

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of RED-Rochester, LLC, RED Investment, LLC, RED Parent, LLC, Ironclad Energy Partners LLC, Ironclad Energy Ventures, LLC and Stonepeak Infrastructure Fund II LP for a Declaratory Ruling Establishing the Wallkill Presumption, or Alternatively, Approval of Upstream Transfer of Ownership Interests of RED-Rochester, LLC, Pursuant to Public Service Law Sections 70, 83 and 89-h, and for Continued Lightened Regulation

Case 16-M-_____

Respectfully submitted,

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This Joint Petition is submitted by RED-Rochester, LLC (“RED-Rochester”), RED Investment, LLC (“RED Investment”), RED Parent, LLC (“RED Parent”), Ironclad Energy Partners LLC (“Ironclad”), Ironclad Energy Ventures, LLC (“IEV”) and Stonepeak Infrastructure Fund II LP (“Stonepeak”) (collectively, “Petitioners” or the “Parties”).

Introduction and Relief Requested

The Petitioners request that the Public Service Commission (“Commission” or “PSC”) issue a declaratory ruling that the proposed upstream transfer of ownership interests in RED-Rochester, effectuated through a sale by RED Parent of 100% of its ownership interests in RED Investment to Ironclad (the “Transaction”), is entitled to the Wallkill Presumption that no further review is required under Public Service Law (“PSL”) Sections 70, 83 and 89-h. In the alternative, in the event that the Wallkill Presumption is not applicable, Petitioners seek an order approving the upstream transfer of ownership interests in RED-Rochester, LLC to Ironclad, pursuant to PSL Sections 70, 83 and 89-h. Petitioners also seek a declaratory ruling, (or alternatively an order), continuing the currently-applicable lightened regulatory regime to RED-Rochester following closing of the

Transaction. In addition, Petitioners respectfully request that the Commission expedite review of the Petition and issue a declaratory ruling in this proceeding at its July 14, 2016 Session finding that the Wallkill Presumption is applicable and no further review is necessary. Alternatively, should the Commission decide to review the Transaction, Petitioners respectfully request that the Commission issue an order approving the Transaction at its August 18, 2016 Session. Petitioners note that all other necessary regulatory approvals or processes are expected to be issued or concluded prior to that date.

DESCRIPTION OF PETITIONERS

A. **Buyer Parties**

1. **Ironclad Energy Partners LLC**

Ironclad Energy Partners LLC is organized under the laws of Delaware and is a joint venture between Stonepeak and IEV. Ironclad was formed for the purpose of acquiring, developing, owning and making additional capital investments in middle market generation facilities similar to RED-Rochester. However, at this time, Ironclad has no other ownership in New York generation, transmission or distribution assets. Thus, when the Transaction is completed, RED-Rochester will be the only entity presently owned by Ironclad that provides regulated utility services, in New York State or elsewhere.

Stonepeak will be providing the majority of the equity in Ironclad. As the majority equity partner, Stonepeak is expected to have governance rights over all major decisions of Ironclad and will own 98% or more of the business. The principals of Ironclad are John Prunkl (CEO) and Christopher Fanella (President and CFO) (“Ironclad Principals”)¹ who will serve as the management team for Ironclad and will handle all day-

¹ As described below, John Prunkl and Christopher Fanella will be owners of IEV, with each holding a 50% ownership interest.

to-day aspects of the business. As explained more fully below, the Ironclad Principals have extensive experience in the industrial energy sector and will own up to 2% of Ironclad.

2. Stonepeak Infrastructure Fund II LP

Stonepeak Infrastructure Fund II LP, a Delaware limited partnership, is a North America-focused private equity fund with headquarters in New York. Stonepeak invests in businesses comprised of hard assets with leading market positions primarily in the following sectors: Energy, Power and Renewables, Transportation, Utilities, Water and Communications. Stonepeak manages approximately \$5.7 billion of capital for its investors. Stonepeak has experience developing, owning and investing in energy generation assets, and more specifically applicable to RED-Rochester's operations, principals at Stonepeak have experience developing, constructing, owning and operating multiple cogeneration facilities in North America.

Neither Stonepeak, nor any of its affiliated entities,² have any current ownership in any New York generating assets or any generating assets in neighboring PJM or ISO New England wholesale markets. Likewise, neither Stonepeak, nor its affiliates, have any current ownership in transmission or distribution facilities in New York, or any influence over inputs (such as fuel) for production of generation supply in New York. Further, neither Stonepeak, nor its affiliates, have any current ownership in or affiliation with retail energy or power marketers. Finally, neither Stonepeak, nor its affiliates, currently own any gas, steam or water utilities in New York.

² For purposes of this Joint Petition, "affiliated entities" or "affiliates" includes all entities wholly-owned or controlled by the relevant entity. With respect to Stonepeak, the "affiliated entities" also includes: Stonepeak Associates II LLC ("Stonepeak Associates"), which is Stonepeak's General Partner; Stonepeak GP Holdings II LP ("Stonepeak Holdings"), which is the sole member of Stonepeak Associates; Stonepeak GP Investors II LLC ("Stonepeak Investors"), which is the General Partner of Stonepeak Holdings; and Stonepeak GP Investors Manager LLC, which is the managing member of Stonepeak Investors.

3. Ironclad Energy Ventures, LLC

Ironclad Energy Ventures, LLC is a Delaware limited liability company, which currently has a single member, John Prunkl. Within 30 days, however, Christopher Fanella will also be a member of IEV. Neither IEV, nor any of its affiliated entities, have any current ownership in any New York generating assets or any generating assets in neighboring PJM or ISO New England wholesale markets. Likewise, neither IEV, nor its affiliates, have any ownership in transmission or distribution facilities in New York, or any influence over inputs (such as fuel) for production of generation supply in New York. Nor does IEV, or its affiliates, have any ownership or affiliation with retail energy or power marketers. Finally, neither IEV, nor its affiliates own any gas, steam or water utilities in New York. IEV will be owned 50% by Mr. Prunkl and 50% by Mr. Fanella.

4. The Ironclad Principals

The Ironclad Principals, John Prunkl and Christopher Fanella, have experience developing, acquiring, financing, building, owning, operating, maintaining, upgrading and managing various utility plants throughout the United States (including New York State) and internationally. Their experience specifically includes providing service to industrial customers.³ The Ironclad Principals have developed/acquired, owned and operated projects totaling more than 11,000 MW of energy service capacity over the course of their careers. Their past projects include providing more than 100 MW of capacity for the United States Navy. Other projects developed and managed by the Ironclad Principals literally span the globe. Most recently, Ironclad Principals—John Prunkl and Christopher Fanella—were the Chief Executive Officer and Chief Commercial Officer, respectively, for Primary Energy Recycling Corporation (“PERC”), which was a publicly traded company

³ A summary of the Ironclad Principals’ utility and applicable experience is attached hereto as Exhibit A.

on the Toronto Stock Exchange until December 2014. PERC was, and still is, the largest pure play on-site industrial generation company in the United States. PERC owns and operates high efficiency onsite industrial combined heat and power (“CHP”), waste heat to power, waste energy recovery facilities and water plants.

B. The Seller Parties

RED-Rochester is organized under the laws of the State of New York and is a wholly-owned subsidiary of RED Investment, a Delaware limited liability company, which is a wholly-owned subsidiary of RED Parent, a Delaware limited liability company. The principals of RED-Rochester, Thomas R. Casten and Sean T. Casten (“RED-Rochester Principals”) founded Recycled Energy Development, LLC in December 2006, now a wholly-owned subsidiary of RED Parent. The RED entities are engaged in developing, constructing and operating recycled energy projects.

RED-Rochester is the only entity presently owned by RED Parent and RED Investment providing regulated utility services in New York State. Several other RED Investment subsidiaries operate CHP facilities in other states. These include, RED-Burlington, LLC, a CHP facility (and FERC “Qualifying Cogeneration Facility”) co-located on the premises of a New Jersey wallboard manufacturer; RED-COI, LLC, a CHP facility co-located on the premises of a California milk producer; and RED-Franklin, LLC, a CHP facility co-located on the premises of a Massachusetts milk producer. These facilities have a combined nameplate generating capacity of 7.5 MW.

BACKGROUND

A. Eastman Business Park

Eastman Business Park (“EBP,” and the utilities business at EBP, the “EBPUB”) is an industrial park owned by Eastman Kodak Company (“Kodak”), which

also includes significant portions of property that are no longer owned by Kodak but still dependent on utility operations at the park.⁴ EBP is located in the City of Rochester and the Town of Greece, both of which are in the County of Monroe. EBP is comprised of real estate and fixtures that cover an area that is roughly four miles long by one mile wide. In order to support Kodak's industrial and manufacturing operations in EBP, Kodak, over time, developed, operated and maintained extensive generation and utility distribution systems, including interconnected natural gas, interconnected electric, steam, chilled water, compressed air, sewer and water utility distribution facilities. EBP is an extensive industrial site with highly developed infrastructure that is attractive to businesses seeking to site or expand industrial or manufacturing operations. From inception until 2013, Kodak operated its EBP utilities business through a separate division of Eastman Kodak Company (the "EBPUB"). As explained below, in 2013 the EBPUB facilities were purchased by and are currently operated by RED-Rochester.

B. The Facilities

The key asset of RED-Rochester is a "tri-generation" power plant that simultaneously generates electricity, steam and refrigeration for use at EBP (the "Power Plant").⁵ The Power Plant consists of four coal-fired boilers, plus four oil-fired backup boilers. The RED-Rochester facilities also include assets used to distribute the products of the Power Plant, and to generate, collect, treat and/or distribute, as applicable, compressed air, demineralized water, natural gas, high-purity water, nitrogen, 9° calcium chloride brine,

⁴ For purposes of this Joint Petition, references to EBP encompass the geographic border of the park as it existed at the time Kodak received its CPCNs, i.e. the "EBP Utility Service Area," as defined below.

⁵ Importantly, the Power Plant is also a certified "Qualifying Cogeneration Facility" as defined in 18 C.F.R. Part 292 of the Federal Energy Regulatory Commission's rules, promulgated under the Public Utility Regulatory Policy Act of 1978 ("PURPA"). Specifically, the facility is a topping-cycle cogeneration facility, generating electricity and steam for production process, building heating and refrigeration needs. *See* FERC Docket No. QF84-467.

chilled water, industrial water, potable water, fire water and industrial wastewater treatment.

RED-Rochester currently supplies utility services to Kodak as well as twelve (12) independent businesses in the EBP that are RED-Rochester's direct utility customers (the "Customers").⁶ These Customers are projected to consume approximately forty (40) percent of RED-Rochester's utility services in 2016. The remainder of RED-Rochester's 2016 sales are to Kodak, also as a direct RED-Rochester customer. Kodak's utility usage includes utilities used by its approximately 57 Tenants (as defined below). As of December 2015, there were approximately 6,500 employees on site at EBP, including those of the Customers, Kodak and the Tenants.

Importantly, the RED-Rochester services are not all regulated services. The non-regulated utility services include: Compressed Air; Demineralized Water; High Purity Water; Nitrogen, 9° F Calcium Chloride Brine; Chilled Water and Waste Water Treatment. The only utility services falling within the Commission's jurisdiction are electricity, natural gas, steam, untreated industrial water, fire water and potable water service.

The RED-Rochester utility facilities include and consist of property (real and personal), easements and other real property interests necessary to conduct the utility business providing regulated and non-regulated utility services throughout EBP. The utility assets include: 1400 psig coal-fired steam boilers (one pulverized coal boiler and two operable cyclone coal boilers); 260 psig oil-fired steam boilers and all associated equipment; steam turbine generators; switchgear; metering; control and excitation system; steam

⁶ The remainder of the independent businesses in the park are businesses that rent space from Kodak or the other building owners ("Building Owners") within EBP. RED-Rochester bills Kodak and the Building Owners for utility services and the tenants pay their respective landlord through their own private arrangements. There are approximately sixty such customers ("Tenants").

distribution headers; electrical power distribution; water intake/treatment plant and auxiliary equipment; emission control equipment; fuel handling equipment; ash handling system; condensate recovery systems; steam-driven chillers; steam-driven air compressors; a waste water treatment facility; interconnected natural gas, electric, steam and water utility distribution facilities; and other facilities for the operation of the regulated and non-regulated utility services at EBP. The electric generating facilities have a nameplate capacity of 114 MW, with a net export/import capacity of 53 MW at the point where the generating facilities interconnect to the electricity transmission grid.

The Power Plant is currently managed and operated by RED-Rochester employees. Approximately 120 on-site RED-Rochester employees are involved in the management and operation of the utility facilities.

C. Kodak's Prior Proceedings Before the Commission

In 2004, the Commission issued an order granting Certificates of Public Convenience and Necessity ("CPCNs") authorizing Kodak to furnish retail gas, electric, and steam service within EBP ("*2004 Kodak Order*"). The scope of the CPCNs was the then-existing boundaries or "Geographic Border" of EBP in 2004, which encompasses the footprint of its utility territory ("EBP Utility Service Area"). The *2004 Kodak Order* also authorized water service without requiring a CPCN. The Commission granted Kodak incidental and lightened regulatory status exempting it from keeping accounts, records, and books, and from filing annual reports, rate schedules and tariffs for its electric, gas and steam service. These exemptions were subject to consumer protections and other requirements in the lightened regulatory scheme as set forth in the *2004 Kodak Order*. The

Commission also granted Kodak an incidental regulation exemption for gas service based on its limited gas service to fewer than twenty customers.⁷

Pursuant to the terms of the Joint Proposal agreement between Kodak and Rochester Gas and Electric Corporation (“RG&E”), which was adopted by the Commission, the gas and electric CPCNs issued to Kodak were “non-exclusive . . . on the terms described [in the Joint Proposal].” The Joint Proposal included the requirements, adopted in the *2004 Kodak Order*, that: (1) Kodak make its electric and natural gas distribution facilities available to competitive commodity suppliers, including RG&E, on a non-discriminatory basis; (2) Kodak would, if necessary, develop and file rates for delivery service to RG&E or other competitive commodity suppliers; (3) RG&E would have the right, but not the obligation, to provide electric and gas delivery service within the EBP Utility Service Area in the event that Kodak (or its successor) ever failed to perform its obligations under the CPCN with respect to electric and gas delivery service; (4) Kodak would not provide natural gas and/or electric utility service outside of EBP Utility Service Area; (5) Kodak would not provide natural gas and/or electric utility service to residential customers within EBP Utility Service Area; and (6) the Joint Proposal also defined the “Geographic Boundaries” of the EBP Utility Service Area as the boundaries of EBP.⁸

The Commission also determined that Kodak need not obtain a CPCN to operate its water plant, or provide water service to customers within those portions of its service area located in the Town of Greece. However, as to water service in the portion of

⁷ See Case 04-M-0388, *Petition of Eastman Kodak Company to Provide Utility Service in Kodak Park, Located in the City of Rochester and Town of Greece, Monroe County*, Order Granting Certificates of Public Convenience and Necessity and Providing for Lightened and Incidental Regulation (issued Aug. 2, 2004) [hereinafter “*2004 Kodak Order*”].

⁸ See *id.* at 6-7; see also Case 04-M-0388, *Petition of Eastman Kodak Company to Provide Utility Service in Kodak Park, Located in the City of Rochester and Town of Greece, Monroe County*, Joint Proposal of Eastman Kodak Company and Rochester Gas & Electric (filed July 2, 2004) [hereinafter “*2004 Joint Proposal*”], at 1-3.

the service area located in the City of Rochester, Kodak was first required to obtain a franchise from the City of Rochester before offering such water services. Kodak subsequently obtained a water franchise from the City of Rochester covering both potable and industrial water.

D. Kodak's Sale of EBPUB to RED-Rochester

As the scale of Kodak's manufacturing operations at EBP declined, Kodak developed parts of EBP for use by independent businesses. Kodak also divested some of its manufacturing operations to independent business entities and, in doing so, sold or leased facilities and space at EBP through arm's length negotiated agreements. In connection with considering strategic objectives for EBP, Kodak concluded that it would be in the best interests of EBP for the EBPUB to be owned and operated by a third party engaged primarily in the business of providing utility services. On August 31, 2013, Kodak sold the EBPUB assets to RED-Rochester as permitted by the *RED Transaction Order* and *RED CPCN Order* (described below). At that time, twelve (12) independent businesses owned their property within the EBP Utility Service Area (comprising the historic boundaries of EBP) and were projected to consume approximately 36% of the utility services at EBP, with Kodak and its Tenants consuming the remainder.

E. RED-Rochester's PSC Orders

On May 30, 2013, former PSC Chairman Gerry Brown approved the transfer by issuance of a One-Commissioner Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings ("*RED*

Transaction Order)⁹. The *RED Transaction Order* was later confirmed by an Order of the full Commission, which also granted CPCNs to RED-Rochester ("*RED CPCN Order*").¹⁰

In the *RED Transaction Order* and *RED CPCN Order*, the Commission established the scope of RED-Rochester's CPCNs. The terms of those CPCNs were essentially unchanged from the *2004 Kodak Order*, consistent with RED-Rochester's petition requesting the same conditions and lightened-regulation as Kodak. Thus, RED-Rochester's CPCNs for steam, electric and gas comprise the same EBP Utility Service Area (the historic boundaries of EBP) as Kodak.¹¹ RED-Rochester must make its electric and natural gas distribution facilities available to competitive commodity suppliers, including RG&E, on a non-discriminatory basis and must develop and file rates for delivery service to RG&E or other competitive commodity suppliers.¹² As originally issued to Kodak, the CPCNs were also non-exclusive to the extent that RG&E has the right, but not the obligation, to provide electric and gas delivery service within the EBP Utility Service Area in the event that Kodak or its successor (RED-Rochester) ever failed to perform its obligations under the CPCN with respect to electric and gas delivery service.¹³ Finally, the CPCNs as originally issued to

⁹ Case 13-M-0028, *RED-Rochester LLC and Eastman Kodak Company - Petition for Approval to Transfer Regulated Utility Assets at Eastman Kodak Park, Approval to Transfer Certificates of Public Convenience and Necessity, for Continued Lightened and Incidental Regulation, Approval of Financing, and Authorization, to the Extent Necessary, for Submetering*, One-Commissioner Order Approving Transfer Subject to Conditions, Providing for Lightened Ratemaking Regulation, and Making Other Findings (issued May 30, 2013) [hereinafter "*RED Transaction Order*"].

¹⁰ Case 13-M-0028, *RED-Rochester LLC and Eastman Kodak Company - Petition for Approval to Transfer Regulated Utility Assets at Eastman Kodak Park, Approval to Transfer Certificates of Public Convenience and Necessity, for Continued Lightened and Incidental Regulation, Approval of Financing, and Authorization, to the Extent Necessary, for Submetering*, Order Confirming Prior Order and Granting Certificates of Public Convenience and Necessity (issued June 13, 2013) [hereinafter "*RED CPCN Order*"].

¹¹ *Id.* at 4. If it seeks to provide service outside of the park, RED-Rochester must obtain an amendment to the relevant CPCN. *Id.*

¹² *Id.*

¹³ *RED Transaction Order*, *supra* n.9 at 21; 2004 Joint Proposal, *supra* n.8 at 2.

Kodak did not permit the provision of natural gas and/or electric service to residential customers within EBP Utility Service Area.¹⁴

F. MACT Compliance

The most significant issue impacting RED-Rochester's Power Plant is the upcoming deadline for compliance with the federal Environmental Protection Agency's Boiler MACT requirements. In order to comply with Boiler MACT, RED-Rochester needs to convert the facilities from coal to natural gas by installing new steam generating equipment. The project will involve installation of four (4) new high efficiency natural gas boilers and conversion of a pulverized coal boiler (Boiler 44) from coal to natural gas. The new natural gas powered boilers and converted Boiler 44 will provide steam to existing steam turbines to provide power and other utility services to RED-Rochester's customers in the EBP. RED-Rochester will also retire coal-fired Boilers 42 and 43 in Building 321, but may retain oil-fired Boilers 1, 2, 3 and 4 in Building 31 for standby/backup service.¹⁵ In addition to conversion of the Power Plant, RG&E will construct a new natural gas pipeline to serve the RED-Rochester conversions (collectively, the "MACT Upgrades"). The pipeline project is underway but is not expected to be in service until the fourth quarter of 2017. RED-Rochester estimates its total costs to bring the Power Plant facilities into MACT compliance will be approximately \$75 million, not including the approximately \$17 million for the pipeline. (RG&E will build and own the pipeline, but RED-Rochester will pay for the construction).

¹⁴ *RED Transaction Order, supra* n.9 at 6. The *RED CPCN Order* also noted that, "other than competitive gas and electric commodity supply, customers must purchase all their utility service requirements from RED. The CPCNs will not be interpreted as overriding the two contractual arrangements on this point." *RED CPCN Order, supra* n.10 at 5.

¹⁵ The oil-fired boilers could also be retired in the near future, but a date for such retirement has not been determined at this time.

The EPA's original deadline for Boiler MACT compliance was January 31, 2016. In light of the significant scope involved in the MACT Upgrades, RED-Rochester requested an extension of the Boiler MACT compliance date. RED-Rochester was only granted a one-year extension of the Boiler MACT compliance date to January 31, 2017 and is continuing to pursue an additional one-year forbearance of the Boiler MACT compliance date until January 31, 2018.

The continued operation of the RED-Rochester utility plant is critical to the operations at EBP and to the economy of the Rochester area. As such, it is critical that RED-Rochester complete the conversion to ensure timely MACT compliance, lest it face penalties that could disrupt or shut down the services on which businesses at EBP depend. As further described below, Ironclad, RED Investment and RED Parent have executed an agreement wherein Ironclad will provide all capital necessary to effectuate MACT compliance.

Under the Transaction, Ironclad will acquire 100% of the ownership interests in RED Investment and has committed to provide 100% of the required funding for the MACT Upgrades (excluding the pipeline cost)¹⁶ with committed equity capital. No additional commercial and/or other external financing will be required. Closing the Transaction will provide the necessary funding for the MACT Upgrades and will protect the sustainability of EBP, RED-Rochester, the Customers, Kodak and the Tenants, as well as the approximately 6,500 employees at EBP.

¹⁶ RG&E will build and own the pipeline, but RED-Rochester will pay for the construction.

THE TRANSACTION

A. The Membership Interest Purchase Agreement

The Petitioners, through arms-length negotiations, agreed to the terms and conditions of a Membership Interest Purchase Agreement (“MIPA”). The closing of the Transaction is contingent on obtaining approval of the Commission either in the form of a declaratory ruling applying the Wallkill Presumption or an order approving the transfer of ownership interests under PSL §§ 70, 83 and 89-h, without a material increase in the regulatory requirements applicable to RED-Rochester’s operations such that, following closing, the overall economics would not be materially worse than they would be under a standard substantially consistent with the PSC’s *RED Transaction Order* and *RED CPCN Order*.

The MIPA provides for the sale of 100% of RED Parent’s interest in RED Investment to Ironclad.¹⁷ As described above, there is an urgent need to obtain funding necessary for the MACT Upgrades. Following closing of the Transaction, RED-Rochester will have access to the equity funding through Ironclad and its equity investor, Stonepeak. No immediate material changes in the staffing, management, operation or ownership of the utility facilities beyond the Transaction are anticipated at this time. The current RED-Rochester Principals, Thomas Casten and Sean Casten, will provide transitional assistance for a reasonable period of time following closing.

To ensure that the MACT Upgrades stay on schedule, RED Investment and RED-Rochester have an obligation to make scheduled progress payments or capital improvements between execution of the MIPA and closing of the Transaction.

¹⁷ As noted above, in addition to RED-Rochester, Ironclad is acquiring three other entities that operate CHP facilities in other states: RED-Burlington, LLC, RED-COI, LLC and RED-Franklin, LLC.

ARGUMENT

POINT I

THE COMMISSION SHOULD ISSUE A DECLARATORY RULING FINDING THAT IT NEED NOT FURTHER REVIEW THE TRANSACTION

Under PSL §§ 70, 83, and 89-h, the Commission's approval is required before a regulated gas, electric, steam or water corporation may transfer ownership interests in utility facilities. In Case 91-E-0350, *Wallkill Generating Company, L.P., Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company*, the Commission determined that PSL Section 70 applies to transactions involving electric and gas corporations that occur at the parent/holding company (i.e. upstream) level.¹⁸ Similar review is required of upstream transfers in steam corporations¹⁹ and water-works corporations.²⁰

Notwithstanding the Commission's Wallkill Ruling that Section 70 applied to upstream transfers, the Commission subsequently issued an "Order Establishing Regulatory Regime" in the *Wallkill Generating Company, L.P.* proceeding, adopting the so-called "Wallkill Presumption" that the Commission need not apply Section 70 oversight to upstream transfers of ownership interests in wholesale generation facilities unless there is a potential for harm to the interests of captive ratepayers sufficient to overrule the

¹⁸ See Case 91-E-0350, *Wallkill Generating Company, L.P. - Petition for Declaratory Ruling That the Public Service Law is Inapplicable, or that Further Regulation Thereunder is Unnecessary, or in the Alternative That Light-Handed Regulation Be Applied*, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (issued August 21, 1994) [hereinafter "*Wallkill Ruling*"], at 12-13. By its express terms, Public Service Law § 70 applies to gas corporations.

¹⁹ See, e.g. Case 04-E-1364, *Sithe Energies, Inc., et al. - Joint Petition for a Declaratory Ruling Regarding Application of Public Service Law § 70 and § 83 to a Proposed Transfer of Indirect Ownership Interests in Sithe Energies*, Declaratory Ruling on Review of Stock Transfers (issued Jan. 14, 2005) [hereinafter "*2005 Sithe Ruling*"].

²⁰ See, e.g. Case 99-W-1542, *Joint Petition of United Water Resources, Inc. and Lyonnaise American Holding, Inc. for Approval of the Acquisition by Lyonnaise American Holding, Inc. of the Stock of United Water Resources, Inc. It Does Not Already Own*, Order Approving Stock Acquisition (issued July 27, 2000).

presumption.²¹ In addition to electric corporations to which Section 70 is expressly applicable, the Wallkill Presumption has been applied to steam corporations and gas corporations.²² In the *RED Transaction Order*, the Commission made the Wallkill Presumption expressly applicable to all regulated services at EBP including electric, gas, steam and water service, stating that “RED may avail itself of [the] presumption” with respect to PSL Section 70 (gas and electric), 83 (steam) and that transfers under Section 89-h (water) will follow those for Sections 70 and 83, as long as the Wallkill Presumption remains valid.²³

In its review of transactions under the Wallkill Presumption, the Commission first determines whether the structure of the transaction qualifies as “upstream,” i.e., whether it involves “parent entities upstream from the entities owning wholesale generation facilities located in New York.”²⁴ In contrast, the Commission has declined to apply the

²¹ See Case 91-E-0350, *Wallkill Generating Company, L.P. - Petition for Declaratory Ruling That the Public Service Law is Inapplicable, or that Further Regulation Thereunder is Unnecessary, or in the Alternative That Light-Handed Regulation Be Applied*, Order Establishing Regulatory Regime (issued April 11, 1994) [hereinafter “*Wallkill Order*”], at 9-10.

²² See, e.g. 2005 *Sithe Ruling* (steam); 13-G-0394, *Verified Joint Petition of Emkey Energy, LLC, et al., for a Declaratory Ruling Regarding a Transfer of Membership Interests or, in the Alternative, an Approval Pursuant to Section 70*, Declaratory Ruling on Review of Transfer Transaction [hereinafter “*Emkey Energy Ruling*”] (issued Oct. 22, 2013) (gas).

²³ See *RED Transaction Order*, *supra* n.9 at 36-37 (gas, electric & steam), 40 (water); see also 2004 *Kodak Order*, *supra* n.7 at 13, 17 (making Wallkill Presumption available to electric, gas and steam service); see also Case 99-E-0990, *Petition of Oneida County Industrial Development Agency and Griffiss Local Development Corporation for an Original Certificate of Public Convenience and Necessity to Own, Operate and Maintain Existing Electric Plant, to Sell Electricity at Retail and for a Declaratory Ruling that they will be Subject Only to Incidental Regulation*, Order Granting Certificate (issued May 24, 2002), at 10-11.

²⁴ Case 13-E-0476, *Astoria Energy II LLC, et al. - Joint Petition for a Declaratory Ruling Regarding Transfer of Upstream Interests in Astoria Energy II LLC, or in the Alternative, Approval Pursuant to Public Service Law § 70*, Declaratory Ruling on Review of Ownership Interest Transfer Transaction (issued Dec. 23, 2013) [hereinafter “*Astoria Energy II Ruling*”]; accord Case 16-M-0194, *Joint Petition of Dynegy Inc., Sithe/Independence Power Partners, L.P. and Terawatt Holdings, L.P. for a Declaratory Ruling that Public Service Law Sections 70 and 83 Do Not Apply to the Proposed Transaction, or in the Alternative, for Approval of the Proposed Transaction Pursuant to Sections 70 and 83 of the Public Service Law*, Declaratory Ruling on a Transfer Transaction (issued May 23, 2016) [hereinafter “*2016 Dynegy Ruling*”], at 5.

