outstanding, only the consent of holders of two-thirds of the shares of each series so affected shall be required; or
- (d) Issue, sell or otherwise dispose of shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock or any shares of senior or parity

stock, or securities convertible into shares of Cumulative Preferred Stock, Cumulative No Par Preferred Stock or senior or parity stock, other than in exchange for or in connection with the retirement (by redemption or otherwise) of, not less than a like number of shares of Cumulative Preferred Stock, Cumulative No Par Preferred Stock or senior or parity stock, or securities convertible into not less than a like number of such shares, as the case may be, at the time outstanding, unless

Immediately after such proposed issue, sale or other disposition, the aggregate of the capital of the Company applicable to all shares of Common Stock then to be outstanding (including premium on all shares of Common Stock) plus earned surplus and paid in or capital surplus, shall be at least equal to the involuntary liquidation preference of all shares of Cumulative Preferred Stock, Cumulative No Par Preferred Stock and senior or parity stock then to be outstanding, provided that until such additional shares or securities, as the case may be, or the equivalent thereof (in terms of involuntary liquidating preference) in shares of Cumulative Preferred Stock, Cumulative No Par Preferred Stock or senior or parity stock, shall have been retired, earned surplus of the Company used to meet the requirements of this clause in connection with the issuance of additional shares of Cumulative Preferred Stock, Cumulative No Par Preferred Stock or senior or parity stock or securities convertible into either thereof shall not, after the issue of such shares or securities, be available for dividends or other distribution Common Stock (other than dividends payable in Common Stock), except in an amount equal to the cash subsequently received by the Company as a contribution to its Common Stock capital or as consideration for the issuance of additional shares of Common Stock; and

The gross income of the Company for a period of 12 consecutive calendar months within the 15 calendar months immediately preceding the issuance, sale or other disposition of such shares, determined in accordance with such system of accounts as may be prescribed by governmental authorities having jurisdiction in the premises, or, in the absence thereof, in accordance with sound accounting practice (but in any event after deducting the amount for said period charged by the Company on its books to depreciation expense and taxes) to be

available for the payment of interest, shall have been equal to at least one and one-half times the sum of (x) the interest charges for one year on all interest bearing indebtedness of the Company (plus all amortization of debt discount and expense, and less all amortization of premium on debt, applicable to the aforesaid 12 months' period) and (y) the dividend requirements for one year on all outstanding Cumulative Preferred Stock, Cumulative No Par Preferred Stock and senior and parity stock; and for the purpose of both such computations the shares and any indebtedness then proposed to be issued shall be included, and any indebtedness and shares then proposed to be retired shall be excluded, and in determining such gross income the Board of Directors shall make such adjustments, by way of increase or decrease in such gross income, as shall in its opinion be necessary to give effect, for the entire 12 months for which such gross income is determined, to any acquisition or disposition of property, the income from which can be separately ascertained.

So long as any Cumulative Preferred Stock or any Cumulative No Par Preferred Stock is outstanding, the Company shall not, without the consent (given by vote in person or by proxy at a meeting called for that purpose) of the holders of at least a majority of the total number of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock, voting as a single class:

- (e) Merge or consolidate with or into any other corporation, provided that this provision shall not apply to a purchase or other acquisition by the Company of franchises or assets of another corporation in any manner which does not involve a statutory merger or consolidation; or
- (f) Sell, lease, or exchange all or substantially all of its property and assets, unless the fair value of the net assets of the Company, after completion of such transaction, shall at least equal the then involuntary liquidation value of Cumulative Preferred Stock of all series, Cumulative No Par Preferred Stock of all series, and all senior or parity stock, then outstanding; or
- (g) Intentionally omitted.

No consent of the holders of Cumulative Preferred Stock or Cumulative No Par Preferred

Stock provided for in paragraph (e) or (f) above shall be required with respect to any consolidation, merger, sale, lease or exchange ordered, approved or permitted by the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935, or by any successor commission or regulatory authority of the United States having jurisdiction in the premises. No consent hereinbefore in this subdivision (vi) provided for shall be required in the case of the holders of any shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock which are to be redeemed at or prior to the time when an alteration or change is to take effect, or at or prior to the time of authorization, issuance, sale or other disposition of any additional Cumulative Preferred Stock, Cumulative No Par Preferred Stock or shares of senior or parity stock or convertible securities, or a consolidation or merger is to take effect, as the case may be.

If at any time dividends on any of the outstanding shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock shall be in default in an amount equivalent to four or more full quarterly dividends, the holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock, voting as a single class, shall be entitled to elect the smallest number of Directors necessary to constitute a majority of the full Board of Directors, which right shall continue in force and effect until all arrears of dividends on outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall have been declared and paid or deposited in trust with a bank or trust company having the qualifications set forth in subdivision (v) of this Division A for payment on or before the next succeeding dividend payment date. When all such arrears have been declared and paid or deposited in trust for payment as aforesaid, such right to elect a majority of the Board of Directors shall cease and terminate unless and until the equivalent of four or more full quarterly dividends shall again be in default on outstanding shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock. Such right to elect a majority of the Board of Directors is subject to the following terms and conditions:

- (h) While holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred

Stock remain entitled to elect a majority of the Board of Directors as aforesaid, the payment of dividends on such stock including dividends in arrears, shall not be unreasonably withheld if the financial condition of the Company permits payment thereof;

- (i) Such right to elect a majority of the Board of Directors may be exercised at any annual meeting of shareholders, or, within the limitations herein provided, at a special meeting of shareholders held for such purpose. Whenever such right to elect a majority of the Board of Directors shall vest, on request signed by any holder of record of shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock then outstanding and delivered to the Company's principal office not less than 120 days prior to the date of the annual meeting next following the date when such right vests, the President or a Vice-President of the Company shall call a special meeting of shareholders to be held within 30 days after receipt of such request for the purpose of electing a new Board of Directors of which holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall be entitled to elect the smallest number necessary to constitute a majority and holders of outstanding shares otherwise entitled to vote shall be entitled to elect the remaining Directors, in each case to serve until the next annual meeting of shareholders or until their successors shall be elected and shall qualify;
- (j) Whenever, under the terms hereof, holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall be divested of the right to elect a majority of the Board of Directors, upon request signed by any holders of record of shares otherwise entitled to vote and delivered to the Company at its principal office not less than 120 days prior to the date for the annual meeting next following the date of such divesting, the President or a Vice-President of the Company shall call a special meeting of the holders of shares otherwise entitled to vote to be held within 30 days after receipt of such request for the purpose of electing a new Board of Directors to serve until the next annual meeting or until their respective successors shall be elected and shall qualify;

- (k) If, while holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock are entitled to elect a majority of the Directors, the holders of shares entitled as a class to elect certain Directors shall fail to elect the full number of Directors which they are entitled to elect, either at an annual meeting of shareholders or a special meeting thereof held as in this subdivision (vi) provided, or at an adjourned session of either thereof held within a period of 90 days beginning with the date of such meeting, then after the expiration of such period holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock and holders of outstanding shares otherwise entitled to vote, voting as a single class, shall be entitled to elect such number of Directors as shall not have been elected during such period by holders of outstanding shares of the class or classes then entitled to elect the same, to serve until the next annual meeting of shareholders or until their successors shall be elected and shall qualify. The term of office of all Directors in office immediately prior to the date of such annual or special meeting shall terminate as and when a full Board of Directors shall have been elected at such meeting or a later meeting of shareholders for the election of Directors, or an adjourned session of either thereof;
- (l) At any annual or special meeting of the shareholders or adjournment thereof, held for the purpose of electing Directors while the holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall be entitled to elect a majority of the Board of Directors, the presence in person or by proxy of the holders of a majority of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock, counting all such shares as a single class, shall be necessary to constitute a quorum for the election by such class of a majority of the Board of Directors and the presence in person or by proxy of the holders of a majority of outstanding shares of a class otherwise entitled to vote shall be necessary to constitute a quorum of such class of shares for the election of Directors which holders of such class of shares are then entitled to elect. In case of a failure by the holders of any class or classes to elect, at such meeting or an adjourned session held within said period of 90 days, the number of Directors which they are entitled to

elect at such meeting, such meeting shall be deemed ipso facto to have been adjourned to reconvene at 11:00 A.M., Central Standard Time, on the fourth full business day next following the close of such 90-day period, at which time, or at a subsequent adjourned session of such meeting, such number of Directors as shall not have been elected during such period by holders of outstanding shares of the class or classes then entitled to elect the same, may be elected by holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock and holders of outstanding shares otherwise entitled to vote, voting as a single class. Subject to the preceding provisions of this subdivision (vi), a majority of the holders of shares of any class or classes at the time present in person or by proxy shall have power to adjourn such meeting for the election of Directors by holders of shares of such class or classes from time to time without notice other than announcement at the meeting;

- (m) At any election of Directors each holder of outstanding shares of any class entitled to vote thereat shall have the right to cast as many votes in the aggregate as shall equal the number of shares of such class held multiplied by the number of Directors to be elected by holders of shares of such class, and may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute them among two or more candidates as such holder shall elect; and
- (n) While the holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock remain entitled to elect a majority of the Board of Directors, any holder of record of outstanding shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock shall have the right, during regular business hours, in person or by a duly authorized representative, to examine the Company's stock records of Cumulative Preferred Stock and Cumulative No Par Preferred Stock for the purpose of communicating with other holders of shares of such stock with respect to the exercise of such right of election, and to make a list of such holders.

So long as any shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock are outstanding, the right of the Company, except as otherwise authorized by the consent (given by vote

in person or by proxy at a meeting called for that purpose) of the holders of at least two-thirds of the total number of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock, voting as a single class, to pay or declare any dividends on its junior stock (other than dividends payable in junior stock) or to make any distribution on, or to purchase or otherwise acquire for value, any shares of its junior stock (each and all of such actions being hereafter embraced collectively in the term "dividends on its junior stock" and each thereof being regarded for purposes hereof as a "dividend"), shall be subject to the following limitations:

- (o) If and so long as the junior stock equity (as hereinafter defined) at the end of the calendar month immediately preceding the date on which a dividend on the junior stock is declared is, or as a result of such dividend would become less than 20% of total capitalization (as hereinafter defined), the Company shall not declare dividends on any of its junior stock in an amount which, together with all other dividends on its junior stock declared within the year ending with but including the date of such dividend declaration, exceeds 50% of the net income of the Company available for dividends on its junior stock for the 12 consecutive calendar months immediately preceding the month in which such dividend is declared; and
- (p) If and so long as the junior stock equity (as hereinafter defined) at the end of the calendar month immediately preceding the date on which a dividend on its junior stock is declared is, or as a result of such dividend would become less than 25%, but more than 20% of total capitalization (as hereinafter defined), the Company shall not declare such dividend on its junior stock in an amount which, together with all other dividends on its junior stock declared within the year ending with but including the date of such dividend declaration, exceeds 75% of the net income of the Company available for dividends on its junior stock for the 12 consecutive calendar months immediately preceding the month in which such dividend is declared; and
- (q) Except to the extent permitted by the preceding subparagraphs (o) and (p) the Company may not pay dividends on its junior stock which would reduce

the junior stock equity below 25% of total capitalization. For the purposes of subparagraphs (d), (o), (p) and (q) of this subdivision (vi):

The total capitalization of the Company shall be deemed to consist of the sum of (x) the principal amount of all outstanding indebtedness of the Company represented by bonds, notes or other evidences of indebtedness maturing by their terms one year or more from the date of issue thereof, (y) the aggregate amount of par or stated capital represented by all issued and outstanding capital stock of all classes of the Company having preference as to dividends or upon liquidation over its junior stock (including premiums on stock of such classes), and (z) the junior stock equity of the Company (as hereinafter defined).

The junior stock equity of the Company shall be deemed to consist of the sum of the amount of par or stated capital represented by all issued and outstanding junior stock, including premiums on junior stock, and the surplus (including paid-in or capital surplus) of the Company.

The surplus accounts shall be adjusted to eliminate the amount, if any, by which the total (as shown by the Company's books) of amounts expended by the Company after November 30, 1946, and up to the end of the latest calendar month ended prior to the proposed payment of dividends on its junior stock for maintenance and repairs to, and of provisions made by the Company during such period for depreciation of, the mortgaged property (as defined in the Company's Indenture of Mortgage and Deed of Trust, dated as of December 1, 1946) is less than the cumulative maintenance and replacement requirement for the period beginning December 1, 1946, and ending at the end of the latest calendar month concluded prior to said proposed payment, all as determined and calculated as though one or more maintenance and replacement certificates covering the entire period had been filed pursuant to the Company's Supplemental Indenture dated as of December 1, 1946, and otherwise in accordance with the provisions of said Supplemental Indenture.

In computing gross income and net income available for dividends on the Company's junior stock for any particular 12 months, operating expenses, among other things, shall include the greater of (x) the provision for depreciation of the

mortgaged property (as defined as aforesaid) as recorded on the Company's books, or, (y) the amount by which expenditures by the Company during such period for maintenance and repairs of the mortgaged property (as defined as aforesaid) as shown by the Company's books is less than the maintenance and replacement requirement for such period, all as determined and calculated as though a maintenance certificate for such period had been filed pursuant to said Supplemental Indenture, and otherwise in accordance with said Supplemental Indenture.

In addition to the requirements set forth in the two immediately preceding clauses, net income available for dividends on the Company's junior stock and surplus (including paid-in or capital surplus) shall be determined in accordance with such system of accounts as may be prescribed by governmental authorities having jurisdiction in the premises, or, in the absence thereof, in accordance with sound accounting practice.

Except as provided in this subdivision (vi) of this Division A, and as by statute at the time mandatorily provided, holders of outstanding shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall not be entitled to vote; and except as by statute at the time mandatorily provided, holders of shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock shall not be entitled to receive notice of any meeting of shareholders at which they are not entitled to vote or consent.

(vii) No Preemptive Rights. No holder of outstanding shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock shall have any preemptive right to subscribe for or acquire any shares of stock or other securities of any kind hereafter issued by the Company.

B. PREFERENCE STOCK

(i) Series of Preference Stock. Shares of Preference Stock may be issued from time to time in one or more series as provided herein. Each such series shall be designated so as to distinguish the shares thereof from the shares of all other series, and shall have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the Articles of Incorporation or any amendment thereto or in the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors pursuant to authority expressly vested in it by the provisions of this Articles of Incorporation, subject however, to the prior

rights and preferences of the Cumulative Preferred Stock and the Cumulative No Par Preferred Stock with respect to dividends, liquidation, preferences, redemption and repurchase, and voting rights as set forth in Division A of this ARTICLE THIRD. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any series of Preference Stock may be made dependent upon facts ascertainable outside these Articles of Incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class of stock is clearly and expressly set forth in these Articles of Incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the Board of Directors. The shares of Preference Stock of all series shall be of equal rank, and all shares of any particular series of Preference Stock shall be identical, except that, if the dividends, if any, thereon are cumulative, the date or dates from which they shall be cumulative may differ. The terms of any series of Preference Stock may vary from the terms of any other series of Preference Stock to the full extent now or hereafter permitted by the Missouri General and Business Corporation Law, and the terms of each series shall be fixed, prior to the issuance thereof, in the manner provided for herein. Without limiting the generality of the foregoing, shares of Preference Stock of different series may, subject to any applicable provisions of law, vary with respect to the following terms:

- (a) The distinctive designation of such series and the number of shares of such series;
- (b) The rate or rates at which shares of such series shall be entitled to receive dividends, the conditions upon, and the times of payment of such dividends, the relationship and preference, if any, of such dividends to dividends payable on any other class or classes or any other series of stock, and whether such dividends shall be cumulative or noncumulative, and, if cumulative, the date or dates from which such dividends shall be cumulative;
- (c) The right, if any, to exchange or convert the shares of such series into shares of any other class or classes, or of any other series of the same or any other class or classes of stock of the Company, and if so convertible or exchangeable, the conversion price or prices, or the rates of exchange, and the adjustments, if any, at which such conversion or exchange may be made;

- (d) If shares of such series are subject to redemption, the time or times and the price or prices at which, at the terms and conditions on which, such shares shall be redeemable;
- (e) The preference of the shares of such series as to both dividends and assets in the event of any voluntary or involuntary liquidation or dissolution or winding up or distribution of assets of the Company;
- (f) The obligation, if any, of the Company to purchase, redeem or retire shares of such series and/or maintain a fund for such purposes, and the amount or amounts to be payable from time to time for such purpose or into such fund, the number of shares to be purchased, redeemed or retired, and the other terms and conditions of any such obligation;
- (g) The voting rights, if any, full or limited, to be given the shares of such series, including without limiting the generality of the foregoing, the right, if any, as a series or in conjunction with other series or classes, to elect one or more members of the Board of Directors either generally or at certain specified times or under certain circumstances, and restrictions, if any, on particular corporate acts without a specified vote or consent of holders of such shares (such as, among others, restrictions on modifying the terms of such series of Preference Stock, authorizing or issuing additional shares of Preference Stock or creating any additional shares of Preference Stock or creating any class of stock ranking prior to or on a parity with the Preference Stock as to dividends or assets); and
- (h) Any other preferences, and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof.

(ii) Authority for Issuance Granted to Board of Directors. Authority is hereby expressly granted to and vested in the Board of Directors at any time or from time to time to issue the Preference Stock as Preference Stock of any series, and in connection with the creation of each such series, so far as not inconsistent with the provisions of this ARTICLE THREE applicable to all series of Preference Stock, to fix, prior to the issuance thereof, by resolution or resolutions providing for the issue of shares thereof, the authorized number of shares of such series, which number may be increased, unless otherwise provided by the

Board of Directors in creating such series, or decreased, but not below the number of shares thereof then outstanding, from time to time by like action of the Board of Directors, the voting powers of such series and the designations, rights, preferences, and relative, participating, optional or other special rights, if any, and the qualifications, limitations or restrictions thereof, if any, of such series.

C. COMMON STOCK

(i) Dividends. Subject to the limitations in this ARTICLE THREE set forth, dividends may be paid on the Common Stock out of any funds legally available for the purpose, when and as declared by the Board of Directors.

(ii) Liquidation Rights. In the event of any liquidation or dissolution of the Company, after there shall have been paid to or set aside for the holders of outstanding shares having superior liquidation preferences to Common Stock the full preferential amounts to which they are respectively entitled, the holders of outstanding shares of Common Stock shall be entitled to receive pro rata, according to the number of shares held by each, the remaining assets of the Company available for distribution.

(iii) Voting Rights. Except as set forth in this ARTICLE THIRD or as by statute otherwise mandatorily provided, the holders of the Common Stock shall exclusively possess full voting powers for the election of Directors and for all other purposes.

D. GENERAL

(i) Consideration for Shares. Subject to applicable law, the shares of the Company, now or hereafter authorized, may be issued for such consideration as may be fixed from time to time by the Board of Directors. Subject to applicable law and to the provisions of this ARTICLE THREE, shares of the Company issued and thereafter acquired by the Company may be disposed of by the Company for such consideration as may be fixed from time to time by the Board of Directors.

(ii) Crediting Consideration to Capital. The entire consideration hereafter received upon the issuance of shares of Common Stock without par value shall be credited to capital, and this requirement may not be eliminated or amended without the affirmative vote or consent of the holders of two-thirds of the outstanding Common Stock.

E. CERTAIN DEFINITIONS

In this ARTICLE THREE, and in any resolution of the Board of Directors adopted pursuant to this ARTICLE THIRD establishing a

series of Cumulative Preferred Stock, a series of Cumulative No Par Preferred Stock or a series of Preference Stock, and fixing the designation, description and terms thereof, the meanings below assigned shall control:

"Senior stock" shall mean shares of stock of any class ranking prior to shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock as to dividends or upon dissolution or liquidation;

"Parity stock" shall mean shares of stock of any class ranking on a parity with, but not prior to, shares of Cumulative Preferred Stock and Cumulative No Par Preferred Stock as to dividends or upon dissolution or liquidation;

"Junior stock" shall mean shares of stock of any class ranking subordinate to shares of Cumulative Preferred Stock or Cumulative No Par Preferred Stock as to dividends and upon dissolution or liquidation; and

Preferential dividends accrued and unpaid on a share of Cumulative Preferred Stock, Cumulative No Par Preferred Stock or Preference Stock, to any particular date shall mean an amount per share at the annual dividend rate applicable to such share for the period beginning with the date from and including which dividends on such share are cumulative and concluding on the day prior to such particular date, less the aggregate of all dividends paid with respect to such share during such period.

ARTICLE FOUR

No holder of outstanding shares of any class shall have any preemptive right to subscribe for or acquire shares of stock or any securities of any kind issued by the Corporation.

ARTICLE FIVE

The name and place of residence of each incorporator is as follows:

Bernard J. Beaudoin
11439 West 105th Street
Overland Park, Kansas 66214

ARTICLE SIX

The number of Directors to constitute the first Board of Directors shall be ten (10). Thereafter the number of directors shall be fixed by, or in the manner provided by the By-laws .

Any changes in the number will be reported to the Secretary of State within thirty calendar days of such change.

ARTICLE SEVEN

The duration of the corporation is perpetual.

ARTICLE EIGHT

The corporation is formed for the following purposes:

The acquisition, construction, maintenance and operation of electric power and heating plant or plants and distribution systems therefor; the purchase of electrical current and of steam and of other heating mediums and forms of energy; distribution and sale thereof; the doing of all things necessary or incident to carrying on the business aforesaid in the State of Missouri and elsewhere, and generally the doing of all other things the law may authorize such a corporation so to do.

ARTICLE NINE

The Board of Directors may make, alter, amend or repeal By-laws of the Company by a majority vote of the whole Board of Directors at any regular meeting of the Board or at any special meeting of the Board if notice thereof has been given in the notice of such special meeting. Nothing in this ARTICLE NINE shall be construed to limit the power of the shareholders to make, alter, amend or repeal By-laws of the Company at any annual or special meeting of shareholders by a majority vote of the shareholders present and entitled to vote at such meeting, provided a quorum is present.

