

## **INDEX OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
1	Requirements Under 16 NYCRR Parts 31 and 18
2	Bowline Point Generating Station Sales Agreement among Orange and Rockland Utilities, Inc., Consolidated Edison Company of New York, Inc. and Southern Energy Bowline, L.L.C. (November 24, 1998)
3	Lovett Generating Station Sales Agreement between Orange and Rockland Utilities, Inc. and Southern Energy Lovett, L.L.C. (November 24, 1998)
4	Gas Turbine and Hydroelectric Generating Stations Sales Agreement between Orange and Rockland Utilities, Inc. and Southern Energy NY-Gen, L.L.C. (November 24, 1998)
5	Bowline Adjacent Property Sales Agreement between Orange and Rockland Utilities, Inc. and Southern Energy Bowline, L.L.C. (November 24, 1998)
6	Continuing Site/Interconnection Agreement by and between Orange and Rockland Utilities, Inc. and Southern Energy Bowline, L.L.C. (November 24, 1998)
7	Continuing Site/Interconnection Agreement by and between Orange and Rockland Utilities, Inc. and Southern Energy Lovett, L.L.C. (November 24, 1998)
8	Continuing Site/Interconnection Agreement by and between Orange and Rockland Utilities, Inc. and Southern Energy NY-Gen, L.L.C. (November 24, 1998)
9	Eastern Load Pocket Call Option Agreement between Orange and Rockland Utilities, Inc. and Southern Energy Lovett, L.L.C. (November 24, 1998)
10	Western Load Pocket Call Option Agreement between Orange and Rockland Utilities, Inc. and Southern Energy NY-Gen, L.L.C. (November 24, 1998)

## **INDEX OF EXHIBITS**

(continued)

<b><u>Exhibit</u></b>	<b><u>Description</u></b>
11	Transition Power Sales Agreement between Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C., Southern Energy NY-Gen, L.L.C. and Orange and Rockland Utilities, Inc. (Dated as of November 24, 1998)
12	Transition Capacity Sales Agreement between Southern Energy Bowline, L.L.C. and Consolidated Edison Company of New York, Inc. (Dated as of November 24, 1998)
13	Bowline Guaranty (November 24, 1998)
14	Lovett, Gas Turbine and Hydroelectric Generating Facilities Guaranty (November 24, 1998)

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**Requirements Under  
16 NYCRR Parts 31 and 18**

The requirements of a petition pursuant to PSL Section 70 are set forth in Parts 31 and 18 of the Commission's regulations (16 NYCRR Parts 31 and 18). In accordance with the provisions of Parts 31 and 18, Petitioners state as follows:

**Section 31.1(a) - - Financial Condition.**

This section requires that the petition provide the facts called for in subdivisions (f) - (i) and (p) of Section 18.1 applicable to the property to be transferred.<sup>1</sup> The information required by this section for both Orange and Rockland and Con Edison is set forth in Appendix A, attached hereto.

**Section 31.1 (b) - - General Description of the Facilities to be Transferred.**

As described in Section III of this Petition, the property to be transferred consists of the Bowline Point Generating Station, the Bowline Adjacent Property, the Lovett Generating Station, the Hillburn and Shoemaker Gas Turbines, and the Mongaup, Rio, Swinging Bridge and Grahamsville Hydroelectric Stations and related assets. A complete description of the property to be transferred is set forth in the Bowline, Lovett, and Gas and Hydro ASAs, respectively, copies of which are attached to this Petition.

**Section 31.1 (c) - - List of Franchises, Consents and Rights to be Transferred.**

Neither Orange and Rockland nor Con Edison's franchised retail operations will be transferred, merged or consolidated as part of the proposed transaction. All written contracts, licenses, agreements and personal property leases which are material to the business or operations of the

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<sup>1</sup> These subdivisions of Section 18.1 require the Petitioners: (i) to identify the case number and date of any order authorizing any bonds, notes, or other evidences of indebtedness (Section 18.1 (f)); to give a brief description of each mortgage upon the property to be transferred (Section 18.1 (g)); to provide information for each bond issued (Section 18.1 (h)); to submit a separate statement for each affiliated interest as defined by the PSL (Section 18.1 (i)); and to provide a detailed income statement and balance sheets for the latest fiscal year, and latest available income statement and balance sheets for 12 months (Section 18.1 (p)).



assets to be transferred and which are expected to continue in force and effect after the closing date (other than those specifically excluded) are listed on Schedules 5.9(a) and 5.17(a) to the Bowline ASA, Lovett ASA and Gas and Hydro ASA.

Section 31.1 (d) - - Local Approvals.

Upon information and belief, no consents or approvals of any municipality in connection with the proposed transfer are required.

Section 31.1 (e) - - A Copy of the Proposed Agreement to be Approved.

Copies of the proposed agreements are attached as Exhibits to this Petition and as described in Section III of the Petition, include the following: (1) the Bowline ASA; (2) the Lovett ASA; (3) the Gas and Hydro ASA; (4) the Bowline Adjacent Property ASA; (5) the Bowline Continuing Site/Interconnection Agreement; (6) the Lovett Continuing Site/Interconnection Agreement; (7) the Gas and Hydro Continuing Site/Interconnection Agreement; (8) the Eastern Load Pocket Agreement; (9) the Western Load Pocket Agreement; (10) the Transition Power Sales Agreement; (11) the Transition Capacity Sales Agreement; (12) the Southern Energy Guaranty for the Bowline ASA and the Bowline Adjacent Property ASA, and (13) the Southern Energy Guaranty for the Lovett ASA and the Gas and Hydro ASA.

Section 31.1 (f) and (g) - - Original Cost of the Property to be Transferred.

See Appendix B.

Section 31.1 (h) - - Accumulated Depreciation Reserve of the Property to be Transferred

See Appendix B.

Section 31.1 (i) - - Cost of the Property to be Transferred.

See Appendix B.

**Section 31.1 (j) - Depreciation Reserves of Property to be Transferred.**

**See Appendix B.**

**Section 31.1 (k) - Statement of Contributions.**

**Not Applicable**

**Section 31.1 (l) - Statement of Operating Revenues, Expenses and Taxes Relating to the Property to be Transferred.**

**Appendix C sets forth an estimate of the revenues, expenses and taxes for the past three calendar years. The balance sheets of Orange and Rockland and Con Edison are set forth in Appendix A to this exhibit. The latest available balance sheet for Southern Energy is attached hereto as Appendix D.**

**APPENDIX A**

**ORANGE AND ROCKLAND UTILITIES, INC.**

Case	Date of Commission Order	Description	Series	Percent	Due	Face Value Outstanding
89-M-120	09/01/89	Debentures	A	9.375	03/15/00	\$80,000,000
92-M-0862	10/22/92	Debentures	C	6.14	03/01/00	20,000,000
92-M-0862	10/22/92	Debentures	D	6.56	03/01/03	35,000,000
97-M-0822	08/26/97	Debentures	F	6.50	12/01/27	80,000,000
91-M-0437	09/14/92	Pollution Control Bonds	1994	6.09	10/01/14	55,000,000
95-M-0229	06/11/95	Pollution Control Bonds	1995	Variable	08/01/15	<u>44,000,000</u>
Total Face Value Outstanding						\$ 314,000,000

Description of Mortgage and Property

On October 1, 1997 the Company's First Mortgage Bonds, Series I, 6 ¼% were redeemed at maturity. The Series I Bonds were the final series of bonds outstanding under the Orange and Rockland Utilities, Inc. First Mortgage Indenture, and the Company has canceled its First Mortgage and discharged the lien thereon.

Information re: Bonds and Other Long-Term Debt

Title		Date of Issue	Date of Maturity	Authorized and Issued	Outstanding at September 30, 1997
<u>Orange and Rockland Utilities, Inc.</u>					
Promissory Notes:					
Note 1(a)	6.96%	8/15/95	7/15/99	23,650	5,783
Note 2(a)	6.96%	8/15/95	7/15/99	24,000	5,861
Note 7	6.90%	8/15/96	7/15/00	26,065	12,823
Note 3	6.90%	2/15/97	1/15/01	27,865	17,126
Note 8	6.97%	4/15/97	4/15/01	27,865	18,822
Note 9	6.90%	1/15/97	1/15/01	27,865	17,128
Unsecured Promissory Notes:					
Pollution Control Bonds:					
1995 Series, Variable Rate		8/01/95	8/01/15	44,000,000	44,000,000
1994 Series, 6.09%		8/31/94	10/1/14	55,000,000	55,000,000
Debentures:					
Series A, 9.375%		03/15/90	03/15/00	80,000,000	80,000,000
Series C, 6.14%		03/10/93	03/01/00	20,000,000	20,000,000
Series D, 6.56%		03/10/93	03/01/03	35,000,000	35,000,000
Series F, 6.50%		12/18/97	12/01/27	80,000,000	80,000,000
					<u>\$314,077,543</u>

Quarterly Report of Orange & Rockland Utilities, Inc.Quarter Ended September 30, 1998

SCH: 601

COMPARATIVE BALANCE SHEET  
ASSETS AND OTHER DEBITS

LINE NO.	ACCOUNT TITLE (A)	BALANCE AT BEGINNING OF TWELVE-MONTH PERIOD* (B) 01	BALANCE AT END OF QUARTER (C) 02	INCREASE OR (DECREASE) (D) 03
1	UTILITY PLANT			
2	UTILITY PLANT (101-107,114,117,118.1-2,120)	1,219,475,074	1,275,842,150	56,367,077
3	LESS ACCUMULATED PROVISION FOR DEPR. AMORT.			
4	AND DEPLETION (108-113,115,119.1,119.2,120.5)	(414,943,979)	(442,830,958)	(27,886,979)
5	TOTAL NET UTILITY PLANT	804,531,094	833,011,192	28,480,098
6	OTHER PROPERTY & INVESTMENTS			
7	NONUTILITY PROPERTY (121)	285,861	265,223	(20,639)
8	LESS: ACCUM.PROV. FOR DEPR. & AMORT. (122)	(161,010)	(176,765)	(15,755)
9	INVESTMENT IN ASSOCIATED COMPANIES (123)			
10	INVESTMENT IN SUBSIDIARY COMPANIES (123.1)	112,599,193	122,087,799	9,488,605
11	OTHER INVESTMENTS (124)	36,160	32,112	(4,047)
12	SINKING FUNDS (125)			
13	DEPRECIATION FUND (126)			
14	OTHER SPECIAL FUNDS (128)			
15	TOTAL PROPERTY AND INVESTMENTS	112,760,204	122,208,369	9,448,165
16	CURRENT AND ACCRUED ASSETS			
17	CASH (131)	906,904	1,671,245	764,341
18	INTEREST SPECIAL DEPOSITS (132)			
19	DIVIDEND SPECIAL DEPOSITS (133)			
20	OTHER SPECIAL DEPOSITS (134)	3,300	1,000	(2,300)
21	WORKING FUNDS (135)	(7,065,005)	(4,423,248)	2,641,757
22	TEMPORARY CASH INVESTMENTS (136)			
23	NOTES RECEIVABLE (141)			
24	ACCOUNTS RECEIVABLE (142,143)	53,065,288	58,331,348	5,266,060
25	LESS: ACCU.PROV FOR UNCOL.ACTS.CR. (144)	(2,315,150)	(2,945,950)	630,800
26	NOTES RECEIVABLE FROM ASSOC COs. (145)			
27	ACCOUNTS RECEIVABLE FROM ASSOC COs (146)	10,309,389	7,917,191	(2,392,198)
28	MATERIALS AND SUPPLIES (150)	16,958,996	14,978,438	(1,980,559)
29	GAS STORED UNDERGROUND CURRENT (164.1)	14,608,405	7,601,547	(7,006,859)
30	LIQUAFIED NATURAL GAS IN STORAGE (164.2)			
31	PREPAYMENTS (165)	42,220,280	36,584,288	(5,635,992)
32	INTEREST AND DIVIDENDS RECEIVABLE (171)			
33	RENTS RECEIVABLE (172)			
34	ACCRUED UTILITY REVENUES (173)	11,930,919	16,020,901	4,089,982
35	MISC. CURRENT AND ACCRUED ASSETS (174)	19,348,064	23,228,392	3,880,328
36	TOTAL CURRENT AND ACCRUED ASSETS	159,971,390	158,965,151	(1,006,239)
37	DEFERRED DEBITS			
38	UNAMORT. DEBT EXPENSE (181)	8,404,379	8,520,277	115,898
39	EXTRAORDINARY PROPERTY LOSSES (182)			
40	PRELIM. SURVEY & INVESTIGATION CHARGES (183)	263,492	365,421	101,929
41	CLEARING ACCOUNTS (184)	124,048	197,825	73,777
42	TEMPORARY FACILITIES (185)			
43	MISCELLANEOUS DEFERRED DEBITS (186)	117,566,783	112,799,430	(4,767,353)
44	DEF LOSSES (DISPOSITN OF UTILITY PLANT) (187)			
45	INVESTMENT IN RESEARCH & DEVELOPMENT (188)	(2,179,502)	(2,048,876)	130,626
46	ACCUMULATED DEFERRED INCOME TAXES (190)	27,938,458	28,404,845	466,387
47	TOTAL DEFERRED DEBITS	152,117,658	148,238,922	(3,878,736)
48	TOTAL ASSETS AND OTHER DEBITS	1,229,380,347	1,262,423,634	33,043,287

\*Beginning balance twelve-months prior to the end of the quarter for which the report is made



COMPARATIVE BALANCE SHEET Liabilities and Other Credits				SCH: 602
LINE NO.	ACCOUNT TITLE (A)	BALANCE AT BEGINNING OF TWELVE-MONTH PERIOD* (B) 01	BALANCE AT END OF QUARTER (C) 02	INCREASE OR (DECREASE) (D) 03
1	PROPRIETARY CAPITAL			
2	COMMON STOCK ISSUED (201)	68,273,760	67,598,020	(675,740)
3	PREFERRED STOCK ISSUED (204)	43,227,097	43,359,955	132,858
4	CAPITAL STOCK SUBSCRIBED (202,205)			
5	STOCK LIABILITY FOR CONVERSION (203,206)			
6	PREMIUM ON CAPITAL STOCK (207)	133,626,599	132,317,080	(1,309,520)
7	OTHER PAID-IN CAPITAL (208-211)			
8	INSTALLMENTS RECEIVED ON CAPITAL STOCK (212)			
9	CAPITAL STOCK EXPENSE (214)	(6,085,137)	(6,019,537)	65,600
10	APPROPRIATED RETAINED EARNINGS (215)			
11	UNAPPROPRIATED RETAINED EARNINGS (216)	98,533,455	95,155,731	(3,377,724)
12	UNAPPRO UNDIS SUBSIDIARY EARNINGS (216.1)	83,495,472	92,984,078	9,488,605
13	REACQUIRED CAPITAL STOCK (217)			
14	TOTAL PROPRIETARY CAPITAL	421,071,246	425,395,326	4,324,081
15	LONG TERM DEBT			
16	BONDS (221)	23,000,000		(23,000,000)
17	REACQUIRED BONDS (222)			
18	ADVANCES FROM ASSOC. COMPANIES (223)			
19	OTHER LONG-TERM DEBT (224)	290,797,336	315,592,997	24,795,661
20	UNAMORTIZED PREMIUM ON LONG-TERM DEBT (225)			
21	UNAMORTIZED DISCT ON LONG-TERM DEBT DEBIT (226)	(45,448)	(26,134)	19,314
22	TOTAL LONG-TERM DEBT	313,751,888	315,566,863	1,814,975
23	CURRENT & ACCRUED LIABILITIES			
24	NOTES PAYABLE (231)	104,877,000	146,716,415	41,839,415
25	ACCOUNTS PAYABLE (232)	74,246,791	68,736,871	(5,509,921)
26	NOTES PAYABLE TO ASSOCIATED COMPANIES (233)			
27	ACCOUNTS PAYABLE TO ASSOCIATED COMPANIES (234)	3,584,730	121,259	(3,463,471)
28	CUSTOMER DEPOSITS (235)	3,615,096	2,632,256	(982,839)
29	TAXES ACCRUED (236)	1,313,519	3,070,335	1,756,816
30	INTEREST ACCRUED (237)	3,776,686	3,742,864	(33,821)
31	DIVIDENDS DECLARED (238)	636,049	637,549	1,500
32	MATURED LONG TERM DEBT (239)			
33	MATURED INTEREST (240)			
34	TAX COLLECTIONS PAYABLE (241)	281,823		(281,823)
35	MISC. CURRENT AND ACCRUED LIABILITIES (242)	37,295,352	27,998,504	(9,296,848)
36	TOTAL CURR AND ACCRUED LIAB	229,627,047	253,656,055	24,029,008
37	DEFERRED CREDITS			
38	CUSTOMER ADVANCES FOR CONSTRUCTION (252)	1,154,422	1,084,496	(69,926)
39	OTHER DEFERRED CREDITS (253)	15,335,295	12,203,144	(3,132,150)
40	ACCUMULATED DEF INVESTMENT TAX CR. (255)	12,493,082	11,821,035	(672,047)
41	DEF GAINS (DISPOSITION OF UTILITY PLANT) (256)			
42	ACUM DEF INCOME TAXES-ACLRD AMORT. (281)	13,249,562	12,627,282	(622,280)
43	ACUM DEF INCOME TAXES-LBRLZD DEPR (282)	134,859,982	137,737,173	2,877,191
44	ACUM DEF INCOME TAXES-OTHER (283)	46,614,421	50,712,509	4,098,088
45	TOTAL DEFERRED CREDITS	223,708,763	226,185,638	2,476,876
46	OPERATING RESERVES			
47	PROPERTY INSURANCE RESERVE (261)			
48	INJURIES AND DAMAGES RESERVE (262)	3,975,003	4,287,837	312,834
49	PENSIONS AND BENEFITS RESERVE (263)	37,270,798	37,094,280	(176,518)
50	MISCELLANEOUS OPERATING RESERVES (265)	(22,398)	237,634	260,032
51	TOTAL OPERATING RESERVES	41,223,403	41,619,751	396,348
52	TOTAL LIABILITIES & OTHER CREDITS	1,229,380,347	1,262,423,634	33,043,287

\*Beginning balance twelve-months prior to the end of the quarter for which the report is made

## Quarterly Report of Orange &amp; Rockland Utilities, Inc.

Quarter Ended September 30, 1998

Sch: 604

## STATEMENT OF INCOME (See Note # 1 on page 7)

FOR THE TWELVE MONTH PERIOD TO THE END OF THE QUARTER

Total (a) 01	Electric (b) 02	Gas (c) 03	..... (d) 04	Line No.	Account (e)
573,272,229	\$427,262,527	\$146,009,702		1	UTILITY OPERATING INCOME
				2	Operating Revenues (400)
404,802,044	224,356,319	180,445,725		3	Operating Expenses:
46,031,779	38,538,216	7,493,563		4	Operation Expense (401)
(77,204,279)	-	(77,204,279)		5	Maintenance Expenses (402)
28,947,592	23,949,210	4,998,382		6	Joint Expenses (402.1)
1,659,509	1,281,894	377,615		7	Depreciation Expense (403)
-	-	-		8	Amort & Depl. of Utility Plant (404)
-	-	-		9	Amort of Other Utility Plant (405)
-	-	-		10	Amort of Utility plant Acq. Adj. (406)
-	-	-		11	Amort of Property Losses (Elec.407, Gas407.1)
78,587,856	62,170,307	16,417,549		12	Amort of Conversion Expenses (gas 407.2)
22,105,230	20,086,062	2,019,168		13	Taxes Other Than Income Taxes (408.1)
-	-	-		14	Income Taxes (409.1, 410.1, 411.1, 411.4, 411.8)
-	-	-		15	Gains from Disposition of Utility Plant (411.6)
-	-	-		16	Losses from Disposition of Utility Plant (411.7)
504,929,731	370,382,008	134,547,723		17	Total Operating Expenses
68,342,498	56,880,520	11,461,979		18	Net Operating Expenses
				19	Revenues from Utility Plant Leased to Others (412)
				20	Expenses of Utility Plant Leased to Others (413)
68,342,498	56,880,520	11,461,979		21	Other Utility Operating Income (414)
				22	Total Utility Operating Income
-	-	-		23	OTHER INCOME
-	-	-		24	Income from Merchandising, Jobbing
-	-	-		25	and Contract Work (415-6)
11,497	11,255	242		26	Income from Nonutility Operations (417, 417.1)
9,488,605	9,247,154	241,452		27	Nonoperating Rental Income (418)
772,408	546,634	225,774		28	Equity in Earnings of Subsidiary Companies (418.1)
1,747,970	1,226,009	521,961		29	Interest & Dividend Income (419)
(77,955)	(116,098)	38,142		30	Allowance for Funds Used During Construction (419.1)
107,269	107,269	-		31	Miscellaneous Income Deductions (421)
12,049,794	11,022,222	1,027,571		32	Gain on Disposition of Property (421.1)
				33	Total Other Income
-	-	-		34	OTHER INCOME DEDUCTIONS
-	-	-		35	Loss on Disposition of Property (421.1)
912,830	700,116	212,714		36	Miscellaneous Amortization (425)
912,830	700,116	212,714		37	Miscellaneous Income Deductions (426)
				38	Total Other Income Deductions
213,614	213,362	252		39	TAXES-OTHER INCOME AND DEDUCTIONS
(979,629)	(824,714)	(154,915)		40	Taxes Other Than Income Taxes (408.2)
(766,015)	(611,352)	(154,663)		41	Income Taxes (409.2, 410.2, 411.2, 411.5, 420)
11,902,978	10,933,458	969,520		42	Total Taxes-Other Income & Deductions
				43	Net Other Income and Deductions
20,132,098	15,545,078	4,587,020		44	INTEREST CHARGES
822,031	636,372	185,659		45	Interest on Long-term Debt (427)
-	-	-		46	Amort of Debt Disc. and Expense (428)
1,185,681	917,485	268,196		47	Amort of Premium on Debt-Credit (429)
9,760,651	7,179,666	2,580,985		48	Interest on Debt to Associated Companies (430)
31,800,461	24,278,601	7,621,860		49	Other Interest Expense (431)
48,345,015	43,535,377	4,809,638		50	Total Interest Charges
				51	Income Before Extraordinary Items
				52	EXTRAORDINARY ITEMS
				53	Extraordinary Income (434)
				54	Extraordinary Deductions (435)
-	-	-		55	Income Taxes, Extraordinary Items (409.3)
				56	Net Extraordinary Items
48,345,015	43,535,377	4,809,638		57	Net Income

Quarter Ended September 30, 1998

Sch: 604

STATEMENT OF INCOME (Continued)

Line No.	FOR THE CURRENT QUARTER	Account (e)			
	Total (f) 05	Electric (g) 06	Gas (h) 07	..... (i) 08	
1					
2	149,607,942	\$136,828,902	\$12,779,040		
3					
4	116,546,624	75,337,255	41,209,369		
5		-	-		
6	(26,494,254)	-	(26,494,254)		
7	7,207,344	5,934,585	1,272,760		
8	760,851	540,513	220,339		
9	-	-	-		
10	-	-	-		
11	-	-	-		
12	-	-	-		
13	19,644,115	16,803,344	2,840,770		
14	9,716,396	12,073,826	(2,357,430)		
15	-	-	-		
16	-	-	-		
17	127,381,077	110,689,523	16,691,554		
18	22,226,866	26,139,380	(3,912,514)		
19					
20					
21					
22	22,226,866	26,139,380	(3,912,514)		
23					
24	-	-	-		
25	-	-	-		
26	-	-	-		
27	1,279	1,587	(308)		
28	4,072,340	4,060,393	11,947		
29	138,169	95,065	43,104		
30	15,066	105,167	(90,102)		
31	(30,714)	(30,610)	(104)		
32	1,751	1,751	-		
33	4,197,891	4,233,353	(35,462)		
34					
35	-	-	-		
36	-	-	-		
37	203,382	164,758	38,624		
38	203,382	164,758	38,624		
39					
40	53,645	53,645	1		
41	(295,606)	(240,178)	(55,428)		
42	(241,961)	(186,533)	(55,427)		
43	4,236,469	4,255,128	(18,659)		
44					
45	5,235,927	4,026,856	1,209,071		
46	201,484	156,009	45,475		
47		-	-		
48	250,526	192,679	57,847		
49	2,326,701	1,690,963	635,738		
50	8,014,638	6,066,507	1,948,131		
51	18,448,697	24,328,001	(5,879,304)		
52					
53					
54					
55					
56	-	-	-		
57	18,448,697	24,328,001	(5,879,304)		

NOTES TO STATEMENT OF INCOME:

1. In columns (b) through (d) show the Departmental Distribution of all amounts reported on lines 2 through 57 in column (a).
2. In columns (g) through (i) show the Departmental Distribution of all amounts reported on lines 2 through 57 in column (f).

NOTES TO STATEMENT OF INCOME:

1. In columns (b) through (d) show the Departmental Distribution of all amounts reported on lines 2 through 57 in column (a).
2. In columns (g) through (i) show the Departmental Distribution of all amounts reported on lines 2 through 57 in column (f).

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**BALANCE SHEET**  
**AS AT SEPTEMBER 30, 1998**

Sept. 30, 1998  
(Thousands of Dollars)

**ASSETS**

**Utility plant, at original cost**

Electric	\$ 11,944,613
Gas	1,807,946
Steam	594,841
General	<u>1,203,783</u>
Total	15,551,183
Less: Accumulated depreciation	<u>4,630,649</u>
Net	10,920,534
Construction work in progress	315,912
Nuclear fuel assemblies and components, less accumulated amortization	<u>105,113</u>
Net utility plant	<u>11,341,559</u>

**Current assets**

Cash and temporary cash investments	69,170
Funds held for redemption of preferred stock	74,156
Funds held for refunding of debt	-
Accounts receivable – customer, less allowance for uncollectible accounts of \$22,798	600,580
Other receivables	44,521
Regulatory accounts receivable	(917)
Fuel, at average cost	29,324
Gas in storage, at average cost	49,208
Materials and supplies, at average cost	188,735
Prepayments	240,787
Other current assets	<u>17,922</u>
Total current assets	<u>1,313,486</u>

Investments and nonutility property	<u>253,758</u>
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**Deferred charges**

Enlightened Energy program costs	79,704
Unamortized debt expense	134,605
Recoverable fuel costs	21,411
Power contract termination costs	70,282
Other deferred charges	<u>248,867</u>
Total deferred charges	<u>554,869</u>

**Regulatory asset - future federal  
Income taxes**

860,841

**Total** \$ 14,324,513

The accompanying notes are an integral part of these financial statements.

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**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**BALANCE SHEET**  
**AS AT SEPTEMBER 30, 1998**

Sept. 30, 1998  
(Thousands of Dollars)

**CAPITALIZATION AND LIABILITIES**

**Capitalization**

Common stock	\$ 1,482,342
Repurchased CEI common stock	(102,178)
Retained earnings	4,506,481
Capital stock expense	(36,759)
<b>Total common shareholders' equity</b>	<b><u>5,849,886</u></b>
<b>Preferred stock</b>	
Subject to mandatory redemption	
7.20% Series I	47,500
6-1/8% Series J	37,050
<b>Total subject to mandatory redemption</b>	<b><u>84,550</u></b>
<b>Other preferred stock</b>	
\$ 5 Cumulative Preferred	175,000
5-3/4% Series A	7,061
5-1/4% Series B	13,844
4.65% Series C	15,330
4.65% Series D	22,233
<b>Total other preferred stock</b>	<b><u>233,468</u></b>
<b>Total preferred stock</b>	<b><u>318,018</u></b>
<b>Long-term debt</b>	<b><u>4,047,837</u></b>
<b>Total capitalization</b>	<b><u>10,215,741</u></b>

**Noncurrent liabilities**

Obligations under capital leases	37,771
Other noncurrent liabilities	158,235
<b>Total noncurrent liabilities</b>	<b><u>196,006</u></b>

**Current liabilities**

Long-term debt due within one year	325,000
Accounts payable	356,947
Customer deposits	177,023
Accrued taxes	155,244
Accrued interest	70,397
Accrued wages	82,691
Other current liabilities	176,654
<b>Total current liabilities</b>	<b><u>1,343,956</u></b>

**Provisions related to future federal income taxes  
and other deferred credits**

Accumulated deferred federal income tax	2,298,301
Accumulated deferred investment tax credits	157,110
Other deferred credits	113,399
<b>Total deferred credits</b>	<b><u>2,568,810</u></b>
<b>Total</b>	<b><u>\$ 14,324,513</u></b>

The accompanying notes are an integral part of these financial statements.

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**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**INCOME STATEMENT**  
**TWELVE MONTHS ENDED SEPTEMBER 30, 1998**

	1998 (Thousands of Dollars)
<b>Operating revenues</b>	
Electric	\$ 5,772,626
Gas	1,003,521
Steam	<u>355,838</u>
<b>Total operating revenues</b>	<u>7,131,985</u>
<b>Operating expenses</b>	
Purchased power	1,347,598
Fuel	595,946
Gas purchased for resale	412,960
Other operations	1,092,292
Maintenance	473,480
Depreciation and amortization	514,637
Taxes, other than federal income tax	1,210,817
Federal income tax	<u>402,330</u>
<b>Total operating expenses</b>	<u>6,050,060</u>
<b>Operating income</b>	1,081,925
<b>Other income (deductions)</b>	
Investment income	8,717
Allowance for equity funds used during construction	2,106
Other income less miscellaneous deductions	(4,737)
Federal income tax	<u>(1,852)</u>
<b>Total other income</b>	<u>4,234</u>
<b>Income before interest charges</b>	1,086,159
Interest on long-term debt	312,748
Other interest	21,347
Allowance for borrowed funds used during construction	<u>(1,072)</u>
<b>Net interest charges</b>	<u>333,023</u>
<b>Net income</b>	753,136
<b>Preferred stock dividend requirements</b>	<u>18,144</u>
<b>Net income for common stock</b>	<u>\$ 734,992</u>
<b>Con Edison Sales</b>	
Electric (Thousands of kilowatthours)	
Con Edison customers	37,340,503
Delivery service to NYPA and others	10,327,005
Service for municipal agencies	<u>855,477</u>
<b>Total sales in service territory</b>	<u>48,522,985</u>
Off-system and ESCO sales	3,067,676
Gas (dekatherms)	
Firm sales and transportation	88,462,270
Off-peak firm/interruptible	<u>20,347,677</u>
<b>Total sales to Con Edison customers</b>	<u>108,809,947</u>
Transportation of customer-owned gas	
NYPA	6,346,278
Other	12,910,949
Off-system sales	<u>21,628,561</u>
<b>Total sales and transportation</b>	<u>149,695,735</u>
Steam (Thousands of pounds)	26,360,100

The accompanying notes are an integral part of these financial statements.

