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July 6, 1994

Re: Case 94-E-0136 - Sithe/Independence Power Partners
L.P. - Petition For An Original Certificate of
Public Convenience and Necessity Under PSL §68 to
Provide Electric Service to Alcan Rolled Products
Company and Liberty Paperboard, L.P.

TO ALL DISCOVERY PARTIES:

Enclosed please find Staff's response to Alcan's I/R
No. 2-7.

Very truly yours,

A handwritten signature in cursive script that reads "Leonard Van Ryn".

Leonard Van Ryn
Staff Counsel

Enclosure

cc: ALJ Vincent P. Furlong

Case 94-E-0136
Sithe/Independence Power Partners

Staff Response to Alcan I/R No. 2-7.

- Q.2-7. In response to Alcan Rolled Products Company's Interrogatory No. 7 to Niagara Mohawk Power Corporation, the utility produced an agenda from a September 29, 1993 meeting between Niagara Mohawk and Department of Public Service Staff. A copy of Niagara Mohawk's interrogatory response is annexed hereto. With respect to Niagara Mohawk's response:
- a. Did Staff, at the September 29, 1993 meeting or at any other time, prohibit Niagara Mohawk from seeking Public Service Commission authorization to offer Alcan or any other industrial customer a long-term contract to provide electricity?
 - b. Did Staff, at the September 29, 1993 meeting or at any other time, discourage Niagara Mohawk from seeking Public Service Commission authorization to offer Alcan or any other industrial customer a long-term contract to provide electricity?
 - c. Please provide all documents in Staff's possession pertaining to the September 29, 1993 meeting referencing Niagara Mohawk's interrogatory response.
 - d. Please identify all Staff representatives in attendance at the September 29, 1993 meeting with Niagara Mohawk.
- A.2-7(a) Staff objects to this question, on the grounds that the "prohibition" it references is beyond Staff's statutory authority.
- A.2-7(b) Staff objects to this question, on the grounds that Staff implements applicable Commission Orders affecting Niagara Mohawk, NYSEG, and RG&E tariff contracts, which may be researched by the parties. Staff's position may also be researched in those Orders, and in Staff filings and Commission Orders in the Competitive Opportunities proceeding.
- A.2-7(c) A preliminary search indicates that Staff has no documents in its possession pertaining to the September 29, 1993 meeting. A further search is being conducted.

A.2-7(d) A preliminary search indicates that the meeting was attended by Raj Addepalli, a member of the Staff Panel testifying in this proceeding, Harvey Arnett, who has been listed as Staff assigned to this proceeding, and by Jane Assaf, an Assistant Counsel. They do not recall any mention of Alcan at this meeting. A further search is being conducted to ascertain the identity of any other Staff who may have attended this meeting.

**AMENDED AND RESTATED
BASE GAS SALES AGREEMENT**

between

ENRON POWER SERVICES, INC.

as Seller

and

SITHE/INDEPENDENCE POWER PARTNERS, L.P.

as Buyer

**AMENDED AND RESTATED
BASE GAS SALES AGREEMENT**

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**AMENDED AND RESTATED
BASE GAS SALES AGREEMENT**

AMENDED AND RESTATED BASE GAS SALES AGREEMENT (this "Agreement"), dated as of October 26, 1992, by and between ENRON POWER SERVICES, INC., a Delaware corporation ("Seller"), and SITHE/INDEPENDENCE POWER PARTNERS, L.P., a Delaware limited partnership ("Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer are parties to the Base Gas Sales Agreement, dated as of January 23, 1992, under which Seller is to sell and Buyer is to buy gas (as herein defined) for use at the Facility (as herein defined); and

WHEREAS, Seller and Buyer wish to amend and restate the Base Gas Sales Agreement in its entirety:

NOW, THEREFORE, in consideration of the premises, the representations, warranties, covenants, and agreements herein contained, and the benefits to be derived therefrom, Seller and Buyer hereby agree and covenant as follows:

**ARTICLE I
DEFINITIONS**

1.1 *Definitions.* The following expressions, as used in this Agreement, have the meanings set forth below or given them in the provisions hereof cited (such meanings to be equally applicable to both the singular and plural forms of the expressions defined):

"*Affiliate*" with respect to any Person means any other Person directly or indirectly controlling, controlled by, or under common control with such first Person whether through ownership, by contract, or otherwise, provided that any Person with direct or indirect ownership of 5% or more of the voting power for the election of directors or other governing body of a corporation or 5% or more of the economic interest of any other Person will be deemed to control such corporation or other Person.

"*Appraiser*" means a Person (other than an Affiliate of Buyer or Seller) selected by Buyer or Seller as provided herein and reasonably acceptable to the other party with the qualifications and experience to determine the Fair Market Value of the Facility.

"British Thermal Unit" or *"Btu"* means the amount of energy required to raise the temperature of 1 pound of pure water 1°F. from 59°F. to 60°F. at a constant pressure of 14.73 pounds per square inch absolute.

"Business Day" means any day other than a Saturday, a Sunday, or a state or federal bank holiday in Houston, Texas, or New York, New York.

"Buyer Event of Default" - Section 8.1.

"Buyer's Annual Deficiency Quantity" - Section 2.5.

"Buyer's Monthly Deficiency Quantity" - Section 2.4.

"Buyer's Initial Transporter" means a Buyer's Transporter that receives gas for Buyer's account at a Delivery Point.

"Buyer's Transporter" means any Person that transports downstream of a Delivery Point gas Scheduled or to be Scheduled under this Agreement for Buyer's account as may be mutually agreed by Buyer and Seller.

"Canadian Losses" means, with respect to any period, the aggregate volumes retained by TCPL and Union during that period for fuel and unaccounted for gas under the terms and conditions of the agreements between Seller and TCPL or Union with respect to the transportation of the Chippawa Volumes.

"Chippawa Use Volume Multiplier" means, with respect to any Day in a Month, the quotient of (a) the Canadian Losses for that Month divided by (b) the total volume of gas (including the Chippawa Volumes) Scheduled for that Month, excluding any Tier I gas during the Recoupment Period.

"Chippawa Volumes" means, for any period, the amount of gas actually Scheduled by Seller for sale to Buyer during that period at the Empire Delivery Point.

"Commercial Operations Date" means January : 1995, or the "Date of Commercial Operation" as defined in Article II of the Consolidated Edison Contract, whichever is later.

"Consolidated Edison" means Consolidated Edison Company of New York, Inc., a New York corporation.

"Consolidated Edison Contract" means the Energy Purchase Agreement dated May 20, 1991, between Buyer and Consolidated Edison.

"Contract Price" - Section 4.1.

"Contract Year" means, with respect to the 1st "Contract Year," the period of 12 consecutive Months beginning on the Commercial Operations Date and, with respect to any succeeding "Contract Year," the period of 12 consecutive Months commencing with the 1st Day after the preceding Contract Year, but excluding any periods of time after the end of the Scheduling Term.

"Day" means each period beginning at 8:00 a.m. Central Time on any day and ending at 8:00 a.m. Central Time on the immediately following day.

"Delivery Point" - Section 2.2(d).

"Effective Income Tax Rate" or *"EITR"* - Section 4.4(b)(ii).

"Empire Delivery Point" means the receipt point under the Service Agreement to be entered into as provided in the Precedent Agreement dated as of February 28, 1992, by and among Empire State Pipeline Company, Inc., St. Clair Pipeline Company, Inc., Empire State Pipeline, and Buyer and located near Chippawa, Ontario, at the expected point of interconnection of the TCPL system and the Empire State Pipeline system.

"Facility" means the gas-fired electrical and steam generating plant and associated materials, structures, and systems to be constructed by Buyer in the Town of Scriba, New York, and expected to have a net generating capacity of approximately 1,000 megawatts.

"Facility Lenders" means the financial institutions or other Persons from which, or on the credit of which, Buyer incurs any Senior Obligations, and any trustee or agent acting on any such Person's behalf.

"Fair Market Value" means, with respect to the Facility, the most likely price (but in no event less than zero) that could reasonably be obtained for the sale of the ownership of the Facility in an arm's-length transaction for cash as determined by the Appraiser in accordance with Section 4.4(b) between an informed and willing purchaser and an informed and willing seller, neither of whom is under any compulsion to purchase or sell, respectively, the ownership of the Facility.

"FERC" means the Federal Energy Regulatory Commission or any successor agency.

"Financial Closing" means the first advance of funds or other credit under the Senior Obligations.

"Force Majeure" - Section 9.1.

The word *"gas"* means natural gas, including gas-well gas, casinghead gas, and/or residue gas resulting from processing both casinghead gas and gas-well gas, and shall include liquefied natural gas and synthetic gas in a vaporized state, in each case meeting the quality specified in Section 3.1.

"Governmental Approval" means any authorization, consent, approval, license, permit, franchise, certificate, exemption, or order of, or filing or registration with, any governmental authority, or legal or regulatory body, federal, national, state, local or foreign, except for (i) routine or periodic informational reports, (ii) corporate filings, and (iii) tax returns and filings.

"Incremental Revenues" - Section 4.5.

"Interest Rate" means, with respect to any Month, the rate per annum equal to the lesser of (i) 1% over the rate identified in the first issue of the *Wall Street Journal* in such Month under "Money Rates" as the "Prime Rate" (or, if no such rate is identified, an index or report selected by Seller in good faith as representative of the prime or base rate quoted by large U.S. money center commercial banks), and (ii) the maximum rate of interest permitted by applicable law.

"MaxDQ" - Section 2.2(c).

"MaxDQ-I" - Section 2.2(c).

"MaxDQ-II" - Section 2.2(c).

"Maximum Daily Delivery Point Quantity" - Section 2.2(d).

"MinAQ" or *"Minimum Annual Quantity"* - Section 2.5.

"MinMQ" or *"Minimum Monthly Quantity"* - Section 2.4.

"MMBtu" means 1,000,000 British Thermal Units.

"Month" means each period beginning at 8:00 a.m. Central Time on the 1st full Day of any calendar month during the Scheduling Term through the end of the last Day to begin in such calendar month, excluding any periods of time after the end of the Scheduling Term.

"Monthly Notice" - Section 2.2(c).

"Net Cash Flow" or *"NCF"* - Section 4.4(v)(ii).

"Niagara Mohawk" means Niagara Mohawk Power Corporation, a New York corporation.

"Niagara Mohawk Contract" means any contract for the sale of electrical energy or capacity from the Facility between Buyer and Niagara Mohawk.

"O&M Agreement" means the Amended and Restated Operations and Maintenance Agreement dated as of August 25, 1992, between Buyer and Sithe Energies Power Services, Inc.

"Parent", means Enron Corp., a Delaware corporation.

"Parent Guaranty" - Section 7.2(d).

"Penalized Party" - Section 3.4.

"Period 1" means the period beginning with the Day commencing on the Commercial Operations Date and ending with the last Day to begin in the 60th Month or the Day commencing June 30, 2000, whichever is earlier.

"Period 2" means the period beginning with the end of the Recoupment Period (or if there is no Recoupment Period, the first Day of the 61st Month) and ending with the Day commencing on the Termination Date.

"Person" means any individual, corporation, partnership, trust, estate, limited liability company, governmental agency or authority, or other entity.

"Posted Spot Price" - Section 4.1(e).

"Power Contract" means the Consolidated Edison Contract, the Niagara Mohawk Contract, or any other contract for the sale of electrical energy or capacity from the Facility.

"Price Escalator" - Section 4.1(e).

"Project Documents" means the loan and related agreements to be entered into relating to the Senior Obligations, all agreements to which Buyer is a party relating to the construction of the Facility, the Power Contracts, any Thermal Host

Contracts, and any other material agreement relating to Buyer's ownership, construction, testing, maintenance, repair, financing, use, or operation of the Facility to which Buyer is a party.

"Prudent Management Practices" means those practices, methods, and acts engaged in or approved by a significant portion of those Persons providing fuel supply management services of a scope similar to the scope of the fuel supply management services to be provided by Seller in accordance with Section 3.3 that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, could have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy, and expedition.

"Qualifying Facility" means a facility that (i) is a "qualifying cogeneration facility" under section 3(18)(B) of the Federal Power Act and a "qualifying facility" under subpart B of part 292 of the regulations of the Federal Energy Regulatory Commission, or any successor regulations implementing the Public Utility Regulatory Policies Act of 1978, as amended, as such regulations may be amended, modified, supplemented, or replaced from time to time, and (ii) satisfies any other requirements which are necessary for entitlement to the benefits of section 210 of the Public Utility Regulatory Policies Act of 1978, as amended.

"Qualifying Project Cash Flow" - Section 4.4(b)(ii).

"Recoupment Period" means the period commencing with the 1st Day following the end of Period 1 and ending at the time and on the Day when the aggregate volume of Tier I gas Scheduled hereunder by Buyer after the end of Period 1 equals the Recoupment Quantity; provided, however, that if the Commercial Operations Date occurs on or before July 1, 1995, there shall be no Recoupment Period.

"Recoupment Quantity" - Section 2.1(b).

"Reference Price" - Section 4.1(e).

"Requested Daily Quantity" means the volume of gas, up to the MaxDQ, that Buyer requests Seller to cause to be delivered during any Day in accordance with Section 2.2(c) and (e).

"Schedule" or *"Scheduled"* or *"Scheduling"* (i) when used in reference to Seller, means to make gas available, or cause gas to be made available, at the Delivery Point(s) for delivery to or for the account of Buyer in accordance with the

provisions of this Agreement, including making all necessary pipeline nominations for transportation of gas upstream of the Delivery Point(s), and (ii) when used in reference to Buyer, means to cause Buyer's Initial Transporter to make available at the Delivery Point(s) transportation capacity sufficient to permit Buyer's Initial Transporter to receive the quantities Seller has available at such Delivery Point(s) in accordance with the provisions of this Agreement, including making all necessary pipeline nominations. Gas will be deemed to have been Scheduled when Buyer's Initial Transporter accepts and confirms Seller's, Seller's Transporter's, or their agent's nomination.

"Scheduling Term" - Section 2.1(a).

"Seller Event of Default" - Section 8.2.

"Seller's Deficiency Quantity" - Section 2.3.

"Seller's Delivery Obligation" - Section 2.3.

"Seller's Transporter" - Section 3.4.

"Senior Obligations" means the principal, premium, interest, fees, expenses, penalties, and other obligations of Buyer arising under any credit agreement, note purchase agreement, bond indenture, security agreement, lease agreement, interest rate exchange agreement or swap agreement or other document or documents relating thereto (including, without limitation, any reimbursement loan agreement relating to the issuance of a debt service reserve letter of credit for the repayment of any Senior Obligations, and any working capital loan facility, the proceeds of which are used to pay operating expenses of Buyer) entered into (i) at or prior to the Commercial Operations Date, the proceeds or credit of which are used for the acquisition, development, financing, construction, completion, construction loan retirement, modification required by the terms of the Senior Obligations, or repair or replacement of all or any portion of the Facility or (ii) at any time but only to the extent that the proceeds of which are used (A) to repay or refinance all or a portion of the Senior Obligations then outstanding (provided, however, that the final maturity of the Senior Obligations, after giving effect to any such repayment or refinancing, may not extend beyond the final maturity therefor in effect prior to such repayment or refinancing), (B) to repair or replace all or any portion of the Facility or to modify the Facility as required by the terms of the Senior Obligations, or (C) to reduce the balance of the Tracking Account in accordance with Section 4.4(d).

"Taxes" means, with respect to any Person, all taxes (including severance and production related taxes, sales taxes, transfer taxes and excise taxes), assessments,

imposts, inspection fees, duties, governmental charges or levies imposed directly or indirectly on such Person or its income, profits or property.

"TCPL" means TransCanada Pipelines Limited, a Canadian corporation.

"Termination Date" means (a) the date (which must be a date on which the last Day of the 20th Contract Year or a subsequent Contract Year commences) that Buyer or Seller specifies as the Termination Date in a notice that it gives to the other after the date occurring 1 year prior to that Termination Date and on or before the date occurring 6 months prior to that Termination Date, or (b) such earlier date as may be provided herein as the Termination Date.

"Thermal Host Contract" means any agreement for the sale and delivery by Buyer of steam and/or electricity in connection with Buyer's efforts to maintain the Facility as a Qualifying Facility.

"Tier I Formula Price" - Section 4.1(e).

"Tier I gas" means, for any Day, the first 116,000 MMBtus of gas Scheduled that Day or such lower total volume as is actually delivered.

"Tier II Formula Price" - Section 4.1(e).

"Tier II gas" means, for any Day, all gas Scheduled that Day that is not Tier I gas; provided, however, that Tier II gas shall not exceed MaxDQ-II on any Day.

"Tracking Account" - Section 4.4(a).

"Unadjusted Price" - Section 4.1.

"Union" means Union Gas Limited, a Canadian corporation.

1.2 **Accounting Definitions.** All accounting definitions not specifically defined herein shall be construed in accordance with generally accepted accounting principles as in effect from time to time, including, without limitation, applicable statements, bulletins, and interpretations issued by the Financial Accounting Standards Board and bulletins, opinions, interpretations, and statements issued by the American Institute of Certified Public Accountants or its committees. When used herein, the expression "*financial statements*" includes the notes and schedules thereto, but unless otherwise prepared need not include such notes or schedules when used with reference to such statements of any Person as of any date other than the end of a fiscal year of such Person. Where the character or amount of any asset or liability or item of income or expense is required to

be made, for the purpose of this Agreement, such determination or calculation shall, to the extent applicable and except as otherwise specified in this Agreement, be made in accordance with generally accepted accounting principles applied on a consistent basis.

1.3 *Other Definitions; Use of Defined Expressions.* The words "hereof," "herein," and "hereunder," and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article, Section, Exhibit, and like references refer to such portions of this Agreement unless otherwise specified. Each Exhibit attached hereto is made a part hereof for all purposes. Unless otherwise defined or the context otherwise requires, expressions for which meanings are provided in this Agreement shall have such meanings when used in each notice or other communication delivered or given from time to time under or in connection with this Agreement. Unless the context otherwise requires, any reference herein to any Project Document shall mean such Project Document and all schedules, exhibits, and attachments thereto as amended, supplemented, or otherwise modified and in effect from time to time. Unless otherwise stated, any reference in this Agreement to any Person shall include its permitted successors and assigns and, in the case of any governmental agency or authority, any Person succeeding to its functions and capacities.

ARTICLE II SCHEDULING TERM; QUANTITY OBLIGATIONS

2.1 *Scheduling Term; Purchase and Sale.* (a) Seller agrees to sell and Schedule, and Buyer agrees to purchase, Schedule, and pay for, gas from and including the Day commencing on the Commercial Operations Date through and including the Day commencing on the Termination Date (the "Scheduling Term"), all subject to the terms and conditions herein.

(b) If the Commercial Operations Date occurs after July 1, 1995, for each calendar month or portion thereof from July 1, 1995, through the day immediately prior to the Commercial Operations Date, Buyer shall pay Seller an amount equal to the product of (i) the Unadjusted Price that then would have been in effect for Tier I gas had the Scheduling Term commenced and (ii) MaxDQ-I and (iii) the number of days during such month or portion thereof. Such payments shall be made in accordance with the procedures set forth in Section 4.2 as if each such calendar month were a Month. During the Recoupment Period, Buyer shall be entitled to receive, on account of such payments and in addition to any Tier II gas purchased hereunder during the Recoupment Period, an aggregate quantity of Tier I gas (the "Recoupment Quantity") equal to the product of (A) MaxDQ-I and (B) the number of days for which such payments are made, such volumes to be delivered in accordance with the procedures set forth in this Article II but without further payment.