ARTICLE TEN

At any meeting of shareholders, a majority of the outstanding shares entitled to vote represented in person or by proxy shall constitute a quorum; provided, that less than such quorum shall have the right successively to adjourn the meeting to a specified date not longer than 90 days after such adjournment, and no notice need be given of such adjournment to shareholders not present at the meeting.

ARTICLE ELEVEN

These Articles of Incorporation may be amended in accordance with and upon the vote prescribed by the laws of the State of Missouri; provided, that in no event shall any such amendment be adopted after the date of the adoption of this ARTICLE ELEVEN without receiving the affirmative vote of at least a majority of the outstanding shares of the Company entitled to vote.

ARTICLE TWELVE

In addition to any affirmative vote required by these Articles of Incorporation or By-laws, the affirmative vote of the holders of at least 80% of the outstanding shares of Common Stock of the Company entitled to vote shall be required for the approval or authorization of any Business Combination with an Interested Shareholder; provided, however, that such 80% voting requirement shall not be applicable if:

- (a) the Business Combination shall have been approved by a majority of the Continuing Directors; or
- (b) the cash or the Fair Market Value of the property, securities or other consideration to be received per share by holders of the Common Stock in such Business Combination is not less than the highest per share price paid by or on behalf of the Interested Shareholder for any shares of Common Stock during the five-year period preceding the announcement of such Business Combination.

The following definitions shall apply for purposes of this ARTICLE TWELVE:

- (a) The term "Business Combination" shall mean: (i) any merger or consolidation involving the Company or a subsidiary of the Company with or into an Interested Shareholder; (ii) any sale, lease, exchange, transfer or other disposition (in one transaction or a series) of any Substantial Part of the assets of the Company or a subsidiary of the Company to or with an Interested Shareholder; (iii) the issuance of any securities of the Company or a subsidiary of the Company to an Interested Shareholder other than the issuance on a pro rata basis to all holders of shares of the same class pursuant to a stock split or stock dividend; (iv) any recapitalization or reclassification or other transaction that would have the effect of increasing the proportionate voting power of an Interested Shareholder; (v) any liquidation, spinoff, splitup or dissolution of the Company proposed by or on behalf of an Interested Shareholder; or (vi) any agreement, contract, arrangement or understanding providing for any of the transactions described in this definition of Business Combination;
- (b) The term "Interested Shareholder" shall mean and include (i) any individual, corporation, partnership or other person or entity which, together with its "Affiliates" or "Associates" (as

defined on March 1, 1986, in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934) "beneficially owns" (as defined on March 1, 1986, in Rule 13d-3 of the General Rules and Regulations under the Securities Exchange Act of 1934) in the aggregate 5% or more of the outstanding shares of the Common Stock of the Company, and (ii) any Affiliate or Associate of any such Interested Shareholder;

- (c) The term "Continuing Director" shall mean any member of the Board of Directors of the Company who is unaffiliated with the Interested Shareholder and was a member of the Board of Directors prior to the time that the Interested Shareholder became an Interested Shareholder, and any successor of a Continuing Director if the successor is unaffiliated with the Interested Shareholder and is recommended or elected to succeed the Continuing Director by a majority of Continuing Directors;
- (d) The term "Fair Market Value" shall mean: (i) in the case of stock, the highest closing sale price during the 30-day period immediately preceding the date in question of a share of such stock on the Composite Tape for New York Stock Exchange-Listed Stocks, or, if such stock is not quoted on the Composite Tape, on the New York Stock Exchange, or, if such stock is not listed on such Exchange, on the principal United States securities exchange registered under the Securities and Exchange Act of 1934 on which such stock is listed, or, if such stock is not listed on any such exchange, the highest closing bid quotation with respect to a share of such stock during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc. Automated Quotations System or any similar system then in use, or, if no such quotations are available, the Fair Market Value on the date in question of a share of such stock as determined by a majority of the Continuing Directors; and (ii) in the case of property other than cash or stock, the Fair Market Value of such property on the date in question as determined by a majority of the Continuing Directors; and
- (e) The term "Substantial Part" shall mean 10% or more of the Fair Market Value of the total assets as reflected on the most recent balance sheet existing at the time the shareholders of the Company would be required to approve or authorize

the Business Combination involving the assets constituting any such Substantial Part.

Notwithstanding ARTICLE ELEVEN or any other provisions of these Articles of Incorporation or the By-laws of the Company (and notwithstanding the fact that a lesser percentage may be specified by law), this ARTICLE TWELVE may not be altered, amended or repealed except by the affirmative vote of the holders of at least 80% or more of the outstanding shares of Common Stock of the Company entitled to vote.

ARTICLE THIRTEEN

- (a) Right to Indemnification. Each person who was or is made a party or is threatened to be made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a Director or officer of the Company or is or was an employee of the Company acting within the scope and course of his or her employment or is or was serving at the request of the Company as a Director, officer, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified and held harmless by the Company to the fullest extent authorized by The Missouri General and Business Corporation Law, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid to or to be paid in settlement) actually and reasonably incurred by such person in connection therewith. The Company may in its discretion by action of its Board of Directors provide indemnification to agents of the Company as provided for in this ARTICLE THIRTEEN.

Such indemnification shall continue as to a person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators.

- (b) Rights Not Exclusive. The indemnification and other rights provided by this ARTICLE THIRTEEN shall not be deemed exclusive of any other rights to which a person may be entitled under any applicable law, By-laws of the Company, agreement, vote of shareholders or disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in any other capacity while holding the office of Director or officer, and the Company is hereby expressly

authorized by the shareholders of the Company to enter into agreements with its Directors and officers which provide greater indemnification rights than that generally provided by The Missouri General and Business Corporation Law; provided, however, that no such further indemnity shall indemnify any person from or on account of such Director's or officer's conduct which was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct. Any such agreement providing for further indemnity entered into pursuant to this ARTICLE THIRTEEN after the date of approval of this ARTICLE THIRTEEN by the Company's shareholders need not be further approved by the shareholders of the Company in order to be fully effective and enforceable.

Insurance. The Company may purchase and maintain insurance on behalf of any person who was or is a Director, officer, employee or agent of the Company, or was or is serving at the request of the Company as a Director, officer, employee or agent of another Company, partnership, joint venture, trust or other enterprise against any liability asserted against or incurred by such person in any such capacity, or arising out of his or her status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of this ARTICLE THIRTEEN.

Amendment. This ARTICLE THIRTEEN may be hereafter amended or repealed; however, no amendment or repeal shall reduce, terminate or otherwise adversely affect the right of a person entitled to obtain indemnification or an advance of expenses with respect to an action, suit or proceeding that pertains to or arises out of actions or omissions that occur prior to the later of (a) the effective date of such amendment or repeal; (b) the expiration date of such person's then current term of office with, or service for, the Company (provided such person has a stated term of office or service and completes such term); or (c) the effective date such person resigns his or her office or terminates his or her service (provided such person has a stated term of office or service but resigns prior to the expiration of such term).

IN WITNESS WHEREOF, these Articles of Incorporation have been signed on February 26, 2001.

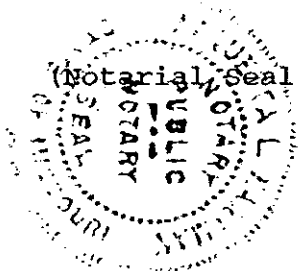
By: B. J. Beaudoin
Signature

Bernard J. Beaudoin
Printed Name

STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss

I, Jacquetta L. Hartman, a Notary Public, do hereby certify that on February 26, 2001, personally appeared before me Bernard J. Beaudoin, and being duly sworn by me, acknowledged that he/she signed as his/her own free act and deed the foregoing document in the capacity therein set forth and declared that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.



(Notarial Seal or Stamp)

Jacquetta L. Hartman
Notary Public: Jacquetta L. Hartman

My commission expires: April 8, 2004

My County of Commission: Ray

FILED

FEB 26 2001

Matt Blum
SECRETARY OF STATE

3.80% CUMULATIVE PREFERRED STOCK

(a) **Establishment of Series and Designation Thereof.** There shall be and hereby is established a series of Cumulative Preferred Stock, the distinctive serial designation of the shares of which shall be, and such shares shall be known as, 3.80% Cumulative Preferred Stock. Such series shall be a closed series consisting of One Hundred Thousand (100,000) shares of the Cumulative Preferred Stock.

(b) **Rate of Dividend.** The rate per annum for preferential dividends on the shares of 3.80% Cumulative Preferred Stock shall be \$3.80, which shall be cumulative from and including the date of issue thereof.

(c) **Prices at which Redeemable.** The shares of 3.80% Cumulative Preferred Stock shall be redeemable at any time after the issue thereof for \$103.70 per share plus preferential dividends at the rate aforesaid accrued and unpaid to the date of redemption.

(d) **No Sinking Fund.** There shall be no sinking fund for the purchase or redemption of shares of 3.80% Cumulative Preferred Stock.

(e) **No Conversion Privilege.** The shares of 3.80% Cumulative Preferred Stock shall not be convertible into other shares or securities of the Company.

4.50% CUMULATIVE PREFERRED STOCK

(a) **Establishment of Series and Designation thereof.** There shall be and hereby is established a second series of Cumulative Preferred Stock, the distinctive serial designation of the shares of which shall be, and the shares of which shall be known as, 4.50% Cumulative Preferred Stock. Such series shall be a closed series consisting of 100,00 shares of the Cumulative Preferred Stock.

(b) **Rate of Dividend.** The rate per annum for preferential dividends on the shares of 4.50% Cumulative Preferred Stock shall be \$4.50 per share, which shall be cumulative from and including the date of issue thereof.

(c) **Prices at which Redeemable.** The shares of 4.50% Cumulative Preferred Stock shall be redeemable at any time after the issue thereof for \$101.00 per share plus preferential dividends at the rate aforesaid accrued and unpaid to the date of redemption.

(d) **No Sinking Fund.** There shall be no sinking fund for the purchase or redemption of shares of 4.50% Cumulative Preferred Stock.

(e) **No Conversion Privilege.** The shares of 4.50% Cumulative Preferred Stock shall not be convertible into other shares or securities of the Company.

4.20% CUMULATIVE PREFERRED STOCK

(a) **Establishment of Series and Designation thereof.** There shall be and hereby is established a fourth series of Cumulative Preferred Stock, the distinctive serial designation of the shares of which shall be, and the shares of which shall be known as, 4.20% Cumulative Preferred Stock. Such series shall be a closed series consisting of 70,000 shares of the Cumulative Preferred Stock.

(b) **Rate of Dividend.** The rate per annum for preferential dividends on the shares of 4.20% Cumulative Preferred Stock shall be \$4.20 per share, which shall be cumulative from and including the date of issue thereof.

(c) **Prices at which Redeemable.** The shares of 4.20% Cumulative Preferred Stock shall be redeemable at any time after the issue thereof for \$102.00 per share plus preferential dividends at the rate aforesaid accrued and unpaid to the date of redemption.

(d) **No Sinking Fund.** There shall be no sinking fund for the purchase or redemption of shares of 4.20% Cumulative Preferred Stock.

(e) **No Conversion Privilege.** The shares of 4.20% Cumulative Preferred Stock shall not be convertible into other shares or securities of the Company.

4.35% CUMULATIVE PREFERRED STOCK

(a) **Establishment of Series and Designation thereof.** There shall be and hereby is established a fifth series of Cumulative Preferred Stock, the distinctive serial designation of the shares of which shall be, and the shares of which shall be known as, 4.35% Cumulative Preferred Stock. Such series shall be a closed series consisting of 120,000 shares of the Cumulative Preferred Stock.

(b) **Rate of Dividend.** The rate per annum for preferential dividends on the shares of 4.35% Cumulative Preferred Stock shall be \$4.35 per share, which shall be cumulative from and including the date of issue thereof.

(c) **Prices at which Redeemable.** The shares of 4.35% Cumulative Preferred Stock shall be redeemable at any time after the issue thereof for \$101.00 per share plus preferential dividends at the rate aforesaid accrued and unpaid to the date of redemption.

(d) **No Sinking Fund.** There shall be no sinking fund for the purchase or redemption of shares of 4.35% Cumulative Preferred Stock.

(e) **No Conversion Privilege.** The shares of 4.35% Cumulative Preferred Stock shall not be convertible into other shares or securities of the Company.

Asset Purchase Agreement
by and among
Aquila, Inc.,
Black Hills Corporation,
Great Plains Energy Incorporated
and
Gregory Acquisition Corp.

Dated: February 6, 2007

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), is made as of February 6, 2007 by and among Aquila, Inc., a Delaware corporation ("Seller"), Black Hills Corporation, a South Dakota corporation ("Buyer"), Great Plains Energy Incorporated, a Missouri corporation ("Parent"), and Gregory Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub").

RECITALS

WHEREAS, Seller has entered into an Agreement and Plan of Merger dated February 6, 2007 (the "Merger Agreement") with Buyer, Parent and Merger Sub which, among other things, provides for the merger of Merger Sub with and into Seller (the "Merger") immediately after the Closing.

WHEREAS, Seller, as the general partner of a Delaware limited partnership to be formed to hold the electric utility business operated by Seller in Colorado ("Electric Opco"), and of a Delaware limited partnership to be formed to hold the gas utility business operated by Seller in Colorado ("Gas Opco"), Aquila Colorado, LLC, a Delaware limited liability company ("Limited Partner") and a wholly-owned subsidiary of Seller, which will be the limited partner of Electric Opco and of Gas Opco, Parent, Merger Sub and Buyer have entered into a Partnership Interests Purchase Agreement (the "Partnership Interests Purchase Agreement") of even date herewith whereby Buyer shall purchase all of the partnership interests of Electric Opco and Gas Opco, each of which shall be formed by Seller to hold the assets related to Seller's electric utility business and gas utility business, respectively, in Colorado.

WHEREAS, Buyer desires to purchase, and Seller desires to sell, the Purchased Assets, 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):

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

"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.

"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, collectively, (i) the Natural Gas Businesses, and (ii) the activities described on Schedule 1.1-A.

"Business Agreements" means any contract, agreement, real or personal property lease, commitment, understanding, or instrument (other than the Retained Agreements and 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 5.11, Schedule 5.13(a), or Schedule 5.13(b), or (ii) relates principally to the Business or the Purchased Assets, and if entered into after the date hereof (and is not a renewal, extension or amendment of an agreement in effect on the date hereof), is entered into in accordance 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 New York, New York are authorized by Law to close.

"Business Employees" means (i) the employees of Seller set forth on Schedule 1.1-B, which shall include all of Seller's employees whose place of employment is at Seller's locations in Iowa, Kansas and Nebraska, other than employees of Seller whose place of employment is at Seller's locations in Kansas principally related to Seller's electric utility business in Kansas, (ii) any persons who are hired by Seller after the date hereof for the Business, other than persons hired after the date hereof to perform Central or Shared Functions, and (iii) other than for purposes of ARTICLE V and Section 8.1, those Central or Shared Function Employees that Buyer and Parent agree Buyer may offer employment to prior to the Closing and that accept employment with Buyer.

"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 under section 401(a) of the Code.

"Buyer Required Regulatory Approvals" means (i) the filings by Seller, Buyer and Parent required by the HSR Act in connection with the transactions contemplated by this Agreement, the Partnership Interests Purchase Agreement and the Merger Agreement, and the expiration or earlier termination of all waiting periods under the HSR Act, and (ii) the approvals set forth on Schedule 1.1-C.

"Buyer's Representatives" means Buyer's accountants, employees, counsel, environmental consultants, surveyors, financial advisors, and other representatives.

"Central or Shared Functions" means any of the business functions set forth on Schedule 1.1-D.

"Central or Shared Function Employees" means any current or former employee of Seller or its Subsidiaries whose employment is (or was immediately prior to termination) principally related to Central or Shared Functions.

"Claims" means any and all civil, criminal, 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.

"Colorado Assets" means the assets principally related to and used in the Colorado Business and included in the assets to be purchased by Buyer pursuant to the Partnership Interests Purchase Agreement.

"Colorado Business" means the electric utility business and the gas utility business operated by Seller in Colorado and such other business activities of Seller in Colorado included in the definition of "Business" in the Partnership Interests Purchase Agreement.

"Confidentiality Agreement" means the Confidentiality Agreement, dated July 11, 2006 between Seller and Buyer.

"Corporate Employees" means any current employee of Seller or its Subsidiaries and any employee of Seller or its Subsidiaries hired after the date hereof and before the Closing Date, including such employees who are Central or Shared Function Employees, other than (i) Business Employees or Transferred Employees, (ii) any current employee of Seller or its Subsidiaries, and any employee of Seller or its Subsidiaries hired after the date hereof and before the Closing Date, for Seller's electric utility operations in Missouri and Kansas, and (iii) any retirees of Seller or any of its Subsidiaries and any employee of Seller or its Subsidiaries who retires between the date hereof and the Closing Date.

"Documents" means all files, documents, instruments, papers, books, reports, tapes, data, records, microfilms, photographs, letters, ledgers, journals, title commitments and policies, title abstracts, surveys, 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, 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 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 its reasonable best 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 any such valuations and projections prepared in conjunction with any past, present or future regulatory filings, whether or not the same was actually filed with the regulatory authority, and 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 (but not including electronic data principally related to the Business, the Purchased Assets or the Assumed Obligations), and (vi) any rights, information, or other matters to the extent used for or on the Internet, including any web pages or other similar items.

"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 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.

“ERISA Case” means the litigation captioned *In re Aquila, Inc. ERISA Litigation*, Case No. 04-cv-00865 (DW), filed in the United States District Court for the Western District of Missouri and any similar Claims relating to the causes of action in such litigation.

“Exchange Act” means the Securities Exchange Act of 1934.

“Exchange Agent” means any exchange agent appointed in connection with the transactions contemplated by the Merger Agreement.

“FERC” means the Federal Energy Regulatory Commission.

“FERC Accounting Rules” means the requirements of FERC with respect to and in accordance with the Uniform System of Accounts established by FERC.

“Final Regulatory Order” means, with respect to a Required Regulatory Approval, an Order granting such Required Regulatory Approval that has not been reversed, stayed, enjoined, set aside, annulled, or suspended, and with respect to which any waiting period prescribed by applicable Law before the transactions contemplated by this Agreement may be consummated has expired (but without the requirement for expiration of any applicable rehearing or appeal period).

“GAAP” means United States generally accepted accounting principles as of the date hereof.

“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 Natural Gas Businesses were to be conducted in a manner consistent with Laws and Orders applicable to the Natural Gas Businesses in each Territory and as a whole, 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 Person means the articles or certificate of incorporation and bylaws, or comparable governing documents, of such Person.

"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 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.

"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.

"Independent Accounting Firm" means any independent accounting firm of national reputation mutually appointed by Buyer and Parent.

"IUB" means the Iowa Utilities Board.

"KCC" means the Kansas Corporation Commission.

"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 any event, effect, change or development that, individually or in the aggregate, (i) other than for purposes of Section 9.2(e), prevents or materially delays or impairs the ability of Seller to consummate the transactions contemplated herein; or (ii) is materially adverse to the financial condition, properties, assets, liabilities (contingent or otherwise), business, or results of operation of the Business and the Purchased Assets, together with the Colorado Business and the Colorado Assets, taken as a whole, in each case excluding any effect on, change in, or development caused by, or event, effect or development resulting from, or arising out of, (A) factors generally affecting the economy, financial markets, capital markets, or commodities markets, except to the extent the Business and the Purchased Assets, together with the Colorado Business and Colorado Assets, taken as a whole, are adversely affected in a substantially disproportionate manner as compared to similarly situated companies; (B) factors, including changes in Law, generally affecting any industry or any segment of any industry in which the Business operates, except to the extent the Business and the Purchased Assets, together with the Colorado Business and Colorado Assets, taken as a whole, are adversely affected in a substantially disproportionate manner as compared to similarly situated participants in such industry or such segment of such industry; (C) the execution, announcement or performance of this Agreement, the Partnership Interests Purchase Agreement or the Merger Agreement, including, in each case, the impact thereof on relationships, contractual or otherwise, with Governmental Entities, customers, suppliers, licensors, distributors, partners or employees; (D) the commencement, occurrence, continuation or intensification of any war, sabotage, armed hostility or terrorism, other than any matter or event occurring in the geographic region served by the Business and the Purchased Assets, together with the Colorado Business and Colorado Assets, taken as a whole; (E) any event, circumstance or condition disclosed in Schedule 1.1-G; and (F) any action taken by Seller or any of its Subsidiaries with Buyer's written consent referring to this subsection (F).

"Natural Gas Businesses" means the natural gas utility businesses conducted by Seller serving customers in the Territories.

"Non-Permitted Encumbrances" means (i) Encumbrances securing or created by or in respect of any of the Excluded Liabilities (other than Excluded Liabilities that are included in the "Assumed Obligations" under the Partnership Interests Purchase Agreement); (ii) statutory liens for material delinquent Taxes, or material delinquent assessments, other than such Taxes or assessments that will become an Assumed Obligation pursuant to Section 2.3 (or will become an "Assumed Obligation" pursuant to the Partnership Interests Purchase Agreement); and (iii) Encumbrances that individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; provided that, in determining if any Encumbrances would individually or in the aggregate reasonably be expected to have a Material Adverse Effect for purposes of clause (iii) of this definition, the following Encumbrances will be excluded: (A) mechanics', carriers', workers', repairers', landlords', and other similar liens arising or incurred in the ordinary course of business relating to obligations to which there is no default on the part of Seller, (B) 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), (C) zoning, entitlement, restriction, and other land use and environmental regulations by Governmental Entities that do not materially interfere with the

present use of the Purchased Assets, (D) any Encumbrance set forth in any state, local, or municipal franchise or governing ordinance, or any franchise or other agreement entered into by Seller in connection with any such ordinance, under which any portion of the Business is conducted, (E) all rights of condemnation, eminent domain, or other similar rights of any Person, or (F) such other Encumbrances (including requirements for consent or notice in respect of assignment of any rights) that do not materially interfere with Buyer'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 hereunder or that are included in the "Assumed Obligations" under the Partnership Interests Purchase Agreement).