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**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**STATEMENT OF CASH FLOWS**  
**FOR THE TWELVE MONTHS ENDED SEPTEMBER 30, 1998**

	1998 (Thousands of Dollars)
<b>Operating activities</b>	
Net income	\$ 750,768
<b>Principal non-cash charges (credits) to income</b>	
Depreciation and amortization	515,136
Deferred recoverable fuel costs	35,988
Federal income tax deferred	61,880
Common equity component of allowance for funds used during construction	(2,049)
Other non-cash charges	(6,396)
<b>Changes in assets and liabilities</b>	
Accounts receivable - customers, less allowance for uncollectibles	(79,684)
Regulatory accounts receivable	10,930
Materials and supplies, including fuel and gas in storage	22,393
Prepayments, other receivables and other current assets	(28,868)
Enlightened Energy program costs	32,460
Cost of removal less salvage	(79,939)
Power contract termination costs	(14,671)
Accounts payable	(35,274)
Accrued income taxes	2,817
Other - net	119,500
<b>Net cash flows from operating activities</b>	<u>1,304,991</u>
<b>Investing activities including construction</b>	
Construction expenditures	(634,809)
Nuclear fuel expenditures	(8,639)
Contributions to nuclear decommissioning trust	(18,103)
Common equity component of allowance for funds used during construction	2,049
<b>Net cash flows from investing activities including construction</b>	<u>(659,502)</u>
<b>Financing activities including dividends</b>	
Repurchase of common stock	(102,178)
Issuance of long-term debt	790,000
Retirement of long-term debt	(102,630)
Advance refunding of long-term debt	(705,240)
Issuance and refunding costs	(15,461)
Common stock dividends	(496,913)
Funds held for redemption of preferred stock	(74,156)
Preferred stock dividends	(18,203)
Corporate reorganization	(121,404)
<b>Net cash flows from financing activities including dividends</b>	<u>(846,185)</u>
<b>Net decrease in cash and temporary cash investments</b>	(200,696)
<b>Cash and temporary cash investments at October 1</b>	269,866
<b>Cash and temporary cash investments at September 30</b>	<u>\$ 69,170</u>
<b>Supplemental disclosure of cash flow information</b>	
Cash paid during the period for:	
Interest	\$ 303,188
Income taxes	334,179

The accompanying notes are an integral part of these financial statements.



**CONSOLIDATED STATEMENT OF RETAINED EARNINGS CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

<b>Year Ended September 30 (Thousands of Dollars)</b>	<b>1998</b>
<b>Balance, October 1</b>	<b>\$ 4,469,185</b>
<b>Corporate reorganization</b>	<b>(198,415)</b>
<b>Net income for the year</b>	<b>750,768</b>
<b>Total</b>	<b>5,021,538</b>
<b>Dividends declared on capital stock</b>	
Cumulative Preferred, at required annual rates	18,144
Common, \$0.525 per share (4th quarter - 1997)*	123,557
<b>Total dividends declared</b>	<b>141,701</b>
<b>Funds for Consolidated Edison, Inc. common stock dividend*</b>	<b>373,356</b>
<b>Balance, September 30</b>	<b>\$ 4,506,481</b>

\* On January 1, 1998 Consolidated Edison, Inc. was established as the holding company for Consolidated Edison Company of New York, Inc.

The accompanying notes are an integral part of these financial statements.

## **NOTE A - GENERAL**

These footnotes accompany and form an integral part of (i) the interim consolidated financial statements of Consolidated Edison, Inc. ("CEI") and its subsidiaries, including Consolidated Edison Company of New York, Inc. ("Con Edison"), the regulated utility, and several non-utility subsidiaries, and (ii) the interim consolidated financial statements of Con Edison on a stand-alone basis. These financial statements are unaudited but, in the respective opinions of the managements of CEI and Con Edison, represent all adjustments (which include only normally recurring adjustments) necessary for a fair statement of the results for the interim periods presented. These financial statements should be read together with the audited financial statements (including the notes thereto) included in the combined CEI and Con Edison Annual Reports on Form 10-K for the year ended December 31, 1997 (the "1997 Form 10-K").

## **NOTE B - CONTINGENCIES**

**INDIAN POINT** Nuclear generating units similar in design to Con Edison's Indian Point 2 unit have experienced problems that have required steam generator replacement. Inspections of the Indian Point 2 steam generators since 1976 have revealed various problems, some of which appear to have been arrested, but the remaining service life of the steam generators is uncertain. The projected service life of the steam generators is reassessed periodically in the light of the inspections made during scheduled outages of the unit. Based on the latest available data and current NRC criteria, Con Edison estimates that steam generator replacement will not be required before 2002. Con Edison has replacement steam generators, which are stored at the site. Replacement of the steam generators would require estimated additional expenditures of approximately \$108 million (1997 dollars, exclusive of replacement power costs) and an outage of approximately three months. However, securing necessary permits and approvals or other factors could require a substantially longer outage if steam generator replacement is required on short notice.

**NUCLEAR INSURANCE** The insurance policies covering Con Edison's nuclear facilities for property damage, excess property damage, and outage costs permit assessments under certain conditions to cover insurers' losses. As of September 30, 1998, the highest amount that could be assessed for losses during the current policy year under all of the policies was \$19 million. While assessments may also be made for losses in certain prior years, Con Edison is not aware of any losses in such years that it believes are likely to result in an assessment.

Under certain circumstances, in the event of nuclear incidents at facilities covered by the federal government's third-party liability indemnification program, Con Edison could be assessed up to \$88.1 million per incident, of which not more than \$10 million may be assessed in any one year.

**ENVIRONMENTAL MATTERS** The normal course of Con Edison's operations necessarily involves activities and substances that expose it to potential liabilities under federal, state and local laws protecting the environment. Such liabilities can be material and in some instances may be imposed without regard to fault, or may be imposed for past acts, even though such past acts may have been lawful at the time they occurred. Sources of such potential liabilities include (but are not limited to) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), a 1994 settlement with the New York State Department of Environmental Conservation (DEC), asbestos, and electric and magnetic fields (EMF).

**SUPERFUND** By its terms Superfund imposes joint and several strict liability, regardless of fault, upon generators of hazardous substances for resulting removal and remedial costs and environmental damages. Con Edison has received process or notice concerning possible claims under Superfund or similar state statutes relating to a number of sites at which it is alleged that hazardous substances generated by Con Edison (and, in most instances, a large number of other potentially responsible parties) were deposited. Estimates of the investigative, removal, remedial and environmental damage costs (if any) that Con Edison will be obligated to pay with respect to each of these sites range from extremely preliminary to highly refined. Based on these estimates Con Edison had accrued at September 30, 1998 a liability of approximately \$22.4 million. There will be additional costs with respect to these and possibly other sites, the materiality of which is not presently determinable.

**DEC SETTLEMENT** In 1994 Con Edison agreed to a consent order settling a civil administrative proceeding instituted by the DEC alleging environmental violations by Con Edison. Pursuant to the consent order, Con Edison has conducted an environmental management systems evaluation and an environmental compliance audit. Con Edison also must implement "best management practices" plans for certain facilities and undertake a remediation program at certain sites. At September 30, 1998, Con Edison had an accrued liability of \$16.6 million for these sites. Expenditures for environmental-related capital projects in the five years 1998-2002, including expenditures to comply with the consent order, are estimated at \$148 million. These estimated expenditures do not reflect divestiture by Con Edison of generating plants pursuant to the Settlement Agreement (see Note A to the financial statements included in the 1997 Form 10-K) or otherwise.

**ASBESTOS CLAIMS** Suits have been brought in New York State and federal courts against Con Edison and many other defendants, wherein a large number of plaintiffs sought large amounts of compensatory and punitive damages for deaths and injuries allegedly caused by exposure to asbestos at various premises of Con Edison. Many of these suits have been disposed of without any payment by Con Edison, or for immaterial amounts. The amounts specified in all the remaining suits total billions of dollars but Con Edison believes that these amounts are greatly exaggerated, as were the claims already disposed of. Based on the information and relevant circumstances known to Con Edison at this time, it is the opinion of Con Edison that these suits will not have a material adverse effect on Con Edison's financial position, results of operations or liquidity.

**EMF** Electric and magnetic fields (EMF) are found wherever electricity is used. In the event a causal relationship between EMF and adverse health effects is established, or independently of any such causal determination, in the event of adverse developments in related legal or public policy doctrines, there could be a material adverse effect on the electric utility industry, including Con Edison.

(a)

## CONSOLIDATED BALANCE SHEET CONSOLIDATED EDISON, INC.

## ASSETS

At December 31 (Thousands of Dollars)

	1997	1996
Utility plant, at original cost (Note A)	\$ 11,743,745	\$ 11,588,344
Electric	1,741,562	1,642,231
Gas	576,206	536,672
Steam	1,203,427	1,152,001
General	15,264,940	14,919,248
Total	4,392,377	4,285,732
Less: Accumulated depreciation	10,872,563	10,633,516
Net	292,218	332,333
Construction work in progress	102,321	101,461
Nuclear fuel assemblies and components, less accumulated amortization	11,267,102	11,067,310
Net utility plant		
Current assets	183,458	106,882
Cash and temporary cash investments (Note A)	328,874	-
Funds held for refunding of debt	581,163	544,004
Accounts receivable – customer, less allowance for uncollectible accounts of \$21,600 in 1997 and 1996	60,759	42,056
Other receivables	(1,682)	45,397
Regulatory accounts receivable (Note A)	53,697	64,709
Fuel, at average cost	37,209	44,979
Gas in storage, at average cost	191,759	204,801
Materials and supplies, at average cost	75,516	64,492
Prepayments	16,457	15,167
Other current assets	1,527,210	1,132,487
Total current assets	292,397	177,224
Investments and nonutility property (Note A)		
Deferred charges (Note A)	117,807	133,718
Enlightened Energy program costs	126,085	130,786
Unamortized debt expense	98,301	101,462
Recoverable fuel costs (Note A)	80,978	58,835
Power contract termination costs	239,559	271,081
Other deferred charges	662,730	695,882
Total deferred charges	973,079	984,282
Regulatory asset – future federal income taxes (Notes A and I)	\$ 14,722,518	\$ 14,057,185
Total		

**CAPITALIZATION AND LIABILITIES**

At December 31 (Thousands of Dollars)

	1997	1996
Capitalization (see Consolidated Statement of Capitalization)		
Common shareholders' equity	\$ 5,930,079	\$ 5,727,568
Preferred stock subject to mandatory redemption (Note B)	84,550	84,550
Other preferred stock (Note B)	233,468	238,098
Long-term debt	4,188,906	4,238,622
Total capitalization	10,437,003	10,288,838

**Noncurrent liabilities**

Obligations under capital leases	39,879	42,661
Other noncurrent liabilities	106,137	80,499
Total noncurrent liabilities	146,016	123,160

**Current liabilities**

Long-term debt due within one year (Note B)	529,385	106,256
Accounts payable	440,114	431,115
Customer deposits	161,731	159,616
Accrued taxes	65,736	27,342
Accrued interest	85,613	83,090
Accrued wages	82,556	80,225
Other current liabilities	183,122	147,968
Total current liabilities	1,548,257	1,035,612

**Provisions related to future federal income taxes and other deferred credits (Notes A and I)**

Accumulated deferred federal income tax	2,307,835	2,289,092
Accumulated deferred investment tax credits	163,680	172,510
Other deferred credits	119,727	147,973
Total deferred credits	2,591,242	2,609,575
Contingencies (Note F)		
Total	\$ 14,722,518	\$ 14,057,185

The accompanying notes are an integral part of these financial statements.

**CONSOLIDATED INCOME STATEMENT CONSOLIDATED EDISON, INC.**

Year Ended December 31 (Thousands of Dollars)	1997	1996	1995
<b>Operating revenues (Note A)</b>			
Electric	\$ 5,635,575	\$ 5,541,117	\$ 5,389,408
Gas	1,093,880	1,015,070	813,356
Steam	391,799	403,549	334,133
<b>Total operating revenues</b>	<b>7,121,254</b>	<b>6,959,736</b>	<b>6,536,897</b>
<b>Operating expenses</b>			
Purchased power	1,349,421	1,272,854	1,107,223
Fuel	596,824	573,275	504,104
Gas purchased for resale	479,218	418,271	259,789
Other operations	1,108,845	1,163,159	1,139,732
Maintenance	474,788	458,815	512,102
Depreciation and amortization (Note A)	502,779	496,412	455,776
Taxes, other than federal income tax	1,181,081	1,166,199	1,120,232
Federal income tax (Notes A and I)	382,910	397,160	396,560
<b>Total operating expenses</b>	<b>6,075,866</b>	<b>5,946,145</b>	<b>5,495,518</b>
<b>Operating income</b>	<b>1,045,388</b>	<b>1,013,591</b>	<b>1,041,379</b>
<b>Other income (deductions)</b>			
Investment income (Note A)	11,554	8,327	16,966
Allowance for equity funds used during construction (Note A)	4,448	3,468	3,763
Other income less miscellaneous deductions	(18,696)	(8,749)	(8,149)
Federal income tax (Notes A and I)	3,190	970	(1,060)
<b>Total other income</b>	<b>496</b>	<b>4,016</b>	<b>11,520</b>
<b>Income before interest charges</b>	<b>1,045,884</b>	<b>1,017,607</b>	<b>1,052,899</b>
Interest on long-term debt	318,158	307,820	301,917
Other interest	17,083	17,331	28,954
Allowance for borrowed funds used during construction (Note A)	(2,180)	(1,629)	(1,822)
<b>Net interest charges</b>	<b>333,061</b>	<b>323,522</b>	<b>329,049</b>
<b>Net income</b>	<b>712,823</b>	<b>694,085</b>	<b>723,850</b>
Preferred stock dividend requirements	(18,344)	(19,859)	(35,565)
Gain on refunding of preferred stock (Note B)	-	13,943	-
<b>Net income for common stock</b>	<b>\$ 694,479</b>	<b>\$ 688,169</b>	<b>\$ 688,285</b>
<b>Basic and diluted earnings per common share</b>	<b>\$ 2.95</b>	<b>\$ 2.93</b>	<b>\$ 2.93</b>
<b>Average number of shares outstanding during each year (235,082,063; 234,976,697 and 234,930,301)</b>			

The accompanying notes are an integral part of these financial statements.

**CONSOLIDATED STATEMENT OF CASH FLOWS CONSOLIDATED EDISON, INC.**

Year Ended December 31 (Thousands of Dollars)	1997	1996	1995
<b>Operating activities</b>			
Net income	\$ 712,823	\$ 694,005	\$ 723,850
Principal non-cash charges (credits) to income			
Depreciation and amortization	502,779	496,412	455,776
Deferred recoverable fuel costs	3,161	(42,008)	(61,937)
Federal income tax deferred	22,620	40,600	69,020
Common equity component of allowance for funds used during construction	(4,321)	(3,274)	(3,546)
Other non-cash charges	17,268	9,602	14,382
Changes in assets and liabilities			
Accounts receivable – customer, less allowance for uncollectibles	(37,159)	(46,789)	(56,719)
Regulatory accounts receivable	47,079	(51,878)	32,827
Materials and supplies, including fuel and gas in storage	31,824	(26,505)	43,341
Prepayments, other receivables and other current assets	(31,017)	5,117	4,566
Enlightened Energy program costs	15,911	10,564	25,919
Power contract termination costs	11,551	30,827	55,387
Accounts payable	8,999	10,263	46,383
Other – net	(62,978)	(19,679)	(72,785)
<b>Net cash flows from operating activities</b>	<b>1,238,540</b>	<b>1,107,337</b>	<b>1,276,464</b>
<b>Investing activities including construction</b>			
Construction expenditures	(654,221)	(675,233)	(692,803)
Nuclear fuel expenditures	(14,579)	(48,705)	(12,840)
Contributions to nuclear decommissioning trust	(21,301)	(21,301)	(18,893)
Common equity component of allowance for funds used during construction	4,321	3,274	3,546
<b>Net cash flows from investing activities including construction</b>	<b>(685,780)</b>	<b>(741,965)</b>	<b>(720,990)</b>
<b>Financing activities including dividends</b>			
Issuance of long-term debt	480,000	525,000	228,285
Retirement of long-term debt	(106,256)	(183,524)	(10,889)
Advance refunding of preferred stock and long-term debt	-	(412,311)	(155,699)
Issuance and refunding costs	(8,930)	(18,480)	(5,269)
Funds held for refunding of debt	(328,874)	-	-
Common stock dividends	(493,711)	(488,756)	(479,262)
Preferred stock dividends	(18,413)	(22,711)	(35,569)
<b>Net cash flows from financing activities including dividends</b>	<b>(476,184)</b>	<b>(600,782)</b>	<b>(458,403)</b>
<b>Net increase (decrease) in cash and temporary cash investments</b>	<b>76,576</b>	<b>(235,410)</b>	<b>97,071</b>
<b>Cash and temporary cash investments at January 1</b>	<b>106,882</b>	<b>342,292</b>	<b>245,221</b>
<b>Cash and temporary cash investments at December 31</b>	<b>\$ 183,458</b>	<b>\$ 106,882</b>	<b>\$ 342,292</b>
<b>Supplemental disclosure of cash flow information</b>			
Cash paid during the period for:			
Interest	\$ 310,310	\$ 309,279	\$ 309,953
Income taxes	335,631	346,755	344,754

The accompanying notes are an integral part of these financial statements.

**CONSOLIDATED STATEMENT OF RETAINED EARNINGS CONSOLIDATED EDISON, INC.**

Year Ended December 31 (Thousands of Dollars)	1997	1996	1995
Balance, January 1	\$ 4,283,935	\$ 4,097,035	\$ 3,888,010
Net income for the year	712,823	694,085	723,850
Total	4,996,758	4,791,120	4,611,860
Dividends declared on capital stock			
Cumulative Preferred, at required annual rates	18,146	18,145	35,259
Cumulative Preference, 6% Convertible Series B	198	284	304
Common, \$2.10, \$2.08 and \$2.04 per share	493,711	488,756	479,262
Total dividends declared	512,055	507,185	514,825
Balance, December 31	\$ 4,484,703	\$ 4,283,935	\$ 4,097,035

The accompanying notes are an integral part of these financial statements.



## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

### CORPORATE RESTRUCTURING

On January 1, 1998 Consolidated Edison Company of New York, Inc. (Con Edison), the regulated utility, became a subsidiary of its new parent holding company, Consolidated Edison, Inc. (CEI), when the outstanding shares of common stock, \$2.50 par value, of Con Edison were exchanged on a share-for-share basis for shares of common stock, \$10 par value, of CEI. Con Edison's debt securities and preferred stock remained securities of Con Edison.

### OPERATIONS

CEI, through its subsidiaries, provides a wide range of energy-related products and services to its customers. The principal subsidiaries, in addition to Con Edison, are Con Edison Solutions and Con Edison Development. Con Edison supplies electric service in all of New York City (except part of Queens) and most of Westchester County, a service area with a population of more than eight million. It also supplies gas in Manhattan, The Bronx and parts of Queens and Westchester, and steam in part of Manhattan. Con Edison Solutions is a full-service energy company offering wholesale and retail electricity and natural gas sales, as well as energy-related products and services, primarily in the Northeast. Con Edison Development invests in energy infrastructure projects and markets technical services worldwide.

### NOTE A SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**PRINCIPLES OF CONSOLIDATION** The accompanying consolidated financial statements include the accounts of Con Edison and its wholly-owned subsidiaries and, therefore, also represent the consolidated financial statements of CEI and its wholly-owned subsidiaries. Intercompany transactions have been eliminated.

**PSC SETTLEMENT AGREEMENT** The New York State Public Service Commission (PSC), by order issued and effective May 20, 1996 in its Competitive Opportunities proceeding, endorsed a fundamental restructuring of the electric utility industry in New York State, based on competition in the generation and energy services sectors of the industry. The PSC, by order issued and effective September 23, 1997, approved a settlement agreement between Con Edison, the PSC staff and certain other parties (the Settlement Agreement).

The Settlement Agreement provides for a transition to a competitive electric market through the development of a "retail access" plan, a rate plan for the period ending March 31, 2002 (the Transition), a reasonable opportunity for recovery of "strandable costs" and the divestiture by Con Edison to unaffiliated third parties of at least 50 percent of its New York City fossil-fueled electric generating capacity.

The "retail access" plan will eventually permit all of Con Edison's electric customers to buy electricity from other suppliers. The delivery of electricity to customers will continue to be through Con Edison's transmission and distribution systems. Con Edison's electric fossil-fueled generating capacity not divested to third parties will be transferred by December 31, 2002 to an unregulated subsidiary of CEI. Con Edison's contracts with non-utility

generators (NUGs), absent renegotiation of these contracts, will remain contractual obligations of Con Edison, which could resell electricity provided under the contracts in the competitive energy supply market. The Settlement Agreement does not contemplate the divestiture or transfer of Con Edison's Indian Point 2 nuclear generating unit. In August 1997 the PSC solicited comments as to the future treatment of nuclear generating facilities in New York.

Con Edison's potential electric "strandable costs" are those prior utility investments and commitments that may not be recoverable in a competitive energy supply market, including the unrecovered cost of Con Edison's electric generating plants, the future cost of decommissioning the Indian Point nuclear generating station and charges under contracts with NUGs. During the Transition Con Edison will continue to recover its potential electric strandable costs in the rates it charges all customers, including those customers purchasing electricity from others. Following the Transition Con Edison will be given a reasonable opportunity to recover, through a non-bypassable charge to customers, remaining strandable costs, including a reasonable return on investments. For remaining fossil-related strandable costs, the recovery period will be 10 years. For remaining nuclear-related strandable costs, the recovery period will be the then-remaining life of Con Edison's Indian Point 2 nuclear unit (the operating license for which extends to 2013). With respect to its NUG contracts, Con Edison will be permitted to recover at least 90 percent of the amount, if any, by which the actual costs of its purchases under the contracts exceed market value after the Transition. Any potential NUG contract disallowance after the Transition will be limited to the lower of (i) 10 percent of the above-market costs or (ii) \$300 million (net present value in 2002). The potential disallowance will be offset by the amount of NUG contract mitigation achieved by Con Edison after April 1, 1997 and 10 percent of the gross proceeds of generating unit sales to third parties. Con Edison will be permitted a reasonable opportunity to recover any costs subject to disallowance that are not offset by these two factors if it makes good faith efforts in implementing provisions of the Settlement Agreement leading to the development of a competitive electric market in its service territory and the development of an independent system operator (which is expected to administer the wholesale electric market in New York State).

**ACCOUNTING POLICIES** The accounting policies of CEI and its subsidiaries conform to generally accepted accounting principles. For regulated public utilities, generally accepted accounting principles include Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, the accounting requirements and rate-making practices of the Federal Energy Regulatory Commission (FERC) and the PSC.

In September 1997 Con Edison applied the standards in SFAS No. 101, "Regulated Enterprises - Accounting for the Discontinuation of Application of the Financial Accounting Standards Board (FASB) Statement No. 71," to the non-nuclear electric supply portion of its business that is being deregulated as a result of the Settlement Agreement (the Deregulated Business). The Deregulated Business includes all of Con Edison's fossil electric generating assets, which had a net book value of approximately \$1.4 billion at December 31, 1997, including approximately \$196 million relating to Con Edison's share of the Bowline Point and Roseton stations (which are located outside New York City and operated by other utilities). The application of SFAS No. 101 to the Deregulated Business had no material adverse effect on Con Edison's financial position or results of operations.

SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of," requires certain assets to be reviewed for impairment if the carrying amount of the assets may not be recoverable, requires that assets to be disposed of be carried at the lower of net book value or fair value, and amends SFAS No. 71 to require that regulatory assets be charged to earnings if such assets are no longer considered probable of recovery. Con Edison has not recognized an impairment of its fossil generating assets because the estimated cash flows from the operation and/or sale of the assets, together with the cash flows from the strandable cost recovery provisions of the Settlement Agreement, will not be less than the net carrying amount of the generating assets.

Certain deferred charges (regulatory assets) principally relating to future federal income taxes and certain deferred credits (regulatory liabilities) have resulted from transactions relating or allocated to the Deregulated Business. At December 31, 1997 regulatory assets net of regulatory liabilities amounted to approximately \$1.4 billion, of which approximately \$300 million is attributable to the Deregulated Business. Con Edison has not written-off against earnings any net regulatory assets because recovery of the assets is probable under the Settlement Agreement.

SFAS No. 5, "Accounting for Contingencies," requires accrual of a loss if it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. Con Edison has not accrued a loss for its contracts with NUGs because it is not probable that the charges by NUGs under the contracts will exceed the cash flows from the sale by Con Edison of the electricity provided by the NUGs, together with the cash flows provided pursuant to the Settlement Agreement.

**UTILITY PLANT AND DEPRECIATION** The capitalized cost of additions to utility plant includes indirect costs such as engineering, supervision, payroll taxes, pensions, other benefits and an allowance for funds used during construction (AFUDC). The original cost of property, together with removal cost, less salvage, is charged to accumulated depreciation as property is retired.

The cost of repairs and maintenance is charged to expense, and the cost of betterments is capitalized.

Rates used for AFDC include the cost of borrowed funds and a reasonable rate on Con Edison's own funds when so used, determined in accordance with PSC and FERC regulations. The AFDC rate was 9.1 percent in 1997, 9.0 percent in 1996 and 9.1 percent in 1995. The rate was compounded semiannually, and the amounts applicable to borrowed funds were treated as a reduction of interest charges.

The annual charge for depreciation is computed on the straight-line method for financial statement purposes using rates based on average lives and net salvage factors, with the exception of the Indian Point 2 nuclear unit. Con Edison's share of the Roseton generating station, certain leaseholds and certain general equipment, which are depreciated on a remaining life amortization method. Depreciation rates averaged approximately 3.4 percent in 1997 and 1996 and 3.3 percent in 1995. In 1996 an additional provision for depreciation of \$13.9 million was accrued in connection with a preferred stock refunding. See Note B.

Con Edison is a joint owner of two 1,200-megawatt (MW) electric generating stations: (1) Bowline Point, operated by Orange and Rockland Utilities, Inc., with Con Edison owning a two-thirds interest, and (2) Roseton, operated by Central Hudson Gas & Electric Corp., with Con Edison owning a 40 percent interest. Central Hudson has the option to acquire Con Edison's interest in the Roseton station in 2004. Con Edison's share of the investment in these stations at original cost and as included in its balance sheet at December 31, 1997 and 1996 was:

(Thousands of Dollars)	1997	1996
Bowline Point: Plant in service	\$ 206,128	\$ 204,484
Construction work in progress	1,796	2,708
Roseton: Plant in service	146,066	146,623
Construction work in progress	652	846

Con Edison's share of accumulated depreciation for the Roseton station at December 31, 1997 and 1996 was \$75.3 million and \$70.3 million, respectively. A separate depreciation account is not maintained for Con Edison's share of the Bowline Point station. Con Edison's share of operating expenses for these stations is included in its income statement. Both Orange and Rockland and Central Hudson have agreed to divest generation as part of their Competitive Opportunities settlements with the PSC.

**NUCLEAR DECOMMISSIONING** Depreciation charges include a provision for decommissioning both the Indian Point 2 and the retired Indian Point 1 nuclear units. Decommissioning costs are being accrued ratably over the Indian Point 2 license period, which extends to the year 2013. Con Edison has been accruing for the costs of decommissioning within the internal accumulated depreciation reserve since 1975. In 1989 the PSC permitted Con Edison to establish an external trust fund for the costs of decommissioning the nuclear portions of the plants, pursuant to Nuclear Regulatory Commission (NRC) regulations. Accordingly, beginning in 1989, Con Edison has made contributions to such a trust. The external trust fund is discussed below under "Investments" in this Note A.

Accumulated decommissioning provisions at December 31, 1997 and 1996, which include earnings on funds externally invested, were as follows:

	Amounts Included in Accumulated Depreciation	
(Millions of Dollars)	1997	1996
Nuclear	\$ 211.7	\$ 164.7
Non-Nuclear	58.2	57.0
Total	\$ 269.9	\$ 221.7

In 1994 a site-specific decommissioning study was prepared for both the Indian Point 2 and the retired Indian Point 1 nuclear units. Based upon this study, the estimated decommissioning cost in 1993 dollars is approximately \$657 million, of which \$252 million is for extended on-site storage of spent nuclear fuel. Using a 3.25 percent annual escalation factor, the estimated cost in 2016, the assumed midpoint for decommissioning expenditures, is approximately \$1,372 million. Under a 1995 electric rate agreement, effective April 1995, the PSC approved an annual decommissioning expense allowance for the nuclear and non-nuclear portions of the plants of \$21.3 million and \$1.8 million, respectively, to fund the future estimated costs of decommissioning. The annual expense allowance assumes a 6 percent after-tax annual return on fund assets.

The FASB is currently reviewing the utility industry's accounting treatment of nuclear and certain other plant decommissioning costs. In an exposure draft issued in February 1996, the FASB concluded that decommissioning costs should be accounted for as a liability at present value, with a corresponding asset in utility plant, rather than as a component of depreciation. Discussions of issues addressed in the exposure draft are ongoing.

**NUCLEAR FUEL** Nuclear fuel assemblies and components are amortized to operating expenses based on the quantity of heat produced in the generation of electricity. Fuel costs also include provisions for payments to the U.S. Department of Energy (DOE) for future off-site storage of the spent fuel and for a portion of the costs to decontaminate and decommission the DOE facilities used to enrich uranium purchased by Con Edison. Such payments amounted to \$7.4 million in 1997. Nuclear fuel costs are recovered in revenues through base rates or through the fuel adjustment clause.

**LEASES** In accordance with SFAS No. 71, those leases that meet the criteria for capitalization are capitalized for accounting purposes. For rate-making purposes, all leases have been treated as operating leases.