2.2 *Scheduling Procedures.* Subject to the other provisions hereof, in Scheduling Buyer and Seller shall follow these procedures:

(a) *Initial Notice.* On or before the 45th day prior to the anticipated Commercial Operations Date, Buyer shall notify Seller of such anticipated Commercial Operations Date, the quantity of gas to be Scheduled on such anticipated Commercial Operations Date, and Buyer's good-faith estimate of the quantities to be Scheduled for each Day during the remainder of the Month commencing with such anticipated Commercial Operations Date. Buyer shall notify Seller of any changes in the anticipated Commercial Operations Date and Buyer's good-faith estimate of the quantities to be Scheduled on such anticipated Commercial Operations Date and each Day during the remainder of the Month commencing with such anticipated Commercial Operations Date.

(b) *Monthly Estimates.* On or before the 15th day of each calendar month, Buyer shall notify Seller of the quantities Buyer expects to Schedule for each Day during the immediately following Month.

(c) *First-of-Month Nominations.* No later than the 3rd Business Day prior to the earliest nomination deadline for deliveries on the 1st Day of each Month by any of Buyer's Transporters, Buyer shall notify Seller of the quantity of gas to be Scheduled for delivery on each Day of such Month (a "Monthly Notice"); provided, however, that unless Buyer and Seller agree otherwise in their sole discretion, the aggregate quantity of gas so specified for any given Day shall not exceed the sum of (i) 116,000 MMBtus ("MaxDQ-I") plus (ii) 76,291 MMBtus ("MaxDQ-II," with the sum of MaxDQ-I and MaxDQ-II called the "MaxDQ"). The Monthly Notice may provide for a different Requested Daily Quantity for a specified Day or any series of Days and shall include Buyer's best estimate of Buyer's expected maintenance outages for the Month and the dates and quantities associated therewith. Changes to the Requested Daily Quantity may be made in accordance with Section 2.2(e).

(d) *Delivery Point Selection.* No later than the 2nd Business Day after Seller's receipt of the notice from Buyer described in Section 2.2(c), Seller shall provide Buyer with Seller's selection of one or more locations specified on Exhibit 2.2 as Delivery Points (each a "Delivery Point") at which the quantity requested in Buyer's notice are to be Scheduled and corresponding quantities for each such Delivery Point, provided that the aggregate of the quantities at the Delivery Points selected by Seller shall equal the quantity requested by Buyer in its notice. Seller shall select the Delivery Points and the corresponding quantities in its sole discretion; provided, however, that without Buyer's consent, Seller shall not select a quantity to be Scheduled at any Delivery Point that exceeds the amount

shown under "Maximum Daily Delivery Point Quantity" for such Delivery Point on Exhibit 2.2 (the "*Maximum Daily Delivery Point Quantity*" for that Delivery Point).

(e) *Buyer's Changes.* Buyer may notify Seller of any change it desires in the Requested Daily Quantity specified as described in Section 2.2(c), subject to the limitations in this Section 2.2(e) and the limitation regarding MaxDQ in Section 2.2(c). In the case of any decrease in the Requested Daily Quantity, Seller shall be obligated to Schedule such decrease as soon as practicable following Seller's receipt of notice of such decrease, provided that Seller shall be obligated to Schedule any decrease (i) to the extent it does not exceed 50% of MaxDQ, no later than the Day following such notice and (ii) to the extent it exceeds 50% of MaxDQ, no later than the 2nd Day following such notice. In the case of any increase in the Requested Daily Quantity, Seller shall be obligated to Schedule such increase as soon as practicable following Seller's receipt of notice of such increase in the Requested Daily Quantity, provided that Seller shall be obligated to Schedule any increase (A) to the extent it does not exceed 10% of MaxDQ, no later than the Day following such notice, (B) to the extent it exceeds 10% of MaxDQ but does not exceed 50% of MaxDQ, no later than the 2nd Day following such notice, and (C) to the extent it exceeds 50% of MaxDQ, no later than the 3rd Day following such notice. Subject to the limitations in Section 2.2(d), Seller shall make appropriate changes to its nominations to Buyer's Initial Transporter and shall provide Buyer with an amended Delivery Point selection reflecting the change requested in such notice from Buyer.

(f) *Seller's Changes.* Subject to the deadlines and the procedures of Buyer's Transporter(s), as applicable, Seller may make changes in its selection of Delivery Point(s) and/or the quantities to be Scheduled at such Delivery Point(s), provided that there is no change in the aggregated quantity Scheduled hereunder. If Seller makes such a change, it shall provide Buyer with an amended Delivery Point selection in accordance with Section 2.2(d).

(g) *Scheduling.* Upon Seller's delivery of and Buyer's receipt of the Delivery Point selections as provided above in this Section 2.2, the parties shall proceed diligently and shall render such assistance as is reasonably required by the other party to Schedule the quantities at the Delivery Points so identified in accordance with the deadlines and the procedures of Buyer's Transporter(s), as applicable.

(h) *Tariff Changes.* In the event changes in the tariffs, contracts, or policies of any third-party transporter upstream or downstream of the Delivery Points cause the notification periods, as provided in this Section 2.2, to become impracticable for either Buyer or Seller to meet its obligations under this Agreement, Buyer and Seller agree to negotiate in good faith to substitute mutually

acceptable notice periods and to modify any other timing of required notices under this Agreement that may be affected thereby.

2.3 Seller's Delivery Obligation. Subject to the terms and conditions hereof, Seller shall Schedule on each Day during the Scheduling Term an amount of gas equal to the Requested Daily Quantity. Such quantity shall be reduced by the sum of the quantities that are not Scheduled as a result of (a) an event of Force Majeure (including any periods following an event of Force Majeure to the extent required for Seller to comply with the provisions of the third sentence of Section 2.2(e)), (b) Buyer's Initial Transporter's refusal to accept delivery of such quantities for reasons other than failure(s) of gas to meet the quality or pressure specifications as provided in Section 3.1, and (c) suspension by Seller as provided in Section 8.1 (such quantity of gas, as so reduced if applicable, called "*Seller's Delivery Obligation*"). If on any Day during the Scheduling Term, Seller fails to Schedule Seller's Delivery Obligation as provided herein (the amount of any such deficiency called "*Seller's Deficiency Quantity*"), Buyer shall use commercially reasonable efforts to purchase replacement fuel on a commercially reasonable basis, taking into consideration the cost, availability, and reliability of alternate supplies. To the extent Buyer uses a liquid fuel in replacement of gas to have been Scheduled, Seller or any Affiliate thereof shall have the option to sell and deliver, or replace Buyer's inventory of, such liquid fuel in accordance with Buyer's specifications in effect from time to time. Seller shall pay to Buyer, as the sole and exclusive remedy for Seller's failure to Schedule Seller's Delivery Obligation as provided herein in any Month, the amount, if any, by which (i) the cost to Buyer of gas or other fuel purchased to replace all or any portion of Seller's Deficiency Quantity (including any incidental expenses that Buyer incurs to obtain any such replacement) in such Month plus Buyer's actual total fuel transportation expenses (including fuel and shrinkage and demand charges) for such Month exceeds (ii) the amount Buyer would have been obligated to pay hereunder for Seller's Deficiency Quantity (computed based on the components thereof that would have been Tier I gas or Tier II gas) plus the total fuel transportation expenses (including fuel and shrinkage and demand charges) Buyer would have incurred for such Month if Seller had delivered that portion of Seller's Deficiency Quantity that Buyer replaced; provided, however, that if and to the extent Buyer is unable, after commercially reasonable efforts as required in this Section 2.3, to obtain replacement fuel for all or any portion of Seller's Deficiency Quantity, Seller shall pay Buyer an amount equal to the amount, if any (but in no event to exceed \$750,000 for any Day), by which (A) the revenues attributable to Seller's Deficiency Quantity that Buyer did not receive but would have received had Seller's Deficiency Quantity been Scheduled exceeds (B) the costs attributable to Seller's Deficiency Quantity that Buyer does not incur but would have incurred had Seller's Deficiency Quantity been Scheduled. Seller shall pay amounts due as provided in this Section 2.3 on or before the 20th day following Seller's receipt of Buyer's invoice therefor.

2.4 Minimum Monthly Quantity. Buyer shall Schedule for each Month an amount of gas no less than an amount of gas, expressed in MMBtus, equal to the product of

(a) 83% of MaxDQ and (b) the number of Days in such Month, such product reduced as provided in Section 2.6 (such amount, as so reduced if applicable, called the "*MinMQ*" for such Month). The quantities of gas Scheduled by Buyer on each Day during a given Month shall be credited against the MinMQ for such Month, but any quantities of gas Scheduled by Buyer in excess of its MinMQ in any given Month shall not be applied against Buyer's MinMQ for any other Month. If during any Month Buyer fails to Schedule the MinMQ for such Month (the excess of the MinMQ over the quantity of gas actually so Scheduled called "*Buyer's Monthly Deficiency Quantity*" for such Month), Buyer shall pay to Seller, as the sole and exclusive remedy for such failure, an amount equal to the product of (A) Buyer's Monthly Deficiency Quantity and (B) the amount, if any, by which the Unadjusted Price for Buyer's Monthly Deficiency Quantity exceeds 85% of the Posted Spot Price for such Month. In making the calculation in the immediately preceding sentence, the Unadjusted Price for Tier II gas shall be used for the portion of Buyer's Monthly Deficiency Quantity up to and including the excess (if any) of (x) the MinMQ for such Month over (y) the product of MaxDQ-I and the number of Days in such Month, and the Unadjusted Price for Tier I gas shall be used for all other portions (if any) of Buyer's Monthly Deficiency Quantity.

2.5 *Minimum Annual Quantity.* Buyer shall Schedule for each Contract Year an amount of gas no less than an amount of gas, expressed in MMBtus, equal to the product of (a) 90% of MaxDQ (88% during the first Contract Year) and (b) the number of Days in such Contract Year, such product reduced as provided in Section 2.6 (such amount, as so reduced if applicable, called the "*MinAQ*" for such Contract Year). The quantities of gas Scheduled by Buyer on each Day during a Contract Year shall be credited against the MinAQ for such Contract Year, but quantities of gas Scheduled by Buyer in excess of the MinAQ for a given Contract Year shall not be applied against the MinAQ for any other Contract Year. If during any Contract Year Buyer fails to Schedule the MinAQ for such Contract Year (the excess of the MinAQ over the quantity of gas actually so Scheduled called "*Buyer's Annual Deficiency Quantity*" for such Contract Year), Buyer shall pay to Seller, as the sole and exclusive remedy for such failure, an amount equal to the excess, if any, of (A) the product of (x) Buyer's Annual Deficiency Quantity and (y) the amount, if any, by which the arithmetic average of the Unadjusted Prices in effect (weighted in accordance with the succeeding sentence) during each Month of such Contract Year exceeds the arithmetic average of 85% of the Posted Spot Prices for each Month of such Contract Year over (B) the sum of all payments paid by Buyer pursuant to Section 2.4 in respect of each Month of such Contract Year. In making the calculation in the immediately preceding sentence, the Unadjusted Price for Tier II gas shall be used for the portion of Buyer's Annual Deficiency Quantity up to and including the excess (if any) of (i) the MinAQ for such Contract Year over (ii) the product of MaxDQ-I and the number of Days in such Contract Year, and the Unadjusted Price for Tier I gas shall be used for all other portions (if any) of Buyer's Annual Deficiency Quantity.

2.6 *Reduction of Minimum Monthly Quantity and Minimum Annual Quantity.* The minimum monthly and annual quantities of gas that Buyer shall Schedule, as contemplated by Sections 2.4 and 2.5, respectively, shall be reduced by the sum of the amounts of (a) any Seller's Deficiency Quantity that exists for each Day during the respective Month or Contract Year as the case may be, (b) any quantity of gas that is not Scheduled by Buyer as a result of Force Majeure on each Day during the respective Month or Contract Year (including any periods following an event of Force Majeure to the extent required for Seller to comply with the provisions of the third sentence of Section 2.2(e)), (c) any quantity of gas that is not Scheduled on each Day during the respective Month or Contract Year due to suspension by Buyer permitted by Section 8.2, and (d) any quantity of gas that is rejected by Buyer's Initial Transporter on each Day during the respective Month or Contract Year in accordance with the applicable transportation contract with Buyer's Initial Transporter due to the failure of such gas to meet quality or pressure specifications as contemplated by Section 3.1. The minimum monthly and annual quantities of gas that Buyer shall Schedule, as contemplated by Sections 2.4 and 2.5, respectively, shall also be reduced as contemplated by Section 2.9(c).

2.7 *Effect of Delivery, Indemnity.* Title to all gas Scheduled hereunder shall pass to Buyer at the Delivery Points. As between the parties hereto, Seller shall be deemed to be in exclusive control and possession of the gas Scheduled hereunder until the same shall have been delivered at the Delivery Points, at and after which delivery Buyer shall be deemed to be in exclusive control and possession thereof. Seller and Buyer each assumes full responsibility and liability for and shall indemnify and save harmless the other party and its officers, directors, employees, agents, and partners from all liability and expense on account of any and all damages, claims, or actions, including injury to and death of persons, arising from any act or accident occurring when title to the gas is vested in the indemnifying party as herein provided.

2.8 *Warranty of Title.* Seller warrants that it will, at the time of delivery, have good title to all gas delivered by it to Buyer hereunder, free and clear of all liens, encumbrances and claims whatsoever.

2.9 *Requirements; Use.* Except to the extent provided in Section 2.2(c) or to the extent that Buyer, in accordance with Section 2.2(e), has notified Seller of an increase or a decrease in the Requested Daily Quantity and Seller does not waive the requirement of notice, to the extent of any Seller's Deficiency Quantity, or to the extent Seller shall consent in writing otherwise, Buyer shall purchase all requirements for gas at the Facility only from Seller, and shall use all gas Scheduled by Seller hereunder solely at the Facility; provided, however, that Buyer may sell or otherwise transfer any such gas, to the extent that (a) such gas is not consumed at the Facility, (b) Scheduling such gas is necessary to cause Buyer to Schedule during any Month the MinMQ for such Month or during any Contract Year the MinAQ for such Contract Year, and (c) Seller has not agreed in writing to reduce the MinMQ or the MinAQ, as applicable, for that period.

2.10 Delivery Plans and Interruptible Supplies. (a) On or before October 1, 1994, and within 90 days following request by Buyer during any Contract Year (but Buyer may make only 1 such request during any Contract Year), Seller shall furnish Buyer with a report describing generally the following for the succeeding 5 years:

(i) an update on commitments by producers to participate in the initial "Investor Producer Pool" program being sponsored by Seller's Affiliate Enron Gas Services Corp.;

(ii) a summary of any firm supply contracts with terms of 5 years or more and the related proven reserves or supplier guarantees, if any, from which Seller intends to acquire the gas to resell to Buyer hereunder;

(iii) a summary of any firm supply contracts with terms of less than 5 years from which Seller intends to acquire the gas to resell to Buyer hereunder;

(iv) the total gas storage capacity Seller has available that could be used to support its obligations to Schedule gas hereunder; and

(v) a summary of Seller's physical delivery and transportation management plans for Scheduling gas hereunder.

(b) Throughout the Scheduling Term, Seller shall use all reasonable efforts to maintain a minimum quantity of interruptible gas supply deliverable at the Delivery Points identified on Exhibit 2.2 under the column "Minimum Interruptible Quantity"; provided, however, that if supplies from specific wells, leases, fields, or contracts are dedicated to the fulfillment of Seller's obligations under this Agreement, the amount under the column "Minimum Interruptible Quantity" for the Delivery Point(s) associated with that dedication shall be deemed reduced by the same amount per Day as the amount of the dedication.

ARTICLE III QUALITY, MEASUREMENT AND TRANSPORTATION

3.1 Buyer's Transporter's Specifications. Gas Scheduled by Seller shall meet or exceed the minimum quality specifications of Buyer's Initial Transporter at the Delivery Points. If any gas Scheduled by Seller shall fail to conform to such quality specifications, Buyer's sole remedy shall be refusal to accept the tendered quantities, in which event such gas shall be treated as if Seller shall have failed to Schedule it; all other gas shall be treated as meeting such specifications. Except as otherwise provided in the succeeding sentence and Section 2.3, in no event shall Seller be liable to Buyer for any punitive, incidental, consequential, indirect, direct or any other damages arising from failure of the

tendered gas to conform to such minimum quality specifications. Gas Scheduled by Seller shall be delivered at pressures sufficient to cause such gas to enter the facilities of Buyer's Initial Transporter at the applicable Delivery Point, but not below the minimum allowable or above the maximum allowable operating pressure specified in the applicable transportation contract with Buyer's Initial Transporter. If Buyer's refusal to accept the gas, as set forth in this Section 3.1, shall prevent Seller from performing its obligation to Schedule gas as set forth in Section 2.3, Buyer's exclusive remedy for Seller's failure to perform such obligation shall be as set forth in Section 2.3.

3.2 Measurement. Receipts and deliveries of gas shall be calculated from the measurements taken at meter(s) installed, operated, and maintained by Seller's Transporters and Buyer's Transporters, or such transporters' designees, at the Delivery Point(s). The applicable quality, pressure, and measurement specifications of Seller's Transporters and Buyer's Transporters shall be those included in the applicable gas tariffs then in effect.

3.3 Transportation Management; Imbalances. (a) Buyer hereby appoints Seller as its agent for purposes of making nominations, Scheduling gas, managing pipeline imbalances to minimize expenses to both parties, confirming the above with the transporting pipelines, and providing a written report to Buyer detailing such activities for each Month within 10 days after the end of each such Month. Buyer agrees to notify Seller of initial nominations for each Month and any changes of the quantities Buyer desires at the Delivery Points as soon as possible and as often as necessary but no later than the time required hereunder to effect such changes. Upon Seller's receipt of such notification, Seller shall manage the transportation services described in Sections 2.2(a), (b), (c), (e), and (g) and in this Section 3.3 in accordance with Prudent Management Practices and in all material respects each of Buyer's agreements with Buyer's Transporters.

(b) Each party promptly shall furnish the other with copies of any imbalance statement that the first party receives but the other does not otherwise receive. Any imbalance between the quantity of gas Scheduled on any Day and the quantity actually delivered to or received by Buyer's Initial Transporter on such Day for Buyer's account shall be corrected as soon as reasonably possible and, in any event, within 180 days of receipt of notice thereof. Each party shall notify the other party of an imbalance on its transporter's system on or before the next Business Day following receipt of notice thereof from such transporter. If Seller is notified by Buyer's Initial Transporter directly of an imbalance on Buyer's Initial Transporter's system, Seller shall notify Buyer of such imbalance as soon as possible. Imbalances resulting from Seller's delivery of less than the Seller's Delivery Obligation shall be corrected in gas. Imbalances resulting from Seller's delivery of more than Seller's Delivery Obligation shall be corrected or adjusted in cash or gas as the parties may agree.