"NPSC" means the Nebraska Public Service Commission.

"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 Buyer or Seller, or Buyer, Seller, Parent or Merger Sub, as indicated by the context, and "Parties" means Buyer and Seller, or Buyer, Seller, Parent and Merger Sub, as indicated by the context.

"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.

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

"Preferential Purchase Rights" means rights of any Person (other than rights of condemnation, eminent domain, or other similar rights of any Person) to purchase or acquire any interest in any of the Purchased Assets, including rights that are conditional upon a sale of any Purchased Assets or any other event or condition.

"Prime Rate" means, for any day, the per annum rate of interest quoted by Citibank, N.A. as its prime rate.

"Regulatory Order" means an Order issued by the KCC, IUB or NPSC, as applicable, or FERC, 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.

"Required Regulatory Approvals" means the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals.

"Sarbanes-Oxley" means the Sarbanes-Oxley Act of 2002.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933.

"Seller Disclosure Schedule" means, collectively, all Schedules other than Schedule 1.1-C and Schedule 6.3.

"Seller Marks" means the names "Aquila," "Aquila Networks," "Energy One," "Service Guard," "UtiliCorp," "Peoples Natural Gas," "West Plains Energy," "Kansas Public Service," and any derivative of any of the foregoing, and any related, similar, and other trade names, trademarks, service marks, and logos of Seller, and any domain names incorporating any of the foregoing.

"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, Buyer and Parent required by the HSR Act in connection with the transactions contemplated by this Agreement, the Partnership Interests Purchase Agreement and the Merger Agreement, 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 SEC Filings" means forms, statements, reports, schedules and other documents required to be filed or furnished by Seller with or to the SEC pursuant to applicable Laws and policies since January 1, 2005.

"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.

"Shared Code" means all computer software applications, programs and interfaces, including source and object code therefor, owned by Seller immediately prior to the Closing. "Shared Code" shall not include any computer software applications, programs or interfaces, or any part thereof, owned by any third party.

"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 or controlled 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.

"Termination Fee" means an amount equal to the costs and expenses incurred by Buyer in connection with the transactions contemplated in this Agreement, the Merger Agreement and the Partnership Interests Purchase Agreement, prior to the date of termination of this Agreement, in any event not to exceed \$15,000,000.

"Territories" means the service territories of Seller's gas utility businesses in Iowa, Kansas and Nebraska.

"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 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.

"Transition Services Agreement" means the Transition Services Agreement, dated the date hereof, among Buyer, Parent and Merger Sub.

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

(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>
Accounts Payable	Section 2.3(f)
Actual Capital Expenditures	Section 3.1(b)
Actual Working Capital	Section 3.1(b) -
Adjusted Section 4044 Amount	Exhibit 8.8(d)(ii)(C)
Adjustment Amount	Section 3.1(b)
Adjustment Dispute Notice	Section 3.2(c)
Agreement	Preamble
Allocated Rights and Obligations	Section 8.5(d)
Applicable Period	Section 8.8(d)(ii)(E)
Applicable Preferential Purchase Right	Section 8.9(c)

<u>Term</u>	<u>Reference</u>
Assumed Environmental Liabilities	Section 2.3(g)
Assumed Obligations	Section 2.3
Base Price	Section 3.1(a)
Benefit Plan	Section 5.12(a)
Buyer	Preamble
Buyer Financing	Section 6.5(a)
Buyer Financing Commitments	Section 6.5(b)
Buyer Pension Plan Trust	Exhibit 8.8(d)(ii)(C)
CB Transferred Employees	Section 8.8(a)
Capital Expenditures	Section 3.1(b)
Capital Expenditures Budget	Section 3.1(b)
Closing	Section 4.1
Closing Date	Section 4.1
Closing Payment Amount	Section 3.2(a)
Collective Bargaining Agreement	Section 5.11
Confidential Business Information	Section 8.2(c)
Confidential Information	Section 8.2(b)
Contingent Purchased Assets	Section 8.5(f)(ii)
Correct Purchase Price	Section 3.2(d)
Covered Individuals	Section 8.8(d)(ii)(D)
Current Retirees	Section 8.8(d)(ii)(D)
Customer Notification	Section 8.13
Division Income Statement Information	Section 5.5(b)
Easements	Section 8.5(a)

<u>Term</u>	<u>Reference</u>
Electric Opco	Recitals
Excluded Assets	Section 2.2
Excluded Liabilities	Section 2.4
Final Purchase Price	Section 3.2(e)
Financial Hedge	Section 8.5(c)
Franchises	Section 5.13(b)
Gas Opco	Recitals
Initial Transfer Amount	Exhibit 8.8(d)(ii)(C)
Initial Transfer Date	Exhibit 8.8(d)(ii)(C)
Interim Period	Section 8.5(f)(ii)
Lease Buy-Out Amount	Section 3.1(b)
Limited Partner	Recitals
Locals	Section 8.8(c)
Merger	Recitals
Merger Agreement	Recitals
Methodologies	Section 3.1(b)
New CBA	Section 8.8(c)
Non-CB Transferred Employees	Section 8.8(a)
Other Arrangements	Section 8.5(d)
Other Plan Participants	Exhibit 8.8(d)(ii)(C)
Parent	Preamble
Partnership Interests Purchase Agreement	Recitals
Post-Retirement Welfare Benefits	Section 8.8(d)(ii)(D)
Proposed Adjustment Amount	Section 3.2(b)

<u>Term</u>	<u>Reference</u>
Proposed Adjustment Statement	Section 3.2(b)
Proposed Purchase Price	Section 3.2(b)
Purchase Price	Section 3.1(a)
Purchased Assets	Section 2.1
Qualifying Offer	Section 8.8(a)
Real Property	Section 2.1(a)
Reduction Amount	Exhibit 8.8(d)(ii)(C)
Reference Balance Sheet	Section 3.1(b)
Reference Capital Expenditures	Section 3.1(b)
Reference Working Capital	Section 3.1(b)
Regulatory Material Adverse Effect	Section 8.4(e)
Retained Agreements	Section 2.2(l)
Savings Plan	Section 8.8(d)(ii)(E)
Section 4044 Amount	Exhibit 8.8(d)(ii)(C)
Selected Balance Sheet Information	Section 5.5(a)
Seller	Preamble
Seller Pension Plan Trust	Exhibit 8.8(d)(ii)(C)
Severance Compensation Agreements	Section 2.1(h)
Shared Agreements	Section 8.5(d)
Straddle Period Taxes	Section 8.7(b)
Substitute Arrangements	Section 8.5(d)
Successor Collective Bargaining Agreement	Section 5.11
Termination Date	Section 10.1(b)
Transfer Taxes	Section 8.7(a)

<u>Term</u>	<u>Reference</u>
Transferable Environmental Permits	Section 2.1(i)
Transferable Permits	Section 2.1(g)
Transferred Employee	Section 8.8(a)
Transition Committee	Section 8.1(b)
True-Up Amount	Exhibit 8.8(d)(ii)(C)
True-Up Date	Exhibit 8.8(d)(ii)(C)
Unrecovered Purchased Gas Adjustments	Section 3.1(b)
Working Capital	Section 3.1(b)

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 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) References. References to any agreement, instrument or other document means that agreement, instrument or other document as amended, modified or supplemented

from time to time, including by waiver or consent, and all attachments thereto and instruments incorporated therein.

(g) "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.

(h) "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.

(i) "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.

(j) "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, subject to all Encumbrances except for Non-Permitted Encumbrances, all of Seller's right, title, and interest in, to, and under the real and personal property, tangible or intangible, principally related to the Business, including as described below, as the same exists at the Closing (and, as applicable and as permitted or contemplated hereby, or as Buyer and Parent agree, with such additions and eliminations of assets as shall occur from the date hereof through the Closing), except to the extent that such assets are Excluded Assets (collectively, the "Purchased Assets"):

(a) Seller's real property and real property interests located in Iowa, Kansas (other than real property or real property interests principally related to Seller's electric utility business in Kansas) and Nebraska, including (i) as described on Schedule 2.1(a), (ii) buildings, structures, other improvements, and fixtures located thereon, (iii) all rights, privileges, easements and appurtenances thereto, the leasehold and subleasehold interests under the leases described on

Schedule 5.9, (iv) the Easements to be conveyed at the Closing pursuant to Section 8.5(a), and (v) any installation, facility, plant (including any manufactured gas plant), or site (including any manufactured gas plant site) described on Schedule 2.1(a) that (A) at the Closing is operated, owned, leased, or otherwise under the control of or attributed to any of Seller or the Business, and (B) is located in the Territories (collectively, the "Real Property");

(b) the accounts receivable and inventories owned by Seller and principally related to the Business, and other similar or related items principally related to the Business;

(c) the Documents;

(d) the machinery, equipment, vehicles, furniture, pipeline system, natural gas distribution assets, 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) to be attached to the Agreement prior to July 1, 2007, and all warranties against manufacturers or vendors relating thereto;

(e) the Business Agreements and the Franchises;

(f) the Allocated Rights and Obligations to the extent transferred to Buyer pursuant to Section 8.5(d);

(g) the Permits, in each case to the extent the same are assignable (the "Transferable Permits");

(h) the severance compensation agreements, if any, between Seller and the Business Employees, as applicable (the "Severance Compensation Agreements");

(i) the Environmental Permits, including those listed on Schedule 5.10(a)-2, in each case to the extent the same are assignable (the "Transferable Environmental Permits");

(j) in addition to the claims, rights and proceeds described in Section 2.1(r), to the extent (i) Seller has received any insurance proceeds from settlements with insurance providers prior to the date hereof relating to costs to clean-up any Real Property as required under any Environmental Laws, including any manufactured gas plant sites acquired by Buyer pursuant to this Agreement, and (ii) such clean-up costs have not been incurred prior to the Closing Date, a pro-rata share of such proceeds to be allocated to the Real Property based upon the estimated clean-up costs of all similar sites of Seller covered by such proceeds;

(k) any refund or credit related to Taxes paid by or on behalf of Seller for which Buyer is liable pursuant to Section 8.7, whether such refund is received as a payment or as a credit against future Taxes payable;

(l) Claims and defenses of Seller to the extent such Claims or defenses arise principally with respect to the Purchased Assets or the Assumed Obligations, provided that any such Claims and defenses will be assigned to Buyer without warranty or recourse;

(m) assets transferred pursuant to Section 8.8;

- (n) any other assets owned by Seller and set forth on Schedule 2.1(n);
- (o) assets included in the FERC Accounts upon which the Selected Balance Sheet Information was prepared;
- (p) any credits, benefits, emissions reductions, offsets and allowances with respect to any Environmental Laws purchased by or granted or issued to Seller for use by or with respect to the Business or the Purchased Assets;
- (q) any other assets of Seller used principally in the Business; and
- (r) any claims or rights under or proceeds of Seller's insurance policies to the extent related to the Business, the Purchased Assets or the Assumed Obligations, including claims, rights or proceeds contemplated by Section 8.9(b).

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) properties and assets principally used in or for the conduct of the electric utility business conducted by Seller in the States of Colorado, Kansas or Missouri, or the gas utility business conducted by Seller in the State of Colorado;
- (d) except as set forth in Section 2.1(k), any refund or credit 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;
- (e) funds, letters of credit and other forms of credit support that have been deposited by Seller as collateral to secure Seller's obligations;
- (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(l), all of the Claims or causes of action of Seller against any Person;
- (i) except as included on Schedule 2.1(n), assets used for performance of the Central or Shared Functions;

(j) except as provided in Section 2.1(j), Section 2.1(l) and Section 2.1(r), all insurance policies, and rights thereunder, including any such policies and rights in respect of the Purchased Assets or the Business;

(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) to be attached to the Agreement prior to July 1, 2007 (the "Retained Agreements"), (ii) Shared Agreements (except to the extent provided by Section 8.5(d)), and (iii) other agreements and contracts not included in the Business Agreements and Franchises;

(m) all software, software licenses, information systems, management 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) other than the software and related assets set forth on Schedule 2.1(n); and

(n) any assets of any Benefit Plan, except as otherwise provided in Section 8.8.

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 incurred either prior to or after the Closing, and principally related to the Purchased Assets or the Business, including those obligations and liabilities set forth in the Selected Balance Sheet Information, 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 Severance Compensation Agreements, the Transferable Permits, the Transferable Environmental Permits, the Preferential Purchase Rights assigned to Buyer pursuant to Section 8.9(c), the Allocated Rights and Obligations transferred to Buyer pursuant to Section 8.5(d), and any other agreements or contractual rights assigned to Buyer pursuant to the terms of this Agreement;

(b) all liabilities and obligations of Seller with respect to customer deposits, customer advances for construction and other similar items related principally to the Business or the Purchased Assets;

(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 Closing;

(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 8.7;

(e) all liabilities and obligations for which Buyer is responsible pursuant to Section 8.8;

(f) all trade accounts payable and other accrued and unpaid current expenses in respect of goods and services incurred by or for the Business to the extent attributable to the period prior to the Closing (the "Accounts Payable");

(g) (i) all Environmental Claims, and (ii) all liabilities, obligations and demands arising under, in respect of, or relating to 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) of Seller directly or indirectly relating to, caused by, or arising in connection with the operation, ownership, use, or other control of or activity at 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 Territories 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; and

(h) all liabilities and obligations of Seller or Buyer arising before, on or after the Closing Date (i) under 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.

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 in respect of indebtedness for borrowed money or the deferred purchase price of property;

(c) 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 8.7;

(d) any and all liabilities arising in connection with the ERISA Case and, except as otherwise provided in Section 2.5 or Section 8.8, any other liability or obligation of Seller or an ERISA Affiliate of Seller to any employee of Seller under or in connection with any of the Benefit Plans, including under any deferred compensation arrangement or severance

policy or any obligation to make any parachute or retention payment, including any liability related to the matters set forth on Schedule 5.12(d); and

(e) except as set forth in Section 2.5, any other liability, obligation, duty or responsibility of Seller not principally related to the Purchased Assets or the Business.

2.5. Post-Closing Liabilities. As of the Closing Date:

(a) With respect to the Corporate Employees, Buyer will reimburse Seller or Seller's successor for 40% of all costs of short-term severance-related benefits, including outplacement benefits, gross-ups for taxes, and severance payments made or provided by Seller or Seller's successor to such employees in connection with the termination of such employees prior to or at the Closing as a result of the transactions contemplated by this Agreement, the Partnership Interests Purchase Agreement and the Merger Agreement.

(b) Parent and Seller will, and Parent will cause Seller's successor to, reimburse Buyer for any Losses, costs or expenses incurred by Buyer with respect to any Excluded Liabilities (other than any Excluded Liabilities that are assumed by Buyer or an Affiliate of Buyer pursuant to the Partnership Interests Purchase Agreement).

(c) Buyer will reimburse Seller, or Seller's successor, as applicable, for any Losses, costs or expenses incurred by Parent, Seller or Seller's successor with respect to any Assumed Obligations.

**ARTICLE III.
PURCHASE PRICE**

3.1. Purchase Price.

(a) The purchase price for the Purchased Assets (the "Purchase Price") will be an amount equal to \$600,000,000 (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.

(b) The following definitions shall be used to compute the Purchase Price:

"Actual Capital Expenditures" means the actual Capital Expenditures for the period between the date hereof and the Closing Date.

"Actual Working Capital" means Working Capital as of the Closing Date.

"Adjustment Amount" means (i) Actual Working Capital minus Reference Working Capital, plus (ii) Actual Capital Expenditures minus Reference Capital Expenditures, plus (iii) an amount equal to the aggregate under-billed amount, or minus an amount equal to the aggregate over-billed amount, of the Unrecovered Purchased Gas Adjustments as of the Closing Date for each of the Natural Gas Businesses, plus (iv) an amount equal to the Lease Buy-Out Amount.

"Capital Expenditures" for any period means the amount of expenditures of the Business for such period which must be capitalized in accordance with the Methodologies.

"Capital Expenditures Budget" means the budget attached hereto as Schedule 3.1(a).

"Lease Buy-Out Amount" means an amount equal to the aggregate purchase price to purchase the vehicles included in the Purchased Assets that are subject to the Master Lease Agreement as described in Schedule 5.8 and are purchased by Seller prior to the Closing pursuant to Section 8.5(h).

"Methodologies" means (i) the methods used in the preparation of the Reference Balance Sheet and the Capital Expenditures Budget; (ii) to the extent consistent with the foregoing, the past practices of the Business; and (iii) to the extent consistent with all of the foregoing, GAAP, in each case of clauses (i), (ii) and (iii), applied on a consistent basis.

"Reference Balance Sheet" means the projected balance sheet of the Business as of December 31, 2007 attached hereto as Schedule 3.1(b).

"Reference Capital Expenditures" means the amount of the Capital Expenditures as set forth in the Capital Expenditures Budget.

"Reference Working Capital" means the Working Capital of the Business estimated as of December 31, 2007, as set forth in Schedule 3.1(c).

"Unrecovered Purchased Gas Adjustments" means the amount of purchased gas adjustment otherwise permitted under Seller's tariffs for the Natural Gas Businesses, not yet paid by the customers of the Natural Gas Businesses, or that the Natural Gas Businesses has not reimbursed to its respective customers.

"Working Capital" as of any date means the "current assets" of the Business as of such date minus the "current liabilities" of the Business as of such date (which may be a positive or negative amount), determined in each case in accordance with the Methodologies.

3.2. Determination of Adjustment Amount and Purchase Price.

(a) No later than fifteen (15) days prior to the Closing Date, Seller, in consultation with Parent and Buyer, will prepare and deliver to Buyer and Parent, Seller's best estimate of the Actual Working Capital, the Actual Capital Expenditures, the Unrecovered Purchased Gas Adjustments, the Lease Buy-Out Amount, the Adjustment Amount and the Purchase Price to be paid at the Closing, based on Seller's best estimates of the Adjustment Amount (such estimated Purchase Price being referred to herein as the "Closing Payment Amount").

(b) Within ninety (90) days after the Closing Date, Buyer will prepare and deliver to Parent a statement (the "Proposed Adjustment Statement") that reflects Buyer's determination of (i) the Actual Working Capital, the Actual Capital Expenditures, the Unrecovered Purchased Gas Adjustments, the Lease Buy-Out Amount and the Adjustment Amount (the "Proposed Adjustment Amount"), and (ii) the Purchase Price based on the Proposed

Adjustment Amount (the "Proposed Purchase Price"). In addition, Buyer will provide Parent with supporting assumptions and calculations, in reasonable detail, for such determinations at the time it delivers the Proposed Adjustment Statement. Parent and Seller agree to, and Parent agrees to cause Seller's successor to, cooperate with Buyer after the Closing in connection with the preparation of the Proposed Adjustment Statement and related information, and will provide Buyer with access to Seller's books, records, information, and employees that are primarily related to the Business and the Purchased Assets that are in Seller's or its successor's possession or control as Buyer may reasonably request.

(c) The amounts determined by Buyer as set forth in the Proposed Adjustment Statement will be final, binding, and conclusive for all purposes unless, and only to the extent, that within thirty (30) days after Buyer has delivered the Proposed Adjustment Statement, Parent notifies Buyer of any dispute with matters set forth in the Proposed Adjustment Statement. Any such notice of dispute delivered by Parent (an "Adjustment Dispute Notice") will identify with reasonable specificity each item in the Proposed Adjustment Statement with respect to which Parent disagrees, the reason for such disagreement, and Parent's position with respect to such disputed item, and will include Parent's recalculation of the Adjustment Amount and the Purchase Price. Parent shall be conclusively deemed to have accepted any item in the Proposed Adjustment Statement not addressed by the Adjustment Dispute Notice.

(d) If Parent delivers an Adjustment Dispute Notice in compliance with Section 3.2(c), Buyer and Parent 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 Parent are unable to reach a resolution with respect to all disputed items within forty five (45) days of delivery of the Adjustment Dispute Notice, Buyer and Parent 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 thirty (30) days after such submission, upon such remaining disputed items. The determination of the Independent Accounting Firm on each issue shall be neither more favorable to Buyer than shown in the Proposed Adjustment Statement nor more favorable to Parent than shown in the Adjustment Dispute Notice. The report of the Independent Accounting Firm will identify the correct Actual Working Capital, Actual Capital Expenditures, Unrecovered Purchased Gas Adjustments, Lease Buy-Out Amount, Adjustment Amount and Purchase Price (the "Correct Purchase Price") and such report 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 Parent so that Parent'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 Parent (as finally determined by the Independent Accounting Firm) bears to the total amount of the disputed amounts so submitted to the Independent Accounting Firm, with the remaining amount allocated to Buyer.