Wallkill Presumption where the transaction involved the transfer of ownership interests in the direct owner of New York generating assets.²⁵

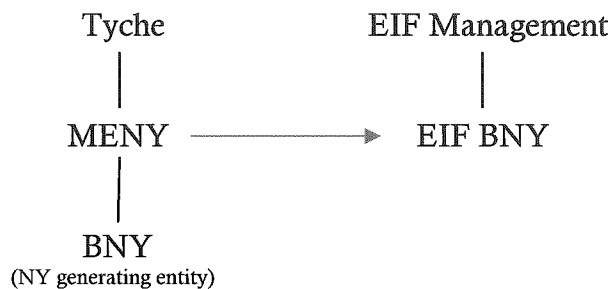
A. The Sale of RED Parent’s Interests in RED Investment is Upstream and Does Not Involve the Direct Owner of the Generation Facilities at EBP

Prior Commission precedent supports a determination that the transfer of interests in RED Investment from RED Parent to Ironclad satisfies the “upstream” requirement of the Wallkill analysis. By way of example, in Case 13-M-0004, *Joint Petition of EIF BNY LLC et al. - Declaratory Ruling on Review of an Acquisition and Stock Transaction* (“*EIF BNY Ruling*”),²⁶ the Commission considered application of the Wallkill Presumption to an upstream transfer of ownership interests in Brooklyn Navy Yard Cogeneration Partners, L.P. (“BNY”), the owner of a New York electric and steam generation facility. BNY was 100% owned, directly and indirectly by Mission Energy New York, Inc. (“MENY”), which was wholly-owned by Tyche Power Partners, LLC (“Tyche”), which was, in turn, owned 6.11% by Olympus Power LLC and 93.89% by Metalmark Capital LLC. The buyer was EIF BNY LLC (“EIF BNY”), an indirect wholly-owned subsidiary of EIF Management LLC, a private equity fund investing in generation facilities. In the transaction, EIF BNY acquired from Tyche 100% of the ownership interests in MENY, the

²⁵ Case 04-E-0789, *Orion Power Holdings, Inc. and Great Lakes Power, Inc. - Joint Petition for Application of Lightened Regulation, Approval of Financing, and a Declaratory Ruling That the Commission Will Not Assert Jurisdiction Over a Transfer, or, in the Alternative, Approval of the Transfer*, Order Approving Transfers and a Financing and Making Other Findings (issued Sept. 22, 2004) [hereinafter “*Great Lakes Power Order*”]; Case 04-E-0302, *Black River Power LLC, et al. - Joint Petition for a Declaratory Ruling Concerning the Transfer of Interests in Black River Power LLC*, Order Approving Transfer (issued May 21, 2004) [hereinafter “*Black River Power Order*”].

²⁶ See Case 13-M-0004, *Joint Petition of EIF BNY LLC, EIF Management LLC, Brooklyn Navy Yard Cogeneration Partners, L.P., Mission Energy New York, Inc., Tyche Power Partners LLC, Olympus Power LLC and Metalmark Capital LLC for a Declaratory Ruling Concerning Application of Public Service Law § 70 and § 83 to a Proposed Transaction*, Declaratory Ruling on Review of an Acquisition and Stock Transaction (issued Feb. 15, 2013) [hereinafter “*EIF BNY Ruling*”]. See also Case 13-M-0004, *Joint Petition of EIF BNY LLC, EIF Management LLC, Brooklyn Navy Yard Cogeneration Partners, L.P., Mission Energy New York, Inc., Tyche Power Partners LLC, Olympus Power LLC and Metalmark Capital LLC for a Declaratory Ruling That Public Service Law Sections 70 and 83 Do Not Apply To A Proposed Transaction, or in the Alternative, for Approval of the Proposed Transaction Pursuant to Sections 70 and 83 of the Public Service Law* (filed Jan. 4, 2013) (Joint Petition detailing structure of proposed transaction).

parent entity of BNY (the generation entity). The transaction is diagrammatically presented below:



(100% transfer of ownership in MENY from Tyche to EIF BNY)

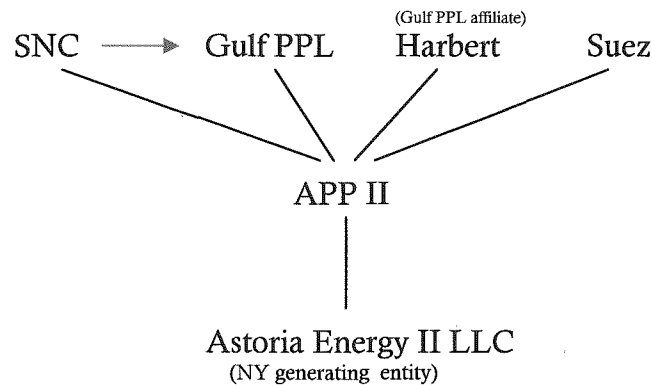
In the *EIF BNY Ruling*, the Commission determined that the transaction in question, (which involved a 100% transfer of ownership at the level of the parent of the New York operating company (BNY)), met the structural requirements of the Wallkill Presumption.²⁷

Likewise, in Case 13-E-0476, *Astoria Energy II, LLC, et al. - Declaratory Ruling on Review of Ownership Interest Transfer Transaction* (“*Astoria Energy II Ruling*”), the Commission reviewed a declaratory ruling petition requesting that the Wallkill Presumption be applied to an upstream transfer of ownership interests in Astoria Energy II LLC, the owner of a New York generating facility.²⁸ Astoria Energy II LLC was a direct, wholly-

²⁷ *EIF BNY Ruling*, *supra* n.26 at 2-6. For additional proceedings involving Wallkill Presumption upstream transfers at the same level as proposed in the Transaction, *see also* Case 09-E-0055, *Constellation Energy Nuclear Group LLC, et al. - Joint Petition for a Declaratory Ruling Regarding the Application of PSL § 70 or, In the Alternative For Approval under § 70, Declaratory Ruling on Review of a Transfer Transaction* (issued Apr. 23, 2009) (upstream transfer of ownership of Constellation Nuclear, direct parent of Nine Mile LLC and Ginna LLC (owners of Nine Mile and Ginna nuclear facilities, respectively), entitled to Wallkill Presumption); Case 03-E-1136, *Sithe Energies, Inc., et al. - Joint Petition for a Declaratory Ruling Regarding Application of Public Service Law § 70, Declaratory Ruling on Review of Ownership Transactions* (issued Oct. 28, 2003) (upstream ownership transfers by direct parents of Sithe Energies, Inc. entitled to Wallkill Presumption); Case 01-E-1900, *Athens Generating Company, L.P. - Petition for a Declaratory Ruling that Section 70 of the Public Service Law Does Not Apply to its Proposed Intracorporate Reorganization or in the Alternative for Approval of the Reorganization, Declaratory Ruling on Review of Corporate Reorganization* (issued Dec. 21, 2001) (restructuring transfer to new affiliated entity of 100% ownership in entities that directly owned the developer entity for generating station, with ultimate parent remaining 100% owner, entitled to Wallkill Presumption) [hereinafter “*Athens Restructuring Ruling*”].

²⁸ *See Astoria Energy II Ruling, supra* n.24 at 1-2.

owned subsidiary of Astoria Project Partners II LLC (“APP II”).²⁹ The ownership interests in APP II were held 20% by SNC-Lavalin Generation, Inc. (“SNC”) and 36% Gulf Pacific Power LLC (“Gulf PPL”), with 14% held by a related entity affiliated with GULP PPL and 30% held by Suez Energy Astoria II LLC (“Suez”). The proposed transaction involved a transfer of 66% of SNC’s 20% interest to Gulf PPL. As a result, SNC proposed to convey effectively 13.2% of the total interests in APP II to Gulf PPL.³⁰ The transaction is diagrammatically presented below:



(13.5% transfer of ownership in APP II from SNC to Gulf PPL)

In the *Astoria Energy II Ruling*, the Commission found that the proposed interest transfer “satisfied the Wallkill [P]resumption,” since the transaction was upstream from the direct owner of the New York generating facility (i.e. upstream from Astoria Energy II, LLC).³¹

In contrast, the Commission has repeatedly refused to apply the Wallkill Presumption where the transaction involved a change in the “direct ownership” of New York generating facilities. For example, in Case 04-E-0789, *Great Lakes Power, Inc., Order*

²⁹ *Id.* at 2.

³⁰ *Id.* at 2-4.

³¹ *Id.* at 4-5.

*Approving Transfers and a Financing and Making Other Findings (“Great Lakes Power Order”)*³² the Commission declined to eschew review of the proposed transaction because it involved the sale of all interests in Erie Boulevard Hydropower, L.P. and Carr Street Generating Station, L.P., both of which were direct owners of New York generating facilities.³³

Similarly, in Case 04-E-0302, *Black River Power LLC, et al., Order Approving Transfer*³⁴ the Commission declined to apply the Wallkill Presumption to a transfer that involved the direct ownership of Black River Power LLC, owner of a coal-fired plant located at Fort Drum. Specifically, related to a bankruptcy filing, the petitioners proposed to transfer ownership of the Fort Drum facility from its then-current owner, BR Power, to a new owner, BR Gen. As a result, the Wallkill Presumption was inapplicable.³⁵

For purposes of the Wallkill Presumption, neither the analysis nor the outcome has been significantly different whether the transaction involved: (1) entirely new upstream controlling ownership (including 100%);³⁶ (2) entirely new upstream ownership

³² *Great Lakes Power Order, supra n.25.*

³³ *Id.* at 14 (stating that “[t]he sale of the entities that are the direct owners of generation plant, however, does not qualify for treatment under the Wallkill [P]resumption, which adheres only to the transfers of interests upstream from the direct owner”) (citing Case 04-E-0302 *Black River Power Order, supra n.25.*)

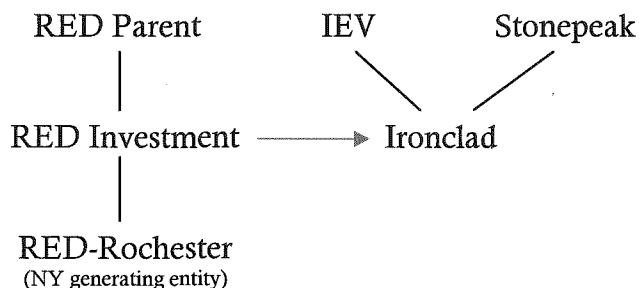
³⁴ *Black River Power Order, supra n.25.*

³⁵ *Id.* at 6 (stating that “[t]he transfer of interests in the direct owner of generation plant, such as BR Power, does not qualify for the Wallkill [P]resumption, which adheres only to transfers upstream from the direct owner”).

³⁶ See *EIF BNY Ruling, supra n.26* (100% stock ownership transfer to unaffiliated new owner (EIF BNY) entitled to Wallkill Presumption); Case 15-E-0462, *Petition of MACH Gen, LLC; New MACH Gen, LLC; Silver Oak Capital, LLC and New Athens Generating Company, LLC for a Declaratory Ruling*, Declaratory Ruling on Review of a Merger Transaction (issued Oct. 20, 2015) [hereinafter “2015 MACH Gen Ruling”] (100% transfer of membership interests to unaffiliated new owner (Talen) entitled to Wallkill Presumption); Case 14-M-0516, *Lakeside Energy LLC, et al. - Joint Petition for Expedited Approval Pursuant to Public Service Law §§ 70 and 81 and Related Approvals*, Declaratory Ruling on Review of a Transfer Transaction (issued Jan. 13, 2015) (100% transfer of ownership interests to unaffiliated new owner (NEP) entitled to Wallkill Presumption); *2005 Sithe Ruling* (100% transfer of ownership interests to unaffiliated new owner (Dynegy) entitled to Wallkill Presumption); Case 00-E-1585, *Sithe Energies, Inc., et al. - Joint Petition for Approval to Transfer the Outstanding Stock of Sithe Energies to Exelon-Fossil*, Order on Review of Stock Transfer and Other Transactions (issued Nov. 16, 2000) (as secondary transaction, option for 100% transfer to unaffiliated new owner was entitled to Wallkill Presumption).

that was not controlling,³⁷ or (3) a “reorganization” of existing ownership interests within the same parent organization.³⁸ So long as the structural aspect of the transfer takes place at least at the level of a “parent entities upstream from the entities owning wholesale electric generation facilities” the Wallkill Presumption may be applied, subject to the “harm” analysis undertaken in the second prong of review (discussed below).

In the case of the proposed transfer of upstream ownership interests in RED-Rochester, the situation is structurally similar to that in the *EIF BNY* and *Astoria Energy II Rulings* in that it involves a transfer of ownership interests at the parent level, one entity above the New York operating entity. The Transaction is diagrammatically represented below:



(100% transfer of ownership in RED Investment from RED Parent to Ironclad)

³⁷ Case 02-E-1184, *Sithe Energies, Inc. and Apollo Energy LLC - Joint Petition for a Declaratory Ruling that the Commission will not Review or Regulate the Proposed Transfer of Sithe Stock from Certain Stockholders to Apollo Energy*, Declaratory Ruling on Review of Stock Transaction (issued Nov. 26, 2002) (transfer of 35.2% of stock to unaffiliated new owner entitled to Wallkill Presumption); Case 00-E-1585, *Sithe Energies, Inc., et al. - Joint Petition for Approval to Transfer the Outstanding Stock of Sithe Energies to Exelon-Fossil*, Order on Review of Stock Transfer and Other Transactions (issued Nov. 16, 2000) (as an initial transaction, transfer of 49.9% of stock to unaffiliated new owner entitled to Wallkill Presumption).

³⁸ *Athens Restructuring Ruling*, *supra* n.27 (restructuring transfer to new affiliated entity of 100% ownership in entities that directly owned the developer entity for generating station, with ultimate parent remaining 100% owner, entitled to Wallkill Presumption); *Astoria Energy II Ruling*, *supra* n.24 (transfer of 13% interest among existing owners entitled to Wallkill Presumption); *Emkey Energy Ruling*, *supra* n.22 (restructuring transaction among owners one level above direct parent of New York lightly regulated gas transmission entities entitled to Wallkill Presumption).

This demonstrates that the Transaction is similar in structure to that which qualified for the Wallkill Presumption in *EIF BNY* and *Astoria Energy II*.³⁹ *EIF BNY* is particularly on point because it involved a 100% transfer of ownership interests to unaffiliated new owners. The proposed transfer is distinguishable from the *Great Lakes Power Order* and the *Black River Power Order* in that it does not involve the direct owner of the Eastman Business Park generating assets, which is RED-Rochester.

B. The Transaction Does Not Enable Ironclad to Exercise Market Power

The second part of the Wallkill Presumption analysis requires the Commission to determine whether “there is the potential for the exercise of market power or other harm to the interests of captive New York ratepayers.”⁴⁰ This typically involves an analysis of potential for the new owners to exercise of horizontal market power in the relevant NYISO markets and vertical market power through delivery and production inputs (such as fuel supply).

In this instance, there is simply no potential for exercise of market power as a result of the Transaction. Ironclad, Stonepeak and their affiliated entities have none of the relevant ownership interests in generation assets, transmission and distribution assets, nor ownership or affiliations with the inputs of generation, or with retail energy or power marketers. Importantly, it has been held that control of 1,129 MW was insufficient to implicate market power concerns in New York, which is well above the mere 114 MW (nameplate capacity) of RED-Rochester’s facilities.⁴¹

Since RED-Rochester is providing *retail* gas, electric, steam and water service to its customers at EBP, the Commission may also consider the potential for exercise of

³⁹ Pre-transaction and post-transaction organizational charts are attached as Exhibits B & C, respectively.

⁴⁰ See, e.g., *EIF BNY Ruling*, *supra* n.26 at 6.

⁴¹ See *2015 MACH Gen Ruling*, *supra* n.36 at 7.

market power in the context of RED-Rochester's competitive services at EBP, or other harm to its customers. In this respect, the analysis should begin with a recognition that the Utility Services Agreements will continue to be obligations of RED-Rochester, and by extension, Ironclad. Said differently, RED-Rochester's existing long-term contracts remain in full force and unchanged.⁴² Further, neither Ironclad, nor RED-Rochester can exercise undue market power with EBP customers because the terms of the existing Utility Services Agreements require rate changes to be approved by the Coordinating Committee of EBP utility service customers.⁴³ Ironclad's ability to modify pricing and terms of the Utility Services Agreements is predicated on the consent of a super-majority of RED-Rochester customers on the Coordinating Committee, exactly as it is today. Moreover, Ironclad does not intend to change the day-to-day operations or staffing at the facility. Finally, in conjunction with the Transaction, the current RED-Rochester Principals, Thomas Casten and Sean Casten, will provide transition services in order to ensure a smooth transition, and the current corporate team will be offered employment contracts. Accordingly, the upstream change of ownership does not create the potential for exercise of market power horizontally, vertically or within the EBP and, in fact, will not directly impact RED-Rochester's day-to-day operations or its customers.

In addition to the market power/harm analysis, the Commission has also weighed the benefits of proposed transactions in the context of its Wallkill analysis.⁴⁴ As

⁴² Notably, in the order that established the Wallkill Presumption, part of the Commission's rationale was that lightly-regulated entities enter into detailed agreements with sophisticated businesses. *See Wallkill Order, supra* n.21 at 9. The same is true of utility customers at EBP. *See 2004 Kodak Order, supra* n.7 at 15.

⁴³ *See* Exhibit D, RED-Rochester Utility Services Agreement, at §§ 4.5 (Coordinating Committee), 14.4 (Amendments); *see also RED Transaction Order, supra* n.9 at Appx. A, p. 10.

⁴⁴ *Compare* Case 08-E-0077, *Entergy Nuclear Fitzpatrick LLC, et al. - Joint Petition for a Declaratory Ruling Regarding a Corporate Reorganization, or, in the Alternative, An Order Approving the Transaction and an Order Approving Debt Financing*, Order Establishing Further Procedures (issued May 23, 2008), at 5-6 (declining to apply Wallkill Presumption where proposed restructuring and new owner would place ratepayers at risk due to new entity's

discussed above, the Transaction will enable RED-Rochester to complete necessary MACT Upgrades, at a projected cost of approximately \$75 million in order to comply with EPA Boiler MACT requirements. This aspect of the Transaction, and its ability to avoid potentially devastating effects of noncompliance on RED-Rochester (as well as its Customers, Kodak and their employees at EBP), also favors application of the Wallkill Presumption so that the Transaction can be consummated and the MACT Upgrades can move forward as quickly as possible.

POINT II

THE COMMISSION SHOULD APPROVE THE UPSTREAM TRANSFER OF OWNERSHIP TO IRONCLAD

As discussed above, PSL §§ 70, 83 and 89-h require the Commission's approval before ownership interests in electric, gas, steam and water-works corporations may be transferred. In conducting such reviews that pertain to lightly-regulated entities operating in competitive markets, the Commission examines any affiliations that might afford opportunities for the exercise of market power, the potential for other actions detrimental to ratepayer interests and ultimately makes a determination as to whether the transaction is in the public interest.⁴⁵ The above Wallkill Presumption analysis of market power clearly establishes that the Transaction will not result in opportunities for abuse of market power or other detriments to ratepayer interests.

encumbrance with substantial debt (\$6.5 Billion)) *with* Case 09-E-0055, *Constellation Energy Nuclear Group LLC, et al. - Joint Petition for a Declaratory Ruling Regarding the Application of PSL § 70 or, In the Alternative, For Approval under § 70, Declaratory Ruling on Review of A Transfer Transaction* (issued April 23, 2009), at 8-9 (applying Wallkill Presumption where transaction would result in significant infusion of capital and would improve overall financial condition).

⁴⁵ *RED Transaction Order, supra* n.9 at 31 (finding transfer to be in public interest); Case 07-M-0363, *Continental Industrial Capital LLC and Coby Housing Corporation - Joint Petition for Approval of the Transfer of Ownership Interests in Certain Steam and Water Plant and for Rulings on Lightened Regulation as a Steam Corporation, Incidental Regulation as a Water-works Corporation, and on Regulation as an Electric Corporation*, Order Granting Certificate of Public Convenience and Necessity, Providing for Lightened and Incidental Regulation, and Approving Transfers (issued June 25, 2007) [hereinafter "2007 CIC Order"], at 10 (finding transfer to be in public interest).

Importantly, the Commission's public interest review of past transfers involving EBP and the similarly situated Rochester Technology Park (also a former Kodak facility) have been guided by broad-based economic development considerations. Where lightly-regulated utilities support economic vitality at business parks, the Commission has stated that it "may act promptly and pragmatically to authorize the provision of utility services that will promote economic development within a business park." Referring to the former Kodak campus that is now Rochester Technology Park, the Commission noted that "[a] diminution of economic activity at the Tech Park could adversely affect the economy of the Rochester area, while prompt consideration of [the petitioner's] plans to provide utility services there will encourage full use of the Tech Park, forestalling adverse economic impacts."⁴⁶ As in its past orders for both former Kodak facilities, the Commission should be guided by the importance that continued and sustainable utility service plays in supporting economic viability of these facilities and the Rochester area economy. These considerations warrant the Commission's "prompt and pragmatic" approval in this proceeding. Doing so will ensure the continued viability of RED-Rochester, its Customers, Kodak and the Tenants, as well as their collective 6,500 employees.

⁴⁶ 2007 CIC Order, *supra* n.45 at 6. See also 2004 Kodak Order, *supra* n.7 at 8; RED Transaction Order, *supra* n.9 *passim*. The policy of pragmatic approvals and lightened regulation supporting economic development objectives at business parks is well-established beyond the former Kodak facilities in Rochester. See also Case 06-E-0287, *Niagara Mohawk Power Corporation, et al. - Joint Petition for Approval of Settlement Service Agreement, Transfer of Certificate of Public Convenience and Necessity and Lightened Regulatory Regime*, Order Approving Economic Development Rate and Providing for Lightened Regulation (issued July 20, 2006), at 8-9 (transfer and lightened regulation); Case 95-M-1133, *Grumman Aerospace Corporation - Application for a Certificate of Public Convenience and Necessity to Operate an Electric and Steam Distribution System and Sell Electricity and Steam On-site*, Opinion and Order Granting Certificate of Public Convenience and Necessity (issued Aug. 9, 1996); Case 95-M-1133, *Grumman Aerospace Corporation - Application for a Certificate of Public Convenience and Necessity to Operate an Electric and Steam Distribution System and Sell Electricity and Steam On-site*, Order Granting in Part Petition for Rehearing (issued Nov. 14, 1996); Case 99-E-0990, *Griffiss Local Development Corporation - Petition of Oneida County Industrial Development Agency and Griffiss Local Development Corporation for an Original Certificate of Public Convenience and Necessity to Own, Operate and Maintain Existing Electric Plant, to Sell Electricity at Retail and for a Declaratory Ruling that they will be Subject Only to Incidental Regulation*, Order Granting Certificate (issued May 24, 2002).

Importantly, Kodak and the Customers at EBP are sophisticated businesses. RED-Rochester will be operating in a competitive marketplace,⁴⁷ where in order to retain the current Customers and to attract new customers, it must offer the utility services at competitive rates and include other favorable terms. The transfer of the upstream interests in RED-Rochester is not a detriment to the Customers or Kodak.

As discussed more fully below, consistent with the public interest, RED-Rochester and Ironclad are committed continuing the long history of providing competitive, safe, adequate and reliable service in order to retain RED-Rochester's existing customers and to attract new businesses to EBP. No changes to the day-to-day operation or employees of RED-Rochester are proposed and the customers are protected by the requirement that rate changes require Coordinating Committee approval. The foregoing demonstrates that approval of the upstream transfer of ownership interests to Ironclad is in the public interest and should be "promptly and pragmatically" approved consistent with the Commission's prior orders.

POINT III

RED-ROCHESTER IS WILLING AND ABLE TO PROVIDE SAFE, ADEQUATE, RELIABLE AND FINANCIALLY VIABLE SERVICE FOLLOWING ACQUISITION BY IRONCLAD

A. Managerial, Technical and Financial Capabilities

As discussed above, the Commission's analysis on transfer applications under PSL Sections 70, 83 and 89-h includes an analysis of the potential for exercise of market power and any potential detriments to ratepayers. To the extent that it may add to the

⁴⁷ Petitioners are not proposing to alter the existing condition that the CPCNs for electric and gas are non-exclusive as to commodity supply, as originally stated in the 2004 Joint Proposal between Kodak and RG&E and adopted in the *2004 Kodak Order*. See *2004 Kodak Order*, *supra* n.7 at 6-7; see also *2004 Joint Proposal*, *supra* n.8 at 2-3.

Commission's review, the following discussion of RED-Rochester's post-closing willingness and ability to provide safe, adequate, reliable and financially viable service following closing is provided as well.

The Ironclad Principals have experience in developing, financing, building, owning, operating, maintaining and managing utility facilities and providing utility services to similar industrial customers, including a combined total of over 11,000 MW of capacity. Many of the projects and energy generation facilities that they have developed, built and operated over the course of their careers continue to operate today. Ironclad's experience will be combined with existing expertise of RED-Rochester and its employees that have a track record of successfully operating the utility facilities.

Ironclad also has the financial strength to carry out the transaction and to continue to operate the utility facilities successfully. In particular, its majority owner and equity investor, Stonepeak, has demonstrated financial wherewithal of approximately \$5.7 billion. Subject to closing, Stonepeak has committed to provide the necessary equity capital to fund the upgrade in order to timely comply with EPA Boiler MACT requirements.

Based on the foregoing, following the upstream transfer, RED-Rochester will have the managerial, technical and financial capabilities to provide adequate and reliable service.

B. Safe and Adequate Service

The regulated utility services provided by RED-Rochester to Kodak and the Customers at EBP will be safe and adequate. As described above, the Ironclad Principals have extensive experience owning, operating, maintaining and managing industrial utility projects similar to that owned by RED-Rochester. In addition to the transition services

provided by the current RED Principals and the continuity of senior management, all staff—including but not limited to environmental health and safety professionals—employed at RED-Rochester will remain in place. In this manner, RED-Rochester will continue the long track record of safe and adequate service at EBP following closing.

C. Financial Viability

As described above, Ironclad has demonstrated that its ownership will enable RED-Rochester's utility operations at EBP to be financially viable. The figures demonstrate that it has the financial resources to complete the Transaction, carry out the MACT Upgrades and support RED-Rochester's ability to operate and maintain the facilities.

POINT IV

OTHER MATTERS RELATED TO THE JOINT PETITION

A. Lightened Regulation

The Transaction will cause no changes to RED-Rochester that should affect the Commission's prior determinations granting lightened regulation in the *RED Transaction Order* and *RED CPCN Order*. In past decisions, the Commission has found that lightly regulated entities operating in competitive markets should continue to be lightly regulated following upstream transfers of their ownership interests.⁴⁸ Thus, Petitioners request the Commission's confirmation that, upon the closing of the Transaction, RED-Rochester will continue to be subject to lightened regulation with the same terms established in the *RED Transaction Order* and *RED CPCN Order* and to the same extent carried forward from the *2004 Kodak Order*.

⁴⁸ See, e.g., *2016 Dynegy Ruling*, *supra* n.24 at 6-7 (confirming continued lightened regulation upon Wallkill Presumption declaratory ruling); *EIF BNY Ruling*, *supra* n.26 at 8 (same); *2015 MACH Gen Ruling*, *supra* n.36 at 8-9 (same); see also *Great Lakes Power Order*, *supra* n.25 at 16-17 (continuing lightened regulation where Wallkill Presumption deemed not applicable).

B. Expedited Review

The Transaction is the culmination of RED-Rochester's extensive efforts to obtain the capital necessary to fund the MACT Upgrades. Failure to consummate the Transaction or further delays in the MACT Upgrades may result in RED-Rochester being subject to disruption of service or shut-down. Accordingly, Petitioners respectfully request that the Commission expedite its review to the maximum extent practicable. Petitioners note that all other necessary regulatory approvals or processes are expected to be issued or concluded prior to the time that the Commission issues its declaratory ruling or order.

CORRESPONDENCE AND COMMUNICATIONS

Correspondence and communications with respect to the Joint Petition should be addressed as follows:

For all Petitioners:

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CONCLUSION

WHEREFORE, Petitioners respectfully request that the Commission review this Joint Petition in an expedited manner and issue a declaratory ruling that the Wallkill Presumption is applicable and that no further Commission review is required under PSL Sections 70, 83 and 89-h. Alternatively, Petitioners request that the Commission approve the Transaction pursuant to PSL Sections 70, 83 and 89-h. Petitioners also request a declaratory ruling (or alternatively, an order) confirming that the lightened regulation of RED-Rochester will continue without change after closing of the Transaction.

Dated: Albany, New York
June 17, 2016

PHILLIPS LYTTLE LLP

By: 

Thomas F. Puchner, Esq.

Attorneys for Joint Petitioners
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RED Parent, LLC, Ironclad Energy Partners LLC,
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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of RED-Rochester, LLC,
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LLC, Ironclad Energy Partners LLC,
Ironclad Energy Ventures, LLC and
Stonepeak Infrastructure Fund II LP for a
Declaratory Ruling Establishing the
Wallkill Presumption, or Alternatively,
Approval of Upstream Transfer of
Ownership Interests of RED-Rochester,
LLC, Pursuant to Public Service Law
Sections 70, 83 and 89-h, and for
Continued Lightened Regulation

Case 16-M-_____

Verification

Sean T. Casten, being duly sworn, deposes and says that I am the President, Chief Executive Officer and authorized representative of RED-Rochester, LLC in the above-entitled proceeding, that I have read the foregoing Joint Petition and know the contents thereof and that the same is true and accurate to the best of my knowledge as to RED-Rochester, LLC.



Sean T. Casten
President & Chief Executive Officer
RED-Rochester, LLC

Sworn to and subscribed before me
this 13th day of June, 2016



Notary Public



STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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Sections 70, 83 and 89-h, and for
Continued Lightened Regulation

Case 16-M-_____

Verification

Sean T. Casten, being duly sworn, deposes and says that I am the President, Chief Executive Officer and authorized representative of RED Investment, LLC in the above-entitled proceeding, that I have read the foregoing Joint Petition and know the contents thereof and that the same is true and accurate to the best of my knowledge as to RED Investment, LLC.



Sean T. Casten
President & Chief Executive Officer
RED Investment, LLC

Sworn to and subscribed before me
this 13th day of June, 2016

Notary Public



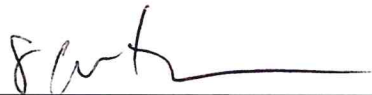
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Case 16-M-_____



Verification

Sean T. Casten, being duly sworn, deposes and says that I am the President, Chief Executive Officer and authorized representative of RED Parent, LLC in the above-entitled proceeding, that I have read the foregoing Joint Petition and know the contents thereof and that the same is true and accurate to the best of my knowledge as to RED Parent, LLC.



Sean T. Casten
President & Chief Executive Officer
RED Parent, LLC

Sworn to and subscribed before me
this 13th day of June, 2016


Notary Public  CRAIG E. BENNETT
OFFICIAL SEAL
Notary Public, State of Illinois
My Commission Expires
September 10, 2019

Doc #01-2954371


STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of RED-Rochester, LLC,
RED Investment, LLC, RED Parent,
LLC, Ironclad Energy Partners LLC,
Ironclad Energy Ventures, LLC and
Stonepeak Infrastructure Fund II LP for a
Declaratory Ruling Establishing the
Wallkill Presumption, or Alternatively,
Approval of Upstream Transfer of
Ownership Interests of RED-Rochester,
LLC, Pursuant to Public Service Law
Sections 70, 83 and 89-h, and for
Continued Lightened Regulation

Case 16-M-_____

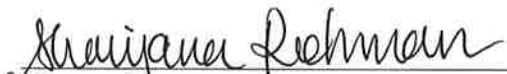
Verification

Luke Taylor, being duly sworn, deposes and says that I am the Managing Director and authorized representative of Ironclad Energy Partners LLC in the above-entitled proceeding, that I have read the foregoing Joint Petition and know the contents thereof and that the same is true and accurate to the best of my knowledge as to Ironclad Energy Partners LLC.