3.4 *Transportation Imbalance Penalties.* Seller shall reimburse Buyer for any transportation imbalance penalties, charges, or cash-outs incurred by Buyer to the extent same is due to Seller's or Seller's Transporter's improper delivery of more or less gas than Seller's Delivery Obligation at the applicable Delivery Point(s) on any Day and not corrected within the time required in the applicable tariff, unless Buyer failed to notify Seller of such imbalance promptly following Buyer's receipt of notice thereof and such failure limited Seller's ability to contest such imbalance. If gas is Scheduled by Seller through any pipeline transporting gas prior to the Delivery Point ("*Seller's Transporter*"), Buyer shall reimburse Seller for any transportation imbalance penalties or charges incurred by Seller under the Seller's Transporter's gas tariff then in effect, to the extent such penalties or charges are due to Buyer's Transporter's improper receipt of more or less than the quantity Scheduled for delivery and receipt at the applicable Delivery Point(s) on any Day and not corrected within the time required by Seller's Transporter's gas tariff then in effect, unless Seller failed to notify Buyer of such imbalance promptly following Seller's receipt of notice thereof and such failure limited Buyer's ability to contest such imbalance. If any penalties described above are imposed upon either party (the "*Penalized Party*"), the party responsible for such penalty under this Section 3.4 shall, on or before the 10th day following receipt of written notice by the Penalized Party, reimburse the Penalized Party for the dollar amount of such penalties, or the portion thereof, as applicable. The parties agree to provide and/or make available to each other for review any and all records to which they have access that support and document the responsibility of either party and/or support either party's claim for reimbursement of a penalty assessed by a transporting pipeline.

3.5 *Assignment of Transportation Capacity.* In the event excess transportation capacity is available to Buyer for any period not exceeding 45 days, Buyer shall use all commercially reasonable efforts, to the extent permitted by law and subject to the receipt of any necessary regulatory approvals, to assign, release, or otherwise transfer such capacity to Seller for use by Seller for the time period during which such capacity is available to Buyer; provided, however, that Buyer has no obligation to enter into such an assignment, release, or transfer if it determines in good faith that such assignment, release, or transfer would increase its costs or otherwise have a material and adverse effect on Buyer. Subject to the provisions of the immediately preceding sentence in the case of any such transportation capacity subject to the jurisdiction of the FERC, Buyer shall enter into a "pre-arranged deal" (as that term is used in Order Nos. 636 and 636-A issued by the FERC) for releasing capacity or such other arrangement with Seller as may be necessary to effect such assignment, release, or transfer in accordance with the tariff of the relevant transporter(s) (as the same may be amended from time to time) and applicable regulations of the FERC or other governmental authority having jurisdiction over such transporter(s). In connection with any assignment, release, or transfer under this Section 3.5, Seller shall be responsible for obtaining any necessary regulatory approvals and for preparing any necessary agreements, documents, and instruments, and Buyer shall cooperate in those activities. Notwithstanding the foregoing or any of the other provisions of this Agreement,

Buyer's failure to comply with the provisions of this Section 3.5 shall not constitute a Buyer Event of Default.

**ARTICLE IV
PRICE AND PAYMENT PROCEDURES**

4.1 **Contract Price.** Buyer shall pay Seller an amount per MMBtu of gas (the "Contract Price") Scheduled hereunder equal to the sum of (x) the applicable Unadjusted Price plus (y) the product of (A) the Chippawa Use Volume Multiplier and (B) the applicable Unadjusted Price. The Unadjusted Price will be established as follows:

(a) For all Tier I gas during Period 1, the amount specified below under "Unadjusted Price (per MMBtu)" for the calendar year in which the Day on which such gas is Scheduled begins:

<i>Calendar Year</i>	<i>Unadjusted Price (per MMBtu)</i>
1995	\$2.28
1996	\$2.79
1997	\$2.80
1998	\$2.87
1999	\$3.02
2000	\$3.52

(b) For all Tier I gas during the Recoupment Period, if any, the Unadjusted Price shall be \$0.00 per MMBtu, such purchase price having been prepaid pursuant to Section 2.1(b).

(c) For all Tier I gas during Period 2, the Unadjusted Price shall be the Tier I Formula Price; provided, however, that if on any Day during Period 2 the Reference Price is less than the Tier I Formula Price and the balance in the Tracking Account is 0 or less than 0, then:

(i) If the Tier I Formula Price minus the Reference Price is equal to or less than the Price Escalator, the Unadjusted Price for Tier I gas for that Day shall equal the Reference Price; and

(ii) If the Tier I Formula Price minus the Reference Price exceeds the Price Escalator, the Unadjusted Price for Tier I gas for that Day shall equal:

$$(A - B) - .5 [(A - B) - C]$$

where:

A = the Tier I Formula Price

B = the Price Escalator

C = the Reference Price

(d) For all Tier II gas during Period 1, the Recoupment Period, or Period 2, the Unadjusted Price shall be the Tier II Formula Price; provided, however, that if on any Day during Period 1, the Recoupment Period, or Period 2 the Reference Price is less than the Tier II Formula Price and the balance in the Tracking Account is 0 or less than 0, then:

(i) If the Tier II Formula Price minus the Reference Price is equal to or less than the Price Escalator, the Unadjusted Price for Tier II gas for that Day shall equal the Reference Price; and

(ii) If the Tier II Formula Price minus the Reference Price exceeds the Price Escalator, the Unadjusted Price for Tier II gas for that Day shall equal:

$$(A - B) - .5 [(A - B) - C]$$

where:

A = the Tier II Formula Price

B = the Price Escalator

C = the Reference Price

(e) As used in this Agreement, the following expressions have the following meanings:

"Posted Spot Price" means, with respect to any Day in a Month, the arithmetic average of (i) the "Index" price reported in the first issue during such Month of *Inside FERC's Gas Market Report* under the section entitled "Prices of Spot Gas Delivered to Pipelines" for deliveries to ANR Pipeline Co. in Louisiana, and (ii) the price reported in the bid week issue for such Month of the *Natural Gas Week "Gas Price Report"* for "Louisiana Gulf Coast Onshore-Spot" under the column "Delivered to Pipeline." If one

of such publications no longer reports such index or price, or materially changes its methodology for computing such index or price, then Buyer and Seller shall select a substitute index or price, but if Buyer and Seller fail to agree either may refer such selection to ICF Resources Inc. (or such other Person as they may agree), who shall select such substitute index or price, which substitution shall be final and binding on Buyer and Seller (and Buyer and Seller each shall pay half the expenses and fees of such Person). Upon such selection, Buyer and Seller (or the Person selecting such index or price) shall compute the ratio of the index or price previously used to the one so selected for each of the last 12 Months during which such previous index or price was used, and in computing the Posted Spot Price such new index or price shall be multiplied by the arithmetic average of such ratios.

"Price Escalator" means, with respect to any Day in a Month, an amount equal to \$.10 per MMBtu in any Month through the last Month beginning in the calendar year 1995, such \$.10 to be increased by \$.01 on the 1st Day beginning in each calendar year thereafter during the Scheduling Term.

"Reference Price" means, with respect to any Day, the Posted Spot Price for that Day.

"Tier I Formula Price" means, with respect to any Day, the product of (i) the greater of (A) the quotient of (x) the aggregate amount payable by Consolidated Edison under the Consolidated Edison Contract and any other Power Contract with Consolidated Edison for the Month in which such Day occurs divided by (y) the total number of kilowatt-hours purchased by Consolidated Edison under the Consolidated Edison Contract and any other Power Contract with Consolidated Edison in respect of such Month (excluding any kilowatt-hours that are lost in the transmission of such electricity to Consolidated Edison), but excluding from the amounts in clauses (x) and (y) any amounts for any portion of that Month not in Period 2, and (B) the rate (expressed in dollars per kilowatt-hour) equal to the "Actual Avoided Energy Costs" as defined in the Consolidated Edison Contract based on the tariff designated Service Classification No. 21 of PSC No. 8 - Electricity in effect for the applicable Day, as such Actual Avoided Energy Costs may change from time to time (provided, however, that if either Buyer or Consolidated Edison is required to negotiate an alternate methodology to determine such Actual Avoided Energy Costs as provided in Article VI(a)(6) of the Consolidated Edison Contract, Buyer shall consult with Seller in negotiations and proceedings to determine such alternate methodology and either Seller shall have agreed to that alternate methodology or, failing Seller's agreement, such alternate methodology shall

be subject to determination by the New York Public Service Commission or by arbitration as provided in the Consolidated Edison Contract), and (ii) 45 during the first 60 Months falling wholly or partly within Period 2; 47.5 during the next 60 Months; and 50 thereafter.

"Tier II Formula Price" means, with respect to any Day, the product of (i) 103% of the rate (expressed in dollars per kilowatt-hour) equal to the "Actual Avoided Energy Costs" as defined in the Niagara Mohawk Contract based on the tariff designated Service Classification No. 6 of PSC No. 207 - Electricity in effect for the applicable Day, as such Actual Avoided Energy Costs may change from time to time (provided, however, that if either Buyer or Niagara Mohawk is required to negotiate an alternate methodology to determine such Actual Avoided Energy Costs as provided in the Niagara Mohawk Contract, Buyer shall consult with Seller in negotiations and proceedings to determine such alternate methodology and either Seller shall have agreed to that alternate methodology or, failing Seller's agreement, such alternate methodology shall be subject to determination by the New York Public Service Commission or as expressly provided in the Niagara Mohawk Contract), and (ii) 45 during Period 1 and the first 60 Months falling wholly or partly within Period 2; 47.5 during the next 60 Months; and 50 thereafter.

4.2 *Payments.* (a) On the 1st day of each calendar month, Seller shall submit an invoice to Buyer stating the amounts due hereunder with respect to the Month most recently ended pursuant to Sections 4.1, 4.6, and to the extent applicable, 2.4 and 2.5. Buyer shall pay the amounts so due (other than amounts owed under Section 4.6(c)) on or before the 20th day of such calendar month; provided, however, that if the invoice is delivered after the 1st day of a calendar month, the day for payment shall be the 19th day following the day on which the invoice is delivered (and in no event shall Seller have any liability for late delivery of an invoice, other than such extension of the date payment is due); and provided further that if the day payment is due is not a Business Day, then payment shall be due on the immediately preceding Business Day.

(b) If either party in good faith disputes any amounts set forth on an invoice delivered pursuant to Section 4.2(a) or any other payment demanded by the other party, the party disputing such amount or payment shall pay the portion that is not so in dispute and notify the other party of the existence and the nature of the dispute. All amounts so invoiced or demanded shall be deemed final and binding unless the paying party has notified the payee party of such dispute on or before the 2nd anniversary of the date of such invoice or demand. Upon receipt of such notice, the parties shall negotiate in good faith to resolve such dispute. If the parties do not resolve any such dispute on or before the 60th day thereafter, either party may submit the disputed matter to an independent auditor mutually acceptable to the parties, whose determination shall be final and binding

on the parties and whose fees shall be borne by the party against whom such auditor rules, or if such is not clear, equally by both parties. On or before the 10th Business Day following the resolution of a disputed matter, by mutual agreement or otherwise, Buyer shall pay Seller, or Seller shall pay Buyer, as the case may be, any amounts owed to the other as a result of such resolution, together with interest thereon at the Interest Rate from the date payment was due to the date paid. No party shall pursue litigation regarding any amounts in dispute except to require the other party to comply with the procedures in this Section 4.2(b) to resolve disputes.

(c) Seller, Buyer, or a third-party representative of Seller or Buyer shall have the right, at any and all reasonable times and upon reasonable notice, to examine the books and records of the other to the extent reasonably necessary to verify the accuracy of any invoice or other demand for payment or computation made under this Agreement.

(d) All payments under this Agreement shall be made by wire transfer of immediately available funds for credit to the recipient's account as provided on Exhibit 4.2, or such other account as the recipient may specify by notice to the payor on or before the 2nd Business Day prior to payment. Any amounts payable hereunder that are not paid when due shall accrue interest at a rate per annum equal to the Interest Rate from the date due until paid.

4.3 Taxes and Adverse Claims. (a) The Contract Price under this Agreement includes full reimbursement for all Taxes applicable to the gas sold hereunder upstream of the Delivery Points hereunder, including all Taxes applicable to the gas sold hereunder prior to the Delivery Points or applicable as a result of the transfer of title to the gas sold hereunder, but excluding all Taxes applicable to the gas sold hereunder downstream of such Delivery Points and except in each case to the extent that the Tax is assessed due to any subsequent sale by Buyer of such gas. All Taxes incurred in or attributable to the production, sale, and delivery, handling, or transportation of the gas sold and delivered under this Agreement (or otherwise caused by or attributable to such gas) prior to the Delivery Points hereunder (including all Taxes applicable to the gas sold hereunder prior to the Delivery Points or applicable as a result of the transfer of title to the gas sold hereunder) shall be the responsibility of Seller and Seller shall indemnify, defend, and hold Buyer and its officers, directors, employees, agents, and partners harmless from and against all such Taxes. All Taxes incurred in or attributable to the purchase and transfer, handling, or transportation of the gas purchased and received under this Agreement (or otherwise caused by or attributable to such gas) after such Delivery Points shall be the responsibility of Buyer, and Buyer shall indemnify, defend, and hold Seller and its officers, directors, employees, agents, and shareholders harmless from and against all such Taxes. All sales, transfer, and use Taxes (if any) applicable to the sale or transfer of gas under this Agreement at the applicable Delivery Points shall be borne 50% each by Buyer and Seller. Each of Seller and Buyer shall apply for, and shall cooperate with the other in

applying for, such exemption and other certificates as the other reasonably may request to eliminate the necessity of paying, collecting, or withholding any such Taxes.

(b) Except for matters addressed in Section 4.3(a), including the indemnification provided thereunder, Seller shall indemnify Buyer and its officers, directors, employees, agents, and partners and save each of them harmless from all suits, actions, debts, accounts, damages, costs, losses, and expenses (including attorneys' fees and court costs) arising from or out of or relating to the existence of adverse claims of any or all persons to gas delivered under this Agreement and/or any sums paid to Seller by Buyer pursuant to this Agreement, or royalties, license fees, or charges thereon that are applicable before title to such gas passes to Buyer and Taxes (including all production-related Taxes) applicable before the Delivery Points hereunder.

4.4 Tracking Account. (a) Seller shall maintain an account (the "Tracking Account") as provided in this Section 4.4. The balance of the Tracking Account initially shall be zero. As of the last Day of each Month, the balance of the Tracking Account shall be adjusted as provided in clauses (i), (ii), (iii), and (iv) of this Section 4.4(a), in each case to the extent applicable:

(i) **Tier I Adjustment.** For any Month during Period 2 only, the balance of the Tracking Account shall be *increased* if the Reference Price exceeds the Unadjusted Price for Tier I gas for that Month and *decreased* if the Unadjusted Price for Tier I gas exceeds the Reference Price for that Month, in either case by an amount equal to:

$$A \times (B + C)$$

where:

A = the difference between the Unadjusted Price for Tier I gas and the Reference Price for that Month.

B = the lesser of:

(x) the product of MaxDQ-I and the number of Days in that Month that are in Period 2; and

(y) the result of the following formula:

$$\text{MinMQ for that Month} \times \frac{\text{the number of Days in that Month that are in Period 2}}{\text{the total number of Days in that Month}}$$

C = the product of (x) the Canadian Losses for that Month multiplied by (y) the quotient of (aa) the amount of Tier I gas sold hereunder during that Month divided by (bb) the total amount of gas sold hereunder during that Month.

(ii) *Tier II Adjustment.* For any Month, the balance of the Tracking Account shall be *increased* if the Reference Price exceeds the Unadjusted Price for Tier II gas for that Month and *decreased* if the Unadjusted Price for Tier II gas exceeds the Reference Price for that Month, in either case by an amount equal to:

$$A \times (B + C)$$

where:

A = the difference between the Unadjusted Price for Tier II gas and the Reference Price for that Month.

B = the greater of:

(x) the amount of Tier II gas sold hereunder during that Month, and

(y) the excess (if any) of (aa) MinMQ for that Month over (bb) the product of MaxDQ-I and the number of Days in that Month.

C = the product of (x) the Canadian Losses for that Month multiplied by (y) the quotient of (aa) the amount of Tier II gas sold hereunder during that Month divided by (bb) the total amount of gas sold hereunder during that Month.

(iii) *Interest.* The balance of the Tracking Account shall be *increased* at the close of business on the last Day of any Month if as of the first Day of that Month the balance is positive and *decreased* at the close of business on the last Day of any Month if as of the first Day of that Month the balance is negative, in each case by an amount equal to the interest accruing on an amount equal to the balance of the Tracking Account (determined as of the first Day of that Month) computed at a rate per annum equal to the Interest Rate and based on the actual number of Days in that Month.

(iv) *Other Adjustments.* The balance of the Tracking Account also shall be *increased* and *decreased* as provided in Sections 4.4(d) and 4.6(c).

(b) From time to time after the Commercial Operations Date, Seller or Buyer by notice to the other may require a determination of the Fair Market Value of the Facility by an Appraiser. Buyer shall cooperate with Seller in all respects in obtaining any such determination including, without limitation, providing information and access to the Facility, the Project Documents, and Buyer's records about them. The party requesting the determination shall pay the fees and expenses of the Appraiser. If as of the last Day of any Month following the delivery of the latest determination to Seller, the Fair Market Value of the Facility as reported in that determination is less than 200% of the positive balance in the Tracking Account, then on or before the 10th day following the end of that Month, Buyer shall reduce the balance of the Tracking Account by paying to Seller the lesser of the amount necessary to reduce the balance of the Tracking Account to 50% of the appraised Fair Market Value of the Facility as reported in the latest determination and the following:

(i) If such Month is during the 1st 120 Months, all Incremental Revenues for such Month.

(ii) If such Month is after the 1st 120 Months, 100% of all Qualifying Project Cash Flow for such Month and, if after paying such amounts to Seller, the balance of the Tracking Account still exceeds 50% of such Fair Market Value, all Incremental Revenues for such Month. As used in this Section 4.4(b)(ii), the term "Qualifying Project Cash Flow" for any Month means:

$$NCF \times [0.5 + (0.25 \times EITR) + (0.125 \times EITR^2)]$$

where:

"NCF" or "Net Cash Flow" means the excess, if any, for such Month of:

(x) All revenues, proceeds, and payments received by Buyer during such Month in connection with the ownership, use, or operation of the Facility and related assets, including, without limitation, revenues from all energy, capacity, or steam sales, casualty insurance proceeds in excess of the amounts reasonably expected to be used in restoring the Facility following a casualty (regardless of whether actually applied to restoration during such Month), condemnation proceeds, proceeds from the sale of all or any portion of the Facility or related assets or any interest therein, any interest or other income received on investments, and the net proceeds of any refinancing of the Facility, any related assets, or any portion thereof,

over the sum of:

(y) All operating expenses due and payable by Buyer during such Month in connection with the ownership, operation, and maintenance of the Facility and customarily paid prior to debt service, including, without limitation, labor, consumables, fuel costs (including the cost of gas Scheduled under this Agreement), fuel transportation expenses, insurance, Taxes (including Taxes that would be payable by Buyer at the Effective Income Tax Rate based upon the assumptions contained in the definition of Effective Income Tax Rate), water and sewage costs, costs incurred in connection with obtaining or maintaining Governmental Approvals, legal, accounting, and other professional fees, interest, fees, principal, and any other payments to any Facility Lender that is not an Affiliate of Buyer, liquidated damages and other obligations payable to customers of, and suppliers of goods and services to, the Facility, and operating and/or management fees under Project Documents (including under the O&M Agreement) that have been approved by Seller as provided herein in the form so approved and all deposits into cash reserves which Buyer is obligated to make by the Facility Lenders, *excluding, however,*

(A) Payments to Affiliates of Buyer (other than under Project Documents (including under the O&M Agreement) that have been approved by Seller as provided herein in the form so approved);

(B) Capital expenditures, except to the extent required by the Facility Lenders to restore the Facility following a casualty or condemnation, required to replace existing capital items, or necessary or appropriate to permit the continued operation of the Facility;

(C) Amounts payable under this Section 4.4(b); and

(D) Buyer's partnership or corporate overhead and administrative expenses, except to the extent included in operating and/or management fees permitted as provided above.

plus

(z) Incremental Revenues for such Month.