(e) "Final Purchase Price" shall mean (i) the Proposed Purchase Price, if Parent does not deliver an Adjustment Dispute Notice; (ii) the amount agreed between Parent and Purchaser, if any; or (iii) the Correct Purchase Price, if determined by the Independent Accounting Firm. Within five (5) days following the final determination of the Final Purchase Price pursuant to Sections 3.2(b), (c) and (d), (x) if the Final Purchase Price is greater than the Closing Payment Amount, Buyer will pay the difference to Seller or its successor; or (y) if the Final Purchase Price is less than the Closing Payment Amount, Parent will cause Seller, or its

successor, to pay the difference 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 same day 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 promulgated thereunder. Within one hundred eighty (180) days following the Closing Date, the Parties will work together in good faith to agree upon such allocation; provided that in the event that such agreement has not been reached within such 180-day period, the allocation will be determined by the Independent Accounting Firm, and such determination will be binding on the Parties. Parent and Buyer will each pay one-half of the fees and expenses of the Independent Accounting Firm in connection with such determination. Each Party will, and Parent will cause Seller's successor to, 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) Solely for purposes of determining the Proposed Purchase Price and the Final Purchase Price under Section 3.2, property Taxes, utility charges, and similar items customarily prorated, including those listed below, to the extent relating to the Business or the Purchased Assets and which are not due or assessed until after the Closing Date but which are attributable to any period (or portion thereof) ending on or prior to the Closing Date, will be prorated as of the Closing Date. Such items to be prorated will include:

- (i) personal property and real property Taxes, assessments, franchise Taxes, and other similar periodic 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 proration pursuant to Section 3.4(a), including installments of special assessments, the amount allocated to Buyer shall equal the amount of the current real property Tax or installment of special assessments, as the case may be, multiplied by a fraction, (i) the numerator of which is the number of days from the date of the immediately preceding installment to the day before the Closing Date, and (ii) the denominator of which is the total number of days in the assessment period in which the Closing Date occurs. In connection with any other proration, 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.

(c) Parent and Buyer agree to furnish each other, or in the case of Parent to cause Seller or its successor to furnish Buyer, 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 IX 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 Fried, Frank, Harris, Shriver & Jacobson LLP, One New York Plaza, New York, New York 10004, beginning at 10:00 A.M. (New York time) on the first Business Day on which the conditions set forth in ARTICLE IX have been satisfied or waived in accordance with this Agreement (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of the conditions), 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 on the Closing Date immediately before the effective time of the Merger.

4.2. Payment of Closing Payment Amount. At the Closing, Buyer will pay or cause to be paid to Seller, or at Parent's direction to the Exchange Agent or Merger Sub, the Closing Payment Amount, by wire transfers of same day funds or by such other means as may be agreed upon by Parent, Seller and Buyer.

4.3. Deliveries by Parent and Seller. At or prior to the Closing, Seller and Parent, as the Parties determine to be applicable, will deliver the following to Buyer:

- (a) the Bill of Sale, duly executed by Seller;
- (b) the Assignment and Assumption Agreement, duly executed by Seller;
- (c) all consents, waivers or approvals obtained by Seller from third parties in connection with this Agreement;
- (d) the certificate contemplated by Section 9.2(d);
- (e) one or more deeds of conveyance of the parcels of Real Property with respect to which Seller holds fee interests, in forms reasonably acceptable to the Parties, duly executed and acknowledged by Seller and in recordable form, as necessary to convey the Real Property to Buyer;
- (f) one or more instruments of assignment or conveyance, substantially in the form of the Assignment of Easements, as are necessary to transfer the Easements to Buyer pursuant to Section 8.5(a);

(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;

(i) terminations or releases of Non-Permitted Encumbrances on the Purchased Assets;

(j) a certificate of good standing with respect to each of Parent and Seller (dated as of a recent date prior to the Closing Date but in no event more than fifteen (15) Business Days before the Closing Date), issued by the Secretary of State (or other duly authorized official) of the state of incorporation or formation of each such Person and with respect to Seller of the States of Kansas, Iowa and Nebraska;

(k) a copy, certified by an authorized officer of each of Parent and Seller, of respective resolutions authorizing the execution and delivery of this Agreement and instruments attached as exhibits hereto and thereto, and the consummation of the transactions contemplated hereby and thereby, together with a certificate by the Secretary of each of Parent and Seller as to the incumbency of those officers authorized to execute and deliver this Agreement and the instruments attached as exhibits hereto and thereto;

(l) an affidavit that Seller is not a foreign person under section 1445(b)(2) of the Code; and

(m) such other agreements, documents, instruments, and writings as are required to be delivered by Parent or 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, duly executed by Buyer;

(b) the certificate contemplated by Section 9.3(c);

(c) all consents, waivers, or approvals obtained by Buyer from third parties in connection with this Agreement;

(d) a certificate of good standing with respect to Buyer, to the extent applicable (dated as of a recent date prior to the Closing Date but in no event more than fifteen (15) Business Days before the Closing Date), issued by the Secretary of State (or other duly authorized official) of the States of South Dakota, Kansas, Iowa and Nebraska, as applicable;

(e) a copy, certified by an authorized officer of Buyer, of resolutions authorizing the execution and delivery of this Agreement and instruments attached as exhibits hereto and thereto, and the consummation of the transactions contemplated hereby and thereby,

together with a certificate by the Secretary of Buyer as to the incumbency of those officers authorized to execute and deliver this Agreement and the instruments attached as exhibits hereto and thereto;

(f) 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

(g) 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

Except as set forth in the Seller Disclosure Schedule or, to the extent the relevance of such disclosure is readily apparent therefrom, as disclosed in the Seller SEC Filings filed prior to the date of this Agreement, Seller represents and warrants to Buyer that:

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, except for failures to be qualified or licensed that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.2. Authority Relative to this Agreement. Seller has all corporate power and authority necessary to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby 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 or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller, and constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its 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 by Seller, and the consummation by Seller of the transactions contemplated hereby, 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

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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 Closing 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, or any of the Purchased Assets, except for violations that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect;

(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; and

(e) as of the date of this Agreement, to Seller's Knowledge, there are no facts or circumstances relating to Seller or any of its Subsidiaries that, in Seller's reasonable judgment, would be reasonably likely to prevent or materially delay the receipt of the Seller Required Regulatory Approvals.

5.4. Governmental Filings.

(a) Since December 31, 2005, Seller has filed or caused to be filed with the KCC, IUB and NPSC, as applicable, and FERC 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 KCC, IUB and NPSC, respectively, or FERC with respect to the Business and the Purchased Assets except for such forms, statements, reports, and documents the failure of which to file, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. 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 except for such forms, statements, reports and documents the failure of which to file in compliance with all requirements of any law or Order, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) Seller has filed or furnished with the SEC all Seller SEC Filings required to be filed or furnished. Each Seller SEC Filing, when and as filed or furnished with the SEC, complied in all material respects with the applicable requirements of the Securities Act, the Exchange Act and Sarbanes-Oxley. As of their respective dates (and, if amended or supplemented, as of the date of any such amendment or supplement) and as filed, the Seller SEC Filings did not contain any untrue statement of a material fact or omit to state a material fact

required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.

5.5. Financial Information.

(a) Schedule 5.5(a) sets forth selected balance sheet information as of December 31, 2005 and September 30, 2006, respectively, with respect to the Business in each of Iowa, Kansas and Nebraska. 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 in each of Iowa, Kansas and Nebraska for the 12-month period ended December 31, 2005, and the nine-month period ended September 30, 2006. The information set forth in Schedule 5.5(b) is referred to herein as the "Division Income Statement Information."

(c) Except as set forth in the notes thereto, 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 FERC Accounting Rules and any applicable KCC, IUB or NPSC accounting rules applied in accordance with Seller's normal accounting practices. The individual accounts in the Selected Balance Sheet Information are recorded in accordance with GAAP, as modified by applicable FERC Accounting Rules and applicable regulatory accounting rules.

5.6. No Material Adverse Effect. Except as set forth in Schedule 5.6, or as otherwise contemplated by this Agreement, since September 30, 2006 no event, change or development has occurred which, individually or in the aggregate, has had, or would 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 September 30, 2006 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 or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) Seller owns good and marketable title to (or in the case of leased property, has a valid and enforceable leaseholder interest in) the Real Property and the Easements; and (ii) Seller has good title to the other Purchased Assets, in each case free and clear of all Non-Permitted Encumbrances. Except as described in Schedule 5.8 or as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Purchased Assets are not subject to any Preferential Purchase Rights. The Purchased Assets have been maintained consistent with Good Utility Practice, except to the extent that the failure to so maintain the Purchased Assets, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. The Easements are all of the easements, railroad crossing rights and rights-of-way, and similar rights (other than public rights-of-way) necessary, in all material respects, for the operation of the Business as currently conducted.

5.9. Leases. Schedule 5.9 describes to Seller's Knowledge as of the date hereof, 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.

(a) Except as set forth on Schedule 5.10(a)-1, (i) Seller presently possesses all Environmental Permits necessary to own, maintain, and operate the Purchased Assets as they are currently being owned, maintained and operated, and to conduct the Business as it is currently being operated and conducted, except with respect to the failure to possess any Environmental Permits that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (ii) with respect to the Purchased Assets and the Business, Seller is in compliance in all material respects with the requirements of such material Environmental Permits and Environmental Laws, and (iii) Seller has received no written notice or information of an intent by an applicable Governmental Entity to suspend, revoke, or withdraw any such Environmental Permits, except with respect to any Environmental Permit that, if suspended, revoked or withdrawn, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To Seller's Knowledge as of the date hereof, 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 individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect or as set forth on Schedule 5.10(b), neither Seller nor any Affiliate of Seller has received within the last three (3) years any written notice, report, or other information regarding any actual or alleged violation of Environmental Laws, Environmental Permits, 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. To Seller's Knowledge as of the date hereof, Schedule 5.10(b) sets forth a list of the written notices, reports or information that Seller or any Affiliate of Seller has received within the last three (3) years regarding any such actual or alleged violations of Environmental Laws or Environmental Permits.

(c) Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect or as set forth on Schedule 5.10(c), (i) 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. To Seller's Knowledge as of the date hereof, Schedule 5.10(c) sets forth a list of all Releases from, in, on or beneath the Real Property that could form the basis for an Environmental Claim, and of all Environmental Claims pending or threatened against Seller that are principally related to the Purchased Assets or the Business.

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") as of the date hereof. Except to the extent set forth in Schedule 5.11 or as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, (i) Seller is in material 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 material compliance with the terms of and its obligations under the Collective Bargaining Agreements, and has administered each Collective Bargaining Agreement in manner consistent in all material respects with the terms and conditions of such Collective Bargaining Agreements; (v) no material grievance or material 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 the Severance Compensation Agreements set forth on Schedule 5.11 with respect to the Business Employees identified on Schedule 1.1-B, obligations to be assumed or undertaken by Buyer pursuant to Sections 2.5(a) or 8.8, and severance compensation agreements existing as of the date hereof, if any, with respect to additional employees that may be added to the Business Employees after the date hereof by Buyer and Parent pursuant to clause (iii) of the definition thereof, 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. A true, correct, and complete copy of each Collective Bargaining Agreement, any renewal or replacement of any Collective Bargaining Agreement that will expire prior to the Closing Date, and any new collective bargaining agreement covering any of the Business Employees entered into by Seller between the date hereof and the Closing (each a "Successor Collective Bargaining Agreement"), has been made available to Buyer prior to the date hereof or will be made available to Buyer prior to the Closing Date, respectively.

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 (or any ERISA Affiliate of Seller) as of the date hereof on account of current Business Employees or persons who have retired from the Business (each, a "Benefit Plan"). Copies of such plans and all amendments and direct agreements pertaining thereto, together with the most recent annual report and actuarial report with respect thereto, if any, have been made available to Buyer prior to the date hereof.

(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. Copies of the most recent determination letter of the IRS with respect to each such Benefit Plan or trust have been made available to Buyer prior to the date hereof.

(c) (i) Each Benefit Plan has been maintained, funded, and administered in compliance with its terms, the terms of any applicable Collective Bargaining Agreements, and all applicable Laws, including ERISA and the Code, (ii) 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, and (iii) 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 or exists in connection with any Benefit Plan, except in the case of (i), (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the date of this Agreement, no proceeding has been initiated to terminate the Seller Pension Plan nor has the Pension Benefit Guaranty Corporation threatened 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), except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. 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, except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. 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, except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(d) Except for the ERISA Case, as set forth on Schedule 5.12(d) or as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, (i) there is no litigation or governmental administrative proceeding or, to Seller's Knowledge, investigation involving any Benefit Plan, and (ii) 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) or as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, 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 or Section 502 of ERISA with respect to any Benefit Plan.

(e) Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, all contributions (including all employer matching and other contributions and all employee salary reduction contributions) for all periods ending prior to the Closing Date (including periods from the first day of the current plan year to the Closing Date) 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 except to the extent the failure to file such returns, reports and disclosure statements would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(f) Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, each Benefit Plan that is a group health plan (within the meaning of Code section 5000(b)(1)) 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 (or the applicable requirements of State insurance continuation law) and the requirements of the Health Insurance Protection Portability and Accountability Act of 1996.

(g) Schedule 5.12(g) sets forth the medical and life insurance benefits provided as of the date of this Agreement 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 for obligations assumed by Buyer as provided in Section 8.8, no provision of any Benefit Plan would require the payment by Buyer or such Benefit Plan of any money or other property, or the provision by Buyer or such Benefit Plan of any other rights or benefits, to or on behalf of any Business Employee or any other employee or former employee of Seller solely 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.

(i) During the past seven (7) years, neither Seller nor any ERISA Affiliate (including the Business) has contributed to any "multiemployer plan" within the meaning of section 3(37) of ERISA.

5.13. Certain Contracts and Arrangements.

(a) To Seller's Knowledge as of the date hereof, except for any contract, agreement, lease, commitment, understanding, or instrument which (i) is disclosed or described on Schedule 5.9, Schedule 5.11, Schedule 5.12(a), Schedule 5.12(g) or Schedule 5.13(a), or (ii) has been entered into in the ordinary course of business and is not material to the conduct of the Business as currently conducted by Seller, as of the date of this Agreement, 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 agreements that relate to both the Business and the other businesses of Seller, and any other contracts, agreements, personal property leases, commitments, understandings, or instruments which are Excluded Assets or Excluded Liabilities. Except as disclosed or described in Schedule 5.13(a) or as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, (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; (B) 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; (C) 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; and (D) Seller has not received written notice of cancellation or termination of any material Business Agreement.

(b) Schedule 5.13(b) sets forth a list of each municipal franchise agreement relating to the Business to which Seller is a party (the "Franchises") as of the date hereof. Except as disclosed in Schedule 5.13(b) or, individually or in the aggregate, as would not reasonably be expected to have a Material Adverse Effect, Seller is not in default under such agreements and, to Seller's Knowledge, each such agreement is in full force and effect. Except as set forth in Schedule 5.13(b) or, individually or in the aggregate, as would not reasonably be expected to have a Material Adverse Effect, Seller has all franchises necessary for the operation of the Business as presently conducted.

5.14. Legal Proceedings and Orders. Except as set forth in Schedule 5.14 or, individually or in the aggregate, as would not reasonably be expected to have a Material Adverse Effect, there are no 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, as set forth in Schedule 5.14 or as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, 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. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, Seller has all Permits required by Law for the operation of the Business as presently conducted. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, (i) Seller has not received any written notification that it is in violation of any such Permits, and (ii) Seller is in compliance in all respects with all such Permits.

5.16. Compliance with Laws. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, Seller is in compliance with all Laws, Orders and Regulatory Orders applicable to the Purchased Assets or the Business. No investigation or review by any Governmental Entity with respect to Seller or any of its Subsidiaries is pending or, to Seller's Knowledge, threatened, except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. This Section 5.16 does not relate to matters with respect to ERISA and the Benefit Plans, which are the subject of Section 5.12, environmental matters, which are the subject of Section 5.10, Taxes, which are the subject of Section 5.18, or labor matters, which are the subject of Section 5.11.

5.17. Insurance. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, since December 31, 2005, 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. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, 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 Closing.

5.18. Taxes.

(a) Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, all Tax Returns relating to the Business or the Purchased Assets, including all property, activities, income, employees, sales, purchases, capital or gross receipts of Seller relating thereto, required to be filed by or on behalf of Seller on or prior to the Closing Date have been or will be filed in a timely manner, and all Taxes required to be shown on such Tax Returns (whether or not shown on any Tax Return) have been or will be paid in full, except to the extent being contested in good faith by appropriate proceedings. Except as would not reasonably be expected to have a Material Adverse Effect, all such Tax Returns were or will be correct and complete in all respects, and were or will be prepared in compliance with all applicable Laws and regulations.

(b) Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, 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 contractor, service provider, credit, member, stockholder or other third party in connection with the Business or the Purchased Assets.

(c) Seller is not a party directly or indirectly to any Tax allocation or sharing agreement relating to the Business or the Purchased Assets.

5.19. 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.

5.20. Sufficiency of Assets. Except as individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect, the Purchased Assets, together with the assets identified in Sections 2.2(i), 2.2(l) and 2.2(m), and the rights of Buyer under the Transition Services Agreement, constitute all of the assets necessary for Buyer to conduct the Business in substantially the same manner as Seller conducted the Business prior to the Closing.

5.21. Related-Party Agreements. As of the date of this Agreement, Seller is not a party with any of its Affiliates to any material agreement, contract, commitment, transaction, or proposed transaction related to the Business. As of the date of this Agreement no material contract, agreement, or commitment included in the Purchased Assets has, as a counterparty thereto, an Affiliate of Seller.

5.22. Financial Hedges. Except in accordance with the hedging practices as described in Schedule 5.22, Seller is not currently a party to any financial hedges, futures contracts, options contracts, or other derivatives transactions in respect of Seller's gas supply portfolios for the Business. Schedule 5.22(a), to be attached to this Agreement fifteen (15) days prior to the Closing, will set forth a list of all financial hedges, future contracts, options or other derivative transactions in respect of Seller's gas supply portfolio for the Business to which Seller is a party as of the date thereof.

5.23. No Other Representations and Warranties. Except for the representations and warranties of Seller contained in this Agreement, the Partnership Interests Purchase Agreement, the Merger Agreement, or any of the exhibits, schedules or other documents attached hereto or

delivered pursuant to any of the foregoing, Seller is not making and has not made, and no other Person is making or has made on behalf of Seller, any express or implied representation or warranty in connection with this Agreement or the transactions contemplated hereby, and no Person is authorized to make any representations and warranties on behalf of Seller.

ARTICLE VI. REPRESENTATIONS AND WARRANTIES OF BUYER

Except as set forth in, or qualified by any matter set forth in, Schedule 6.3, Buyer represents and warrants to Seller as follows:

6.1. Organization. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of South Dakota 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. Buyer has the requisite corporate power and authority to, and it has taken all corporate action necessary to, execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby 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 or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer, and constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its 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 by Buyer, and the consummation by Buyer of the transactions contemplated hereby, do not:

- (a) conflict with or result in any breach of Buyer'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 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 Closing 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 Partnership Interests Purchase Agreement;
- (c) violate any Law or Order applicable to Buyer, any of its Affiliates, or any of their respective assets, except for violations that, individually or in the aggregate, would not reasonably be expected to prevent, materially delay or impair the ability of Buyer to consummate the transactions contemplated by this Agreement or the Partnership Interests Purchase Agreement;

(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 Partnership Interests Purchase Agreement; and

(e) as of the date of this Agreement, Buyer does not know of any facts or circumstances relating to Buyer or any of its Subsidiaries that, in Buyer's reasonable judgment, would be reasonably likely to prevent or materially delay the receipt of the Buyer Required Regulatory Approvals.

6.4. 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.

6.5. Financing.

(a) At the Closing, Buyer will have sufficient funds available to pay the aggregate amount of consideration payable to Seller, or at Parent's direction to Merger Sub or the Exchange Agent, pursuant to this Agreement and the Partnership Interests Purchase Agreement (the "Buyer Financing").

(b) Buyer has delivered to Seller and Parent true and complete copies of all commitment letters (as the same may be amended or replaced, the "Buyer Financing Commitments"), pursuant to which the lender parties thereto have agreed, subject to the terms and conditions thereof, to provide or cause to be provided to Buyer the Buyer Financing. As of the date of this Agreement, (i) none of the Buyer Financing Commitments has been amended or modified, (ii) the commitments contained in the Buyer Financing Commitments have not been withdrawn or rescinded in any material respect, (iii) the Buyer Financing Commitments are in full force and effect, and (iv) there are no conditions precedent or other contingencies related to the funding of the full amount of Buyer Financing other than as set forth in the Buyer Financing Commitments. As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of the Buyer under any term or condition of the Buyer Financing Commitments. As of the date of this Agreement, Buyer has no reason to believe that it or any of its Subsidiaries will not be able to satisfy on a timely basis any term or condition contained in the Buyer Financing Commitments or that the full amount of the Buyer Financing Commitments will not be available to Buyer as of the closing of the transactions contemplated by this Agreement and the Partnership Interests Purchase Agreement. Buyer has fully paid any and all commitment fees that have been incurred and are due and payable as of the date hereof in connection with the Buyer Financing Commitments.

(c) As of the date of this Agreement, Buyer has no reason to believe that it or any of its Subsidiaries will not be able to satisfy on a timely basis any term or condition contained in this Agreement or the Partnership Interests Purchase Agreement, or that the full amount of the consideration payable by Buyer to Seller, or to Merger Sub or the Exchange Agent as directed by Parent, pursuant to this Agreement or the Partnership Interests Purchase

Agreement, will not be available to Buyer as of the closing of the transactions contemplated by this Agreement or the Partnership Interests Purchase Agreement.

6.6. No Other Agreements. This Agreement, the Merger Agreement, the Partnership Interests Purchase Agreement, the letter of intent dated November 21, 2006 between Buyer and Parent, and the Transition Services Agreement are the sole agreements and arrangements between or among Buyer and Parent and their respective Affiliates with respect to the transactions contemplated herein and therein.

6.7. No Other Representations and Warranties. Except for the representations and warranties of Buyer contained in this Agreement, the Partnership Interests Purchase Agreement, the Merger Agreement, or any of the exhibits, schedules or other documents attached hereto or delivered pursuant to any of the foregoing, Buyer is not making and has not made, and no other Person is making or has made on behalf of Buyer, any express or implied representation or warranty in connection with this Agreement or the transactions contemplated hereby, and no Person is authorized to make any representations and warranties on behalf of Buyer.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby represent and warrant to Buyer and Seller that:

7.1. Organization. Each of Parent and Merger Sub is a legal entity duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization and has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted.