**REVENUES** Revenues for electric, gas and steam service are recognized on a monthly billing cycle basis. Pursuant to the 1992 and 1995 electric rate agreements, actual electric net revenues (operating revenues less fuel and purchased power costs and revenue taxes) were adjusted by accrual to target levels established under the agreements in accordance with an electric revenue adjustment mechanism (ERAM). Revenues were also increased (or decreased) each month to reflect rewards (or penalties) earned under incentive mechanisms for the Enlightened Energy (demand-side management) program and for customer service activities. The agreements provided that the net regulatory asset (or liability) thus accrued in each rate year would be reflected in customers' bills in the following rate year. Effective April 1, 1997 the Settlement Agreement eliminated the ERAM and the Enlightened Energy and electric customer service incentives. The Settlement Agreement includes a penalty mechanism (estimated maximum, \$26 million per year) for failure to maintain certain customer service standards.

The 1994 gas rate agreement provided for revenues to be increased (or decreased) each month to reflect rewards (or penalties) earned under incentive mechanisms related to gas customer service and system improvement targets. The 1997 gas rate agreement discontinued the incentive mechanisms effective October 1, 1997, after which Con Edison is subject to a penalty (maximum, \$1.7 million per year) if it fails to maintain targeted levels of customer service.

**RECOVERABLE FUEL COSTS** Fuel and purchased power costs that are above the levels included in base rates are recoverable under electric, gas and steam fuel adjustment clauses. If costs fall below these levels, the difference is credited to customers. For electric and steam, such costs are deferred until the period in which they are billed or credited to customers (40 days for electric, 30 days for steam). For gas, the excess or deficiency is accumulated for refund or surcharge to customers on an annual basis.

Effective April 1992 a partial pass-through electric fuel adjustment clause (PPFAC) was implemented with monthly targets for electric fuel and purchased power costs. Con Edison retains for stockholders 30 percent of any savings in

actual costs below the target amount, but must bear 30 percent of any excess of actual costs over the target. For each rate year there is a \$35 million cap on the maximum incentive or penalty, with a limit (within the \$35 million) of \$10 million for costs associated with generation at Con Edison's Indian Point 2 nuclear unit.

**REGULATORY ACCOUNTS RECEIVABLE** Regulatory accounts receivable at December 31, 1997 amounted to a credit due customers of \$1.7 million, reflecting an accrual for the PPFAC. The amounts accrued under the PPFAC are billed or credited to customers on a monthly basis through the electric fuel adjustment clause. Effective April 1, 1997 the Settlement Agreement eliminated the modified ERAM and the Enlightened Energy and electric customer service incentives; at that time, the regulatory accounts receivable recorded for the modified ERAM and these incentives were, along with certain other debit and credit balances in Con Edison's financial statements, eliminated. The elimination of these balances had no material adverse effect on Con Edison's financial position or results of operations.

**ENLIGHTENED ENERGY PROGRAM COSTS** In accordance with PSC directives, Con Edison deferred the costs of its Enlightened Energy program for future recovery from ratepayers. Such deferrals amounted to \$117.8 million at December 31, 1997 and \$133.7 million at December 31, 1996. In accordance with the 1992 and 1995 electric rate agreements, deferred charges for the Enlightened Energy program are generally recoverable over a five-year period.

**TEMPORARY CASH INVESTMENTS** Temporary cash investments are short-term, highly liquid investments which generally have maturities of three months or less. They are stated at cost which approximates market. CEI and Con Edison consider temporary cash investments to be cash equivalents.

**INVESTMENTS** For 1997 investments consisted primarily of the nuclear decommissioning trust fund (\$211.7 million at December 31, 1997) and investments of Con Edison Solutions and Con Edison Development (\$66.0 million at December 31, 1997). For 1996 investments consisted primarily of the nuclear decommissioning trust fund (\$164.7 million at December 31, 1996). The nuclear decommissioning trust fund is stated at market; investments of Con Edison Solutions and Con Edison Development are stated at cost. Earnings on the nuclear decommissioning trust fund are not recognized in income but are included in the accumulated depreciation reserve. See Nuclear Decommissioning in this Note A.

**GAS HEDGING** Con Edison purchases put options and sells futures contracts under its gas hedging program in order to protect its gas inventory against adverse market price fluctuations. Con Edison defers the related hedging gains and losses until the underlying gas commodity is withdrawn from storage and then adjusts the cost of its gas in storage accordingly.

All hedging gains or losses are credited or charged to customers through Con Edison's gas fuel adjustment clause. Con Edison Solutions uses futures contracts to hedge natural gas transactions in order to minimize the risk of unfavorable market price fluctuations. Gains or losses on these futures contracts are deferred until gas is purchased, at which time gas expense is adjusted accordingly. At December 31, 1997 deferred gains or losses on open positions were not material.

Neither CEI nor any of its consolidated subsidiaries, including Con Edison, enters into derivative transactions that do not meet the criteria for hedges and that do not qualify for deferred accounting treatment. If for any reason a derivative transaction were no longer classified as a hedge, inventory or gas expense, as appropriate, would be adjusted for unrealized gains and losses relating to the transaction.

**FEDERAL INCOME TAX** In accordance with SFAS No. 109, "Accounting for Income Taxes," Con Edison has recorded an accumulated deferred federal income tax liability for substantially all temporary differences between the book and tax bases of assets and liabilities at current tax rates. In accordance with rate agreements, Con Edison has recovered amounts from customers for a portion of the tax expense it will pay in the future as a result of the reversal or "turn-around" of these temporary differences. As to the remaining temporary differences, in accordance with SFAS No. 71, Con Edison has established a regulatory asset for the net revenue requirements to be recovered from customers for the related future tax expense. In 1993 the PSC issued an Interim Policy Statement proposing accounting procedures consistent with SFAS No. 109 and providing assurances that these future increases in taxes will be recoverable in rates. The final policy statement is not expected to differ materially from the interim policy statement. See Note I.

Accumulated deferred investment tax credits are amortized ratably over the lives of the related properties and applied as a reduction in future federal income tax expense.

Con Edison and its subsidiaries file, and CEI expects that it and its subsidiaries will file, a consolidated federal income tax return. Income taxes are allocated to each company based on its taxable income.

**RESEARCH AND DEVELOPMENT COSTS** Research and development costs relating to specific construction projects are capitalized. All other such costs are charged to operating expenses as incurred. Research and development costs in 1997, 1996 and 1995, amounting to \$25.9 million, \$32.3 million and \$45.0 million, respectively, were charged to operating expenses. No research and development costs were capitalized in these years.

**NEW FINANCIAL ACCOUNTING STANDARDS** The FASB has issued the following two standards effective for fiscal years beginning after December 15, 1997: SFAS No. 130, "Reporting Comprehensive Income,"

and SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information." The application of these standards will not have a material effect on CEI's financial position or results of operations or materially change its current disclosure practices.

**RECLASSIFICATION** Certain prior year amounts have been reclassified to conform with current year presentation.

**ESTIMATES** The accompanying consolidated financial statements reflect judgments and estimates made in the application of the above accounting policies.

#### NOTE B CAPITALIZATION

**COMMON STOCK AND PREFERRED STOCK NOT SUBJECT TO MANDATORY REDEMPTION** In December 1997 Con Edison redeemed its Series B preference stock. Each share of Series B preference stock was convertible into 13 shares of common stock at a conversion price of \$7.69 per share. During 1997, 1996 and 1995, 38,158 shares, 2,869 shares and 3,928 shares of Series B preference stock were converted into 496,054 shares, 37,297 shares and 51,064 shares of common stock, respectively.

The prices at which Con Edison has the option to redeem its preferred stock other than Series I and Series J (in each case, plus accrued dividends) are as follows:

<b>\$5 Cumulative Preferred Stock</b>	<b>\$ 105.00</b>
<b>Cumulative Preferred Stock:</b>	
Series A	\$ 102.00
Series B	102.00
Series C	101.00
Series D	101.00

#### PREFERRED STOCK SUBJECT TO MANDATORY REDEMPTION

Con Edison is required to redeem 25,000 of the Series I shares on May 1 of each year in the five-year period commencing with the year 2002 and to redeem the remaining Series I shares on May 1, 2007. Con Edison is required to redeem the Series J shares on August 1, 2002. In each case the redemption price is \$100 per share plus accrued and unpaid dividends to the redemption date. In addition, Con Edison may redeem Series I shares at a redemption price of \$103.60 per share, plus accrued dividends, if redeemed prior to May 1, 1998 (and thereafter at prices declining annually to \$100 per share, plus accrued dividends, after April 30, 2002). Neither Series I nor Series J shares may be called for redemption while dividends are in arrears on outstanding shares of \$5 cumulative preferred stock or cumulative preferred stock.

**PREFERRED STOCK REFUNDING** In March 1996 Con Edison canceled approximately \$227 million of its preferred stock purchased pursuant to a tender offer and redeemed an additional \$90 million of its preferred stock. In accordance with the PSC order approving the issuance of subordinated deferrable interest debentures to refund the preferred stock, Con Edison offset the net gain of \$13.9 million by accruing an additional provision for depreciation equal to the net gain.

**DIVIDENDS** Beginning in 1998, dividends on CEI's common shares will depend primarily on the dividends and other distributions that Con Edison and the other subsidiaries will pay to CEI and the capital requirements of CEI and its subsidiaries. The PSC Settlement Agreement limits the dividends that Con Edison may pay to not more than 100 percent of Con Edison's income available for dividends, calculated on a two year rolling average basis. Excluded from the calculation of "income available for dividends" are non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. The restriction also does not apply to dividends necessary to transfer to CEI proceeds from major transactions, such as asset sales, or to dividends reducing Con Edison's equity ratio to a level appropriate to Con Edison's business risk.

Payment of Con Edison common stock dividends to CEI is subject to certain additional restrictions. No dividends may be paid, or funds set apart for payment, on Con Edison's common stock until all dividends accrued on the \$5 cumulative preferred stock and cumulative preferred stock have been paid, or declared and set apart for payment, and unless Con Edison is not in arrears on its mandatory redemption obligation for the Series I and Series J cumulative preferred stock. No dividends may be paid on any of Con Edison's capital stock during any period in which Con Edison has deferred payment of interest on its subordinated deferrable interest debentures.

**LONG-TERM DEBT** In December 1997 Con Edison issued \$330 million of 10-year 6.45% Series 1997 B debentures to refund in January 1998 three series of tax-exempt debt that Con Edison issued through the New York State Energy Research and Development Authority: 7-1/2% Series 1986 A, 9-1/4% Series 1987 B and 7-3/4% Series 1989 A.

Long-term debt maturing in the period 1998-2002 is as follows:

1998	\$ 200,000,000
1999	225,000,000
2000	275,000,000
2001	300,000,000
2002	300,000,000

Con Edison's long-term debt is stated at cost which, as of December 31, 1997, approximates fair value. The fair value of the company's long-term debt is estimated based on current rates for debt of the same remaining maturities.

#### NOTE C SHORT-TERM BORROWING

Con Edison has been authorized by FERC to issue short-term debt of up to \$500 million outstanding at any one time. At December 31, 1997 Con Edison had no short-term debt outstanding. In January 1998 Con Edison initiated a \$500 million commercial paper program, supported by revolving credit agreements with banks. Bank commitments under the revolving credit agreements may terminate upon a change in control of CEI and borrowings under the agreements are subject to certain conditions, including that Con Edison's ratio (calculated in accordance with the agreements) of debt to total capital not at any time exceed 0.65 to 1. At December 31, 1997 this ratio was 0.43 to 1. Borrowings under the commercial paper program or the revolving credit facilities are expected to be at prevailing market rates.

#### NOTE D PENSION BENEFITS

Con Edison has pension plans that cover substantially all of its employees and certain employees of other CEI subsidiaries. The plans are designed to comply with the Employee Retirement Income Security Act of 1974 (ERISA). Contributions are made solely by Con Edison and the other subsidiaries based on an actuarial valuation, and are not less than the minimum amount required by ERISA. Con Edison's policy is to fund the actuarially computed net pension cost as such cost accrues subject to statutory maximum (and minimum) limits. Benefits are generally based on a final five-year average pay formula.

In accordance with SFAS No. 87, "Employers' Accounting for Pensions," Con Edison uses the projected unit credit method for determining pension cost. Pension costs for 1997, 1996 and 1995 amounted to \$11.8 million, \$73.2 million and \$11.4 million, respectively, of which \$9.3 million for 1997, \$57.8 million for 1996 and \$8.9 million for 1995 was charged to operating expenses. Pension costs reflect the amortization of a regulatory asset established pursuant to SFAS No. 71 to offset the \$33.3 million increase in pension obligations from a special retirement program Con Edison offered in 1993, which provided special termination benefits as described in SFAS No. 88, "Employers' Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Termination Benefits." Pension cost for 1995 also includes an actuarially determined credit of \$7.3 million representing a prepayment on one of the plans. This credit reduced pension funding in 1996.

Con Edison recognizes investment gains and losses over five years and amortizes unrecognized actuarial gains and losses over ten years.

The components of net periodic pension cost for 1997, 1996 and 1995 were as follows:

(Millions of Dollars)	1997	1996	1995
Service cost — benefits earned during the period	\$ 111.4	\$ 120.2	\$ 90.2
Interest cost on projected benefit obligation	334.3	320.1	296.7
Actual return on plan assets	(878.6)	(593.6)	(865.8)
Unrecognized investment gain (loss) deferred	471.3	217.6	521.6
Net amortization	(28.8)	6.7	(41.5)
Net periodic pension cost	9.6	71.0	9.2*
Amortization of regulatory asset	2.2	2.2	2.2
Total pension cost	\$ 11.8	\$ 73.2	\$ 11.4

\* Includes a prepayment credit of \$7.3 million.

The funded status of the pension plans as of December 31, 1997, 1996 and 1995 was as follows:

(Millions of Dollars)	1997	1996	1995
Actuarial present value of benefit obligation:			
Vested	\$ 3,800.7	\$ 3,525.9	\$ 3,319.2
Nonvested	175.9	190.5	267.9
Accumulated to date	3,976.6	3,716.4	3,587.1
Effect of projected future compensation levels	964.0	906.6	1,070.3
Total projected benefit obligation	4,940.6	4,703.0	4,657.4
Plan assets at fair value	5,988.7	5,269.3	4,775.8
Plan assets less projected benefit obligation	1,048.1	566.3	118.4
Unrecognized net gain	(1,157.4)	(703.8)	(240.3)
Unrecognized prior service cost*	90.4	100.1	85.3
Unrecognized net transition liability at January 1, 1987*	11.3	14.3	17.2
Accrued pension cost**	\$ (7.6)	\$ (23.1)	\$ (19.4)

\* Being amortized over approximately 15 years.

\*\* Accrued liability primarily for special retirement program, reduced in 1997 by a prepayment credit.

To determine the present value of the projected benefit obligation, the discount rates assumed were 7.25 percent for 1997 and 1996 and 7 percent for 1995. A weighted average rate of increase in future compensation levels of 5.8 percent and long-term rate of return on plan assets of 8.5 percent were assumed for all years.

The pension plan assets consist primarily of corporate common stocks and bonds, group annuity contracts and debt of the United States government and its agencies.

#### NOTE E POSTRETIREMENT BENEFITS OTHER THAN PENSIONS (OPEB)

Con Edison has a contributory comprehensive hospital, medical and prescription drug program for all retirees, their dependents and surviving spouses. Con Edison also provides life insurance benefits for approximately 6,400 retired employees. All of Con Edison's employees become eligible for these benefits upon retirement, except that the amount of life insurance is limited and is available only to management employees and to those bargaining unit employees who participated in the optional program prior to retirement. Con Edison has reserved the right to amend or terminate these programs.

Con Edison's policy is to fund in external trusts the actuarially determined annual costs for retiree health and life insurance subject to statutory maximum limits.

Con Edison recognizes investment gains and losses over five years and amortizes unrecognized actuarial gains and losses over ten years.

The cost to Con Edison for retiree health benefits for 1997, 1996 and 1995 amounted to \$76.7 million, \$89.2 million and \$65.5 million, respectively, of which \$61.0 million for 1997, \$70.5 million for 1996 and \$51.6 million for 1995 was charged to operating expenses. The cost of the retiree life insurance plan for 1997, 1996 and 1995 amounted to \$20.8 million, \$22.8 million and \$18.0 million, respectively, of which \$16.5 million for 1997, \$18.0 million for 1996 and \$14.2 million for 1995 was charged to operating expenses.

The components of postretirement benefit (health and life insurance) costs for 1997, 1996 and 1995 were as follows:

(Millions of Dollars)	1997	1996	1995
Service cost – benefits earned during the period	\$ 15.7	\$ 17.4	\$ 10.7
Interest cost on accumulated postretirement benefit obligation	71.0	68.9	61.2
Actual return on plan assets	(100.3)	(51.3)	(60.8)
Unrecognized investment gain (loss) deferred	63.8	23.5	40.4
Amortization of transition obligation and unrecognized net loss	47.3	53.5	32.0
Net periodic postretirement benefit cost	\$ 97.5	\$ 112.0	\$ 83.5

The following table sets forth the program's funded status at December 31, 1997, 1996 and 1995:

(Millions of Dollars)	1997	1996	1995
Accumulated postretirement benefit obligation:			
Retirees	\$ 470.6	\$ 471.1	\$ 447.7
Employees eligible to retire	240.1	248.8	250.7
Employees not eligible to retire	253.4	279.2	305.6
Total projected benefit obligation	964.1	999.1	1,004.0
Plan assets at fair value	574.1	444.2	322.2
Plan assets less accumulated postretirement benefit obligation	(390.0)	(554.9)	(681.8)
Unrecognized net loss	41.3	139.9	240.8
Unrecognized net transition liability at January 1, 1993*	322.8	415.0	441.0
Accrued postretirement benefit cost	\$ (26.1)	\$ 0	\$ 0

\* Being amortized over a period of 20 years.

To determine the accumulated postretirement benefit obligation, the discount rates assumed were 7.25 percent for 1997 and 1996 and 7 percent for 1995. The assumed long-term rate of return on plan assets was 8.5 percent for these years. The health care cost trend rate assumed for 1997 was 8.5 percent, for 1998, 8 percent, and then declining one-half percent per year to 5 percent for 2004 and thereafter. If the assumed health care cost trend rate were to be increased by one percentage point each year, the accumulated postretire-

ment benefit obligation would increase by approximately \$114.8 million and the service cost and interest component of the net periodic postretirement benefit cost would increase by \$12.6 million.

Postretirement plan assets consist of corporate common stocks and bonds, group annuity contracts, debt of the United States government and its agencies and short-term securities.

#### NOTE F CONTINGENCIES

**INDIAN POINT** Nuclear generating units similar in design to Con Edison's Indian Point 2 unit have experienced problems that have required steam generator replacement. Inspections of the Indian Point 2 steam generators since 1976 have revealed various problems, some of which appear to have been arrested, but the remaining service life of the steam generators is uncertain. The projected service life of the steam generators is reassessed periodically in the light of the inspections made during scheduled outages of the unit. Based on the latest available data and current NRC criteria, Con Edison estimates that steam generator replacement will not be required before 2001. Con Edison has replacement steam generators, which are stored at the site. Replacement of the steam generators would require estimated additional expenditures of approximately \$108 million (1997 dollars, exclusive of replacement power costs) and an outage of approximately four months. However, securing necessary permits and approvals or other factors could require a substantially longer outage if steam generator replacement is required on short notice.

**NUCLEAR INSURANCE** The insurance policies covering Con Edison's nuclear facilities for property damage, excess property damage, and outage costs permit assessments under certain conditions to cover insurers' losses. As of December 31, 1997, the highest amount that could be assessed for losses during the current policy year under all of the policies was \$24 million. While assessments may also be made for losses in certain prior years, Con Edison is not aware of any losses in such years that it believes are likely to result in an assessment.

Under certain circumstances, in the event of nuclear incidents at facilities covered by the federal government's third-party liability indemnification program, Con Edison could be assessed up to \$79.3 million per incident, of which not more than \$10 million may be assessed in any one year. The per-incident limit is to be adjusted for inflation not later than 1998 and not less than once every five years thereafter.

Con Edison participates in an insurance program covering liabilities for injuries to certain workers in the nuclear power industry. In the event of such injuries, Con Edison is subject to assessment up to an estimated maximum of approximately \$3.1 million.



**ENVIRONMENTAL MATTERS** The normal course of Con Edison's operations necessarily involves activities and substances that expose it to potential liabilities under federal, state and local laws protecting the environment. Such liabilities can be material and in some instances may be imposed without regard to fault, or may be imposed for past acts, even though such past acts may have been lawful at the time they occurred. Sources of such potential liabilities include (but are not limited to) the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund), a 1994 settlement with the New York State Department of Environmental Conservation (DEC), asbestos, and electric and magnetic fields (EMF).

**SUPERFUND** By its terms Superfund imposes joint and several strict liability, regardless of fault, upon generators of hazardous substances for resulting removal and remedial costs and environmental damages. Con Edison has received process or notice concerning possible claims under Superfund or similar state statutes relating to a number of sites at which it is alleged that hazardous substances generated by Con Edison (and, in most instances, a large number of other potentially responsible parties) were deposited. Estimates of the investigative, removal, remedial and environmental damage costs (if any) that Con Edison will be obligated to pay with respect to each of these sites range from extremely preliminary to highly refined. Based on these estimates Con Edison had accrued as of December 31, 1997 a liability of approximately \$25.4 million. There will be additional costs with respect to these and possibly other sites, the materiality of which is not presently determinable.

**DEC SETTLEMENT** In 1994 Con Edison agreed to a consent order settling a civil administrative proceeding instituted by the DEC alleging environmental violations by the company. Pursuant to the consent order, Con Edison has conducted an environmental management systems evaluation and an environmental compliance audit. Con Edison also must implement "best management practices" plans for certain facilities and undertake a remediation program at certain sites. As of December 31, 1997 Con Edison had an accrued liability of \$16.9 million for these sites. Expenditures for environmental-related capital projects in the five years 1998-2002, including expenditures to comply with the consent order, are estimated at \$148 million. These estimated expenditures do not reflect divestiture by Con Edison of generating plants pursuant to the Settlement Agreement (see Note A) or otherwise.

**ASBESTOS CLAIMS** Suits have been brought in New York State and federal courts against Con Edison and many other defendants, wherein several hundred plaintiffs sought large amounts of compensatory and punitive damages for deaths and injuries allegedly caused by exposure to asbestos at various premises of Con Edison. Many of these suits have been disposed of without any payment by Con Edison, or for immaterial amounts. The amounts specified in all the remaining suits total billions of dollars but Con Edison believes that these amounts are greatly exaggerated, as were the claims

already disposed of. Based on the information and relevant circumstances known to Con Edison at this time, it is the opinion of Con Edison that these suits will not have a material adverse effect on the company's financial position, results of operations or liquidity.

**EMF** Electric and magnetic fields are found wherever electricity is used. Con Edison is the defendant in several suits claiming property damage resulting from EMF. The aggregate amount sought in these suits is not material. In the event, however, that a causal relationship between EMF and adverse health effects is established, or independently of any such causal determination, in the event of adverse developments in related legal or public policy doctrines, there could be a material adverse effect on the electric utility industry, including Con Edison.

#### NOTE G NON-UTILITY GENERATORS (NUGS)

Con Edison has contracts with NUGs for 2,059 MW of electric generating capacity. Payments by Con Edison under the contracts are reflected in rates. Assuming performance by the NUGs, Con Edison is obligated over the terms of these contracts (which extend for various periods, up to 2036) to make capacity and other fixed payments.

For the years 1998 - 2002, capacity and other fixed payments are estimated to be \$510 million, \$508 million, \$478 million, \$485 million and \$494 million. Such payments gradually increase to approximately \$600 million in 2013, and thereafter decline significantly.

For energy delivered under these contracts, Con Edison is obligated to pay variable prices that are estimated to be approximately at market levels.

#### NOTE H STOCK-BASED COMPENSATION

Under CEI's Stock Option Plan, options may be granted to officers and key employees for up to 10,000,000 shares of CEI's common stock. Generally, options become exercisable three years after the grant date and remain exercisable until ten years from the grant date.

As permitted by SFAS No. 123, "Accounting for Stock-Based Compensation," CEI has elected to follow Accounting Principles Board Opinion No. 25 (APB 25), "Accounting for Stock Issued to Employees" and related interpretations in accounting for its employee stock options. Under APB 25, because the exercise price of CEI's employee stock options equals the market price of the underlying stock on the date of grant, no compensation expense is recognized.

Disclosure of pro-forma information regarding net income and earnings per share is required by SFAS No. 123. This information has been determined as if CEI had accounted for its employee stock options under the fair value method of that statement. The fair values of 1997 and 1996 options are \$2.84 and \$2.49 per share, respectively. They were estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions used for grants in 1997 and 1996, respectively: risk-free interest rates of 6.46 percent and 6.74 percent; expected lives of eight years for 1997 and 1996; expected volatility of 14.08 percent and 16.28 percent; and dividend yields of 6.67 percent and 7.46 percent.

Had CEI used SFAS No. 123, basic and diluted earnings per share for 1997 and 1996 would be unaffected and pro-forma net income for common stock would be \$693,680,000 or \$799,000 less than the amount reported for 1997, and \$697,938,000 or \$231,000 less than the amount reported for 1996.

A summary of the status of the Plan as of December 31, 1997 and 1996 and changes during those years is as follows:

	1997		1996	
	Options	Exercise Price	Options	Exercise Price
Outstanding at beginning of year	697,200	\$27.875	0	\$ -
Granted	834,600	31.50	704,200	27.875
Exercised	0		0	
Forfeited	(14,100)	29.62	(7,000)	27.875
Outstanding at end of year	1,517,700	\$ 29.85	697,200	\$ 27.875
Options exercisable at end of year	0		0	
Fair value of options granted during the year	\$ 2.84		\$ 2.49	

The following summarizes the Plan's stock options outstanding at December 31, 1997 and 1996:

Plan Year	Exercise Price	Options Outstanding at 12/31/97	Remaining Contractual life
1997	\$ 31.50	827,800	9 years
1996	\$ 27.875	689,900	8 years

#### NOTE I FEDERAL INCOME TAX

The net revenue requirements for the future federal income tax component of accumulated deferred federal income taxes (see Note A) at December 31, 1997 and 1996 are shown on the following table:

(Millions of Dollars)	1997	1996
Future federal income tax liability		
Temporary differences between the book and tax bases of assets and liabilities:		
Property related	\$ 5,791.0	\$ 5,595.0
Reserve for injuries and damages	(57.4)	(55.7)
Other	(112.9)	16.7
Total	5,620.7	5,556.0
Future federal income tax computed at statutory rate - 35%	1,967.2	1,944.6
Less: Accumulated deferred federal income taxes previously recovered	1,334.7	1,304.8
Net future federal income tax expense to be recovered	632.5	639.8
Net revenue requirements for above (Regulatory asset - future federal income taxes)*	973.1	984.3
Add: Accumulated deferred federal income taxes previously recovered		
Depreciation	1,188.7	1,115.5
Unbilled revenues	(98.3)	(94.6)
Advance refunding of long-term debt	30.1	32.7
Other	214.2	251.2
Subtotal	1,334.7	1,304.8
Total accumulated deferred federal income tax	\$ 2,307.8	\$ 2,289.1

\* Net revenue requirements will be offset by the amortization to federal income tax expense of accumulated deferred investment tax credits, the tax benefits of which Con Edison has already realized. Including the full effect therefrom, the net revenue requirements related to future federal income taxes at December 31, 1997 and 1996 are \$809.4 million and \$811.8 million, respectively.