"EITR" or "Effective Income Tax Rate" means the sum (expressed as a decimal) of the marginal income tax rates of the United States of America, the State of New York, and any local government authorities that would be applicable for the payment of Taxes by the Buyer that are based on or measured by the net income of the Buyer assuming (x) the Buyer is a corporation that stands alone and is not a member of any consolidated group of corporations or affiliated with or related to any other corporations or affiliated with or related to any other corporation for the purpose of such Taxes, and (y) the Buyer minimizes its liability to all such Taxes in accordance with reasonable and prudent business practices.

(c) If at the end of the last Day of the 20th Contract Year a positive balance exists in the Tracking Account, then on or before the 60th day following the last Day of the 20th Contract Year, Buyer shall pay an amount in cash equal to the balance of the Tracking Account (determined as of the last Day of the 20th Contract Year) to Seller; provided, however, that (i) if the Termination Date occurs as provided in Section 8.1, such payment shall be due on the Termination Date and Buyer shall pay an amount in cash equal to the balance of the Tracking Account (determined as of the end of the Scheduling Term) to Seller, or (ii) if the Facility Lenders declare the Senior Obligations to be due and payable prior to the scheduled maturity thereof and the Facility Lenders have foreclosed, or have commenced judicial or other proceedings to foreclose, or have accepted a deed or other transfer in lieu of foreclosure, on the Facility, then Seller, by notice to Buyer, may declare the balance of the Tracking Account due on Buyer's receipt of such notice and Buyer shall pay an amount in cash equal to the balance of the Tracking Account (determined as of the date of such notice) to Seller; provided, however, that in the case of clause (ii) of this sentence, if the Senior Obligations shall no longer be due and payable prior to the scheduled maturity thereof or if the Facility Lenders shall no longer be seeking to succeed to Buyer's interest in the Facility (whether through foreclosure or by delivery of a deed or other transfer of the ownership of the Facility in lieu of foreclosure) or, in the case of clause (i) or clause (ii) of this sentence, if the Facility Lenders or their designee or assignee shall succeed to Buyer's interest under this Agreement in the manner contemplated by the agreement with Seller described in Section 7.2(e), then such payment shall no longer be due hereunder until a due date for such payment occurs thereafter, and if Buyer shall have theretofore made payment of all or any portion of the balance of the Tracking Account in accordance with clause (i) or clause (ii) of this sentence or shall have theretofore conveyed to Seller an equity ownership interest in lieu of any such payment or if Seller shall have theretofore obtained any portion of any such payment, whether through foreclosure or otherwise, Seller shall refund any such payment or recovery to Buyer and reconvey any such ownership interest to Buyer. Notwithstanding any other provision contained herein, Buyer's failure to make payment to Seller in accordance with clause (ii) of the preceding sentence and Buyer's failure to promptly convey to Seller an equity ownership interest in Buyer's Facility in accordance with the succeeding sentence in respect of Buyer's failure to make payment

to Seller in accordance with clause (ii) of the preceding sentence shall not constitute or result in a Buyer Event of Default and Seller's sole remedy for any such failure shall be to foreclose on any collateral securing such payment. If Buyer fails to make all or any portion of such payment when due, at Seller's option (A) Buyer shall promptly convey to Seller an equity ownership interest in Buyer's Facility having a fair market value equal to the amount not so paid or (B) Seller shall foreclose on any collateral securing payment of such amount, but without any duplicate recovery. Any such conveyance shall be effected as of the date payment of the balance of the Tracking Account is due through documents reasonably satisfactory to Seller and recorded in all appropriate governmental offices at Buyer's expense. The equity ownership interest necessary to meet the requirements of clause (i) of the second sentence of this Section 4.4(c) shall be determined by agreement of Buyer and Seller, but if they fail to agree on or before the 60th day following the date payment was due, either Buyer or Seller, by notice to the other, may designate an appraiser to determine such interest. If on or before the 10th day following the designation of such appraiser the party not designating such appraiser notifies the party designating such appraiser it disapproves of the appraiser so designated, either party may apply to the Chief Judge of the U.S. District Court for the district in which Buyer's Facility is located to designate an appraiser to make such determination. The determination of the appraiser, however designated, shall be final and binding on Buyer and Seller and Buyer shall bear the costs of such appraiser. No payment is owed to either party under this Section 4.4 if, at the end of Scheduling Term, the balance of the Tracking Account is zero or negative.

(d) From time to time after the Commercial Operations Date, Buyer may, in its sole discretion and without obligation, reduce the balance of the Tracking Account by making a payment to Seller to reduce such balance.

(e) Notwithstanding any other provisions of this Agreement to the contrary, the obligations of Buyer and Seller under Sections 4.4(b), 4.4(c), 4.4(d), 4.7, 6.1(b), 6.1(c), 6.1(d) (excluding the first sentence thereof), 6.1(e), 6.1(f), 6.1(g), 6.1(h), 6.1(i), and 9.3 shall continue in full force and effect following any Termination Date until the satisfaction in full of Buyer's obligations under Section 4.4(c).

4.5 *Certain Incremental Capacity and Energy Sales.* Except for sales of energy and capacity under the Consolidated Edison Contract, the Niagara Mohawk Contract, and any Thermal Host Contract, Buyer (a) shall consult with Seller prior to entering into any agreement to sell any energy produced at the Facility or any of the Facility's capacity, (b) shall consider in good faith Seller's suggestions with respect to any such proposed sale, and (c) shall enter into any such agreement only with the consent of Seller, which consent shall not be withheld or delayed unreasonably. When Buyer sells any energy produced at the Facility or sells any of the Facility's capacity (other than pursuant to the Consolidated Edison Contract, any Power Contract with Consolidated Edison to the extent entered into in replacement of the Consolidated Edison Contract, and any Thermal Host Contract), the

amount by which (i) the revenues plus the cost savings (if any) Buyer realizes that are attributable to such sale less the additional cost (if any) attributable to such sale (determined by calculating the difference between the actual costs incurred in making any such sale and the costs that Buyer would have incurred had such sale been made to Consolidated Edison) exceed (ii) the revenues that Buyer would have received had such sales been made to Consolidated Edison during the same period at the rates provided in the Consolidated Edison Contract as it existed on May 20, 1991, shall be called "*Incremental Revenues*." In any Month in which Buyer receives Incremental Revenues, Buyer shall pay Seller, in addition to all other payments due hereunder, 35% of the balance of Incremental Revenues remaining after any payments on account of Incremental Revenues made in accordance with Section 4.4(b).

4.6 Transportation. (a) During any Month in which (i) the total transportation cost (including fuel retention) that Buyer actually incurs for transportation of gas purchased by Buyer hereunder during such Month (other than for Chippawa Volumes) is less than (ii) the total transportation cost that Buyer would have incurred had such gas purchased by Buyer hereunder during such Month (other than for Chippawa Volumes) been transported from the Delivery Points to the Facility through the pipelines listed on Exhibit 4.6 at the corresponding rate (including fuel retention) for such pipelines as shown on Exhibit 4.6, Buyer shall pay Seller, in addition to payments for gas sold hereunder and other payments hereunder, an amount equal to 50% of the difference between the amounts in clauses (i) and (ii) of this sentence.

(b) In addition to all other amounts due hereunder, Buyer shall pay Seller for each Month, and for each calendar month or portion thereof commencing with November 1994 and continuing through the day before the Commercial Operations Date as if it were a Month, an amount equal to \$626,279 (increased as of each November 1 commencing November 1, 1995, to an amount equal to 102% of the amount in effect immediately prior to that date) as a demand charge for delivery of Chippawa Volumes, regardless of the actual Chippawa Volumes, if any.

(c) In addition to all other amounts due hereunder, Buyer shall pay Seller for each Month commencing with the first Month to begin during 2001 and continuing for each Month thereafter through the Scheduling Term, as a demand charge for gas Scheduled or to be Scheduled hereunder, an amount equal to the lower of (i) \$1,666,667 for any Month beginning in 2001 through 2005 and thereafter \$2,083,333 and (ii) $\frac{1}{12}$ th of the aggregate Net Cash Flow for that Month and the immediately preceding 5 Months (but calculated, for purposes of this Section 4.6(c) only, without including, in clause (y) of the definition of Net Cash Flow in Section 4.4(b), any amounts payable on account of this Section 4.6(c)). Buyer shall pay the amount due for any Month on or before the January 20 or the July 20 first occurring after the end of that Month, together with interest on the amount due at the Interest Rate from the date on which the last Day of that Month commences to the date paid. If the amount so paid for a Month (excluding

interest) is less than the amount in clause (i) above, the balance of the Tracking Account shall be increased as of the last Day of that Month by an amount equal to the amount by which the amount in clause (i) above exceeds the amount so paid.

4.7 *Deferral of Certain Payments.* For as long as the Senior Obligations are outstanding, notwithstanding the provisions of Sections 4.4, 4.5, and 4.6(a), payment of amounts otherwise due under such Sections shall be deferred if and to the extent Buyer's agreements with the Facility Lenders in connection with the Senior Obligations prohibit payment of like amounts to Buyer's equity investors until such time as such payments to Buyer's equity investors could be made under such agreements (and Buyer agrees not to make payment to its equity investors during such deferral). Any amounts so deferred shall accrue interest at the Interest Rate from the date due until paid but, in the case of payments due under Section 4.4, without duplication of interest in calculating the balance of the Tracking Account. The provisions of this Section 4.7, however, shall not limit the ability of Seller to exercise its rights to foreclose on any collateral securing payment of amounts due under Section 4.4(c) when due as therein provided. Notwithstanding any other provisions contained herein, Buyer's failure to make any payment under Section 4.4, 4.5, or 4.6(a) shall not constitute or result in a Buyer Event of Default under this Agreement if and to the extent that Buyer is entitled to defer payment of any such amount in accordance with this Section 4.7.

ARTICLE V REPRESENTATIONS AND WARRANTIES

5.1 *Representations and Warranties of Buyer.* Buyer represents and warrants to Seller as follows:

(a) ***Existence, Good Standing and Power.*** Buyer is a limited partnership duly formed, validly existing, and in good standing under the law of the State of Delaware and is duly qualified and in good standing as a foreign limited partnership in the State of New York. Buyer has all requisite partnership power and authority to enter into and perform this Agreement.

(b) ***Authorization and Validity.*** This Agreement and the other documents and instruments to be delivered to Seller by Buyer pursuant hereto, and the transactions contemplated hereby and thereby, have been duly authorized by Buyer; and this Agreement has been, and each such other document or instrument will be, duly executed and delivered by Buyer and constitutes, or upon such execution and delivery will constitute, legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with its respective terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and except as the enforceability thereof may be

limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(c) *No Violation.* The execution, delivery, and performance by Buyer of this Agreement and the other documents and instruments to be delivered to Seller by Buyer pursuant hereto, and the transactions contemplated hereby and thereby, do not and will not (i) violate or conflict with any provision of Buyer's partnership agreement, (ii) violate or constitute a default under any agreement or instrument to which Buyer is a party or by which Buyer is bound, which violation will have a material and adverse effect on Buyer's ability to perform its obligations hereunder, or any other agreement for the purchase of fuel to which Buyer is a party or by which it is bound, (iii) violate any existing statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Buyer, which violation will have a material and adverse effect on Buyer's ability to perform its obligations hereunder, or (iv) except as described in Section 5.1(g), under existing law require any consent, approval or authorization of, or designation, declaration or filing with, any governmental authority on the part of Buyer, except as Buyer's performance of this Agreement after the Commercial Operations Date may then require in the ordinary course of business.

(d) *Legal Proceedings.* There are no judicial or administrative actions, proceedings, or to Buyer's best knowledge investigations (including, without limitation, bankruptcy, reorganization or insolvency actions, proceedings, or investigations) pending or, to the best of Buyer's knowledge, threatened that (i) challenge the validity of this Agreement or the transactions contemplated hereby, (ii) seek to restrain or prevent any action taken or to be taken by Buyer in connection with this Agreement, or (iii) except for proceedings relating to the application for Government Approvals for or related to the Facility or the transactions contemplated hereby that have not yet been obtained, if adversely determined, would have a material adverse effect upon Buyer's ability to perform its obligations hereunder.

(e) *Public Utility, Investment Company.* Buyer is not subject to regulation as a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder. Buyer is not an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

(f) *Site.* Buyer has or anticipates that, prior to Financial Closing, it will have good and marketable fee simple title to, or a valid leasehold interest in, the site on which the Facility is to be constructed, and anticipates in good faith that it

will obtain or will have, prior to Financial Closing, all easements and other interests necessary for the placement of assets associated with the Facility, in each case free and clear of all liens, claims, and encumbrances of any nature whatsoever, except those that will have no material and adverse effect on Buyer's ability to construct, own, finance, and operate the Facility and to perform its obligations under this Agreement and the Project Documents.

(g) *Project Documents.* Buyer has delivered to Seller copies of all Project Documents that have been entered into as of the date hereof. Each such Project Document has been duly executed and delivered by Buyer and to Buyer's best knowledge each of the other parties thereto, is in full force and effect, and constitutes a legal, valid, and binding obligation of the Buyer and to Buyer's best knowledge each other party thereto, enforceable against such parties in accordance with its terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law). Buyer is not in, and has not received notice of the existence of, any material default under any such Project Document, nor is there existing any event or circumstance which with notice or lapse of time or both would give rise to a material default on the part of Buyer thereunder. The copies of such Project Documents delivered to Buyer are correct and complete, including all amendments thereto.

5.2 *Representations and Warranties of Seller.* Seller represents and warrants to Buyer as follows:

(a) *Existence, Good Standing and Power.* Seller is a corporation duly organized, validly existing and in good standing under the law of the State of Delaware and is duly qualified and in good standing as a foreign corporation in the State of Texas. Seller has all requisite corporate power and authority to enter into and perform this Agreement.

(b) *Authorization and Validity.* This Agreement and the other documents and instruments to be delivered by Seller pursuant hereto, and the transactions contemplated hereby and therein, have been duly authorized by Seller, and this Agreement has been, and each such other document or instrument will be, duly executed and delivered by Seller and constitutes, or upon such execution and delivery will constitute, legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with its respective terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(c) *No Violation.* The execution, delivery, and performance by Seller of this Agreement and the other documents and instruments to be delivered by Seller pursuant hereto, and the transactions contemplated hereby and thereby, do not and will not (i) violate or conflict with any provision of Seller's certificate of incorporation or bylaws, (ii) violate or constitute a default under any agreement or instrument to which Seller is a party or by which Seller is bound, which violation will have a material and adverse effect on Seller's ability to perform its obligations hereunder, (iii) violate any existing statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Seller, which violation will have a material and adverse effect on Seller's ability to perform its obligations hereunder, or (iv) under existing law require any consent, approval or authorization of, or designation, declaration or filing with, any governmental authority on the part of Seller, except as Seller's performance of this Agreement after the Commercial Operations Date may then require in the ordinary course of business.

(d) *Legal Proceedings.* There are no judicial or administrative actions, proceedings or investigations (including, without limitation, bankruptcy, reorganization or insolvency actions, proceedings or investigations) pending or, to Seller's knowledge, threatened that (i) challenge the validity of this Agreement or the transactions contemplated hereby, (ii) seek to restrain or prevent any action taken or to be taken by Seller in connection with this Agreement, or (iii) if adversely determined, would have a material and adverse effect upon Seller's ability to perform its obligations hereunder.

(e) *Public Utility; Investment Company.* Seller is not subject to regulation as a "holding company," or a "subsidiary company" of a "holding company," or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935, as amended, and the rules and regulations thereunder. Seller is not an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

ARTICLE VI COVENANTS OF BUYER AND SELLER

6.1 *Covenants of Buyer.* From the date hereof through the Day commencing on the Termination Date, Buyer shall, unless otherwise consented to by Seller in writing:

(a) *Construction.* Diligently prosecute the design, development, and construction of the Facility using all reasonable efforts to cause the Commercial

Operations Date to occur on or before July 1, 1995, and in this regard apply for and diligently seek all financing, Governmental Approvals, and construction arrangements necessary or advisable to meet the conditions in Sections 7.1 and 7.3; and on or before the 10th day following the end of each calendar quarter before the Commercial Operations Date, deliver to Seller a report on the progress of such activities.

(b) *Reports and Other Information.* Furnish, or cause to be furnished, to Seller:

(i) *Notice of Events.* Forthwith after Buyer shall have obtained knowledge of the occurrence of a Buyer Event of Default, written notice thereof setting forth the details of such Buyer Event of Default and the action which Buyer proposes to take with respect thereto.

(ii) *Reports to Facility Lenders.* At the same time as they are (or if the Senior Obligations have been repaid, at the time they would have been) required to be delivered to the Facility Lenders, a copy of each quarterly, annual, or other audit or financial report and each report on the electrical or thermal output of the Facility to be furnished to Facility Lenders and each notice of default or condition or event that, with notice or lapse of time or the taking of any action, will constitute a default under the agreements with the Facility Lenders.

(c) *Existence, Etc.* Cause the representations and warranties in Section 5.1(a) and (e) to remain true and correct.

(d) *Project Documents.* Deliver to Seller for Seller's timely review copies of all final drafts of Project Documents and final drafts of amendments thereto requiring Seller's acceptance entered into on or after the date hereof, promptly on their becoming available to Buyer (provided, however, that Seller may review engineering, procurement, and construction contracts only at Buyer's offices and Buyer shall not be required to provide Seller copies thereof and provided further that Seller may review Project Documents relating to the Senior Obligations only at Buyer's offices or such other location as shall be acceptable to Buyer and Buyer shall not be required to provide Seller copies thereof) and to enter into Project Documents (other than Project Documents relating to the Senior Obligations) only upon acceptance by Seller (which acceptance shall not be withheld or delayed unreasonably). Buyer may enter into amendments to any of the Project Documents relating to the Senior Obligations subject to the limitations contained in the definition of Senior Obligations contained herein. Buyer may not, without the consent of Seller (which consent shall not be unreasonably withheld or delayed), enter into any amendment to any other Project Document or fail to maintain such

other Project Document in full force and effect or fail to perform its obligations under such other Project Document except to the extent such amendment or failure would not reasonably be expected materially and adversely to affect Buyer's ability to perform its obligations under this Agreement, and may not, without the consent of Seller (which may be withheld in its sole discretion), enter into any amendment to, or modification, replacement, or waiver of, the Consolidated Edison Contract or the Niagara Mohawk Contract if the effect thereof would be to change the amount or the method of computing the Tier I Formula Price or the Tier II Formula Price.

(e) *Governmental Approvals; Qualifying Facility.* Obtain and maintain in full force and effect all Governmental Approvals necessary for its execution, delivery, and performance of this Agreement and for the operation of the Facility, and use all reasonable efforts to cause the Facility at all times from its first operation to be a Qualifying Facility.