Luke Taylor
Managing Director
Ironclad Energy Partners LLC

Sworn to and subscribed before me
this 14th day of June, 2016



Notary Public

SHARJANA ROHMAN
Notary Public, State of New York
No. 01RO6255101
Qualified in Kings County
Commission Expires Jan. 30, 2020

6/14/16

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Joint Petition of RED-Rochester, LLC,
RED Investment, LLC, RED Parent,
LLC, Ironclad Energy Partners LLC,
Ironclad Energy Ventures, LLC and
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Sections 70, 83 and 89-h, and for
Continued Lightened Regulation

Case 16-M-_____


Verification

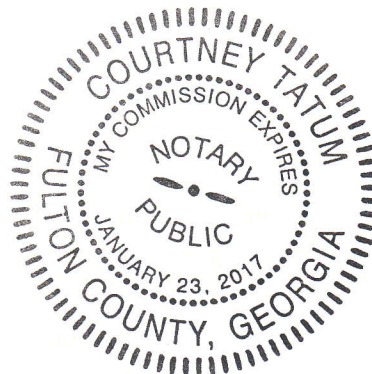
John D. Prunkl, being duly sworn, deposes and says that I am the sole member and authorized representative of Ironclad Energy Ventures, LLC in the above-entitled proceeding, that I have read the foregoing Joint Petition and know the contents thereof and that the same is true and accurate to the best of my knowledge as to Ironclad Energy Ventures, LLC.



John D. Prunkl
Sole Member
Ironclad Energy Ventures, LLC

Sworn to and subscribed before me
this 13 day of June, 2016


Notary Public



**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Joint Petition of RED-Rochester, LLC,
RED Investment, LLC, RED Parent,
LLC, Ironclad Energy Partners LLC,
Ironclad Energy Ventures, LLC and
Stonepeak Infrastructure Fund II LP for a
Declaratory Ruling Establishing the
Wallkill Presumption, or Alternatively,
Approval of Upstream Transfer of
Ownership Interests of RED-Rochester,
LLC, Pursuant to Public Service Law
Sections 70, 83 and 89-h, and for
Continued Lightened Regulation

Case 16-M-_____

Verification

Michael Dorrell, being duly sworn, deposes and says that I am the authorized representative of Stonepeak Infrastructure Fund II LP in the above-entitled proceeding, that I have read the foregoing Joint Petition and know the contents thereof and that the same is true and accurate to the best of my knowledge as to Stonepeak Infrastructure Fund II LP.


STONEPEAK INFRASTRUCTURE FUND II LP

By: STONEPEAK ASSOCIATES II LLC, its General Partner

By: STONEPEAK GP HOLDINGS II LP, its sole member

By: STONEPEAK GP INVESTORS II LLC, its general Partner

By: STONEPEAK GP INVESTORS MANAGER LLC, its managing
member

By: 

Michael Dorrell

Senior Managing Director

Sworn to and subscribed before me

this 14th day of June, 2016


Notary Public

6/14/16
SHARJANA ROHMAN
Notary Public, State of New York
No. 01RO6255101
Qualified in Kings County
Commission Expires Jan. 30, 2020

Exhibit A

Summary of Ironclad Principals' Utility Experience

UTILITY AND APPLICABLE EXPERIENCE

JOHN PRUNKL & CHRISTOPHER FANELLA (“IRONCLAD PRINCIPALS”)

The Ironclad Principals, John Prunkl and Christopher Fanella, have deep experience in acquiring, developing, owning, operating, financing, upgrading and managing various utility plants throughout the United States. This experience came about through various executive roles in prior organizations.

John Prunkl

John Prunkl is the CEO of Ironclad Energy Partners LLC (“Ironclad”). He is currently the sole member of Ironclad Energy Ventures, LLC (“IEV”).¹ Mr. Prunkl is the former President, CEO and Board Member of Primary Energy Recycling Corporation (“PERC”), which was publicly traded on the Toronto Stock Exchange (“TSX”) until December, 2014. PERC was, and still is, the largest pure play on-site industrial generation company in the United States. PERC owns and operates high-efficiency onsite industrial combined heat and power (“CHP”), waste heat to power (“WHP”), waste energy recovery (“WER”) facilities and water plants. Mr. Prunkl has over 25 years of experience of global operating experience in natural gas and coal power generation, natural gas fired CHP, wind energy, waste heat, waste water and byproduct fuel fired generation facilities.

Mr. Prunkl began his career with General Electric Power Systems (“GE”), in Schenectady, NY, in international sales for gas and steam turbines including turnkey power plants. This experience gave Mr. Prunkl a strong management foundation and technical understanding of power plants and thermal systems. While at GE, Mr. Prunkl led or

¹ Mr. Fanella will be a member of IEV within 30 days, at which point Mr. Prunkl and Mr. Fanella will each own 50% of IEV.

Exhibit A to Verified Petition

assisted in closing several complex equipment and turnkey contracts which today generate over 3,000 MW. From GE, Mr. Prunkl became the Vice President of Operations for Illinova Generating's (now Dynegy) global operations, and was a company officer. In this role, Mr. Prunkl was responsible for all engineering, asset management, operations and maintenance, contract management and construction activities of fourteen operating projects and three in construction for a total of over 1,000 MW of net equity ownership and 4,000 MW based upon plant name plate. These facilities were located in both the United States and abroad. After the sale of Illinova to Dynegy, Mr. Prunkl co-founded a demand response company called Metrogen focused on the New York City market, and worked closely with the New York Independent System Operator to develop New York State's first demand response program. The purpose of Metrogen was to deploy New York City's almost 900 MW of unused/underutilized back-up generation as a way to stabilize and support the grid during high load factor hours. Due to the September 11 attack, Metrogen closed, and Mr. Prunkl joined what became Primary Energy LLC.

With the acquisition of Primary Energy LLC in 2003, Mr. Prunkl joined the newly formed Executive Committee of Primary Energy Ventures ("PEV"), the parent company, and became the Executive Vice President of Operations. In this role, Mr. Prunkl was ultimately responsible for the successful operation, project implementation, and capital improvements of fourteen generation facilities, all of which were located and integrated on host sites. These facilities served customers and industries ranging from steel manufacturing, the US Navy, pharmaceutical, university, auto supply and food. In 2005, a subset of this portfolio including all of the inside-the-fence facilities located at the steel mills were taken public on the TSE, forming the company Primary Energy Recycling

Exhibit A to Verified Petition

Corporation ("PERC"). In 2006, the remainder of PEV was sold to EPCOR, a Canadian Utility. Mr. Prunkl became the President of EPCOR USA, overseeing a portfolio of seventeen facilities, generating over 1,100 MW. Mr. Prunkl left EPCOR USA in 2008 to become the President of an energy/waste water technology start-up that was commercializing its first, \$180 million facility.

In 2009, the independent directors of PERC approached Mr. Prunkl and requested that he become CEO of PERC, solely focused on the public company's assets which consisted of five of the inside-the-fence utility assets located at the steel mills with a capacity of 280 MW and 1,800 K pounds an hour of steam. PERC had a short-term debt maturity issue, short-term contracts and operations that had suffered over the prior two to three years in Mr. Prunkl's absence.

After financially recapitalizing the business (in the middle of the financial crisis), Mr. Prunkl was able to extend a significant portion of the existing contracts. Further, Mr. Prunkl led an investment of over \$70 million into three of the facilities, which significantly improved the efficiency and longevity of the facilities, while reducing the overall costs to the industrial customers. In 2014, PERC was taken private and Mr. Prunkl worked with the new owners to bring in a new CEO and ensure a smooth transition.

Overall, Mr. Prunkl has been responsible for utility generation for the past sixteen years in an executive operating or CEO role. He has successfully implemented significant capital improvements to existing facilities, extended and expanded relationships with existing partners and customers, been responsible for the successful development of facilities and helped facilities work through challenging situations.

Exhibit A to Verified Petition

In addition, Mr. Prunkl is co-founder and Chairman of the Heat is Power (“HIP”) Association. HIP is a not-for-profit organization committed to educating decision makers and the public about the characteristics of waste heat to power as a source for emission-free electricity and an economic driver for global competitiveness. HIP promotes the efficient, industrial use of emission-free electricity generated through WHP processes. Further, Mr. Prunkl has been on the Policy Committee for the Midwest Cogeneration Association, helping develop and pursue policies that will help improve energy efficiency, reduce emissions, reduce costs and system losses and promoting smart deployment of decentralized CHP in today’s market.

Christopher Fanella

Christopher Fanella is President and CFO of Ironclad. Within 30 days he will also a member and 50% owner of IEV. Mr. Fanella is the former Chief Commercial Officer and Executive Vice President of Primary Energy Recycling Corporation (“PERC”) and Executive Vice President of Lakeside Energy. Mr. Fanella has fifteen years of experience in the energy and power generation space, specifically in finance, executive and company management, corporate strategy, acquisitions and accounting.

After starting his career in investment banking, Mr. Fanella joined the PEV team in 2001. Beginning as an analyst, Mr. Fanella was rapidly promoted to Vice President of Finance in 2002, where he identified and led the financing of the initial acquisition of Primary Energy. Upon the consummation of the Primary Energy acquisition, Mr. Fanella was appointed to the newly formed PEV Executive Committee, who set the strategy and oversaw the successful growth and operations of PEV. Mr. Fanella led the financing activities between 2003 and 2006 in support of the acquisition of an additional eight

Exhibit A to Verified Petition

generating facilities, two recapitalizations, lease equity acquisitions, and a successful cross border IPO.

While at PEV, Mr. Fanella ensured capital was available for both growth, the successful operations of the company and return of investment to PEV's owners. Ultimately, as Vice President of Finance, Mr. Fanella was responsible for raising over \$850 million in financing activities for transactions ranging in size from \$10 million to \$175 million utilizing public and private equity as well as many different debt markets. Upon the sale of PEV to EPCOR, Mr. Fanella left PEV and become a founding member Lakeside Energy LLC ("Lakeside").

At Lakeside, Mr. Fanella's role grew from Sr. Vice President of Finance, ultimately to Executive Vice President in charge of strategy, financing, acquisitions as well as working collaboratively with his three partners on all other aspects of the business. Mr. Fanella was elected to the Board of Directors of InEntec Chemical LLC ("InEnTec") in 2010. InEnTec was commercializing hazardous waste plasma gasification technology it had developed and had built its first full size gasifier.

Mr. Fanella also successfully led the acquisition of Beaver Falls LLC, and Syracuse LLC, both natural gas fired generating facilities located in upstate New York. This transaction acquired two plants on the verge of shutdown in order to turn them around, keep them operating and make them profitable, an endeavor in which the Lakeside team succeeded. In 2013, Mr. Fanella rejoined Mr. Prunkl at PERC as the Chief Commercial Officer to work with Mr. Prunkl.

Exhibit A to Verified Petition

Utility and Energy Generation Experience

A more fulsome list of energy projects under the Principal's leadership is attached to this summary. Highlights include:

- Being the sole source of steam, hot water and majority of power for some of the largest steel manufacturing sites in North America;
- Rebuilding sixteen boilers literally above a live Coke battery giving off 2,000 degree waste heat;
- Supplying steam and power to pharmaceutical R&D center and headquarters;
- Supplying steam to several key US Navy's west coast operations including supplying steam to some of the largest vessels in the US Nuclear Navy while in port;
- Designing and installing the largest condensing economizer onto a cogeneration facility to drive economic heat rate below 5,000 BTU/kWh;
- Implementing commercial strategies that are lower cost for customers and higher profitability for owners.

Exhibit A to Verified Petition

Applicable Projects Acquired, Developed, Financed and/or Operated under Mr. Prunkl and Mr. Fanella

Owner	Project	Location	MW Capacity	Steam Capacity (mlbs/hr)	Thermal Customer or Electric Offtake	Fuel	Prunkl	Fanella
Primary Energy Recycling Corporation	Portside	Indiana	64	495	US Steel	Natural Gas	x	x
Primary Energy Recycling Corporation	Ironside	Indiana	50	460	Arcelor Mittal	Blast Furnace Gas	x	x
Primary Energy Recycling Corporation	Harbor Coal	Indiana	NA	NA	Arcelor Mittal	NA - Coal Pulverization Facility	x	x
Primary Energy Recycling Corporation	North Lake	Indiana	90	NA	Arcelor Mittal	Blast Furnace Gas	x	x
Primary Energy Recycling Corporation	Cokenergy	Indiana	95	896	Arcelor Mittal	Waste Heat from Industrial Process	x	x
Lakeside Energy Generation	Beaver Falls	New York	108	27	Interface Solutions & Omni Filtra	Natural gas		x
Lakeside Energy Generation	Syracuse	New York	103	NA	N/A	Natural Gas		x
Lakeside Energy Generation	Hazleton	Pennsylvania	158	NA	N/A	Natural Gas		x
Primary Energy Ventures	Roxboro	North Carolina	60	140	Collins and Aikman	Coal, Wood, TDF	x	x
Primary Energy Ventures	Southport	North Carolina	120	220	Archer Daniels Midland	Coal, Wood, TDF	x	x
Primary Energy Ventures	Kenilworth	New Jersey	30	78	Schering Plough	Natural Gas	x	x
Primary Energy Ventures	Greeley	Colorado	79	120	University of Northern Colorado	Natural Gas	x	x
Primary Energy Ventures	Oxnard	California	49	120	Boskovitch Farms	Natural Gas	x	x
Primary Energy Ventures	Naval Training Center	California	25	281	US Navy	Natural Gas	x	x
Primary Energy Ventures	Naval Station	California	47	479	US Navy	Natural Gas	x	x
Primary Energy Ventures	North Island	California	40	440	US Navy	Natural Gas	x	x
Primary Energy Ventures	Lakeside	Indiana	161	NA	US Steel	Blast Furnace Gas	x	x
EPCOR USA	Curtis Palmer	New York	60	NA	Niagara Mohawk	Hydro	x	
EPCOR USA	Manchief	Colorado	300	NA	Public Service of Colorado	Natural Gas	x	
EPCOR USA	Frederickson	Washington	250	NA	Benton, Gray Harbor, Franklin PUD	Natural Gas	x	
EPCOR USA	Castleton Power, LLC	New York	72	NA	NY ISO	Natural Gas	x	
Illinova	Tenaska Frontier	Texas	830	NA	Exelon	Natural Gas	x	
Illinova	Tenaska Cleburne	Texas	260	NA	Brazos Electric	Natural Gas	x	
Illinova	Tenaska Uch	Pakistan	585	NA	Pakistan Water & Power Authority	Med-BTU gas	x	
Illinova	Tenaska Ferndale	Washington	270	NA	Puget Sound Energy	Natural Gas	x	
Illinova	Tenaska Paris	Texas	245	50	Campbell's Soup	Natural Gas	x	
Illinova	Pesa	Costa Rica	20	NA	Instituto Costarricense de Electricidad	Wind	x	
Illinova	Zhuzhuo	China	30	30	China Industrial	Coal	x	
Illinova	Xingchang	China	25	NA	China Utility	Coal	x	
Illinova	Aguaytia	Peru	220	NA	Electroperu	High-BTU gas	x	
Illinova	EEl-Joppa	Illinois	1,000	NA	United States Enrichment Corporation	Coal	x	
Illinova	Pan-Am	Panama	80	NA	ETESA	Heavy Oil	x	
Illinova	Teeside	England	1,875	100	PX/ Wilton Chemical	Natural Gas	x	
Illinova	Frederickson	Washington	250	NA	Bonneville Power	Natural Gas	x	
Illinova	Flores	Colombia	350	NA	Empresa	Natural Gas	x	
Illinova	Dr. Byrd	Jamaica	60	NA	Jamaica Public Service	Heavy Oil	x	
Illinova	Elcosa	Honduras	80	NA	ENEE	Heavy Oil	x	
GE Power Systems	Various	Asia	3,000	NA		Coal & Natural Gas	x	

Exhibit B

Pre-Transaction Organizational Chart

SIMPLIFIED PRE-TRANSACTION ORGANIZATIONAL STRUCTURE

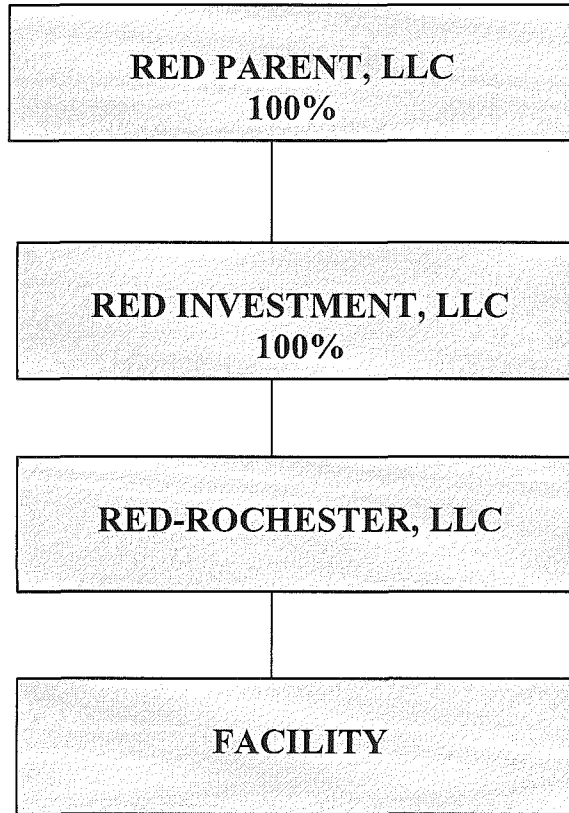


Exhibit C

Post-Transaction Organizational Chart

SIMPLIFIED POST-TRANSACTION ORGANIZATIONAL STRUCTURE

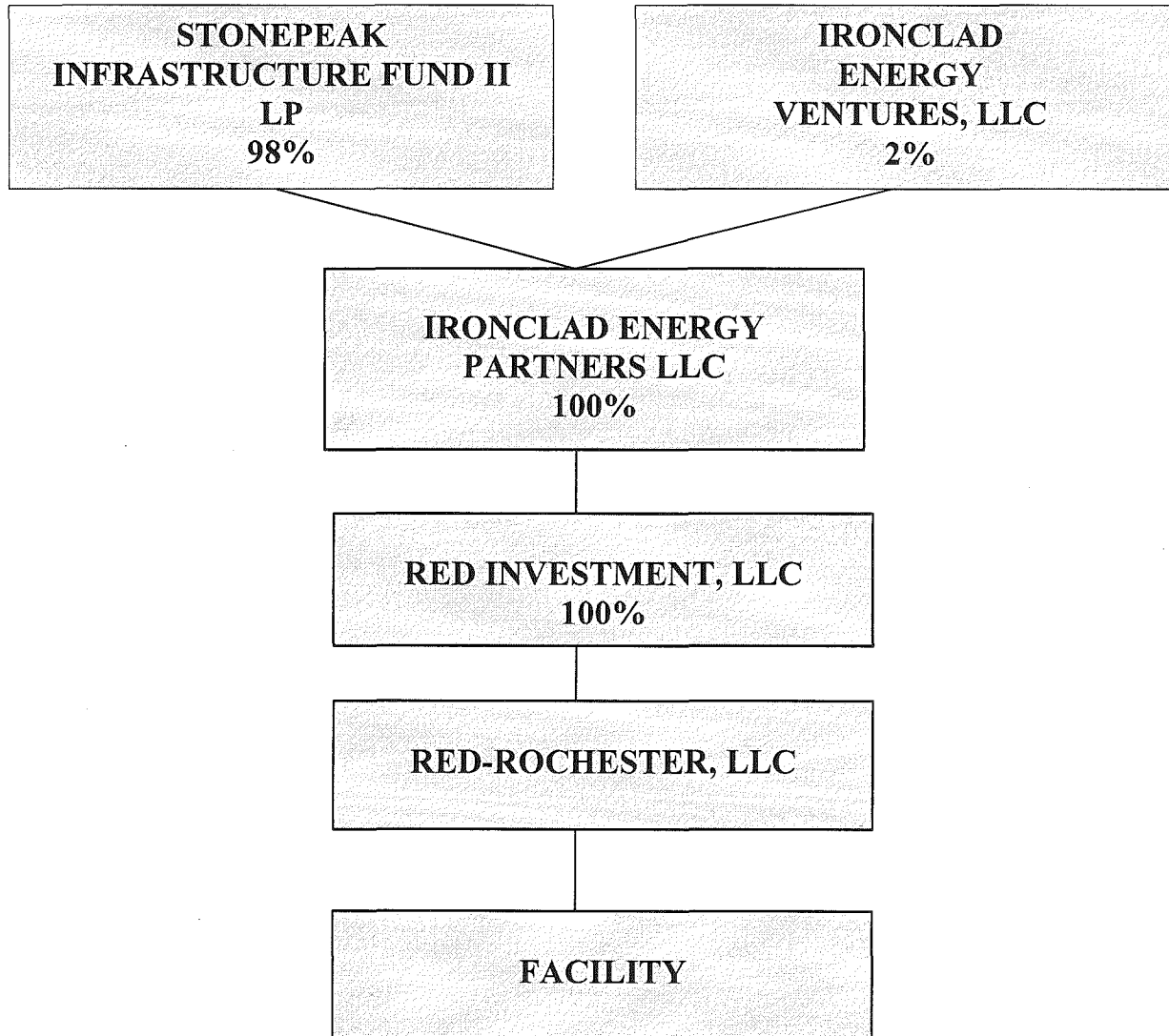


Exhibit D

RED-Rochester Utility Services Agreement

**EASTMAN BUSINESS PARK
UTILITY SERVICES AGREEMENT**

THIS UTILITY SERVICES AGREEMENT, (this Agreement) dated as of this [day] of [month], 20__ (“Contract Date”) is entered into by and between:

RED-ROCHESTER, LLC, a New York limited liability company having offices at _____, Rochester, New York _____ (herein “**SUPPLIER**”);

And

_____, a _____ having offices at _____ (“**CUSTOMER**”).

WHEREAS, SUPPLIER provides certain Utility Services (as defined below) in the EBP Utility Services Territory; and

WHEREAS, SUPPLIER is authorized by order of the Public Service Commission of the State of New York (“**Public Service Commission**”) in Case 13-M-0028, effective May 30, 2013 together with the Confirming Order entered on June 13, 2013 (collectively, the “**PSC Order**”) to provide Services to the “EBP Utility Services Territory” (as defined below); and

WHEREAS, CUSTOMER owns or leases property in the EBP Utility Services Territory; and

WHEREAS, CUSTOMER acknowledges it has been advised by SUPPLIER that CUSTOMER has certain rights to acquire Regulated Services from providers other than SUPPLIER; and

WHEREAS, CUSTOMER desires to purchase and receive the Services from SUPPLIER; and

WHEREAS, SUPPLIER desires to sell and provide the Services to CUSTOMER; and

WHEREAS, the Parties desire to set forth the terms and conditions that will apply to SUPPLIER’s provision of the Services to CUSTOMER under this Agreement;

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE I — DEFINITIONS

- 1.1** “**Affected Party**” means a Party claiming that a Force Majeure Event has occurred and affects such Party’s ability to perform its obligations under this Agreement.
- 1.2** “**Agency**” has the meaning given to that term in **Section 3.2.1**.
- 1.3** “**Agreement**” has the meaning given to that term in the preamble.

1.4 “**Applicable Laws**” means all statutes, laws, ordinances, regulations, rules, licenses, permits, decrees, directives and other requirements.

1.5 “**Applicable Requirements**” has the meaning given to that term in **Section 3.2.1**.

1.6 “**Asset Purchase Agreement**” means the Asset Purchase Agreement dated December 21, 2012 between SUPPLIER and Eastman Kodak Company.

1.7 “**Baseline Outage**” means, during the relevant time period prior to the Effective Date, any failure or omission by Eastman Kodak Company for any reason to provide any Service to the applicable Delivery Point up to the quantity required to be provided or any interruption in the provision of any Service to the applicable Delivery Point up to the quantity required to be provided, including omission or interruption caused by rejection of such Service upon a failure or omission to meet any required specifications; provided, any such failure or omission to provide Service or interruption in Service shall not constitute a Baseline Outage (i) if it relates to the provision of any Service other than electric service or compressed air service and (a) it does not exceed fifteen (15) minutes in duration with respect to any single occurrence, and (b) not more than one such occurrence occurs during any rolling twenty-four (24) hour period, or (ii) to the extent it is caused by a Force Majeure Event.

1.8 “**Billing Month**” means the period commencing at the time on the day the Meters are read in one month and terminating at the time on the day the Meters are read in the following month. The timing of Meter readings is determined by SUPPLIER and shall occur on or around the 25th day of each calendar month.

1.9 “**Binding Quality Specifications**” means those specifications relating to each Utility Service as so labeled and more fully described in **SCHEDULE D** and **SCHEDULE F**, which SUPPLIER shall be bound to provide at all times.

1.10 “**Blanket Amendment**” has the meaning given to that term in **Section 14.4**.

1.11 “**Building**” means a building located in the EBPUST and listed on **SCHEDULE A** attached hereto as a location to which one or more Services are provided or any new building to which SUPPLIER provides services pursuant to **Section 4.1**.

1.12 “**Compliance Date**” means December 31, 2016; provided, (i) if as of any time from or after the date that the MACT Rules are effective but are not stayed, the date by which the Facilities and their operation must comply with the MACT Rules is before or after December 31, 2016, after giving effect to any extension thereof to which RED-Rochester is legally entitled at such time (whether by the terms of the MACT Rules or a binding DEC commitment), the Compliance Date shall be such earlier or later date, respectively, and (ii) the Compliance Date may be extended by Park Owner (as defined in the Utility Rights Agreement) in its sole discretion.

1.13 “**Chilled Water Return**” has the meaning given to that term in **Section 4.4**.

1.14 “**Condensate**” has the meaning given to that term in **Section 4.3**.

1.15 “**Condensate Return System**” has the meaning given to that term in **Section 4.3**.

1.16 “**Confidential Information**” has the meaning given to that term in **Section 9.1**.

1.17 “**Conforming Contract**” means (i) this Agreement, (ii) any contract resulting from a partial assignment of this Agreement, and (iii) a contract with respect to the delivery of Services by SUPPLIER between SUPPLIER and an EBPUST Customer where under such contract (a) the EBPUST Customer participates in the quarterly cash flow sharing as described in **Section 4** of **SCHEDULE C**, and (b) the pricing terms and conditions are otherwise substantially consistent with those in **SCHEDULE C**. For the purposes of this definition “substantially consistent” shall be understood to mean that such contracts have no material change from this Agreement other than changes reflecting those (x) required to meet the unique operational or other technical conditions of an individual customer; or; (y) do not otherwise provide any material change in the balance of risks and rewards between SUPPLIER and the counterparty to such Conforming Contract.

1.18 “**Continuous Meter**” means a meter for any service that transmits use in one-hour or shorter increments to SUPPLIER’s central computers.

1.19 “**Contract Date**” has the meaning given to that term in the Preamble.

1.20 “**Contract Demand**” means, with respect to each Delivery Point, the Delivery Point Peak Demand for such Delivery Point or such higher amount of demand as is requested by CUSTOMER and accepted by SUPPLIER as contemplated by **Section 4.1**, and represents the minimum units of Service SUPPLIER agrees to provide to such Delivery Point for the relevant contracted Service during one hour, as specified in **SCHEDULE D** for Regulated Services and in **SCHEDULE F** for Unregulated Services. For clarity, SUPPLIER will deliver more units than the Contract Demand upon CUSTOMER’s use, up to system delivery limits, but will not be contractually responsible for more than the Contract Demand.

1.21 “**Control Center**” means SUPPLIER’s 24 hour control room that can currently be reached at telephone number (585) ____ - ____, which number may be changed by SUPPLIER from time to time by giving written notice of the new number to CUSTOMER.

1.22 “**Coordination Committee**” has the meaning given to that term in **Section 4.5**.

1.23 “**Covered Real Property**” means (i) the Permanent Easement Area (as defined in the Asset Purchase Agreement) and that portion of Blanket Utility Easement Area (as defined in the Asset Purchase Agreement) (a) on which Facilities are located as of the Effective Time, or (b) adjacent to the land described in clause (a) and reasonably required to be accessed by SUPPLIER to operate, maintain, repair or replace the Facilities as they exist as of the Effective Time, and (ii) any land required to be accessed by SUPPLIER in connection with the construction or installation of any New or Modified Facilities, including the surface and subsurface elements of such properties and the soils and groundwater present at the Covered Real Property, and any references to items “on the Covered Real Property” shall include all items at, in, on, upon, over, across, under and within the Covered Real Property.

1.24 “CUSTOMER” has the meaning given to that term in the preamble.

1.25 “CUSTOMER Indemnified Parties” has the meaning given to that term in Section 13.5.1.

1.26 “CUSTOMER Proof Window” means, with respect to any Service in connection with any Shortfall, the period between (i) the date that is ten (10) years prior to the occurrence of such Shortfall, and (ii) the EIS Date with respect to such Service; provided, there will be no CUSTOMER Proof Window with respect to such Service after ten (10) years has elapsed from the EIS Date with respect to such Service.

1.27 “Delivery Point” means the point at which CUSTOMER takes responsibility for the receipt of Utility Services at a Service Location, or with respect to Condensate Return and Chilled Water Return, the point at which SUPPLIER takes responsibility for receipt of the commodity being returned. Unless otherwise noted in SCHEDULE A attached hereto, the Delivery Point for each Utility Service provided to a particular Service Location shall be at the point of connection on CUSTOMER’s side of the applicable Meter for such Utility Service at such Service Location. Each Delivery Point provides a single Service, and for clarity, all terms that include the words “Delivery Point” refer to one specific Service unless otherwise stated.