7.2. Authority Relative to this Agreement. Except as set forth on Schedule 7.2, Parent and Merger Sub each have the requisite corporate or similar power and authority to, and each of them have taken all corporate or similar action necessary to, execute, deliver and perform its obligations under this Agreement. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and is a valid and binding agreement of Parent and Merger Sub, respectively, enforceable against each of them in accordance with its 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. No vote or approval of the stockholders of Parent is required in connection with the execution, delivery or performance by Parent of its obligations under this Agreement.

7.3. Consents and Approvals; No Violation. Except as set forth in Schedule 7.3, the execution and delivery of this Agreement by Parent and Merger Sub, and the performance by Parent or Merger Sub of their respective obligations hereunder, do not:

(a) conflict with or result in any breach of Parent's or Merger Sub'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 Parent, Merger Sub or any of their respective Affiliates is a party or by

which Parent, Merger Sub or any of their respective Affiliates, business or 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 Closing 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, the Partnership Interests Purchase Agreement or the Merger Agreement;

(c) violate any Law or Order applicable to Parent, Merger Sub, any of their respective Affiliates, except for violations that, individually or in the aggregate, would not be reasonably be expected to prevent or materially delay the ability of Parent or Merger Sub to consummate the transactions contemplated in this Agreement, the Partnership Interests Purchase Agreement or the Merger Agreement;

(d) require any declaration, filing, or registration with, or notice to, or authorization, consent, or approval of any Governmental Entity, other than (i) the 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, the Partnership Interests Purchase Agreement or the Merger Agreement, or (iii) any requirements which become applicable to Parent or Merger Sub 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; and

(e) as of the date of this Agreement, Parent does not know of any facts or circumstances relating to Parent or any of its Subsidiaries that, in Parent's reasonable judgment, would be reasonably likely to prevent or materially delay the receipt of the Material Parent Regulatory Consents (as defined in the Merger Agreement).

7.4. Merger Agreement. Parent has delivered to Buyer a true and complete copy of the Merger Agreement. As of the date of this Agreement, (a) the Merger Agreement has not been amended or modified, (b) the Merger Agreement is in full force and effect, and (c) there are no conditions precedent or other contingencies related to the obligations of the Parties under the Merger Agreement other than as set forth in the Merger Agreement. As of the date of this Agreement, Parent has no reason to believe that it or any of its Subsidiaries will not be able to satisfy on a timely basis any term or condition contained in the Merger Agreement.

7.5. No Other Representations and Warranties. Except for the representations and warranties of Parent and Merger Sub contained in this Agreement, the Partnership Interests Purchase Agreement, the Merger Agreement, or any of the exhibits, schedules or other documents attached hereto or delivered pursuant to any of the foregoing, neither Parent nor Merger Sub is making and neither has made, and no other Person is making or has made on behalf of Parent or Merger Sub, any express or implied representation or warranty in connection with this Agreement or the transactions contemplated hereby, and no Person is authorized to make any representations and warranties on behalf of Parent or Merger Sub.

7.6. Fees and Commissions. No broker, finder, or other Person is entitled to any brokerage fees, commissions, or finder's fees for which Seller or Buyer could become liable or

obligated in connection with the transactions contemplated hereby by reason of any action taken by Parent or Merger Sub.

7.7. No Other Agreements. This Agreement, the Merger Agreement, the Partnership Interests Purchase Agreement, the letter of intent dated November 21, 2006 between Parent and Buyer, and the Transition Services Agreement are the sole agreements and arrangements between or among Parent and Buyer and their Affiliates with respect to the transactions contemplated herein and therein.

ARTICLE VIII. COVENANTS OF THE PARTIES

8.1. Conduct of Business.

(a) Except as contemplated in this Agreement, required by any Business Agreement, Law, or Order, or otherwise described in Schedule 8.1, 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 and in all material respects consistent with Good Utility Practice and will use reasonable best efforts to preserve intact the Business, and to preserve the goodwill and relationships with customers, suppliers, Governmental Entities, and others having business dealings with the Business. Without limiting the generality of the foregoing, except as required by applicable Law, or Order, or as otherwise described in Schedule 8.1, prior to the Closing Date, without the prior written consent of Buyer and Parent, which will not be unreasonably withheld, delayed or conditioned, Seller will not:

(i) create, incur or assume any Non-Permitted Encumbrance upon the Purchased Assets, except for any such Encumbrance that will be released at or prior to the Closing;

(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 \$650,000 on an individual basis, or \$3,250,000 in the aggregate, sell, lease, transfer, or otherwise dispose of any of the Purchased Assets, other than (A) in the ordinary course of business, or (B) consistent with Good Utility Practice;

(iv) make or commit to any capital expenditures relating to the Business or the Purchased Assets in excess of the amount reflected for such expenditures in the Capital Expenditure Budget for the year in which those capital expenditures are made, or up to 10% in excess of such amount if necessary as a result of increases in the costs of labor, commodities, materials, services, supplies, equipment or parts after the date hereof, except for capital expenditures (A) required under any Business Agreement to which Seller or any of its Subsidiaries is a party as of the date of this Agreement, a copy of which has been made available to Buyer; (B) incurred in connection with the repair or replacement of facilities destroyed or damaged due to casualty or accident (whether or not covered by insurance) necessary to provide or maintain safe and adequate

natural gas service to the utility customers of the Business; provided that, Seller shall, if reasonably possible, consult with Buyer prior to making or agreeing to make any such expenditure; and (C) other capital expenditures relating to the Business or the Purchased Assets of up to \$650,000 individually or \$3,250,000 in the aggregate for each twelve (12) month budget cycle;

(v) spend in excess of \$1,000,000 individually or in the aggregate to acquire any business that would be included in the Business or the Purchased Assets, whether by merger, consolidation, purchase of property or otherwise (valuing any non-cash consideration at its fair market value as of the date of the execution of a binding agreement for the acquisition);

(vi) other than (A) in the ordinary course of business, (B) upon terms not materially adverse to the Business, the Purchased Assets, the Colorado Business and the Colorado Assets, taken together, or (C) as otherwise permitted under this Section 8.1(a), (1) enter into, amend, extend, renew, modify or breach in any material respect, terminate or allow to lapse (other than in accordance with its terms), any material Business Agreement, or any contract that would have been a material Business Agreement if in effect prior to the date hereof;

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

(viii) terminate, establish, adopt, enter into, make any new, or accelerate any existing benefits under, amend or otherwise modify, or grant any rights to severance, termination or retention benefits under, any Benefit Plans (including amendments or modifications to any medical or life insurance benefits provided by Seller or Seller's adoption or grant of any new medical or life insurance benefits to any currently retired or former employees of the Business), or increase the salary, wage, bonus or other compensation of any Business Employees who will become Transferred Employees, except for (A) grants of equity or equity based awards in the ordinary course of business, (B) increases in salary or grants of annual bonuses in the ordinary course of business in connection with normal periodic performance reviews (including promotions) and the provision of individual compensation and benefits to new and existing directors, officers and employees of Seller consistent with past practice (which shall not provide for benefits or compensation payable solely as a result of the consummation of the transactions contemplated hereunder, in the Partnership Interests Purchase Agreement or the Merger Agreement), (C) actions necessary to satisfy existing contractual obligations under Benefit Plans existing as of the date of this Agreement, or (D) bonus payments, together with any such bonus payments permitted under the Partnership Interests Purchase Agreement and the Merger Agreement, not to exceed an aggregate of \$500,000 to executives in Seller's compensation bands E through G;

(ix) negotiate the renewal or extension of any Collective Bargaining Agreement or enter into any new collective bargaining agreement, without providing Buyer with access to all information relating to such new collective bargaining agreement, or the renewal or extension of any such Collective Bargaining Agreement, and permitting Buyer to consult from time to time with Seller and its counsel on the

progress thereof; provided that the negotiation of such renewal or extension will be conducted in a manner consistent with past practice, and Seller will not be obligated to follow any advice that may be provided by Buyer during any such consultation;

(x) agree or consent to any material agreements or material modifications of material existing agreements or material courses of dealing with any of the IUB, KCC, NPSC or any other state public utility or service commission, or the FERC, in each case in respect of the operations of the Business or the Purchased Assets, except as required by Law to obtain or renew Permits or agreements in the ordinary course of business consistent with past practice;

(xi) modify, amend or terminate, or waive, release or assign any material rights or claims with respect to any confidentiality or standstill agreement relating to the Business or the Purchased Assets to which Seller or any of its Subsidiaries is a party (it being agreed and acknowledged that Seller may grant waivers under any such standstill agreement to allow a third party to submit an Acquisition Proposal (as defined in the Merger Agreement) for Seller to the extent that the Board of Directors of Seller determines in good faith (after consulting with outside legal counsel) that the failure to grant such waiver would be inconsistent with its fiduciary duties under applicable Law);

(xii) fail to maintain insurance on the Purchased Assets with financially responsible insurance companies (or if applicable, self insure), insurance in such amounts and against such risks and losses as are consistent with Good Utility Practice and customary for companies of the size and financial condition of Seller that are engaged in businesses similar to the Business;

(xiii) enter into, amend in any material respect, make any material waivers under, or otherwise modify in any material respect any property Tax agreement, treaty, or settlement related to the Business;

(xiv) enter into any line of business in any of the Territories or the states of Iowa, Kansas or Nebraska other than the current Business; provided that the restrictions in this Section 8.1(a)(xiv) will not apply to activities that are not part of the current Business or are not related to the Purchased Assets, including Seller's electric utility businesses in Kansas and Missouri;

(xv) other than in the ordinary course of business, amend in any material respect, breach in any material respect, terminate or allow to lapse or become subject to default in any material respect or subject to termination, any Permit material to the Business, the Purchased Assets, the Colorado Business and the Colorado Assets, taken as a whole, other than (A) as required by applicable Law, and (B) approvals by Governmental Entities of, or the entry with Governmental Entities into, compromises or settlements of litigation, actions, suits, claims, proceedings or investigations entered into in accordance with Section 8.1(a)(xvi);

(xvi) enter into any compromise or settlement of any litigation, action, suit, claim, proceeding or investigation relating to the Business or the Purchased Assets

(excluding tax controversies and tax closing agreements that relate to Taxes that are not Assumed Obligations under this Agreement) in which the damages or fines to be paid by Seller (and not reimbursed by insurance) are in excess of \$5,000,000 individually or in the aggregate, or in which the non-monetary relief to be provided could reasonably be expected to materially restrict the prospective operation of the Business;

(xvii) enter into any agreements that would limit or otherwise restrict in any material respect the Business or any successor thereto, or that, after the Closing, would limit or restrict in any material respect Buyer, the Business or any successor thereto, from engaging or competing in any line of business or product line or in any of the Territories (in each case other than limitations on franchises, certificates of convenience or necessity, or other rights granted under the same documents);

(xviii) except as permitted under Section 7.2 and ARTICLE IX of the Merger Agreement, take any action that is intended or would reasonably be expected to result in any of the conditions to the obligations of any of the Parties to effect the transactions contemplated hereby not being satisfied;

(xix) except for non-material filings in the ordinary course of business consistent with past practice, (A) implement any changes in Seller's rates or charges (other than automatic cost pass-through rate adjustment clauses), standards of service or accounting, in any such case, as relates to the Business or execute any agreement with respect thereto (other than as otherwise permitted under this Agreement), without consulting with Buyer prior to implementing any such changes or executing any such agreement, and (B) agree to any settlement of any rate proceeding that would provide for a reduction in annual revenues or would establish a rate moratorium or phased-in rate increases (other than automatic cost pass-through rate adjustment clauses) for a duration of more than one (1) year (it being agreed and acknowledged that, notwithstanding anything to the contrary herein, rate matters relating to the Business shall be restricted between the date of this Agreement and the Closing solely to the extent set forth in this Section 8.1(a)(xix) and not by any other provision hereof);

(xx) with respect to the Business, change, in any material respect, its accounting methods or practices (except in accordance with changes in GAAP), credit practices, collection policies, or investment, financial reporting, or inventory practices or policies or the manner in which the books and records of the Business are maintained;

(xxi) hire any employee for the Business other than (A) persons who are hired by Seller to replace employees who have retired, been terminated, died, or become disabled, (B) persons who are hired by Seller in the ordinary course of business consistent with past practice, or (C) persons hired by Seller to perform Central or Shared Functions; or

(xxii) agree or commit to take any action which would be a violation of the restrictions set forth in Sections 8.1(a)(i) through 8.1(a)(xxi).

(b) Within fifteen (15) Business Days after the date hereof, a committee of three Persons comprised of one Person designated by Parent, 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 to examine transition issues relating to or arising in connection with the transactions contemplated hereby, except for issues to be examined by the Transition Services Committee pursuant to the Transition Services Agreement. From time to time, the Transition Committee will report its findings to the senior management of each of Parent, Seller and Buyer. The Transition Committee shall have no authority to bind or make agreements on behalf of the Parties or to issue instructions to or direct or exercise authority over the Parties. Seller shall provide to Buyer, at no cost, interim furnished office space, utilities, and telecommunications at mutually agreed locations as reasonably necessary to allow Buyer to conduct its transition efforts.

(c) In the event that the Transition Committee, or Buyer and Parent, agree to engage a consultant to provide advice to the Transition Committee, or Parent and Buyer, respectively, in connection with transition issues relating to or arising in connection with the transactions contemplated hereby, (i) such engagement shall occur pursuant to a written agreement with such consultant that shall be subject to the prior written approval of each of Buyer and Parent, and (ii) all out-of-pocket costs incurred by Parent and Buyer pursuant to such consulting agreement will be split between Buyer and Parent, with each of Buyer and Parent bearing 50% of such costs.

8.2. Access to Information.

(a) To the extent permitted by Law, 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 and those of its properties, contracts and records used principally in the Business or principally related to the Purchased Assets, 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 (including but not limited to surveys 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; (iv) grant Buyer access to such officers and employees of Seller as Buyer may reasonably request in connection with obtaining information regarding the Business or the Purchased Assets, including with respect to any environmental matters, regulatory matters and financial information; (v) furnish Buyer with copies of surveys, legal descriptions of real property and easements, contracts, leases and other documents with respect to the Purchased Assets in Seller's possession and reasonable control; (vi) 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; and (vii) furnish Buyer all information concerning the Business Employees or Covered Individuals as reasonably requested; provided, however, that (A) any such investigation will be conducted, and any such access to officers and employees of Seller will be exercised, 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 of the Real Property to the condition substantially equivalent

to the condition such Real Property was in prior to any investigation of environmental matters), (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 8.2 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. Seller acknowledges and agrees that except for the information disclosed in Schedules 1.1-B, 3.1(a), 5.3(b), 5.5(a), 5.5(b), 5.8, 5.10(b), 5.10(c), 5.11, 5.14, 8.8(d)(ii)(D) and 8.8(d)(ii)-A to this Agreement, Buyer may include such information relating to the Business and the Purchased Assets as reasonably necessary in filings with the SEC, including in one or more registration statements filed by Buyer in connection with obtaining the Buyer Financing.

(b) Unless and until the transactions contemplated hereby have been consummated, Buyer will, and will cause its Affiliates and Buyer's Representatives to, hold in strict confidence and not use or disclose to any other Person all Confidential Information. "Confidential Information" means all information in any form heretofore or hereafter obtained from Seller in connection with Buyer's evaluation of the Business or 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 by Buyer, its Affiliates, or Buyer's Representatives. Notwithstanding the foregoing, Buyer may disclose Confidential Information to the extent that such information is required to be disclosed by Buyer 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. In the event that Buyer believes any such disclosure is required, Buyer will give Seller notice thereof as promptly as possible and will cooperate with Seller in seeking any protective orders or other relief as Seller may determine to be necessary or desirable. In no event will Buyer make or permit to be made any disclosure of Confidential Information other than to the extent Buyer's legal counsel has advised in writing is required by Law, and Buyer will use its reasonable 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, Buyer will promptly upon Seller's request, destroy or return to Seller all copies of any Confidential Information, including any materials prepared by Buyer or Buyer's Representatives incorporating or reflecting Confidential Information, and an officer of Buyer shall certify in writing compliance by Buyer with the foregoing. Seller acknowledges and agrees that this Agreement (other than the information disclosed in Schedules 1.1-B, 3.1(a), 5.3(b), 5.5(a), 5.5(b), 5.8, 5.10(b), 5.10(c), 5.11, 5.14, 8.8(d)(ii)(D) and 8.8(d)(ii)-A to this Agreement) shall not be considered Confidential Information for purposes of this Section 8.2(b).

(c) Seller agrees that for the two-year period immediately following the Closing Date, Seller will, and will cause its Affiliates and Seller's 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 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 reasonable best efforts to assure that any Confidential Business Information so disclosed is protected from further disclosure.

(d) The provisions of Section 8.2(b) supersede the provisions of the Confidentiality Agreement relating to Proprietary Information (as defined therein), and will survive for a period of two (2) years following the earlier of the Closing or the termination of this Agreement, except that if the Closing occurs, the provisions of Section 8.2(b) will expire with respect to any information principally related to the Purchased Assets and the Business.

(e) For a period of seven (7) 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 any 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 8.2(e) and will reimburse the other Party for any costs or expenses incurred by such other Party in connection with complying with such request. 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.

8.3. Expenses. Except to the extent specifically provided herein, in the Merger Agreement or in the Partnership Interests Purchase Agreement, 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.

8.4. Further Assurances; Regulatory Filings; Consents and Approvals.

(a) Subject to the terms and conditions of this Agreement, each of the Parties will use reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper, or advisable under applicable Laws to consummate and make effective the transactions contemplated hereby, by the Merger Agreement and by the Partnership Interests Purchase Agreement as promptly as practicable after the date of this Agreement, including using reasonable best efforts to obtain satisfaction of the conditions precedent to each Party's obligations hereunder, under the Merger Agreement and the Partnership Interests Purchase Agreement. Except for actions permitted under Section 7.2 and ARTICLE IX of the Merger Agreement, neither Buyer nor Seller will take or permit any of its Subsidiaries to take any action that would reasonably be expected to prevent or materially delay or impair the consummation of the transactions contemplated hereby.

(b) Seller, Parent 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 notifications required to be filed by it 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 reasonable best 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.

(c) Without limiting the foregoing, the Parties will cooperate with each other and use reasonable best 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 consents, approvals and authorizations necessary to transfer to Buyer 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, in each case, effective as of the Closing, (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, provided, however, no Party will be required to take any action that would result in a Regulatory Material Adverse Effect, and (iv) obtain all consents, approvals, releases and authorizations of all other Persons to the extent necessary or appropriate 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, Business Agreement, Easement, or other instrument to which Seller or Buyer is a party or by which either of them is bound. Buyer and Seller will each have the right to review in advance all characterizations of the information related to it or the transactions contemplated hereby which appear in any filing made by the other in connection with the transactions contemplated by this Agreement. Buyer will be solely responsible for payment of all filing fees required in connection with any Required Regulatory Approvals or such other applications, notices, petitions and filings made with any Governmental Entity.

(d) To the extent permitted by Law, Buyer and Seller will have the right to review in advance, and each will consult the other on, the form, substance and content of any filing to be made by Buyer or Seller or any of their respective Subsidiaries with, or any other written materials submitted by any of them to, any third party or any Governmental Entity (other than the SEC) in connection with the transactions contemplated by this Agreement, the Merger and the Partnership Interests Purchase Agreement. To the extent permitted by Law, each of Buyer and Seller will (i) provide the other with copies of all correspondence between it or any of its Subsidiaries (or its or their Representatives) and any Governmental Entity (other than the SEC) relating to the transactions contemplated by this Agreement, the Merger Agreement and the transactions contemplated by the Partnership Interests Purchase Agreement, (ii) consult and cooperate with the other Party, and to take into account the comments of such other Party in connection with any such filings, and (iii) inform the other Party in advance of any communication, meeting, or other contact which such Party proposes or intends to make with respect to such filings, including the subject matter, contents, intended agenda, and other aspects of any of the foregoing and to use reasonable best efforts to ensure that all telephone calls and meetings with a Governmental Entity regarding the transactions contemplated by this Agreement will include representatives of Buyer and Seller; provided that nothing in the foregoing will apply to or restrict communications or other actions by Seller with or with regard to Governmental Entities in connection with the Purchased Assets or the Business in the ordinary course of business. To the extent permitted by Law, Buyer, Seller and Parent each agree to (1) provide one another with copies of any registration statements filed with the SEC, in the case of Buyer, in connection with obtaining financing, or by Seller and Parent in connection with the transactions contemplated under the Merger Agreement, (2) provide the other Parties the opportunity to review in advance and consult with one another as to the content of such registration statements regarding such Parties and, (3) provide the other Parties with copies of all correspondence between it or any of its Subsidiaries (or its or their respective Representatives) and the SEC with respect to such registration statements regarding such Parties.

(e) Nothing in this Section 8.4(e) will require, or be construed to require, (i) Seller to take or refrain from taking, or to cause any of its Subsidiaries to take or refrain from taking, any action or to engage in any conduct, or to agree or consent to Seller or any of its Subsidiaries taking any action or engaging in any conduct, or agreeing to any restriction, condition or conduct, with respect to any of the businesses, assets or operations of Seller or any of its Subsidiaries, if this action, restriction, condition or conduct would take effect prior to the Closing or is not conditioned on the Closing occurring, or (ii) Buyer to take or refrain from taking, or to cause any of its Subsidiaries to take or refrain from taking, any action or to engage in any conduct, or to agree or consent to Seller or any of its Subsidiaries taking any action, or agreeing to any restriction, condition or conduct, with respect to any of the businesses, assets or

operations of Seller or any of its Subsidiaries, if the cumulative impact of these actions, restrictions, conditions and conduct would reasonably be expected to have a material adverse effect on the financial condition, properties, assets, liabilities (contingent or otherwise), business or results of operations of the Business and the Purchased Assets, together with the Colorado Business and the Colorado Assets, taken as a whole (a "Regulatory Material Adverse Effect"), it being understood that, for purposes of determining whether a Regulatory Material Adverse Effect would reasonably be expected to occur both the positive and negative effects of any actions, conduct, restrictions and conditions, including any sale, divestiture, licensing, lease, disposition or change or proposed change in rates, will be taken into account. Notwithstanding the foregoing, Seller shall not take, consent to or agree to take any action with respect to the Business or the Purchased Assets that would reasonably be expected to have a material adverse effect on the financial condition, properties, assets, liabilities (contingent or otherwise) business or results of operations of the Post-Sale Company (as defined in the Merger Agreement) and its Subsidiaries, without Parent's written consent.