(f) *Title; No Merger.* Subject to the provisions of Section 10.2, (i) maintain good and marketable title to all assets and properties comprising a part of the Facility, including fee simple title to the site on which the Facility is located (or a valid leasehold interest therein), and all easements and other interests acquired for use in connection with the Facility, in each case free and clear of all liens, claims, and encumbrances of any nature whatsoever, except those in favor of the Facility Lenders in connection with the Senior Obligations or Seller as contemplated hereby and those that would not reasonably be expected to have a material and adverse effect on Buyer's ability to construct, own, finance, and operate the Facility and to perform its obligations under this Agreement; (ii) use all reasonable efforts to obtain, prior to Financial Closing, all easements and other interests necessary for the placement of assets associated with the Facility; (iii) not sell, assign, transfer, convey or otherwise dispose of all or a material portion of the assets and properties comprising a part of the Facility; and (iv) not merge with or into or consolidate with any Person, or acquire, by lease, purchase, or otherwise all or substantially all of the assets or stock of any class of, or any partnership or joint venture interest in, any Person.

(g) *Security Interest.* Create, perfect, and preserve (including payment of all associated recording fees and Taxes, provided that Seller shall enter into such agreements, instruments, and documents (including amendments hereto) as Buyer may reasonably request to create, perfect, and preserve such security instruments and liens so long as such agreements, instruments, and documents do not, in Seller's reasonable opinion, materially and adversely affect Seller's rights hereunder) in favor of Seller a security interest and lien on the Facility, Buyer's interest in all Project Documents, and the proceeds of the foregoing, securing Buyer's obligations to pay the balance of the Tracking Account when due as provided herein, free and

clear of any other security interest or lien other than those in favor of the Facility Lenders in connection with the Senior Obligations (and subordinate to such security interests and liens of the Facility Lenders on terms satisfactory to Seller and the Facility Lenders) and those that would not reasonably be expected to have a material and adverse effect on Buyer's ability to construct, own, finance, and operate the Facility and to perform its obligations under this Agreement, all on substantially the same terms and conditions as the security interests and liens in favor of the Facility Lenders in connection with the Senior Obligations (other than with respect to covenants specifically addressed in this Agreement) or as Seller and Buyer otherwise may agree.

(h) *Priority of Payment.* Cause the Buyer's agreements with the Facility Lenders to provide that payments to Seller hereunder (other than pursuant to Sections 4.4, 4.5, and 4.6(a)) will have priority over payments due to the Facility Lenders for the payment of principal and interest, and not agree to subordinate payments to Seller hereunder to any operating or maintenance expenses.

(i) *Indebtedness.* Buyer shall not directly or indirectly create, incur, assume, or otherwise be or become liable with respect to any indebtedness other than (i) indebtedness in respect of the Senior Obligations, (ii) indebtedness in respect of current accounts and other amounts payable in the ordinary course of business, (iii) unsecured indebtedness or indebtedness subject and subordinate (on terms and conditions reasonably satisfactory to Seller) to Buyer's obligations under Section 4.4, provided that such indebtedness is in respect of the acquisition, development, construction, completion, operation, maintenance, repair, replacement, use, expansion, or modification of all or any portion of the Facility or the performance of any of Buyer's obligations under this Agreement, and (iv) indebtedness, the proceeds of which are to be distributed by Buyer to the equity investors in Buyer, provided that such indebtedness has been approved by Seller.

(j) *TCPL Transportation Obligations.* Prior to the date of Financial Closing, Buyer shall not, without Seller's prior written approval, enter into the long-term firm service transportation agreement with TCPL that is contemplated in the Precedent Agreement between Buyer and TCPL.

6.2 *Covenants of Seller.* From the date hereof through the Day commencing on the Termination Date, Seller shall, unless otherwise consented to by Buyer in writing:

(a) *Reports.* Furnish, or cause to be furnished, to Buyer:

(i) *Notice of Events.* Forthwith after Seller shall have obtained knowledge of the occurrence of a Seller Event of Default, written notice

thereof setting forth the details of such Seller Event of Default and the action which Seller proposes to take with respect thereto.

(ii) *Parent Reports.* Copies of each quarterly or annual report sent to the public shareholders generally of Parent and each Form 8-K filed with the Securities and Exchange Commission.

(b) *Existence, Etc.* Cause its representations and warranties in Section 5.2(a) and (e) to remain true and correct at all times.

(c) *Review of Project Documents.* Within 15 days after receipt, notify Buyer of any objections to drafts of Project Documents and amendments thereto delivered by Buyer as provided in Section 6.1(d).

(d) *Governmental Approvals.* Obtain and maintain in full force and effect all Governmental Approvals necessary for its execution, delivery, and performance of this Agreement.

(e) *Financing.* Cooperate in good faith with and provide all reasonable assistance to Buyer in providing information to prospective Facility Lenders in connection with Buyer's negotiation of the Senior Obligations, and cooperate in good faith with Buyer in its efforts to achieve Financial Closing by entering into such agreements, instruments, and documents pursuant to Section 7.2(e) as may reasonably be required to achieve the Financial Closing, provided such agreements, instruments, and documents are reasonably acceptable, in form and substance, to Seller.

ARTICLE VII CONDITIONS

7.1 *Seller's Conditions to Financial Closing.* Seller in its sole discretion may cancel this Agreement without obligation or liability by notice to Buyer if, at the Financial Closing, any or all of the following conditions have not been satisfied:

(a) *Representations, Warranties, and Covenants.* All representations and warranties of Buyer contained in Sections 5.1(a)-(e) shall be true at and as of the Financial Closing if such representations and warranties were made at and as of the Financial Closing, and Buyer shall have performed and satisfied all agreements required by this Agreement to be performed and satisfied by Buyer at or prior to the Financial Closing.

(b) *Title to Facility.* Seller shall have evidence reasonably satisfactory to it that Buyer has good and marketable title to all assets comprising the Facility.

including fee simple title to the site on which the Facility is located (or a valid leasehold therein), and all easements and other interests necessary for the placement of assets associated with the Facility, in each case free and clear of all liens, claims, and encumbrances of any nature whatsoever except those in favor of the Facility Lenders in connection with the Senior Obligations and Seller as contemplated hereby and those that will have no material and adverse effect on Buyer's ability to construct, own, finance, and operate the Facility and to perform its obligations under this Agreement.

(c) *Project Documents.* The Project Documents shall be in full force and effect and shall constitute legal, valid, and binding obligations of the parties thereto, enforceable against such parties in accordance with their respective terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally, and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law). Buyer shall not be in, and shall not have received notice of, the existence of, any material default under any of the Project Documents, nor shall there be existing any event or circumstance which with notice or lapse of time or both would give rise to a material default on the part of Buyer thereunder. Buyer shall have provided Seller with correct and complete copies of all Project Documents, including all amendments thereto, which shall be reasonably satisfactory to Seller.

(d) *Bankruptcy.* No Buyer Event of Default of the type described in Section 8.1(c) or (d) shall have occurred and be continuing.

(e) *No Litigation.* As of the Financial Closing, no suit, action or other proceeding instituted by someone other than Seller shall be pending or threatened before any court or governmental agency seeking to enjoin the performance of the transactions contemplated hereunder or seeking material damages against Seller as a result of the commencement or performance of this Agreement.

If Seller elects not to cancel this Agreement pursuant to this Section 7.1, at the Financial Closing Seller shall deliver to the Facility Lenders a written notice stating that each of the conditions contained in this Section 7.1 has been satisfied or permanently waived by Seller and that Seller permanently waives any right it may have to cancel the Agreement pursuant to this Section 7.1, but without prejudice to any other rights and remedies arising out of this Agreement.

7.2 *Buyer's Conditions to Financial Closing.* Buyer in its sole discretion may cancel this Agreement without obligation or liability by notice to Seller if, at the Financial Closing, any or all of the following conditions have not been satisfied:

(a) *Representations, Warranties, and Covenants.* All representations and warranties of Seller contained in this Agreement shall be true at and as of the Financial Closing as if such representations and warranties were made at and as of the Financial Closing, and Seller shall have performed and satisfied all agreements required by this Agreement to be performed and satisfied by Seller at or prior to the Financial Closing.

(b) *Bankruptcy.* No Seller Event of Default of the type described in Section 8.2(a) shall have occurred and be continuing.

(c) *No Litigation.* As of the Financial Closing, no suit, action or other proceeding initiated by someone other than Buyer shall be pending or threatened before any court or governmental agency seeking to enjoin the performance of the transactions contemplated hereunder or seeking material damages against Buyer as a result of the commencement or performance of this Agreement.

(d) *Parent Guaranty.* Parent shall have delivered a duly executed Guaranty Agreement in the form of Exhibit 7.2(d) or such other form as Buyer, Parent, and the Facility Lenders may approve (the "*Parent Guaranty*").

(e) *Agreement.* Seller shall have delivered a duly executed agreement containing the provisions set forth in Exhibit 7.2(e)(i), or such other provisions as Buyer, Seller, and the Facility Lenders may approve, and Parent shall have delivered a duly executed agreement containing the provisions set forth in Exhibit 7.2(e)(ii) or such other provisions as Buyer, Parent, and the Facility Lenders may approve.

If Buyer elects not to cancel this Agreement pursuant to this Section 7.2, at the Financial Closing Buyer shall deliver to the Seller a written notice stating that each of the conditions contained in this Section 7.2 has been satisfied or permanently waived by Buyer and that Buyer permanently waives any right it may have to cancel the Agreement pursuant to this Section 7.2, but without prejudice to any other rights and remedies arising out of this Agreement.

7.3 Cancellation. Notwithstanding the preceding provisions of this Article VII, Seller in its sole discretion may cancel this Agreement without obligation or liability by notice to Buyer, at any time after March 31, 1993, if the Financial Closing has not yet occurred. If Seller has not elected to cancel this Agreement pursuant to this Section 7.3, at the Financial Closing Seller shall deliver to the Facility Lenders a written notice stating that each of the conditions contained in this Section 7.3 has been satisfied or permanently waived by Seller and that Seller permanently waives any right it may have to cancel the Agreement pursuant to this Section 7.3, but without prejudice to any other rights and remedies arising out of this Agreement.

**ARTICLE VIII
REMEDIES**

8.1 *Buyer Events of Default.* If one or more of the following conditions or events (each a "*Buyer Event of Default*") occurs and is continuing:

(a) Buyer fails to pay any amounts due Seller hereunder when due (it being understood that for purposes of this Section 8.1, any amount in dispute in good faith in accordance with Section 4.2(b) is not due herein until such dispute is resolved in accordance with Section 4.2(b));

(b) Buyer ceases to own all or any substantial part of the Facility, unless Seller consents to the new owner, which consent shall not be withheld unreasonably (it being agreed that Seller shall be deemed to have withheld such consent reasonably if such was done on account of the financial condition, operating experience, or history of environmental or regulatory compliance and inquiries of the Person that is the proposed owner of all or any portion of the Facility or securities of Buyer; provided, however, that such reasons shall not constitute the only grounds upon which Seller may withhold consent reasonably);

(c) Buyer generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or shall voluntarily commence any case or proceeding or file any petition under any bankruptcy, insolvency, or similar law seeking dissolution, liquidation, or reorganization or the appointment of a receiver, trustee, custodian, or liquidator for itself or a substantial portion of its property, assets, or business, or to effect a plan or other arrangement with its creditors, or shall file any answer admitting the jurisdiction of the court and the material allegations of any involuntary petition filed against it in any bankruptcy, insolvency, or similar case or proceeding or is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, or shall consent to, or acquiesce in the appointment of, a receiver, trustee, custodian, or liquidator for itself or a substantial portion of its property, assets, or business, or corporate action is taken by Buyer for the purpose of effectuating any of the foregoing; and, in any such circumstance, the Person exercising control over the assets of the Buyer shall fail to affirm this Agreement within a reasonable period of time and shall fail to provide evidence reasonably satisfactory to Seller that the Buyer can reasonably be expected to perform its obligations when and as they become due under this Agreement;

(d) involuntary proceedings or any involuntary petition shall be commenced or filed against Buyer under any bankruptcy, insolvency, or similar law seeking the dissolution, liquidation, or reorganization of Buyer, or the appointment of

a receiver, trustee, custodian, or liquidator for Buyer, or of a substantial part of the property, assets, or business of Buyer, or any writ, judgment, warrant of attachment, execution, or similar process is issued or levied against a substantial part of the property, assets, or business of Buyer and, in any such circumstance, (i) such involuntary bankruptcy or similar proceedings are not stayed or dismissed within 120 days or (ii) the Person exercising control over the assets of the Buyer shall fail to affirm this Agreement within a reasonable period of time and shall fail to provide evidence reasonably satisfactory to Seller that the Buyer can reasonably be expected to perform its obligations when and as they become due under this Agreement;

(e) any representation or warranty of Buyer hereunder was untrue in any material respect when made and, at the time of discovery thereof, the failure of such representation or warranty to be true in such material respect would reasonably be expected to have a material and adverse effect on the ability of the Buyer to perform its obligations under this Agreement; or

(f) Buyer fails to perform in any material respect any of its material obligations under this Agreement or any other agreement with Seller for the purchase and sale of gas for the Facility,

then Seller, in its sole discretion, may:

(i) in the case of a Buyer Event of Default under Section 8.1(a) in an amount in excess of \$150,000, (A) suspend in whole or in part its obligations to Schedule gas hereunder effective as of a date specified in a notice to Buyer (which date shall be no earlier than the 10th day following the date of such notice) until such time as such amount, together with interest thereon as provided in Section 4.2(a), is paid and, if such amount is not paid by such date and Seller so requests in such notice (unless otherwise agreed), Buyer shall have provided to Seller an irrevocable letter of credit in form and substance reasonably satisfactory to Seller providing for draws if Buyer fails to make payments for gas hereunder, issued by a financial institution reasonably acceptable to Seller, and in an amount equal to the sum of the amounts estimated to be payable on account of gas sold hereunder for the first three full Months immediately following such notice, such estimate to be calculated by taking the volumes of gas delivered hereunder for the corresponding Months one year earlier and multiplying them by the Contract Price for such following Months; and before the first Day of each Month following the first full Month following such notice, Buyer shall cause the amount of such letter of credit to be increased (and may cause it to be decreased) based on recalculation of the amounts in the immediately preceding sentence for the next three full Months; Buyer shall continue to cause such letter of credit or replacements therefor to remain in effect through the first anniversary of the first date after such notice on which no Buyer Event of Default exists; and if thereafter Buyer fails to make

any payment due Seller when due, Seller may draw on such letter of credit up to the amount not paid (plus accrued interest, if any), such amount to be applied to reduce Buyer's obligation to Seller hereunder; provided, however, that in lieu of any suspension and provision of any letter of credit Seller shall consider in good faith (but shall not be obligated to accept) an escrow arrangement in conjunction with the Facility Lenders and the purchasers under the Power Contracts providing for the payment of fuel-related revenues under the Power Contracts to a third-party escrow agent, which in turn shall make the payments due hereunder directly to Seller and free and clear of any interests of any third parties, including, without limitation, the Facility Lenders and their representatives, trustees, or agents; and (B) at any time on or after the 30th day following delivery of a notice from Seller to Buyer requesting the cure of such Buyer Event of Default unless such amount, together with interest thereon as provided in Section 4.2(a), is paid, designate a Termination Date in a notice to Buyer, which date shall be no earlier than the 10th day following the date of such notice; and

(ii) in the case of any Buyer Event of Default, (A) at any time on or after the 30th day (or if such condition or event cannot reasonably be cured by such 30th day but can reasonably be expected to be cured by the 120th day and Buyer is diligently pursuing such cure, on or after the 120th day) following delivery of a notice from Seller to Buyer requesting the cure of such Buyer Event of Default, unless it has been cured, suspend in whole or in part its obligations to Schedule gas hereunder until such time as such Buyer Event of Default is cured; and (B) at any time on or after the 30th day (or if such condition or event cannot reasonably be cured by such 30th day but can reasonably be expected to be cured by the 120th day and Buyer is diligently pursuing such cure, on or after the 120th day) following delivery of notice from Seller to Buyer requesting the cure of such Buyer Event of Default, unless it has been cured, designate a Termination Date in a notice to Buyer, which date shall be no earlier than the 10th day following the date of such notice.

8.2 *Seller Events of Default.* If one or more of the following conditions or events (each a "*Seller Event of Default*") occurs and is continuing:

(a) Parent or Seller generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or shall voluntarily commence any case or proceeding or file any petition under any bankruptcy, insolvency, or similar law seeking dissolution, liquidation, or reorganization or the appointment of a receiver, trustee, custodian, or liquidator for itself or a substantial portion of its property, assets, or business, or to effect a plan or other arrangement with its creditors, or shall file any answer admitting the jurisdiction of the court and the material allegations of any involuntary petition filed against it in any bankruptcy, insolvency, or similar case or proceeding, or is adjudicated bankrupt, or makes a general assignment for the benefit of creditors or shall consent to, or acquiesce in the

appointment of, a receiver, trustee, custodian, or liquidator for itself or a substantial portion of its property, assets, or business, or corporate action is taken by Parent or Seller for the purpose of effectuating any of the foregoing; or involuntary proceedings or any involuntary petition is commenced or filed against Parent or Seller under any bankruptcy, insolvency, or similar law seeking the dissolution, liquidation, or reorganization of Parent or Seller, or the appointment of a receiver, trustee, custodian, or liquidator for Parent or Seller, or of a substantial part of the property, assets, or business of Parent or Seller, or any writ, judgment, warrant of attachment, execution, or similar process is issued or levied against a substantial part of the property, assets, or business of Parent or Seller; provided, however, that conditions or events of the type described in this Section 8.2(a) with respect to Seller shall not constitute a Seller Event of Default if on or before the 60th day following the occurrence thereof an Affiliate of Seller or Parent assumes Seller's obligations hereunder and Parent reaffirms the applicability of the Parent Guaranty.

(b) any representation or warranty of Seller under this Agreement or Parent under the Parent Guaranty was untrue in any material respect when made and, at the time of discovery thereof, the failure of such representation or warranty to be true in such material respect would reasonably be expected to have a material and adverse effect on the ability of the Seller to perform its obligations under this Agreement or of Parent to perform its obligations under the Parent Guaranty; or

(c) Seller fails to perform in any material respect any of its material obligations under this Agreement or any other agreement with Buyer for the purchase and sale of gas for the Facility, or Parent fails to perform in any material respect any of its material obligations under the Parent Guaranty,

then Buyer, in its sole discretion, may (i) at any time on or after the 30th day (or if such condition or event cannot reasonably be cured by such 30th day but can reasonably be expected to be cured by the 120th day and Seller is diligently pursuing such cure, on or after the 120th day) following delivery of a notice from Buyer to Seller requesting the cure of such Seller Event of Default, unless it has been cured, suspend in whole or in part its obligations to Schedule gas hereunder until such time as such Seller Event of Default is cured; and (ii) at any time on or after the 30th day (or if such condition or event cannot reasonably be cured by such 30th day but can reasonably be expected to be cured by the 120th day and Seller is diligently pursuing such cure, on or after the 120th day) following delivery of a notice from Buyer to Seller requesting the cure of such Seller Event of Default, unless it has been cured, designate a Termination Date in a notice to Seller, which date shall be no earlier than the 10th day following the date of such notice.

8.3 Remedies Cumulative. Subject to the provisions of Section 8.4 and to remedies stated to be sole and exclusive pursuant to Article II, the rights, powers, and

remedies provided in Article VII and this Article VIII are in addition to other rights, powers, or remedies the parties may have at law or in equity.

8.4 *Limitation on Damages.* Notwithstanding any other provision of this Agreement or applicable law, in no event shall any party hereto be liable for indirect, special, consequential, punitive, or exemplary damages for any breach of the provisions hereof.