1.28 “Delivery Point Peak Demand” means, (i) for calendar years 2013 and 2014 such number as is requested by CUSTOMER and accepted by SUPPLIER, and (ii) for any calendar year after 2014, means the maximum delivery of the applicable Utility Service during one any one hour period during the prior calendar year in the case of each Delivery Point with a Continuous Meter. For each Delivery Point without a Continuous Meter, the Delivery Point Peak Demand shall be equal to the quotient of (i) the total consumption of service at such Delivery Point during the prior twelve (12) Billing Months, divided by (ii) the EBP Load Factor for the applicable Utility Service for the calendar year in which the Billing Month for which such Delivery Point Peak Demand is being determined occurs.

1.29 “Discharge Point” shall mean the point at which the Industrial Sewer lateral meets the Industrial Sewer main as defined with more specificity in CUSTOMER’s KWIC Profile as defined.

1.30 “Eastman Kodak Company” means Eastman Kodak Company, a New Jersey corporation with offices at 343 State Street, Rochester, New York 14650.

1.31 “EBP Load Factor” means, for each metered Service for each calendar year, the quotient of (i) the total consumption during the prior calendar year’s twelve (12) Billing Months at all delivery points of all EBPUS Customers with Continuous Meters, divided by (ii) the result of (a) the sum of the non-coincident highest one-hour total consumption of such metered Service at the same delivery point in the prior calendar year’s twelve (12) Billing Months, multiplied by (b) the number of hours in the same twelve (12) Billing Months.

1.32 “EBP Utility Service Territory” or “EBPUS” means the manufacturing and industrial park to which SUPPLIER is authorized by the PSC Order to provide electric,

steam, natural gas and potable water commodity and distribution services, which is located in the Town of Greece and the City of Rochester, New York, and is more particularly depicted on a map that was filed with the Public Service Commission in Case 04-M-0388.

1.33 “EBPUST Customer” means any owner or tenant of property, other than SUPPLIER in their capacity as a utility provider, within the EBPUST to whom SUPPLIER provides Services, whether or not such owner or tenant is a Participating Customer.

1.34 “Effective Date” shall mean the Closing Date as such term is defined in the Asset Purchase Agreement.

1.35 “Effective Time” has the meaning given that term in the Asset Purchase Agreement.

1.36 “EIS” means the Energy Information System acquired by SUPPLIER pursuant to the Asset Purchase Agreement, together with any replacement to such Energy Information System installed by SUPPLIER during the Fixed Data Period.

1.37 “EIS Date” means, with respect to a Service, the earliest date for which information is available for such Service in the EIS from such date through the Effective Date.

1.38 “Environment” means all soil, real property, air, water (including surface waters, streams, ponds, drainage basins and wetlands), groundwater, water body sediments, drinking water supply, stream sediments or land, including land surface or subsurface strata, including all fish, plant, wildlife, and other biota and any other environmental medium or natural resource.

1.39 “Environmental Disturbance” means any planned construction or maintenance activity by SUPPLIER that has the potential to result in an environmental liability or require Remediation.

1.40 “Environmental Laws” means all Applicable Laws regarding pollution or protection of the Environment, public health, the conservation and management of land, natural resources and wildlife or human health or the Occupational Safety and Health Act (only as it relates to Hazardous Substances), including Applicable Laws regarding Releases or threatened Releases of Hazardous Substances or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Hazardous Substances. “Environmental Laws” include the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.) (“RCRA”), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. §§ 2601 et seq.), the Oil Pollution Act (33 U.S.C. §§ 2701 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.) (only as it relates to Hazardous Substances).

1.41 “Excluded Shortfall” means (i) any Shortfall that affects ten percent (10%) or more of all delivery points of all EBPUST Customers, (ii) any Shortfall to the extent attributable

to the failure by SUPPLIER to operate the Facilities in accordance with Prudent Utility Practices (as such term is defined in the Asset Purchase Agreement) from and after the Effective Time, or (iii) any Shortfall resulting from the application of the Load Shedding Schedule.

1.42 “Excused Shortfall” means any (i) Grace Period Shortfall, (ii) Shortfall to the extent caused by a Force Majeure Event affecting SUPPLIER, to the extent provided in **Section 14.9**, (iii) Shortfall Due to Data Insufficiency, or (iv) Shortfall at a Delivery Point having a duration shorter than the applicable Shortfall Historic Level with respect to such Delivery Point.

1.43 “Extended Force Majeure Event” has the meaning given to that term in **Section 14.9.7**.

1.44 “Fixed Data Period” means, with respect to a Service, the ten (10) year period commencing with the EIS Date with respect to such Service.

1.45 “Force Majeure Event” means any event or circumstance that is unforeseeable, is beyond the reasonable control of the Affected Party, and prevents the Affected Party from performing its obligations under this Agreement, including, to the extent they satisfy such standard, the following: acts of God, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, volcanoes, storms, floods, civil disturbances, sabotage and strikes, lockouts, labor disturbances, any interruption in the quantity or quality of natural gas or electricity deliveries to SUPPLIER that compromises SUPPLIER’s ability to fulfill its obligations under this Agreement, or any Shortfall caused by the act or failure to act of any EBPUS Customer.

1.46 “FPWS” shall mean Fire Protection Water System.

1.47 “FPWS Distribution System” has the meaning given to that term in **Section 2.6.5**.

1.48 “Governmental Authority” means any United States federal, state or local governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

1.49 “Grace Period Shortfall” means a Shortfall in the provision of any Service other than electric service or compressed air service where (i) such Shortfall does not exceed fifteen (15) minutes in duration with respect to any single occurrence, and (ii) not more than one such Shortfall occurs during any rolling twenty-four (24) hour period.

1.50 “Hazardous Substances” means (a) any petroleum, petroleum products, asbestos or asbestos-containing material, radioactive materials or substances, urea formaldehyde foam insulation, polychlorinated biphenyls, transformers or other equipment that contains polychlorinated biphenyls; and (b) any chemicals, materials, substances or waste defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants,” “pollutants,” “toxic pollutants”

or “hazardous air pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law.

1.51 “Industrial Sewer” means the industrial sewer system owned by SUPPLIER running through Eastman Business Park and ultimately connected to, and including, SUPPLIER’s Kings Landing Waste Water Treatment Facility.

1.52 “Industrial Water” means water which is gathered directly from the source, treated and delivered entirely by SUPPLIER for use at EBPUS T for certain industrial and other purposes.

1.53 “Internal Condensate System” has the meaning given to that term in **Section 4.3**.

1.54 “KWIC Profiles” has the meaning given to that term in **Section 3.2.2.1**.

1.55 “Load Shedding Schedule” has the meaning given to that term in **Section 2.8**.

1.56 “Losses” has the meaning given to that term in **Section 13.5.1**.

1.57 “MACT RULES” means the National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units issued by the United States Environmental Protection Agency on February 16, 2012, as such standards may be amended, supplemented, replaced, stayed or implemented from time to time.

1.58 “Meter” means the device, and associated totalizing equipment and appurtenances, that is used to measure CUSTOMER’s consumption of one or more of the Services.

1.59 “New or Modified Facilities” means pipes, wires, lines, Meters, and related fixtures and facilities and any other utilities equipment (including generating equipment) that are used to produce or supply the Services to the Premises and that are constructed, installed, modified, or repaired by SUPPLIER after the date hereof.

1.60 “Nominal Quality Specifications” means those specifications relating to each Utility Service as so labeled and more fully described in **SCHEDULE D** and **SCHEDULE F**, which SUPPLIER shall endeavor to provide at all times.

1.61 “Operating Dividend” means the quarterly billing credit to be provided to Participating Customers pursuant to **Section 4.9** of **SCHEDULE C**.

1.62 “Participating Customers” means EBPUS T Customers who are parties to Conforming Contracts.

1.63 “Party” or “Parties” means CUSTOMER or SUPPLIER individually or collectively.

1.64 “Potential Historical Shortfall” means a period of time of at least twenty-four (24) hours during the CUSTOMER Proof Window with respect to which CUSTOMER is unable to demonstrate that such Service was available to CUSTOMER within any portion of such period or was not available within any portion of such period due to a Force Majeure Event, which demonstration may be made, among other means, by providing business records maintained in the ordinary course showing that CUSTOMER was consuming such Service or conducting operations dependent on the availability of such Service.

1.65 “Premises” means each of the Service Locations, and the land owned or leased by CUSTOMER on which the Service Locations are situated, in the EBPUS; provided, the Premises shall not include any land over which SUPPLIER has a permanent easement.

1.66 “PSC Order” has the meaning given to that term in the Recitals.

1.67 “RED” means Recycled Energy Development, LLC, a Delaware limited liability company, with offices located at 640 Quail Ridge Drive, Westmont, Illinois 60559 or an affiliate thereof, excluding RED-Rochester, LLC.

1.68 “RED Management Fee” has the meaning given to that term in **Section 5.3.1**.

1.69 “Regulated Services” means electric services, steam services and delivery of potable water services and natural gas from third party suppliers.

1.70 “Regulated Services Specifications” has the meaning given to that term in **Section 2.3**.

1.71 “Release” means any release, deposit, migration, dispersal, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Substance on or into the Environment or within any building, structure, facility or fixture, provided, however, that “Release” shall not include any release that is in compliance with applicable Environmental Laws or an applicable environmental permit which has been issued by a Governmental Authority.

1.72 “Remediation” means action of any kind required by any Applicable Law or order of a Governmental Authority to address a Release, the threat of a Release or the presence of Hazardous Substances at the Covered Real Property or at an off-site location as a result of migration from the Covered Real Property including any or all of the following activities to the extent they relate to or arise from the presence of a Hazardous Substance at the Covered Real Property or such off-site location: (a) monitoring, investigation, assessment, treatment, cleanup, containment, removal, mitigation, response or restoration work; (b) obtaining any permits, consents, approvals or authorizations of any Governmental Authority necessary to conduct any such activity; (c) preparing and implementing any plans or studies for any such activity; (d) obtaining a written notice from a Governmental Authority with jurisdiction over the Covered Real Property or such off-site location under Environmental Law that no additional work is required by such Governmental Authority; (e) the use, implementation, application, installation, operation or maintenance of remedial action on the Covered Real Property or such off-site location, remedial technologies applied to the surface or subsurface soils, excavation and off-site treatment or disposal of soils, systems for long term treatment

of surface water or ground water, engineering controls or institutional controls; and (f) any other activities required under Applicable Law to address the presence or Release of Hazardous Substances at the Covered Real Property or such off-site location.

1.73 “Remediation Costs” means reasonable out-of-pocket costs incurred by SUPPLIER associated with any requirement to test, manage or conduct Remediation at/on the Covered Real Property which arises from any disturbance after the Effective Time of any soil or other environmental condition existing at the Effective Time to the extent that (i) SUPPLIER is not obligated to bear such costs pursuant to **Section 5.9(b)(iv)** or **(vi)** of the Asset Purchase Agreement, and (ii) such costs exceed any insurance proceeds to which SUPPLIER is entitled with respect to such activities or Remediation.

1.74 “Remediation Allocation Percentage” means, with respect to each Participating Customer for Remediation Costs incurred in any Billing Month, the percentage obtained by dividing (i) the total amounts billed to such Participating Customer before taxes for the immediately preceding three Billing Months, excluding any amounts billed pursuant to **Section 4.1**, by (ii) the total amounts billed to all Participating Customers before taxes for the immediately preceding three Billing Months, excluding any amounts billed pursuant to **Section 4.1** or any corresponding provision of any Conforming Contract

1.75 “Replacement Distribution System” has the meaning given to that term in **Section 11.3.2.1**.

1.76 “Replacement Fire Protection Water Service” has the meaning given to that term in **Section 11.3.2.1**.

1.77 “Service Location” means a Building or Stand-Alone Service Location.

1.78 “Services” means Utility Services and Sewer Services.

1.79 “Sewer Services” means industrial wastewater treatment services.

1.80 “Shortfall” means any failure or omission of SUPPLIER for any reason (including any Force Majeure Event) to provide any Service to the applicable Delivery Point up to the Contract Demand or any interruption in the provision of any Service to the applicable Delivery Point up to the Contract Demand, including omission or interruption caused by rejection by CUSTOMER upon a failure or omission to meet any Binding Quality Specifications.

1.81 “Shortfall Due to Data Insufficiency” means any Shortfall during the first seven hundred thirty (730) days after the Effective Time that (a) with respect to quantity occurs at a Delivery Point from which (i) Eastman Kodak Company did not maintain metering for at least seven hundred thirty (730) days immediately preceding the Effective Time, or (ii) Eastman Kodak Company maintained metering for seven hundred thirty (730) days immediately preceding the Effective Time but observed aggregate metering outages during that period in excess of one hundred sixty-eight (168) hours; and (b) with respect to quality means any failure to provide service meeting Nominal Quality Standards prior to SUPPLIER establishing Binding Quality Standards.

1.82 “Shortfall Historic Level” means (a) for any Delivery Point with respect to which Eastman Kodak Company did not maintain metering for at least seven hundred thirty (730) days immediately preceding the Effective Time or maintained such metering but observed aggregate metering outages in excess of one hundred sixty-eight (168) hours during that seven hundred thirty (730) day period, the sum of (i) the longest Shortfall other than an Excused Shortfall or Excluded Shortfall observed during the seven hundred thirty (730) days immediately following the Effective Time, plus (ii) fifteen (15) minutes, or (b) for any Delivery Point with respect to which Eastman Kodak Company maintained metering for at least seven hundred thirty (730) days prior to the Effective Time and has not had aggregate metering outages in excess of one hundred sixty-eight (168) hours during that period, the sum of (i) the longest Baseline Outage observed during the seven hundred thirty (730) days immediately preceding the Effective Time, plus (ii) fifteen (15) minutes. Notwithstanding clauses (a)(ii) and (b)(ii) of this **Section 1.82**, the fifteen (15) minute addition noted in such clauses shall not apply to Electricity and Compressed Air.

1.83 “Stand-Alone Service Location” means a location in the EBPUST and listed on **SCHEDULE A** attached hereto as a “Stand-Alone Service Location” to which one or more Utility Services are provided.

1.84 “SUPPLIER” has the meaning given to that term in the preamble.

1.85 “SUPPLIER EHS” means SUPPLIER’s Environmental Health and Safety Organization at the following address: _____,
Attention: _____, which address may be changed by SUPPLIER from time to time by giving written notice of the new address to CUSTOMER.

1.86 “SUPPLIER Indemnified Parties” has the meaning given to that term in **Section 13.5.2**.

1.87 “SUPPLIER SPDES Permit” has the meaning given to that term in **Section 3.2.2.6**.

1.88 “SUPPLIER SPDES Permit Modification” has the meaning given to that term in **Section 3.2.2.6**.

1.89 “Term” means the term of this Agreement, consisting of the “Initial Term”, the “First Renewal Term”, the “Second Renewal Term” and any “Renewal Term”, as each of such terms are defined in **Section 11.1** hereof, subject to the rights of the Parties to terminate this Agreement set forth in **ARTICLE XI** and elsewhere herein.

1.90 “Terminable Shortfall” means a Shortfall, other than an Excused Shortfall, with respect to a Service (a) lasting for the longer of (i) seven (7) continuous days after notice thereof has been given by CUSTOMER to SUPPLIER, (ii) five (5) percent longer than the longest continuous Baseline Outage or Shortfall other than an Excused Shortfall or Excluded Shortfall that SUPPLIER can document from information in the EIS to have occurred for that Service at any Delivery Point during the Fixed Data Period or, if such Shortfall occurs prior to the end of the Fixed Data Period, from the EIS Date for such Service through the occurrence of such Shortfall, or (iii) if such Shortfall occurs prior to the

end of the Fixed Data Period, five (5) percent longer than the longest Potential Historical Shortfall during the applicable CUSTOMER Proof Window, or (b) comprising at least four (4) Shortfalls, other than Excused Shortfalls, having a duration of more than twenty four (24) continuous hours each with an aggregate duration over any continuous twelve (12) month period that is greater than the greater of (i) fourteen (14) days, (ii) if such Shortfall occurs after the end of the Fixed Data Period, five (5) percent longer than the longest duration of any combination of four (4) or more Baseline Outages or Shortfalls other than Excused Shortfalls or Excluded Shortfalls that SUPPLIER can document from information in the EIS to have occurred for that Service at any Delivery Point during any continuous twelve (12) month period during the Fixed Data Period, or (iii) if such Shortfall occurs before the end of the Fixed Data Period, five (5) percent longer than the longest duration of any combination, occurring during any continuous twelve (12) month period, of four (4) or more (A) Baseline Outages or Shortfalls other than Excused Shortfalls or Excluded Shortfalls with individual durations of more than twenty four (24) hours that SUPPLIER can document from information in the EIS to have occurred for that Service at any Delivery Point from the EIS Date for such Service through the occurrence of such Shortfall, and/or (B) Potential Historical Shortfalls during the applicable CUSTOMER Proof Window.

1.91 “**Transferred Delivery Points**” has the meaning given to that term in **Section 12.2**.

1.92 “**Unregulated Services**” means chilled water, Industrial Water, demineralized water, high purity water, fire protection water, compressed air, nitrogen, 9°F brine, and -95°F brine.

1.93 “**Unregulated Services Specifications**” has the meaning given to that term in **Section 2.5**.

1.94 “**Utility Rights Agreement**” means the Utility Rights Agreement dated as of the Effective Date between SUPPLIER and Eastman Kodak Company, as such Utility Rights Agreement may be amended from time to time.

1.95 “**Utility Services**” means Regulated Services and Unregulated Services.

ARTICLE II — UTILITY SERVICES TO BE PROVIDED

2.1 **This Section is Intentionally Left Blank.** .

2.2 **Regulated Service.** Except as otherwise provided in **Section 4.1** hereof, as described in **SCHEDULE B** attached hereto or during the occurrence of any Shortfall with respect thereto, CUSTOMER agrees to purchase CUSTOMER’s full requirements for Regulated Services at the Premises during the Term from SUPPLIER. SUPPLIER agrees to supply and deliver CUSTOMER’s full requirements for Regulated Services at the Premises.

2.3 **Regulated Services Specifications.** The specifications for the Regulated Services to be provided by SUPPLIER to the Premises are set forth in **SCHEDULE D** attached hereto (the “**Regulated Services Specifications**”).

2.4 Unregulated Services. Except as otherwise provided in **Section 4.1.1** hereof, as described in **SCHEDULE E** attached hereto or during the occurrence of any Shortfall with respect thereto, CUSTOMER agrees to purchase CUSTOMER's full requirements for Unregulated Services at the Premises during the Term from SUPPLIER. SUPPLIER agrees to supply and deliver CUSTOMER's full requirements for Unregulated Services at the Premises. CUSTOMER acknowledges and agrees that Industrial Water shall not be used for drinking or food preparation purposes, and that CUSTOMER shall maintain the existing signage warning system to identify sources, and the required limitations on the use of, Industrial Water within the Premises. CUSTOMER acknowledges that, notwithstanding any provision in this **Section 2.4** or **SCHEDULE F**, SUPPLIER's provision of any Unregulated Service is not subject to the supervision and oversight of the Public Service Commission.

2.5 Unregulated Services Specifications. The specifications for the Unregulated Services to be provided by SUPPLIER to the Premises are set forth in **SCHEDULE F** (the "Unregulated Services Specifications").

2.6 Delivery Points. SUPPLIER shall be responsible for delivering the Utility Services to CUSTOMER at the Delivery Points. Title to and control of the commodities represented by the Utility Services will transfer from SUPPLIER to CUSTOMER at the Delivery Points; provided, however, that in the case of steam commodity and chilled water, CUSTOMER's title to and control over the steam commodity and chilled water after delivery by SUPPLIER is subject to and limited by the obligations of CUSTOMER in **Sections 4.3** and **4.4** hereof to return the Condensate and Chilled Water Return to SUPPLIER.

2.6.1 Delivery Infrastructure: SUPPLIER shall, at SUPPLIER's sole cost and expense except as otherwise provided in **ARTICLE VI**, maintain in good working order and repair all elements of the utility distribution systems for each of the Utility Services which are located on the SUPPLIER side of the Delivery Points, regardless of whether any Delivery Point is located on the property owned or leased by CUSTOMER. CUSTOMER shall, at its sole cost and expense, be responsible to maintain in good working order and repair, and consistent with the reasonable or necessary delivery requirements of SUPPLIER, all elements of the delivery infrastructure for each of the Utility Services which are located on the CUSTOMER side of the Delivery Points. In addition, notwithstanding anything to the contrary herein, CUSTOMER shall be responsible: (i) to maintain any containment backflow preventers located on the Industrial Water supply pipes at the wall service connections of each Building, and (ii) to conduct annual testing of such backflow preventers, the results of which tests shall be reported promptly in writing to SUPPLIER. Furthermore, CUSTOMER agrees to maintain signs on all fixtures which supply Industrial Water anywhere in any Building (including without limitation locker room showers, hose stations and sinks) providing "NON-POTABLE WATER — DO NOT DRINK". SUPPLIER and CUSTOMER acknowledge that nothing in this Agreement is intended to transfer or otherwise affect the ownership of utility assets (including without limitation the electric switch room and load centers, steam and water pipes and valves (including post indicator valves), back-flow preventers, wires, manholes,

condensate return tanks and pumps, controls and pipe support infrastructure) constituting the utility distribution system serving any Service Location or any utility plans or drawings of utility distribution system assets. CUSTOMER and SUPPLIER agree to maintain updated originals of all utility plans and drawings owned by them, respectively, with respect to the Service Locations and the Premises, and the Parties further agree to share with each other any utility plans and drawings owned by them which are reasonably required by the other Party in order to carry out such other Party's obligations pursuant to this Agreement. Each of CUSTOMER and SUPPLIER hereby releases the other Party and agrees to hold the other Party harmless from any damages suffered by the Party receiving the utility plan or drawing (the "Receiving Party") which arises as a result of the plan or drawing being inaccurate and the Receiving Party acting in reliance on the accuracy of such plan or drawing. CUSTOMER and SUPPLIER further acknowledge and agree that they will each participate in the "Dig Safely New York" program with respect to all underground facilities located at the Premises and owned or leased by CUSTOMER or SUPPLIER, respectively.

2.6.2 CUSTOMER's Obligation to Request Lock Out/Tag Out: Whenever CUSTOMER, CUSTOMER'S employees, contractors or agents, in carrying out CUSTOMER's responsibilities under **Section 2.6.1** above or otherwise, shall find it necessary to maintain, modify or replace a circuit which is located in the delivery infrastructure on the CUSTOMER side of a Delivery Point, CUSTOMER shall, in the case of a non-emergency situation, request at least two (2) business days prior to commencing any such work that SUPPLIER lock out and tag out electrical service of the circuit in the high-voltage electrical switch room in order to ensure the safety of the Delivery Point of that circuit. If an emergency situation exists as determined by CUSTOMER, then such two-day advance notice provision shall not apply and SUPPLIER shall respond expeditiously without delay to provide lock-out/tag-out service in the affected high-voltage switch room. Any lock-out/tag-out request from CUSTOMER to SUPPLIER (whether or not in the context of an emergency) shall be made by telephone to the Control Center.

2.6.3 SUPPLIER's Right of Access to the Premises: CUSTOMER will provide SUPPLIER and SUPPLIER's employees, contractors and agents reasonable access to the Premises with reasonable advance notice to CUSTOMER for the purpose of reading Meters, collecting samples of Industrial Water delivered to the Premises for testing purposes, inspecting the Utility Services delivery infrastructure in the Premises and maintaining SUPPLIER'S delivery infrastructure as contemplated in **Section 2.6.1** hereof. Without limiting the foregoing, SUPPLIER's rights of access to the Premises shall include 24 hour per day access to the Delivery Points, the Condensate Return System, all high-voltage electric switch rooms located in the Buildings, and such other rooms as are identified on **SCHEDULE G** attached hereto and made a part hereof, as well as access via existing manholes to any high-voltage electric duct banks located at or beneath the Premises. In addition, in any circumstance determined by SUPPLIER to constitute an emergency, and upon such notice as is practicable under the

circumstances, SUPPLIER shall have the right to enter the Premises for the purpose of inspecting delivery infrastructure, conducting emergency repairs or attending to other exigent circumstances arising from the provision of Utility Services hereunder. Furthermore, in order to assure the safety and reliability of the delivery of Utility Services to the Premises, SUPPLIER shall have the right from time to time to restrict CUSTOMER and any third party's access to portions of the Premises in which the Delivery Points, Meters or significant items of utility delivery infrastructure are located, provided that no such restrictions shall unreasonably interfere with CUSTOMER's use of the Premises or the operation of CUSTOMER's business. The portions of the Premises to which such access restrictions shall apply as of the Effective Date are specified on **SCHEDULE G** attached hereto and made a part hereof. The access rights granted to SUPPLIER under this **Section 2.6.3** will remain in effect for so long as SUPPLIER's delivery infrastructure remains connected to the Premises, and may not be revoked or terminated by CUSTOMER, nor shall CUSTOMER take any action that would impede, restrict, diminish or otherwise interfere with any of the rights granted SUPPLIER in this **Section 2.6.3**. The provisions of this **Section 2.6.3** shall survive the expiration, cancellation or any termination of this Agreement.

2.6.4 SUPPLIER's Right to Install New or Modified Distribution Facilities at the Premises: In the event that SUPPLIER reasonably determines (in order to accommodate operation of SUPPLIER's existing utility distribution system or to accommodate increased demands of CUSTOMER as contemplated in **Section 4.1** hereof) that it is necessary to modify the distribution system to the Premises for any Service, CUSTOMER shall enter good faith negotiations to grant to SUPPLIER any additional easement or permanent access rights and shall cooperate with SUPPLIER to make available space in the Building or elsewhere on the Premises to accommodate the necessary modifications, provided that such modifications to the distribution system do not materially adversely affect CUSTOMER's use of the Premises or the operation of CUSTOMER's business. In the case of electric service, CUSTOMER shall make available to SUPPLIER space in the Building to be reasonably agreed upon by CUSTOMER and SUPPLIER to locate a new load center, transformer or other installation if determined to be necessary by SUPPLIER.

2.6.5 FWPS Distribution System. SUPPLIER shall inspect, test, operate, maintain and repair the distribution system for the provision of fire protection water services which are located on the SUPPLIER side of the applicable Delivery Points (the "**FWPS Distribution System**") at all times in full compliance with Applicable Laws and the requirements of Factory Mutual Insurance Company, at SUPPLIER's sole cost and expense, maintain and comply with all approvals of any Governmental Authority relating to the operation of the FWPS Distribution System and required for the provision of the fire protection water service. SUPPLIER shall maintain testing, inspection and maintenance records with respect to the FWPS Distribution System in accordance with the requirements of Factory Mutual Insurance Company, and as required by Applicable Laws. In the event that Factory Mutual Insurance Company ceases to be an industry leader in

the context of establishing requirements and standards regarding fire protection, SUPPLIER and Coordination Committee shall promptly identify and mutually agree upon a successor insurance company recognized as an industry leader with corresponding requirements and standards to which SUPPLIER shall comply. In the event CUSTOMER's insurance policies have compliance requirements in addition to those outlined above, SUPPLIER shall use commercially reasonable efforts to comply with any such requirements upon the request of Customer and CUSTOMER shall bear the reasonable incremental costs incurred by SUPPLIER in connection with complying with such additional requirements. If in the process of investigating a leak in the FWPS Distribution System, SUPPLIER discovers that the source of the leak is one or more of the applicable Delivery Points, SUPPLIER shall immediately notify CUSTOMER and afford CUSTOMER the opportunity to eliminate the leak. If CUSTOMER fails to notify SUPPLIER within five (5) business days that it intends to take such actions as are required to eliminate the leak, SUPPLIER shall have the right, but not the obligation, to take such actions as are reasonably required to eliminate the leak and, thereafter, CUSTOMER agrees to reimburse SUPPLIER for the reasonable cost of investigation and maintenance activities associated with the leak. Prior to the commencement of any activities planned by CUSTOMER that would result in the interruption or impairment of the FWPS Distribution System or the fire protection water service as each relates to the Premises, CUSTOMER shall provide written notice of such proposed interruption or impairment to the Control Center at least two (2) Business Days prior to such planned interruption or impairment. In the case of an Emergency Use (as defined in **SCHEDULE C**) or in the case of an emergency involving the interruption or impairment of the FWPS Distribution System or the fire protection water service as each relates to the Premises, CUSTOMER shall immediately notify the Control Center.

2.7 Utility Service Curtailment and Interruption. Any one or more of the Utility Services may be curtailed or interrupted at any time by reason of accident or of repairs, alterations or improvements necessary for SUPPLIER to perform SUPPLIER's obligations under this Agreement, or as necessary to ensure the safety, reliability and integrity of the utility systems that are owned or controlled by SUPPLIER, or by strikes or lockouts, or by reason of operation of law, or causes beyond the reasonable control of SUPPLIER. However, SUPPLIER shall use commercially reasonable efforts to make sure that CUSTOMER receives uninterrupted service and that CUSTOMER receives adequate notice of any anticipated shutdowns (not less than thirty (30) days prior written notice from SUPPLIER to CUSTOMER), related to alterations and improvements and SUPPLIER shall accommodate CUSTOMER's production needs in the event of any planned and anticipated shutdowns related to alterations and improvements. In particular, CUSTOMER acknowledges that an interruption in Service (including without limitation electric service) will be required at least once every five (5) years to allow SUPPLIER to conduct routine system maintenance (including without limitation maintenance on an electric load center) which is necessary to ensure the continued safety, reliability and integrity of SUPPLIER's utility systems. Any interruptions or curtailments of Utility Services to a Building which are planned by SUPPLIER to conduct maintenance shall occur outside normal business hours (i.e. 8 am to 5 pm, local time), and upon not less than thirty (30) days prior written

notice (or such shorter period of time as mutually agreed to) from SUPPLIER to CUSTOMER of such interruption or curtailment. SUPPLIER and CUSTOMER shall agree in writing to a date and time frame for such planned interruptions or curtailments. However, no such interruption of Service shall render SUPPLIER liable to CUSTOMER for damage, direct or consequential, nor shall any such interruption relieve CUSTOMER from performance by CUSTOMER of CUSTOMER's obligations under this Agreement, except as otherwise provided in **Section 3.6** of **SCHEDULE C**.