**NOTE 1 FEDERAL INCOME TAX, continued**

Year Ended December 31 (Thousands of Dollars)	1997	1996	1995
Charged to: Operations	\$ 382,910	\$ 397,160	\$ 396,560
Other income	(3,190)	(970)	1,060
<b>Total federal income tax</b>	<b>379,720</b>	<b>396,190</b>	<b>397,620</b>
<b>Reconciliation of reported net income with taxable income</b>			
Federal income tax – current	357,100	355,590	328,600
Federal income tax – deferred	31,450	49,510	78,330
Investment tax credits deferred	(8,830)	(8,910)	(9,310)
<b>Total federal income tax</b>	<b>379,720</b>	<b>396,190</b>	<b>397,620</b>
<b>Net income</b>	<b>712,823</b>	<b>694,085</b>	<b>723,850</b>
<b>Income before federal income tax</b>	<b>1,092,543</b>	<b>1,090,275</b>	<b>1,121,470</b>
<b>Effective federal income tax rate</b>	<b>34.8%</b>	<b>36.3%</b>	<b>35.5%</b>
<b>Adjustments decreasing (increasing) taxable income</b>			
<b>Tax depreciation in excess of book depreciation:</b>			
Amounts subject to normalization	215,370	201,760	202,230
Other	(64,502)	(99,576)	(85,538)
Deferred recoverable fuel costs	(3,161)	42,008	61,937
Regulatory accounts receivable	(47,079)	51,878	(32,827)
Excess research and development	14,980	(13,025)	(2,969)
Pension and other postretirement benefits	(6,820)	(34,136)	38,102
Power contract termination costs	(40,657)	(38,759)	(56,397)
Other – net	(9,200)	(45,729)	25,356
<b>Total</b>	<b>58,931</b>	<b>64,421</b>	<b>149,894</b>
<b>Taxable income</b>	<b>1,033,612</b>	<b>1,025,854</b>	<b>971,576</b>
<b>Federal income tax – current</b>	<b>361,764</b>	<b>359,049</b>	<b>340,052</b>
<b>Amount computed at statutory rate – 35%</b>	<b>(4,664)</b>	<b>(3,459)</b>	<b>(11,452)</b>
<b>Tax credits</b>	<b>357,100</b>	<b>355,590</b>	<b>328,600</b>
<b>Total</b>	<b>359,300</b>	<b>357,000</b>	<b>328,200</b>
Charged to: Operations	(2,200)	(1,410)	400
Other income			
<b>Total</b>	<b>357,100</b>	<b>355,590</b>	<b>328,600</b>
<b>Federal income tax – deferred</b>			
Charged to: Operations	32,440	49,070	77,870
Other income	(990)	440	660
<b>Total</b>	<b>\$ 31,450</b>	<b>\$ 49,510</b>	<b>\$ 78,330</b>

NOTE J FINANCIAL INFORMATION BY BUSINESS SEGMENTS (a)

(Thousands of Dollars)	Electric			Steam		
	1997	1996	1995	1997	1996	1995
Operating revenues*	\$ 5,646,916	\$ 5,552,247	\$ 5,401,524	\$ 393,418	\$ 405,040	\$ 335,694
Operating expenses						
Purchased power	1,319,472	1,269,092	1,107,223	29,949	3,762	-
Fuel	429,324	377,351	354,006	167,500	195,924	150,018
Other operations and maintenance*	1,311,983	1,331,801	1,372,715	82,100	83,837	79,929
Depreciation and amortization	429,407	425,397	393,302	16,239	15,900	13,064
Taxes, other than federal income	989,791	900,309	951,095	53,108	51,361	45,788
Federal income tax	311,878	330,103	339,863	8,442	14,131	12,598
Total operating expenses*	4,791,855	4,714,053	4,510,364	357,338	364,915	301,397
Operating income	855,061	838,194	883,160	36,080	40,125	34,297
Construction expenditures	504,644	515,006	530,454	29,905	38,290	27,559
Net utility plant**	9,251,149	9,150,261	9,027,031	489,091	458,019	399,028
Fuel	51,629	64,231	40,444	2,068	478	62
Other identifiable assets	1,669,957	1,703,906	1,724,005	66,448	42,817	51,969
* Intersegment rentals included in segments' income but eliminated for total:						
Operating revenues	\$ 11,341	\$ 11,130	\$ 12,116	\$ 1,819	\$ 1,491	\$ 1,561
Operating expenses	2,605	2,472	2,513	12,519	12,190	13,102

	Gas			Total		
	1997	1996	1995	1997	1996	1995
Operating revenues*	\$ 1,096,057	\$ 1,077,124	\$ 815,307	\$ 7,121,254	\$ 6,959,736	\$ 6,536,897
Operating expenses						
Purchased power	-	-	-	1,349,421	1,272,854	1,107,223
Fuel	-	-	-	596,824	573,275	504,104
Gas purchased for resale	479,218	418,271	259,789	479,218	418,271	259,789
Other operations and maintenance*	204,687	221,011	214,818	1,583,633	1,621,974	1,651,834
Depreciation and amortization	57,133	55,115	49,330	502,779	496,412	455,776
Taxes, other than federal income	138,182	134,529	123,349	1,181,081	1,166,199	1,120,232
Federal income tax	62,590	52,926	44,099	382,910	397,160	396,560
Total operating expenses*	941,810	881,852	691,385	6,075,866	5,946,145	5,495,518
Operating income	154,247	135,272	123,922	1,045,388	1,013,591	1,041,379
Construction expenditures	119,672	121,937	126,790	654,221	675,233	692,803
Net utility plant**	1,526,862	1,459,030	1,388,344	11,267,102	11,067,310	10,814,403
Fuel and gas in storage	37,209	44,979	26,452	90,906	109,688	66,958
Other identifiable assets	165,977	197,033	177,374	1,902,382	1,943,756	1,953,348
Other corporate assets				1,462,128	936,431	1,115,181
Total assets				\$ 14,722,518	\$ 14,057,185	\$ 13,949,890

\* Intersegment rentals included in segments' income but eliminated for total:

Operating revenues	\$ 2,177	\$ 2,054	\$ 1,951	\$ 15,137	\$ 14,675	\$ 15,628
Operating expenses	13	13	13	15,137	14,675	15,628

\*\* General Utility Plant was allocated to Electric and Gas on the basis of the departmental use of such plant. Pursuant to PSC requirements the Steam department is charged an interdepartmental rent for general plant used in Steam operations, which is credited to the Electric and Gas departments.

(a) Con Edison supplies electric service in all of New York City (except part of Queens) and most of Westchester County. It also supplies gas in Manhattan, The Bronx and parts of Queens and Westchester, and steam in part of Manhattan.

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**CONSOLIDATED EDISON, INC.**

**FINANCIAL DATA**

	Year <u>1998</u>	Year <u>1997</u>	Year <u>1996</u>
Interest coverage (Times)			
SEC - Book	4.29	4.09	4.18
Earnings per share	\$ 3.04	\$ 2.95	\$ 2.93
Return on average common Equity	12.0%	12.1%	12.3%
Book value per share			
Average	\$ 25.29	\$ 24.49	\$ 23.74
End of period	25.88	25.18	24.37
Effective tax rate	35.7%	34.9%	36.3%
Capitalization ratios:			
SEC Basis			
Long term debt	39.2%	40.1%	41.2%
Preferred stock	2.4	3.1	3.1
Common equity	<u>58.4</u>	<u>56.8</u>	<u>55.7</u>
	100.0%	100.0%	100.0%
PSC Basis			
Long term debt	40.6%	40.8%	41.3%
Preferred stock	2.4	2.9	3.0
Customer deposits	1.7	1.5	1.5
Common equity	<u>55.3%</u>	<u>54.8%</u>	<u>54.2%</u>
	100.0%	100.0%	100.0%

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- (c) The complete terms, preferences, privileges and voting powers of the \$5 Cumulative Preferred Stock, Cumulative Preferred Stock 5-3/4% Series A, 5-1/4% Series B, 4.65% Series C, 4.65% Series D, 5-3/4% Series E, 6.20% Series F, 7.20% Series I, 6-1/8% Series J and Cumulative Preference Stock, 6% Convertible Series B, are as set forth in Con Edison's Certificate of Incorporation, as amended, previously filed with the Commission to which reference is made. In March 1996 Con Edison canceled approximately \$227 million of its preferred stock purchased pursuant to a tender offer and redeemed an additional \$90 million of its preferred stock. In December 1997 Con Edison redeemed its Series B preference stock. In November 1998 Con Edison redeemed the remaining outstanding securities of three series of preferred stock that had been subject to the 1996 tender offer (5-3/4% Series A, 5-1/4% Series B and 7.20% Series I). In general the preferences of such stocks are as follows:

#### **\$5 Cumulative Preferred Stock**

The \$5 Cumulative Preferred Stock shall be entitled to receive, when and as declared from surplus or net profits, dividends at the rate of five dollars a share per annum and no more, which dividends shall be cumulative from the dividend date next preceding the date of issue of the respective shares (or from the date of issue if that be a dividend date), and shall be payable quarterly on the first day of February, May, August, and November in each year.

Upon any liquidation or distribution of capital assets, the \$5 Cumulative Preferred Stock shall be entitled to receive \$100 a share and in addition thereto, a sum equivalent to all unpaid dividends accumulated thereon, and any preferred stock of any class ranking equally with the \$5 Cumulative Preferred Stock in the distribution of capital assets shall be entitled to receive an equivalent amount before any distribution shall be made to any other preferred stock or common stock, which shall be entitled to receive all the remainder of such capital assets so distributed in accordance with provisions governing their respective rights thereto.

Con Edison shall have the right to redeem the \$5 Cumulative Preferred Stock on any dividend date, either in whole or in such portions as, from time to time, the Board of Trustees may determine, upon the payment of the sum of \$105 a share and the amount of all unpaid dividends accumulated thereon to the date fixed for such redemption, provided, that, if less than all of the outstanding shares of \$5 Cumulative Preferred Stock shall be redeemed at any time, the shares to be redeemed shall be selected in such manner as the Board of Trustees may determine.

(c) (Continued)

### **Cumulative Preferred Stock**

The Cumulative Preferred Stock may be issued from time to time in one or more series, the Board of Trustees having the authority to fix from time to time the designations, preferences, privileges and voting powers of each series except for such provisions as are to be applicable to all series. The \$5 Cumulative Preferred Stock shall rank superior in all respects to the new Cumulative Preferred Stock except that one or more series of new Cumulative Preferred Stock may rank equally with the \$5 Cumulative Preferred Stock with respect to priority in the payment of dividends and the distribution of assets if the earnings of Con Edison and its affiliated companies, as defined, for the fiscal year ending next prior to the date of issue of the new Cumulative Preferred Stock are at least equal to three times the annual dividend on all shares of preferred stock to be outstanding immediately after the issue of such new Cumulative Preferred Stock. In such case, however, any series of new Cumulative Preferred Stock theretofore or thereafter issued shall also rank equally with the \$5 Cumulative Preferred Stock and shall also comply or have complied with such earnings requirements.

With respect to each series of new Cumulative Preferred Stock, the Board of Trustees may determine, among other things, the provisions relating to the dividend rate, the sum per share (not less than \$100) payable upon voluntary or involuntary dissolution, liquidation or winding up of Con Edison, the redemption price and the conversion rights and sinking fund provisions, if any, applicable thereto and any other provisions not inconsistent with the provisions applicable to all shares.

### **Cumulative Preferred Stock, 5-3/4% Series A**

The Cumulative Preferred Stock, 5-3/4% Series A had a par value of \$100 per share; was entitled to receive (1) on voluntary liquidation an amount equal to the redemption price then in effect and (2) on involuntary liquidation \$100 per share plus accrued but unpaid dividends thereon.

### **Cumulative Preferred Stock, 5-1/4% Series B**

The Cumulative Preferred Stock, 5-1/4% Series B had a par value of \$100 per share; was entitled to receive (1) on voluntary liquidation an amount equal to the redemption price then in effect and (2) on involuntary liquidation \$100 per share plus accrued but unpaid dividends thereon.

**Cumulative Preferred Stock, 4.65% Series C**

The Cumulative Preferred Stock, 4.65% Series C has a par value of \$100 per share; is entitled to receive (1) on voluntary liquidation an amount equal to the redemption price then in effect and (2) on involuntary liquidation \$100 per share plus accrued but unpaid dividends thereon and is redeemable at \$101 per share plus accrued but unpaid dividends to the redemption date.

**Cumulative Preferred Stock, 4.65% Series D**

The Cumulative Preferred Stock, 4.65% Series D has a par value of \$100 per share; is entitled to receive (1) on voluntary liquidation an amount equal to the redemption price then in effect and (2) on involuntary liquidation \$100 per share plus accrued but unpaid dividends thereon and is redeemable at \$101 per share plus accrued but unpaid dividends to the redemption date.

**Cumulative Preferred Stock, 5-3/4% Series E**

The Cumulative Preferred Stock, 5-3/4% Series E had a par value of \$100 per share; was entitled to receive (1) on voluntary liquidation an amount equal to the redemption price then in effect and (2) on involuntary liquidation \$100 per share plus accrued but unpaid dividends thereon.

**Cumulative Preferred Stock, 6.20% Series F**

The Cumulative Preferred Stock, 6.20% Series F had a par value of \$100 per share; was entitled to receive (1) on voluntary liquidation an amount equal to the redemption price then in effect and (2) on involuntary liquidation \$100 per share plus accrued but unpaid dividends thereon.

**Cumulative Preferred Stock, 7.20% Series I**

The Company was required to redeem 25,000 of the Series I shares on May 1 of each year in the five-year period commencing with the year 2002 and to redeem the remaining Series I shares on May 1, 2007. The redemption price was \$100 per share plus accrued and unpaid dividends to the redemption date.



(c) (Concluded)

**Cumulative Preferred Stock, 6-1/8% Series J**

Con Edison is required to redeem the Series J shares on August 1, 2002. The redemption price is \$100 per share plus accrued and unpaid dividends to the redemption date. Series J shares may not be called for redemption while dividends are in arrears on outstanding shares of \$5 Cumulative Preferred Stock or Cumulative Preferred Stock. Nevertheless, the redemption obligation of Con Edison with respect to such shares is cumulative and if the redemption requirement is in arrears Con Edison may not purchase or redeem or pay any dividends on the common stock or any other stock ranking junior as to dividends or assets to the Cumulative Preferred Stock, except for payments or distributions in common stock or such junior stock.

**Cumulative Preference Stock**

The Cumulative Preference Stock was issued from time to time in one or more series, the Board of Trustees having the authority to fix from time to time the designations, preferences, privileges and voting powers of each series except for such provisions as are applicable to all series. The \$5 Cumulative Preferred Stock and the Cumulative Preferred Stock rank superior in all respects to the Cumulative Preference Stock. No holder of any Cumulative Preference Stock had any preemptive rights and, except as otherwise provided by law and the Certificate of Incorporation, as amended, had any voting rights.

With respect to each series of Cumulative Preference Stock, the Board of Trustees determined, among other things, the provisions relating to the dividend rate, the sum per share (not less than \$100) payable upon voluntary or involuntary dissolution, liquidation or winding-up of Con Edison, the redemption price, the conversion rights and sinking fund provisions, if any, applicable thereto and any other provisions not inconsistent with the provisions applicable to all shares.

**Cumulative Preference Stock, 6% Convertible Series B**

The Cumulative Preference Stock, 6% Convertible Series B had a par value of \$100 per share; was convertible, unless previously redeemed, into Common Stock at a conversion price of \$7.69 per share subject to adjustment under certain conditions; was redeemable at \$100 per share, plus dividends accrued to the redemption date.

(d) Rate and amount of dividends declared upon the Capital Stock and the amount of dividends paid during each of the years 1994 to 1998.

	<u>Dividends Declared</u>		<u>Dividends</u>
	<u>Rate</u>	<u>Amount</u>	<u>Paid</u>
<b>\$5 Cumulative Preferred Stock</b>			
1994	\$5.00	\$9,576,595	\$9,576,595
1995	5.00	9,576,595	9,576,595
1996	5.00	9,576,595	9,576,595
1997	5.00	9,576,595	9,576,595
1998	5.00	9,576,595	9,576,595
<b>Cumulative Preferred Stock</b>			
<b>5-3/4% Series A</b>			
1994	5.75	3,450,000	3,450,000
1995	5.75	3,450,000	3,450,000
1996	5.75	406,019	406,019
1997	5.75	406,019	406,019
1998	5.75	304,514	304,514
<b>5-1/4% Series B</b>			
1994	5.25	3,937,500	3,937,500
1995	5.25	3,937,500	3,937,500
1996	5.25	726,800	726,800
1997	5.25	726,800	726,800
1998	5.25	545,100	545,100
<b>4.65% Series C</b>			
1994	4.65	2,790,002	2,790,002
1995	4.65	2,790,002	2,790,002
1996	4.65	712,828	712,828
1997	4.65	712,828	712,828
1998	4.65	712,828	712,828
<b>4.65% Series D</b>			
1994	4.65	3,487,502	3,487,502
1995	4.65	3,487,501	3,487,501
1996	4.65	1,033,836	1,033,836
1997	4.65	1,033,835	1,033,835
1998	4.65	1,033,835	1,033,835
<b>5-3/4% Series E</b>			
1994	5.75	2,875,002	2,875,002
1995	5.75	2,875,002	2,875,002

- (d) Rate and amount of dividends declared upon the Capital Stock and the amount of dividends paid during each of the years 1994 to 1998.

	<u>Dividends Declared</u>		<u>Dividends</u>
	<u>Rate</u>	<u>Amount</u>	<u>Paid</u>
<b>6.20% Series F</b>			
1994	6.20	2,480,000	2,480,000
1995	6.20	2,480,000	2,480,000
<b>7.20% Series I</b>			
1994	7.20	3,600,000	3,600,000
1995	7.20	3,600,000	3,600,000
1996	7.20	3,420,000	3,420,000
1997	7.20	3,420,000	3,420,000
1998	7.20	2,565,000	2,565,000
<b>6-1/8% Series J</b>			
1994	6.125	3,062,500	3,062,500
1995	6.125	3,062,500	3,062,500
1996	6.125	2,269,313	2,269,313
1997	6.125	2,269,313	2,269,313
1998	6.125	2,269,313	2,269,313
<b>Cumulative Preference Stock</b>			
<b>6% Convertible Series B</b>			
1994	6.00	325,715	331,974
1995	6.00	303,801	310,112
1996	6.00	283,562	287,370
1997	6.00	198,324	198,324
<b>Common Stock</b>			
1994	2.00	469,560,742	469,560,742
1995	2.04	479,262,332	479,262,332
1996	2.08	488,755,428	488,755,428
1997	2.10	493,711,770	493,711,770
1998	2.12	496,944,821	496,944,821

- (e) No Contingent Assets. See footnotes to Financial Statements for Contingent Liabilities.

**APPENDIX B**

**Orange and Rockland Utilities, Inc**  
**Inventory Balances of the Property to be Transferred**  
**As of December 31, 1988.**

<u>Description</u>	<u>Balance Sheet Account</u>	<u>Plant Account</u>	<u>Utility Plant</u>	<u>Construction Work In Progress</u>	<u>Accumulated Depreciation Reserve</u>	<u>Total</u>
<b>Net Electric Utility Plant</b>	<b>101-119</b>					
Intangible Plant		302	\$ 3,641,559		\$ 820,039	\$ 2,821,520
Steam Production						
Land	"	310	9,078,075		21,304	9,056,771
Structures & Improvements	"	311	48,722,009	\$ 185,635	21,539,850	27,367,794
Boiler Plant Equipment	"	312	245,904,237	1,356,436	95,612,844	151,647,829
Turbogenerator	"	314	50,225,767	110,156	26,527,875	23,808,048
Accessory Electric Equipment	"	315	23,830,400		9,906,074	13,924,326
Miscellaneous Power Plant Equipment	"	316	3,581,118	15,013	1,055,077	2,541,054
Hydraulic Production						
Land	"	330	5,045,009		553,395	4,491,614
Structures & Improvements	"	331	2,166,357		1,265,673	900,684
Reservoirs, Dams & Waterways	"	332	23,024,812		8,562,813	14,461,999
Water Wheels, Turbines & Generators	"	333	2,784,150		1,699,735	1,084,415
Accessory Electric Equipment	"	334	960,913		558,965	401,948
Miscellaneous Power Plant Equipment	"	335	664,612	2,500	133,032	534,080
Roads, Railroads & Bridges	"	336	52,737		30,003	22,734
Other Production						
Structures & Improvements	"	341	704,962	68,088	743,453	29,597
Fuel Holders, Producers & Accessories	"	342	381,737		169,387	212,350
Prime Movers	"	343	401,742		402,144	(402)
Generators	"	344	2,220,540		555,033	1,665,507
Accessory Electric Equipment	"	345	646,294		523,967	122,327
Miscellaneous Power Plant Equipment	"	346	10,685	2,900	4,960	8,625
Transmission Plant						
Land	"	350	139,519			139,519
Structures & Improvements	"	352	345,165		141,658	203,507
Station Equipment	"	353	9,513,175	69,493	3,300,953	6,281,715
Underground Conduit	"	357	621,469		244,024	377,445
Underground Conductors & Devices	"	358	633,893		341,450	292,443
Distribution Plant						
Station Equipment	"	362	5,542		4,585	957
General Plant						
Office Furniture & Equipment	"	391	917,238	44,916	375,214	586,940
Transportation Equipment	"	392	138,358		71,933	66,425
Stores Equipment	"	393	90,696		29,485	61,211
Tools, Shop & Garage Equipment	"	394	28,289		5,313	22,976
Laboratory Equipment	"	395	66,001		8,022	57,979
Power Operated Equipment	"	396	26,150		5,210	20,940
Communications Equipment	"	397	633,999	43,890	154,080	523,809
Miscellaneous Equipment	"	398	7,389		1,436	5,953
<b>Net Gas Utility Plant</b>						
Land	"	374	9,799			9,799
Measuring & Regulating Station Equipment	"	378	8,791		5,124	3,667
Office Furniture & Equipment	"	391	1,287		283	1,004
					713	(713)
<b>Net Common Utility Plant</b>						
Office Furniture & Equipment	"	391	79,057		22,122	56,935
Transportation Equipment	"	392	190,465		68,524	121,941
Power Operated Equipment	"	396	156,688		92,471	64,217
Miscellaneous Equipment	"	398	2,405		367	2,038
<b>Net Nonutility Plant</b>						
Structures & Improvements	121,122		1,574		713	861
<b>Total</b>			437,664,664	1,899,027	175,559,303	264,004,388
<b>Fuel Inventories</b>						6,538,287
<b>Materials &amp; Supplies</b>						10,951,424
<b>Total</b>						<u>\$281,494,099</u>

Consolidated Edison Company of New York, Inc.  
Bowline Point  
Estimated Original Cost, Accrued Depreciation and Construction Work in Progress at June 30, 1999  
for the Company's Share of the Station and Related Facilities being Sold  
(000)

<u>Account No.</u>			<u>Estimated</u>	<u>Estimated</u>		<u>Construction</u>
<u>PSC</u>	<u>Co.</u>		<u>Book Cost</u>	<u>Accrued</u>	<u>Net</u>	<u>Work in</u>
				<u>Depreciation</u>		<u>Progress</u>
<b><u>Bowline Point Station</u></b>						
<b><u>Electric - Steam Production</u></b>						
310	9510	Land and Land Rights	\$ 774	\$ 0	\$ 774	\$ 0
311	9514	Structures and Improvements	27,066	6,560	20,506	0
312	9516	Boiler Plant Equipment	110,924	42,966	67,958	1,000
314	9522	Turbogenerator Units	50,829	28,015	22,814	500
315	9524	Accessory Electric Equipment	11,729	4,551	7,178	0
316	9526	Misc. Power Plant Equipment	2,654	571	2,083	0
		Total	<u>\$ 203,976</u>	<u>\$ 82,663</u>	<u>\$ 121,313</u>	<u>\$ 1,500</u>
<b><u>Electric Transmission Facilities</u></b>						
352	9532	Structures and Improvements	259	102	157	0
353	9534	Station Equipment	5,801	2,370	3,431	0
		Total	<u>\$ 6,060</u>	<u>\$ 2,472</u>	<u>\$ 3,588</u>	<u>\$ 0</u>
<b><u>Feeders 67 &amp; 68 - Bowline to West Haverstraw</u></b>						
<b><u>Electric Transmission Facilities</u></b>						
350	9530	Land and Land Rights	153	0	153	0
357	9544	Underground Conduit	1,238	558	680	0
358	9546	Underground Conductors and Devices	1,198	551	647	0
		Total	<u>\$ 2,589</u>	<u>\$ 1,109</u>	<u>\$ 1,480</u>	<u>\$ 0</u>

**APPENDIX C**

**Orange And Rockland Utilities, Inc.**  
**Operating Revenues, Expenses and Taxes**  
**Relating to Property to be Transferred (4)**  
**(\$000)**

		<u>1996</u>	<u>1997</u>	<u>1998</u>
Revenues	(1)	\$ 152,340	\$ 200,052	\$ 295,990
Operating Expenses	(2)	\$ 107,689	\$ 130,960	\$ 201,750
Property Taxes	(3)	\$ 36,856	\$ 39,292	\$ 43,009
Net Generation (MWH)		2,958,067	3,884,513	5,747,375

(1) Currently, the Company does not account separately for revenues associated with the generation facilities to be transferred. Therefore it was necessary to estimate the revenues.

For this purpose, the 1996 average price of \$.0515 from the Company's embedded costs allocation study for unbundling rates was used as a proxy for the average wholesale market price. This estimate may be distorted if the average price for unbundling does not fairly approximate the average wholesale market rate.

(2) The expenses shown above for 1996 and 1997 were included the Offering Memorandum. They include all costs directly charged to production O&M accounts as well as allocations from clearing accounts.

(3) The property taxes shown above are the taxes PAID in 1996, 1997 and 1998. Other taxes that are dependent on revenue have not been estimated.

(4) Revenues and costs shown above include Con Edison's share of the Bowline Point Generating Station.



**APPENDIX D**

**CONSOLIDATED STATEMENTS OF INCOME**

For the Years Ended December 31, 1997, 1996, and 1995

Southern Company and Subsidiary Companies 1997 Annual Report

	1997	1996 (in millions)	1995
<b>Operating Revenues</b>	<b>\$ 12,611</b>	<b>\$ 10,358</b>	<b>\$9,180</b>
<b>Operating Expenses:</b>			
Operation --			
Fuel	2,281	2,245	2,126
Purchased power	3,033	1,103	491
Other	1,930	1,860	1,626
Maintenance	763	782	683
Depreciation and amortization	1,246	996	904
Amortization of deferred Plant Vogtle costs, net	121	137	124
Taxes other than income taxes	572	634	535
Income taxes	725	747	805
<b>Total operating expenses</b>	<b>10,671</b>	<b>8,504</b>	<b>7,294</b>
<b>Operating Income</b>	<b>1,940</b>	<b>1,854</b>	<b>1,886</b>
<b>Other Income:</b>			
Allowance for equity funds used during construction	6	4	5
Interest income	152	54	38
Other, net	53	42	(65)
Income taxes applicable to other income	34	(10)	36
Windfall profits tax assessed in United Kingdom (Note 8)	(148)	-	-
<b>Income Before Interest Charges</b>	<b>2,037</b>	<b>1,944</b>	<b>1,900</b>
<b>Interest Charges and Other:</b>			
Interest on long-term debt	678	530	557
Allowance for debt funds used during construction	(14)	(19)	(20)
Interest on notes payable	112	107	63
Amortization of debt discount, premium, and expense, net	34	33	44
Other interest charges	63	46	43
Minority interest in subsidiaries	29	13	13
Distributions on capital and preferred securities of subsidiary companies	120	22	9
Preferred dividends of subsidiary companies	43	85	88
Interest charges and other, net	1,065	817	797
<b>Consolidated Net Income</b>	<b>\$ 972</b>	<b>\$ 1,127</b>	<b>\$1,103</b>
<b>Common Stock Data: (Note 9)</b>			
Average number of shares of common stock outstanding (in millions)	685	673	665
Basic and diluted earnings per share of common stock	\$1.42	\$1.68	\$1.66
Cash dividends paid per share of common stock	\$1.30	\$1.26	\$1.22

**CONSOLIDATED STATEMENTS OF RETAINED EARNINGS**

For the Years Ended December 31, 1997, 1996, and 1995

	1997	1996 (in millions)	1995
<b>Balance at Beginning of Year</b>	<b>\$3,764</b>	<b>\$3,483</b>	<b>\$3,191</b>
<b>Consolidated net income</b>	<b>972</b>	<b>1,127</b>	<b>1,103</b>
	<b>4,736</b>	<b>4,610</b>	<b>4,294</b>
Cash dividends on common stock	889	846	811
Capital and preferred stock transactions, net	5	-	-
<b>Balance at End of Year (Note 9)</b>	<b>\$3,842</b>	<b>\$3,764</b>	<b>\$3,483</b>

The accompanying notes are an integral part of these statements.

# **CONSOLIDATED STATEMENTS OF CASH FLOWS**

For the Years Ended December 31, 1997, 1996, and 1995

Southern Company and Subsidiary Companies 1997 Annual Report

	1997	1996	1995
	(in millions)		
<b>Operating Activities:</b>			
Consolidated net income	\$ 972	\$ 1,127	\$ 1,103
Adjustments to reconcile consolidated net income to net cash provided by operating activities --			
Depreciation and amortization	1,471	1,201	1,134
Deferred income taxes and investment tax credits	(5)	57	117
Allowance for equity funds used during construction	(6)	(4)	(5)
Amortization of deferred Plant Vogtle costs, net	121	137	124
Gain on asset sales	(25)	(59)	(33)
Other, net	(61)	54	(121)
Changes in certain current assets and liabilities excluding effects from acquisitions --			
Receivables, net	(238)	(92)	(109)
Fossil fuel stock	56	57	28
Materials and supplies	21	47	11
Accounts payable	138	19	(138)
Other	181	(143)	204
<b>Net cash provided from operating activities</b>	<b>2,625</b>	<b>2,401</b>	<b>2,315</b>
<b>Investing Activities:</b>			
Gross property additions	(1,859)	(1,229)	(1,401)
Southern Energy business acquisitions, net of cash acquired	(2,925)	-	(1,416)
Sales of property	32	211	287
Other	(13)	(275)	153
<b>Net cash used for investing activities</b>	<b>(4,765)</b>	<b>(1,293)</b>	<b>(2,377)</b>
<b>Financing Activities:</b>			
Proceeds --			
Common stock	360	171	277
Capital and preferred securities	1,321	322	-
First mortgage bonds	-	85	375
Other long-term debt	2,499	1,570	1,805
Retirements --			
Preferred stock	(660)	(179)	(1)
First mortgage bonds	(168)	(426)	(538)
Other long-term debt	(802)	(1,754)	(902)
Increase (decrease) in notes payable, net	509	(268)	727
Payment of common stock dividends	(889)	(846)	(811)
Miscellaneous	126	(110)	(237)
<b>Net cash provided from (used for) financing activities</b>	<b>2,296</b>	<b>(1,435)</b>	<b>695</b>
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	<b>156</b>	<b>(327)</b>	<b>633</b>
<b>Cash and Cash Equivalents at Beginning of Year</b>	<b>445</b>	<b>772</b>	<b>139</b>
<b>Cash and Cash Equivalents at End of Year</b>	<b>\$ 601</b>	<b>\$ 445</b>	<b>\$ 772</b>
<b>Supplemental Cash Flow Information:</b>			
Cash paid during the year for --			
Interest (net of amount capitalized)	\$876	\$677	\$622
Income taxes	\$823	\$706	\$645
Southern Energy business acquisitions --			
Fair value of assets acquired	\$4,768	\$-	\$2,745
Less cash paid for common stock	2,925	-	1,416
<b>Liabilities assumed</b>	<b>\$1,843</b>	<b>\$-</b>	<b>\$1,329</b>

The accompanying notes are an integral part of these statements.