ARTICLE IX ADDITIONAL AGREEMENTS

9.1 *Suspension for Force Majeure.* If either party hereto is rendered unable, wholly or in part, by Force Majeure to carry out its obligations under this Agreement (except for an accrued obligation to make a payment), it is agreed that upon such party's giving notice and full particulars of such Force Majeure to the other party as soon as reasonably possible, such notice to be confirmed in writing, then the obligations of the party giving such notice, to the extent they are affected by such Force Majeure, from its inception, shall be excused during the continuance of any inability so caused but for no longer period. The party suffering such event of Force Majeure shall use its best efforts to remedy same as soon as possible; provided, however, no provision of this agreement shall be interpreted to require Seller to Schedule for delivery, or Buyer to Schedule for receipt, quantities of gas at points other than the Delivery Points or to deliver or receive on any day, at any of said Delivery Points, a quantity in excess of the Maximum Daily Delivery Point Quantity for such Delivery Point. As used in this Agreement, the expression "*Force Majeure*" means acts of God, strikes, lockouts, or other industrial disturbances, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, arrests and restraints of government, either federal or state, inability of any party hereto to obtain necessary permits due to future rules, orders, laws of governmental authorities (both federal and state), civil disturbances, explosions, sabotage, breakage or accident to machinery or lines of pipe, freezing of lines of pipe, and any other causes whether of the kind herein enumerated or otherwise that were not anticipated at the time of contract, that are not within the reasonable control of the party claiming Force Majeure, and that by the exercise of due diligence such party could not have prevented or is unable to overcome; provided, however, that (i) the failure of Buyer's power markets or of its customers to purchase power (other than as a result of an event of Force Majeure affecting any of Buyer's customers), (ii) the first 96 hours in each Contract Year of unscheduled shutdowns or other outages in the Facility, (iii) outages or shutdowns of the Facility for reasons of routine or scheduled maintenance, (iv) failure of pipelines to provide transportation (other than as a result of an event of Force Majeure affecting any transporter), and (v) inadequate gas supplies on the part of Seller (other than as a result of an event of Force Majeure affecting Seller's suppliers) shall not constitute an event of Force Majeure hereunder. In no event shall any change in the financial condition of Buyer, Seller, or Parent or any change in market conditions affecting

gas or power constitute Force Majeure under this Agreement. Neither Buyer nor Seller shall be liable to the other for any loss or damage arising out of or relating to the occurrence or existence of any event or circumstance which constitutes Force Majeure or the inability of Buyer or Seller to perform any of its obligations under this Agreement to the extent such performance is excused in accordance with this Section 9.1. Any failure by Buyer or Seller to perform any of its obligations under this Agreement shall not constitute a breach or default by Buyer or Seller of any such obligation under this Agreement to the extent such performance is excused in accordance with this Section 9.1.

9.2 *Agents.* Either party, by notice to the other, may designate another Person as its agent for matters related hereto. Until such designation is revoked or changed by a subsequent notice, the party receiving such notice may rely on the actions of the Person so designated as those of the party making such designation.

9.3 *Right of First Refusal.* Until the later of the 3rd anniversary of the Termination Date and the date all amounts due under Section 4.4 are paid, Buyer may enter into a contract providing for supply of gas for use at the Facility with a Person other than Seller only if (a) Buyer has offered Seller, by notice to Seller, the opportunity to supply gas for use at the Facility on the same terms and conditions as are provided in that contract, (b) 30 days have lapsed since that notice, and (c) Seller has not notified Buyer that it accepts that offer. Buyer, however, has no obligation under this Section 9.3 if the Termination Date occurs as provided in Section 8.2.

ARTICLE X MISCELLANEOUS

10.1 *Notices.* All notices under this Agreement shall be in writing and shall be deemed to have been duly given when actually delivered to the other party (by telecopier or other means) or when received by registered or certified mail, postage prepaid, by the receiving party at the following address or such other address as may be specified in writing from time to time by the receiving party by notice to the other in the foregoing manner:

(a) *if to Seller other than with respect to nominations:*

Enron Power Services, Inc.
P. O. Box 1188
Houston, Texas 77251-1188
Attention: Vice President - Marketing
Telecopy: (713) 853-2577

if to Seller with respect to nominations:

Enron Gas Marketing, Inc.
P.O. Box 1188
Houston, Texas 77251-1188
Attention: Operations Manager - Midwest
Telephone: (800) FLOW-GAS
(800) 356-9427
Telecopy: (713) 646-3444

(b) *if to Buyer:*

Sithe/Independence Power Partners, L.P.
335 West First Street
Oswego, New York 13126
Attention: Project Manager
Telecopy: (315) 343-5175

with a copy to:

Sithe Energies U.S.A., Inc.
23rd Floor
135 East 57th Street
New York, New York 10022
Attn: Mr. Bruce Wrobel
Telecopy: (212) 755-7211

10.2 *Binding Effect; Assignment; No Third Party Beneficiary.* Subject to the remaining provisions of this Section 10.2, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may assign any rights or obligations under this Agreement without the prior written consent of the other party or parties; provided, however, that Buyer may pledge or assign its interests hereunder without the consent of Seller to the Facility Lenders as contemplated by Section 6.1(g) and Exhibit 7.2(e)(i) and Seller may assign its rights to receive payments hereunder; and provided further that as long as the Parent Guaranty is in effect and Parent shall have confirmed in writing to Buyer and the Facility Lenders, in a manner and in form and substance reasonably satisfactory to Buyer and the Facility Lenders, the continuing validity and enforceability of the Parent Guaranty, Seller may assign this Agreement and delegate its duties hereunder to any Affiliate thereof (other than Enron Power Corp.) and thereby be relieved of its obligations hereunder. If Buyer does assign its rights under this Agreement, the expression "*Buyer*" as used herein and in the exhibits attached hereto shall be deemed to refer to Buyer's assignee. The parties acknowledge and agree that any assignment by any party of any rights or obligations hereunder shall not in any way release such party from any obligations so assigned. Nothing expressed or implied in this Agreement is intended to confer on any Person other

than Buyer, Seller and their successors and permitted assigns, any rights or obligations under this Agreement.

10.3 *Incidental Expenses; Brokers.* Except as expressly provided otherwise herein, each party hereto shall bear and pay its own expenses of negotiating and consummating the transactions contemplated by this Agreement, and any broker's or other commissions that may be due as a result of any agreement made by the party.

10.4 *Multiple Counterparts.* This Agreement may be executed in multiple counterparts, each of which may be signed by fewer than all parties hereto, but all of which shall be considered one instrument for all purposes.

10.5 *Entire Agreement.* This Agreement and the other documents, if any, to be delivered pursuant hereto constitute the entire agreement between the parties and supersede any prior or contemporaneous written or oral agreement or understanding between the parties with respect to the subject matter of this Agreement. Without limiting the generality of the foregoing, this Agreement amends and restates in its entirety the Base Gas Sales Agreement as originally executed. The execution and delivery of any other documents contemplated to be executed and delivered hereunder shall not supersede or otherwise affect the provisions of this Agreement.

10.6 *Applicable Law.* THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCLUDING CONFLICT-OF-LAWS RULES. EACH OF BUYER AND SELLER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER AGREEMENTS REFERRED TO HEREIN OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

10.7 *Amendment.* No amendment or modification of this Agreement shall be effective unless same is in writing and signed by the parties affected by such amendment or modification.

10.8 *Waiver.* No waiver of any provision of or rights under this Agreement shall be effective unless in writing and signed by the waiving party. No waiver of any specified right or provision shall be construed as a waiver of any other right or provision or as a continuing waiver.

10.9 *Severability.* If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall to the fullest extent permitted by law nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto shall

negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in an acceptable manner so that the transactions contemplated hereby are fulfilled to the extent possible.

10.10 *Governmental Action.* If any federal, state, local, or municipal government or agency thereof asserts jurisdiction over the rates Seller may charge, or the rates Buyer may pay, for gas sales contemplated hereby, resulting in a material modification of the Contract Price herein provided, then at the request of either party Buyer and Seller shall negotiate in good faith to modify the pricing or other provisions hereof to provide each party hereto, to the greatest extent possible, the benefits of its bargain hereunder.

10.11 *Publicity.* Seller and Buyer will cooperate with each other in the development and distribution of all news releases and other public disclosures relating to the transactions contemplated hereby. Neither Seller nor Buyer shall issue or make, or cause to have issued or made, any press release or announcement concerning the transactions contemplated hereby without the advance approval in writing of the form and substance thereof by the other party, unless otherwise required by applicable law.

10.12 *Preparation.* This Agreement was negotiated and prepared by both parties hereto with advice of counsel to the extent deemed necessary by each party, was not prepared by any party to the exclusion of the other, and accordingly, should not be construed against either party by reason of its preparation.

IN WITNESS WHEREOF, the parties have duly executed this Agreement to be effective on the day and year first written above.

SELLER

ENRON POWER SERVICES, INC.

By: 
Name: MARK A. FREVERT
Title: VICE PRESIDENT

SKT

BUYER

SITHE/INDEPENDENCE POWER
PARTNERS, L.P.

BY: SITHE/INDEPENDENCE, INC.,
its General Partner

By: Bruce J. Wood
Name: Bruce J. Wood
Title: Exec. V.P.

EXHIBIT 2.2

DELIVERY POINTS AND QUANTITIES

Delivery Points	Maximum Daily Delivery Point Quantity (MMBtus/Day)	Minimum Interruptible Quantity (MMBtus/Day)
Any of the Points of Receipt as defined in the FTS Agreement entered into March 23, 1992, by and between ANR Pipeline Company and Buyer (T, E, & S Contract Number 054791)	126,008	<i>Southeast leg</i> 41,950 <i>Midcontinent</i> 21,119
Any of the receipt points under the Transportation Agreement to be entered into as provided in the Precedent Agreement for Firm Transportation Service made and entered into March 20, 1992, by and between Panhandle Eastern Pipe Line Company and Buyer	37,883	18,942
The Empire Delivery Point	28,400	0

EXHIBIT 4.2

PAYMENT INSTRUCTIONS

If to Seller:

Destination: NationsBank of Texas, N.A.
Houston, Texas
ABA Routing #111000025

For Credit To: Enron Power Services, Inc.
Account #4140329363

Confirmation of Transfer: Enron Gas Marketing, Inc.
Credit and Collections
(713) 853-5667

If to Buyer:

Destination: Banque Nationale de Paris
San Francisco Agency
ABA #121027234
Favor BNP Los Angeles

For Credit To: Sithe Energies
FBO: Sithe/Independence Power Partners, L.P.

Confirmation of Transfer: Sandra J. Manilla
Treasurer S/E
(212) 755-7600

EXHIBIT 4.6

TRANSPORTATION COSTS
(\$/MMBtu)

Year	ANR	GLGT	TCPL	EMP	NIMO
1995	.430	.150	.150	.250	.12
1996	.439	.153	.153	.255	.13
1997	.447	.156	.156	.260	.13
1998	.456	.159	.159	.265	.13
1999	.465	.162	.162	.271	.14
2000	.475	.166	.166	.276	.14
2001	.484	.169	.169	.282	.14
2002	.494	.172	.172	.287	.14
2003	.504	.176	.176	.293	.15
2004	.514	.179	.179	.299	.15
2005	.524	.183	.183	.305	.15
2006	.535	.186	.186	.312	.16
2007	.545	.190	.190	.317	.16
2008	.556	.194	.194	.323	.16
2009	.567	.198	.198	.330	.16
2010	.578	.202	.202	.337	.17
2011	.590	.206	.206	.344	.17
2012	.602	.210	.210	.351	.18
2013	.614	.214	.214	.358	.18
2014	.626	.218	.218	.365	.18
2015	.639	.222	.222	.372	.19
Fuel and Shrinkage	4.5%	1.5%	1.5%	.0%	0.5%

ANR - ANR Pipeline Company

GLGT - Great Lakes Gas Transmission Limited Partnership

TCPL - TransCanada Pipelines Limited

EMP - Empire State Pipeline

NIMO - Niagara Mohawk Power Corporation

EXHIBIT 7.2(d)

GUARANTY AGREEMENT

This Base Guaranty Agreement (this "*Guaranty*"), dated as of _____, 199_, is made and entered into by Enron Corp., a Delaware corporation ("*Enron*"), to and for the benefit of Sithe/Independence Power Partners, L.P., a Delaware limited partnership ("*Buyer*"), and its successors and permitted assigns.

WITNESSETH:

WHEREAS, Buyer and Enron Power Services, Inc., a Delaware corporation ("*Power Services*"), have entered into an Amended and Restated Base Gas Sales Agreement dated as of October 26, 1992, a copy of which is attached hereto as Exhibit A (such Gas Sales Agreement, as the same may from time to time be modified, amended, or supplemented by the parties thereto, referred to herein as the "*Gas Sales Agreement*");

WHEREAS, Buyer in its sole discretion may cancel the Gas Sales Agreement by notice to Power Services if, among other things, at the Financial Closing (as defined in the Gas Sales Agreement), Enron has not duly executed and delivered this Guaranty;

WHEREAS, Power Services is an indirect, wholly owned subsidiary of Enron, and Enron will derive substantial benefit from the performance by Buyer of its obligations under the Gas Sales Agreement; and

WHEREAS, Enron is willing to enter into this Guaranty:

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Enron hereby covenants and agrees as follows:

1. *Guaranty*. Subject to the terms hereof, Enron hereby irrevocably, absolutely, and unconditionally guarantees to Buyer and its successors and permitted assigns the due, punctual, and full payment of each and every obligation of Power Services under the Gas Sales Agreement (each such obligation hereinafter referred to, individually, as a "*Guaranteed Obligation*" and, collectively, as the "*Guaranteed Obligations*") and agrees that, if for any reason whatsoever Power Services shall fail or be unable duly, punctually, and fully to pay any such Guaranteed Obligation, Enron shall forthwith, upon demand as provided in Section 4 hereof, perform or pay such Guaranteed Obligation, or cause such

Guaranteed Obligation to be paid, without regard to any exercise or nonexercise by Buyer, its successors or permitted assigns of any right, power or privilege under or in respect of the Gas Sales Agreement or the Guaranteed Obligations. This Guaranty shall be direct, immediate, and primary and shall be a guarantee of payment and not of collection, and is not conditioned or contingent upon any attempt to collect from Power Services or upon any other event, contingency, or circumstances whatsoever, except as expressly provided otherwise herein.

2. *Obligations Unconditional.* Enron covenants to and agrees with Buyer and its successors and permitted assigns that, to the fullest extent permitted by law, its obligations under this Guaranty are irrevocable, absolute, and unconditional, shall remain in full force and effect, and shall not be impaired or affected by, or be subject to, any reduction, termination, or other impairment by set-off, deduction, counterclaim, recoupment, interruption, or otherwise, and Enron shall have no right to terminate this Guaranty or to be released, relieved, or discharged, in whole or in part, from its payment obligations referred to in this Guaranty for any reason whatsoever (other than the payment in full of the Guaranteed Obligations), including (a) any amendment, supplement, or modification to, waiver of, consent to, or departure from, or failure to exercise any right, remedy, power, or privilege under or in respect of, the Gas Sales Agreement, the Guaranteed Obligations, or any other agreement or instrument relating thereto, (b) any insolvency, bankruptcy, reorganization, dissolution, or liquidation of, or any similar occurrence with respect to, or cessation of existence of, or change of ownership of Power Services, or any rejection of any of the Guaranteed Obligations in connection with any Proceeding (as defined in Section 3 below) or any disallowance of all or any portion of any claim by Buyer, its successors or permitted assigns in connection with any Proceeding, (c) any lack of genuineness, legality, validity, regularity, enforceability, or value of the Gas Sales Agreement, any of the Guaranteed Obligations, or any other agreement or instrument relating thereto, (d) the failure to create, preserve, validate, perfect, or protect any security interest granted to, or in favor of, any person, (e) any substitution, modification, exchange, release, settlement, or compromise of any security or collateral for or guarantee of any of the Guaranteed Obligations, or failure to apply such security or collateral or failure to enforce such guarantee, or (f) any other event or circumstance whatsoever that might otherwise constitute a legal or equitable discharge of a surety or guarantor (other than the payment in full of the Guaranteed Obligations), it being the intent of Enron that its obligations under this Guaranty shall be irrevocable, unconditional, and absolute under any and all circumstances, except as expressly provided herein. This Guaranty and the obligations of Enron hereunder shall continue to be effective or be automatically reinstated, as the case may be, if at any time any payment by or on behalf of Power Services is rescinded or must otherwise be restored by Buyer, its successors or permitted assigns for any reason, including, but not limited to, as a result of any Proceeding with respect to Power Services or any other person, as though such payment had not been made.

3. *Interest.* The Guaranteed Obligations shall include, without limitation, interest accruing as part of the Guaranteed Obligations by the terms thereof following the commencement by or against Power Services of any case or proceeding under any law relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution, or composition or adjustment of debt (hereinafter, a "Proceeding"), whether or not allowed as a claim in any such Proceeding.

4. *Demand.* If Power Services shall fail or be unable duly, punctually, and fully to pay any Guaranteed Obligation, Buyer, its successors or permitted assigns may at any time prior to the full payment of such Guaranteed Obligation deliver notice of such failure or inability of Power Services to pay to Enron in writing, which notice shall reasonably and briefly specify the nature of such failure or inability to pay, as the case may be and, in the case of a failure or inability to pay, the amount thereof (each such written notice hereinafter a "Demand"). Enron shall, upon receipt of a Demand, forthwith pay such Guaranteed Obligation, or cause such Guaranteed Obligation to be paid in full. Promptly on request, Enron shall reimburse Buyer, its successors and permitted assigns for all costs and expenses (including reasonable attorneys' fees) incurred in enforcing Buyer's, its successors' or permitted assigns' rights under this Guaranty.

5. *Representations and Warranties.* Enron represents and warrants to Buyer and its successors and permitted assigns that as of the date hereof:

(a) it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, it has the corporate power and authority to execute, deliver, and carry out the terms and provisions of this Guaranty, and it is duly qualified and in good standing in the State of Texas;

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

(c) this Guaranty has been duly executed and delivered by Enron and constitutes a valid and legally binding agreement of Enron enforceable against Enron in accordance with its terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law);

(d) the execution, delivery, and performance of this Guaranty have been duly authorized by all necessary corporate action and do not require any other corporate actions or proceedings or any stockholder approval or consent of any trustee or holder of any indebtedness of Enron;

(e) the execution, delivery, and performance of this Guaranty and compliance by Enron with the terms hereof (i) will not violate any governmental approval or law applicable to it or any of its property, (ii) will not violate any provision of its certificate of incorporation, bylaws, or other governing documents, and (iii) will not violate or constitute a default under any agreement or instrument to which it is a party or by which it or any of its property may be bound, or result in the creation or imposition of any lien upon any of its property, which violation, default, or lien would have a material adverse effect on its ability to perform its obligations under this Guaranty;

(f) except as disclosed in Enron's latest Form 10-K and any Form 10-Qs or Form 8-Ks subsequently filed with the Securities and Exchange Commission, there are no actions, suits, investigations, or proceedings against Enron by or before any court, arbitrator, administrative or regulatory agency, or other governmental authority pending, or to its knowledge, threatened against or affecting it, its properties, or its assets that, if adversely determined, would reasonably be expected to have a material and adverse effect on its ability to perform its obligations under this Guaranty; and

(g) it directly or indirectly owns all of the issued and outstanding shares of each class of capital stock of Power Services.