2.8 Load Shedding Schedule. Within two (2) months following the Effective Date, SUPPLIER shall develop, in consultation with the Coordination Committee, a schedule defining the order in which electric loads will be taken off line in the event of a partial curtailment of electric service (the "**Load Shedding Schedule**"), which Load Shedding Schedule and any amendment thereto shall become effective when approved by the Coordination Committee in accordance with **Section 4.5** with the expectation that the Load Shedding Schedule must be established and published no later than six (6) months following the Effective Date. Until the initial Load Shedding Schedule shall have been adopted, the schedule used for such purpose by Eastman Kodak Company prior to the Effective Date shall constitute the Load Shedding Schedule. In the event there is insufficient electric capacity to meet the electricity needs of all customers of SUPPLIER at any time, SUPPLIER agrees to take power loads off line in accordance with the then-current Load Shedding Schedule, subject to safety and reliability concerns based on the circumstances giving rise to the curtailment. With the approval of the Coordination Committee, SUPPLIER may develop schedules with respect to Services other than electricity that serve the same purpose as the Load Shedding Schedule. CUSTOMER shall keep SUPPLIER informed of the contents of and all material changes to its load management plans and provide an estimate of anticipated changes in December for each ensuing year's operations.

2.9 Restoration of Service. Where any curtailment or interruption occurs, SUPPLIER agrees to apply commercially reasonable efforts to restore the curtailed or interrupted Services at the Premises as quickly as possible, provided that CUSTOMER acknowledges that, where the event or circumstances causing such curtailment or interruption affect one or more buildings other than the Building in the EBP Utility Service Territory, SUPPLIER shall be entitled to conduct such restoration efforts in the manner, in SUPPLIER's reasonable judgment under the circumstances, designed to best achieve the objective of restoring Service to the most users as quickly as reasonably possible; and further provided, that in no case shall SUPPLIER's obligations under this **Section 2.9** be construed as requiring SUPPLIER to restore any one or more of any affected Services when such restoration may/or would result in curtailment or interruption of any Service of any kind elsewhere in the EBP Utility Service Territory or when such restoration may/or would result in physical danger, harm, or damage to any person or property, including without limitation any property that is necessary to ensure the safety, reliability or integrity of SUPPLIER's utility systems. In addition to the foregoing, in the event of any impairment of the FWPS Distribution System or interruption of the fire protection water service exists SUPPLIER will use commercially reasonable efforts to implement appropriate temporary and rapid cross connections, where feasible, to maintain/restore adequate fire protection water service until restoration of normal fire protection water service is complete. In such event, the fire protection water service shall be repaired or restored by SUPPLIER within twenty-four (24)

hours, where feasible, of the occurrence of the impairment or interruption. In the event of an unplanned Service interruption, SUPPLIER shall immediately contact CUSTOMER and provide a status update on SUPPLIER's efforts to restore any curtailed or interrupted Services to the Premises. In the event of an emergency or unscheduled impairment of the FWPS Distribution System or interruption of the fire protection water service, SUPPLIER shall give immediate oral notification of such impairment or interruption to CUSTOMER (in a manner designated in writing by CUSTOMER from time to time). SUPPLIER shall give prompt oral notice to CUSTOMER upon the completion of any maintenance or repairs in connection with any interruption of a Utility Service and the restoration of such Utility Service upon such completion.

2.10 Quality Specifications. SUPPLIER shall review historical data and collect new data regarding process capability by Service and by delivery points of all Participating Customers, and shall analyze and use such data to convert all Nominal Quality Specifications to Binding Quality Specifications by negotiating in good faith an amendment to this Agreement with CUSTOMER for such purpose as soon as practical, but in no case by later than 730 days after the Effective Date.

2.11 Use of Manufacturing Wastes. Notwithstanding anything to the contrary in this Agreement, CUSTOMER shall have the right to recover and re-use those otherwise wasted byproducts of CUSTOMER's normal manufacturing operations for any purpose, including the production of Utility Services. However, should CUSTOMER consider investments in capital projects for the purpose of such waste recovery, SUPPLIER shall be given reasonable opportunity to review and make such investment for the purpose of meeting CUSTOMER's needs and/or providing such Utility Services for the use of other Participating CUSTOMERS.

2.12 Right to Maintain Backup Supply. Notwithstanding anything to the contrary in this Agreement, CUSTOMER shall have the right to take such self-help measures as are deemed required, by CUSTOMER, so long as such measures provide Utility Services only during those periods when SUPPLIER is unable to meet CUSTOMER requirements pursuant to **Sections 2.2 and 2.4.**

2.13 The Parties acknowledge that over the Term of the Agreement, it may be possible to deploy one or more capital projects on the CUSTOMER side of the meter that would generate Utility Services at a lower cost than is provided by SUPPLIER. To the extent that such capital projects are not covered by the self-help provisions found in **Sections 2.11 and 2.12**, SUPPLIER shall be obligated to work reasonably, expeditiously, and in good faith with CUSTOMER to negotiate and enter into a contract external to this Agreement wherein SUPPLIER would provide all capital, ownership, and operation of the projects and would share 50% of the resulting savings, after capital recovery, with CUSTOMER. For the avoidance of a doubt, if SUPPLIER and CUSTOMER fail to come to a mutually acceptable agreement on this new contract, subject to the obligation to work reasonably, expeditiously, and in good faith with each other, then CUSTOMER shall not be entitled to build such capital project independent of SUPPLIER unless otherwise permitted by the provisions of **Sections 2.11, 2.12, or 14.9.7**, or unless SUPPLIER consents in writing.

ARTICLE III — SEWER SERVICES TO BE PROVIDED

3.1 Sewer Services. Subject to the terms and conditions of this Article III, from and after the Contract Date, SUPPLIER hereby agrees to provide to CUSTOMER, and CUSTOMER agrees to use, the Sewer Services; including, without limitation, sewer capacity in and the right to remain connected to, and to discharge into and to use, the Industrial Sewer.

3.2 Compliance with Applicable Requirements.

3.2.1 General. From and after the Contract Date, CUSTOMER shall at all times comply with all Applicable Laws imposed or implemented by federal, state or local governmental authorities or agencies (collectively, the “Agency”) applicable to CUSTOMER’s use of and discharge into the Industrial Sewer, as well as any additional, reasonable requirements imposed by SUPPLIER on all users of the Industrial Sewer, or specifically with regard to CUSTOMER, including without limitation the requirements of **Section 3.2.2.1** with respect to SUPPLIER’s pre-approval of discharges into the Industrial Sewer (collectively, the “Applicable Requirements”).

3.2.2 Industrial Sewer Compliance.

3.2.2.1 Approved Discharges. Without limiting the generality of the foregoing, CUSTOMER and SUPPLIER acknowledge that as of the Effective Date, CUSTOMER’s approved discharges into the Industrial Sewer are characterized on the previously approved KWIC Profiles dated _____, a complete copy of which has been provided to SUPPLIER by CUSTOMER on or before the Effective Date (the “KWIC Profiles”), which provide complete descriptions of the approved discharges for each discharge point (a “Discharge Point”) at the Premises. CUSTOMER shall not, at any time, discharge to the Industrial Sewer at any Discharge Point any effluent in an amount or of a type or characteristic which is not approved for such Discharge Point as set forth in the KWIC Profiles, unless such effluent is authorized in the manner described below. If CUSTOMER desires to make any new discharge or any change to an approved discharge to the Industrial Sewer at any Discharge Point, CUSTOMER shall provide written notice of the proposed new discharge or change to an approved discharge to the SUPPLIER EHS no later than five (5) Business Days prior to the proposed date of implementation of any such proposed change. In the case of non-routine emergency events, SUPPLIER and CUSTOMER will make reasonable efforts to expedite the approval process to enable discharge as soon as practical and will not enforce such five (5) Business Day notice requirement. Such changes shall be implemented by CUSTOMER only after obtaining the prior written approval of SUPPLIER, which approval SUPPLIER may withhold if SUPPLIER reasonably determines that such changes will potentially have an adverse effect on the Industrial Sewer; potentially affect compliance with Applicable Laws or Applicable Requirements; or in any manner potentially increase SUPPLIER’S cost of providing Sewer Services, including

without limitation cost of compliance. SUPPLIER shall promptly make its determination regarding whether CUSTOMER's proposed change would have any such effect on the Industrial Sewer or SUPPLIER'S Sewer Services, and SUPPLIER shall notify CUSTOMER within five (5) Business Days Business Days after CUSTOMER's notice of a proposed change whether such change is approved. If SUPPLIER does not approve or disapprove any proposed changes within the five (5) Business Day period described above, SUPPLIER shall be deemed to have disapproved such change. If SUPPLIER does not approve or disapprove such proposed change within two (2) Business Days following receipt of the second notice, SUPPLIER shall be deemed to have approved such change. All such approved changes shall be incorporated by SUPPLIER into a revised waste characterization profile, a copy of which shall be provided by SUPPLIER to CUSTOMER upon request by CUSTOMER and supersede the relevant KWIC Profiles or waste characterization profile. For avoidance of doubt, any reduction or elimination of discharges is not considered a change and does not require written notice to or approval from SUPPLIER.

3.2.2.2 CUSTOMER Reporting and Other Obligations. As a further condition of SUPPLIER's providing CUSTOMER the right to remain connected to and use the Industrial Sewer hereunder, and without limiting CUSTOMER's compliance and reporting obligations set forth in any other provisions of this **ARTICLE III**, CUSTOMER hereby agrees that: (i) CUSTOMER shall promptly provide to SUPPLIER any and all documents or information reasonably required by SUPPLIER, and shall fully cooperate with SUPPLIER as and when reasonably requested, to the extent necessary to allow SUPPLIER to comply with all Applicable Laws relating to the provision of Sewer Services at the Premises, including those requirements imposed under the Supplier SPDES Permit, Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.) and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.); and (ii) CUSTOMER shall not conduct CUSTOMER's activities on the Premises in a manner which would cause SUPPLIER to violate SUPPLIER's obligations under the SUPPLIER SPDES Permit. In addition, on an annual basis, CUSTOMER shall submit to SUPPLIER EHS a written review of all chemical substances contained in CUSTOMER's discharges to the Industrial Sewer during the preceding calendar year versus its KWIC Profile or, if superceded, by its waste characterization profile, and certify that the review is true and accurate.

3.2.2.3 Notification of Noncompliance and Unlawful Discharges. CUSTOMER shall promptly provide written notice to SUPPLIER of any known material non-compliance by CUSTOMER with Applicable Requirements or Applicable Laws related to the use of the Industrial Sewer by notice to SUPPLIER EHS. In addition, CUSTOMER shall immediately notify the Control Center of any discharges or spills into the Industrial Sewer which are in violation of Applicable Requirements, Applicable Laws or this Agreement.

3.2.2.4 Reporting Requirements. CUSTOMER shall promptly supply SUPPLIER EHS with copies of all correspondence, notices, reports and submissions to be made by CUSTOMER, on or after the Contract Date, to any Agency relating to the Industrial Sewer and at such time as such is supplied to any Agency. CUSTOMER shall also promptly notify SUPPLIER of any written allegations or complaints of non-compliance to CUSTOMER from any Agency or person, with respect to discharges into the Industrial Sewer.

3.2.2.5 Inspection Rights; CUSTOMER Cooperation with Sewer Investigations. SUPPLIER, and SUPPLIER's authorized representatives (the "SUPPLIER Representatives"), shall have the right from time to time to enter upon and inspect any portion of the Premises which discharges effluent into the Industrial Sewer, including but not limited to the Buildings or the other structures located on the land or to be constructed thereon, and the business operations of CUSTOMER, upon no less than two (2) Business Days' prior oral notice (at (585)722-2121 and in the event such number changes, CUSTOMER shall provide SUPPLIER with written notice thereof) or written notice (except in the case of an emergency or if SUPPLIER reasonably suspects CUSTOMER is then in breach of its obligations under **Section 3.2.2.3**) and in such a manner so as not to interfere unreasonably with the conduct of CUSTOMER's business, to investigate CUSTOMER's compliance with Applicable Requirements or any other requirement of this **Section 3.2**. During such inspections, SUPPLIER and the SUPPLIER Representatives shall have the right, but not the obligation, to take such samples and conduct such tests with respect to CUSTOMER's effluent as SUPPLIER may determine, in SUPPLIER's sole discretion, to be necessary or advisable to determine CUSTOMER's compliance with Applicable Requirements or any other requirement of this **Section 3.2**. If SUPPLIER plans to conduct sampling of CUSTOMER's effluent, CUSTOMER shall be provided reasonable advance notice of such sampling and the nature of the testing to be conducted, and CUSTOMER shall be entitled to conduct split samples, at CUSTOMER's sole cost and expense. In addition to the foregoing, CUSTOMER shall cooperate with any investigation of the Industrial Sewer conducted by SUPPLIER or any Agency having jurisdiction with respect thereto, which cooperation shall include, without limitation, sharing information about the nature of CUSTOMER's operations at, and use of, the Property, and any substances used by CUSTOMER at the Property; provided that, in addition to the terms of the confidentiality provisions in **ARTICLE IX**, SUPPLIER agrees to enter into a reasonable confidentiality agreement with respect to any of CUSTOMER's proprietary information which may be requested as part of the investigation.

3.2.2.6 SUPPLIER Compliance Obligations. SUPPLIER shall comply with all Applicable Laws, including the SUPPLIER SPDES Permit (as defined below), relating to the monitoring, operation and maintenance of the Industrial Sewer and the "SUPPLIER Sewer Mains" (as defined below) associated with the Industrial Sewer, except for CUSTOMER'S responsibilities provided for in this Agreement and including without limitation this **Section 3.2.2.6**. SUPPLIER shall comply with the DEC State Pollutant Discharge Elimination System Permit regulating the

discharge of certain substances via the Sewer (the “**SUPPLIER SPDES Permit**”), including without limitation, any analysis and certifications required thereby; provided that CUSTOMER shall promptly provide to SUPPLIER any and all documents or information reasonably requested by SUPPLIER and shall fully cooperate with SUPPLIER as and when requested to the extent necessary to allow SUPPLIER to comply with the SUPPLIER SPDES Permit or other Applicable Laws; and further provided that CUSTOMER shall comply with and implement, in its operations at the Premises, the Best Management Practices Plan and Spill Prevention Plan, Mercury Minimization Plan and other plans required by the SUPPLIER SPDES Permit or Applicable Requirements. SUPPLIER represents that it has provided CUSTOMER with a copy of the current SUPPLIER SPDES Permit, and SUPPLIER covenants that it shall provide CUSTOMER with prompt notification of any changes made to the SUPPLIER SPDES Permit throughout the term of this Agreement. SUPPLIER shall be responsible for, and agrees to maintain, continue and use commercially reasonable efforts to renew during the Term, the SUPPLIER SPDES Permit and any variances to the SUPPLIER SPDES Permit required to permit CUSTOMER to discharge into the Sewer, if any. If any renewal, modification, amendment, expiration, termination or other change to the SUPPLIER SPDES Permit (a “**SUPPLIER SPDES Permit Modification**”), as proposed, sought, requested or required by an Agency or SUPPLIER, may in any way potentially impact, restrict or modify CUSTOMER’s discharge, SUPPLIER shall promptly notify CUSTOMER and provide CUSTOMER with all documents and information related to such SUPPLIER SPDES Permit Modification. In the event of any SUPPLIER SPDES Permit Modification, SUPPLIER hereby consents to CUSTOMER’s participation in, at CUSTOMER’s own cost, any administrative, judicial or other proceeding or action with respect to any such SUPPLIER SPDES Permit Modification.

3.3 Maintenance of Sewer Infrastructure. SUPPLIER shall, at SUPPLIER’s sole cost and expense except as otherwise provided in **Section 6.1**, maintain in good working order and repair all elements of the facilities and infrastructure used to provide the Sewer Services which are located on the SUPPLIER side of the Discharge Points, regardless of whether any Discharge Point is located on the property owned or leased by CUSTOMER. CUSTOMER shall, at its sole cost and expense, be responsible to maintain in good working order and repair all elements of the facilities and infrastructure used to access the Sewer Services which are located on the CUSTOMER side of the Discharge Points.

ARTICLE IV — COVENANTS RELATING TO SERVICES

4.1 Installation of New or Modified Facilities. If CUSTOMER in good faith wants to increase CUSTOMER’s Contract Demand of any Service or obtain any Service at additional Delivery Point(s), CUSTOMER may request that SUPPLIER increase its contractual obligations to provide the relevant Service to the relevant existing or proposed Delivery Point(s) by submitting a written request to SUPPLIER pursuant to the notice provisions of this Agreement. Within five (5) business days after receipt of such request, SUPPLIER shall respond in writing and either (i) accept CUSTOMER’s request, in which case the

Contract Demand shall be immediately increased or Service shall be immediately available to the requested additional Delivery Point(s) or (ii) indicate that meeting the request may require SUPPLIER to construct, install and operate New or Modified Facilities. In the latter case, SUPPLIER will advise CUSTOMER in writing within sixty (60) days if it is technically feasible to construct, install and operate the requested New or Modified Facilities. If it is technically feasible, SUPPLIER will provide to CUSTOMER a written, good faith estimate of the costs to construct and install the New or Modified facilities, which costs will include Remediation Costs and other environmental compliance costs required by such construction and installation. Upon receipt of SUPPLIER's written estimate, if CUSTOMER determines to proceed with the construction or installation of the New or Modified Facilities, SUPPLIER and CUSTOMER shall finalize and execute a separate written and binding agreement that will provide that CUSTOMER shall pay the entire cost of such New or Modified Facilities, including related Remediation Costs and other environmental compliance costs, if any, regardless of whether such cost exceeds SUPPLIER's good faith estimate thereof, all or a portion of which costs may be subject to pre-payment by CUSTOMER, and will describe the other terms and conditions under which the New or Modified Facilities will be constructed and installed.

4.1.1 Supplemental Service. If (i) SUPPLIER determines that the construction and installation of New or Modified Facilities requested by CUSTOMER to provide an increase in Contract Demand and/or new Delivery Points are not technically feasible; or (ii) CUSTOMER has disclosed a written offer from another provider to provide and/or has disclosed projections relating to the self-generation of the Services represented by CUSTOMER's request to increase Contract Demand and/or new Delivery Points at a lower lifecycle cost than offered by SUPPLIER inclusive of likely Operating Dividends and projected costs for which CUSTOMER would be responsible pursuant to **Section 4.1**, and such disclosed offer is subject to comparable or superior standards of delivery to those found in this Agreement (to the extent provided by another provider), including but not limited to reliability standards, and SUPPLIER has been given a reasonable opportunity to match that lower cost and failed to do so, then CUSTOMER shall have the right to obtain and/or self-generate up to the quantity of such Service by which CUSTOMER requested to increase the Contract Demand and/or serve additional Delivery Points from a source other than SUPPLIER or by producing such Service itself, provided that if obtained from another source such source provides supply on terms substantially similar to those disclosed to SUPPLIER. If CUSTOMER actually contracts with another source of supply for the provision of such Service, CUSTOMER shall have the right, subject to SUPPLIER's consent, to terminate this Agreement to the extent that it relates to such Service in its entirety. Otherwise, CUSTOMER shall have no obligation to purchase its full requirements for such Service from SUPPLIER so long as the Services used and not purchased from SUPPLIER (i) does not exceed the quantity of such Service by which CUSTOMER requested to increase the Contract Demand, or (ii) are consumed at the proposed Delivery Point(s) that are not served by SUPPLIER.

4.1.2 Reduction in Contract Demand. CUSTOMER shall have the right to reduce its Contract Demand to any level equal to or greater than the Delivery Point Peak

Demand with respect to any Service at any Delivery Point by giving SUPPLIER written notice of such reduction not later than December 1st of any calendar year, which reduction shall be effective with the start of the ensuing calendar year after such notice is given. In the event that CUSTOMER has discontinued or materially reduced production at facilities served by one or more Delivery Points and gives SUPPLIER a written request to reduce Contract Demand at such Delivery Points to levels below the Delivery Point Peak Demand, SUPPLIER will grant such requested change prior to the end of the current year, or as the case may be prior to the actual reduction of the prior twelve (12) Billing Periods peak demand, but only for a month following the month that SUPPLIER has signed contracts for new or increased Contract Demand at existing Delivery Points for the Service in question that were not taken into account in preparing the relevant Annual Calculation Worksheet (as defined in **SCHEDULE C**), and such reduction of Contract Demand will not reduce the total Contract Demand from all EPBUST Customers (including new EBPUST Customers) for that Service for the calendar year in question.

4.2 If CUSTOMER agrees that hot water supply will satisfy its thermal requirements, SUPPLIER may replace low pressure steam supply with hot water supply, at SUPPLIER's expense. If CUSTOMER elects to receive hot water supply in place of steam, CUSTOMER and SUPPLIER will work together to effectuate the conversion in a manner that does not impact CUSTOMER's operations. If CUSTOMER, in its sole discretion, determines that hot water supply does not meet its thermal requirements, CUSTOMER may terminate thermal service and seek alternative suppliers or self-supply the service. SUPPLIER will be solely responsible for any and all costs and modifications to CUSTOMER equipment or infrastructure resulting from CUSTOMERS conversion to alternative service or self-supply.

4.3 Condensate Return. CUSTOMER agrees to maintain the existing building and process condensate collection systems located at the Premises and on the CUSTOMER side of the applicable Delivery Point (each, an "**Internal Condensate System**") in such a manner so as to cause condensate (the "**Condensate**") to be returned to SUPPLIER on a mass basis equal to the amount of steam delivered on a mass basis to the extent reasonably practicable based on the nature, condition and design of the Internal Condensate Systems as of the Contract Date. CUSTOMER shall be responsible to deliver the Condensate to SUPPLIER at the Delivery Point(s) identified in **SCHEDULE A** (which Delivery Points and the utility condensate collection receiver located adjacent thereto are referred to herein as the "**Condensate Return System**"), and in accordance with the specifications set forth in **SCHEDULE H** attached hereto. The cost of maintaining, repairing and replacing the Internal Condensate System which captures the Condensate and delivers the Condensate to the Condensate Return System shall be the sole responsibility of CUSTOMER. The Condensate Return System and distribution assets necessary to return the Condensate from the applicable Delivery Point to SUPPLIER's steam generating facilities shall be maintained by SUPPLIER at SUPPLIER's sole cost and expense. CUSTOMER acknowledges that CUSTOMER's failure to return the Condensate as required under this **Section 4.3** may significantly increase the cost to SUPPLIER of producing and delivering the steam service to CUSTOMER at the Premises, and accordingly, CUSTOMER agrees that if CUSTOMER fails to provide the Condensate to SUPPLIER at the Condensate Return System as required,

SUPPLIER shall be entitled to add to each monthly invoice and to collect as additional charges from CUSTOMER SUPPLIER's additional direct costs incurred to deliver the steam service to the Premises as a result of CUSTOMER's failure to deliver the Condensate, and CUSTOMER shall be responsible to pay such additional charges to SUPPLIER upon written demand therefor (provided that such additional amounts may be included by SUPPLIER in SUPPLIER's monthly invoice).

4.4 Chilled Water Return. CUSTOMER agrees to maintain the existing chilled water return system located at the Premises in such a manner so as to cause the chilled water delivered to the Premises to be returned (the "**Chilled Water Return**") to SUPPLIER in amounts consistent with the design and performance of the existing Chilled Water Return system as of the Contract Date. CUSTOMER shall be responsible to deliver the Chilled Water Return to SUPPLIER using the existing pipes and delivery system, and shall be deemed to have delivered title to and control over the Chilled Water Return to SUPPLIER at the Delivery Point(s) identified in **SCHEDULE A**, and in accordance with the specifications set forth in **SCHEDULE H** attached hereto. The cost of maintaining, repairing and replacing the portion of the chilled water system within the Premises to the applicable Chilled Water Return Delivery Point shall be the sole responsibility of CUSTOMER. The distribution assets necessary to return the Chilled Water Return from the applicable Chilled Water Return Delivery Point to SUPPLIER's chilled water generating facilities shall be maintained by SUPPLIER at its sole cost and expense. CUSTOMER acknowledges that its failure to return the Chilled Water Return as required under this **Section 4.4** may significantly increase the cost to SUPPLIER of producing and delivering the chilled water service to CUSTOMER at the Premises, and accordingly, CUSTOMER agrees that if it fails to provide the Chilled Water Return to SUPPLIER as required hereunder, SUPPLIER shall be entitled to prepare a good faith estimate of the additional costs, including make-up water, chemicals, cooling energy, water treatment and a reasonable estimate of overhead incurred by it as a result of CUSTOMER's failure to deliver the Chilled Water Return, and CUSTOMER shall be responsible to pay such good faith estimate to SUPPLIER upon written demand therefor. In addition, if CUSTOMER shall fail to promptly commence and, within ten (10) days after notice from SUPPLIER, to remedy the failure to deliver Chilled Water Return as required hereunder, and provided that in the case of such failure to deliver Chilled Water Return which cannot, with due diligence, be remedied within a period of ten (10) days, CUSTOMER shall have such additional time to remedy same as may reasonably be necessary to effect such remedy, so long as CUSTOMER commences remedying such failure to deliver Chilled Water Return within the ten (10) day period and proceeds with due diligence to remedy such failure to deliver Chilled Water Return after receipt of said notice; then SUPPLIER shall have the right upon prior written notice to CUSTOMER to access the Premises in order to repair the Chilled Water Return capture and delivery system and otherwise to cause the necessary steps to be taken to restore such Chilled Water Return delivery, and any and all reasonable out-of-pocket costs incurred by SUPPLIER in doing so shall be promptly reimbursed by CUSTOMER upon written demand therefor. CUSTOMER agrees to cooperate with SUPPLIER to open and close winter bypass valves in the fall and spring when requested to do so by SUPPLIER.

4.5 Coordination Committee. A committee (the “**Coordination Committee**”) shall be established and shall be composed of at least one representative (or a proxy) appointed by each Participating Customer who has the experience and training to be able to understand the interface between SUPPLIER and SUPPLIER’s utility infrastructure and CUSTOMER’s operations and the operational complexities of each. The Coordination Committee shall be the forum for the respective representatives to receive information about any potential changes to the system, any planned outages, updated forecasts of likely Operating Dividends, and other general information about the system. SUPPLIER will also use the Coordination Committee meetings as a forum to discuss plans to improve system reliability and efficiency and seek non-binding ideas from Participating Customers regarding such improvements. The Parties acknowledge that the Coordination Committee shall act in an advisory role only and that nothing herein shall restrict SUPPLIER from taking any specific action or require SUPPLIER to take any specific action in connection with the provision of the Services or related to the operations of its business, except that SUPPLIER shall not without approval of the Coordination Committee: (i) pay RED to provide any services not covered by the RED Management Fee (and, in such case, the Coordination Committee must approve the scope of the services to be provided and the cost thereof), (ii) adopt or amend the Load Shedding Schedule, (iii) enter into any contract to provide Services at the EBPUS other than a Conforming Contract, or (iv) undertake any investments which are primarily intended to increase the fuel or operating efficiency within the EBPUS if SUPPLIER projects that Remediation Costs related to such investment that would not be excepted from **Section 6.2** by any of **Section 6.2.1**, **6.2.2** or **6.2.3** would reasonably be greater than twenty-five percent (25%) of the total anticipated capital expenditures for such investment.

4.5.1 SUPPLIER shall, upon the reasonable request of the Coordination Committee, provide each member of the Coordination Committee with information concerning SUPPLIER’s operations, costs, fuel purchases, routine maintenance schedules, major maintenance schedules, emergency plans and measures to mitigate disruptions and improve the efficiency with which Services are provided. SUPPLIER shall periodically provide suggestions to the Coordination Committee identifying how Participating Customers can positively impact the Operating Dividend. SUPPLIER shall, at SUPPLIER’s cost, provide audited financial statements of SUPPLIER (which shall include reasonable assurance with respect to the accuracy of the billing in accordance with **Section 3.4** of **SCHEDULE C**) to the Coordination Committee on an annual basis within one hundred twenty (120) days after the end of SUPPLIER’s fiscal year. Designated representatives of the Coordination Committee or professional advisers retained by the Coordination Committee shall have the right, not more frequently than once per year, to audit the books, records and operating data of SUPPLIER used to determine the Operating Dividends or any charges or Remediation Costs billed to Participating Customers.

4.5.2 Subject to the express duties and obligations set forth in this Agreement, the Coordination Committee shall provide for effective cooperation and interchange of information between Participating Customers as a group and SUPPLIER. The establishment of the Coordination Committee and the duties, functions and responsibilities assigned to it herein shall not constitute the authority to modify

any of the terms, covenants or conditions of this Agreement except as expressly provided in **Section 14.4**.

- 4.5.3** The Coordination Committee shall meet on an as needed basis, but not less than quarterly. The Coordination Committee shall adopt by-laws incorporating voting requirements providing for in **Section 4.5.4** hereof, together with other provisions, in consultation with SUPPLIER and institute rules and policies for the conduct of business by the Coordination Committee.
- 4.5.4** If any action taken by the Coordination Committee shall be deemed to require a vote, approval shall require a vote of the greater of a majority of the voting power of all representatives or fifteen percent more than the voting power of the representative(s) of the Participating Customer having the greatest voting power except where a greater vote is otherwise provided in this Agreement. For purposes of any action taken by the Coordination Committee, the representative (or representatives collectively) of each Participating Customer shall have voting power equal the Allocation Percentage (as defined in **SCHEDULE C**) of such Participating Customer.

ARTICLE V — CHARGES FOR SERVICES

5.1 Pricing. CUSTOMER agrees to pay SUPPLIER for the Services including any increased Contract Demand or new Delivery Points requested by CUSTOMER as provided for in **Section 4.1** or any decreased Contract Demand requested in **Section 4.1.2** in the amounts computed in accordance with the price and quantity provisions included in **SCHEDULE C** attached hereto and made a part hereof, which is entitled "Service Rate Calculations". CUSTOMER acknowledges that the method of determining the charges for Services described in such **SCHEDULE C** has been negotiated at arms' length and represents the agreement of the Parties with respect to the determination of the price for the Services provided hereunder by SUPPLIER. Accordingly, CUSTOMER agrees that CUSTOMER shall not challenge, before the Public Service Commission or any court or other administrative or governmental tribunal or any arbitrator, as unfair or inappropriate the method set forth in such **SCHEDULE C** of determining the amounts to be paid by CUSTOMER for the Services. SUPPLIER agrees not to make any Non-Compliance Investment (as defined in **SCHEDULE C**) unless SUPPLIER projects in good faith that such Non-Compliance Investment will result in an increase of the Operating Dividend (as defined in **SCHEDULE C**) on a cumulative basis over the three (3) year period following the commercial operation date of the improvement funded by such Non-Compliance Investment. SUPPLIER agrees to use commercially reasonable efforts to minimize the actual, delivered price per MMBtu of all fuel purchased by SUPPLIER for use in providing the Services, taking into account safety, reliability, maintenance and backup concerns related to the amount and nature of fuel consumed and applicable regulatory requirements.