(f) 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.

(g) Each of Buyer, Seller and Parent will keep the other apprised of the status of matters relating to completion of the transactions contemplated by this Agreement, the Merger Agreement and the Partnership Interests Purchase Agreement. Without limiting the foregoing, each of Buyer, Seller and Parent will promptly furnish the other with copies of any notice or other communication received by it or its Subsidiaries from any Person with respect to the transactions contemplated by this Agreement, the Merger Agreement or the Partnership Interests Purchase Agreement regarding (i) the occurrence or existence of (A) the breach in any material respect of a representation, warranty or covenant made by the other in this Agreement, or (B) any fact, circumstance or event that has had, or individually or in the aggregate would reasonably be expected to have a Material Adverse Effect; (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated hereby; and (iii) (A) the commencement or, to a Party's knowledge, threatened commencement of any material Claims against such Party, (B) the commencement of any material internal investigations or the receipt of any material and reasonably credible whistleblower complaints relating to a Party or any of its Subsidiaries, or (C) the entry of any material Order relating to a Party.

(h) Seller agrees that none of the information supplied or to be supplied by Seller or its Subsidiaries in writing specifically for Buyer's use in preparing, or incorporation by reference, in any registration statement to be filed by Buyer in connection with obtaining Buyer's financing will, at the time such registration statement is filed with the SEC, is amended or supplemented, or becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading.

(i) Buyer agrees that none of the information supplied or to be supplied by Buyer or its Subsidiaries in writing specifically for Seller's and Parent's use in preparing, or

incorporation by reference, in any registration statement to be filed by Seller and Parent in connection with the transactions contemplated by the Merger Agreement will, at the time such registration statement is filed with the SEC, is amended or supplemented, or becomes effective under the Securities Act, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, not misleading.

(j) Each of Seller, Parent and Buyer will, and will cause its Subsidiaries, including in the case of Parent, Seller's successor, to cooperate with the others and use reasonable best efforts to take or cause to be taken all actions and do or cause to be done all things necessary, proper or advisable on its part to enable Buyer, Parent, Seller and Seller's successor to perform their respective obligations under the Transition Services Agreement, including participation in the Transition Services Committee to be established pursuant to the Transition Services Agreement, and implementation of the Transition Plan in accordance therewith.

8.5. Procedures with Respect to Certain Agreements and Other Assets.

(a) Seller has easements, real property license agreements (including railroad crossing rights), rights-of-way, and leases for rights-of-way, which relate solely to the Business and Purchased Assets (the "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) to the extent practicable, by separate, recordable Assignment of Easement as to all Easements in each separate County. Buyer and Seller agree that if Buyer and Seller determine that Seller's Kansas electric utility operations "share" Easements with Seller's gas utility operations in Kansas, Buyer and Seller will take all actions reasonably necessary (such as executing sub-easements or other documents) to ensure Buyer is permitted to use the same on a non-exclusive basis, as presently used by Seller with respect to its Kansas gas utility operations.

(b) To the extent that any of the Purchased Assets or Seller's rights under any Business Agreement may not be assigned to Buyer 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 reasonable best efforts (without being required to make any payment to any third party or incur any economic burden, except as may be specifically required under any Business Agreement in connection with the grant of such consent) 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 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 a Purchased Asset, including any Business Agreement, is not obtained or if any attempted assignment would be ineffective or would impair Buyer's rights to such Purchased Assets or 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, 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 effect the transfer or assignment of such

Purchased Asset or to provide Buyer with the benefits and obligations of such Business Agreement from and after the Closing.

(c) 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, Buyer and Seller agree that the Financial Hedge will be liquidated at or promptly after the Closing. Liquidation proceeds will be paid as follows: (i) 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 (ii) 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 agree on a specific procedure to liquidate the non-assignable Financial Hedges, and any payment due as a result of such liquidation under this Section 8.5(c) will be made at or promptly after the Closing. Seller will calculate the mark-to-market value of the Financial Hedges in accordance with its usual and customary practice.

(d) Buyer and Parent agree that the agreements, if any, described on Schedule 8.5(d) (the "Shared Agreements"), which will be attached to this Agreement prior to July 1, 2007 by the mutual agreement of Buyer and Parent, will be governed by this Section 8.5(d) and will not be Business Agreements for purposes of this Agreement. Seller's rights and obligations under the Shared Agreements, to the extent such rights and obligations relate to the Business, are described on Schedule 8.5(d), and are referred to herein as the "Allocated Rights and Obligations." Unless Parent elects for Seller or its successor to enter into Other Arrangements, Seller shall, or Parent shall cause Seller's successor to, cooperate with Buyer and use their reasonable best efforts to enter into agreements (effective from and after the Closing Date) with the other party or parties to each Shared Agreement providing for (i) assignment to and assumption by Buyer, effective from and after the Closing, of the Allocated Rights and Obligations, and (ii) retention by Seller or its successor 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 or its successor 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 Buyer the Allocated Rights and Obligations (and reserving to Seller or its successor the rights and obligations which are not Allocated Rights and Obligations) on a fair and equitable basis, as determined in the reasonable discretion of Parent and Buyer. In connection with the foregoing, Parent, Seller and Buyer will, and Parent will cause Seller's successor to, as reasonably requested, to submit such financial or other information concerning themselves or Seller, and to execute such assumption agreements or similar documents reasonably requested by a third party; provided that no Party will be, and Seller's successor will not 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 or its successor). In the event that (x) Buyer and Seller or its successor 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 or

promptly after the Closing Buyer and Seller, to the maximum extent permitted by Law and such Shared Agreement, will 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 or its successor retaining the other benefits and obligations under such Shared Agreements from and after the Closing (the "Other Arrangements").

(e) Seller from time to time provides collateral or other security to certain other Persons in connection with certain Business Agreements, Financial Hedges and Shared Agreements. Seller and Buyer agree to use their reasonable best 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), or released (in the case of other credit support previously provided by Seller) at or promptly after the Closing. In the event that such collateral or other security is not returned to Seller or otherwise released at or promptly after the Closing, Buyer will (i) pay to Seller, or its successor, an amount equal to any cash collateral posted by Seller; and (ii) in the case of a letter of credit provided in connection with a Business Agreement, replace such letter of credit as soon as practicable, or if such letter of credit is provided in connection with a Shared Agreement, provide to Seller, or its successor, a back-up letter of credit in the same amount and for a period expiring no earlier than ten (10) days following the expiration of the letter of credit previously provided by Seller. The provisions of this Section 8.5(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.

(f) In the event that any approval for the transfer of any of the Purchased Assets to Buyer is required from the Federal Communications Commission or any Franchise authority, and such approval is necessary to obtain in order to avoid violation of any Law, but is not a Required Regulatory Approval, the Parties agree that if such approval is not obtained prior to the Closing:

(i) they will each continue to use, and Parent and Seller will, and Parent will cause Seller's successor to use, reasonable best efforts to obtain, and with respect to Parent, to cause Seller's successor to obtain, such approvals as promptly as possible;

(ii) any of the Purchased Assets, the transfer of which to Buyer in the absence of such an approval would cause or lead to a violation of any Law (the "Contingent Purchased Assets"), shall not be transferred to Buyer at the Closing, but Seller will, or Parent will cause Seller's successor to, transfer such assets immediately upon receipt of the requisite approvals, with the time between the Closing and the receipt of such approval being referred to as the "Interim Period";

(iii) during the Interim Period, Seller or its successor shall continue to have all title, rights, and obligations in the Contingent Purchased Assets to the extent necessary to avoid any violation of Law; and

(iv) Buyer will, and Seller will, or Parent will cause Seller's successor to, enter into such arrangements with each other prior to Closing as are permissible under Law and reasonably necessary to provide Buyer with the benefits and obligations in

respect of the Contingent Purchased Assets from and after the Closing, and otherwise on terms and conditions reasonably acceptable to Buyer and Seller or its successor.

(g) Following the Closing, Buyer and Seller will, or Parent will cause Seller's successor to, promptly remit to the other any payments Buyer or Seller or its successor receives that are in satisfaction of any rights or assets belonging to the other.

(h) With respect to the vehicles that are included in the Purchased Assets and that are subject to the Master Lease Agreement described in Schedule 5.8, Seller shall, upon written notice from Buyer, purchase such vehicles prior to the Closing and obtain the release of the liens on such vehicles as indicated in Schedule 5.8.

8.6. Public Statements. Each Party will consult with the other prior to issuing any press releases or otherwise making public announcements with respect to the transactions contemplated by this Agreement, except (i) as may be required by Law or by obligations pursuant to any listing agreement with or rules of any national securities exchange or any self-regulatory organization, and (ii) for any consultation that would not be reasonably practicable as a result of requirements of Law.

8.7. Tax Matters.

(a) All transfer, documentary, stamp, registration, sales and use Taxes, including real property conveyance Taxes ("Transfer Taxes"), incurred in connection with this Agreement and the transactions contemplated hereby shall be shared equally between Seller or its successor, on the one hand, and Buyer, on the other hand. To the extent required by applicable Law, Seller shall, or Parent shall cause Seller's successor to, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, and, if required by applicable Law, Buyer shall join in the execution of any such Tax Returns or other documentation. Buyer shall remit to Seller, within 20 days after receipt of notice as to the amount of such Transfer Taxes that are payable on or after the Closing or have been paid, 50 percent of the total amount of such Transfer Taxes. In the event there is an additional assessment of such Transfer Taxes or an amount of such Transfer Taxes is refunded, (i) Buyer and Seller shall share equally the amount of any such additional assessment, with the Party that is not required to pay such Transfer Tax under applicable Law remitting to the other 50 percent of such additional assessment within 20 days after receiving notice of a final determination, and (ii) Buyer and Seller shall share equally the amount of any such refund, with the Party receiving such refund paying 50 percent of such refund to the other within 20 days after receiving such refund (or claiming an offset against Taxes relating to such refund).

(b) Buyer will be responsible for the preparation and timely filing of all Tax Returns associated with the Business, the Purchased Assets and the Business Employees for (i) in the case of property Taxes and payroll Taxes, all periods that begin before and end after the Closing Date (the "Straddle Period Taxes"), and (ii) in the case of all Taxes, all periods that begin after the Closing Date, and for the timely payment of all Taxes described in clauses (i) and (ii) of this Section 8.7(b).

(c) Any Tax Return that reflects Transfer Taxes or 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 twenty (20) Business Days prior to the due date for filing such Tax Return.

(d) Buyer, Parent and Seller will, and Parent will cause Seller's successor to, provide one another with such assistance as may reasonably be requested by such other Persons in connection with the preparation of any Tax Return, any audit or other examination by any Governmental Entity, or any judicial or administrative proceedings relating to liability for Taxes, and each of Buyer, Parent and Seller will, and Parent will cause Seller's successor to, 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 8.7(d) 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 8.2(b).

8.8. Employees and Employee Benefits.

(a) No later than twenty (20) Business Days prior to the Closing Date, Buyer will give Qualifying Offers of employment commencing as of the Closing Date to all Business Employees, including any such employees who are on a leave of absence under the Family and Medical Leave Act, the Uniformed Services Employment and Reemployment Rights Act or other applicable Law, or authorized under Seller's established leave policy, including short-term or long-term disability. For this purpose, a "Qualifying Offer" means employment at a level of base pay at least equal to the Business Employee's base pay in effect immediately prior to the Closing Date, and with a primary work location no more than fifty (50) miles from the Business Employee's primary work location immediately prior to the Closing Date; provided, however, that with respect to any Business Employee who is covered by a Collective Bargaining Agreement or Successor Collective Bargaining Agreement, the Qualifying Offer shall be on terms and conditions set forth in the Collective Bargaining Agreement, Successor Collective Bargaining Agreement or, if applicable, a new collective bargaining agreement negotiated by Buyer covering such employee. Each Business Employee who becomes employed by Buyer pursuant to this Section 8.8(a) is referred to herein as a "Transferred Employee." Each Transferred Employee who is covered by a Collective Bargaining Agreement or a Successor Collective Bargaining Agreement shall be referred to herein as a "CB Transferred Employee," and each Transferred Employee who is not covered by a Collective Bargaining Agreement or a Successor Collective Bargaining Agreement shall be referred to herein as a "Non-CB Transferred Employee."

(b) All offers of employment made by Buyer pursuant to Section 8.8(a) will be made in accordance with all applicable Laws, will be conditioned only on the occurrence of the Closing, and will remain open until the Closing Date. Any such offer which is accepted before it expires will thereafter be irrevocable, except for good cause. Following acceptance of such offers, Buyer will provide written notice thereof to Seller and Seller will, or Parent will cause Seller's successor to, provide Buyer with access to the Transferred Employee Records consistent with applicable Law. Buyer will be responsible for all liabilities and obligations for and with respect to any Business Employees who do not become Transferred Employees including (i) pursuant to Exhibit 8.8(d)(ii)(C), (ii) due to retirement by such employee after the date hereof and prior to Closing, (iii) severance benefits which become payable to such Business

Employee upon any termination of such Business Employee's employment on or following the Closing Date, and (iv) the benefits described in Section 8.8(d)(ii)(D), but not including liabilities and obligations with respect to insured welfare benefits provided to such Business Employee for periods prior to the Closing Date. Without limiting the obligations of Buyer hereunder, the employment of each Business Employee who does not become a Transferred Employee as of the Closing shall be terminated immediately following the Closing by Seller or the applicable Affiliate of Seller.

(c) From and after the Closing Date, Buyer will recognize the union locals that are the counterparties to Seller under the Collective Bargaining Agreements or any Successor Collective Bargaining Agreements entered into in compliance with Section 8.1(a) (the "Locals") as the exclusive bargaining representatives of the bargaining units that include CB Transferred Employees. No later than twenty (20) Business Days prior to the Closing Date, Buyer will negotiate and reach agreement with each Local on the terms and conditions of a new collective bargaining agreement to be effective from and after the Closing Date with respect to the applicable bargaining unit represented by such Local (each such agreement being referred to as a "New CBA"). Should Buyer fail to successfully negotiate a New CBA with a Local at least twenty (20) Business Days prior to the Closing Date, then at the Closing, Buyer will assume the existing Collective Bargaining Agreement or, as applicable, Successor Collective Bargaining Agreement entered into in compliance with Section 8.1(a), to the extent applicable to the bargaining unit represented by such Local and to the extent consistent with applicable Law; provided that Buyer shall not assume any of the Benefit Plans (but may receive assets to be transferred from such plans pursuant to Exhibit 8.8(d)(ii)(C)), and Buyer will instead provide benefits of the type and amount described in the existing Collective Bargaining Agreements or Successor Collective Bargaining Agreements entered into in compliance with Section 8.1(a), as applicable, through Buyer's own benefit plans and arrangements. Buyer agrees that (i) upon request by Seller, Buyer will notify Seller of the status of negotiations with each Local, and (ii) no later than nineteen (19) Business Days prior to the Closing Date, Buyer will notify Seller whether a New CBA has been successfully negotiated with such Local.

(d) The following will be applicable with respect to the Transferred Employees, Business Employees, Current Retirees, and Other Plan Participants as appropriate. For all purposes of this Section 8.8, determinations as to whether any individuals are "similarly situated" shall be made by Buyer in its reasonable discretion.

(i) From and after the Closing, the Transferred Employees will accrue no additional benefits under any Benefit Plan or any other employee benefit plan, policy, program, or arrangement of Seller, Parent or their respective Affiliates.

(ii) As of the Closing, with respect to the CB Transferred Employees, Buyer will provide benefits of the type and amount described in the relevant collective bargaining agreements through Buyer's own benefit plans and arrangements. As of the Closing and extending through December 31 of the calendar year following the calendar year in which the Closing occurs, Buyer will cause the Non-CB Transferred Employees to be covered by Buyer benefit plans that provide compensation and employee benefits (excluding (i) equity or equity based compensation, and (ii) change in control, severance or retention payments) that are no less favorable in the aggregate than provided to the Non-CB Transferred Employees immediately before the Closing ; provided, that in

determining the timing, amount and terms and conditions of equity compensation and other incentive awards to be granted to Non-CB Transferred Employees, Buyer will treat in a substantially similar manner Non-CB Transferred Employees and similarly situated other employees of Buyer (including by reason of job duties and years of service). The commitments under this Section 8.8(d)(ii) require the following with respect to the Non-CB Transferred Employees and, to the extent not addressed in the relevant collective bargaining agreement, the CB Transferred Employees:

(A) With respect to welfare benefit plans, Buyer agrees to waive or to cause the waiver of all restrictions, limitations or exclusionary periods as to pre-existing conditions, actively-at-work exclusions, waiting periods and proof of insurability requirements (to the extent allowable under Buyer's welfare benefit plans and insurance policies) for the Transferred Employees to the same extent waived or satisfied under the corresponding Benefit Plans. With respect to the calendar year in which the Closing Date occurs, all eligible expenses incurred by any such employees or any eligible dependent thereof, including any alternate recipient pursuant to qualified medical child support orders, in the portion of the calendar year preceding the Closing Date that were qualified to be taken into account for purposes of satisfying any deductible, co-insurance or out-of-pocket limit under any Seller Benefit Plan will be taken into account for purposes of satisfying any deductible, co-insurance or out-of-pocket limit under similar plans of Buyer for such calendar year. As soon as practicable, but in no event later than sixty (60) days after the Closing Date, Seller will, or Parent will cause Seller's successor to, provide Buyer with all relevant information necessary or reasonably requested by Buyer for purposes of administering this provision, consistent with applicable Law.

(B) With respect to service and seniority, Buyer will recognize the service and seniority of each of the Transferred Employees recognized by Seller for all material purposes, including the determination of eligibility and vesting, the extent of service or seniority-related welfare benefits, and eligibility for and level of retiree health benefits, but in any event not for purposes of determining the accrual of pension benefits and levels of pension or other retirement income benefits.

(C) The Parties will comply with the provisions set forth on Exhibit 8.8(d)(ii)(C).

(D) Buyer will assume all liabilities, obligations, and responsibilities with respect to providing post-retirement health and life insurance benefits arising under or pursuant to existing plans and agreements of Seller ("Post-Retirement Welfare Benefits") to (i) the persons listed on Schedule 8.8(d)(ii)(D) and any Business Employee who retires between the date hereof and the Closing Date (such listed persons and such Business Employees, the "Current Retirees"), and their spouses and eligible dependents, and (ii) the Business Employees (together with the Current Retirees, the "Covered Individuals") and their spouses and eligible dependents. From and after the Closing, Buyer will continue to provide to the Covered Individuals Post-Retirement Welfare Benefits that, in material respects, are comparable to in the aggregate those Post-Retirement Welfare Benefits provided to such Covered Individuals immediately prior to the Closing Date, under cost-sharing structures that either are at least as favorable as the cost-sharing structures in effect for and available to the Covered Individuals immediately

prior to the Closing Date (as adjusted for inflation); provided that if Buyer reduces or eliminates any Post-Retirement Welfare Benefits provided to Covered Individuals from such benefits that are available to such individuals under the terms and conditions of the existing plans and agreements of Seller applicable to such individuals as in effect on the date hereof, any liabilities arising in connection with such reduction or elimination shall be deemed an Assumed Obligation and Buyer will be responsible therefor.

(E) With respect to the Aquila, Inc. Retirement Investment Plan (the "Savings Plan"), Seller will vest Transferred Employees in their Savings Plan account balances as of the Closing Date. Buyer will take all actions necessary to establish or designate a defined contribution plan and trust intended to qualify under Section 401(a) and Section 501(a) of the Code in which Transferred Employees are eligible to participate (x) to recognize the service that the Transferred Employees had in the Savings Plan for purposes of determining such Transferred Employees' eligibility to participate, vesting, attainment of retirement dates, contribution levels, and, if applicable, eligibility for optional forms of benefit payments, and (y) to accept direct rollovers of Transferred Employees' account balances in the Savings Plan, including transfers of loan balances and related promissory notes, provided that such loans would not be treated as taxable distributions at any time prior to such transfer.

(F) Within sixty (60) days after the Closing Date, Seller will, or Parent will cause Seller's successor to, transfer to a flexible spending plan maintained by Buyer any balances standing to the credit of Transferred Employees under Seller's flexible spending plan as of the day immediately preceding the Closing Date, net of any negative balances in the applicable accounts at such time. As soon as practicable after the Closing Date, Seller will, or Parent will cause Seller's successor to, provide to Buyer a list of those Transferred Employees that have participated in the health or dependent care reimbursement accounts of Seller, together with (x) their elections made prior to the Closing Date with respect to such account and (y) balances standing to their credit as of the day immediately preceding the Closing Date. As of the transfer described in the first sentence hereof, the flexible spending plan maintained by Buyer shall assume the rights and obligations of Seller's flexible spending plan with respect to the Transferred Employees for the remainder of the year in which such transfer occurs. For the avoidance of doubt, this paragraph shall not be construed to require a transfer with respect to any Transferred Employee of an amount in excess of such employee's unreimbursed contributions to the flexible spending plan as of the date of transfer.