6. *Amendment of Guaranty.* No term or provision of this Guaranty shall be amended, modified, altered, waived, supplemented, or terminated except in a writing signed by Enron and Buyer or Buyer's successors and permitted assigns.

7. *Waivers.* To the fullest extent permitted by law, and except for the Demand required pursuant to Section 4 hereof, Enron hereby waives (a) all set-offs, counterclaims, presentments, demands for performance, notices of nonperformance, protests, notice of any of the matters referred to in Section 2, notices of protests, notices of dishonor, notice of any waivers or indulgences or extensions, and notices of every kind that may be required to be given by any statute or rule of law and notice of acceptance of this Guaranty; (b) diligence, presentment, and demand of payment, filing of claims with a court in connection with any Proceeding, protest, or notice with respect to the Guaranteed Obligations and all demands whatsoever; and (c) any requirement that any action or proceeding be brought against Power Services or any other person, or any requirement that any person exhaust any right, power, or remedy or proceed against any other person, prior to any action against Enron under the terms hereof. No delay on the part of Buyer, its successors or permitted assigns in the exercise of, or failure to exercise, any right or remedy shall operate as a waiver thereof, a waiver of any other rights or remedies, or a release of Enron from any obligations hereunder, and no single or partial exercise by

Buyer, its successors or permitted assigns of any right or remedy shall preclude any further exercise thereof or the exercise of any other right or remedy.

8. **Waiver of Subrogation.** Enron hereby agrees that it will not exercise, and hereby irrevocably, absolutely, and unconditionally waives, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payments made by it hereunder until all Guaranteed Obligations then outstanding have been fully paid and performed.

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

To Buyer:

Sithe/Independence Power Partners, L.P.
335 West First Street
Oswego, New York 13126
Attention: Project Manager
Telecopy: (315) 343-5175

with a copy to:

Sithe Energies U.S.A., Inc.
23rd Floor
135 East 57th Street
New York, New York 10022
Attn: Mr. Bruce Wrobel
Telecopy: (212) 755-7211

To Enron:

Enron Corp.
1400 Smith Street
Houston, Texas 77002
Attn: Vice President and Secretary
Telecopy: (713) 853-3920

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by

telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

10. *Assignment.* Enron shall have no right, power, or authority to delegate, assign, or transfer all or any of its obligations hereunder. Buyer may assign all or any of its rights hereunder to any assignee of its rights under the Gas Sales Agreement as permitted thereby with the prior written consent of Enron, which consent shall not be unreasonably withheld or delayed; provided, however, that Buyer may pledge or assign its interest hereunder without the consent of Enron to the Facility Lenders (as defined in the Gas Sales Agreement) in connection with any assignment of the Gas Sales Agreement to the Facility Lenders as contemplated by Exhibit 7.2(e)(i) to the Gas Sales Agreement. In connection with any such assignment to any Facility Lender (as defined in the Gas Sales Agreement), Enron agrees to execute and deliver and to furnish to any such Facility Lender (or its agent or representative) the agreement contemplated by Section 7.2(e) and the opinion of counsel contemplated by Section 7.2(g) of the Gas Sales Agreement.

11. *Miscellaneous.* THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCLUDING CONFLICT-OF-LAWS RULES. EACH OF ENRON AND BUYER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE OTHER AGREEMENTS REFERRED TO HEREIN OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. This Guaranty is a continuing guaranty, shall apply to all Guaranteed Obligations whenever arising, shall be binding upon Enron and its successors and shall inure to the benefit of and be enforceable by Buyer and its successors and permitted assigns. This Guaranty embodies the entire agreement of Enron and Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for the purposes of reference only, and shall not affect the meaning hereof. If any provision of this Guaranty shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Enron has caused this Guaranty to be executed and delivered by its duly authorized officer as of the day and year first above written.

ENRON CORP.

By: _____
Title: _____

ACCEPTED:

SITHE/INDEPENDENCE POWER PARTNERS, L.P.

By: SITHE/INDEPENDENCE, INC.,
its General Partner

By: _____
Title: _____

EXHIBIT 7.2(e)(i)

SELLER'S AGREEMENT WITH FACILITY LENDERS

For as long as principal or interest on the Senior Obligations is outstanding:

1. Seller consents to Buyer's granting of a security interest in Buyer's interest in the Agreement in favor of the Facility Lenders to secure payment of the Senior Obligations, subject to the terms hereof.
2. The Facility Lenders will have the right, but not the obligation, to pay all sums due under the Agreement from Buyer to Seller and perform any other act, duty, or obligation of Buyer thereunder and Seller shall accept any such payment or performance. Without limiting the generality of the foregoing, the Facility Lenders and any designee or assignee thereof shall have the full right and power to enforce directly against Seller all obligations of Seller under the Agreement and otherwise to exercise all remedies thereunder and to make all demands and give all notices and make all requests required or permitted to be made by Buyer under the Agreement.
3. No material amendment, modification, or supplement of the Agreement and no waiver or termination by Buyer of any of its material rights thereunder shall be made or effective without the consent of the Facility Lenders, which consent shall not be withheld unreasonably. Seller will not, without the prior written consent of the Facility Lenders, take any action to (i) except as expressly provided in the Agreement, cancel, suspend, or terminate the Agreement or consent to or accept any cancellation, suspension, or termination thereof, (ii) exercise any of its rights set forth in the Agreement to cancel, suspend, or terminate the Agreement unless Seller shall have delivered to the Facility Lenders written notice specifying the nature of the default giving rise to such right (and, in the case of a payment default, specifying the amount thereof) and permitting Buyer and the Facility Lenders to cure such default by making a payment of the amount in default or by performing or causing to be performed the obligation in default, as the case may be, or (iii) petition, request, or take any other legal or administrative action that seeks, or may reasonably be expected, to rescind, cancel, terminate, or suspend or amend or modify the Agreement, or any part thereof, except pursuant to its rights expressly provided in the Agreement. In furtherance of the foregoing clause (ii), Seller agrees that, notwithstanding anything contained in the Agreement to the contrary, upon the occurrence of a default under the Agreement that cannot by its nature be cured by the payment of money, Seller will not cancel, suspend, or terminate the Agreement if, and for so long as (but in no event later than the 270th day following such default), (x) the Facility Lenders shall be diligently seeking to institute foreclosure proceedings or other substantial remedies, or otherwise to acquire or dispose of Buyer's interest in the Agreement, the Parent Guaranty,

and the Facility, or (y) the Facility Lenders and any designee or assignee (including any purchaser or transferee) shall be diligently seeking to cure such default; provided, however, that if such default is in Buyer's obligations under Section 6.1(g) of the Agreement, then during such parts of the period following the date Seller otherwise could send a notice of a Termination Date as contemplated by Section 8.1(ii) of the Agreement until such default under Section 6.1(g) is cured, (i) the demand charge under Section 4.6(c) shall be calculated solely with respect to clause (i) thereof and (ii) if the Unadjusted Price for any gas sold during all or any part of such period following the date Seller otherwise could send such notice would be less than the Reference Price, then notwithstanding the provisions of Section 4.1 of the Agreement the Unadjusted Price for such gas shall be equal to the Reference Price. In addition, Seller shall, in the event of a suspension contemplated in clause (ii) above, upon cure by the Facility Lenders of any default giving rise to such right prior to termination, resume performance of its obligations under the Agreement.

4. Seller will provide the agent or other representative of the Facility Lenders all notices of default received by Seller under or pursuant to the Agreement and, concurrently with the delivery thereof to Buyer, a copy of all material consents, approvals, notices, elections, and requests (other than routine communications related to Scheduling gas) that Seller delivers to Buyer under the Agreement.

5. A foreclosure of, or other exercise of remedies or sale by the Facility Lenders or their assignee or designee, whether by judicial proceedings, under any power of sale or otherwise, or any conveyance from Buyer to the Facility Lenders or any such assignee or designee, in lieu thereof, shall not require the consent of Seller or constitute a default under the Agreement.

6. In the event that the Facility Lenders or their designee or assignee (i) succeed to Buyer's interest under the Agreement, whether by foreclosure or otherwise, in which case the Facility Lenders or their designee or assignee shall assume liability for all of Buyer's obligations under the Agreement or (ii) enter into a replacement agreement under paragraph 8 hereof, then the Facility Lenders or their designee or assignee shall comply with the provisions of Section 6.1(g) of the Agreement, or the comparable provisions of such replacement agreement, whereupon any payment then due under Section 4.4(c) of the Agreement or comparable provision of such replacement agreement of the balance of the Tracking Account shall no longer be due and payable under the Agreement or such replacement agreement until a due date for such payment occurs thereafter. Upon such succession and assumption or replacement, Buyer shall be relieved of all obligations under the Agreement so assumed.

7. Upon the exercise of remedies by the Facility Lenders, the Facility Lenders may assign their rights and interests and the rights and interests of Buyer under the Agreement to any purchaser or transferee of the Facility, if such purchaser or transferee shall assume all of the obligations of Buyer under the Agreement. Upon such assignment and

assumption, the Facility Lenders and Buyer shall be relieved of all obligations under the Agreement.

8. In the event that the Agreement is cancelled or terminated, or the Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Buyer, and if within 120 days after such cancellation, termination, or rejection, the Facility Lenders or their designee or assignee shall so request and shall certify in writing to Seller that the Facility Lenders or their designee or assignee intend to perform the obligations of Buyer as and to the extent required under the Agreement and shall cure all Buyer Events of Defaults reasonably susceptible of being cured then existing, Seller will execute and deliver to the Facility Lenders or such designee or assignee a new agreement pursuant to which Seller shall agree to perform the obligations contemplated to be performed by it under the original Agreement and that shall be for the balance of the remaining term under the original Agreement before giving effect to such cancellation, termination, or rejection and shall contain the same conditions, agreements, terms, provisions, and limitations as the original Agreement (except for any requirements that have been fulfilled by Buyer prior to such cancellation, termination, or rejection).

9. In the event that the Facility Lenders or their designee or assignee, or any purchaser, transferee, grantee or assignee of the interests of the Facility Lenders or their designee or assignee in the Facility shall assume or be liable under the Agreement or any replacement agreement under paragraph 8 hereof, liability in respect of any and all obligations of any such party under the Agreement or any replacement agreement under paragraph 8 hereof shall be limited solely to such party's interest in the Facility following the assumption of liability under the Agreement or any replacement agreement under paragraph 8 hereof (and any officer, director, employee, shareholder, partner, or agent thereof shall have no liability with respect thereto).

10. Except as expressly permitted by the Agreement, Seller will not be released from any of its obligations under the Agreement pursuant to any assignment or transfer (including by reason of a merger, consolidation, sale of substantially all of its assets or otherwise), and shall not delegate any of its obligations under the Agreement unless the Facility Lenders shall have previously consented in writing to such release or delegation, as the case may be.

11. All payments to be made by Seller to Buyer (if any) under the Agreement shall be made in lawful money of the United States of America in immediately available funds, directly to the Facility Lenders in such manner as the Facility Lenders may from time to time request.

**FIRST AMENDMENT TO
AMENDED AND RESTATED
BASE GAS SALES AGREEMENT**

This FIRST AMENDMENT TO AMENDED AND RESTATED BASE GAS SALES AGREEMENT (this "*Amendment*") is made and entered into as of December 1, 1992, by and between ENRON POWER SERVICES, INC., a Delaware corporation ("*Seller*"), and SITHE/INDEPENDENCE POWER PARTNERS, L.P., a Delaware limited partnership ("*Buyer*").

RECITALS

Buyer and Seller are parties to an Amended and Restated Base Gas Sales Agreement dated as of October 26, 1992 (the "*Agreement*") and now wish to amend certain provisions therein to reflect their original intent.

NOW, THEREFORE, for and in consideration of the premises, the covenants set forth herein, and the benefits to be derived therefrom, the parties hereto agree as follows:

1. Section 4.5 of the Agreement is amended by adding, after the words "other than" at the beginning of the first phrase in parentheses in the second sentence thereof, the phrase "energy pursuant to the Niagara Mohawk Contract and energy or capacity".
2. Section 4.6(c) of the Agreement is amended by adding at the end thereof the following:

As consideration for, and as an inducement to, Seller's having entered into, and having arranged for Parent to enter into, those certain Performance Agreements on Financial Assurances, each dated November 6, 1992, and having arranged for Parent to enter into the related Guarantees, Buyer shall reimburse Seller and Parent, on or before the 15th day following notice from Seller or Parent to Buyer demanding such payment, specifying the amount thereof, and setting forth the factual basis for the demand, for all amounts payable to TCPL under such Guarantees, to the extent that both (i) pursuant to Section 5(b) of the applicable Performance Agreement on Financial Assurances, Buyer (x) indicates to TCPL that the default (as provided in such Section 5(b)) is a direct or indirect result of an occurrence of the circumstances described in Section 5(a) of that agreement or (y) fails to deliver the Shipper's Response in a timely manner; and (ii) the default was, in fact, not a direct or indirect result of the occurrence of the circumstances described in such Section 5(a).

3. Section 8.1(f) of the Agreement is amended by adding, after the words "under this Agreement," the phrase ", the documents evidencing the security interest described in Section 6.1(g)."

4. The Agreement, as amended by this Amendment, is ratified and confirmed by Seller and Buyer.

5. This Amendment may be executed in multiple counterparts, each of which may be signed by fewer than all parties hereto, but all of which shall be considered one instrument for all purposes. This Amendment was negotiated and prepared by both parties hereto with advice of counsel to the extent deemed necessary by each party, was not prepared by any party to the exclusion of the other, and accordingly, should not be construed against either party by reason of its preparation.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of December 1, 1992.

ENRON POWER SERVICES, INC. *just*

By: *Mark A. Prevert*
Name: MARK A. PREVERT
Title: VICE PRESIDENT

SITHE/INDEPENDENCE POWER PARTNERS, L.P.

By: Sithe/Independence, Inc.,
its General Partner

By: *Bruce J. Wibel*
Name: Bruce J. Wibel
Title: Exec. V.P.

EXHIBIT 10.7.3

GUARANTY AGREEMENT

This Base Guaranty Agreement (this "*Guaranty*"), dated as of December 1, 1992, is made and entered into by Enron Corp., a Delaware corporation ("*Enron*"), to and for the benefit of Sithe/Independence Power Partners, L.P., a Delaware limited partnership ("*Buyer*"), and its successors and permitted assigns.

WITNESSETH:

WHEREAS, Buyer and Enron Power Services, Inc., a Delaware corporation ("*Power Services*"), have entered into an Amended and Restated Base Gas Sales Agreement dated as of October 26, 1992, a copy of which is attached hereto as Exhibit A (such Gas Sales Agreement, as the same may from time to time be modified, amended, or supplemented by the parties thereto, referred to herein as the "*Gas Sales Agreement*");

WHEREAS, Buyer in its sole discretion may cancel the Gas Sales Agreement by notice to Power Services if, among other things, at the Financial Closing (as defined in the Gas Sales Agreement), Enron has not duly executed and delivered this Guaranty;

WHEREAS, Power Services is an indirect, wholly owned subsidiary of Enron, and Enron will derive substantial benefit from the performance by Buyer of its obligations under the Gas Sales Agreement; and

WHEREAS, Enron is willing to enter into this Guaranty:

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, Enron hereby covenants and agrees as follows:

1. *Guaranty.* Subject to the terms hereof, Enron hereby irrevocably, absolutely, and unconditionally guarantees to Buyer and its successors and permitted assigns the due, punctual, and full payment of each and every obligation of Power Services under the Gas Sales Agreement (each such obligation hereinafter referred to, individually, as a "*Guaranteed Obligation*" and, collectively, as the "*Guaranteed Obligations*") and agrees that, if for any reason whatsoever Power Services shall fail or be unable duly, punctually, and fully to pay any such Guaranteed Obligation, Enron shall forthwith, upon demand as provided in Section 4 hereof, perform or pay such Guaranteed Obligation, or cause such Guaranteed Obligation to be paid, without regard to any exercise or nonexercise by Buyer, its successors or permitted assigns of any right, power or privilege under or in respect of the Gas Sales Agreement or the Guaranteed Obligations. This Guaranty shall be direct,

immediate, and primary and shall be a guarantee of payment and not of collection, and is not conditioned or contingent upon any attempt to collect from Power Services or upon any other event, contingency, or circumstances whatsoever, except as expressly provided otherwise herein.

2. *Obligations Unconditional.* Enron covenants to and agrees with Buyer and its successors and permitted assigns that, to the fullest extent permitted by law, its obligations under this Guaranty are irrevocable, absolute, and unconditional, shall remain in full force and effect, and shall not be impaired or affected by, or be subject to, any reduction, termination, or other impairment by set-off, deduction, counterclaim, recoupment, interruption, or otherwise, and Enron shall have no right to terminate this Guaranty or to be released, relieved, or discharged, in whole or in part, from its payment obligations referred to in this Guaranty for any reason whatsoever (other than the payment in full of the Guaranteed Obligations), including (a) any amendment, supplement, or modification to, waiver of, consent to, or departure from, or failure to exercise any right, remedy, power, or privilege under or in respect of, the Gas Sales Agreement, the Guaranteed Obligations, or any other agreement or instrument relating thereto, (b) any insolvency, bankruptcy, reorganization, dissolution, or liquidation of, or any similar occurrence with respect to, or cessation of existence of, or change of ownership of Power Services, or any rejection of any of the Guaranteed Obligations in connection with any Proceeding (as defined in Section 3 below) or any disallowance of all or any portion of any claim by Buyer, its successors or permitted assigns in connection with any Proceeding, (c) any lack of genuineness, legality, validity, regularity, enforceability, or value of the Gas Sales Agreement, any of the Guaranteed Obligations, or any other agreement or instrument relating thereto, (d) the failure to create, preserve, validate, perfect, or protect any security interest granted to, or in favor of, any person, (e) any substitution, modification, exchange, release, settlement, or compromise of any security or collateral for or guarantee of any of the Guaranteed Obligations, or failure to apply such security or collateral or failure to enforce such guarantee, or (f) any other event or circumstance whatsoever that might otherwise constitute a legal or equitable discharge of a surety or guarantor (other than the payment in full of the Guaranteed Obligations), it being the intent of Enron that its obligations under this Guaranty shall be irrevocable, unconditional, and absolute under any and all circumstances, except as expressly provided herein. This Guaranty and the obligations of Enron hereunder shall continue to be effective or be automatically reinstated, as the case may be, if at any time any payment by or on behalf of Power Services is rescinded or must otherwise be restored by Buyer, its successors or permitted assigns for any reason, including, but not limited to, as a result of any Proceeding with respect to Power Services or any other person, as though such payment had not been made.

3. *Interest.* The Guaranteed Obligations shall include, without limitation, interest accruing as part of the Guaranteed Obligations by the terms thereof following the commencement by or against Power Services of any case or proceeding under any law

relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution, or composition or adjustment of debt (hereinafter, a "Proceeding"), whether or not allowed as a claim in any such Proceeding.

4. *Demand.* If Power Services shall fail or be unable duly, punctually, and fully to pay any Guaranteed Obligation, Buyer, its successors or permitted assigns may at any time prior to the full payment of such Guaranteed Obligation deliver notice of such failure or inability of Power Services to pay to Enron in writing, which notice shall reasonably and briefly specify the nature of such failure or inability to pay, as the case may be and, in the case of a failure or inability to pay, the amount thereof (each such written notice hereinafter a "Demand"). Enron shall, upon receipt of a Demand, forthwith pay such Guaranteed Obligation, or cause such Guaranteed Obligation to be paid in full. Promptly on request, Enron shall reimburse Buyer, its successors and permitted assigns for all costs and expenses (including reasonable attorneys' fees) incurred in enforcing Buyer's, its successors' or permitted assigns' rights under this Guaranty.