5.2 Taxes. Any and all sales taxes, utility gross receipts taxes or similar taxes or charges imposed on the delivery and/or sale of the Services or on SUPPLIER's revenues or income derived from the sale, transportation, transmission or distribution of the Services, whether imposed by law upon SUPPLIER or CUSTOMER, shall be the responsibility of

CUSTOMER; it being understood and agreed that if CUSTOMER qualifies for an exemption from sales tax, CUSTOMER shall not be liable for payment of any sales tax under this provision. Such taxes shall be paid by CUSTOMER either within twenty (20) days after invoice thereof from SUPPLIER or, if possible, directly by CUSTOMER to the appropriate taxing jurisdiction. Notwithstanding the foregoing, SUPPLIER, RED and their affiliates shall be solely responsible for any and all income taxes payable by them in connection with the delivery and/or sale of the Services or any profit therefrom.

5.3 RED Management Fee.

5.3.1 CUSTOMER acknowledges that SUPPLIER will obtain certain management services from RED, which will be paid monthly by SUPPLIER and reset at the beginning of each calendar year as an annual amount equal to one million three-hundred thousand dollars (\$1,300,000) multiplied by the Inflation Index Amount with respect to such calendar year as defined in **SCHEDULE C** (the “**RED Management Fee**”).

5.3.2 RED will provide SUPPLIER with general management, accounting services, management of the annual audit of financial records, support for human resources management, corporate information technology management, environmental health and safety management, engineering and operations review, internal legal review, insurance sourcing and management, sourcing and management of outside professional services, public affairs support, support in interfacing with governmental agencies, marketing support, investor and lender relationship management and such other general management support as required for efficient dispatch of SUPPLIER obligations. RED shall not be obligated to provide detailed engineering, outside legal advice, conduct of the annual audit or other outside professional services. In the event that RED does not provide any services required to be provided by it pursuant to this **Section 5.3.2**, RED shall reimburse SUPPLIER for any costs incurred by SUPPLIER to perform such services itself or obtain such services from a third party and such reimbursement shall not constitute “Revenues” for purposes of **SCHEDULE C**.

5.4 New or Modified Facilities. CUSTOMER shall bear the costs for construction or installation of any New or Modified Facilities requested by CUSTOMER pursuant to **Section 4.1** and approved by SUPPLIER in accordance with **Sections 1.1, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1 or 8.1** of **SCHEDULE D** or **Sections 1.1, 2.1, 3.1, 4.1, 5.1, 6.1, 7.1, 8.1, 9.1, 10.1, 11.1, 12.1 or 13.1** of **SCHEDULE F** to serve CUSTOMER’s operations at the Premises. Prior to constructing, installing or operating any New or Modified Facilities requested by CUSTOMER pursuant to **Section 4.1**, CUSTOMER and SUPPLIER shall execute a separate written agreement that provides for their respective rights and obligations as described in **Section 4.1** hereof.

ARTICLE VI — REMEDIATION COSTS

6.1 Remediation Costs. Remediation Costs resulting from SUPPLIER's construction and installation of New or Modified Facilities for CUSTOMER pursuant to **Section 4.1** will be paid by CUSTOMER.

6.2 Payment of Other Remediation Costs. CUSTOMER shall pay its share of any other Remediation Costs as calculated in **Section 6.4** incurred by SUPPLIER, except for:

- 6.2.1** Remediation Costs paid by, or for which SUPPLIER is entitled to reimbursement from any EBPUS Customer pursuant to a provision corresponding to **Section 4.1** in a Conforming Contract or such similar provisions as may be contained in contracts of EBPUS Customers who are not Participating Customers;
- 6.2.2** Remediation Costs incurred in connection with the modification or expansion of SUPPLIER's facilities for the purpose, in whole or in part, of providing revenue-generating Utility Services outside the EBPUS;
- 6.2.3** Remediation Costs resulting from SUPPLIER's repair or maintenance activities for which SUPPLIER has been reimbursed pursuant to **Section 5.9** of the Asset Purchase Agreement; and
- 6.2.4** Remediation Costs incurred in connection with an investment requiring Coordination Committee approval if such approval was not obtained prior to entering into any commitment to make such investment.

6.3 Notice of Environmental Disturbance. Prior to any Environmental Disturbance on any property owned or leased by CUSTOMER, SUPPLIER shall notify CUSTOMER of the affected property to be disturbed and shall comply with any applicable soil management requirements and/or Environmental Laws in connection with activities related to such Environmental Disturbance and shall provide detailed description of such compliance to CUSTOMER before any such Environmental Disturbance.

6.4 Allocation of Remediation Costs. CUSTOMER's share of the Remediation Costs payable pursuant to **Section 6.2** shall be based upon its respective Remediation Allocation Percentage with respect to such Remediation Costs. SUPPLIER shall invoice CUSTOMER for its share of the Remediation Costs incurred as a part of normal monthly bills in the invoice for the Billing Month immediately following the Billing Month in which such Remediation Costs were incurred.

- 6.4.1** If SUPPLIER intends to allocate to EBPUS Customers any Remediation Costs which would otherwise be the responsibility of Kodak or its successors (whether by trust or otherwise) under **Section 6.2.3**, then prior to allocating any such cost to EBPUS Customers in accordance with this **ARTICLE VI**, SUPPLIER must (i) be able to reasonably demonstrate based on an engineering analysis that no practicable alternative exists to installing such facilities in such environmentally sensitive areas, (ii) secure the prior written consent of the Coordination Committee pursuant to **Section 4.5.4** and DEC to conduct such work and such

work is executed in accordance with the plan approved by the Coordination Committee (e.g. SUPPLIER will not exceed cost authority without Coordination Committee approval).

6.5 Limitation on Direct Liability for Remediation. Except as provided in this **ARTICLE VI**, CUSTOMER shall have no liability under this Agreement for any Remediation Costs incurred by SUPPLIER; provided, CUSTOMER acknowledges such costs may affect the amount of the Operating Dividend available.

ARTICLE VII — METERING

7.1 Metering. Consumption of each of the Utility Services by CUSTOMER shall be determined based on the measurements logged by Meters that are currently installed or that will be installed by SUPPLIER. SUPPLIER will install, own, operate and maintain a separate Meter for each type of Utility Service that is provided to each Delivery Point. Each Meter will measure the amount of each Service delivered by SUPPLIER to the Delivery Point for that Utility Service. SUPPLIER will be responsible for reading each Meter except as provided for in **Section 7.6**. SUPPLIER will use commercially reasonable efforts to install accurate Meters by the end of calendar year 2014. CUSTOMER shall be deemed to have consumed Sewer Services in an amount equal to the metered amount of Industrial Water consumed by CUSTOMER.

7.2 Meter Facilities. CUSTOMER agrees to provide sufficient and readily accessible space for the installation, operation, access and repair of any Meter.

7.3 Meter Seal. SUPPLIER may seal or lock any Meter or Meter installation. Without regard to whether a Meter is sealed or locked, no person except a duly authorized employee, contractor or designee of SUPPLIER shall be permitted to break or replace a seal or lock on any Meter, or to alter or change a Meter or its connections or location.

7.4 Meter Relocation. If at any time after the installation of any Meter, conditions are changed so that a Meter's location becomes unsuitable, SUPPLIER shall have the right to move the Meter and any associated equipment, fixtures or facilities to a new location which is mutually agreeable to the Parties. If the change in conditions is due to action on the part of SUPPLIER, SUPPLIER shall bear the cost (as Operating Cost) of relocating such Meter as described in this **Section 7.4**. If the change in conditions is due to action on the part of CUSTOMER, CUSTOMER shall bear the cost of relocating such Meter as described in this **Section 7.4**.

7.5 Meter Testing. If CUSTOMER makes a written request that any Meter be tested, SUPPLIER shall test such Meter as soon as practicable and provide the test results in writing to CUSTOMER. SUPPLIER may test any Meter at its own volition and, if it does so, shall provide the test results in writing to CUSTOMER. Where any such test reveals that a Meter is not functioning within the limits of its calibration specifications, SUPPLIER shall repair or replace the inaccurate Meter at its sole cost and expense and any replacement shall be of a model and type that has at least the same degree of reliability and accuracy as the original Meter. SUPPLIER shall reimburse CUSTOMER for any and all overcharges, and

CUSTOMER shall pay SUPPLIER for any and all undercharges, attributable to a Meter not functioning within the limits of its calibration specifications, which overcharges and undercharges shall be estimated in accordance with **Section 7.6**. Where any such test requested by CUSTOMER in a writing addressed and sent as described in this Agreement reveals that the Meter requested to be tested by CUSTOMER is functioning within its calibration specifications, CUSTOMER shall bear the costs and expenses of such test. In all other circumstances, SUPPLIER shall bear the cost of any Meter test. In no event shall either Party be responsible for repaying undercharges or overcharges for a period greater than ninety (90) days prior to the date of notice addressed and sent as described in this Agreement that Customer believes the Meter readings are incorrect or the date on which SUPPLIER tests a Meter at its own volition, as applicable. Except as provided in this **Section 7.5** and notwithstanding **Section 7.6** SUPPLIER shall not be entitled to bill or collect any charges for any Services with respect to any Billing Period unless such charges are included in the initial invoice issued by SUPPLIER with respect to such Billing Period.

7.6 Estimated Usage. Should any Meter for any reason fail to register the full usage, or register excessive usage, of a Service at the Premises for any period of time, or if the actual usage of a Service cannot be obtained for any reason, the usage of such Service may be reasonably estimated by SUPPLIER on the basis of available data, and CUSTOMER will be billed accordingly. Where such estimated usage occurs, SUPPLIER shall notify CUSTOMER at the time of billing for the applicable period of such estimated usage, and such notice shall identify the period of such estimated usage and the usage estimated for each such period. Thereafter, CUSTOMER shall have a period of ninety (90) days following receipt of the invoice to request a written description of the basis of such estimate; provided that any such request shall be by a writing addressed and sent as described in this Agreement; and further provided that CUSTOMER shall not have the right to withhold payment of its invoice containing Services charges based on estimated usage so long as such estimate has been made by SUPPLIER in good faith. SUPPLIER will respond to any such request within thirty (30) days in a writing that shall be addressed and sent as described in this Agreement. If the estimated usage which formed the basis for any bill prepared in accordance with this **Section 7.6** was not a reasonable estimate of actual usage, then the appropriate refund to CUSTOMER or additional charges due to SUPPLIER shall be included as a credit or additional charge in the next monthly invoice to CUSTOMER. SUPPLIER shall use commercially reasonable efforts to repair or replace any Meter that is inoperable or otherwise not functioning within its calibration specifications so as to minimize the need for estimating the usage of Services and shall, in any event, do so as necessary to prevent the need to estimate usage of a particular Service at a particular Delivery Point for a period of more than ninety (90) days after the inoperable or malfunctioning Meter is first identified. Upon the written request of CUSTOMER, SUPPLIER will use commercially reasonable efforts to install Meters to measure usage of Utility Services where such usage is not then measured.

7.7 Additional Meters. Should any Meter for any reason fail or fail to register the full usage, or register SUPPLIER has the right to install at its sole cost and expense new meters to measure usage of any Services where such usage is not then measured.

7.8 CUSTOMER Information. SUPPLIER agrees to provide CUSTOMER with such reports as may reasonably be requested by CUSTOMER summarizing in reasonable detail CUSTOMER's consumption of Services and any relevant characteristics thereof.

7.9 Installation of Continuous Metering Capability. Supplier agrees to use commercially reasonable efforts to convert all Meters with respect to Peak Demand Based Services to Continuous Meters within twelve (12) months after the Effective Time.

ARTICLE VIII — PAYMENT

8.1 Billing Period. SUPPLIER and CUSTOMER agree that each Billing Month shall constitute a billing cycle.

8.2 Invoices. Invoices for Services rendered shall be issued after each billing cycle. Each invoice shall itemize the amount of each Service rendered during the applicable Billing Month and may not be issued prior to the end of such Billing Month. Such itemization shall be pursuant to the data measured and reported by the affected Meter or, where usage is estimated, as described in **Section 7.6**.

8.3 Payment. All payments for Services provided by SUPPLIER under this Agreement shall be made net twenty (20) days from the invoice date. In the event that CUSTOMER fails to make payment of all or any part of an invoice as described in this **Section 8.3**, SUPPLIER may, but shall not be obligated to, issue a second invoice for any outstanding amount.

8.4 Late Payment. Any amount not paid by twenty (20) days from the invoice date for such Service or Services shall be late, and shall be subject to a late charge equal to one and a half percent (1.5%) per month of any unpaid amount.

8.5 Discontinuance of Services for Late Payment. In the event that CUSTOMER fails to make payment within ninety (90) days after the invoice date for any Service or Services, SUPPLIER may, in its discretion, discontinue provision of any or all Services to the Premises on three (3) business days' notice if such payment is not made within such three (3) day period; provided, no Service or Services may be discontinued based on a failure by CUSTOMER to pay any amount being disputed by CUSTOMER in good faith. If SUPPLIER discontinues any Service or Services pursuant to this **Section 8.5**, SUPPLIER shall not thereby be deemed to have breached SUPPLIER's obligations to CUSTOMER under this Agreement or under the Public Service Law or its implementing regulations, or to have otherwise harmed or caused harm to CUSTOMER in any regard. In addition, SUPPLIER's discontinuance of any Service pursuant to this **Section 8.5** shall not relieve CUSTOMER of CUSTOMER's duties and obligations under this Agreement, and such discontinuance shall be in addition to any other legal or equitable remedies available to SUPPLIER. In the event that SUPPLIER has discontinued any Service or Services pursuant to this **Section 8.5**, SUPPLIER shall resume such Service or Services promptly following payment by CUSTOMER of any amounts due for Services that have been invoiced by SUPPLIER prior to such discontinuance of such Service or Services inclusive of any interest due on late charges pursuant to **Section 8.4**; provided, if SUPPLIER has

discontinued any Service or Services to CUSTOMER pursuant to this **Section 8.5** two or more times in any twenty-four (24) month period, SUPPLIER may also require, as a condition to resumption of the provision of Services, that Customer prepay for a period of twelve (12) Billing Months commencing with the Billing Month in which the Services are resumed on or prior to the first day of each such Billing Month an amount equal to the projected charges for Services that will be incurred during such Billing Month (in which case SUPPLIER shall have the right to discontinue Services on or after the first day of each such Billing Month if the projected charges for such Billing Month are not paid to SUPPLIER on or before the first day of such Billing Month and prior to such discontinuance).

ARTICLE IX — CONFIDENTIAL INFORMATION

9.1 During the Term, certain information that is considered proprietary or confidential may be disclosed or exchanged between the Parties. The term “**Confidential Information**” shall mean information disclosed hereunder by one Party to the other Party in accordance with the following procedure:

- 9.1.1** When disclosed in writing, Confidential Information shall be labeled as being confidential;
- 9.1.2** When disclosed orally, Confidential Information shall be identified as confidential at the time of disclosure, with subsequent confirmation to the other Party in writing within thirty (30) days after disclosure, identifying the date and type of information disclosed.
- 9.1.3** In addition, the existence and terms and conditions of this Agreement (including without limitation the amount of the charge rates and total charges for Services) shall be deemed to be Confidential Information and shall be treated as such by each Party.

9.2 The rights and obligations of the Parties with respect to Confidential Information shall survive termination or expiration of this Agreement for one (1) year. Each Party shall hold in confidence the other’s Confidential Information, shall disclose such information only to those persons whose work in connection with this Agreement requires such disclosure, and shall not, without the prior written consent of the other Party, disclose such information to any person except its own employees, contractors, attorneys, accountants and consultants who have a need to know and are bound to keep such information confidential, and shall not use the other’s Confidential Information for any purpose except to perform its obligations under this Agreement; provided, however, CUSTOMER may disclose, to the extent that such disclosure is reasonably necessary, the Confidential Information to any person with whom CUSTOMER is discussing any sale, lease or other transaction concerning the Premises, and to such person’s employees, contractors, attorneys, accountants and consultants, so long as such person has agreed in writing to comply with this **Section 9.2** and to cause its employees, contractors, attorneys, accountants and consultants who receive Confidential Information to comply with this **Section 9.2**. These obligations shall not apply to any Confidential Information to the extent that it:

- 9.2.1 is or becomes a matter of public knowledge through no fault of the receiving Party;
- 9.2.2 is lawfully in the possession of the receiving Party in written or other recorded form before the time of disclosure by the disclosing Party;
- 9.2.3 is lawfully acquired by the receiving Party from a source that is not under obligation to the disclosing Party regarding disclosure of such information;
- 9.2.4 is disclosed by the disclosing Party to any third party on a non-confidential basis; or;
- 9.2.5 is required to be disclosed by operation of law, including, without limitation, regulatory or governmental rules requiring approval prior to marketing products, or is developed by the receiving Party independently of the providing or receiving of the Services.

ARTICLE X — REPRESENTATIONS AND WARRANTIES

10.1 CUSTOMER acknowledges that pursuant to the PSC Order, CUSTOMER has been advised by SUPPLIER that CUSTOMER has the right to request electric and natural gas commodity service from providers of utility services other than SUPPLIER utilizing SUPPLIER's transmission and distribution facilities within EBPUS. Notwithstanding this right CUSTOMER, subject to the other terms and conditions of this Agreement, represents and warrants that CUSTOMER has elected to purchase CUSTOMER's full Regulated Service requirements for the Premises from SUPPLIER and SUPPLIER agrees to provide those requirements in accordance with the terms of this Agreement for each Regulated Service to each Delivery Point as specified in **SCHEDULE D** and any amendments thereto.

ARTICLE XI — TERM AND TERMINATION RIGHTS

11.1 **Term.** This Agreement shall become effective on the Contract Date and, unless sooner terminated as provided herein, shall continue for a period of [_____] (____) years following the Contract Date (the "**Initial Term**"). Upon the expiration of the Initial Term and each subsequent Renewal Term (as hereinafter defined), as applicable, this Agreement shall be automatically renewed for an additional period of five (5) years (each, a "**Renewal Term**") unless either Party gives notice to the other Party at least two (2) years prior to the expiration of the Initial Term or Renewal Term, that it elects to cause this Agreement not to renew. If this Agreement is not renewed at the expiration of the Initial Term or any Renewal Term pursuant to this **Section 11.1**, the cost of obtaining alternative services shall be the sole responsibility of CUSTOMER, except that SUPPLIER shall be responsible, at SUPPLIER's sole cost and expense, for disconnecting the Premises from SUPPLIER's utility delivery systems and shall cooperate with CUSTOMER and any replacement provider to effect a smooth and efficient transition of the provision of Services by SUPPLIER to such replacement provider.

11.2 **CUSTOMER's Termination Rights.** CUSTOMER shall have the right to cease obtaining any one or more of the Services from SUPPLIER if a Terminable Shortfall has

occurred with respect to such Service, or a Shortfall attributable to a Force Majeure Event has occurred with respect to such Service and SUPPLIER has failed to demonstrate commercially reasonable efforts to restore such Service. In addition to the right to cease obtaining a Service affected by any of the conditions in this **Section 11.2**, CUSTOMER shall have the right to cease to obtain any other Service or Services if the replacement of the Service affected by any of the conditions in this **Section 11.2** and such other Service or Services in the aggregate can be achieved more efficiently by replacing such other Service or Services in conjunction with the replacement of the Service affected by any of the conditions in this **Section 11.2**.

11.3 Termination Mechanics. CUSTOMER may exercise its right to cease to obtain a Service pursuant to **Section 11.2** by giving notice of such termination to SUPPLIER, which notice shall specify each Service that is ceasing to be provided or obtained and the basis therefor. CUSTOMER or SUPPLIER, as applicable, may exercise its right to terminate this Agreement pursuant to **Section 14.9** by giving notice of such termination to the other Party, which notice shall specify that such termination is based on an Extended Force Majeure Event. Upon the giving of such notice, this Agreement shall terminate with respect to the affected Service or Services (or in its entirety if terminated pursuant to **Section 14.9**), subject to the obligations of the Parties under this **Section 11.3**. If this Agreement is terminated in whole or in part pursuant to **Section 11.2** or **14.9**:

11.3.1 the cost of obtaining alternative services shall be the sole responsibility of CUSTOMER, except that SUPPLIER shall be responsible, at SUPPLIER's sole cost and expense, for disconnecting the Premises from SUPPLIER's utility delivery systems (other than the FWPS Distribution System);

11.3.2 in the case of any termination affecting fire water protection services;

11.3.2.1. prior to the effective date of such termination, CUSTOMER shall, at CUSTOMER's sole cost and expense, (i) construct and install or cause a third party to construct and install, a direct connection from the public potable water delivery system operated by the [City of Rochester Bureau of Water and Lighting/Monroe County Water Authority] for fire protection purposes (the "**Replacement Fire Protection Water Service**"), which Replacement Fire Protection Water Service shall be provided generally in the same manner and quantities as the fire protection water service and provide quantities, flow and pressure levels that comply with Applicable Laws and all approvals of Governmental Authorities, and (ii) install a fire protection water distribution system consisting of, but not limited to, water mains, piping, valves, pumps, backflow preventers, strainers and related equipment and facilities to replace, in whole or in part, that portion of the SUPPLIER Distribution System serving the Premises (the "**Replacement Distribution System**");

11.3.2.2. to the extent any portions of the FWPS Distribution System replaced by the Replacement Distribution System are no longer to be used by SUPPLIER, such portions shall be abandoned to CUSTOMER and SUPPLIER shall at the time of abandonment deliver a bill of sale or similar instrument sufficient to

convey title to such abandoned portions of the FWPS Distribution System to CUSTOMER;

11.3.2.3. In connection with the installation of the Replacement Distribution System, CUSTOMER shall, at CUSTOMER's sole cost and expense, perform the following separations and disconnections from the Fire Protection Water Service and the SUPPLIER Distribution System: (i) cap all existing, abandoned pipes formerly connecting the Replacement Distribution System to the FWPS Distribution System in such a way that groundwater and other foreign materials shall be prevented from entering such abandoned pipes; and (ii) perform any additional separation activities mutually agreed upon by SUPPLIER and CUSTOMER.

11.3.3 SUPPLIER shall, upon the request of CUSTOMER, use commercially reasonable efforts to continue to provide in accordance with the terms of this Agreement all or any part of the affected Services for a period of up to twenty-four months (as requested by CUSTOMER) to allow CUSTOMER to find suitable replacement for the Services and shall cooperate with CUSTOMER and any replacement provider to effect a smooth and efficient transition of the provision of such Services by SUPPLIER to such replacement provider; and

11.3.4 All obligations accrued by either Party under this Agreement that relate to the period prior to such termination or for Services provided after such termination pursuant to **Section 11.3.2** shall survive such termination and shall be paid or performed in accordance with the terms and conditions of this Agreement as though no such termination had occurred.

ARTICLE XII — ASSIGNMENT OF THIS AGREEMENT

12.1 Assignment of Agreement or Transfer of Delivery Points by CUSTOMER. Without the consent of SUPPLIER, CUSTOMER may assign this Agreement or its rights and obligations hereunder with respect to one or more of the individual Delivery Points (i) to an unrelated third party, or (ii) to any parent, subsidiary or affiliate of CUSTOMER, provided, in each case, that the assignee assumes in writing all of the obligations and duties of CUSTOMER corresponding to the assignment. CUSTOMER shall give SUPPLIER written notice of any assignment of this Agreement or any of its rights and obligations hereunder at least ten (10) days preceding such assignment. Upon the effective date of any assignment by CUSTOMER (other than an assignment pursuant to clause (ii) above), SUPPLIER agrees that SUPPLIER shall look solely to the assignee for performance of the obligations assumed by such assignee, and CUSTOMER shall be automatically released without any further action by CUSTOMER or SUPPLIER from any and all liability for the continued performance of such obligations. Any attempted assignment by CUSTOMER in contravention of the above shall be null and void and of no force or effect.

12.2 In the case of an assignment by CUSTOMER of its rights and obligations under this Agreement with respect to less than all of CUSTOMER's Delivery Points, CUSTOMER shall designate each Delivery Point of CUSTOMER for each Service being assigned to the

assignee in connection with such partial assignment (the “**Transferred Delivery Points**”). From and after such partial assignment, CUSTOMER’s Contract Demand shall be reduced by the Contract Demand associated with the Transferred Delivery Points and assignee’s Contract Demand shall equal (or, if assignee is already a Participating Customer, increased by) the Contract Demand associated with the Transferred Delivery Points. Concurrently with the effective date of such assignment, assignee and SUPPLIER shall execute an agreement reflecting the assignment of the Transferred Delivery Points and amendments to **SCHEDULES A, D and F** as applicable, which agreement will have the same terms and conditions as this Agreement with the exception that (i) the assignee will be identified as the party to the agreement and (ii) Schedules A, D and F to this Agreement will be modified to delete matters not relating to the Transferred Delivery Points. Concurrently with the effective date of such assignment, CUSTOMER and SUPPLIER shall execute an amended and restated Agreement that will only be updated to reflect the deletion from **SCHEDULES A, D and F** of matters related to the Transferred Delivery Points.

12.3 Assignment by SUPPLIER. SUPPLIER may assign this Agreement without CUSTOMER’s consent to any third party which acquires all or substantially all of SUPPLIER’s assets, whether by merger, reorganization, acquisition, sale or otherwise, provided that SUPPLIER has provided at least ninety (90) prior written notice of the proposed assignment to CUSTOMER, CUSTOMER is put on notice of all hearings for an approval of such transfer with the Public Service Commission and the acquisition of such assets shall have been approved by the Public Service Commission and provided that the assignee assumes in writing all of SUPPLIER’S obligations under this Agreement. In addition, SUPPLIER may partially assign this Agreement with respect to one or more, but less than all, of the Services provided hereunder to any third party which acquires all or substantially all of that portion of the business assets of SUPPLIER used to provide such Service or Services, provided that either: (i) the acquisition of such assets shall have been approved by the Public Service Commission and provided that the assignee assumes in writing all of SUPPLIER’S obligations under this Agreement; or (ii) SUPPLIER agrees not to be released from its liability for the performance of this Agreement. Upon the effective date of any such partial assignment by SUPPLIER, CUSTOMER agrees that (except in the case of an agreement to the contrary by SUPPLIER pursuant to clause (ii) of the preceding sentence) CUSTOMER shall look solely to SUPPLIER’s assignee for performance of the Services to which the assignment applies, and CUSTOMER shall release SUPPLIER from any and all liability for the continued performance of this Agreement with respect thereto; provided that CUSTOMER shall have received written confirmation from the proposed assignee that it shall assume all of the obligations and duties under this Agreement accruing thereafter. Without the consent of CUSTOMER, SUPPLIER (a) may assign this Agreement to a direct or indirect subsidiary of RED, or (b) may make a collateral assignment, pledge, mortgage or grant of a security interest to any lender (or collateral agent or similar fiduciary for the benefit thereof) in connection with the financing of capital improvements to assets used by SUPPLIER to provide Services.

ARTICLE XIII — LIABILITY, INSURANCE AND INDEMNIFICATION

13.1 Insurance.

13.1.1 SUPPLIER and CUSTOMER shall each, at their own cost and expense, maintain and keep in force at all times during the Term:

- (i) Commercial General Liability Insurance, including coverage for Products/Completed Operations and Contractual Liability, covering all claims for personal injury, death or property damage occurring on, in or about the Buildings, Premises and, in the case of SUPPLIER, EBPUST, with a limit of liability of not less than ten million dollars (\$10,000,000) per occurrence and aggregate combined single limit for bodily injury and property damage; and
- (ii) Worker's Compensation Insurance covering all claims under applicable Workers' Compensation statutes or any similar statutes or requirements.

13.1.2 If either SUPPLIER or CUSTOMER contracts with any third party to perform maintenance activities or any other activity, or permits such party to conduct any of maintenance activities or any other activity of any kind on the Premises or in the Buildings, SUPPLIER or CUSTOMER, as the case may be, shall be responsible for the acts of such party in accordance with the provisions of this Agreement, and SUPPLIER and CUSTOMER, as the case may be, shall bear all responsibility for assuring the adequacy of any insurance carried by such party. The amount of such insurance carried by such Person shall not limit SUPPLIER's or CUSTOMER's respective liability hereunder.

13.1.3 CUSTOMER and SUPPLIER shall also maintain and keep in force at all times during the Term, all risk property damage insurance covering all property of CUSTOMER or SUPPLIER, respectively, located at or serving the Premises, including equipment, machinery, stock supplies and leasehold improvements, for the full replacement value of such property.

13.1.4 CUSTOMER and SUPPLIER shall be required to name each other as an "Additional Insured" on each of the applicable policies named herein.

13.2 Mutual Release and Waiver of Subrogation. SUPPLIER and CUSTOMER hereby waive on behalf of themselves and their respective insurers, any claims that either actually may have against the other for loss or damage covered under the respective insurance policies required under **Section 13.1**. It is understood that this waiver is intended to extend to all such loss or damage whether or not the same is caused by the fault, neglect or negligence of either SUPPLIER or CUSTOMER and whether or not insurance is in force. If required by policy conditions, each Party shall secure from its insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other Party.

13.3 Limitation of SUPPLIER's Liability. SUPPLIER shall not be liable for any personal injury, death, or property damage to any person or entity (including CUSTOMER or any other Customer Indemnified Parties) resulting in any way from: (i) the interruption or failure of SUPPLIER to provide any Service hereunder, or (ii) CUSTOMER's use of any Service on the Premises on the downstream, CUSTOMER-side of the applicable Delivery

Points, unless and only to the extent caused by the gross negligence or willful misconduct of SUPPLIER, and provided that the limitations of **Section 13.4** of this Agreement shall apply to and limit the liability of SUPPLIER under this **Section 13.3**.