(iii) With respect to severance benefits, Buyer will provide to any Non-CB Transferred Employee who is terminated by Buyer (other than for cause) prior to the date which is one (1) year following the Closing Date, severance benefits comparable to those provided by Seller under Seller's severance plans and policies (other than any plans or policies with respect to stock options or other types of equity compensation) in effect immediately prior to the Closing Date. Any employee who is provided severance benefits under this Section 8.8(d)(iii) may be required to execute a release of claims against Buyer, Seller and their respective Affiliates and successors, in such form as Buyer reasonably prescribes, as a condition for the receipt of such benefits.

(iv) Parent will, or will cause Seller or its successor to, provide COBRA Continuation Coverage to any current and former Business Employees, or to any qualified beneficiaries of such Business Employees, who become or became entitled to COBRA Continuation Coverage on or before the Closing, including those for whom the Closing occurs during their COBRA election period. Buyer will be responsible for extending and continuing to extend COBRA Continuation Coverage to all Transferred Employees (and their qualified beneficiaries) who incur a COBRA qualifying event and thus become entitled to such COBRA Continuation Coverage following the Closing.

(v) Without limiting the obligations of the Parties under Sections 8.8(d)(ii)(C) and 8.8(d)(ii)(D), Seller or its Affiliates will pay or cause to be paid to all Transferred Employees, all compensation (including any accrued vacation carried over to the calendar year of the Closing from a previous calendar year), workers' compensation or other employment benefits to which they are entitled or that have accrued under the terms of the applicable compensation or Seller Benefit Plans or programs with respect to employment or events occurring prior to the Closing Date; provided that if any of the CB Transferred Employees elect to retain or carryover accrued and unused vacation days rather than receive such payments, Seller or its Affiliates will pay or cause to be paid to Buyer an amount equal to the aggregate amount that would otherwise have been paid to such CB Transferred Employees with respect to such vacation days, and Buyer will honor all such accrued and unused vacation days of such CB Transferred Employees as of the Closing. Buyer will pay to each Transferred Employee all unpaid salary or other compensation or employment benefits (but not including any compensation attributable to stock options or other types of equity compensation granted by Seller) which accrue to such employee from and after the Closing Date, at such times as provided under the terms of the applicable compensation or benefit programs.

(vi) Without limiting the obligations of the Parties under Sections 8.8(d)(ii)(C) and 8.8(d)(ii)(D), Business Employees who on the Closing Date are not actively at work due to a leave of absence covered by the Family and Medical Leave Act, the Uniformed Service Employment and Reemployment Rights Act or other applicable Law, or other authorized leave of absence under Seller's established leave policy, including short-term or long-term disability, will be provided by Buyer with benefits and compensation during such leave that is substantially similar to the benefits and compensation provided to such employees by Seller prior to the Closing Date, and will be treated as Transferred Employees on the date that they are able to return to work (provided that such return to work occurs within the authorized period of their leaves following the Closing Date) and are able to perform the essential functions of their jobs with or without reasonable accommodation. Seller shall provide Buyer with a list of such individuals as of the Closing Date with the scheduled dates for expiration of their leaves.

(vii) Buyer will assume Seller's obligations as of the Closing Date to pay nonqualified deferred compensation to the applicable Business Employees and former Business Employees.

(e) On or before the Closing Date, Seller shall provide Buyer a list of the names and sites of employment of any and all Business Employees who have experienced, or

will experience, an employment loss or layoff as defined by WARN Act or any similar applicable state or local Law requiring notice to employees in the event of a closing or layoff within ninety (90) days prior to the Closing Date. Seller shall update this list up to and including the Closing Date. For a period of ninety (90) days after the Closing Date, Buyer shall not engage in any conduct which would result in an employment loss or layoff for a sufficient number of employees of Buyer which, if aggregated with any such conduct on the part of Seller prior to the Closing Date, would trigger the WARN Act or any similar applicable Law. Without limiting the foregoing, Buyer will be responsible, with respect to the Business, for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification to Transferred Employees of any "employment loss" within the meaning of the WARN Act which occurs at or following the Closing Date.

(f) From and after the Closing Date, with respect to worker's compensation, Buyer shall assume, discharge, pay and be solely liable for all Losses in respect of any Claims pending as of or commenced after the Closing Date resulting from actual or alleged harm or injury to any Business Employee regardless of when the incident or accident giving rise to such liability occurred or occurs. Buyer shall make all necessary arrangements to assume all such worker's compensation claim files, whether opened or closed, as of the Closing Date, and will make the necessary arrangements for assuming the continued management of such liabilities.

(g) From and after the Closing Date, except to the extent any such Losses are covered under Seller's or an Affiliates' third party insurance plans or policies, reinsurance policies or arrangements, or trusts or other funding vehicles, Buyer shall assume, discharge, pay and be solely liable for health, accidental death and dismemberment, short term disability or life insurance coverage and any medical or dental benefits to the Business Employees and their eligible dependents.

(h) Buyer agrees that from and after the Closing Date, if a Business Employee commences an action, suit or proceeding relating to an employment-related claim (but excluding, in any event the ERISA Case), any resulting Liability shall be the responsibility of Buyer. Parent shall reasonably cooperate with Buyer in the defense of any such claim to the extent that the applicable actions or events transpired preceding the Closing Date.

(i) For purposes of Sections 8.8(f), 8.8(g) and 8.8(h), the term "Business Employees" shall also include any individuals who (A) were employed principally for the Business at the time the incident or circumstances giving rise to such suit, claim, action, proceeding or Loss occurred, and (B) who are not employed by Seller either as of the date hereof or as of the Closing Date.

(j) No provision in this Agreement shall modify or amend any other agreement, plan, program or document, including any of Buyer's benefit plans or arrangements, unless this Agreement explicitly states that the provision "amends" that other agreement, plan, program or document. This shall not prevent the parties entitled to enforce this Agreement from enforcing any provision in this Agreement, but no other party shall be entitled to enforce any provision in this Agreement on the grounds that it is an amendment to another agreement, plan, program or document, unless a provision is explicitly designated as such in this Agreement, and the person is otherwise entitled to enforce such other agreement, plan, program or document. If a party not entitled to enforce this Agreement brings a lawsuit or other action to enforce any

provision in this Agreement as an amendment to another agreement, plan, program or document, and such provision is construed to be such an amendment despite not being explicitly designated as an amendment in this Agreement, such provision shall lapse retroactively, thereby precluding it from having any amendatory effect. The provisions of this Section 8.8 are not, and will not be construed as being, for the benefit of any Person other than the Parties, and are not enforceable by any Persons (including Transferred Employees, Current Retirees, and Other Plan Participants) other than such Parties.

(k) Following the Closing, if Buyer or Seller or its successor identifies any individual that was incorrectly classified by Seller (including employees not listed in Schedule 1.1-B) with respect to whether such individual was a Business Employee, a former employee of the Natural Gas Businesses or a Current Retiree, as applicable, Buyer and Seller, or Parent shall cause Seller's successor to, each agree to notify the other Party and, acting in good faith, to take, or cause to be taken, all action, and to do, or cause to be done, all things reasonably necessary, proper or advisable to cause such individual to be appropriately classified for purposes of this Agreement, and to allocate the liabilities and obligations related to such re-classified individual in accordance with the terms hereof.

8.9. Eminent Domain; Casualty Loss.

(a) If, before the Closing Date, any of the Purchased Assets are taken by eminent domain or condemnation, or are the subject of a pending or (to Seller's Knowledge) contemplated taking which has not been consummated, Seller will (i) notify Buyer promptly in writing of such fact, and (ii) at the Closing assign, or Seller shall, or Parent shall cause Seller's successor to, assign to Buyer all of Seller's right, title, and interest in and to any proceeds or payments received, or to be received, in compensation for such taking.

(b) If, before the Closing Date, all or any material portion of the Purchased Assets are damaged or destroyed by fire or other casualty, Seller will notify Buyer promptly in writing of such fact and, at the Closing assign, or Seller shall, or Parent shall cause Seller's successor to, assign all of Seller's right, title, and interest in and to any insurance recoveries received, or to be received, in compensation for such damage or destruction less any such amounts received, or to be received, to reimburse Seller for expenditures incurred by Seller to repair or replace such Purchased Assets.

(c) Seller and Buyer will use their reasonable best efforts (without being required to make payment to any third party or to incur any economic burden) to obtain from each holder of any Preferential Purchase Right a written waiver of such Preferential Purchase Right if required with respect to the transactions contemplated by this Agreement (an "Applicable Preferential Purchase Right"). If the Parties cannot obtain a waiver of an Applicable Preferential Purchase Right, the Parties will cooperate, using reasonable best efforts, to provide for compliance with the terms of such Applicable Preferential Purchase Right. In the event that any Purchased Asset remains subject to such Applicable Preferential Purchase Right as of the Closing, in lieu of any adjustment to the Purchase Price, Seller will, or Parent will cause Seller's successor to, at the Closing assign to Buyer, as a Purchased Asset, all of Seller's right, title, and interest in and to all rights of Seller with respect to such Applicable Preferential Purchase Right, including proceeds received or to be received in respect to such Applicable Preferential Purchase Right, and will assign to Buyer and Buyer will assume, as Assumed Obligations, all obligations

of Seller with respect to such Applicable Preferential Purchase Right. If any third party holding a Preferential Purchase Right exercises such right prior to the Closing, Seller shall promptly give Buyer written notice of such exercise. Buyer and Seller hereby expressly acknowledge and agree that nothing in this Agreement constitutes an offer or agreement to sell, transfer, dispose of, purchase, assume, or acquire any asset subject to a Preferential Purchase Right except upon the Closing following the satisfaction of all conditions to Closing specified in this Agreement. Neither this Agreement nor anything herein or in connection herewith shall be deemed to obligate Seller to sell, transfer, assign or otherwise dispose of any Purchased Asset or Assumed Obligation, to Buyer or any other Person, except upon the Closing following the satisfaction or waiver of all conditions to Closing specified in this Agreement.

(d) A condemnation or taking of, casualty or exercise of a Preferential Purchase Right set forth in Schedule 5.8 with respect to, any Purchased Asset, and any effects thereof (including any resulting termination of any Franchise or other agreement principally related to such Purchased Asset), may be taken into account in determining whether a Material Adverse Effect has occurred; provided that to the extent Buyer is assigned the rights, title and interest to any payments or proceeds received by Seller with respect to any such condemnation or taking, casualty or exercise of a Preferential Purchase Right, such payments or proceeds may be considered in determining whether any Material Adverse Effect has occurred; provided further that assignment of such proceeds or payments to Buyer shall not necessarily mean a Material Adverse Effect did not occur.

8.10. Transitional Use of Signage and Other Materials Incorporating Seller's Name or other Logos. Parent acknowledges that it will have no ongoing claim or rights in or to the Seller Marks. Within one hundred eighty (180) days following the Closing Date, Parent will remove or cause the removal of the Seller Marks from all signage or other items relating to or used in connection with the Excluded Assets and, thereafter, Parent will not use or permit the use of any Seller Marks.

8.11. Litigation Support. In the event and for so long as Buyer, Parent or Seller or its successor is actively contesting or defending against any third-party Claim in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving Seller, Buyer, Parent and Seller will, and Parent will cause Seller's successor to, cooperate with the contesting or defending Person and its counsel in the contest or defense, make reasonably available its personnel, and provide such testimony and access to its books and records as is reasonably necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Person.

8.12. Audit Assistance.

(a) If, (i) during or for the period beginning on the date hereof and ending on the Closing Date, Buyer is, in connection with any annual or quarterly report filed with the SEC, required by the SEC to file audited or reviewed financial statements of the Business in respect of any period occurring prior the Closing Date, or (ii) during or for the period beginning on the date hereof and ending on the last day of the calendar year of the Closing, Buyer is, in connection with a registration statement or other voluntary filing to be filed by Buyer with the SEC, required by the SEC to file audited or reviewed financial statements of the Business in respect of any

period occurring prior the Closing Date, then in each case at Buyer's request, as applicable, Seller will, or Parent will cause Seller's successor to, use its reasonable best efforts to cause Seller's auditor to, at Buyer's sole cost and expense, (a) cooperate with and provide Buyer access to such information, books and records as necessary for Buyer to prepare audited and interim or reviewed financial statements of the Business, and (b) agree to provide to Buyer an audit or review of the financial statements of the Business, for the periods necessary to satisfy the SEC requirements (and any consents, if any, to use such audited or reviewed financial statements in Buyer's SEC filings). Further, Seller will use reasonable best efforts to assist Buyer in preparing pro forma financial information that in Buyer's reasonable judgment may be required to be included in any such filing or prospectus, offering memorandum or other document or materials that may be prepared in connection with the Buyer Financing or otherwise on or prior to the Closing, and, whether or not Seller's auditor is retained by Buyer to conduct an audit or review of the Business, Seller will, or Parent will cause Seller's successor to (x) use its reasonable best efforts to cause Seller's auditor to, at Buyer's sole cost and expense, make available to Buyer and its auditors the work papers and other documents and records reasonably requested by Buyer that were created prior to the Closing and relate principally to the Business, and (y) cooperate with Buyer, at Buyer's sole cost and expense, in obtaining an audit or review of the Business, in each case, to the extent required by the SEC.

(b) Seller acknowledges and agrees that any audited and interim or reviewed financial statements and related information prepared in accordance with this Section 8.12 will not be deemed Confidential Information for purposes of this Agreement.

8.13. Notification of Customers. As soon as practicable following the Closing, Seller will, or Parent will cause Seller's successor to, cooperate with Buyer to cause to be sent to customers of the Business a notice of the transfer of the customers from Seller to Buyer (the "Customer Notification"). The Customer Notification will contain such information as is required by Law and approved by Buyer and Seller, which approval will not be unreasonably withheld or delayed.

8.14. Financing. Buyer will use reasonable best efforts to take or to cause to be taken, all actions, and to do or cause to be done, all things necessary, proper or advisable to close the Buyer Financing on the terms and conditions described in the Buyer Financing Commitments by the date upon which the Closing Date is contemplated to occur in accordance with Section 4.1 (provided and to the extent that Buyer has not otherwise obtained funds sufficient to pay the Purchase Price through other sources of funds and provided that Buyer may replace or amend the Buyer Financing Commitments after consultation with Parent and Seller but only if the terms of such replacement or amended Buyer Financing Commitments, including with respect to conditionality, would not adversely impact Buyer's ability to consummate the transactions contemplated by this Agreement or the Partnership Interests Purchase Agreement, or otherwise prevent, impact or delay the consummation of the transactions contemplated by this Agreement or the Partnership Interests Purchase Agreement), including paying the commitment fees arising under the Buyer Financing Commitments as and when such fees become due and payable during the period beginning on the date hereof and ending on the Closing Date, and using reasonable best efforts to (i) negotiate definitive agreements with respect thereto on the terms and conditions contained therein and (ii) to satisfy on a timely basis all conditions applicable to obtain the Buyer Financing. In the event any portion of the Buyer Financing becomes unavailable on the terms and conditions contemplated in the Buyer Financing Commitments and Buyer has not otherwise

obtained other sources of funds, Buyer will use reasonable best efforts to obtain alternative financing from alternative sources by the date upon which the Closing Date is contemplated to occur in accordance with Section 4.1. Buyer will give prompt notice to Seller and Parent of any material breach of the Buyer Financing Commitments of which Buyer becomes aware or any termination of the Buyer Financing Commitments or any Buyer Financing. Buyer will keep Seller and Parent informed on a regularly current basis in reasonable detail of the status of the Buyer Financing.

8.15. Document Delivery. The Parties will work cooperatively to make available to Buyer prior to the Closing such Documents as are reasonably necessary to transition the control and operation of the Business to Buyer at the Closing with minimal interruptions or disruptions in the conduct of the Business. At or within a reasonably practicable period of time after the Closing Date, Seller will, or Parent will cause Seller's successor to, deliver to Buyer, at such location mutually agreed upon by Buyer and Seller or its successor, any remaining Documents. At Buyer's reasonable request, Seller will, or Parent will cause Seller's successor to, use reasonable best efforts to make available in an electronic format compatible with Buyer's electronic systems any Documents and other books and records relating to the Purchased Assets which are maintained by Seller in electronic form.

8.16. Surveys' Title Insurance, Estoppel Certificates, and Non-Disturbance Agreements. At Buyer's option and at Buyer's sole cost and expense, Buyer may obtain (i) surveys desired by Buyer in respect of the Real Property, in form and substance reasonably satisfactory to Buyer; (ii) title insurance policies in current ALTA Form or equivalent covering the Real Property, insuring title to the applicable Real Property as vested in Buyer, and in form, substance, and amounts reasonably satisfactory to Buyer, and without limiting the generality of the foregoing, with all requirements satisfied or waived, with all exceptions deleted, and with all endorsement thereto to the extent desired by Buyer; and (iii) all estoppel certificates and non-disturbance agreements desired by Buyer in respect of any real property leases included in the Purchased Assets, in form and substance reasonably satisfactory to Buyer and to the parties providing such certificates and agreements. Seller agrees, and Parent agrees to cause Seller's successor, to cooperate as reasonably requested by Buyer (at Buyer's expense) in its efforts to obtain such items, provided that (y) none of Seller, Parent, Seller or Seller's successor shall be required to make any payment to any third party or incur any economic burden in connection therewith, and (z) Buyer's obtaining any such items shall not be a requirement of or a condition to the Closing. In addition, with respect to Seller's and Seller's successor's cooperation with Buyer's reasonable requests to obtain title insurance under clause (ii) above, neither Seller nor Seller's successor, except to the extent required to satisfy the Closing condition set forth in Section 9.2(f), and except for such actions as may be necessary to enable Buyer's title insurance company to insure title to the applicable Real Property as vested in Buyer, shall be required to cure any purported defects, cause any exceptions to be deleted, or provide any affidavits, indemnities, or representations or warranties to any title company issuing such title insurance.

8.17. Post-Closing Release of Encumbrances and Transfer of Purchased Assets.

(a) Notwithstanding anything to the contrary herein, if any Non-Permitted Encumbrances on the Business or the Purchased Assets are not released on or before the Closing, and such Non-Permitted Encumbrances secure or are created by or in respect of the Excluded Liabilities, or are for material delinquent Taxes or material delinquent assessments, Seller shall,

and Parent shall cause Seller's successor to, promptly make such payments and take such actions as necessary to obtain the release of such Non-Permitted Encumbrances after the Closing.

(b) Notwithstanding anything to the contrary herein, if Seller fails to deliver any deeds of conveyance or assignments or other instruments, certificates or documents as necessary to transfer any of the Purchased Assets to Buyer at the Closing, Seller shall, and Parent shall cause Seller's successor to, promptly execute and deliver such deeds of conveyance, assignments or other instruments, certificates or documents and take such actions as necessary to transfer such Purchased Assets to Buyer as soon as practicable after the Closing.

8.18. Shared Code Licenses. Buyer hereby grants to Parent a worldwide, non-exclusive, royalty-free, fully paid-up, sublicensable, transferable license to use, reproduce, make derivative works of, distribute, display and perform the Shared Code that is included in the Purchased Assets. Parent hereby grants to Buyer a worldwide, non-exclusive, royalty-free, fully paid-up, sublicensable, transferable license to use, reproduce, make derivative works of, distribute, display and perform the Shared Code that is included in the Excluded Assets. Except as set forth in the Transition Services Agreement, neither Buyer nor Parent shall have any obligation to support, maintain, provide updates or upgrades for, or otherwise provide any assistance to the other in connection with, the Shared Code. The foregoing licenses shall be binding on the respective successors and assigns of Buyer and Parent.

ARTICLE IX. CONDITIONS TO CLOSING

9.1. Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each Party to effect the transactions contemplated hereby are subject to the satisfaction or waiver by Buyer and Seller at or prior to the Closing Date of each of the following conditions:

(a) The waiting period under the HSR Act, including any extension thereof, applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated;

(b) No applicable Law prohibiting consummation of the transactions contemplated in this Agreement shall be in effect, except where the violation of Law resulting from the consummation of the transactions contemplated in this Agreement would not, individually or in the aggregate, reasonably be expected to have an impact (other than an insignificant impact) on the Business, the Purchased Assets, the Colorado Business and the Colorado Assets, taken as a whole, and no court of competent jurisdiction in the United States will have issued any Order that is in effect and enjoins the consummation of the transactions contemplated hereby (each Party agreeing to use its reasonable best efforts to have any such Order lifted); and

(c) Seller, Parent and Merger Sub will be in a position to consummate the Merger immediately following the closing of the transactions contemplated by this Agreement and the Partnership Interests Purchase Agreement.

9.2. Conditions to Obligations of Buyer. The obligation of Buyer to effect the transactions contemplated hereby is also subject to the satisfaction or waiver by Buyer, at or prior to the Closing Date of the following conditions:

(a) Since the date of this Agreement, no Material Adverse Effect shall have occurred and be continuing;

(b) Seller, Parent and Merger Sub shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by such Person on or prior to the Closing Date (other than Section 4.3, which is subject to Section 9.2(f));

(c) The representations and warranties of Seller set forth in ARTICLE V of this Agreement, and the representations and warranties of Parent and Merger Sub set forth in ARTICLE VII of this Agreement, shall be true and correct as of the Closing Date, as if made at and as of the Closing Date (except to the extent that any such representation or warranty is expressly made as of an earlier date, in which case such representation and warranty will be true and correct only as of such date), except where the failure or failures of such representations and warranties to be so true and correct (without giving effect to any limitations or exceptions as to materiality or Material Adverse Effect set forth therein) would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect;

(d) Buyer shall have received a certificate from the Chief Executive Officer of each of Parent and Seller, dated the Closing Date stating that, to the best of such officer's knowledge, the conditions set forth in Sections 9.2(b) and 9.2(c) regarding Parent and Seller, respectively, have been satisfied;

(e) The Required Regulatory Approvals shall have been obtained and become Final Regulatory Orders, and no terms (excluding those proposed in the applications for the Required Regulatory Approvals) shall have been imposed in connection with such Final Regulatory Orders by any Governmental Entity which terms, individually or in the aggregate, would reasonably be expected to result in a Regulatory Material Adverse Effect;

(f) Buyer shall have received the items to be delivered pursuant to Section 4.3; provided that the failure to deliver the items required to be delivered pursuant to Sections 4.3(e)-(i) shall not be construed as a failure to satisfy the requirements of this Section 9.2(f) to the extent any deed, assignment, instrument of conveyance or certificate of title, termination or release (i) otherwise required pursuant to Sections 4.3(e)-(h) relates to parcels of immaterial Real Property, immaterial Easements, or immaterial titled or other Purchased Assets, each of which is subject to transfer subsequent to the Closing pursuant to Section 8.17; or (ii) otherwise required pursuant to Section 4.3(i) relates to terminations or releases of Non-Permitted Encumbrances on the Purchased Assets requiring the payment of immaterial amounts of cash, or the delivery of instruments, certificates or other documents or items required to remove Non-Permitted Encumbrances on assets that are immaterial to the Business, the Purchased Assets, the Colorado Business and the Colorado Assets, taken as a whole, and are subject, in each case, to release subsequent to the Closing pursuant to Section 8.17; and

(g) The consummation of the transactions contemplated by the Partnership Interests Purchase Agreement shall have occurred or shall occur concurrently with the Closing.