## CONSOLIDATED BALANCE SHEETS

At December 31, 1997 and 1996

Southern Company and Subsidiary Companies 1997 Annual Report

Assets	1997	1996
	(in millions)	
<b>Utility Plant:</b>		
Plant in service (Note 1)	\$ 34,044	\$ 33,260
Less accumulated provision for depreciation	11,934	10,921
	22,110	22,339
Nuclear fuel, at amortized cost	230	246
Construction work in progress (Note 4)	1,312	684
<b>Total</b>	<b>23,652</b>	<b>23,269</b>
<b>Other Property and Investments:</b>		
Goodwill, being amortized (Note 14)	1,888	318
Leasehold interests, being amortized	1,389	416
Equity investments in subsidiaries	1,168	227
Nuclear decommissioning trusts	387	279
Miscellaneous	742	261
<b>Total</b>	<b>5,574</b>	<b>1,501</b>
<b>Current Assets:</b>		
Cash and cash equivalents	601	445
Special deposits	17	62
Receivables, less accumulated provisions for uncollectible accounts of \$77 million in 1997 and \$32 million in 1996	2,100	1,440
Fossil fuel stock, at average cost	214	270
Materials and supplies, at average cost	493	510
Prepayments	99	87
Vacation pay deferred	79	77
<b>Total</b>	<b>3,603</b>	<b>2,891</b>
<b>Deferred Charges and Other Assets:</b>		
Deferred charges related to income taxes (Note 8)	1,142	1,238
Prepaid pension costs	399	341
Deferred Plant Vogtle costs	50	171
Debt expense, being amortized	101	81
Premium on reacquired debt, being amortized	285	289
Miscellaneous	465	449
<b>Total</b>	<b>2,442</b>	<b>2,569</b>
<b>Total Assets</b>	<b>\$ 35,271</b>	<b>\$ 30,230</b>

The accompanying notes are an integral part of these balance sheets.

**CONSOLIDATED BALANCE SHEETS**

At December 31, 1997 and 1996

Southern Company and Subsidiary Companies 1997 Annual Report

<b>Capitalization and Liabilities</b>	<b>1997</b>	<b>1996</b>
	(in millions)	
<b>Capitalization (See accompanying statements):</b>		
Common stock equity	\$ 9,647	\$ 9,216
Preferred stock of subsidiaries	493	980
Company or subsidiary obligated mandatorily redeemable capital and preferred securities	1,744	422
Long-term debt	10,274	7,938
<b>Total</b>	<b>22,158</b>	<b>18,556</b>
<b>Current Liabilities:</b>		
Amount of securities due within one year	784	364
Notes payable	2,064	1,483
Accounts payable	1,049	788
Customer deposits	133	132
Taxes accrued-		
Federal and state income	120	12
Other	259	193
Interest accrued	262	187
Vacation pay accrued	108	104
Miscellaneous	608	535
<b>Total</b>	<b>5,387</b>	<b>3,798</b>
<b>Deferred Credits and Other Liabilities:</b>		
Accumulated deferred income taxes (Note 8)	4,650	4,731
Deferred credits related to income taxes (Note 8)	746	814
Accumulated deferred investment tax credits	754	788
Employee benefits provisions	447	439
Minority interests in subsidiaries	435	375
Prepaid capacity revenues	110	122
Department of Energy assessments	72	81
Disallowed Plant Vogtle capacity buyback costs	56	57
Storm damage reserves	38	35
Miscellaneous	418	427
<b>Total</b>	<b>7,726</b>	<b>7,876</b>
<b>Commitments and Contingent Matters (Notes 1, 2, 3, 4, 5, 7, 13, and 14)</b>		
<b>Total Capitalization and Liabilities</b>	<b>\$ 35,271</b>	<b>\$ 30,230</b>

The accompanying notes are an integral part of these balance sheets.

# **CONSOLIDATED STATEMENTS OF CAPITALIZATION**

At December 31, 1997 and 1996

Southern Company and Subsidiary Companies 1997 Annual Report

	1997	1996	1997	1996
	(in millions)		(percent of total)	
<b>Common Stock Equity:</b>				
Common stock, par value \$5 per share --				
Authorized -- 1 billion shares				
Outstanding -- 1997: 693 million shares				
1996: 677 million shares	\$ 3,467	\$ 3,385		
Paid-in capital	2,338	2,067		
Retained earnings (Note 9)	3,842	3,764		
<b>Total common stock equity</b>	<b>9,647</b>	<b>9,216</b>	<b>43.5 %</b>	<b>49.7 %</b>
<b>Cumulative Preferred Stock of Subsidiaries:</b>				
\$100 par or stated value --				
4.20% to 5.96%	89	199		
6.32% to 7.88%	47	130		
\$25 par or stated value --				
\$1.90 to \$1.9875	-	191		
6.40% to 7.60%	131	323		
Auction rates -- at January 1, 1998:				
4.20% to 4.235%	70	70		
Adjustable rates -- at January 1, 1998:				
4.67% to 5.27%	156	240		
<b>Total (annual dividend requirement -- \$27 million)</b>	<b>493</b>	<b>1,153</b>		
<b>Less amount due within one year</b>	<b>-</b>	<b>173</b>		
<b>Total excluding amount due within one year</b>	<b>493</b>	<b>980</b>	<b>2.2</b>	<b>5.3</b>
<b>Company or Subsidiary Obligated Mandatorily</b>				
<b>Redeemable Capital and Preferred Securities (Note 10):</b>				
\$25 liquidation value --				
7.375%	97	97		
7.60% to 7.625 %	415	-		
7.75%	649	225		
8.14% to 9%	583	100		
<b>Total (annual distribution requirement -- \$138 million)</b>	<b>1,744</b>	<b>422</b>	<b>7.9</b>	<b>2.3</b>

# **CONSOLIDATED STATEMENTS OF CAPITALIZATION (continued)**

At December 31, 1997 and 1996

Southern Company and Subsidiary Companies 1997 Annual Report

		1997	1996	1997	1996
		(in millions)		(percent of total)	
Long-Term Debt of Subsidiaries:					
First mortgage bonds --					
<u>Maturity</u>	<u>Interest Rates</u>				
1997	5 7/8 %	-	25		
1997	8.665%	-	7		
1998	5% to 8.665%	238	238		
1999	6 1/8% to 8.665%	373	373		
2000	6% to 8.665%	349	349		
2001	8.665%	9	9		
2002	6.85% to 8.665%	260	260		
2003 through 2007	6.07% to 8.665%	944	944		
2008 through 2012	6 7/8% to 8.665%	121	121		
2013 through 2017	8.665%	73	73		
2018 through 2022	8.30% to 9 1/4%	476	612		
2023 through 2026	6 7/8% to 9%	1,109	1,109		
Total first mortgage bonds		3,952	4,120		
Other long-term debt (Note 11)		7,191	4,084		
Unamortized debt premium (discount), net		(85)	(75)		
Total long-term debt (annual interest requirement -- \$738 million)		11,058	8,129		
Less amount due within one year (Note 12)		784	191		
Long-term debt excluding amount due within one year		10,274	7,938	46.4	42.7
Total Capitalization		\$ 22,158	\$ 18,556	100.0 %	100.0 %

## **CONSOLIDATED STATEMENTS OF PAID-IN CAPITAL**

For the Years Ended December 31, 1997, 1996, and 1995

	1997	1996	1995
	(in millions)		
Balance at Beginning of Year	\$2,067	\$1,941	\$1,712
Proceeds from sales of common stock over the par value -- 16.4 million, 7.5 million, and 13.0 million shares in 1997, 1996, and 1995, respectively	278	133	212
Miscellaneous	(7)	(7)	17
<b>Balance at End of Year</b>	<b>\$2,338</b>	<b>\$2,067</b>	<b>\$1,941</b>

The accompanying notes are an integral part of these statements.

## NOTES TO FINANCIAL STATEMENTS

Southern Company and Subsidiary Companies 1997 Annual Report

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### General

Southern Company is the parent company of five operating companies, a system service company, Southern Communications Services (Southern Communications), Southern Company Energy Solutions, Southern Energy, Inc. (Southern Energy), Southern Nuclear Operating Company (Southern Nuclear), and other direct and indirect subsidiaries. The operating companies -- Alabama Power, Georgia Power, Gulf Power, Mississippi Power, and Savannah Electric -- provide electric service in four southeastern states. Contracts among the operating companies -- dealing with jointly owned generating facilities, interconnecting transmission lines, and the exchange of electric power -- are regulated by the Federal Energy Regulatory Commission (FERC) and/or the Securities and Exchange Commission (SEC). The system service company provides, at cost, specialized services to Southern Company and subsidiary companies. Southern Communications provides digital wireless communications services to the operating companies and also markets these services to the public within the Southeast. Southern Company Energy Solutions develops new business opportunities related to energy products and services. Worldwide, Southern Energy develops and manages electricity and other energy related projects, including domestic energy trading and marketing. Southern Nuclear provides services to Southern Company's nuclear power plants.

Southern Company is registered as a holding company under the Public Utility Holding Company Act of 1935 (PUHCA). Both the company and its subsidiaries are subject to the regulatory provisions of the PUHCA. The operating companies also are subject to regulation by the FERC and their respective state regulatory commissions. The companies follow generally accepted accounting principles and comply with the accounting policies and practices prescribed by their respective commissions. The preparation of financial statements in conformity with generally accepted accounting principles requires the use of estimates, and the actual results may differ from those estimates. All material intercompany items have been eliminated in consolidation.

The consolidated financial statements reflect investments in controlled subsidiaries on a consolidated basis and other investments on an equity basis. Effective

in January 1998, Southern Energy and Vastar Resources combined their energy trading and marketing activities to form a joint venture. Southern Energy's investment in the joint venture will be accounted for under the equity method of accounting. Certain prior years' data presented in the consolidated financial statements have been reclassified to conform with the current year presentation.

#### Regulatory Assets and Liabilities

The operating companies are subject to the provisions of Financial Accounting Standards Board (FASB) Statement No. 71, Accounting for the Effects of Certain Types of Regulation. Regulatory assets represent probable future revenues to the operating companies associated with certain costs that are expected to be recovered from customers through the ratemaking process. Regulatory liabilities represent probable future reductions in revenues associated with amounts that are expected to be credited to customers through the ratemaking process. Regulatory assets and (liabilities) reflected in the Consolidated Balance Sheets at December 31 relate to the following:

	1997	1996
	(in millions)	
Deferred income taxes	\$1,142	\$1,238
Deferred Plant Vogtle costs	50	171
Premium on reacquired debt	285	289
Demand-side programs	11	44
Department of Energy assessments	63	69
Vacation pay	79	77
Deferred fuel charges	4	29
Postretirement benefits	38	38
Work force reduction costs	37	48
Deferred income tax credits	(746)	(814)
Storm damage reserves	(36)	(32)
Other, net	152	114
Total	\$1,079	\$1,271

In the event that a portion of an operating company's operations is no longer subject to the provisions of FASB Statement No. 71, the company would be required to write off related net regulatory assets and liabilities that are not specifically recoverable through regulated rates. In addition, the company would be required to determine if any impairment to other assets exists, including plant, and write down the assets, if impaired, to their fair value.



## NOTES (continued)

Southern Company and Subsidiary Companies 1997 Annual Report

### Revenues and Fuel Costs

The operating companies accrue revenues for service rendered but unbilled at the end of each fiscal period. Fuel costs are expensed as the fuel is used. The operating companies' electric rates include provisions to adjust billings for fluctuations in fuel, the energy component of purchased power costs, and certain other costs. Revenues are adjusted for differences between recoverable fuel costs and amounts actually recovered in current rates.

Southern Energy's revenues for product sales and marketing services are recognized when title passes to the customer or when service is performed.

The operating companies have a diversified base of customers. No single customer or industry comprises 10 percent or more of revenues. In 1997, uncollectible accounts continued to average less than 1 percent of revenues.

Fuel expense includes the amortization of the cost of nuclear fuel and a charge, based on nuclear generation, for the permanent disposal of spent nuclear fuel. Total charges for nuclear fuel included in fuel expense amounted to \$144 million in 1997, \$142 million in 1996, and \$140 million in 1995. Alabama Power and Georgia Power have contracts with the U.S. Department of Energy (DOE) that provide for the permanent disposal of spent nuclear fuel. Although disposal was scheduled to begin in 1998, the actual year this service will begin is uncertain. Sufficient storage capacity currently is available to permit operation into 2003 at Plant Hatch, into 2008 at Plant Vogtle, and into 2010 and 2013 at Plant Farley units 1 and 2, respectively. Activities for adding dry cask storage capacity at Plant Hatch by as early as 1999 are in progress.

Also, the Energy Policy Act of 1992 required the establishment in 1993 of a Uranium Enrichment Decontamination and Decommissioning Fund, which is funded in part by a special assessment on utilities with nuclear plants. This assessment is being paid over a 15-year period, which began in 1993. This fund will be used by the DOE for the decontamination and decommissioning of its nuclear fuel enrichment facilities. The law provides that utilities will recover these payments in the same manner as any other fuel expense. Alabama

Power and Georgia Power -- based on its ownership interests -- estimate their respective remaining liability at December 31, 1997, under this law to be approximately \$34 million and \$27 million, respectively. These obligations are recorded in the Consolidated Balance Sheets.

### Depreciation and Nuclear Decommissioning

Depreciation of the original cost of depreciable utility plant in service is provided primarily by using composite straight-line rates, which approximated 3.4 percent in 1997 and 3.3 percent in 1996 and 1995. When property subject to depreciation is retired or otherwise disposed of in the normal course of business, its cost -- together with the cost of removal, less salvage -- is charged to the accumulated provision for depreciation. Minor items of property included in the original cost of the plant are retired when the related property unit is retired. Depreciation expense includes an amount for the expected costs of decommissioning nuclear facilities and removal of other facilities.

Georgia Power recorded additional depreciation of electric plant amounting to \$159 million in 1997, \$24 million in 1996, and \$6 million in 1995. See Note 3 under "Georgia Power Retail Accounting Order" for additional information.

The Nuclear Regulatory Commission (NRC) requires all licensees operating commercial power reactors to establish a plan for providing, with reasonable assurance, funds for decommissioning. Alabama Power and Georgia Power have external trust funds to comply with the NRC's regulations. Amounts previously recorded in internal reserves are being transferred into the external trust funds over periods approved by the respective state public service commissions. The NRC's minimum external funding requirements are based on a generic estimate of the cost to decommission the radioactive portions of a nuclear unit based on the size and type of reactor. Alabama Power and Georgia Power have filed plans with the NRC to ensure that -- over time -- the deposits and earnings of the external trust funds will provide the minimum funding amounts prescribed by the NRC.

Site study cost is the estimate to decommission a specific facility as of the site study year, and ultimate cost is the estimate to decommission a specific facility as of retirement date. The estimated costs of decommissioning

**NOTES (continued)**

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-- both site study costs and ultimate costs -- at December 31, 1997, for Alabama Power's Plant Farley and Georgia Power's ownership interests in plants Hatch and Vogtle were as follows:

	Plant Farley	Plant Hatch	Plant Vogtle
Site study basis (year)	1993	1997	1997
Decommissioning periods:			
Beginning year	2017	2014	2027
Completion year	2029	2027	2038
	(in millions)		
Site study costs:			
Radiated structures	\$489	\$372	\$317
Non-radiated structures	89	33	44
Total	\$578	\$405	\$361
Ultimate costs:			
Radiated structures	\$1,504	\$722	\$922
Non-radiated structures	274	65	129
Total	\$1,778	\$787	\$1,051
	Plant Farley	Plant Hatch	Plant Vogtle
	(in millions)		
Amount expensed in 1997	\$ 18	\$ 11	\$ 9
Accumulated provisions:			
Balance in external trust funds	\$193	\$118	\$76
Balance in internal reserves	44	23	13
Total	\$237	\$141	\$89
Significant assumptions:			
Inflation rate	4.5%	3.6%	3.6%
Trust earning rate	7.0	6.5	6.5

Annual provisions for nuclear decommissioning are based on an annuity method as approved by the respective state public service commissions. All of Alabama Power's decommissioning costs are approved for ratemaking. For Georgia Power, only the costs to decommission the radioactive portion of the plants are currently included in cost of service. Georgia Power's decommissioning costs currently included in cost of service are \$320 million and \$267 million for plants Hatch and Vogtle, respectively. The estimated ultimate costs associated with the amounts currently included in cost of service are \$781 million and \$1.1 billion for plants Hatch and Vogtle, respectively. Alabama Power and Georgia Power expect their respective state public service commissions to periodically review and adjust, if

necessary, the amounts collected in rates for the anticipated cost of decommissioning.

The decommissioning cost estimates are based on prompt dismantlement and removal of the plant from service. The actual decommissioning costs may vary from the above estimates because of changes in the assumed date of decommissioning, changes in NRC requirements, or changes in the assumptions used in making these estimates.

**Income Taxes**

Southern Company uses the liability method of accounting for deferred income taxes and provides deferred income taxes for all significant income tax temporary differences. Investment tax credits utilized are deferred and amortized to income over the average lives of the related property.

**Plant Vogtle Phase-In Plans**

In 1987, 1989, and 1991, the Georgia Public Service Commission (GPSC) ordered that the allowed costs of Plant Vogtle, a two-unit nuclear facility of which Georgia Power owns 45.7 percent, be phased into rates. Each GPSC order called for recovery of deferred costs within 10 years. Under these plans, all allowed costs will be recovered by 1999.

**Allowance for Funds Used During Construction (AFUDC)**

AFUDC represents the estimated debt and equity costs of capital funds that are necessary to finance the construction of new facilities. While cash is not realized currently from such allowance, it increases the revenue requirement over the service life of the plant through a higher rate base and higher depreciation expense. The composite rates used by the operating companies to calculate AFUDC during the years 1995 through 1997 ranged from a before-income-tax rate of 5.8 percent to 9.8 percent. AFUDC, net of income tax, as a percent of consolidated net income was 1.6 percent in 1997, 1.4 percent in 1996, and 1.6 percent in 1995.

**Utility Plant**

Utility plant is stated at original cost less regulatory disallowances. Original cost includes: materials; labor; minor items of property; appropriate administrative and general costs; payroll-related costs such as taxes, pensions, and other benefits; and the estimated cost of funds used during construction. The cost of maintenance, repairs, and replacement of minor items of property is

**NOTES (continued)**

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charged to maintenance expense. The cost of replacements of property -- exclusive of minor items of property -- is charged to utility plant.

**Leasehold Interests**

Leasehold interests include Southern Energy's power generation facilities that are developed under build, operate, and transfer agreements with foreign governments. Southern Energy's construction costs are initially recorded as construction work in progress, and -- after completion -- these costs are recorded as leasehold interests. These costs are amortized over the length of time the facility is operated before transferring ownership to the local government.

**Cash and Cash Equivalents**

For purposes of the Consolidated Statements of Cash Flows, temporary cash investments are considered cash equivalents. Temporary cash investments are securities with original maturities of 90 days or less.

**Foreign Currency Translation**

Assets and liabilities of Southern Company's international operations, where the local currency is the functional currency, have been translated at year-end exchange rates, and revenues and expenses have been translated using average exchange rates prevailing during the year. Adjustments resulting from translation have been recorded in stockholders' equity. The financial statements of international operations, where the U.S. dollar is the functional currency and when certain transactions are denominated in a local currency, are remeasured in U.S. dollars. The remeasurement of local currencies into U.S. dollars creates adjustments. These adjustments and all gains and losses from foreign currency transactions are included in consolidated net income. Foreign exchange gains and losses are not material for all periods presented.

**Financial Instruments for Non-Trading**

Non-trading derivative financial instruments are used to hedge exposures to fluctuations in interest rates, foreign currency exchange rates, and certain commodity prices. Gains and losses on qualifying hedges are deferred and recognized either in income or as an adjustment to the carrying amount when the hedged transaction occurs.

The company utilizes interest rate swaps and cross currency interest rate swaps to minimize borrowing costs by changing the interest rate and currency of the original

borrowing. For qualifying hedges, the interest rate differential is reflected as an adjustment to interest expense over the life of the swaps.

Southern Company's international operations are exposed to the effects of foreign exchange rate fluctuations. To protect against this exposure, the company utilizes currency swaps to hedge its net investment in certain foreign subsidiaries, which has the effect of converting foreign currency cash inflows into U.S. dollars at fixed exchange rates. Gains or losses on these currency swaps, designated as hedges of net investment, are offset against the translation effects reflected in stockholders' equity, net of tax.

Non-trading financial derivative instruments held at December 31, 1997, were as follows:

Type	Year of Maturity or Termination	Notional Amount	Unrecognized Gain (Loss)
(in millions)			
Interest rate swaps:			
	2002-2012	\$710	\$ (33)
	2001-2012	£500	\$ (52)
	2002-2007	DM691	\$ (3)
Cross currency swaps	2001-2007	£439	\$6
Cross currency swaption	2003	DM570	\$1

£ - Denotes British pound sterling.

DM - Denotes Deutschemark.

The company is exposed to losses related to financial instruments in the event of counterparties' nonperformance. The company has established controls to determine and monitor the creditworthiness of counterparties in order to mitigate the company's exposure to counterparty credit risk. The company does not expect any of the counterparties to fail to meet their obligations.

In the United Kingdom, the company utilizes contracts to mitigate its exposure to volatility in the prices of electricity purchased through the wholesale electricity market. These contracts are in place to hedge electricity purchases of approximately 20 billion kilowatt-hours through the year 2008. The gains or losses realized on such contracts are deferred and recognized as electricity is purchased. Because of the absence of a trading market, it is not practicable to estimate the fair value of these contracts.

# NOTES (continued)

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Other Southern Company financial instruments for which the carrying amount did not equal fair value at December 31 were as follows:

	Carrying Amount	Fair Value
	(in millions)	
Long-term debt:		
At December 31, 1997	\$10,916	\$11,160
At December 31, 1996	7,975	8,122
Capital and preferred securities:		
At December 31, 1997	1,744	1,826
At December 31, 1996	422	427

The fair values for long-term debt and capital and preferred securities were based on either closing market price or closing price of comparable instruments.

## Financial Instruments for Trading

Derivative financial instruments used for trading purposes primarily relate to commodities associated with the energy sector, such as electricity, natural gas, and crude oil. These instruments are recorded at fair value for balance sheet purposes. The determination of fair value considers various factors, such as closing exchange prices, broker price quotations, and model pricing. Model pricing considers time value and volatility factors underlying any options and contractual commitments. These transactions are accounted for using the mark-to-market method of accounting in which the unrealized gains or losses resulting from the impact of price movements are recognized as net gains or losses in the consolidated statements of income. If the company has a master netting agreement with counterparties, net positions are recognized for consolidated balance sheet and income statement purposes.

The company provides price risk management services by entering into a variety of contractual commitments such as price cap and floor agreements, futures contracts, forward purchase and sale agreements, and option contracts. These contracts generally require future settlement, and are either executed on an exchange or traded as over-the-counter (OTC) instruments. Contractual commitments have widely varying terms and durations that range from a few hours to a number of years depending on the instrument. The majority of the company's transactions are short-term in duration, with a weighted average maturity of approximately 1.3 years and 0.6 years at December 31, 1997 and 1996, respectively.

All contractual commitments used for trading purposes are recorded at fair value. Contracts in a net receivable position, as well as options held, are reported as assets. Similarly, contractual commitments in a net payable position, as well as options written, are reported as liabilities. The net unrealized gain from risk management services amounted to \$8 million at December 31, 1997. Southern Company has made guarantees to certain counterparties regarding performance of contractual commitments by its affiliates related to trading and marketing activities. Contractual commitments reflected in the Consolidated Balance Sheets at December 31 were as follows:

1997	Net Notional Amounts (Kilowatt-Hours)	Fair Value	
		Assets	Liabilities
		(in millions)	
Exchange-issued products:			
Futures contracts	904	\$14	\$15
Other	958	1	1
Total	1,862	15	16
OTC products:			
Forward contracts	2,643	69	62
Swaps	(473)	1	-
Other	639	9	8
Total	2,809	79	70
Total	4,671	\$94	\$86

1996	Net Notional Amounts (Kilowatt-Hours)	Fair Value	
		Assets	Liabilities
		(in millions)	
Exchange-issued products:			
Futures contracts	42	\$ 3	\$ 3
Other	105	-	-
Total	147	3	3
OTC products:			
Forward contracts	56	15	15
Swaps	-	-	-
Other	51	-	-
Total	107	15	15
Total	254	\$18	\$18

**NOTES (continued)****Southern Company and Subsidiary Companies 1997 Annual Report**

Notional amounts -- stated in equivalent millions of kilowatt-hours -- are indicative only of the volume of activity and are not a measure of market risk. Notional amounts of natural gas and crude oil positions are reflected in equivalent kilowatt-hours based on standard conversion rates. The company has established controls to determine and monitor the creditworthiness of counterparties in order to mitigate the company's exposure to counterparty credit risk. A concentration of counterparties may impact the company's overall exposure to credit risk, either positively or negatively, in that the counterparties may be similarly affected by changes in economic, regulatory, or other conditions.

The annual average gross balances of the company's options and contractual commitments used for trading purposes, based on month-end balances were as follows:

<u>1997</u>	<u>Average Fair Value</u>	
	<u>Assets</u>	<u>Liabilities</u>
	(in millions)	
Commodity instruments:		
Electricity	\$97	\$94
Gas	6	6
Other	7	6

<u>1996</u>	<u>Average Fair Value</u>	
	<u>Assets</u>	<u>Liabilities</u>
	(in millions)	
Commodity instruments:		
Electricity	\$19	\$18
Gas	1	1
Other	-	-

**Materials and Supplies**

Generally, materials and supplies include the costs of transmission, distribution, and generating plant materials. Materials are charged to inventory when purchased and then expensed or capitalized to plant, as appropriate, when installed.

**2. RETIREMENT BENEFITS****Pension Plans**

The system companies have defined benefit, trustee, pension plans that cover substantially all regular employees. Benefits are based on one of the following formulas: years of service and final average pay or years of service and a flat-dollar benefit. Primarily, the companies use the "entry age normal method with a frozen initial liability" actuarial method for funding purposes, subject to limitations under federal income tax regulations. Amounts funded to the pension trusts are primarily invested in equity and fixed-income securities. FASB Statement No. 87, Employers' Accounting for Pensions, requires use of the "projected unit credit" actuarial method for financial reporting purposes.

**Postretirement Benefits**

In the United States, Southern Company provides certain medical care and life insurance benefits for retired employees. Substantially all these employees may become eligible for such benefits when they retire. The operating companies fund trusts to the extent deductible under federal income tax regulations or to the extent required by their respective regulatory commissions. Amounts funded are primarily invested in debt and equity securities.

FASB Statement No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions, requires that medical care and life insurance benefits for retired employees be accounted for on an accrual basis using a specified actuarial method, "benefit/years-of-service." In October 1993, the GPSC ordered Georgia Power to phase in the adoption of Statement No. 106 to cost of service over a five-year period, whereby one-fifth of the additional costs was expensed in 1993 and the remaining costs were deferred. An additional one-fifth of the costs was expensed each succeeding year until the costs were fully reflected in cost of service in 1997. The costs deferred during the five-year period will be amortized to expense over a 15-year period beginning in 1998. For the other operating companies, the cost of postretirement benefits is reflected in rates on a current basis.

**NOTES (continued)**

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**Funded Status and Cost of Benefits**

The funded status of the plans and reconciliation to amounts reflected in the Consolidated Balance Sheets at December 31 were as follows:

	Pension	
	1997	1996
	(in millions)	
Actuarial present value of benefit obligation:		
Vested benefits	\$ 2,891	\$ 2,730
Non-vested benefits	83	119
Accumulated benefit obligation	2,974	2,849
Additional amounts related to projected salary increases	728	775
Projected benefit obligation	3,702	3,624
Less:		
Fair value of plan assets	5,953	5,258
Unrecognized net gain	(1,877)	(1,314)
Unrecognized prior service cost	126	135
Unrecognized transition asset	(101)	(114)
Prepaid asset recognized in the Consolidated Balance Sheets	\$ 399	\$ 341

	Postretirement Benefits	
	1997	1996
	(in millions)	
Actuarial present value of benefit obligation:		
Retirees and dependents	\$477	\$409
Employees eligible to retire	85	78
Other employees	373	383
Accumulated benefit obligation	935	870
Less:		
Fair value of plan assets	335	260
Unrecognized net loss (gain)	68	79
Unrecognized prior service cost	(4)	(5)
Unrecognized transition obligation	233	249
Accrued liability recognized in the Consolidated Balance Sheets	\$303	\$287

The weighted average rates assumed in the actuarial calculations were:

	1997	1996	1995
Discount	7.5%	7.8%	7.3%
Annual salary increase	5.0	5.3	4.8
Long-term return on plan assets	8.5	8.5	8.5

An additional assumption used in measuring the accumulated postretirement benefit obligation was a weighted average medical care cost trend rate of 8.8 percent for 1997, decreasing gradually to 5.5 percent through the year 2005, and remaining at that level thereafter. An annual increase in the assumed medical care cost trend rate of 1 percent would increase the accumulated benefit obligation at December 31, 1997, by \$80 million and the aggregate of the service and interest cost components of the net retiree cost by \$7 million.

Components of the plans' net costs are shown below:

	Pension		
	1997	1996	1995
	(in millions)		
Benefits earned during the year	\$ 94	\$ 99	\$ 79
Interest cost on projected benefit obligation	271	267	193
Actual return on plan assets	(856)	(564)	(730)
Net amortization and deferral	417	152	412
Net pension cost (income)	\$ (74)	\$ (46)	\$ (46)

Of the above net pension income, \$52 million in 1997, \$37 million in 1996, and \$30 million in 1995 were recorded in operating expenses, and the remainder was recorded in construction and other accounts.

	Postretirement Benefits		
	1997	1996	1995
	(in millions)		
Benefits earned during the year	\$ 18	\$ 20	\$ 28
Interest cost on accumulated benefit obligation	67	60	67
Amortization of transition obligation	15	15	27
Actual return on plan assets	(28)	(17)	(23)
Net amortization and deferral	12	6	12
Net postretirement costs	\$ 84	\$ 84	\$111

Of the above net postretirement costs, \$70 million in 1997, \$64 million in 1996, and \$78 million in 1995 were charged to operating expenses, and \$3 million in 1996 and \$11 million in 1995 were deferred. The remainder for each year was charged to construction and other accounts.

**Work Force Reduction Programs**

The system companies have incurred additional costs for work force reduction programs. The costs related to these programs were \$50 million, \$85 million, and \$42 million

## **NOTES (continued)**

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for the years 1997, 1996, and 1995, respectively. In addition, certain costs of these programs were deferred and are being amortized in accordance with regulatory treatment. The unamortized balance of these costs was \$37 million at December 31, 1997.