13.4 Consequential Damages. It is specifically agreed and understood that neither Party will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith in contract or in tort (including negligence), under any warranty, or otherwise, including without limitation CUSTOMER's failure to accept or SUPPLIER's failure to deliver, Services at any time. This **Section 13.4** shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise. Nothing in this **Section 13.4** shall affect any right of CUSTOMER under **Section 3.6** of **SCHEDULE C**.

13.5 Indemnification.

13.5.1 By SUPPLIER. Subject to the limitations set forth in **Sections 13.2, 13.3** and **13.4**, SUPPLIER shall indemnify, defend, and hold harmless CUSTOMER, its members, directors, officers, shareholders, employees, contractors and agents (together, the "**Customer Indemnified Parties**") from and against any and all claims, demands, administrative or judicial proceedings, costs, expenses (including reasonable attorneys' fees and expenses), liabilities, damages, judgments, or awards (together, "**Losses**") asserted against, resulting from, imposed upon or incurred by any Customer Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including Customer Indemnified Parties) arising directly or indirectly, out of the negligence or willful misconduct of SUPPLIER or any Supplier Indemnified Party in connection with the Services or this Agreement, or the default of SUPPLIER under this Agreement (other than interruptions of Services or Customer's use of Services, SUPPLIER's responsibilities for which are specifically and solely addressed by **Section 3.6** of **SCHEDULE C**); or (ii) Losses of third parties or its contractors of agents, for personal injury, death, or property damage arising, directly or indirectly, out of the provision of the Services under this Agreement on or after the Contract Date, except in the case of either (i) or (ii) above, to the extent caused by the negligence or willful misconduct of CUSTOMER, any other Customer Indemnified Party or the person or entity suffering the Losses.

13.5.2 By CUSTOMER. Subject to the limitations set forth in **Sections 13.2** and **13.4**, CUSTOMER shall indemnify, defend, and hold harmless SUPPLIER, its members, managers, officers, employees, contractors and agents (together, the "**Supplier Indemnified Parties**") from and against any and all Losses asserted against, resulting from imposed upon or incurred by any Supplier Indemnified Party by reason of or resulting from: (i) Losses of any person or entity (including the Supplier Indemnified Parties) arising, directly or indirectly out of the negligence or willful misconduct of CUSTOMER or any Customer Indemnified Party in connection with the Services or the default by CUSTOMER under this

Agreement; or (ii) Losses of third parties or its contractors or agents, for personal injury, death, or property damage, arising directly or indirectly, out of the ownership, management, operation or maintenance of the Premises other than distribution systems for the Services on the CUSTOMER side of the applicable Delivery Points, except in the case of either (i) or (ii) above to the extent caused by the negligence or willful misconduct of SUPPLIER, any other Supplier Indemnified Party or the person or entity suffering the Losses.

ARTICLE XIV — GENERAL TERMS AND CONDITIONS

14.1 Notice and Communications. All notices and other communications required or permitted under this Agreement must be in writing and will be delivered personally or sent by commercial courier, or by postage prepaid certified mail return receipt requested or by registered mail or by facsimile, at the option of the sending Party. All communications must be sent to, and shall be effective on the date of the delivery at, the receiving Party's address indicated below. Such addresses may be changed by submitting a notice as provided in this **Section 14.1** to the other Party.

Communications to SUPPLIER:

Communications to CUSTOMER:

RED-Rochester, LLC

123 Main Street

Rochester, NY 14652-3709

Attn:

Attn:

Facsimile: () ____ - _____

Facsimile: () ____ - _____

With a copy to:

With a copy to:

RED-Rochester, LLC

640 Quail Ridge Drive

Westmont, IL 60559

Attn: General Counsel

Attn:

Facsimile: (630) 590-6037

Facsimile: () ____ - _____

14.2 Survival. The following provisions shall survive termination of this Agreement: **ARTICLE IX**, Confidential Information; **ARTICLE X**, Representations and Warranties;

ARTICLE XI, Term and Termination Rights; **ARTICLE XIII**, Liability, Insurance and Indemnification; and this **ARTICLE XIV**, General Terms and Conditions.

14.3 Conflicts in Documentation. In the event that a conflict arises between this Agreement and any purchase order, separate agreement or schedule implementing this Agreement, the terms of this Agreement shall prevail, unless such purchase order, agreement or schedule by its terms modifies this Agreement, describes the scope of such modification, and is agreed to in a separate writing by a duly authorized representative of each Party.

14.4 Amendments. No addition to, deletion from or modification of any of the provisions of this Agreement shall be binding upon the Parties unless such deletion, addition or modification is made in writing and is signed by a duly authorized representative of each Party; provided, however, if an amendment (which may include an amendment to the Spreadsheet as defined in **SCHEDULE C**) has been approved with respect to all Conforming Contracts by (i) SUPPLIER, (ii) representatives of the Coordination Committee representing at least two-thirds of the voting power of all representatives of the Coordination Committee, and (iii) the then-current beneficiary of the rights granted by SUPPLIER under the Utility Rights Agreement (a "**Blanket Amendment**"), then this Agreement shall be amended as provided in the Blanket Amendment; provided further, that (a) unless approved by at least ninety percent (90%) of the voting power of all representatives of the Coordination Committee, no Blanket Amendment may be adopted prior to the later of (1) the fifth (5th) anniversary of the Effective Date, or (2) the date by which SUPPLIER has made new capital investments after the Effective Date of at least thirty million dollars (\$30,000,000) in the Facilities for the purpose of insuring the long-term viability of the Facilities; (b) a Blanket Amendment may only become effective on January 1st of a calendar year and must be approved by all necessary parties no later than June 30th of the preceding calendar year; (c) a Blanket Amendment may not become effective earlier than two (2) years after the last Blanket Amendment became effective; (d) each Blanket Amendment must amend each Conforming Contract in an identical manner; (e) no Blanket Amendment may have a materially disproportionate adverse impact on any Participating Customer or group of Participating Customers as compared to the impact of such Blanket Amendment on all Participating Customers taken as a whole except that a change to the manner in which charges for Services are calculated may have such a disproportionate impact so long as (1) the change is reasonably designed to (A) address unintended anomalies in the rates for Services due to changes over time in volumes, the composition of EBPUS T Customers, developments in technology, the cost of providing the Services and other similar factors, (B) align the respective costs of Services more closely with both (x) prevailing rates in the Rochester, New York area for comparable services, and (y) SUPPLIER's costs in providing the Services, or (C) increase the efficiency of the provision of Services as measured by an increase in the total projected Operating Dividend as defined in **SCHEDULE C** hereto not attributable to an increase in total charges to EBPUS T Customers, or (2) the adversely affected Participating Customer or group of Participating Customers can substantially mitigate the disproportionate impact of such change by taking actions that are commercially reasonable; and (f) for avoidance of doubt, any charges for Remediation Costs pursuant to **Section 6.1** do not constitute an amendment

to this Agreement and are therefore subject to neither this **Section 14.4** nor any Blanket Amendment approval as provided for herein.

14.4.1 Required Blanket Amendment Proposal. SUPPLIER shall be obligated to propose a Blanket Amendment (and to approve such Blanket Amendment pursuant to Section 14.4 if approved by the Coordination Committee) following the earlier of (i) the Compliance Date associated with the MACT Rules or (ii) completion of the installation of the gas turbines associated with Non-Compliance Investments. In proposing such Blanket Amendment, SUPPLIER shall endeavor to reallocate the total charges in a manner more consistent with the operational characteristics associated with the Facilities in operation at that time and in an equitable manner between and among Regulated Service and Unregulated Services based on EBPUST Customer needs at that time. The approval of such Blanket Amendment shall require approval of the Coordination Committee pursuant to **Section 14.4** and nothing in this Section 14.4.1 shall obligate any representatives of CUSTOMER to vote in favor of such Blanket Amendment.

14.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous discussions, representations, understandings, and agreements of the Parties with respect thereto.

14.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and both of which shall together constitute but one and the same instrument which may be sufficiently evidenced by one counterpart.

14.7 Complaints and Dispute Resolution Procedures. Complaints about any Service, Services, or other issues shall first be made in writing and submitted pursuant to the notice provisions of **Section 14.1** hereof. Any such written complaints shall be brief and shall state the nature of the dispute, the relevant facts, and the desired relief. SUPPLIER shall promptly investigate any such complaint in a fair manner, and report the results in writing to CUSTOMER. If SUPPLIER's investigation resolves the complaint in whole or in part in SUPPLIER's favor, and if the complaint involves a Regulated Service, SUPPLIER shall inform CUSTOMER of the availability of the Public Service Commission's complaint handling procedures. SUPPLIER will not terminate service to CUSTOMER during the pendency of a complaint before SUPPLIER or the Public Service Commission, provided that CUSTOMER shall pay the undisputed portion of any outstanding bill as well as all bills for current or subsequent usage during such pendency. If either party is unsatisfied by the results of this dispute resolution procedure, then the affected Party has the right to petition to the Public Service Commission for relief with respect to disputes involving Regulated Services (subject to **Section 5.1**) or to pursue its other legal remedies with respect to disputes involving Unregulated Services or Sewer Services.

14.8 Choice of Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without consideration of the conflicts of laws principles thereof. The Parties expressly consent to the jurisdiction of the Public Service Commission or its successor agency (except to the extent otherwise provided herein with respect to pricing methodology, Unregulated Services or Sewer Services) as well as of

the courts of the State of New York as to any issues related to this Agreement, including the validity, enforceability or interpretation thereof. The Parties expressly consent and agree that any dispute under this Agreement involving Regulated Services other than pricing methodology, after the dispute resolution procedures set forth in **Section 14.7** of this Agreement have been exhausted, shall be brought initially in a formal proceeding before the Public Service Commission or any successor agency.

14.9 Force Majeure.

- 14.9.1** No Party shall be liable for, or be in default under this Agreement as a result of such Party's failure or inability to perform any of its obligations hereunder, other than any obligation to pay money, to the extent that (i) such failure or inability is caused by a Force Majeure Event; and (ii) the Affected Party complies with the provisions of this **Section 14.9**.
- 14.9.2** The Affected Party shall give notice to the other Party promptly after becoming aware of a Force Majeure Event, giving details of the circumstances constituting the Force Majeure Event and the likely adverse effect and duration thereof, if reasonably known, and shall keep the other Party informed of any changes in such circumstances, including when such Force Majeure Event ends and, if different, when the Affected Party ceases to be affected by such Force Majeure Event. Each Party shall attempt in good faith to give the other Party notice of any events of which the notifying Party is aware which may be reasonably expected, with the lapse of time or otherwise, to become a Force Majeure Event. Following the receipt of a notice given pursuant to this **Section 14.9.2**, the Parties shall consult in good faith to assess the Force Majeure Event and any ways in which it may be mitigated or avoided.
- 14.9.3** The rights and obligations of the Parties under this Agreement shall be suspended in whole or in part, as the circumstances may require, to the extent that the ability of a Party to perform its relevant obligations hereunder is materially and adversely affected by a Force Majeure Event.
- 14.9.4** Suspension of any obligation as a result of a Force Majeure Event shall be of no greater extent than reasonably required considering the nature and extent of the Force Majeure Event, and shall not affect any rights or obligations which may have accrued prior to such suspension.
- 14.9.5** The Affected Party shall make all commercially reasonable efforts to remedy the circumstances constituting the Force Majeure Event and to mitigate the adverse effects of the Force Majeure Event. If the Force Majeure Event affects only some rights and obligations of an Affected Party, any other rights or obligations of such Affected Party shall not be affected by the Force Majeure Event. In addition:
- 14.9.5.1** The Affected Party shall prepare as soon as practicable, but no later than five days following the Affected Party's notice to the other Party of the Force Majeure Event, a detailed plan to be provided to the other Party for the other

Party's review and comment setting forth Affected Party's mitigation actions undertaken to date, and any additional or continuing mitigation actions proposed to be taken by the Affected Party;

14.9.5.2 The Affected Party shall furnish weekly reports to the other Party regarding its progress in overcoming the adverse effects of such Force Majeure Event; and

14.9.5.3 The Affected Party shall afford the other Party reasonable facilities for obtaining further information about the Affected Party's progress in overcoming the Force Majeure Event.

14.9.6 When the Affected Party is able, or would have been able if it had complied with its obligations under **Section 14.9.5**, to remedy or otherwise terminate the Force Majeure Event, the Affected Party promptly shall give Notice to the other Party that the period of force majeure relating to the Force Majeure Event shall be deemed to have ended and that the Affected Party is able to resume its performance of the suspended obligation, and shall resume such performance.

14.9.7 If, notwithstanding the efforts of the Affected Party to mitigate the adverse effects of the Force Majeure Event as described in **Section 14.9.5**: (i) the adverse effects of such Force Majeure Event render the Affected Party substantially unable to comply with its material obligations hereunder, or to obtain the benefits of the transactions contemplated hereby, so that the commercial purposes of this Agreement are substantially frustrated, and (ii) such adverse effects continue for a period in excess of twelve (12) months, then an "**Extended Force Majeure Event**" shall be deemed to have occurred. Upon the occurrence of an Extended Force Majeure Event, regardless of whether CUSTOMER or SUPPLIER is the Affected Party, then, by thirty (30) days notice to the other Party, (a) CUSTOMER may terminate this Agreement, or (b) if such Extended Force Majeure Event continues for an additional six (6) months (for a total of eighteen (18) months), SUPPLIER may terminate this Agreement, in each case pursuant to the procedures set forth in **Section 11.3**.

14.10 Use of Other Party's Name. Except as necessary to perform their obligations under this Agreement, neither Party may make any reference to the other Party, its trademarks or trade names in advertising, public announcements or promotional materials without express written permission from the other Party.

14.11 Severability. If any provision of this Agreement is held to be unenforceable under then current laws, the enforceability of the remaining provisions shall not be affected thereby, and in lieu of each such unenforceable provision the parties shall negotiate to add a provision as similar terms to such unenforceable provision as may be possible.

14.12 Independent Contractor. SUPPLIER and CUSTOMER shall act as independent contractors and nothing herein shall be construed to make either party or any of their

employees, officers, directors or representatives, the agent, employee, partner or servant of the other party.

14.13 Non-Waiver. Failure by either Party at any time to require strict performance of any of the provisions herein shall not waive or diminish a Party's right thereafter to demand strict compliance therewith or with any other provision. Waiver of any obligation, term or condition of this Agreement shall not be deemed as a further or continuing waiver of any other term, provision or condition of this Agreement. A Party shall not be deemed to have waived any rights hereunder unless such waiver is in writing and signed by a duly authorized representative of the Party making such waiver.

14.14 Article and Section Headings. Headings for articles and sections are for convenience only and shall not affect the interpretation of this Agreement.

14.15 Agreement Binding on Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and permitted assigns.

Accepted and Agreed:

Accepted and Agreed:

RED-ROCHESTER, LLC

By _____

By _____

Title _____

Title _____

Date _____

Date _____

SCHEDULE A

Service Locations and Delivery Points

<u>Service</u>	<u>To Building</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Location</u>	<u>Comments</u>
<u>Steam—260 psig</u>					
<u>[TO BE POPULATED]</u>					
<u>Steam—140 psig</u>					
<u>[TO BE POPULATED]</u>					
<u>Steam—135 psig</u>					
<u>[TO BE POPULATED]</u>					
<u>Steam—70 psig</u>					
<u>[TO BE POPULATED]</u>					
<u>Steam—Low Pressure</u>					
<u>[TO BE POPULATED]</u>					

<u>Service</u>	<u>To Building</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Location</u>	<u>Comments</u>
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Condensate Return

[TO BE POPULATED]

South 35F Chilled Water

[TO BE POPULATED]

40F Chilled Water

[TO BE POPULATED]

Open 40F Kodak Water

[TO BE POPULATED]

<u>Service</u>	<u>To Building</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Location</u>	<u>Comments</u>
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Compressed Air

[TO BE POPULATED]

Nitrogen

[TO BE POPULATED]

Natural Gas

[TO BE POPULATED]

Demineralized Water

[TO BE POPULATED]

High Purity Water

[TO BE POPULATED]

<u>Service</u>	<u>To Building</u>	<u>Delivery Point/ Supply Valve Number</u>	<u>Acceptance Point/ Return Valve Number</u>	<u>Approx. Valve Location</u>	<u>Comments</u>
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Industrial (Kodak) Water

[TO BE POPULATED]

Drinking Water

[TO BE POPULATED]

Fire Protection Water

[TO BE POPULATED]

SCHEDULE B

Exceptions for Purchase of Regulated Services

Potable water that is separately and directly supplied by Monroe County Water Authority or the City of Rochester to CUSTOMER and not delivered to a Delivery Point

[TO BE COMPLETED ON CUSTOMER-SPECIFIC BASIS IF NECESSARY]

SCHEDULE C

Service Rate Calculations

1. **OVERVIEW.** For the provision of the Services by SUPPLIER to CUSTOMER, CUSTOMER shall pay to SUPPLIER the amounts determined pursuant to **Section 3** of this **SCHEDULE C** with respect to each Billing Month. On a quarterly basis, SUPPLIER will calculate the amount of cash available, if any, for distributions as Preferred Returns and Operating Dividends pursuant to **Section 4** of this **SCHEDULE C**.
2. **DEFINITIONS.** For purposes of this **SCHEDULE C** (and where referenced in the Agreement) the following terms shall have the meanings set forth below. If a defined term is not defined in this **SCHEDULE C**, it shall have the meaning given to it in the Agreement.

“Aggregate Billing Demand” means, with respect to each Peak Demand Based Service, for any Billing Month, the sum of the Billing Demand for all EBPUST Customers for such Billing Month plus, in the case of electricity only, the SUPPLIER Electricity Billing Demand for such Billing Month.

“Allocation Percentage” means, with respect to each Participating Customer for each calendar quarter, the percentage obtained by dividing (i) the total payments received from such Participating Customer under such Participating Customer’s Conforming Contract excluding those payments made pursuant to **Sections 4.1, 6.1** and **8.4** of such Conforming Contract (or provisions corresponding thereto, as applicable) for the Billing Months included in such calendar quarter, by (ii) the total payments received from all Participating Customers for the Billing Months excluding those payments subject to **Sections 4.1, 6.1** and **8.4** of such Participating Customers’ Conforming Contracts (or provisions corresponding thereto, as applicable) for the Billing Months included in such calendar quarter.

“Annual Calculation Worksheet” means, with respect to any calendar year, the tab in the Spreadsheet titled “Annual Calculation Worksheet”, as populated pursuant to **Section 3.1** of this **SCHEDULE C** with respect to such calendar year.

“Arrears Balances” means the sum of: (i) any Preferred Return Shortfall from a prior calendar quarter to the extent not previously paid pursuant to **Section 4.8**, of **SCHEDULE C** and (ii) any payments made by SUPPLIER Owners or affiliated companies to cover any shortfall in operating costs and/or debt service obligations during periods prior to the current calendar quarter to the extent not previously reimbursed by SUPPLIER or paid pursuant to **Section 4.8** of **SCHEDULE C**, together with interest on the amounts described in clauses (i) and (ii) outstanding from time to time at a rate of seven percent (7%) per year. If any payments described in clause (ii) of this definition have not been reimbursed or paid within six (6) months after the date on which such payments were made, SUPPLIER may, at SUPPLIER’s sole discretion, at any time thereafter elect to treat such payments and any interest accrued thereon as a capital investment (which shall thereafter constitute a Compliance Investment or Non-Compliance Investment, as applicable) as of the date of such election, in which case such amount shall then cease to be an Arrears Balance.

“Base Amount” has, with respect to CUSTOMER, the meaning given to that term in **Section 3.3** of this **SCHEDULE C** and means, with respect to each other Participating Customer, the

amount characterized as the “Base Amount” in the Conforming Contract to which such Participating Customer is a party.

“**Billing Demand**” means, for each EBPUST Customer with respect to each Peak Demand Based Service, for any Billing Month, the sum of (i) the peak one-hour supply of such Peak Demand Based Service to all of such EBPUST Customer’s delivery points with Continuous Meters, plus (ii) the Delivery Point Peak Demand for all of such EBPUST Customer’s delivery points without Continuous Meters, plus (iii) the total Delivery Point Delta Capacity with respect to all of such EBPUST Customer’s delivery points, in each case during the twelve Billing Months immediately preceding such Billing Month.

“**Billing Month Worksheet**” means, with respect to any Billing Month, the tab in the Spreadsheet titled “Billing Month Worksheet”, as populated pursuant to **Section 3.2** of this **SCHEDULE C** with respect to such Billing Month, where the tab in such Spreadsheet titled “Annual Calculation Worksheet”, has also been populated pursuant to **Section 3.1** of this **SCHEDULE C** with respect to the calendar year in which such Billing Month occurs.

“**Compliance Capital Investment**” means any investment in the Facilities by SUPPLIER for the purpose of complying with present or future governmental requirements, improving safety or improving reliability and that is not a Non-Compliance Investment.

“**Compliance Investments**” means Compliance Capital Investments and the contributions made by SUPPLIER Owners to (i) provide funding of working capital; (ii) fund any investments or escrow amounts required by government agencies; and (iii) provide initial funding for any debt service reserves or maintenance reserves required by and funded from proceeds of Facility Loans. Compliance Investments expressly exclude Non-Compliance Investments.

“**Debt Service Payments**” means, with respect to any calendar year, the total interest and principal, plus any fees and/or penalties, paid by SUPPLIER on any Facility Loans during such calendar year, including payments funded with releases from any debt service reserve accounts and including amounts distributed to another person for the purpose of making such payments.

“**Debt Service Reserve Payments/Releases**” means, with respect to any calendar quarter, any increase or decrease during such calendar quarter in the balance of any debt reserve account reasonably required to be established and maintained by any Facility Loans, including any payments made during such calendar quarter to fund any prior shortfalls in such debt service reserve accounts and any cash released from debt service reserve accounts.

“**Delivery Point Delta Capacity**” means the amount, if any, by which Contract Demand exceeds Delivery Point Peak Demand for a specific Delivery Point.

“**Facility Loans**” means any loans (i) that are (a) debt obligations of SUPPLIER, and (b) are secured by SUPPLIER’s assets used in whole or in part to provide Services to EBPUST Customers and/or cash flows from EBPUST Customers, and (ii) the proceeds of which are used solely for the capital improvements to the Facilities and associated transaction costs, funding of reserves and required escrow accounts, maintenance of the Facilities, working capital and/or to reduce Net Equity PP&E.

“Inflation Index Amount” with respect to any calendar year means the amount obtained from the following formula:

$$[0.35 * (PPI / 179.9)] + [0.65 * (CPI / 248.494)] - (1.01^{(y-2012)}) + 1$$

where:

y = the year for which the Inflation Index Amount is being calculated

PPI = the Producer Price Index-Commodities, not seasonally adjusted, finished goods less food and energy, 1982 = 100, Series ID#WPUSOP3500, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with **Section 5.3** of this **SCHEDULE C**, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)

CPI = the Consumer Price Index for all Urban Consumers (CPI-U), not seasonally adjusted, Northeast urban, all items less food and energy, 1982-1984=100, Series ID #CUUR0100SA0L1E, as reported by the United States Department of Labor, Bureau of Labor Statistics, as replaced or revised in accordance with **Section 5.3** of this **SCHEDULE C**, published in December of the calendar year prior to calendar year y (which will contain data for the month of November of such prior calendar year)

“Liquidated Damages Shortfall” has the meaning given to that term in **Section 3.6** of this **SCHEDULE C**.

“Maintenance Reserve Payments/Releases” means, with respect to any calendar quarter, any increase or decrease during such calendar quarter in the balance of any maintenance reserve account reasonably required to be established and maintained by any Facility Loans, including any payments made during such calendar quarter to fund any prior shortfalls in such maintenance reserve accounts and any cash released from such maintenance reserve accounts.

“Major Utility Service” means steam, chilled water and electrical Service, each taken as a whole, inclusive of all pressures (steam), temperatures (chilled water) and voltages (electrical Service) as appropriate.

“MMBtus” means millions of British thermal units. Where used to describe a quantity of fuel, this is on a lower heating value (LHV) basis (as applicable) unless otherwise noted.

“Net Compliance PP&E” means, for any calendar quarter, the difference between (i) the sum of the Un-depreciated Amount of all Compliance Investments made prior to such calendar quarter, minus (ii) the cumulative proceeds, if any, received by SUPPLIER and distributed to SUPPLIER Owners from the sale of Facilities acquired with Compliance Investments, but only to the extent that the proceeds from such sale have not been recognized as Revenue.

“Net Equity PP&E” means, for any calendar quarter, (i) the sum of (a) the Total Depreciable Capital, and (b) the weighted average during such calendar quarter of all cash contributed by SUPPLIER Owners from the Effective Time forward to fund working capital, maintenance or debt service reserves, vendor deposits or escrow accounts, minus (ii) the weighted average

during such calendar quarter of all Facility Loans outstanding during such quarter, minus (iii) the weighted average during such calendar quarter of all distributions by SUPPLIER to SUPPLIER Owners from the Effective Time forward other than pursuant to **Sections 4.2 through 4.12** inclusive of **SCHEDULE C** or payments representing a reimbursement of any payments described in clause (ii) of the definition of Arrears Balances.

“Non-Compliance Investment” means any investment in the Facilities by SUPPLIER projected to have, at the time of the commitment to make such investment, an inherent economic return to SUPPLIER, without regard to any economic return that would be generated if such investment were treated as a Compliance Investment. For avoidance of doubt, gas turbines have intrinsic economics, and any installation of any gas turbine, together with any necessary gas-line upgrades to the extent paid by SUPPLIER, will be deemed a Non-Compliance Investment, even a gas turbine installed to facilitate compliance with Environmental Laws.

“Operating Cost” means, with respect to any calendar quarter, (i) all cash expenses reasonably incurred by SUPPLIER in the course of operating the Facilities including (a) fuel expenses, (b) other non-fuel consumable expenses, (c) operations labor expenses, (d) insurance expenses, (e) property and gross receipts taxes, (f) a management fee payable to RED pursuant to **Section 5.3** of the Agreement, and (g) expenses associated with any third party professional services reasonably required for SUPPLIER to fulfill its legal and contractual obligations to its customers, investors, and Governmental Authorities, and (ii) any liquidated damages credits given by SUPPLIER to any Participating Customer with respect to Billing Months during such calendar quarter.

“Overhead Charge” has the meaning given to that term in **Section 3.4** of this **SCHEDULE C**.

“Overhead Percent” means the amount calculated pursuant to Exhibit I.

“Peak Demand Based Services” means Services including each type of steam Service, electricity, each type of brine Service and chilled water.

“Preferred Return” means, with respect to any calendar quarter, one-twenty-fourth (1/24th) of the Net Equity PP&E for such calendar quarter.

“Preferred Return Shortfall” means, with respect to any calendar quarter, the amount, if any, by which the cash remaining after collections and payments provided for under **Sections 4.1 through 4.6** inclusive of this **SCHEDULE C** is less than the Preferred Return for such calendar quarter.

“Revenues” means, with respect to any calendar quarter, the sum of (i) all cash received by SUPPLIER during such calendar quarter from (a) Participating Customers, (b) EBPUST Customers who are not Participating Customers, and (c) other third parties in connection with the sale of services (including, for clarity, sales of electricity to the grid) or environmental attributes by SUPPLIER, plus (ii) all proceeds received by SUPPLIER during such calendar quarter in connection with the sale of any assets to the extent that such proceeds have not been (a) reinvested in the Facilities, (b) used to repay Facility Loans, (c) used to satisfy a senior lien that results in a reduction of Net Equity PP&E or (d) distributed to SUPPLIER Owners.

“**Spreadsheet**” means the Microsoft Excel spreadsheet named “USA utility service charges workbook 051113.xlsx” that includes a tab titled “Annual Calculation Worksheet” and a tab titled “Billing Month Worksheet” in the form saved on the disk attached to this Agreement.

“**SUPPLIER Electricity Billing Demand**” means for any Billing Month, the sum of (i) the peak one-hour supply of electricity to all of SUPPLIER’s Delivery Points with Continuous Meters, plus (ii) the Delivery Point Peak Demand for all SUPPLIER’s delivery points without Continuous Meters, in each case during the twelve (12) Billing Months immediately preceding such Billing Month.

“**SUPPLIER Owners**” means the holders of the membership interests or other equity interests in SUPPLIER.

“**Total Depreciable Capital**” means, for any calendar quarter, the sum of (i) the Un-depreciated Amount of the total payment made by SUPPLIER to Eastman Kodak Company pursuant to the Asset Purchase Agreement allocated to Purchased Assets (as defined in the Asset Purchase Agreement) that are depreciable under United States generally accepted accounting principles, and (ii) the weighted average balance of the Un-depreciated Amounts of all Compliance Capital Investments and Non-Compliance Investments made by SUPPLIER (determined by dividing the sum of the Un-depreciated Amounts of Compliance Capital Investments and Non-Compliance Investments as of the beginning and the end of such calendar quarter by two (2)).

“**Un-depreciated Amount**” means, at any time, the portion of a Compliance Capital Investment or Non-Compliance Investment that has not then been depreciated. Compliance Capital Investments and Non-Compliance Investments shall be depreciated on a quarterly, straight line basis over sixty (60) quarters, with the depreciation for the calendar quarter in which the Compliance Capital Investment or Non-Compliance Investment is made being prorated based on the date the investment is made.

“**Unit**” means, with respect to each Service, the unit of measurement set forth in column B of the Annual Calculation Worksheet of the Spreadsheet with respect to such Service.

3. **DETERMINATION OF PRICE PAYABLE FOR SERVICES.** The Base Amount payable by CUSTOMER to SUPPLIER for Services shall be determined as follows:

3.1 **Creation of Annual Calculation Worksheet.** With respect to each calendar year, the Spreadsheet shall be populated as follows to create an Annual Calculation Worksheet for such calendar year:

- (i) **Determination of Projected Volumes.** Prior to the commencement of each calendar year, SUPPLIER will survey all EBPUST Customers to estimate expected consumption by such EBPUST Customers of each Service during such calendar year. The results of this survey, adjusted by SUPPLIER to reflect the best judgment of SUPPLIER acting in good faith, of volumes of each Service to be provided to EBPUST Customers during such calendar year and specified in Units, will be input into the row (between rows 4 and 20, inclusive) corresponding to such Service in column D of the Annual Calculation Worksheet.