5. *Representations and Warranties.* Enron represents and warrants to Buyer and its successors and permitted assigns that as of the date hereof:

(a) it is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, it has the corporate power and authority to execute, deliver, and carry out the terms and provisions of this Guaranty, and it is duly qualified and in good standing in the State of Texas;

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

(c) this Guaranty has been duly executed and delivered by Enron and constitutes a valid and legally binding agreement of Enron enforceable against Enron in accordance with its terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law);

(d) the execution, delivery, and performance of this Guaranty have been duly authorized by all necessary corporate action and do not require any other corporate actions or proceedings or any stockholder approval or consent of any trustee or holder of any indebtedness of Enron;

(e) the execution, delivery, and performance of this Guaranty and compliance by Enron with the terms hereof (f) will not violate any governmental

approval or law applicable to it or any of its property, (ii) will not violate any provision of its certificate of incorporation, bylaws, or other governing documents, and (iii) will not violate or constitute a default under any agreement or instrument to which it is a party or by which it or any of its property may be bound, or result in the creation or imposition of any lien upon any of its property, which violation, default, or lien would have a material adverse effect on its ability to perform its obligations under this Guaranty;

(f) except as disclosed in Enron's latest Form 10-K and any Form 10-Qs or Form 8-Ks subsequently filed with the Securities and Exchange Commission, there are no actions, suits, investigations, or proceedings against Enron by or before any court, arbitrator, administrative or regulatory agency, or other governmental authority pending, or to its knowledge, threatened against or affecting it, its properties, or its assets that, if adversely determined, would reasonably be expected to have a material and adverse effect on its ability to perform its obligations under this Guaranty; and

(g) it directly or indirectly owns all of the issued and outstanding shares of each class of capital stock of Power Services.

6. *Amendment of Guaranty.* No term or provision of this Guaranty shall be amended, modified, altered, waived, supplemented, or terminated except in a writing signed by Enron and Buyer or Buyer's successors and permitted assigns.

7. *Waivers.* To the fullest extent permitted by law, and except for the Demand required pursuant to Section 4 hereof, Enron hereby waives (a) all set-offs, counterclaims, presentments, demands for performance, notices of nonperformance, protests, notice of any of the matters referred to in Section 2, notices of protests, notices of dishonor, notice of any waivers or indulgences or extensions, and notices of every kind that may be required to be given by any statute or rule of law and notice of acceptance of this Guaranty; (b) diligence, presentment, and demand of payment, filing of claims with a court in connection with any Proceeding, protest, or notice with respect to the Guaranteed Obligations and all demands whatsoever; and (c) any requirement that any action or proceeding be brought against Power Services or any other person, or any requirement that any person exhaust any right, power, or remedy or proceed against any other person, prior to any action against Enron under the terms hereof. No delay on the part of Buyer, its successors or permitted assigns in the exercise of, or failure to exercise, any right or remedy shall operate as a waiver thereof, a waiver of any other rights or remedies, or a release of Enron from any obligations hereunder, and no single or partial exercise by Buyer, its successors or permitted assigns of any right or remedy shall preclude any further exercise thereof or the exercise of any other right or remedy.

8. *Waiver of Subrogation.* Enron hereby agrees that it will not exercise, and hereby irrevocably, absolutely, and unconditionally waives any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payments made by it hereunder until all Guaranteed Obligations then outstanding have been fully paid and performed.

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

To Buyer:

Sithe/Independence Power Partners, L.P.
335 West First Street
Oswego, New York 13126
Attention: Project Manager
Telecopy: (315) 343-5175

with a copy to:

Sithe Energies U.S.A., Inc.
23rd Floor
135 East 57th Street
New York, New York 10022
Attn: Mr. Bruce Wrobel
Telecopy: (212) 755-7211

To Enron:

Enron Corp.
1400 Smith Street
Houston, Texas 77002
Attn: Vice President and Secretary
Telecopy: (713) 853-3920

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

10. *Assignment.* Enron shall have no right, power, or authority to delegate, assign, or transfer all or any of its obligations hereunder. Buyer may assign all or any of its rights hereunder to any assignee of its rights under the Gas Sales Agreement as permitted thereby with the prior written consent of Enron, which consent shall not be unreasonably withheld or delayed; provided, however, that Buyer may pledge or assign its interest hereunder without the consent of Enron to the Facility Lenders (as defined in the Gas Sales Agreement) in connection with any assignment of the Gas Sales Agreement to the Facility Lenders as contemplated by Exhibit 7.2(e)(i) to the Gas Sales Agreement. In connection with any such assignment to any Facility Lender (as defined in the Gas Sales Agreement), Enron agrees to execute and deliver and to furnish to any such Facility Lender (or its agent or representative) the agreement contemplated by Section 7.2(e) and the opinion of counsel contemplated by Section 7.2(g) of the Gas Sales Agreement.

11. *Miscellaneous.* THIS GUARANTY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, EXCLUDING CONFLICT-OF-LAWS RULES. EACH OF ENRON AND BUYER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OF THE OTHER AGREEMENTS REFERRED TO HEREIN OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. This Guaranty is a continuing guaranty, shall apply to all Guaranteed Obligations whenever arising, shall be binding upon Enron and its successors and shall inure to the benefit of and be enforceable by Buyer and its successors and permitted assigns. This Guaranty embodies the entire agreement of Enron and Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for the purposes of reference only, and shall not affect the meaning hereof. If any provision of this Guaranty shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Guaranty, and this Guaranty shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, but only to the extent of its invalidity, illegality, or unenforceability. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Enron has caused this Guaranty to be executed and delivered by its duly authorized officer as of the day and year first above written.

ENRON CORP.

By: [Signature] AEP
Title: Senior Vice President, Finance and Treasurer

ACCEPTED:

SITHE/INDEPENDENCE POWER PARTNERS, L.P.

By: SITHE/INDEPENDENCE, INC.,
its General Partner

By: [Signature]
Title: Exec. V.P.

**SECOND AMENDMENT TO
AMENDED AND RESTATED
BASE GAS SALES AGREEMENT**

This SECOND AMENDMENT TO AMENDED AND RESTATED BASE GAS SALES AGREEMENT (this "Amendment") is made and entered into as of August __, 1993, by and between ENRON POWER SERVICES, INC., a Delaware corporation ("Seller"), and SITHE/INDEPENDENCE POWER PARTNERS, L.P., a Delaware limited partnership ("Buyer").

RECITALS

Buyer and Seller are parties to an Amended and Restated Base Gas Sales Agreement dated as of October 26, 1992, as previously amended (the "Agreement," with capitalized terms used in this Amendment and not otherwise defined having the meanings given to them in the Agreement), and now wish to amend certain provisions in the Agreement.

NOW, THEREFORE, for and in consideration of the premises, the covenants set forth herein, and the benefits to be derived therefrom, the parties hereto agree as follows:

1. Section 4.6 of the Agreement is amended and restated in its entirety to read as follows:

4.6 *Other Charges.* (a) *Transportation Savings.* During any Month in which (i) the total transportation cost (including fuel retention) that Buyer actually incurs for transportation of gas purchased by Buyer hereunder during such Month (other than for Chippawa Volumes) is less than (ii) the total transportation cost that Buyer would have incurred had such gas purchased by Buyer hereunder during such Month (other than for Chippawa Volumes) been transported from the Delivery Points to the Facility through the pipelines listed on Exhibit 4.6 at the corresponding rate (including fuel retention) for such pipelines as shown on Exhibit 4.6, Buyer shall pay Seller, in addition to payments for gas sold hereunder and other payments hereunder, an amount equal to 50% of the difference between the amounts in clauses (i) and (ii) of this sentence.

(b) *Transportation Demand Charge.* In addition to all other amounts due hereunder, Buyer shall pay Seller for each Month, and for each calendar month or portion thereof commencing with the later of (i) November 1, 1994, and (ii) the "Date of Commencement" (as defined in the Firm Service Contract to be entered into as provided in the Precedent Agreement dated as of March 31, 1993, between TCPL, Enron Gas Marketing, Inc., and Enron Gas Services Corp.) and continuing through the day before the Commercial Operations Date as if it were a Month, an amount equal to \$626,279 (increased as of each November 1 commencing November 1, 1995, to an amount equal to 102%



of the amount in effect immediately prior to that date) as a demand charge for delivery of Chippawa Volumes, regardless of the actual Chippawa Volumes, if any.

(c) *Price Risk Management Fees.* In addition to all other amounts due hereunder, Buyer shall pay Seller for each Month commencing with the first Month to begin during 2001 and continuing for each Month thereafter through the Scheduling Term, as a price risk management fee for gas Scheduled or to be Scheduled hereunder, an amount equal to the lower of (i) \$1,554,850 for any Month beginning in 2001 through 2005 and thereafter \$1,971,516 and (ii) $\frac{1}{12}$ th of the aggregate Net Cash Flow for that Month and the immediately preceding 5 Months (but calculated, for purposes of this Section 4.6(c) only, without including, in clause (y) of the definition of Net Cash Flow in Section 4.4(b), any amounts payable on account of this Section 4.6(c)). Buyer shall pay the amount due for any Month on or before the January 20 or the July 20 first occurring after the end of that Month, together with interest on the amount due at the Interest Rate from the date on which the last Day of that Month commences to the date paid. If the amount so paid for a Month (excluding interest) is less than the amount in clause (i) above, the balance of the Tracking Account shall be increased as of the last Day of that Month by an amount equal to the amount by which the amount in clause (i) above exceeds the amount so paid. As consideration for, and as an inducement to, Seller's having entered into, and having arranged for Parent to enter into, those certain Performance Agreements on Financial Assurances, each dated November 6, 1992, and having arranged for Parent to enter into the related Guarantees, Buyer shall reimburse Seller and Parent, on or before the 15th day following notice from Seller or Parent to Buyer demanding such payment, specifying the amount thereof, and setting forth the factual basis for the demand, for all amounts payable to TCPL under such Guarantees, to the extent that both (i) pursuant to Section 5(b) of the applicable Performance Agreement on Financial Assurances, Buyer (x) indicates to TCPL that the default (as provided in such Section 5(b)) is a direct or indirect result of an occurrence of the circumstances described in Section 5(a) of that agreement or (y) fails to deliver the Shipper's Response in a timely manner; and (ii) the default was, in fact, not a direct or indirect result of the occurrence of the circumstances described in such Section 5(a).

(d) *Foreign Currency Adjustment.* In addition to all other amounts due hereunder, Buyer shall pay Seller (or if the amount calculated is negative, ~~Seller~~ shall be credited with the absolute value of the negative amount) for each Month (or calendar month) during the calendar years listed on Exhibit 4.6(d), an amount equal to the product of (i) the amount set forth on Exhibit 4.6(d) opposite the calendar year in which that Month (or calendar month) falls, multiplied by (ii) the remainder of (x) \$0.80 minus (y) the U.S. dollar exchange-rate equivalent on one Canadian dollar as reported in *The Wall Street Journal* (or, if no such exchange rate is identified, an index or report selected by Seller

Buyer

in good faith with the consent of Buyer, which consent may not be withheld unreasonably, as representative of such exchange rate) for the trading day immediately preceding the 23rd day of that Month (or calendar month).

2. Exhibit 4.6(d) to this Amendment is added to the Agreement as Exhibit 4.6(d) thereto.

3. Each party, to induce the other party to enter into this Amendment, represents and warrants to the other party that:

(a) *Authorization and Validity.* This Amendment and the transactions contemplated hereby have been duly authorized by such party; and this Amendment has been duly executed and delivered by such party and constitutes the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(b) *No Violation.* The execution and delivery of this Amendment by such party, and the performance by such party of the Agreement as modified by this Amendment, and the transactions contemplated hereby, do not and will not (i) violate or conflict with any provision of such party's partnership agreement, certificate of incorporation, or bylaws, (ii) violate or constitute a default under any agreement or instrument to which such party is a party or by which such party is bound, which violation will have a material and adverse effect on such party's ability to perform its obligations under this Amendment or the Agreement as modified by this Amendment, or (in the case of Buyer) any other agreement for the purchase of fuel to which such party is a party or by which it is bound, (iii) violate any existing statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to such party, which violation will have a material and adverse effect on Buyer's ability to perform its obligations under this Amendment or the Agreement as modified by this Amendment, or (iv) under existing law require any consent, approval or authorization of, or designation, declaration or filing with, any governmental authority on the part of such party, except as such party's performance of the Agreement after the Commercial Operations Date may then require in the ordinary course of business.

(c) *Legal Proceedings.* There are no judicial or administrative actions, proceedings, or to such party's best knowledge investigations (including, without limitation, bankruptcy, reorganization or insolvency actions, proceedings, or investigations) pending or, to the best of such party's knowledge, threatened that (i) challenge the validity of this Amendment, the Agreement as modified by this Amendment, or the transactions contemplated thereby, (ii) seek to restrain or prevent any action taken or to be taken by Buyer in connection with this Amendment or the Agreement as modified by this Amendment, or (iii) except for proceedings relating to the application for


Government Approvals for or related to the Facility or the transactions contemplated hereby that have not yet been obtained, if adversely determined, would have a material adverse effect upon such party's ability to perform its obligations under this Amendment or the Agreement as modified by this Amendment.

4. The Agreement, as amended by this Amendment, is ratified and confirmed by Seller and Buyer.

5. This Amendment may be executed in multiple counterparts, each of which may be signed by fewer than all parties hereto, but all of which shall be considered one instrument for all purposes. This Amendment was negotiated and prepared by both parties hereto with advice of counsel to the extent deemed necessary by each party, was not prepared by any party to the exclusion of the other, and accordingly, should not be construed against either party by reason of its preparation.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of August __, 1993.

ENRON POWER SERVICES, INC.

By: 
Mark A. Frevert
President

SITHE/INDEPENDENCE POWER PARTNERS,
L.P.

By: Sithe/Independence, Inc.,
its General Partner


By: 
Name: Bruce J. Wrobel
Title: Exec. V.P.

EXHIBIT 4.6(d)

FOREIGN CURRENCY ADJUSTMENT AMOUNTS

<u>Calendar Year</u>	<u>Amount for Each Month</u>
1995	755,000
1996	766,000
1997	774,000
1998	782,000
1999	790,000
2000	798,000
2001	806,000
2002	814,000
2003	822,000
2004	830,000
2005	838,000
2006	846,000
2007	854,000
2008	863,000
2009	872,000
2010	881,000
2011	890,000
2012	899,000
2013	908,000
2014	917,000

**THIRD AMENDMENT TO
AMENDED AND RESTATED
BASE GAS SALES AGREEMENT**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED BASE GAS SALES AGREEMENT (the "Amendment") is made and entered into as of December 31, 1993 by and between ENRON POWER SERVICES, INC., a Delaware corporation ("Seller") and SITHE/INDEPENDENCE POWER PARTNERS, L.P., a Delaware limited partnership ("Buyer").

WITNESSETH:

WHEREAS, Seller and Buyer are parties to the Amended and Restated Base Gas Sales Agreement dated as of October 26, 1992, as previously amended by Amendments dated as of December 1, 1992 and August 26, 1993 (the "Agreement"), under which Seller is to sell and Buyer is to buy gas for use at the Facility (as defined in the Agreement); and

WHEREAS, Seller and Buyer wish to amend the Agreement in part:

NOW, THEREFORE, in consideration of the premises, the covenants herein contained and the benefits to be derived therefrom,, Seller and Buyer hereby agree as follows:

1. Subsection (a) of Section 4.1 of Article IV of the Agreement shall be deleted in its entirety and substituted therefor shall be the following:

"(a) For all Tier I gas during Period 1, the amount specified below under "Unadjusted Price (per MMBtu)" for the calendar year in which the Day on which such gas is Scheduled begins:

<u>Calendar Year</u>	<u>Unadjusted Price (per MMBtu)</u>
1995	\$2.25
1996	\$2.47
1997	\$2.78
1998	\$3.05
1999	\$3.32
2000	\$3.52"

2. This Amendment shall be effective as of the date first written above.

3. Each party, to induce the other party to enter into this Amendment, represents and warrants to the other party that:

(a) *Authorization and Validity.* This Amendment and the transactions contemplated hereby have been duly authorized by such party, and this Amendment has been duly executed and delivered by such party and constitutes the legal, valid, and binding obligations of such party, enforceable against such party in accordance with its terms, subject, however, to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting creditors' rights generally and except as the enforceability thereof may be limited by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

(b) *No Violation.* The execution and delivery of this Amendment by such party, and the performance by such party of the Agreement as modified by this Amendment, and the transactions contemplated hereby, do not and will not (i) violate or conflict with any provision of such party's partnership agreement, certificate of incorporation, or bylaws, (ii) violate or constitute a default under any agreement or instrument to which such party is a party or by which such party is bound, which violation will have a material and adverse effect on such party's ability to perform its obligations under this Amendment or the Agreement as modified by this Amendment, or (in the case of Buyer) any other agreement for the purchase of fuel to which such party is a party or by which it is bound, (iii) violate any existing statute or law or any judgment, decree, order, regulation or rule of any court or governmental authority applicable to such party, which violation will have a material and adverse effect on Buyer's ability to perform its obligations under this Amendment or the Agreement as modified by this Amendment, or (iv) under existing law require any consent, approval or authorization of, or designation, declaration or filing with, any governmental authority on the part of such party, except as such party's performance of the agreement after the Commercial Operations Date may then require in the ordinary course of business.

(c) *Legal Proceedings.* There are no judicial or administrative actions, proceedings, or to such party's knowledge investigations (including, without limitation, bankruptcy, reorganization or insolvency actions, proceedings, or investigations) pending or, to the best of such party's knowledge, threatened that (i) challenge the validity of this Amendment, the Agreement as modified by this Amendment, or the transactions contemplated thereby, (ii) seek to restrain or prevent any action taken or to be taken by Buyer in connection with this Amendment or the Agreement as modified by this

Amendment, or (iii) except for proceedings relating to the application for Government Approvals for or related to the Facility or the transactions contemplated hereby that have not yet been obtained, if adversely determined, would have a material adverse effect upon such party's ability to perform its obligations under this Amendment or the Agreement as modified by this Amendment.

4. The Agreement, as amended by this Amendment, is ratified and confirmed by Seller and Buyer.

5. This Amendment may be executed in multiple counterparts, each of which may be signed by fewer than all parties hereto, but all of which shall be considered one instrument for all purposes. This Amendment was negotiated and prepared by both parties hereto with advice of counsel to the extent deemed necessary by each party, was not prepared by any party to the exclusion of the other, and accordingly, should not be construed against either party by reason of its preparations.

IN WITNESS WHEREOF, the parties hereto have duly executed this amendment in multiple originals as of the date first written above.

SELLER

ENRON POWER SERVICES, INC.

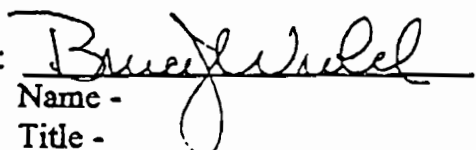
By: 
Mark A. Frevert
President

*Dist by
ATW*

BUYER

SITHE/INDEPENDENCE POWER
PARTNERS, L.P.

By: SITHE/INDEPENDENCE, INC.
its General Partner

By: 
Name -
Title -