### **3. LITIGATION AND REGULATORY MATTERS**

#### **Alabama Power Appliance Warranty Litigation**

In 1996, legal actions against Alabama Power were filed in several counties in Alabama charging Alabama Power with fraud and non-compliance with regulatory statutes relating to the offer, sale, and financing of "extended service contracts" in connection with the sale of electric appliances. Some of these suits were filed as class actions, while others were filed on behalf of multiple individual plaintiffs. The plaintiffs seek damages for an unspecified amount. Alabama Power has offered extended service agreements to its customers since January 1984, and approximately 175,000 extended service agreements could be involved in these proceedings. The final outcome of these cases cannot now be determined.

#### **Georgia Power Potentially Responsible Party Status**

In January 1995, Georgia Power and four other unrelated entities were notified by the Environmental Protection Agency (EPA) that they have been designated as potentially responsible parties under the Comprehensive Environmental Response, Compensation, and Liability Act with respect to a site in Brunswick, Georgia. As of December 31, 1997, Georgia Power had recorded approximately \$5 million in expenses associated with the site. This represents Georgia Power's agreed upon share of removal and remedial investigation and feasibility study costs.

The final outcome of this matter cannot now be determined. However, based on the nature and extent of Georgia Power's activities relating to the site, management believes that the company's portion of any remaining remediation costs should not be material to the financial statements.

#### **Georgia Power Investment in Rocky Mountain**

In its 1985 financing order, the GPSC concluded that completion of the Rocky Mountain pumped storage hydroelectric plant in 1991 as then planned was not economically justifiable and reasonable and withheld authorization for Georgia Power to spend funds from approved securities issuances on that plant. In 1988,

Georgia Power and Oglethorpe Power Corporation (OPC) entered into a joint ownership agreement for OPC to assume responsibility for the construction and operation of the plant. The plant went into commercial operation in 1995.

In June 1996, the GPSC initiated a review of this plant. On January 14, 1998, the GPSC ordered that Georgia Power be allowed to include approximately \$108 million of its \$143 million investment in rate base as of December 31, 1998. Georgia Power has appealed the GPSC's order to the Superior Court of Fulton County, Georgia. If the order is upheld, Georgia Power will be required to record a write-off currently estimated to be approximately \$29 million, after taxes.

The final outcome of this matter cannot now be determined. Accordingly, no provision related to the GPSC's disallowance has been recorded.

#### **FERC Reviews Equity Returns**

In May 1991, the FERC ordered that hearings be conducted concerning the reasonableness of the operating companies' wholesale rate schedules and contracts that have a return on common equity of 13.75 percent or greater. The contracts that could be affected by the hearings include substantially all of the transmission, unit power, long-term power, and other similar contracts.

In August 1992, a FERC administrative law judge issued an opinion that changes in rate schedules and contracts were not necessary and that the FERC staff failed to show how any changes were in the public interest. The FERC staff has filed exceptions to the administrative law judge's opinion, and the matter remains pending before the FERC.

In August 1994, the FERC instituted another proceeding based on substantially the same issues as in the 1991 proceeding. In November 1995, a FERC administrative law judge issued an opinion that the FERC staff failed to meet its burden of proof, and therefore, no change in the equity return was necessary. The FERC staff has filed exceptions to the administrative law judge's opinion, and the matter is pending before the FERC.

If the rates of return on common equity recommended by the FERC staff were applied to all of the schedules and contracts involved in both proceedings -- as well as to certain other contracts that reference these proceedings in determining return on common equity -- and if refunds were ordered, the amount of refunds could range up to



## NOTES (continued)

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approximately \$194 million at December 31, 1997. Although management believes that rates are not excessive and that refunds are not justified, the final outcome of this matter cannot now be determined.

### Southern Company Tax Litigation

In August 1997, Southern Company and the Internal Revenue Service (IRS) entered into a settlement agreement related to tax issues for the years 1984 through 1987. The agreement is subject to the review and approval by the Joint Congressional Committee on Taxation. If approved by the Joint Committee, the agreement would resolve all issues in the case for the years before the U.S. Tax Court, resulting in a refund to Southern Company of approximately \$162 million. This amount includes interest of \$76 million. The tax litigation was related to a timing issue as to when taxes should have been paid; therefore, only the interest portion will affect future income. There can be no assurance that such Joint Committee approval will be received.

### Alabama Power Rate Adjustment Procedures

In November 1982, the Alabama Public Service Commission (APSC) adopted rates that provide for periodic adjustments based upon Alabama Power's earned return on end-of-period retail common equity. The rates also provide for adjustments to recognize the placing of new generating facilities in retail service. Both increases and decreases have been placed into effect since the adoption of these rates. The rate adjustment procedures allow a return on common equity range of 13.0 percent to 14.5 percent and limit increases or decreases in rates to 4 percent in any calendar year.

In June 1995, the APSC issued a rate order granting Alabama Power's request for gradual adjustments to move toward parity among customer classes. This order also calls for a moratorium on any periodic retail rate increases (but not decreases) until July 2001.

In December 1995, the APSC issued an order authorizing Alabama Power to reduce balance sheet items -- such as plant and deferred charges -- at any time the company's actual base rate revenues exceed the budgeted revenues. In April 1997, the APSC issued an additional order authorizing Alabama Power to reduce balance sheet asset items. This order authorizes the reduction of such items up to an amount equal to five times the total estimated annual revenue reduction resulting from future rate reductions initiated by Alabama Power.

The ratemaking procedures will remain in effect until the APSC votes to modify or discontinue them.

### Georgia Power Retail Accounting Order

In February 1996, the GPSC approved a three-year accounting order, effective January 1, 1996. Under the accounting order, Georgia Power's earnings are evaluated against a retail return on common equity range of 10 percent to 12.5 percent. Earnings in excess of 12.5 percent will be used to accelerate the amortization of regulatory assets or to accelerate the depreciation of electric plant. At its option, Georgia Power may also accelerate amortization or depreciation of assets while within the range allowed on common equity. Georgia Power is required to absorb cost increases of approximately \$29 million annually during the three-year period, including \$14 million annually of accelerated depreciation of electric plant. Under the accounting order, Georgia Power will not file for a general base rate increase unless its projected retail return on common equity falls below 10 percent. On July 1, 1998, Georgia Power is required to file a general rate case. In response, the GPSC would be expected to either continue the provisions of the accounting order or adopt new ones.

A consumer group appealed the GPSC's decision to the Superior Court of Fulton County, Georgia. In 1996, the superior court ruled that statutory requirements applicable to rate cases were not followed and remanded the matter to the GPSC. In October 1997, the Georgia Court of Appeals upheld the accounting order and reversed the superior court's decision. This matter is now concluded.

## 4. CONSTRUCTION PROGRAM

The system companies are engaged in continuous construction programs, currently estimated to total some \$2.0 billion in 1998, \$2.0 billion in 1999, and \$1.6 billion in 2000. The construction programs are subject to periodic review and revision, and actual construction costs may vary from the above estimates because of numerous factors. These factors include: changes in business conditions; revised load growth estimates; changes in environmental regulations; changes in existing nuclear plants to meet new regulatory requirements; increasing costs of labor, equipment, and materials; and cost of capital. At December 31, 1997, significant purchase commitments were outstanding in connection with the construction program. The operating companies have approximately 1,600 megawatts of combined cycle generation scheduled to be placed in service by 2001. Southern Energy has under construction some 1,400



**NOTES (continued)**

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megawatts of owned capacity. In addition, significant construction will continue related to transmission and distribution facilities and the upgrading of generating plants.

See Management's Discussion and Analysis under "Environmental Matters" for information on the impact of the Clean Air Act Amendments of 1990 and other environmental matters.

## 5. FINANCING, INVESTMENTS, AND COMMITMENTS

### General

The amount and timing of additional equity capital to be raised in 1998 -- as well as in subsequent years -- will be contingent on Southern Company's investment opportunities. Equity capital can be provided from any combination of public offerings, private placements, or the company's stock plans.

The operating companies' construction programs are expected to be financed primarily from internal sources. Short-term debt is often utilized and the amounts available are discussed below. The companies may issue additional long-term debt and preferred securities primarily for debt maturities and for redeeming higher-cost securities if market conditions permit.

### Bank Credit Arrangements

At the beginning of 1998, unused credit arrangements with banks totaled \$4.9 billion, of which \$3.0 billion expires during 1998, \$800 million during 1999 to 2001, and \$1.0 billion during 2002. The following table outlines the credit arrangements by company:

Company	Amount of Credit			
	Total	Unused	Expires 1998	Expires 1999 & beyond
	(in millions)			
Alabama Power	\$ 814	\$ 814	\$ 679	\$ 135
Georgia Power	1,144	1,144	919	225
Gulf Power	103	94	94	-
Mississippi Power	96	76	56	20
Savannah Electric	41	41	21	20
Southern Company	2,000	2,000	1,000	1,000
Southern Energy	1,038	635	193	442
Other	70	66	66	-
Total	\$5,306	\$4,870	\$3,028	\$1,842

Approximately \$2.1 billion of the credit facilities allows for term loans ranging from one to three years. Most of the agreements include stated borrowing rates but also allow for competitive bid loans.

All of the credit arrangements require payment of commitment fees based on the unused portion of the commitments or the maintenance of compensating balances with the banks. These balances are not legally restricted from withdrawal. Of Southern Company's credit facilities, \$1.7 billion is a syndicated credit arrangement which also requires the payment of agent fees.

A portion of the \$4.9 billion unused credit with banks is allocated to provide liquidity support to the companies' variable rate pollution control bonds. At December 31, 1997, the amount of the credit lines allocated for this purpose was \$1.2 billion.

In addition, the companies from time to time borrow under uncommitted lines of credit with banks and, in the case of Southern Company, Alabama Power, Georgia Power, and Southern Energy, through commercial paper programs that have the liquidity support of committed bank credit arrangements.

### Assets Subject to Lien

Each of Southern Company's subsidiaries is organized as a legal entity, separate, and apart from Southern Company and its other subsidiaries. The subsidiary companies' mortgages, which secure the first mortgage bonds issued by the companies, constitute a direct first lien on substantially all of the companies' respective fixed property and franchises. There are no agreements or other arrangements among the subsidiary companies under which the assets of one company have been pledged or otherwise made available to satisfy obligations of Southern Company or any of its subsidiaries.

### Fuel and Purchased Power Commitments

To supply a portion of the fuel requirements of the generating plants, Southern Company has entered into various long-term commitments for the procurement of fossil and nuclear fuel. In most cases, these contracts contain provisions for price escalations, minimum purchase levels, and other financial commitments.

# NOTES (continued)

Southern Company and Subsidiary Companies 1997 Annual Report

Also, Southern Company has entered into various long-term commitments for the purchase of electricity. Total estimated long-term obligations at December 31, 1997, were as follows:

Year	Fuel (in millions)	Purchased Power
1998	\$ 2,081	\$ 338
1999	1,596	164
2000	1,235	175
2001	1,122	178
2002	1,005	182
2003 and thereafter	4,580	1,720
Total commitments	\$11,619	\$2,757

## Operating Leases

Southern Company has operating lease agreements with various terms and expiration dates. These expenses totaled \$33 million, \$23 million, and \$17 million for 1997, 1996, and 1995, respectively. At December 31, 1997, estimated minimum rental commitments for noncancelable operating leases were as follows:

Year	Amounts (in millions)
1998	\$ 39
1999	37
2000	32
2001	28
2002	28
2003 and thereafter	291
Total minimum payments	\$455

## 6. FACILITY SALES AND JOINT OWNERSHIP AGREEMENTS

In 1992, Alabama Power sold an undivided interest in units 1 and 2 of Plant Miller and related facilities to Alabama Electric Cooperative, Inc.

Since 1975, Georgia Power has sold undivided interests in plants Vogtle, Hatch, Scherer, and Wansley in varying amounts, together with transmission facilities, to OPC, the Municipal Electric Authority of Georgia, and the city of Dalton, Georgia. In addition, Georgia Power has joint ownership agreements with OPC for the Rocky Mountain project and with Florida Power Corporation (FPC) for a combustion turbine unit at Intercession City, Florida.

At December 31, 1997, Alabama Power's and Georgia Power's ownership and investment (exclusive of nuclear fuel) in jointly owned facilities with the above entities were as follows:

	Jointly Owned Facilities		
	Percent Ownership	Amount of Investment	Accumulated Depreciation
		(in millions)	
Plant Vogtle (nuclear)	45.7%	\$3,299	\$1,100
Plant Hatch (nuclear)	50.1	840	477
Plant Miller (coal)			
Units 1 and 2	91.8	717	311
Plant Scherer (coal)			
Units 1 and 2	8.4	112	44
Plant Wansley (coal)	53.5	298	136
Rocky Mountain (pumped storage)	25.4	202	44
Intercession City (combustion turbine)	33.3	13	*

\*Less than \$1 million.

Alabama Power and Georgia Power have contracted to operate and maintain the jointly owned facilities -- except for the Rocky Mountain project and Intercession City -- as agents for their respective co-owners. The companies' proportionate share of their plant operating expenses is included in the corresponding operating expenses in the Consolidated Statements of Income.

## 7. LONG-TERM POWER SALES AGREEMENTS

The operating companies have long-term contractual agreements for the sale of capacity and energy to certain non-affiliated utilities located outside the system's service area. These agreements -- expiring at various dates discussed below -- are firm and pertain to capacity related to specific generating units. Because the energy is generally sold at cost under these agreements, profitability is primarily affected by revenues from capacity sales. The capacity revenues amounted to \$203 million in 1997, \$217 million in 1996, and \$237 million in 1995.

Unit power from specific generating plants is currently being sold to Florida Power & Light Company (FPL), FPC, Jacksonville Electric Authority (JEA), and the city of Tallahassee, Florida. Under these agreements, approximately 1,600 megawatts of capacity is scheduled to be sold annually through 1999. Thereafter, these sales

# NOTES (continued)

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will decline to some 1,500 megawatts and remain at that approximate level -- unless reduced by FP&L, FPC, and JEA for the periods after 1999 with a minimum of three years notice -- until the expiration of the contracts in 2010.

## 8. INCOME TAXES

At December 31, 1997, the tax-related regulatory assets and liabilities were \$1.1 billion and \$746 million, respectively. These assets are attributable to tax benefits flowed through to customers in prior years and to taxes applicable to capitalized AFUDC. These liabilities are attributable to deferred taxes previously recognized at rates higher than current enacted tax law and to unamortized investment tax credits.

Details of income tax provisions are as follows:

	1997	1996	1995
	(in millions)		
Total provision for income taxes:			
Federal --			
Currently payable	\$ 547	\$569	\$ 567
Deferred -- current year	188	116	185
-- reversal of prior years	(160)	(74)	(111)
	575	611	641
State --			
Currently payable	104	82	90
Deferred -- current year	15	23	26
-- reversal of prior years	(19)	(9)	(12)
	100	96	104
International -			
Windfall profits tax assessed in United Kingdom	148	-	-
Other	16	50	24
Total	839	757	769
Less income taxes charged (credited) to other income	114	10	(36)
Total income taxes charged to operations	\$ 725	\$747	\$ 805

The first half of the windfall profits tax assessed in the United Kingdom was paid in December 1997, and the remainder is due December 1998.

The tax effects of temporary differences between the carrying amounts of assets and liabilities in the financial statements and their respective tax bases, which give rise to deferred tax assets and liabilities, are as follows:

	1997	1996
	(in millions)	
Deferred tax liabilities:		
Accelerated depreciation	\$3,345	\$2,981
Property basis differences	1,756	2,154
Other	269	362
Total	5,370	5,497
Deferred tax assets:		
Federal effect of state deferred taxes	108	110
Other property basis differences	245	253
Deferred costs	116	139
Pension and other benefits	72	68
Other	197	214
Total	738	784
Net deferred tax liabilities	4,632	4,713
Portion included in current assets, net	18	25
Accumulated deferred income taxes in the Consolidated Balance Sheets	\$4,650	\$4,738

Deferred investment tax credits are amortized over the life of the related property with such amortization normally applied as a credit to reduce depreciation in the Consolidated Statements of Income. Credits amortized in this manner amounted to \$30 million in 1997, \$33 million in 1996, and \$38 million in 1995. At December 31, 1997, all investment tax credits available to reduce federal income taxes payable had been utilized.

A reconciliation of the federal statutory income tax rate to the effective income tax rate is as follows:

	1997	1996	1995
Federal statutory rate	35.0%	35.0%	35.0%
State income tax, net of federal deduction	3.4	3.2	3.4
Non-deductible book depreciation	2.3	1.8	1.6
Windfall profits tax	8.0	-	-
Difference in prior years' deferred and current tax rate	(1.5)	(1.0)	(1.1)
Other	(1.9)	(0.5)	0.3
Effective income tax rate	45.3%	38.5%	39.2%

Southern Company files a consolidated federal income tax return. Under a joint consolidated income tax agreement, each subsidiary's current and deferred tax expense is computed on a stand-alone basis. Tax benefits

## NOTES (continued)

Southern Company and Subsidiary Companies 1997 Annual Report

from losses of the parent company are allocated to each subsidiary based on the ratio of taxable income to total consolidated taxable income.

## 9. COMMON STOCK

### Shares Reserved

At December 31, 1997, a total of 49 million shares was reserved for issuance pursuant to the Southern Investment Plan, the Employee Savings Plan, the Outside Directors Stock Plan, and the Performance Stock Plan.

### Performance Stock Plan

Southern Company's Executive Stock Option Plan was replaced by the Performance Stock Plan effective February 17, 1997. As of December 31, 1997, 283 current and former employees participated in the plan. The maximum number of shares of common stock that may be issued under the new plan may not exceed 40 million. The prices of options granted to date have been at the fair market value of the shares on the dates of grant. The first grant under the new plan was in July 1997. Options granted to date become exercisable pro rata over a maximum period of four years from the date of grant. Options outstanding will expire no later than 10 years after the date of grant, unless terminated earlier by the Southern Company Board of Directors in accordance with the plan. Stock option activity in 1996 and 1997 for both plans are summarized below:

	Shares Subject To Option	Average Option Price Per Share
Balance at December 31, 1995	2,476,299	\$19.87
Options granted	1,460,731	23.00
Options canceled	(13,878)	22.35
Options exercised	(97,988)	17.94
Balance at December 31, 1996	3,825,164	21.11
Options granted	1,776,094	21.25
Options canceled	(51,913)	21.83
Options exercised	(137,426)	19.72
Balance at December 31, 1997	5,411,919	\$21.18
Shares reserved for future grants:		
At December 31, 1995	2,114,915	
At December 31, 1996	668,062	
At December 31, 1997	38,234,044	
Options exercisable:		
At December 31, 1996	1,279,830	
At December 31, 1997	1,996,724	

Southern Company accounts for its stock-based compensation plans in accordance with Accounting Principles Board Opinion No. 25. Accordingly, no compensation expense has been recognized.

The pro forma impact on earnings of fair-value accounting for options granted -- as required by FASB Statement No. 123, Accounting for Stock-Based Compensation -- is less than 1 cent per share and is not significant to the consolidated financial statements.

### Earnings Per Share

In 1997, Southern Company adopted FASB Statement No. 128, Earnings per Share. This statement simplifies the methodology for computing both basic and diluted earnings per share. The only difference in the two methods for computing Southern Company's per share amounts is attributable to outstanding options, under the Performance Stock Plan. The effect of the stock options was determined using the treasury stock method. Consolidated net income as reported was not affected. Shares used to compute diluted earnings per share are as follows:

	Average Common Stock Shares		
	1997	1996	1995
	(in thousands)		
As reported shares	685,033	672,590	665,064
Effect of options	191	200	170
Diluted shares	685,224	672,790	665,234

### Common Stock Dividend Restrictions

The income of Southern Company is derived primarily from equity in earnings of its subsidiaries. At December 31, 1997, consolidated retained earnings included \$3.8 billion of undistributed retained earnings of the subsidiaries. Of this amount, \$2.0 billion was restricted against the payment by the subsidiary companies of cash dividends on common stock under terms of bond indentures.

## 10. CAPITAL AND PREFERRED SECURITIES

Company or subsidiary obligated mandatorily redeemable capital and preferred securities have been issued by special purpose financing entities of Southern Company and its subsidiaries. Substantially all the assets of these special financing entities are junior subordinated notes issued by the related company seeking financing. Each of these companies considers that the mechanisms and obligations relating to the capital or preferred securities

**NOTES (continued)**

Southern Company and Subsidiary Companies 1997 Annual Report

issued for its benefit, taken together, constitute a full and unconditional guarantee by it of the respective special financing entities' payment obligations with respect to the capital or preferred securities. At December 31, 1997, preferred securities of \$1.1 billion and capital securities of \$600 million were outstanding. Southern Company guarantees the notes related to \$600 million of capital securities issued on its behalf.

**11. OTHER LONG-TERM DEBT**

Details of other long-term debt at December 31 are as follows:

	1997	1996
	(in millions)	(in millions)
Obligations incurred in connection with the sale by public authorities of pollution control revenue bonds:		
Collateralized --		
4.375% to 9.375% due 2000-2026	\$1,154	\$1,403
Variable rates (3.85% to 5.20% at 1/1/98) due 2011-2025	639	639
Non-collateralized --		
7.25% due 2003	1	1
6.75% to 8.375% due 2015-2020	109	200
5.8% due 2022	10	10
Variable rates (4.50% to 5.90% at 1/1/98) due 2021-2037	670	265
	<u>2,583</u>	<u>2,518</u>
Capitalized lease obligations	142	151
Long-term notes payable:		
4% to 11% due 1997-2000	295	301
5.502% to 10.56% due 2001-2037	1,741	793
7.125% due 2047	194	-
Adjustable rates (5.70% to 13% at 1/1/98) due 1997-2000	703	240
Adjustable rates (3.77% to 8.0781% at 1/1/98) due 2001-2007	1,533	81
	<u>4,466</u>	<u>1,415</u>
<b>Total</b>	<b>\$7,191</b>	<b>\$4,084</b>

With respect to the collateralized pollution control revenue bonds, the operating companies have authenticated and delivered to trustees a like principal amount of first mortgage bonds as security for obligations under installment sale or loan agreements. The principal and interest on the first mortgage bonds will be payable only in the event of default under the agreements.

Sinking fund requirements and/or serial maturities through 2002 applicable to other long-term debt are as follows: \$400 million in 1998; \$610 million in 1999; \$364 million in 2000; \$323 million in 2001; and \$939 million in 2002.

**12. LONG-TERM DEBT DUE WITHIN ONE YEAR**

A summary of the improvement fund requirements and scheduled maturities and redemptions of long-term debt due within one year at December 31 is as follows:

	1997	1996
	(in millions)	(in millions)
Bond improvement fund requirements	\$ 38	\$ 40
Less:		
Portion to be satisfied by certifying property additions	3	4
Cash sinking fund requirements	35	36
First mortgage bond maturities and redemptions	349	76
Other long-term debt maturities (Note 11)	400	79
<b>Total</b>	<b>\$784</b>	<b>\$191</b>

The first mortgage bond improvement (sinking) fund requirements amount to 1 percent of each outstanding series of bonds authenticated under the indentures prior to January 1 of each year, other than those issued to collateralize pollution control and other obligations. The requirements may be satisfied by depositing cash or reacquiring bonds, or by pledging additional property equal to 166 2/3 percent of such requirements.

**13. NUCLEAR INSURANCE**

Under the Price-Anderson Amendments Act of 1988, Alabama Power and Georgia Power maintain agreements of indemnity with the NRC that, together with private insurance, cover third-party liability arising from any nuclear incident occurring at the companies' nuclear power plants. The act provides funds up to \$8.9 billion for public liability claims that could arise from a single nuclear incident. Each nuclear plant is insured against this liability to a maximum of \$200 million by private insurance, with the remaining coverage provided by a mandatory program of deferred premiums that could be assessed, after a nuclear incident, against all owners of nuclear reactors. A company could be assessed up to \$79 million per incident for each licensed reactor it operates, but not more than an aggregate of

## NOTES (continued)

Southern Company and Subsidiary Companies 1997 Annual Report

\$10 million per incident to be paid in a calendar year for each reactor. Such maximum assessment, excluding any applicable state premium taxes, for Alabama Power and Georgia Power -- based on its ownership and buyback interests -- is \$159 million and \$160 million, respectively, per incident, but not more than an aggregate of \$20 million per company to be paid for each incident in any one year.

Alabama Power and Georgia Power are members of Nuclear Electric Insurance Limited (NEIL), a mutual insurer established to provide property damage insurance in an amount up to \$500 million for members' nuclear generating facilities. The members are subject to a retrospective premium assessment in the event that losses exceed accumulated reserve funds. Alabama Power's and Georgia Power's maximum annual assessments are limited to \$8 million and \$10 million, respectively, under current primary policies.

Additionally, both companies have policies that currently provide decontamination, excess property insurance, and premature decommissioning coverage up to \$2.25 billion for losses in excess of the \$500 million primary coverage. This excess insurance is also provided by NEIL.

NEIL also covers the additional costs that would be incurred in obtaining replacement power during a prolonged accidental outage at a member's nuclear plant. Members can be insured against increased costs of replacement power in an amount up to \$3.5 million per week -- starting 17 weeks after the outage -- for one year and up to \$2.8 million per week for the second and third years.

Under each of the NEIL policies, members are subject to assessments if losses each year exceed the accumulated funds available to the insurer under that policy. The maximum annual assessments under current policies for Alabama Power and Georgia Power for excess property damage would be \$10 million and \$11 million, respectively. The maximum replacement power assessments are \$8 million for Alabama Power and \$11 million for Georgia Power.

For all on-site property damage insurance policies for commercial nuclear power plants, the NRC requires that the proceeds of such policies issued or renewed on or after April 2, 1991, shall be dedicated first for the sole purpose of placing the reactor in a safe and stable condition after an accident. Any remaining proceeds are to be applied next toward the costs of decontamination

and debris removal operations ordered by the NRC, and any further remaining proceeds are to be paid either to the company or to its bond trustees as may be appropriate under the policies and applicable trust indentures.

All retrospective assessments -- whether generated for liability, property, or replacement power -- may be subject to applicable state premium taxes.

## 14. ACQUISITIONS

In 1997, Southern Energy acquired a 26 percent interest in an integrated utility in Berlin, Germany for approximately \$820 million. Southern Energy also completed in 1997 the acquisition of a 100 percent interest in Consolidated Electric Power Asia (CEPA) for a total net investment of some \$2.1 billion. CEPA is the largest independent power producer in Asia. The acquisition has been accounted for under the purchase method of accounting. The acquisition cost exceeded the fair market value of net assets by approximately \$1.6 billion. This amount is considered goodwill and is being amortized on a straight-line basis over 40 years.

CEPA has been included in the consolidated financial statements since January 29, 1997. The following unaudited pro forma results of operations for the years 1997 and 1996 have been prepared assuming the acquisition of CEPA, effective January 1, 1996. The pro forma results assume acquisition financing of \$716 million of short-term borrowings, \$792 million of long-term notes, and \$600 million of capital securities. Southern Company's assumed effective composite interest rate on these obligations for each period was 6.82 percent.

In 1995, Southern Energy acquired SWEB for approximately \$1.8 billion. The British utility distributes electricity to some 1.3 million customers. The acquisition has been accounted for under the purchase method of accounting. Goodwill of \$287 million is being amortized over 40 years. SWEB has been included in the consolidated financial statements since September 1995. The following pro forma results of operations for the year 1995 has been prepared assuming the acquisition of SWEB, effective January 1, 1994, and assuming 100 percent short-term debt financing.

These unaudited pro forma results are not necessarily indicative of the actual results that would have been realized had the acquisitions occurred on the assumed dates, nor are they necessarily indicative of future results. Pro forma operating results are for information purposes only and are as follows:

**NOTES (continued)**

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	1997		1996		1995	
	As Reported	Pro Forma	As Reported	Pro Forma	As Reported	Pro Forma
Operating revenues (in millions)	\$12,611	\$12,632	\$10,358	\$10,506	\$9,180	\$10,013
Consolidated net income (in millions)	\$972	\$977	\$1,127	\$1,109	\$1,103	\$1,144
Earnings per share	\$1.42	\$1.43	\$1.68	\$1.65	\$1.66	\$1.72

**15. SEGMENT AND RELATED INFORMATION**

Effective December 31, 1997, Southern Company adopted FASB Statement No. 131, Disclosure About Segments of an Enterprise and Related Information. Southern Company's principal business segment -- or its traditional core business -- is the five regulated electric utility operating companies that provide electric service in four southeastern states. The other reportable business segment is non-traditional energy services provided by Southern Energy, which develops and manages electricity and other energy-related projects both in the United States and abroad including domestic energy trading and marketing. Intersegment revenues are not material. Financial data for business segments, products and services, and geographic areas are as follows:

**Business Segments**

Year	Regulated Domestic Electric Utilities	Non-Traditional Services			All Other (Note)	Reconciling Eliminations	Consolidated
		International	Domestic	Total			
<b>1997</b>				(in millions)			
Operating revenues	\$ 8,688	\$1,748	\$2,089	\$ 3,837	\$ 98	\$ (12)	\$12,611
Depreciation and amortization	1,038	179	15	194	14	-	1,246
Interest income	51	96	42	138	21	(58)	152
Net interest charges	588	289	73	362	84	(41)	993
Income taxes from operations	735	24	(11)	13	(17)	(6)	725
Windfall profits tax	-	148	-	148	-	-	148
Net income from equity method subsidiaries	-	41	7	48	-	-	48
Segment net income (loss)	1,105	(4)	5	1	(123)	(11)	972
Total assets	24,555	9,225	1,832	11,057	1,224	(1,565)	35,271
Investments in equity method subsidiaries	-	1,023	135	1,158	-	10	1,168
Gross property additions	1,080	720	1	721	58	-	1,859
Increase in goodwill	-	1,649	-	1,649	-	-	1,649
<b>1996</b>							
Operating revenues	\$ 8,639	\$1,506	\$177	\$1,683	\$ 50	\$ (14)	\$10,358
Depreciation and amortization	879	95	13	108	9	-	996
Interest income	36	15	2	17	20	(19)	54
Net interest charges	546	126	31	157	18	(2)	719
Income taxes from operations	755	16	(4)	12	(14)	(6)	747
Net income from equity method subsidiaries	-	11	-	11	-	-	11
Segment net income (loss)	1,086	88	4	92	(40)	(11)	1,127
Total assets	24,899	4,320	604	4,924	450	(43)	30,230
Investments in equity method subsidiaries	-	227	-	227	-	-	227
Gross property additions	1,033	157	8	165	31	-	1,229
Increase in goodwill	-	-	-	-	-	-	-



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**BOWLINE POINT GENERATING STATION SALES AGREEMENT**

**AMONG**

**ORANGE AND ROCKLAND UTILITIES, INC.,**

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

**AND**

**SOUTHERN ENERGY BOWLINE, L.L.C.**

**November 24, 1998**

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## BOWLINE POINT GENERATING STATION SALES AGREEMENT

BOWLINE POINT GENERATING STATION SALES AGREEMENT, dated as of November 24, 1998, among Orange and Rockland Utilities, Inc., a New York corporation ("O&R"), Consolidated Edison Company of New York, Inc., a New York corporation ("Con Edison") (each of O&R and Con Edison individually may be referred to as a "Seller" and collectively as the "Sellers" herein) and Southern Energy Bowline, L.L.C., a Delaware limited liability company ("Buyer").