- (ii) **Inflation Index Amount.** The Inflation Index Amount for such calendar year will be input into cell B33 of the Annual Calculation Worksheet.
- (iii) **Customer Type:** The “Customer Type” should be input as “Non-Kodak” in cell B57 of the Annual Calculation Worksheet.
- (iv) **Fixed Grid Connection Cost:** The grid connection cost that SUPPLIER will be charged by its electricity supplier will be input into cell B43 of the Annual Calculation Worksheet.
- (v) **Real Estate Tax Amount:** The real estate tax assessed on the Transferred Land (as defined in the Asset Purchase Agreement) or allocated to the Permanent Easement Area, Buildings or Building Use Easement Area (as such terms are defined in the Asset Purchase Agreement) during the immediately preceding calendar year should be input in cell B59 of the Annual Calculation Worksheet.
- (vi) **Severance Cost Amount:** \$0 shall be entered into cell B61 of the Annual Calculation Worksheet.
- (vii) **Applicable Calendar Year.** The calendar year to which such Annual Calculation Worksheet relates will be input into cell B63 of the Annual Calculation Worksheet.

3.2 **Creation of Billing Month Worksheet.** With respect to each Billing Month, the Billing Month Worksheet and Annual Calculation Worksheet shall be populated as follows:

- (i) **Aggregate Actual Volumes for all EBPUST Customers.** The aggregate actual volume for each Service provided by SUPPLIER to all EBPUST Customers during the Billing Month as specified in Units will be input into the row (between rows 4 and 20, inclusive) corresponding to such Service in column C of the Billing Month Worksheet.
- (ii) **Actual CUSTOMER Volumes.** The actual volume for each Service provided by SUPPLIER to CUSTOMER during the Billing Month as specified in Units will be input into the row (between rows 4 and 20, inclusive) corresponding to such Service in column D of the Billing Month Worksheet.
- (iii) **Billing Demand and Aggregate Billing Demand.** For Billing Months during calendar years 2013 and 2014, input zero (0) into the cells that correspond to that service in columns E and F of the Billing Month Worksheet (rows 4-9, 15 and 16). For Billing Months during calendar years after calendar year 2014, the Aggregate Billing Demand and Billing Demand for CUSTOMER will be input into columns E and F respectively of the Billing Month Worksheet (rows 4-9, 15 and 16). The SUPPLIER Electricity Billing Demand will be input into cell B54.
- (iv) **Net Compliance PP&E.** The Net Compliance PP&E for the calendar quarter in which the Billing Month occurs will be input into cell B39 of the Annual Calculation Worksheet.
- (v) **Natural Gas Cost.** The actual, delivered price stated in dollars per dekatherm of all natural gas purchased by SUPPLIER during the calendar month that ends during such Billing Month will be input into cell B23 of the Billing Month Worksheet.
- (vi) **Total Fuel Cost.** The actual, delivered price stated in dollars of all fuel purchased by SUPPLIER during the calendar month that ends during such Billing Month will be input into cell B25 of the Billing Month Worksheet.

- (vii) **Total Fuel Purchased.** The total MMBtus of fuel purchased by SUPPLIER during the calendar month that ends during such Billing Month will be input into cell B26 of the Billing Month Worksheet.
 - (viii) **EBP Purchased Electricity Rate.** The average rate per MWh at which SUPPLIER was charged by its electricity suppliers for capacity and delivery charges for electricity purchased by SUPPLIER for EBP consumption during the calendar month that ends during such Billing Month will be input into cell B41 of the Billing Month Worksheet.
 - (ix) **Lake Station Purchased Electricity Rate.** The average rate per MWh at which SUPPLIER was charged by its electricity suppliers for capacity and delivery charges for electricity purchased by SUPPLIER for Lake Station consumption during the calendar month that ends during such Billing Month will be input into cell B50 of the Billing Month Worksheet.
 - (x) **Potable Water Rate.** The rate at which SUPPLIER was charged for potable water by Monroe County Water Authority or its successor water distribution company for provision and delivery of water on the invoice issued by Monroe County Water Authority or its successor during such Billing Month will be input into cell B29 of the Billing Month Worksheet.
- 3.3 **Base Amount for Services.** The base amount payable by CUSTOMER to SUPPLIER for each Service for a Billing Month (for all Services in the aggregate, the “**Base Amount**”) shall be the amount contained in the row (between rows 4 and 20, inclusive) corresponding to such Service in column Q of the Billing Month Worksheet for such Billing Month after the relevant Annual Calculation Worksheet and such Billing Month Worksheet have been populated in accordance with **Sections 3.1 and 3.2** of this **SCHEDULE C**.
- 3.4 **Billed Amount.** The monthly bill submitted to CUSTOMER will show (a) the Base Amount itemized by Services delivered, (b) an overhead charge equal to the Base Amount multiplied by the Overhead Percent (the “**Overhead Charge**”), (c) any additional charges pursuant to **Sections 4.1, 6.1 and 8.4** of the Agreement, (d) any positive or negative adjustments pursuant to **Section 7.6** of the Agreement, and (e) any credits due to CUSTOMER pursuant to **Section 3.6 or 4.9** of this **SCHEDULE C**.
- 3.5 **Fire Protection Water.** In the event of a fire, accidental discharge, or other emergency, or any sprinkler test performed by CUSTOMER, CUSTOMER’s insurer or other third-party on CUSTOMER’s behalf (each, an “**Emergency Use**”) in which more than a *de minimis* amount of water not captured by a Meter (“**Fire Protection Water**”) is used by CUSTOMER, CUSTOMER shall pay for CUSTOMER’s usage of Fire Protection Water in connection with the Emergency Use (this payment is in addition to amounts payable for fire access as determined pursuant to **Sections 3.1 through 3.3** of this **SCHEDULE C**). The estimated consumption in thousand gallons (Kgal) of Fire Protection Water will be included in the process water usage numbers in column C and, if applicable, D of the Billing Month Worksheet (row 17). SUPPLIER shall provide CUSTOMER, upon request, copies of information in SUPPLIER’s possession relating to the measurement and estimation of CUSTOMER’s consumption of Fire Protection Water.
- 3.6 **Liquidated Damages Credit.** The parties hereby agree that if a Shortfall, other than an Excused Shortfall, occurs with respect to a Major Utility Service (a “**Liquidated**

Damages Shortfall”), SUPPLIER will provide liquidated damages to CUSTOMER in the form of a billing credit, on the invoice for the Billing Month in which such Liquidated Damages Shortfall occurs, in an amount equal to One Thousand Dollars (\$1,000) per affected Delivery Point for every six (6) hours that such Liquidated Damages Shortfall exists. For clarity, a Liquidated Damages Shortfall must last for at least six (6) hours before SUPPLIER is obligated to provide any liquidated damages credit and must last for at least an additional six (6) hours before the next One Thousand Dollars (\$1,000) credit will be provided. Furthermore, SUPPLIER shall only be obligated to provide a single One Thousand Dollars (\$1,000) liquidated damages credit per affected Delivery Point per six (6)-hour period when multiple Major Utility Services are experiencing a concurrent Liquidated Damages Shortfall. The liquidated damage credits provided pursuant to this **Section 3.6** shall be CUSTOMER’s sole and exclusive remedy for a Shortfall with respect to a Major Utility Service; provided, nothing in this **Section 3.6** shall impair any remedy CUSTOMER may have with respect to such a Shortfall under **Article XI** or any other agreement between CUSTOMER and SUPPLIER.

4. **QUARTERLY CASH FLOW SHARING PAYMENT.** All Participating Customers will participate in a cash flow sharing structure that aligns the interest of Participating Customers and SUPPLIER to minimize the total cost of the Services. Such participation will be determined via a “waterfall” formulation, with each sequential payment made only to the extent that cash is available after repayment of all prior (senior) payments, and will be payable in the form of a quarterly billing credit. The priority of distributions in the waterfall is as follows:
 - 4.1 First, SUPPLIER will collect all Revenues;
 - 4.2 Second, SUPPLIER will pay all Operating Costs;
 - 4.3 Third, SUPPLIER will pay Debt Service Payments;
 - 4.4 Fourth, SUPPLIER will deposit or receive Debt Service Reserve Payments/Releases;
 - 4.5 Fifth, SUPPLIER will deposit or receive Maintenance Reserve Payments/Releases;
 - 4.6 Sixth, SUPPLIER will, in its reasonable discretion, determine how much cash should be on hand to cover near term working capital needs, and then either (i) obtain additional contributions from SUPPLIER Owners to cover any projected shortfall or distribute to SUPPLIER Owners any excess cash from reducing the working capital requirement, in which case the Net Equity PP&E will be increased or decreased, respectively; provided, SUPPLIER may not make distributions to SUPPLIER Owners that would reduce Net Equity PP&E below zero, or (ii) retain needed extra cash from operating cash flow or release extra cash from reduced working capital needs into this waterfall, in which case the Net Equity PP&E will not be changed;
 - 4.7 Seventh, SUPPLIER will distribute the Preferred Return to SUPPLIER Owners;
 - 4.8 Eighth, SUPPLIER will pay any outstanding Arrears Balances;
 - 4.9 Ninth, SUPPLIER will provide an aggregate Operating Dividend in the form of billing credits to all Participating Customers equal to fifty percent (50%) of any cash remaining

after the actions contemplated by **Sections 4.1** through **4.8** inclusive have been completed, which amount shall be credited pro rata to the Participating Customers in accordance with their respective Allocation Percentages for the calendar quarter to which such Operating Dividend relates; and

- 4.10 Any cash remaining after the actions contemplated by **Sections 4.1** through **4.9** inclusive have been completed (after reducing such cash amount by billing credits to be given by SUPPLIER pursuant to **Section 4.9** and corresponding provisions of the Conforming Contracts) shall be distributed to SUPPLIER Owners.
 - 4.11 The amount of any billing credit to which CUSTOMER is entitled pursuant to **Section 4.9** of this **SCHEDULE C** shall be determined no later than fifteen (15) days immediately following the calendar quarter to which it relates.
 - 4.12 Any billing credit pursuant to **Section 4.9** of this **SCHEDULE C** shall be applied to the invoice for the Billing Month immediately following the calendar quarter to which such billing credit relates and, if such billing credit exceeds the amount otherwise includable in such invoice, the invoice(s) for the next successive Billing Month(s) until such billing credit has been fully utilized.
5. **Miscellaneous Calculations.** For purposes of implementing the provisions of this **SCHEDULE C**:
- 5.1 The number of Units of wastewater treatment and sewer provided to CUSTOMER during any Billing Month shall be deemed to be the number of Units of process water provided to CUSTOMER during such Billing Month. For any calendar year, the number of Units of wastewater treatment and sewer projected to be provided to all EBPUST Customers during such calendar year shall be deemed to be the number of Units of process water projected to be provided to all EBPUST Customers during such calendar year.
 - 5.2 A Billing Month that straddles two calendar quarters shall be deemed to occur in the calendar quarter in which the majority of the days comprising such Billing Month fall.
 - 5.3 If the PPI or CPI (as defined in the definition of Inflation Index Amount) at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then the Parties shall negotiate in good faith to agree upon a substitute index or indices which most closely approximate the unavailable index.
6. **Other Matters**
- 6.1 None of the financial terms used in this document shall be assumed to have meanings consistent with generally accepted accounting principles or other national or international accounting standards except as provided in the definition of Total Depreciable Capital.
 - 6.2 Any cash expended by SUPPLIER in providing Services to EBPUST Customers shall be treated as an expense or a capital investment, but in no case may any expenditure be treated as both an expense and a capital investment. If treated as an expense, those charges will be recovered by SUPPLIER as an operating expense during the period incurred to the extent cash is available for reimbursement or during later periods, plus

interest earned pursuant to the definition of Arrears Balances if applicable. If treated as a capital investment, those charges will constitute a Compliance Investment or Non-Compliance Investment, as applicable, and be recovered through an increase in the Preferred Return.

- 6.3 SUPPLIER shall not incur, guarantee or encumber the Facilities or its cash flows to secure any debt other than Facility Loans, and shall not incur, guarantee or encumber the Facilities or its cash flows to secure any Facility Loans to the extent such Facility Loans would reduce the Net Equity PP&E below zero. SUPPLIER agrees to cause any reserves maintained by it to be invested as required by the loan documents requiring such reserves or, if the loan documents do not contain any such requirements, SUPPLIER agrees to maintain such reserves only in United States government obligations or investment grade securities.
- 6.4 No capital investment shall constitute a Compliance Investment or Non-Compliance Investment except to the extent it is funded with contributions from SUPPLIER Owners, proceeds from the sale of assets or proceeds of Facility Loans.
- 6.5 For the avoidance of doubt, an election by an EBPUST Customer to pay market-based prices pursuant to a Market Based Pricing of Steam & Electricity Rider to such EBPUST's Conforming Contract shall not have any impact on the determination of the Base Amount or give rise to any Operating Costs.

SCHEDULE D

Specifications for Delivery of Regulated Services

Each Delivery Point is the responsibility of one CUSTOMER, and the metered or estimated Service passing through that Delivery Point shall be the responsibility of that CUSTOMER. The SUPPLIER will work with CUSTOMER to prepare all of the data described in this **SCHEDULE D** for all CUSTOMER Delivery Points that provide Regulated Services in the form of the following table referencing the specification for the relevant Service in **Sections 2 to 9** below and such other information as may be required regarding that Delivery Point. Peak Demand services, as defined in **Schedule C**, require a Contract Demand entry, while other services do not require a Contract Demand entry. From the Contract Date through 2014, Contract Demand shall be the amount for the relevant Delivery Point as mutually agreed by SUPPLIER and CUSTOMER. For calendar years after 2014 Contract Demand shall be determined in accordance with the Agreement.

Delivery Point	Regulated Service	Specifications (B)=Binding Specification (N)=Nominal Specification	Contract Demand	Units	Type metering (Continuous, monthly read, estimated)

1. Sections 2 through 9 of this **SCHEDULE D** describe the specifications for the relevant Services. Specifications designated with a “(B)” are Binding Specifications. Specifications designated with an “(N)” are Nominal Specifications. Service will be provided by SUPPLIER in a manner appropriate to CUSTOMER’s needs subject to such specifications and subject to other provisions of this Agreement.

2. Electric Service. Electric service will be provided to the Premises at the electric Delivery Points at a nominal 480 volt, three phase alternating current, approximately 60 Hz, with a voltage range of minimum of 440 volts and a maximum of 484 volts, or such other voltage or other conditions as mutually agreed by SUPPLIER and CUSTOMER.

Additionally, electric service will be provided to specific Delivery Points within EBP at a nominal 2300 volt, three phase alternating current, approximately 60 Hz, with a voltage range of minimum of () volts and a maximum of () volts, or such other voltage or other conditions as mutually agreed by SUPPLIER and CUSTOMER.

- 2.1 **Electric Power Factor.** Whenever CUSTOMER's Equipment is so operated that the electrical power factor of any load center serving the Premises is less than [85%], CUSTOMER shall remedy that inefficient condition in a manner reasonably acceptable to SUPPLIER by, at CUSTOMER's option, either:
- (a) Installing and maintaining at its own expense on CUSTOMER's side of the Delivery Point power factor corrective equipment reasonably acceptable to SUPPLIER to remedy the condition; or
 - (b) Paying to SUPPLIER the actual reasonable cost incurred by SUPPLIER of any power factor corrective equipment installed by SUPPLIER on its side of the Delivery Point to effect such correction.
3. **Low Pressure Steam Service.** SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of five pounds per square inch (5 psig) with a pressure range of a minimum of 3 psig and a maximum of 15 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.
4. **70 # Steam Service.** SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of seventy pounds per square inch (70 psig) with a pressure range of a minimum of 50 psig and a maximum of 90 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.
5. **135# Steam Service.** SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of one hundred thirty five pounds per square inch (135 psig) with a pressure range of a minimum of 125 psig and a maximum of 150 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.
6. **140# Steam Service.** SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of one hundred forty pounds per square inch (140 psig) with a pressure range of a minimum of 130 psig and a maximum of 200 psig or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.
7. **260# Steam Service.** SUPPLIER will provide continuous service to the steam Delivery Point at a nominal gauge pressure of two hundred sixty pounds per square inch (260 psig) with a pressure range of a minimum of 250 psig and a maximum of 300 psig in EBP-E and EBP-W, and a nominal gauge pressure of three hundred pounds per square inch (300 psig) with a pressure range of a minimum 250 psig and a maximum of 340 psig in EBP-X, EBP-M and EBP-S, or such alternate supply as mutually agreed between CUSTOMER and SUPPLIER.
8. **Potable Water Service.** SUPPLIER will provide continuous service to the potable water Delivery Points at a minimum gauge pressure of fifty pounds per square inch (50 psig) and a maximum gauge pressure of one hundred twenty-five pounds per square inch (125 psig).
9. **Natural Gas Service.** SUPPLIER will provide continuous service to the natural gas Delivery Point at a nominal gauge pressure of ___ pounds per square inch (___ psig).

SCHEDULE E

Exceptions for Purchase of Unregulated Services

SCHEDULE F

Specifications for Delivery of Unregulated Services

Each Delivery Point is the responsibility of one CUSTOMER, and the metered or estimated Service passing through that Delivery Point shall be the responsibility of that CUSTOMER. The SUPPLIER will work with the CUSTOMER to prepare all of the data described in this **SCHEDULE F** for all CUSTOMER Delivery Points that provide Unregulated Services in the form of the following table, referencing the specification for the relevant Service in **Sections 2** through **14** below and such other information as may be required regarding that Delivery Point. Peak Demand services, as defined in **Schedule C**, require a Contract Demand entry, while other services do not require a Contract Demand entry. From the Contract Date through 2014, Contract Demand shall be the amount for the relevant Delivery Point or such other number as mutually agreed by SUPPLIER and CUSTOMER. For calendar years after 2014, Contract Demand shall be determined in accordance with the Agreement.

Delivery Point	Unregulated Service	Specifications (B)=Binding Specification (N)=Nominal Specification	Contract Demand	Units	Type metering (Continuous, monthly read, estimated)

1. All items listed in **Sections 2** through **14** of this **SCHEDULE F** describe the specifications for the relevant Services. Specifications designated with a “(B)” are Binding Specifications. Specifications designated with an “(N)” are Nominal Specifications. Service will be provided by SUPPLIER in a manner appropriate to CUSTOMER’s needs subject to such specifications and subject to other provisions of this Agreement.
2. **EBP-E 40 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 40° continuous service with a temperature range of a minimum of 39°F and a maximum of 42°F to the chilled water Delivery Point at a nominal gauge pressure of 95 psig during the months of June, July, August and September and 80 psig during the months of December, January, February and

March. (This data is relevant with the EBP-E 40 degree chilled water system only. These parameters vary depending on the system, location and elevation).

3. **EBP-E 37S Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of ___° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
4. **EBP-W 45 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 45° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
5. **B-205 45 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 45° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
6. **EBP-M 40 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 40° continuous service with a temperature range of a minimum of 39°F and a maximum of 42°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
7. **EBP-S 43 Degree Chilled Water Service.** SUPPLIER will provide a nominal supply temperature of 43° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the chilled water Delivery Point at a nominal gauge pressure of ___ psig during the months of June, July, August and September and ___ psig during the months of December, January, February and March.
8. **EBP-E 9 Degree Brine Service.** SUPPLIER will provide a nominal supply temperature of 9° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the 9 Degree Brine Delivery Point at a nominal gauge pressure of ___ psig.
9. **EBP-E -95 Degree Brine Service.** SUPPLIER will provide a nominal supply temperature of -95° continuous service with a temperature range of a minimum of ___°F and a maximum of ___°F to the EBP-E -95 Degree Brine Delivery Point at a nominal gauge pressure of ___ psig.
10. **Compressed Air Service:** SUPPLIER will provide continuous service to the compressed air Delivery Point at a nominal gauge pressure of seventy-five pounds per square inch **75 psig** with pressure range of a minimum **60 psig** and a maximum of **90 psig** and with a maximum dew point of **55°F**.

11. **Nitrogen Service.** SUPPLIER will provide continuous Nitrogen Service to the nitrogen Delivery Point at a nominal gauge pressure of seventy-five pounds per square inch (75 psig) with a pressure range of a minimum sixty pounds per square inch (60 psig) and a maximum of one hundred pounds per square inch (100 psig) with a maximum dew point of -100°F.
12. **Industrial Water Service.** SUPPLIER will provide continuous service to the Industrial Water Delivery Points at a minimum gauge pressure of sixty pounds per square inch (60 psig) and a maximum gauge pressure of 100 psig.
13. **High-Purity Water Service.** SUPPLIER will provide continuous service to the High-Purity Water Delivery Points at a minimum gauge pressure of () pounds per square inch (_ psig) and a maximum gauge pressure of _ psig.
14. **Demineralized Water Service.** SUPPLIER will provide continuous service to the demineralized water Delivery Points at a minimum gauge pressure of () pounds per square inch (_ psig) and a maximum gauge pressure of () pounds per square inch (_ psig).

SCHEDULE G

SUPPLIER'S Rights of Access and CUSTOMER'S Restricted Access Areas within the Premises

SUPPLIER's Rights of Access. SUPPLIER shall have access to the Premises in accordance with the provisions of **Section 2.6.3** of this Agreement.

CUSTOMER's Restricted Access. Access to the following portions of the Building and the Premises shall be restricted to SUPPLIER's employees and contractors only, and no employee, contractor or other representative of CUSTOMER shall be entitled to access such areas unless and only to the extent authorized in writing by SUPPLIER:

1. Manholes leading to the high-voltage electric duct banks, as well as the duct banks themselves.
2. High-voltage load centers owned by SUPPLIER and immediately adjacent space dedicated to such high-voltage load centers.

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SCHEDULE H

Specifications for Condensate and Chilled Water Return Services

Condensate Return Service: CUSTOMER shall deliver Condensate to the condensate return Delivery Point within below the upper limits and above any lower limits specified in the table below with respect to each parameter.

Parameter	Units	Lower Limit	Upper Limit
Conductivity	Micro-siemens per cm	N/A	10
pH	pH scale	.5	8.5
Non-Volatile Total Organic Carbon	Parts per Mission	N/A	2
Hardness (CaCO ₃)	Parts per billion	N/A	500
Calcium	Parts per billion	N/A	200
Magnesium	Parts per billion	N/A	150
Iron	Parts per billion	N/A	200
Copper	Parts per billion	N/A	1

SCHEDULE I

Overhead Charge Calculation

1. **OVERVIEW.** This **Schedule I** defines the manner in which the Overhead Charge is calculated for the purposes of monthly bill calculations pursuant to **Section 3.4** of **SCHEDULE C**.
2. **DEFINITIONS.** For the purposes of this Schedule I (and where referenced in the Agreement) the following terms shall have the following definitions:

“**First Block Tier**” means \$500,000 divided by 12 and then multiplied by the Inflation Index Amount.

“**Inflation Index Amount**” shall have the meaning given to that term in **SCHEDULE C**.

“**Second Block Tier**” means \$1,500,000 divided by 12 and then multiplied by the Inflation Index Amount.

“**Third Block Tier**” means \$3,500,000 divided 12 and then multiplied by the Inflation Index Amount.

3. **OVERHEAD CHARGE.** The Overhead Charge is calculated on a block basis, based on the Base Amount for such month. The Base Amount expressly excludes (i) any additional charges pursuant to **Sections 4.1, 6.1** and **8.4** of the Agreement, (ii) any positive or negative adjustments pursuant to **Section 7.6** of the Agreement, and (iii) any credits due to CUSTOMER pursuant to **Section 3.6** or **4.9** of **SCHEDULE C**. The Overhead Charge for a given month shall equal:
 - 3.1. All amounts in the Base Amount for such month up to the First Block Tier multiplied by 25%, which amount will be added to
 - 3.2. Any amounts in the Base Amount for such month in excess of the First Block Tier up to the Second Block Tier multiplied by 22.5%, which will be added to
 - 3.3. Any amounts in the Base Amount for such month in excess of the Second Block Tier up to the Third Block Tier multiplied by 20%, which will be added to
 - 3.4. Any amounts in the Base Amount for such month in excess of the Third Block Tier multiplied by 10%.

SCHEDULE J
RED/KODAK ASSET PURCHASE AGREEMENT (APA)
DATED DECEMBER 21, 2012

**USA Schedule J
(RED/Kodak APA - 2012)
Omitted**

**See Docket 13-M-0028
Exhibit A (APA) to Exhibit 2 - Part 1 (Private
Sale Motion - Part 1) of Joint Petition by Kodak
and RED-Rochester**

Exhibit E

Draft SAPA Notice

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Approval of Upstream Transfer of Ownership Interests of RED-Rochester, LLC, Pursuant to Public Service Law Sections 70, 83 and 89-h, and Providing for Continued Lightened Regulation

I.D. No. PSC-_____

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed action: The Commission is considering a Joint Petition, pursuant to Sections 70, 83 and 89-h of the Public Service Law, by RED-Rochester, LLC, RED Investment, LLC, RED Parent, LLC, Ironclad Energy Partners LLC, Ironclad Energy Ventures, LLC and Stonepeak Infrastructure Fund II LP requesting an Order approving the upstream transfer of ownership interests in regulated electric, gas, steam and water utility assets at Eastman Business Park owned by RED-Rochester, LLC, as contemplated in a proposed transaction by which RED Parent, LLC will convey all of its ownership interests in its wholly-owned subsidiary, RED Investment, LLC, (which is the sole owner of RED-Rochester, LLC) to Ironclad Energy Partners LLC. Approval is required under Sections 70, 83 and 89-h of the Public Service Law because the transaction involves acquisition of ownership interests in regulated electric, gas, steam and water utility assets (“Utility Assets”) at Eastman Business Park in the City of Rochester and Town of Greece, Monroe County, New York. The Joint Petition also requests continued lightened regulation for RED-Rochester, LLC following approval by the Commission.

Statutory authority: New York Public Service Law Sections 70, 83 and 89-h.

Subject: Joint Petition, pursuant to Sections 70, 83 and 89-h of the Public Service Law, to approve the upstream transfer of ownership interests in regulated electric, gas, steam and water Utility Assets at Eastman Business Park owned by RED-Rochester, LLC as contemplated in a proposed transaction by which RED Parent, LLC will convey all of its ownership interests in RED Investment, LLC (which is the sole owner of RED-Rochester, LLC) to Ironclad Energy Partners LLC, and further requesting continued lightened regulation for RED-Rochester, LLC following approval by the Commission.

Purpose: to approve: (1) the upstream transfer of ownership interests in regulated electric, gas, steam and water Utility Assets at Eastman Business Park owned by RED-Rochester, LLC via a transaction between RED Parent, LLC conveying all of its ownership interests in RED-Investment LLC (which is the sole owner of RED-Rochester, LLC) to Ironclad Energy Partners LLC; and (2) continued lightened regulation for RED-Rochester, LLC following approval by the Commission.

Substance of proposed rule: The Commission is considering a Joint Petition, pursuant to Sections 70, 83 and 89-h of the Public Service Law, by RED-Rochester, LLC, RED Investment, LLC, RED Parent, LLC, Ironclad Energy Partners LLC, Ironclad Energy Ventures, LLC and

Stonepeak Infrastructure Fund II LP requesting an Order approving the upstream transfer of ownership interests in regulated electric, gas, steam and water utility assets at Eastman Business Park owned by RED-Rochester, LLC, as contemplated in a proposed transaction by which RED Parent, LLC will convey all of its ownership interests in its wholly-owned subsidiary, RED Investment, LLC, (which is the sole owner of RED-Rochester, LLC) to Ironclad Energy Partners LLC. Approval is required under Sections 70, 83 and 89-h of the Public Service Law because the transaction involves acquisition of ownership interests in regulated electric, gas, steam and water utility assets (Utility Assets) at Eastman Business Park in the City of Rochester and Town of Greece, Monroe County, New York. The Joint Petition also requests continued lightened regulation for RED-Rochester, LLC following approval by the Commission.

The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, view or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in Section 102(2)(a)(ii) of the State Administrative Procedures Act.

Exhibit F

Method of Service Form

Method of Service

Name:	Thomas F. Puchner
Company/Organization:	Phillips Lytle LLP
Mailing Address:	Omni Plaza, Suite P1, 30 South Pearl Street, Albany, NY 12207-3425
Company/Organization you represent, if different from above:	Red-Rochester, LLC, RED Investment, LLC, Red Parent, LLC, Ironclad Energy Partners LLC, Ironclad Energy Ventures, LLC, Stonepeak Infrastructure Fund II LP
E-Mail Address:	tpuchner@phillipslytle.com
Case/Matter Number:	16-M-

Request Type

- New Petition/Application - I am filing a new petition/application which requires action by the Commission.
- Service List request – I request to be on the service list for the matter/case.
- Other – Type of request _____

Service Information (Select one option below)

- Electronic Service and Waiver – Consent in Case/Matter Identified Above
As duly authorized by the Participant identified above that I represent, I knowingly waive on behalf of that Participant any right under PSL §23(1) to be served personally or by regular mail with Commission orders that affect that Participant and will receive all orders by electronic means in the above Case. If participating individually, I knowingly waive any PSL §23(1) right to service of orders personally or by regular mail and will receive all orders by electronic means in the above Case. This consent remains in effect until revoked.
- Electronic Service and Waiver – Global Consent in All Cases/Matters
As duly authorized by the Participant identified above that I represent, I knowingly waive on behalf of that Participant any right under PSL §23(1) to be served personally or by regular mail with Commission orders that affect that Participant and will receive all orders by electronic means in all Cases where it participates. If participating individually, I knowingly waive any PSL §23(1) right to service of orders personally or by regular mail, and will receive all orders by electronic means in all Cases where I participate. This consent remains in effect until revoked.
Note: Due to the design of our system, this consent attaches to the individual named here and not to the party that may be represented by that individual. Therefore, individuals who represent multiple parties should be aware that a global consent will affect all matters in which they appear on behalf of any party.
- I do **not** consent to receive orders electronically

E-Mail Preference (Select one option below) – For Case specific request

E-Mail notifications include a link to filed and issued documents.

- Notify me of Commission Issued Documents in this case/matter.
- Notify me of Both Commission Issued Documents and Filings in this case/matter
- Do not send me any notifications of filed or issued documents

Submitted by: 	Date: 6/14/2016
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