9.3. Conditions to Obligations of Seller. The obligations of Seller to effect the transactions contemplated hereby is also subject to the satisfaction or waiver at or prior to the Closing Date of the following conditions:

(a) Buyer shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing Date;

(b) The representations and warranties of Buyer which are set forth in ARTICLE VI of this Agreement shall be true and correct as of the Closing Date, as if made at and as of the Closing Date (except to the extent that any such representation or warranty is expressly made as of an earlier date, in which case such representation and warranty will be true and correct only as of such date), except where the failure or failures of such representations and warranties to be so true and correct (without giving effect to any limitations or exceptions as to materiality set forth therein) that do not, individually or in the aggregate, cause such representations and warranties of Buyer to be materially inaccurate taken as a whole;

(c) Seller shall have received a certificate from the Chief Executive Officer of Buyer, dated the Closing Date, stating that to the best of such officer's knowledge, the conditions set forth in Sections 9.3(a) and 9.3(b) have been satisfied;

(d) The Required Regulatory Approvals shall have been obtained and become Final Regulatory Orders; and no terms (excluding those proposed in the applications for the Required Regulatory Approvals) shall have been imposed in connection with such Final Regulatory Orders by any Governmental Entity which terms, individually or in the aggregate, would reasonably be expected to result in a Regulatory Material Adverse Effect affecting the Post-Sale Company (as defined in the Merger Agreement);

(e) Seller shall have received the other items to be delivered pursuant to Section 4.4; and

(f) The consummation of the transactions contemplated by the Partnership Interests Purchase Agreement shall have occurred or shall occur concurrently with the Closing.

9.4. Invoking Certain Provisions. Any Party seeking to claim that a condition to its obligation to effect the transactions contemplated hereby has not been satisfied by reason of the fact that a Material Adverse Effect or a Regulatory Material Adverse Effect has occurred or would reasonably be expected to occur or result will have the burden of proof to establish that occurrence or expectation.

ARTICLE X.
TERMINATION AND OTHER REMEDIES

10.1. Termination.

(a) This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller, Buyer and Parent.

(b) This Agreement may be terminated by Seller or Buyer if the Closing has not occurred on or before the first anniversary of the date of this Agreement (the "Termination Date"); provided that, if Buyer or Seller determines that additional time is necessary to obtain any of the Required Regulatory Approvals, the Material Company Regulatory Consents or the Material Parent Regulatory Consents (each as defined in the Merger Agreement), or the "Required Regulatory Approvals" as defined in the Partnership Interests Purchase Agreement, or if all of the conditions to Parent's obligations to consummate the Merger shall have been satisfied or shall be then capable of being satisfied and this Agreement fails to be consummated by reason of a breach by Parent of its obligation to be in a position to consummate the Merger after the Closing, the Termination Date may be extended by Buyer or Seller from time to time by written notice to the other Party and to Parent up to a date not beyond eighteen (18) months after the date of this Agreement, any of which dates shall thereafter be deemed to be the Termination Date; provided further that the right to terminate this Agreement under this Section 10.1(b) will not be available to a Party that has breached in any material respect its obligations under this Agreement in any manner that will have proximately contributed to the failure of the Closing to occur on or before the Termination Date.

(c) This Agreement may be terminated by either Seller or Buyer if (i) any Required Regulatory Approval has been denied by the applicable Governmental Entity and all appeals of such denial have been taken and have been unsuccessful, or (ii) one or more courts of competent jurisdiction in the United States or any State has issued an Order permanently restraining, enjoining, or otherwise prohibiting the Closing, and such Order has become final and nonappealable.

(d) This Agreement may be terminated by Buyer if there has been a material breach of any representation, warranty, or covenant made by Seller in this Agreement, or any representation or warranty of Seller shall have become untrue after the date of this Agreement, so that Section 9.2(b) or 9.2(c) would not be satisfied and this breach or failure to be true, is not curable, or if curable, is not curable by the Termination Date (as the same may be extended).

(e) This Agreement may be terminated by Seller if the Board of Directors of Seller approves a Superior Proposal (as defined in the Merger Agreement) and authorizes Seller to enter into a binding written agreement with respect to that Superior Proposal and, in connection with the termination of the Merger Agreement and entering into the agreement reflecting the Superior Proposal, pays into a joint bank account in the names of Buyer and Parent by wire transfer of same day funds the Company Termination Fee (as defined in the Merger Agreement) required to be paid pursuant to Section 9.5(b) of the Merger Agreement.

(f) This Agreement may be terminated by Seller if there has been a material breach of any representation, warranty, or covenant made by Buyer in this Agreement, or any

representation or warranty of Buyer shall have become untrue after the date of this Agreement, so that Sections 9.3(a) and 9.3(b) would not be satisfied and this breach or failure to be true is not curable, or if curable, is not curable by the Termination Date (as the same may be extended).

(g) This Agreement may be terminated by Buyer or Seller upon or following the termination of the Merger Agreement in accordance with its terms.

10.2. Procedure and Effect of Termination. In the event of termination of this Agreement pursuant to Section 10.1, written notice thereof will forthwith be given by the terminating Party to the other Parties and this Agreement (other than as set forth in this Section 10.2, Section 10.4 and Section 11.1) will terminate and become void and of no effect, and the transactions contemplated hereby will be abandoned without further action by any Party, whereupon the liabilities of the Parties hereunder (and of any of their respective Representatives) will terminate, except as otherwise expressly provided in this Agreement; provided, that such termination will not relieve any Party from any liability for damages to any other Party resulting from any prior breach of this Agreement, the Partnership Interests Purchase Agreement or the Merger Agreement which is (i) material, and (ii) willful or knowing. If this Agreement is terminated pursuant to Section 10.1(e) or Section 10.1(g) upon or following termination of the Merger Agreement under circumstances where Seller is required to pay Parent the Company Termination Fee (as defined in the Merger Agreement) pursuant to the provisions of Section 9.5(b) of the Merger Agreement, Seller will, following such termination and at the time required under Section 9.5(b) of the Merger Agreement, pay into a joint bank account in the names of Buyer and Parent the termination fee required to be paid pursuant to the terms of the Merger Agreement, by wire transfer of same day funds. If this Agreement is terminated pursuant to Section 10.1(g) upon or following termination of the Merger Agreement under circumstances where Parent is required to pay Seller the Parent Termination Fee (as defined in the Merger Agreement) pursuant to the provisions of Section 9.5(c) of the Merger Agreement, Parent will, following such termination and at the time required for payment of the Parent Termination Fee (as defined in the Merger Agreement), pay Buyer the Termination Fee, which shall be in an amount (subject to the limitations thereon as set forth in the definition of Termination Fee set forth herein) reasonably agreed upon by Buyer and Parent. Seller and Parent acknowledge that the agreements contained in this Section 10.2 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Buyer would not enter into this Agreement; accordingly, if Seller or Parent fails to pay promptly the amount due pursuant to this Section 10.2, and, in order to obtain such payment, Buyer commences a suit which results in a judgment against Seller or Parent, as the case may be, for the fee to be paid by such Party as set forth in this Section 10.2, Seller or Parent, as applicable, will pay to Buyer its costs and expenses (including attorneys' fees) in connection with this suit, together with interest on the amount of the fee at the Prime Rate in effect on the date the payment should have been made.

10.3. Payment of Termination Fee. As promptly as practicable after payment of the Company Termination Fee (as defined in the Merger Agreement) to be paid pursuant to the terms of the Merger Agreement to the joint bank account, Parent and Buyer will reasonably agree upon the amount of the Termination Fee (subject to the limitations thereon as set forth in the definition of Termination Fee set forth herein) to be paid to Buyer, and upon such agreement Buyer and Parent shall jointly direct payment of the agreed-upon Termination Fee to Buyer and disbursement of the remaining amount in such joint account to Parent.

10.4. Remedies upon Termination. If this Agreement is terminated as provided herein:

(a) ARTICLE XI (other than Section 11.2, Section 11.3 and Section 11.5) and the agreements of the Parties contained in Section 8.2(b), Section 8.2(d), Section 8.3, Section 10.2, Section 10.3 and Section 10.4 will survive the termination of this Agreement.

(b) Notwithstanding anything to the contrary herein, in view of the difficulty of determining the amount of damages which may result from a termination of this Agreement and the failure of the Parties to consummate the transactions contemplated by this Agreement under circumstances in which a termination fee is payable as contemplated by Section 10.2, Buyer, Parent, Merger Sub and Seller have mutually agreed that the payment of the termination fees as set forth in Section 10.2 will be made as liquidated damages, and not as a penalty. In the event of any such termination, the Parties have agreed that the payment of the applicable termination fee as set forth in Section 10.2 will be the sole and exclusive remedy for monetary damages of Buyer. ACCORDINGLY, THE PARTIES HEREBY ACKNOWLEDGE THAT (i) THE EXTENT OF DAMAGES CAUSED BY THE FAILURE OF THIS TRANSACTION TO BE CONSUMMATED WOULD BE IMPOSSIBLE OR EXTREMELY DIFFICULT TO ASCERTAIN UNDER CIRCUMSTANCES IN WHICH A TERMINATION FEE IS PAYABLE AS CONTEMPLATED BY SECTION 10.2, (ii) THE AMOUNT OF THE TERMINATION FEE CONTEMPLATED IN SECTIONS 10.2 AND 10.3 IS A FAIR AND REASONABLE ESTIMATE OF SUCH DAMAGES UNDER THE CIRCUMSTANCES, AND (iii) RECEIPT OF SUCH TERMINATION FEE BY BUYER DOES NOT CONSTITUTE A PENALTY. THE PARTIES HEREBY FOREVER WAIVE AND AGREE TO FOREGO TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW ANY AND ALL RIGHTS THEY HAVE OR IN THE FUTURE MAY HAVE TO ASSERT ANY CLAIM DISPUTING OR OTHERWISE OBJECTING TO ANY OR ALL OF THE FOREGOING PROVISIONS OF THIS SECTION 10.4(b). Any payment under Section 10.2 will be made by wire transfer of same day funds to a bank account in the United States of America designated in writing by the Parties entitled to receive such payment not later than three (3) Business Days following the date such Party delivers notice of such account designation to the Party responsible to make such payment.

(c) Upon any termination of this Agreement, all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, will be withdrawn from the Governmental Entity or other Person to which they were made.

ARTICLE XI. MISCELLANEOUS PROVISIONS

11.1. Survival. None of the covenants or agreements of Seller, Buyer, Parent or Merger Sub contained in this Agreement will survive the Closing, except for this ARTICLE XI and those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing. Except as specified in the foregoing sentence, all other representations, warranties, covenants and agreements in this Agreement will not survive the Closing of this Agreement.

11.2. Amendment and Modification. This Agreement may be amended, modified, or supplemented only by a written agreement executed and delivered by duly authorized officers of Seller, Parent and Buyer.

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

11.4. Notices. Notices, requests, instructions or other documents to be given under this Agreement must be in writing and will be deemed given, (a) when sent if sent by facsimile, provided that the fax is promptly confirmed by telephone confirmation thereof, (b) when delivered, if delivered personally to the intended recipient, and (c) one (1) Business Day later, if sent by overnight delivery via a national courier service, and in each case, addressed to a Party at the following address for such Party:

(a) If to Parent or Merger Sub, or to Seller after the Closing, to:

Great Plains Energy Incorporated
1201 Walnut Street
P.O. Box 418679
Kansas City, MO 64106
Attention: Mark G. English
General Counsel and Assistant Secretary
Fax: (816) 556-2418

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Nancy A. Lieberman, Esq.
Morris J. Kramer, Esq.
Fax: (212) 735-2000

(b) If to Buyer, to:

Black Hills Corporation
625 9th Street
Rapid City, South Dakota 57709
Attention: Steven J. Helmers, Esq.
Fax: (605) 721-2550

with a copy to:

Morgan, Lewis & Bockius LLP
300 South Grand Avenue, Suite 2200

Los Angeles, California 90071
Attention: Richard A. Shortz, Esq.
Fax: (213) 612-2501

(c) If to Seller before the Closing, to:

Aquila, Inc.
20 West Ninth Street
Kansas City, MO 64105-1711
Attention: Christopher Reitz,
General Counsel and Corporate Secretary
Fax: 816) 467-3486

with a copy to:

Fried, Frank, Harris, Shriver & Jacobson
One New York Plaza
New York, New York 10004
Attention: Arthur Fleischer, Jr., Esq.
Stuart Katz, Esq.
Philip Richter, Esq.
Fax: (212) 859-4000

or to those other persons or addresses as may be designated in writing by the party to receive the notice as provided above.

11.5. Assignment. This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by any Party, without the prior written consent of the other Parties, nor is this Agreement intended to confer upon any other Person except the Parties any rights or remedies hereunder. Notwithstanding the foregoing, Buyer, upon written notice to but without the consent of Seller, Parent or Merger Sub, may assign this Agreement or the rights, benefits and obligations described herein to one or more wholly-owned Subsidiaries formed or to be formed to operate as a regulated utility in each of Iowa, Kansas and Nebraska; provided, however, that notwithstanding such assignment, Buyer shall retain and remain responsible for all obligations and liabilities of Buyer hereunder; provided, further, that Buyer shall consult with Seller regarding the structure, financing and other attributes of such Subsidiaries to reflect requirements of the IUB, KCC or NPSC.

11.6. No Third Party Beneficiaries. This Agreement is not intended to, and does not, confer upon any Person other than Buyer, Seller, Parent and Merger Sub, any rights or remedies hereunder. Without limiting the generality of the foregoing, no provision of this Agreement creates any third party beneficiary rights in any employee or former employee of Seller (including any beneficiary or dependent thereof) in respect of continued employment or resumed employment, and no provision of this Agreement creates any rights in any employee or former employee of Seller (including any beneficiary or dependent thereof) in respect of any benefits

that may be provided, directly or indirectly, under any employee benefit plan or arrangement except as expressly provided for under such plans or arrangements.

11.7. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL.

(a) THIS AGREEMENT WILL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CONFLICTS OF RULES THEREOF. The Parties hereby irrevocably submit exclusively to the jurisdiction of the State of Delaware and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement may not be enforced in or by such courts, and each of Seller, Buyer, Parent and Merger Sub irrevocably agrees that all claims with respect to such action or proceeding will be heard and determined in Delaware state court. Each of Seller, Buyer, Parent and Merger Sub hereby consents to and grants any such court jurisdiction over the Person of such Parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 11.4 or in such other manner as may be permitted by Law, will be valid and sufficient service thereof.

(b) EACH OF SELLER, BUYER, PARENT AND MERGER SUB ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THE PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF SELLER, BUYER, PARENT AND MERGER SUB CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) EACH SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) EACH SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (iv) EACH SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.7(b).

11.8. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11.9. Specific Performance. Each of Seller, Buyer, Parent and Merger Sub acknowledges and agrees that any breach of this Agreement would give rise to irreparable harm for which monetary damages would not be an adequate remedy. Each of Seller, Buyer, Parent and Merger Sub accordingly agrees that, in addition to other remedies, the Parties will be entitled

to enforce the terms of this Agreement by decree of specific performance without the necessity of providing the inadequacy of monetary damages as a remedy and to obtain injunctive relief or other equitable remedy against any breach or threatened breach hereof.

11.10. Entire Agreement. This Agreement will be a valid and binding agreement of the Parties only if and when it is fully executed and delivered by the Parties, and until such execution and delivery no legal obligation will be created by virtue hereof. This Agreement, the Partnership Interests Purchase Agreement and the Merger Agreement (in each case together with the Schedules and Exhibits hereto or thereto, and the certificates and instruments delivered pursuant hereto or thereto), the Confidentiality Agreement, the confidentiality agreement dated June 28, 2006 between Seller and Parent, as amended by the letter agreement dated September 5, 2006 between Seller and Parent, the letter of intent dated November 21, 2006 between Buyer and Parent, and the Transition Services Agreement (together with the schedules thereto), embody the entire agreement and understanding of the Parties hereto in respect of the transactions contemplated by this Agreement, the Partnership Interests Purchase Agreement and the Merger Agreement, and supersede all prior agreements, understandings, representations and warranties, both written and oral, between or among the Parties or any of them with respect to the transactions contemplated herein, in the Partnership Interests Purchase Agreement and the Merger Agreement.

11.11. Bulk Sales or Transfer Laws. Buyer and Parent acknowledge that Seller will not comply with the provisions of any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

11.12. No Consequential Damages. Notwithstanding anything to the contrary elsewhere in this Agreement or provided for under any applicable Law, no Party will, in any event, be liable to any other Party, either in contract, in tort or otherwise, for any consequential, incidental, indirect, special, or punitive damages of such other Party or Persons represented by such other Party, whether or not the possibility of such damages has been disclosed to such other Party or Persons represented by such other Party in advance or could have been reasonably foreseen by such other Party or Persons represented by such other Party. The preceding sentence shall not limit the right of any Party to seek "benefit of the bargain" damages for a breach of this Agreement or specific performance or other equitable remedy as provided in Section 11.9; provided that the right of any Party or Persons represented by such Party to seek any of such remedies is not an admission by the other Parties that, under the circumstances, any such remedies are proper remedies; provided, further, that the Party against whom any such remedy is sought may not claim that the awarding of "benefit of the bargain" damages is prohibited by virtue of the restriction against liability for consequential, incidental, indirect, special or punitive damages contained in this Section 11.12.

11.13. Counterparts. This Agreement, and any certificates and instruments delivered under or in accordance herewith, may be executed in any number of counterparts (including by facsimile or other electronic transmission), each such counterpart being deemed to be an original instrument, and all such counterparts will together constitute the same instrument, it being understood that all of the Parties need not sign the same counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be signed by their respective duly authorized officers as of the date first above written.

SELLER:

AQUILA, INC.

By: Richard C. Green
Name: Richard C. Green
Title: President, Chief Executive Officer and
Chairman of the Board of Directors

BUYER:

BLACK HILLS CORPORATION

By: _____
Name: David R. Emery
Title: President, Chief Executive Officer and
Chairman of the Board of Directors

GREAT PLAINS ENERGY INCORPORATED

By: _____
Name: Michael J. Chesser
Title: Chairman of the Board and Chief Executive
Officer

GREGORY ACQUISITION CORP.

By: _____
Name: Terry Bassham
Title: President

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be signed by their respective duly authorized officers as of the date first above written.

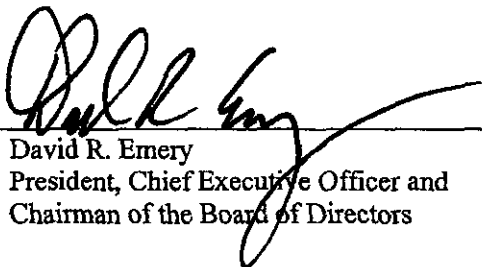
SELLER:

AQUILA, INC.

By: _____
Name: Richard C. Green
Title: President, Chief Executive Officer and
Chairman of the Board of Directors

BUYER:

BLACK HILLS CORPORATION

By:  _____
Name: David R. Emery
Title: President, Chief Executive Officer and
Chairman of the Board of Directors

GREAT PLAINS ENERGY INCORPORATED

By: _____
Name: Michael J. Chesser
Title: Chairman of the Board and Chief Executive
Officer

GREGORY ACQUISITION CORP.

By: _____
Name: Terry Bassham
Title: President

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be signed by their respective duly authorized officers as of the date first above written.

SELLER:

AQUILA, INC.

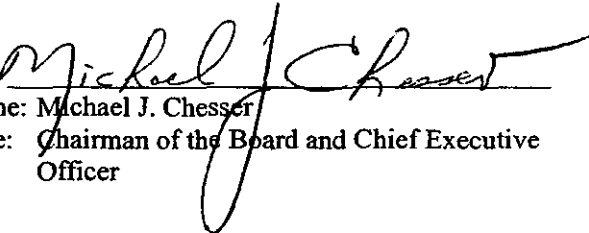
By: _____
Name: Richard C. Green
Title: President, Chief Executive Officer and
Chairman of the Board of Directors

BUYER:

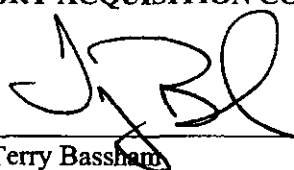
BLACK HILLS CORPORATION

By: _____
Name: David R. Emery
Title: President, Chief Executive Officer and
Chairman of the Board of Directors

GREAT PLAINS ENERGY INCORPORATED

By: 
Name: Michael J. Chesser
Title: Chairman of the Board and Chief Executive
Officer

GREGORY ACQUISITION CORP.


By: _____
Name: Terry Bassham
Title: President