WHEREAS, the Sellers own the Purchased Assets (as defined herein), and O&R operates under the terms of the Operating Agreement, dated October 10, 1969, a certain electric power generation station known as Bowline Point Generating Station that is part of the Purchased Assets; and

WHEREAS, the Buyer desires to purchase and assume from the Sellers, and the Sellers desire to sell to Buyer, the Purchased Assets upon the terms and conditions hereinafter set forth in this Agreement.

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

## ARTICLE I

### DEFINITIONS

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

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

(2) "Agreement" means this Bowline Point Generating Station Sales Agreement together with the Schedules and Exhibits hereto.

(3) "Ancillary Agreements" means (i) the Operating Easement, (ii) the Seller's Easements, (iii) the Continuing Site/Interconnection Agreement, and (iv) the Transition Agreement, (v) the Transition Capacity Sales Agreement, dated as of the date of this Agreement, between Con Edison and Buyer relating to the purchase from Buyer of installed electric capacity at Bowline.

(4) "Bill of Sale" means the Bill of Sale to be delivered at the Closing with respect to the Purchased Assets which constitute personal property and which are to be transferred at the Closing, substantially in the form of Exhibit A hereto.

(5) "Bowline" means the Bowline Point Generating Station located in the Village of West Haverstraw, Rockland County, New York.

(6) "Business Day" shall mean any day other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

(7) "Buyer Representatives" means the Buyer's accountants, counsel, environmental consultants, financial advisors and other authorized representatives.

(8) "CERCLA" means the Federal Comprehensive Environmental Response, Compensation and Liability Act.

(9) "Code" means the Internal Revenue Code of 1986, as amended.

(10) "Confidentiality Agreement" means the Confidentiality Agreement, dated June 19, 1998, between O&R and Southern Energy, Inc.

(11) "Continuing Site/Interconnection Agreement" means the Continuing Site/Interconnection Agreement, dated as of the date of this Agreement, between O&R and the Buyer.

(12) "Emission Allowances" means the sulfur dioxide allowances already allocated by the United States Environmental Protection Agency to Bowline and the nitrogen oxide allowances to be allocated by the New York State Department of Environmental Conservation to Bowline, each as set forth in Schedule 1.1(a)(12).



(13) "Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

(14) "Environmental Laws" means all Federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, laws relating to Releases or threatened Releases of Hazardous Substances (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport or handling of Hazardous Substances.

(15) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(16) "Estimated Inventory Adjustment Amount" means the value of oil inventory and propane inventory used at or in connection with the Purchased Assets as of the date ten (10) days before the Closing Date, as determined by using the average price for residual 0.3% sulphur high pour New York cargo spot index for no. 6 oil - New York Harbor published in Bloomberg Energy during the consecutive ten (10) day period preceding the date which is ten (10) days before the Closing Date, and the average price for propane published in the Journal of Commerce for

Propane-Mt. Belvieu during such consecutive ten (10) day period plus five cents (\$0.05) per gallon, which valuations shall be provided to the Buyer by the Sellers no later than five (5) days before the Closing Date.

(17) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(18) "Federal Power Act" means the Federal Power Act of 1935.

(19) "FERC" means the Federal Energy Regulatory Commission or any successor thereto.

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

(21) "Hazardous Substances" means (a) any petrochemical or petroleum products, oil, radioactive materials, radon gas, asbestos in any form that is

or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "contaminants" or "pollutants" or words of similar meaning and regulatory effect; or (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(22) "Holding Company Act" means the Public Utility Holding Company Act of 1935, as amended.

(23) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(24) "Income Tax" means any tax, charge, fee, levy, penalty, or other assessment imposed by any U.S. federal, state, local or foreign taxing authority (a) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains taxes and alternative minimum taxes but excluding sales, transfer and similar taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on which such tax may be based, mea-

sured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties, or additions attributable thereto.

(25) "Income Tax Return" means any return, report, information return or other document (including any related or supporting information) supplied or required to be supplied to any authority with respect to Income Taxes.

(26) "Independent Accounting Firm" means Arthur Andersen LLP or such other independent accounting firm of national reputation mutually appointed by the Sellers and the Buyer.

(27) "Instrument of Assumption" means the Instrument of Assumption in the form of Exhibit B hereto.

(28) "Intellectual Property" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, copyrights and copyright rights, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights other than the names, trademarks, service marks or logos listed in Section 2.2(b) and (c) hereof.

(29) "Internal Revenue Service" means the United States Internal Revenue Service, or any successor thereto.

(30) "ISO" means the New York Independent System Operator, or its successor.

(31) "Material Adverse Effect" means any change in or effect on the Purchased Assets after the date of this Agreement that is, individually or in the aggregate, materially adverse to the condition (financial or physical) of (as compared to the condition on the date of this Agreement), or the ability to own or operate (as compared to the ownership and operation thereof prior to the date of this Agreement), any material part of the Purchased Assets, other than (i) any change or effect resulting from changes in the international, national, regional or local wholesale or retail markets for electric power, (ii) any change or effect resulting from changes in the international, national, regional or local markets for any fuel used at the Purchased Assets, (iii) any change or effect resulting from changes in the North American, national, regional or local electric transmission systems, (iv) any change or effect resulting from any regulation, rule or order adopted or proposed by or with respect to the ISO and its responsibility for, authority over and operation of the wholesale and retail electric energy, capacity and ancillary services electric power markets and (v) any materially adverse change in or effect on the Purchased Assets which is cured (including by the payment of money) by the Sellers before the Termination Date.

(32) "NJBPU" means the New Jersey Board of Public Utilities, or any successor thereto.

(33) "NYPSC" means the New York Public Service Commission, or any successor thereto.

(34) "Operating Easement" means the operating easement providing the right to continue operating and maintaining certain distribution facilities at the substations, which will be prepared as described in the Continuing Site/Interconnection Agreement.

(35) "Other Sales Agreements" means the Lovett Generating Station Sales Agreement between O&R and Southern Energy Lovett, L.L.C.; the Gas Turbines and Hydroelectric Generating Station Sales Agreement between O&R and Southern Energy NY-Gen, L.L.C.; and the Bowline Adjacent Property Sales Agreement, between O&R and the Buyer, each dated as of the date of this Agreement.

(36) "PAPUC" means the Pennsylvania Public Utility Commission, or any successor thereto.

(37) "Permitted Encumbrances" means (i) those exceptions to title to the Purchased Assets contained in the documents listed on Schedules 5.8, 5.9(a), 5.9(b) and 5.15; (ii) any state of facts that a current survey of the Purchased Assets would disclose; (iii) mortgages, liens, pledges, charges, encumbrances and restrictions which are not in excess of \$100,000 incurred in connection with the Sellers' purchase of properties and assets to be conveyed to Buyer as part of the Purchased Assets after the date of this Agreement securing all or a portion of the purchase price

therefor incurred in the ordinary course of business; (iv) the Operating Easement; (v) statutory liens for current Taxes, assessments or other governmental charges not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles, provided that the aggregate amount being so contested does not exceed \$500,000; (vi) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to the Sellers' obligations which are not yet due and payable or the validity of which are being contested in good faith by appropriate proceedings, provided that the aggregate amount of such liens does not exceed \$500,000; (vii) zoning, entitlement, conservation restrictions and other land use and environmental regulations by governmental authorities, provided that the foregoing do not materially interfere with the present use of the Purchased Assets; and (viii) such other liens, imperfections in or failure of title, charges, easements, restrictions and encumbrances which do not materially detract from the value of or materially interfere with the present use of the Purchased Assets and neither secure indebtedness, nor individually or in the aggregate have or would have a Material Adverse Effect or which will be discharged or released prior to or simultaneously with the Closing.

(38) "Person" means an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an

unincorporated organization or a governmental entity or any department or agency thereof.

(39) "Purchased Assets" means the real and personal property, tangible or intangible, constituting or used principally for generation purposes at, or otherwise for the operation of, Bowline, including, but not limited to, the following assets:

(a) the two 600 MW natural gas- or oil-fired steam electric generating units listed in Schedule 1.1(a)(39);

(b) all of Sellers' right, title and interest in, to and under the Real Property (including all structures, buildings, facilities and other improvements thereon and all appurtenances thereto) as further described on Schedule 5.8;

(c) all other machinery, equipment, furniture and other personal property owned by the Sellers located at Bowline on the Closing Date, including, without limitation, the items of personal property listed or referred to in Schedule 1.1(a)(39);

(d) the underground portion of 345 kV transmission feeders that connect the electric generating units at Bowline to O&R's West Haverstraw 345 kV substation and approximately 7,400 feet of 16 inch gas main between Bowline and Garnerville, New York gas meter and regulator station subject



to the terms of applicable easements which would not have a materially adverse effect thereon;

(e) the Garnerville, New York gas meter and regulator station;

(f) all inventories of fuels, supplies, spare parts and materials located at Bowline on the Closing Date;

(g) all contracts, agreements and personal property leases principally relating to Bowline, as further listed on Schedules 5.17(a), (b), and (c) and 7.10(a), respectively;

(h) the Environmental Permits and Permits listed on Schedules 5.12(a)(ii) and 5.19(a), respectively;

(i) the Emission Allowances;

(j) all books, operating records, reports, engineering or design plans, specifications, drawings, procedures, software or tools used to process and report environmental data, safety and maintenance manuals and similar items of the Sellers relating specifically to the aforementioned assets;

(k) all of Sellers' right, title and interest in, to and under the Leases;

(l) copies of all filings made with regulatory agencies, as updated, relating to O&R's Year 2000 programs as such filings apply to the Purchased Assets;

(m) the existing cross-plant water outage credits points generated by Bowline under the Settlement Agreement or the Consent Order, if any exist on the Closing Date;

(n) all unexpired, transferable warranties and guarantees from third parties with respect to any of the Purchased Assets, as of the Closing Date;

(o) the Intellectual Property, if any, relating to the Purchased Assets (including Sellers' goodwill therein and the rights of Sellers in and to the name of Bowline) and all rights, privileges, claims, causes of action, indemnification rights and options pertaining solely to the Purchased Assets or the Assumed Liabilities, including, without limitation, those items listed on Schedule 1.1(a)(39)(o);

(p) the assets acquired by Sellers pursuant to Section 7.4; and

(q) \$4.0 million in cash.

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

(41) "Scheduled Capital Expenditures" means those capital expenditures listed on Schedule 1.1(a)(41).

(42) "Scheduled Maintenance Expenditures" means those maintenance expenditures listed on Schedule 1.1(a)(42).

(43) "SEC" means the Securities and Exchange Commission, or any successor thereto.

(44) "Securities Act" means the Securities Act of 1933, as amended.

(45) "Sellers Agreements" means those agreements listed on Schedule 5.17(a) and the Collective Bargaining Agreements.

(46) "Separation Document" means the document, to be negotiated in good faith by the Buyer and O&R within three (3) months from the date of this Agreement, which will delineate the Purchased Assets from O&R's other assets, and which will be consistent with the separation document summary attached hereto as Exhibit C.

(47) "Settlement Agreement" means that certain Settlement Agreement entered into on December 19, 1980, by the following entities to settle their disputes relating to the National Pollutant Discharge Elimination System permits issued to certain utilities in 1975: the Sellers; Central Hudson Gas & Electric Corporation; Niagara Mohawk Power Corporation; the Power Authority of the State of New York (currently the New York Power Authority); the New York State Department of Environmental Conservation; the Attorney General of the State of New York; the United States Environmental Protection Agency; Hudson River Fisherman's Association, Inc. (currently d/b/a the Hudson Riverkeeper Fund, Inc.);

Scenic Hudson Preservation Conference (currently Scenic Hudson, Inc.); and the National Resources Defense Council, as amended.

(48) "Subsidiary" when used in reference to any other person means any corporation of which outstanding securities having ordinary voting power to elect a majority of the Board of Directors of such corporation are owned directly or indirectly by such other person.

(49) "Tax" means any tax, charge, fee, levy, penalty or other assessment imposed by any U.S. federal, state, local or foreign taxing authority, including, but not limited to, any income, gross receipts, license, stamp, occupation, environmental, excise, property, sales, transfer, payroll, unemployment, withholding, social security or any other tax of any kind whatsoever, including any interest, penalties or additions attributable thereto.

(50) "Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or other related or supporting information) supplied or required to be supplied to any authority with respect to Taxes and including any supplement or amendment thereof.

(51) "Transition Agreement" means the Transition Power Sales Agreement between the Buyer, Southern Energy Lovett, L.L.C. and Southern Energy NY-Gen, L.L.C. and O&R, dated as of the date of this Agreement.

(52) "WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988.

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

<u>Term</u>	<u>Section</u>
Adjustment Statement	3.2
Assumed Liabilities	2.3
Benefit Plans	5.14
Buyer	Preamble
Buyer Indemnitee	9.1
Buyer Required Regulatory Approvals	6.3
Buyer's Easements	4.3
CEI	11.6
Closing	4.1
Closing Date	4.1
Collective Bargaining Agreements	7.10
Con Edison	Preamble
Condition Fulfillment Date	8.4
Confidential Information	11.2
Consent Order	7.12
Defect of Title	7.13
Deferred Closing Date	8.4
Designated Representative	7.2
Direct Claim	9.2
Disclosing Party	11.2
DLJ	7.7
Environmental Insurance	7.18
Environmental Permits	5.12
ERISA Affiliate	2.4
ERISA Affiliate Plans	2.4
Estimated Purchase Price	4.2
Excluded Assets	2.2

<u>Term</u>	<u>Section</u>
Excluded Liabilities	2.4
Final Order	8.1
Hourly Employees	7.10
Indemnifiable Losses	9.1
Indemnification Floor	9.1
Indemnifying Party	9.1
Indemnitee	9.1
Intended Use	7.16
Inventory Adjustment Amount	3.2
ISO Approval	8.4
Leases	5.9
Leased Assets	7.4
Management Employees	7.10
Necessary Capital Expenditures	7.1
Necessary Maintenance Expenditures	7.1
O&R	Preamble
Participation Agreement	7.8
Pension Benefit Plans	5.14
Permits	5.19
Pollution Control Bond	2.4
Pollution Control Facilities	7.8
Property Interests	5.8
Purchase Price	3.1
Real Property	5.8
Recipient	11.2
Seller	Preamble
Seller Indemnitee	9.1
Sellers	Preamble
Sellers Balance Sheet	5.5
Sellers Required Regulatory Approvals	5.3
Seller's Easements	4.4
Termination Date	10.1
Third Party Claim	9.2
Title Commitment	7.13
Title Company	7.13
1986 Tax Act	7.8

## ARTICLE II

### SALE AND PURCHASE

2.1. The Sale. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, the Sellers will sell, assign, convey, transfer and deliver to the Buyer, and the Buyer will purchase and acquire from the Sellers, free and clear of all Encumbrances (except for Permitted Encumbrances) all of the Sellers' right, title and interest in, to and under the real and personal property, tangible or intangible, owned by the Sellers and constituting the Purchased Assets.

2.2. Excluded Assets. Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include the following (herein referred to as the "Excluded Assets"):

(a) all cash, bank deposits, cash equivalents and accounts receivable (other than the cash specified in Section 1.1(a)(39)(q) of this Agreement);

(b) the name "Orange and Rockland Utilities, Inc.", "Orange and Rockland", "O&R", "ORU" or any related or similar trade names, trademarks, service marks or logos;

(c) the name "Con Ed", "Con Edison", "Consolidated Edison", "Consolidated Edison, Inc." "Consolidated Edison Company of New York, Inc.",

"New York Edison," Brooklyn Edison," "States Island Edison," "Edison" or any related or similar names, trademarks, service marks or logos;

(d) distribution, substation and communication facilities and related support equipment described in Schedule 2.2(d);

(e) any refund, credit, penalty payment, adjustment or reconciliation (i) related to personal property or other Taxes (excluding Taxes relating to real property) paid prior to the Closing Date in respect of the Purchased Assets, whether such refund, adjustment or reconciliation is received as a payment or as a credit against future Taxes payable, or (ii) arising under any of the Sellers Agreements and relating to a period before the Closing Date;

(f) except to the extent specifically required by law, all personnel records relating to any employees of the Sellers; and

(g) the rights and assets to be described in the Separation Document as not part of the Purchased Assets.

2.3. Assumed Liabilities. On the Closing Date, the Buyer shall deliver to the Sellers the Instrument of Assumption pursuant to which the Buyer shall assume and agree to discharge to the maximum extent permitted by law, all of the following liabilities and obligations of the Sellers which relate to the Purchased Assets, other than Excluded Liabilities, in accordance with the respective terms and subject to the respective conditions thereof:



(a) all liabilities and obligations of the Sellers arising or accruing after the Closing Date under (i) the Sellers Agreements, the Environmental Permits, the Permits, real property leases, contracts and other agreements disclosed and assigned to the Buyer pursuant to this Agreement in accordance with the terms thereof, and (ii) the leases, contracts and other agreements entered into by the Sellers with respect to the Purchased Assets after the date hereof consistent with the terms of this Agreement; except in each case, to the extent such liabilities and obligations, but for a breach or default by either Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arise out of any such breach or default or any event which after the giving of notice would constitute a default by either Seller;

(b) all liabilities and obligations associated with the Purchased Assets in respect of Taxes for which the Buyer is liable pursuant to Section 7.8;

(c) any liabilities and obligations for which the Buyer has indemnified the Sellers pursuant to Section 9.1;

(d) all liabilities to employees for which the Buyer is liable pursuant to Section 7.10, including the Collective Bargaining Agreements;

(e) any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued,

arising as a result of or in connection with (i) any violation or alleged violation of Environmental Law, prior to the Closing Date, with respect to the ownership or operation of the Purchased Assets; (ii) loss of life, injury to persons or property or damage to natural resources (whether or not such loss, injury or damage arose or was made manifest before the Closing Date or arises or becomes manifest after the Closing Date), caused (or allegedly caused) by the presence or Release of Hazardous Substances at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets prior to the Closing Date, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; and (iii) the investigation and/or remediation (whether or not such investigation or remediation commenced before the Closing Date or commences after the Closing Date) of Hazardous Substances that are present or have been Released prior to the Closing Date at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; provided, as to all of the above, that nothing set forth in this subsection 2.3(e) shall require the Buyer to assume any liabilities that are expressly excluded in Section 2.4;

(f) any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (i) any violation or alleged violation of Environmental Law, on or after the Closing Date, with respect to the ownership or operation of the Purchased Assets; (ii) compliance with applicable Environmental Laws on or after the Closing Date with respect to the ownership or operation of the Purchased Assets; (iii) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by the presence or Release of Hazardous Substances at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets on or after the Closing Date, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; (iv) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by the off-site disposal, storage, transportation, discharge, Release, recycling, or the arrangement for such activities, of Hazardous Substances, on or after the Closing Date, in connection with the ownership or operation of the Purchased Assets; (v) the investigation and/or remediation of Hazardous Substances that are present or have been released on or after the Closing Date at, on, in, under, adjacent to, discharged

from, emitted from or migrating from the Purchased Assets, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells or in other environmental media at or adjacent to the Purchased Assets; and (vi) the investigation and/or remediation of Hazardous Substances that are disposed, stored, transported, discharged, Released, recycled, or the arrangement of such activities, on or after the Closing Date, in connection with the ownership or operation of the Purchased Assets, at any off-site location; provided, that nothing set forth in this subsection shall require the Buyer to assume any liabilities that are expressly excluded in Section 2.4;

(g) all liabilities and obligations of the Sellers with respect to the Purchased Assets under the agreements or consent orders set forth on Schedule 5.12(c);

(h) all liabilities incurred by the Sellers with respect to maintenance and capital expenditures made with respect to the Purchased Assets by the Sellers which are requested by Buyer;

(i) all liabilities or obligations relating to leases for the Purchased Assets; and

(j) all other liabilities or obligations other than those liabilities and obligations noted in (a) through (i) above, exclusively relating to the Purchased

Assets no matter when the events or occurrences giving rise to such liabilities or obligations took place, the value of which liabilities and obligations, together with the liabilities and obligations relating to the "Purchased Asset" and the "Purchased Assets" as defined in each of the Other Sales Agreements, in the aggregate, shall not exceed \$3 million.

All of the foregoing liabilities and obligations to be assumed by the Buyer hereunder (excluding any Excluded Liabilities) are referred to herein as the "Assumed Liabilities." It is understood and agreed that nothing in this Section 2.3 shall constitute a waiver or release of any claims arising out of the contractual relationships between the Sellers and the Buyer.

2.4. Excluded Liabilities. The Buyer shall not assume or be obligated to pay, perform or otherwise discharge the following liabilities (the "Excluded Liabilities"):

- (a) any liabilities or obligations of either Seller in respect of any Excluded Assets or other assets of the Sellers which are not Purchased Assets;
- (b) any liabilities or obligations with respect to Taxes attributable to the Purchased Assets for taxable periods ending on or before the Closing Date, except for Taxes for which the Buyer is liable pursuant to Section 7.8(a);
- (c) any liabilities, obligations, or responsibilities relating to the disposal, storage, transportation, discharge, Release, recycling, or the arrangement

for such activities, of Hazardous Substances that were generated at the Purchased Assets, at any off-site location, where the disposal, storage, transportation, discharge, Release, recycling or the arrangement for such activities at said off-site location occurred prior to the Closing Date, provided that for purposes of this Section, "off-site location" does not include any location to which Hazardous Substances disposed of, discharged from, emitted from or Released at the Purchased Assets have migrated, including, but not limited to, surface waters that have received waste water discharges from the Purchased Assets;

(d) any liabilities, obligations or responsibilities arising after the Closing Date relating to: (i) the transmission lines delineated in the Operating Easements or (ii) O&R's operations on, or usage of, the Operating Easements, including, without limitation, liabilities, obligations or responsibilities arising as a result of or in connection with (1) any violation or alleged violation of Environmental Law and (2) loss of life, injury to persons or property or damage to natural resources, except to the extent caused by the Buyer;

(e) any liabilities, obligations or responsibilities arising prior to or after the Closing Date relating to the easements provided O&R under the Operating Easement, including, without limitation: (i) the transmission lines or other facilities of O&R delineated in the Operating Easements or (ii) O&R's ownership rights, operations on, or usage of, the Operating Easements, including, without limitation,

liabilities, obligations or responsibilities arising as a result of or in connection with (1) any violation or alleged violation of Environmental Law or Release of Hazardous Substances and (2) loss of life, injury to persons or property or damage to natural resources, except in the case of (1) or (2) to the extent caused by the Buyer;

(f) any liabilities or obligations required to be accrued by either Seller in accordance with generally accepted accounting principles and/or the FERC Uniform System of Accounts on or before the Closing Date with respect to liabilities related to the Purchased Assets, other than any liability assumed by Buyer under Section 2.3;

(g) any liabilities or obligations with respect to liabilities relating to the Purchased Assets relating to any personal injury including bodily injury (including, but not limited to workers' compensation claims), discrimination, wrongful discharge, unfair labor practice or similar claim or cause of action with respect to any act or occurrence arising prior to or on the Closing Date, other than liabilities or obligations for injury to persons or loss of life assumed by the Buyer in Sections 2.3(e) and 2.3(f);

(h) any fines or penalties imposed by a governmental agency or authority resulting from (A) an investigation or proceeding with respect to any act or occurrence arising prior to or on the Closing Date or (B) illegal acts, willful misconduct or gross negligence of either Seller prior to or on the Closing Date;

(i) any payment obligations of either Seller for goods delivered or services rendered prior to the Closing;

(j) any liabilities or obligations imposed upon, assumed or retained by O&R pursuant to the Continuing Site/Interconnection Agreement or any other Ancillary Agreement;

(k) any liabilities, obligations or responsibilities relating to any deferred compensation, pension, profit-sharing and retirement plans, including multiemployer plans, and all welfare, severance, stock-based, bonus and other employee benefit or fringe benefit plans, programs and arrangements, whether written or oral, maintained or with respect to which contributions have been in the last five (5) years or are made by O&R and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with O&R under Section 414(b), (c), (m) or (o) of the Code ("ERISA Affiliate") or to which O&R and any ERISA Affiliate contributed thereunder (the "ERISA Affiliate Plans"), including any multiemployer plan, maintained by, contributed to, or obligated to contribute to, at any time, by O&R or any ERISA Affiliate; including, without limitation, any liability (A) to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (B) with respect to non-compliance with the continuation requirements of COBRA; (C) with respect to any non-compliance with ERISA, the Code, or any other applica-



ble laws; (D) with respect to any suit, proceeding or claim which is brought against either Seller, any ERISA Affiliate Plan, or any fiduciary or former fiduciary of any such ERISA Affiliate Plan; (E) relating to a multiemployer plan; or (F) for any claim or suit for benefits accrued under an ERISA Affiliate Plan prior to Closing;

(l) any liabilities, obligations or responsibilities relating to the employment or termination of employment, by O&R of any individual (including, but not limited to, any employee of O&R) attributable to any actions or inactions by O&R prior to the Closing Date; and

(m) any liabilities relating to the \$55,000,000 New York State Energy Research and Development Authority Pollution Control Refunding Revenue Bonds (Orange and Rockland Utilities, Inc. Projects) 1994 Series A (the "Pollution Control Bond") and any agreements relating thereto.

### ARTICLE III

#### PURCHASE PRICE

3.1. Purchase Price. The purchase price for the Purchased Assets shall be an amount equal to the sum of (i) \$199,850,000, (ii) the Estimated Inventory Adjustment Amount, (iii) the Inventory Adjustment Amount and (iv) any amounts paid by the Sellers to acquire title to Leased Assets pursuant to Section 7.4(a) ( the "Purchase Price").

3.2. Purchase Price Adjustment. (a) Within sixty (60) days after the Closing, the Sellers shall prepare and deliver to the Buyer a statement (the "Adjustment Statement") which sets forth an amount equal to (A) the value as of the Closing Date, of all oil inventory and propane inventory to be used at or in connection with the Purchased Assets determined by using (i) the average price for residual 0.3% surplus high pour New York cargo spot index for No. 6 oil - New York Harbor published in Bloomberg Energy for the consecutive ten (10) days prior to the Closing Date, the Closing Date and the nine (9) consecutive days following the Closing Date, and (ii) the average price for propane published in the Journal of Commerce for Propane — Mt. Belvieu during such consecutive twenty (20) day period plus five cents (\$0.05) per gallon minus (B) the Estimated Inventory Adjustment Amount (such difference is referred to as the "Inventory Adjustment Amount");

The Adjustment Statement shall be prepared using the same generally accepted accounting principles, policies and methods as the Sellers have historically used in connection with the calculation of the items reflected on the Adjustment Statement. The Buyer and the Sellers agree to cooperate with the other in connection with the preparation of the Adjustment Statement and related information, and each shall provide to the other such books, records and information as may be reasonably requested from time to time.

(b) The Buyer may dispute the Inventory Adjustment Amount; provided, however, that the Buyer shall notify the Sellers in writing of the disputed amount, and the basis of such dispute, within thirty (30) days of the Buyer's receipt of the Adjustment Statement. In the event of a dispute with respect to the Inventory Adjustment Amount, the Buyer and the Sellers shall attempt to reconcile their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the parties. If the Buyer and the Sellers are unable to reach a resolution of such differences within thirty (30) days of receipt of the Buyer's written notice of dispute to the Sellers, the Buyer and the Sellers shall submit the amounts remaining in dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the parties, within thirty (30) days after such submission, upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the parties hereto with respect to the amounts disputed. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Buyer and the Sellers so that the Buyer's share of such fees and disbursements shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by the Buyer to the Independent Accounting Firm that is unsuccessfully disputed by the Buyer (as finally determined by the Independent Accounting Firm) bears to the total amount of

such remaining disputed amounts so submitted by the Buyer to the Independent Accounting Firm.

(c) If the Inventory Adjustment Amount is positive, within ten (10) Business Days after the Buyer's receipt of the Adjustment Statement, the Buyer shall pay to the Sellers all undisputed portions of the Inventory Adjustment Amount. If the Inventory Adjustment Amount is negative, within ten (10) Business Days after the Buyer's receipt of the Adjustment Statement, the Sellers shall pay to the Buyer all undisputed portions of the Inventory Adjustment Amount. If there is a dispute with respect to any amount on the Adjustment Statement, within five (5) Business Days after the final determination of such disputed amounts on the Adjustment Statement, the Buyer shall pay the Sellers an amount equal to the disputed portion of the Inventory Adjustment Amount as finally determined to be payable with respect to the Adjustment Statement; provided, however, that if such amount shall be less than zero, the Sellers will pay to the Buyer the amount by which such amount is less than zero. All payments made pursuant to this Section 3.2(c) shall be paid together with interest thereon for the period commencing on the Closing Date through the date of payment, calculated at the prime rate of The Chase Manhattan Bank in effect on the Closing Date, in cash by federal or other wire transfer of immediately available funds. For any payments made by the Buyer to the Sellers pursuant to this section,

the Sellers shall provide the necessary information to the Buyer so that the Buyer may allocate payments due to Sellers between O&R and Con Edison.

3.3. Allocation of Purchase Price. The Buyer shall prepare an allocation of the Purchase Price consistent with Section 1060 of the Code and the Treasury Regulations thereunder within one hundred eighty (180) days of the date of this Agreement but in no event less than forty-five (45) days prior to the Closing and submit it to the Sellers. The Sellers may dispute the allocation of the Purchase Price; provided, however, that the Sellers shall notify the Buyer in writing of the disputed amount, and the basis of such dispute, and follow the procedures relating to a dispute described in Section 3.2(b) above. The Buyer and the Sellers each agree to file Internal Revenue Service Form 8594, and all federal, state, local and foreign Tax Returns and Income Tax Returns, in accordance with such agreed allocation. Each of the Buyer and the Sellers shall report the transactions contemplated by the Agreement for federal Income Tax and all other Tax purposes in a manner consistent with the allocation determined pursuant to this Section 3.3. The Buyer and the Sellers each agree to provide the other promptly with any other information required to complete Form 8594. Each of the Buyer and the Sellers shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding regarding the agreed upon allocation of the Purchase Price.

3.4. Proration. (a) The Buyer and the Sellers agree that all of the items normally prorated, including those listed below, relating to the business and operation of the Purchased Assets will be prorated as of the Closing Date, with the Sellers liable to the extent such items relate to any time period through the Closing Date, and the Buyer liable to the extent such items relate to periods subsequent to the Closing Date:

(i) personal property, real estate, occupancy and any other Taxes (excluding Income Taxes), assessments and other charges, if any, on or with respect to the ownership, use or business and operation of the Purchased Assets;

(ii) rent, Taxes (excluding Income Taxes) and other items payable by or to the Sellers under any of the Sellers Agreements to be assigned to and assumed by the Buyer hereunder;

(iii) any permit, license or registration fees with respect to any Environmental Permit or other Permit; and

(iv) sewer rents and charges for water, telephone, electricity and other utilities.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which

such actual Taxes or fees are available and such Taxes or fees shall be reproporated upon request of either the Sellers or the Buyer made within sixty (60) days of the date that the actual amounts become available. The Sellers and the Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.4.

#### ARTICLE IV

##### THE CLOSING

4.1. Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, at 10:00 A.M. (local time) on April 30, 1999, or at such other place or later date and time as the parties may agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."

4.2. Payment of Purchase Price. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Purchased Assets, the Buyer will pay or cause to be paid to the Sellers at the Closing an amount

(the "Estimated Purchase Price") in United States dollars, equal to the sum of (i) \$199,850,000, (ii) the Estimated Inventory Adjustment Amount for the Closing, and (iii) any amounts paid to acquire title to Leased Assets pursuant to Section 7.4(a) hereof, by wire transfer of immediately available funds or by such other means as are agreed to by the Sellers and the Buyer. The Sellers shall provide the necessary information to the Buyer so that the Buyer may allocate the Estimated Purchase Price between O&R and Con Edison.

4.3. Deliveries by the Sellers. At the Closing, the Sellers will deliver the following to the Buyer:

(a) The Bill of Sale, duly executed by the Sellers for the personal property included in the Purchased Assets;

(b) The executed consents to transfer the Sellers Agreements, the Environmental Permits and the Permits, to the extent specifically required hereunder.

(c) Each Ancillary Agreement, required to be delivered under this Agreement, duly executed by O&R or Con Edison;

(d) The certificates and the opinions of counsel contemplated by Sections 8.2(c), (e), (f), (g) and (i);

(e) One or more bargain and sale deeds of conveyance in statutory form, with covenant against grantor's acts, transferring Sellers' interest in the



Property Interests to the Buyer, duly executed and acknowledged by O&R and in recordable form substantially in the form of Exhibit D hereto;

(f) One or more easements to the extent necessary to evidence the right of Buyer to use the real property of O&R (the "Buyer's Easements") that comprise part of the Excluded Assets, duly executed and acknowledged by O&R and in recordable form, each substantially in the form of Exhibit E hereto;

(g) The Assignment of Leases in the form attached hereto as Exhibit F assigning to Buyer all of the Sellers' right, title and interest as lessor (or lessee as the case may be) under the leases;

(h) Copies of the resolutions adopted by the Board of Directors or Board of Trustees, and/or a committee of the Board of Directors or Board of Trustees to whom the Board has delegated its authority, of each of the Sellers, certified by the Secretary of each Seller, as having been duly and validly adopted and as being in full force and effect, authorizing the execution and delivery by each Seller of this Agreement, the Bill of Sale and other closing documents described in this Agreement to which such Seller is a party, and the performance by such Seller of its respective obligations hereunder and thereunder;

(i) All such other instruments of assignment or conveyance as shall, in the reasonable opinion of the Buyer and its counsel, be necessary to transfer to the

Buyer the Purchased Assets in accordance with this Agreement and where necessary or desirable, in recordable form;

(j) A certification of non-foreign status in a form which complies with Section 1445 of the Code and the regulations thereunder; provided, however, that if either Seller shall fail to deliver such certification, the Buyer shall withhold at the Closing and pay over to the appropriate taxing authority any amount equal to ten (10) percent of the portion to be allocated to such Seller of the total Amount Realized (as defined under Section 1445 of the Code);

(k) Such other agreements, documents, instruments and writings as are required to be delivered by the Sellers at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith; and

(1) \$4.0 million by wire transfer of immediately available funds or by such other means as are agreed to by O&R and the Buyer.

4.4. Deliveries by Buyer. At the Closing, the Buyer will deliver the following to the Sellers:

(a) The Estimated Purchase Price by wire transfer of immediately available funds or by such other means as are agreed to by the Sellers and the Buyer;

(b) Each Ancillary Agreement required to be delivered under this Agreement, duly executed by the Buyer;

(c) The certificate and opinion of counsel contemplated by Sections 8.3(c) and (d);

(d) The Instrument of Assumption, duly executed by the Buyer;

(e) All such other instruments of assumption as shall, in the reasonable opinion of the Sellers and their counsel, be necessary for the Buyer to assume the Assumed Liabilities in accordance with this Agreement;

(f) One or more easements to the extent necessary for O&R to continue and maintain their transmission and distribution business, in favor of the O&R (the "Seller's Easements") with respect to Real Property conveyed to Buyer, duly executed and acknowledged by Buyer, each substantially in the form of Exhibit E hereto, and Buyer shall bear any transfer or similar tax incurred in connection herewith as set forth in Section 7.8;

(g) Copies of the resolutions adopted by the Members or Managers, or similar governing body, of the Buyer, certified by the Member of the Buyer, as having been duly and validly adopted and as being in full force and effect, authorizing the execution and delivery by the Buyer of this Agreement and other closing documents described in this Agreement to which the Buyer is a party, and the performance by the Buyer of its respective obligations hereunder and thereunder; and

(h) Such other agreements, documents, instruments and writings as are required to be delivered by the Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Each of O&R and Con Edison represents on behalf of itself only, and not on behalf of the other Seller, and warrants on behalf of itself only, and not on behalf of the other Seller, to the Buyer as follows:

5.1. Organization; Qualification. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Each Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each foreign jurisdiction in which it operates the Purchased Assets and such foreign jurisdiction requires it to be so qualified. Each Seller has heretofore delivered to the Buyer complete and correct copies of its Certificate of Incorporation and By-Laws as currently in effect.

5.2. Authority Relative to this Agreement. Each Seller has full corporate power and authority to execute and deliver this Agreement and to consum-

mate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors or Board of Trustees, or a committee of the Board of Directors or the Board of Trustees to whom the Board has designated its authority, of each Seller and no other corporate proceedings on the part of either Seller or its shareholders is necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by such Seller, and assuming that this Agreement constitutes a valid and binding agreement of the Buyer, subject to the receipt of the Sellers Required Regulatory Approvals and the Buyer Required Regulatory Approvals, constitutes a valid and binding agreement of such Seller, enforceable against such Seller in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

5.3. Consents and Approvals; No Violation. (a) Except as set forth in Schedule 5.3(a), and other than obtaining the Sellers Required Regulatory Approvals and the Buyer Required Regulatory Approvals, neither the execution and delivery of this Agreement by such Seller nor the performance by such Seller of its respective obligations under this Agreement or the Ancillary Agreements or the consummation

of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-Laws of such Seller, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except (x) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not have a Material Adverse Effect or would not prohibit or restrain the execution, delivery or performance of this Agreement or the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby in any material respect or (y) for those requirements which become applicable to such Seller as a result of the specific regulatory status of the Buyer (or any of its affiliates) or as a result of any other facts that specifically relate to the business or activities in which the Buyer (or any of its affiliates) is or proposes to be engaged; (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which such Seller, or any of its subsidiaries, is a party or by which such Seller, or any of its subsidiaries, or any of the Purchased Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, individually or in the aggregate, would not have a Material Adverse Effect; or (iv) violate any order, writ, injunction, judgment,

law, decree, statute, rule or regulation applicable to such Seller, or any of its assets, which violation would, individually or in the aggregate, have a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) and except for (i) any required approvals under the Federal Power Act, (ii) as may be required by applicable law (A) notice by the Sellers to, and an order by, the NYPSC approving the transactions contemplated by this Agreement or the Ancillary Agreements, (B) notice by O&R to, and an order by, the NJBPU approving the transactions contemplated by this Agreement or the Ancillary Agreements and (C) notice by O&R to, and an order by, the PAPUC approving the transactions contemplated by this Agreement or the Ancillary Agreements, (iii) the approval, if required, of the SEC pursuant to the Holding Company Act, and (iv) the filings by the Sellers and the Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act (the filings and approvals referred to in clauses (i) through (iv) are collectively referred to as the "Sellers Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by such Seller of the transactions contemplated hereby or by the Ancillary Agreements, other than such declarations, filings, registrations, notices, authorizations consents or

approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect and other than Permits and Environmental Permits.

5.4. Reports. Since January 1, 1996, O&R and Con Edison, pursuant to the Securities Act, the Exchange Act, the applicable State public utility laws, the Federal Power Act and the Holding Company Act, has filed or caused to be filed with the SEC, the applicable state or local utility commissions or regulatory bodies, or the FERC, as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by them with respect to the business and operations of O&R and Con Edison as it relates to the Purchased Assets under each of the Securities Act, the Exchange Act, the applicable State public utility laws, the Federal Power Act and the Holding Company Act and the respective rules and regulations thereunder, all of which complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder in effect on the date each such report was filed.

5.5. Financial Statements. The Sellers have previously furnished to the Buyer (i) audited statements of assets, liabilities and owners' interest of Bowline Point Tenants in Common relating to the Sellers' interest in Bowline as of December 31, 1997, and (ii) the related audited statements of operating expenses and changes in owners' interests relating to the Sellers' interest in Bowline for the fiscal



year then ended, together with the respective reports thereon of Arthur Andersen LLP. The statements of assets, liabilities and owners' interest of Bowline Point Tenants in Common relating to the Sellers' interest in Bowline as of December 31, 1997 is referred to as the "Sellers Balance Sheet." Each of the balance sheets included in the financial statements referred to in this Section 5.5 (including the related notes thereto) presents fairly, in all material respects, the assets, liabilities, and owners' interests of Bowline Point Tenants in Common (Bowline Point Facility) as of December 31, 1997, and the operating expenses and changes in owners' interests for the year then ended, all in conformity with the General Agreement between O&R and Con Edison, dated October 10, 1969, as amended, and on the basis of accounting followed by the owners who are subject to regulation by the FERC and various state regulatory authorities with respect to their rates and accounting, except as otherwise noted therein.

5.6. Undisclosed Liabilities. Except as set forth in Schedule 5.6, to the Sellers' knowledge, the Sellers have no liability or obligation relating to the business or operations of the Purchased Assets, secured or unsecured (whether absolute, accrued, contingent or otherwise, and whether due or to become due), of a nature required by generally accepted accounting principles to be reflected in a corporate balance sheet or disclosed in the notes thereto, which are not accrued or reserved against in the Sellers Balance Sheet or disclosed in the notes thereto in

accordance with generally accepted accounting principles, except those which either were incurred in the ordinary course of business, after the date of the Sellers Balance Sheet, or those which in the aggregate are not material to the Purchased Assets.

5.7. Absence of Certain Changes. Except (i) as set forth in Schedule 5.7, or in the reports, schedules, registration statements and definitive proxy statements filed by such Seller with the SEC and (ii) as otherwise contemplated by this Agreement, to the Sellers' knowledge, since the date of the Sellers Balance Sheet there has not been: (a) any Material Adverse Effect; (b) any damage, destruction or casualty loss, whether covered by insurance or not, which had a Material Adverse Effect; (c) any entry into any agreement, commitment or transaction (including, without limitation, any borrowing or capital financing) by either Seller, which is material to the business or operations of the Purchased Assets, except agreements, commitments or transactions in the ordinary course of business or as contemplated herein; or (d) any change by either Seller, with respect to the Purchased Assets, in accounting methods, principles or practices except as required or permitted by generally accepted accounting principles.

5.8. Title. Set forth in Schedule 5.8 is a true and complete list of all real property which is part of or material to the business or operations of the Purchased Assets (the "Real Property") and other real property interests which are a part of or material to the business or operations of the Purchased Assets (together

with the Real Property, the "Property Interests"). One or both Sellers have leasehold or other contractual interests in all Purchased Assets identified in subsections (g), (k), (m), (n) and (p) of Section 1.1(a)(39) and, subject only to Permitted Encumbrances and the Leases: (i) good and marketable record title to the Real Property and the Buyer's Easements and (ii) good and valid title to all Purchased Assets identified in subsections (a), (c), (d), (e), (f), (h), (i), (j), (l) and (o) of Section 1.1(a)(39). At the Closing, O&R will have the cash available to pay the amount referred to in Section 1.1(a)(39)(q) of this Agreement.

5.9. Leasehold Interests. Schedule 5.9(a) lists all Real Property leases or subleases (the "Leases") relating to the Purchased Assets under which either or both of the Sellers are a lessee, sublessee, lessor, or sublessor and which are to be assigned to, and assumed by, the Buyer on the Closing Date. Except as set forth in Schedule 5.9(b), the Leases are valid, binding and enforceable in accordance with their terms, and are in full force and effect; there are no existing material defaults by the applicable Seller or Sellers thereunder; and no event has occurred which (whether with or without notice, lapse of time or both) would constitute a material default thereunder. One or both Sellers have a valid and subsisting leasehold estate in and the right to quiet enjoyment of the Leases under which either Seller is a lessee or sublessee for the full term of such Leases, which leasehold interests are unencum-

bered other than by Permitted Encumbrances, and Sellers have delivered to Buyer true and complete copies of all Leases.

5.10. Improvements. Except as set forth in Schedule 5.10(a), O&R has not received, and to Con Edison's knowledge, Con Edison has not received, any notices from any governmental authority stating or alleging that any improvements with respect to the Purchased Assets have not been constructed in compliance with applicable law. Except as set forth in Schedule 5.10(b), to the Sellers' knowledge, no notice has been received by either Seller from any governmental authority requiring or advising as to the need for any repair, alteration, restoration or improvement in connection with the Purchased Assets.

5.11. Insurance. O&R represents and warrants that except as set forth in Schedule 5.11(a), all material policies of fire, liability, worker's compensation and other forms of insurance purchased or held by and insuring or related to the Purchased Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as described in Schedule 5.11(b), neither Seller has been refused any insurance with respect to the Purchased Assets nor has its coverage been limited by any insurance carrier to which it has applied for

any such insurance or with which it has carried insurance during the last five (5) years nor have they received written notice from any insurer with respect to any Real Property or Lease of defects or inadequacies with respect thereto or the improvements located thereon that would materially adversely affect the insurability of same or cause the imposition of extraordinary premiums therefor.

5.12. Environmental Matters. (a) Except as disclosed in Schedule 5.12(a)(i), to the Sellers' knowledge, the Sellers hold, and are in compliance with, all permits, licenses, certificates and governmental authorizations ("Environmental Permits") required for either Seller to operate the Purchased Assets under applicable Environmental Laws, and the Sellers are otherwise in compliance with applicable Environmental Laws with respect to the Purchased Assets except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, which, individually or in the aggregate, are not reasonably likely to have a Material Adverse Effect. Schedule 5.12(a) (ii) sets forth all Environmental Permits relating to the ownership or operation of the Purchased Assets.

(b) Except as disclosed in Schedule 5.12(b), neither Seller has received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar State law with respect to any on-site location related to the Purchased Assets, and no investigation and/or remediation

is being conducted or is pending at the Purchased Assets (other than investigations or remediation conducted by or on behalf of Seller or Buyer in connection with this transaction), except for such liability under such laws or investigations or remediation as would not be reasonably likely to have a Material Adverse Effect.

(c) With respect to the Purchased Assets, no action, claim, investigation or other proceeding relating to any Environmental Law is pending, or to Seller's knowledge, threatened, and neither Seller has entered into or agreed to any consent decree or order, and are not subject to any judgment, decree, or administrative or judicial order relating to compliance with any Environmental Law or to investigation or cleanup of Hazardous Substances under any Environmental Law, except such consent decrees or orders, judgments, decrees or administrative or judicial orders, actions, claims, investigations or proceedings that (i) would not be reasonably likely to have a Material Adverse Effect, (ii) appear on Schedule 5.12(c), or (iii) relate to off-site disposal locations.

(d) All written reports of audits and studies performed by or on behalf of either Seller, and in the possession of either Seller, which concern Releases of Hazardous Substances at, on, in, or under the Purchased Assets or compliance of Purchased Assets with Environmental Laws, conducted within the last two (2) years, are listed in Schedule 5.12(d) and have been provided to Buyer.

(e) The representations and warranties made in this Section 5.12 are the Sellers' exclusive representations and warranties relating to environmental matters.

5.13. Labor Matters. O&R represents and warrants that Schedule 7.10(a) lists, and O&R has previously delivered to the Buyer, true and correct copies of all labor union, Collective Bargaining Agreements and other labor agreements relating to the Purchased Assets to which O&R is a party or subject. Neither Con Edison nor any other party (except for the parties to the agreements listed in Schedule 7.10(a)) is a party to, or is subject to any labor union, collective bargaining agreement or other labor agreement which relates to the Purchased Assets. Con Ed has no employees employed at the Purchased Assets. With respect to the Purchased Assets, except to the extent set forth in Schedule 5.13 and except for such matters as will not have a Material Adverse Effect, to O&R's knowledge: (a) O&R is in compliance with all applicable laws respecting employment and employment practices, occupational health and safety, and wages and hours; (b) O&R has not received written notice of any unfair labor practice complaint against it pending before the National Labor Relations Board; (c) there is no labor strike, slowdown or stoppage actually pending or threatened against or affecting O&R; (d) O&R has not received notice that any representation petition respecting its employees has been filed with the National Labor Relations Board; (e) no grievance or arbitration

proceeding arising out of or under collective bargaining agreements is pending against O&R; and (f) O&R has not experienced any primary work stoppage since at least December 31, 1994.

5.14. ERISA. (a) O&R represents and warrants that Schedule 5.14(a) lists all deferred compensation, pension, profit-sharing and retirement plans, including multiemployer plans, and all welfare, severance, stock-based, bonus and other employee benefit or fringe benefit plans, programs and arrangements, whether written or oral, maintained or with respect to which contributions have been in the last five (5) years or are made by O&R in respect of employees who are employed in connection with the Purchased Assets (such plans, programs and arrangements collectively, the "Benefit Plans"). To O&R's knowledge, each Benefit Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and all other applicable laws. Accurate and complete copies of all such Benefit Plans and their summary descriptions, including multiemployer plans, have been made available to the Buyer.

(b) Except as set forth in Schedule 5.14(b)(i), with respect to employees at the Purchased Assets, to O&R's knowledge, O&R and the ERISA Affiliates have fulfilled their respective obligations under the minimum funding requirements of Section 302 of ERISA, and Section 412 of the Code, with respect to each Benefit Plan that is a pension benefit plan as defined in Section 3(2) of ERISA (each, a



"Pension Benefit Plan"). To the O&R's knowledge, neither O&R nor any ERISA Affiliate has incurred any liability to the Pension Benefit Guaranty Corporation in connection with any Pension Benefit Plan which is subject to Title IV of ERISA, including any withdrawal liability, nor is there any reportable event (as defined in Section 4043 of ERISA), except as set forth in Schedule 5.14(b)(ii). Except as set forth in Schedule 5.14(b)(iii), the Internal Revenue Service has issued a letter for each Pension Benefit Plan which is intended to be qualified under Section 401(a) of the Code, determining that such plan is exempt from United States Federal Income Tax under Sections 401(a) and 501(a) of the Code, and to the O&R's knowledge, there has been no occurrence since the date of any such determination letter which has adversely affected such qualification, and no withdrawal liability has been incurred by or asserted and none is anticipated against O&R with respect to any Pension Benefit Plan which is a "multiemployer plan" (as defined in Section 3(37) of ERISA).

(c) To the O&R's knowledge, neither O&R nor any ERISA Affiliate has engaged in any transaction within the meaning of Section 4069(b) or Section 4212(c) of ERISA. Except as set forth in Schedule 5.14(c), no Benefit Plan is a multi-employer plan.

(d) To the extent O&R maintained or maintains a "group health plan" within the meaning of Section 5000(b)(1) of the Code, to the O&R's knowledge,

O&R has materially complied with the notice and continuation requirements of Section 4980B of the Code, COBRA Part 6 of Subtitle B of Title I of ERISA and the regulations thereunder.

5.15. Real Property Encumbrances. Schedule 5.15 lists all real property encumbrances affecting the Real Property including matters contained in deeds, easements and options. O&R represents and warrants that true and correct copies of all current surveys, abstracts, title opinions and policies of title insurance currently in force with respect to such Real Property have been delivered by O&R to the Buyer. None of the Permitted Encumbrances materially adversely affect the existing use of the Real Property.

5.16. Condemnation. Neither the whole nor any part of the Real Property or any other real property or rights leased, used or occupied by the Sellers in connection with the ownership or operation of the Purchased Assets is subject to any pending suit for condemnation or other taking by any public authority, and, to the knowledge of the Sellers, no such condemnation or other taking is threatened or contemplated.

5.17. Certain Contracts and Arrangements.

(a) Except (i) as listed in Schedule 5.17(a), (ii) for contracts, agreements, personal property leases, commitments, understandings or instruments which will expire prior to the Closing Date, (iii) for agreements with suppliers entered into

in the ordinary course of business (including contracts entered into in connection with the Scheduled Capital Expenditures and the Scheduled Maintenance Expenditures), and (iv) for contracts, agreements, personal property leases, commitments, understandings or instruments with a value less than \$200,000 or with annual or aggregate payments less than \$200,000, neither Seller is a party to any written contract, agreement, personal property lease, commitment, understanding or instrument which is material to the business or operations of the Purchased Assets.

(b) Except as disclosed in Schedule 5.17(b), each Sellers Agreement listed on Schedule 5.17(a) constitutes a valid and binding obligation of the parties thereto and is in full force and effect and may be transferred to the Buyer pursuant to this Agreement and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder.

(c) Except as set forth in Schedule 5.17(c), there is not, under any of the Sellers Agreements listed on Schedule 5.17(a), any default or event which, with notice or lapse of time or both, would constitute a default on the part of any party thereto, except such events of default and other events as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a Material Adverse Effect.

5.18. Legal Proceedings, etc. Except as set forth in Schedule 5.18 or in any filing made by either Seller pursuant to the Securities Act or the Exchange Act, there are no claims, actions, or proceedings pending or investigation pending or, to the Sellers' knowledge, threatened against either Seller relating to the Purchased Assets before any court, arbitrator, governmental or regulatory authority or body acting in an adjudicative capacity, which, if adversely determined, would have a Material Adverse Effect or would prohibit or restrain the execution, delivery or performance of this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby in any material respect. Except as set forth in Schedule 5.18, the Sellers are not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court, governmental or regulatory authority relating to the Purchased Assets which would have a Material Adverse Effect.

5.19. Permits. Sellers have all material permits, licenses, franchises and other governmental authorizations, consents and approvals, other than with respect to Environmental Laws (collectively, "Permits") as set forth in Schedule 5.19(a), necessary to own or operate the Purchased Assets as presently owned or operated, except where the failure to have such Permits would not have a Material Adverse Effect. Except as set forth in Schedule 5.19(b), with respect to the Purchased Assets, neither Seller has received any written notification that it is in

violation of any of such Permits, or any law, statute, order, rule, regulation, ordinance or judgment of any governmental or regulatory body or authority applicable to it, except for notifications of violations which would not, individually or in the aggregate, have a Material Adverse Effect. The Sellers are in compliance with all Permits, laws, statutes, orders, rules, regulations, ordinances, or judgments of any governmental or regulatory body or authority applicable to Purchased Assets, except for violations which, in the aggregate, would not have a Material Adverse Effect.

5.20. Regulation as a Utility. O&R and certain of its subsidiaries are regulated as public utilities in the States of New York, New Jersey and Pennsylvania as set forth on Schedule 5.20(a)(i), and in no other State. Con Edison is regulated as a public utility in the State of New York as set forth on Schedule 5.20(a)(ii), and in no other state. Except as set forth on Schedule 5.20(b), the Sellers are not subject to regulation as a public utility or public service company (or similar designation) by the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

5.21. Taxes. Except as set forth in Schedule 5.21: (a) no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of Sellers in respect of the Purchased Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 5.21 is being contested in good faith through appropriate proceedings; (b) there are no

outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the Purchased Assets for any period; (c) there are no rulings or closing agreements executed with any taxing authority relating to the Purchased Assets that will be binding upon Buyer after the Closing; (d) none of the Purchased Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f)(8) of the Code or "tax-exempt use" property within the meaning of Section 168(h) of the Code; and (e) there are no powers of attorney in effect relating to Taxes relating to the Purchased Assets for any Post-Closing period.

5.22. Intellectual Property. Sellers have all right, title and interest in or valid and binding rights under contract to use the Intellectual Property relating to the Purchased Assets. Sellers have not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of the Purchased Assets, no claim is pending or has been made to such effect that has not been resolved and neither Seller is infringing any Intellectual Property of any other Person the effect of which, individually or in the aggregate, would have a Material Adverse Effect.

5.23. Year 2000 Readiness. O&R has have informed Buyer of its analysis of, the status of development of contingency plans for, and forecasted expenditures with respect to Year 2000 readiness of material computer software and

computer firmware comprising the Purchased Assets, as such analysis, contingency plan development and forecast of expenditures exist on the date hereof.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer represents and warrants to the Sellers as follows:

6.1. Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Buyer has heretofore delivered to the Sellers complete and correct copies of its Certificate of Formation and Limited Liability Company Agreement (or other similar governing documents), as currently in effect.

6.2. Authority Relative to this Agreement. The Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Managers or Members of the Buyer and the Board of Directors of both Southern Energy, Inc. and The Southern Company and no other company proceedings on the part of the Buyer or such Affiliates are necessary to

authorize this Agreement or to consummate the transactions contemplated hereby.

This Agreement has been duly and validly executed and delivered by the Buyer, and assuming that this Agreement constitutes a valid and binding agreement of the Sellers, subject to the receipt of the Buyer Required Regulatory Approvals and the Sellers Required Regulatory Approvals, constitutes a valid and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

6.3. Consents and Approvals; No Violation. (a) Except as set forth in Schedule 6.3(a), and other than obtaining the Buyer Required Regulatory Approvals and the Sellers Required Regulatory Approvals, neither the execution and delivery of this Agreement by the Buyer nor the purchase by the Buyer of the Purchased Assets pursuant to this Agreement will (i) conflict with or result in any breach of any provision of the Certificate of Formation or Limited Liability Company Agreement (or other similar governing documents) of the Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other



instrument or obligation to which the Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

(b) Except as set forth in Schedule 6.3(a) and except for the filings by the Buyer and the Sellers required by the HSR Act (the filings and approvals referred to in Schedule 6.3(a) and with respect to the HSR Act are collectively referred to as the "Buyer Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by the Buyer of the transactions contemplated hereby.

6.4. Operating Easements. Buyer shall grant Operating Easements to O&R as agreed to pursuant to the procedures set forth in the Continuing Site/Interconnection Agreement.

6.5. Regulation as a Utility. On the Closing Date, the Buyer will be an exempt wholesale generator under the Holding Company Act, although it is a subsidiary of a registered public utility holding company under the Holding Company Act. On the Closing Date, the Buyer also will be a public utility under the Federal Power Act. Except as set forth in Schedule 6.5, the Buyer is not subject to regulation as a public utility or public service company (or similar designation) by

the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

6.6. Availability of Funds. The Buyer has sufficient funds available to it or will receive binding written commitments from responsible financial institutions to provide sufficient funds on the Closing Date to pay the Purchase Price.

## ARTICLE VII

### COVENANTS OF THE PARTIES

7.1. Conduct of Business Relating to the Purchased Assets. Except as described in Schedule 7.1, during the period from the date of this Agreement to the Closing Date, the Sellers will operate and maintain the Purchased Assets according to their ordinary and usual course of business consistent with Good Utility Practice. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 7.1, prior to the Closing Date, without the prior written consent of the Buyer (unless such consent would be prohibited by law), the Sellers will not with respect to the Purchased Assets:

(a) make any material change in the operations of the Purchased Assets (including, without limitation, the levels of fuel inventory and materials and supplies customarily maintained by the Sellers other than consistent with past practice);

(b) except for the Scheduled Capital Expenditures, make any capital expenditures with respect to the Purchased Assets or enter into any contract or commitment therefor, except that (i) the Sellers shall make any capital expenditures requested by the Buyer, provided that the Buyer will reimburse Sellers for such capital expenditures at least five (5) Business Days prior to the date payment for such expenditure is due, and (ii) the Sellers shall make any capital expenditures deemed necessary by the Sellers in accordance with Good Utility Practices ("Necessary Capital Expenditures"), at Sellers' cost and expense, provided, however, that if the Buyer requests that the Sellers make enhancements/upgrades with a cost in excess of the cost of any Necessary Capital Expenditures, the Buyer shall reimburse the Sellers for the cost of such enhancements/upgrades to the extent the cost of such enhancement/upgrade exceeds the cost of the Necessary Capital Expenditure at the time such enhancement/upgrade is performed;

(c) sell, lease (as lessor), transfer or otherwise dispose of, any of the Purchased Assets, other than assets used, consumed or replaced in the ordinary course of business consistent with Good Utility Practice and not mortgage or pledge, or impose or suffer to be imposed any Encumbrance on, any of the Purchased Assets other than Permitted Encumbrances in the ordinary course of business;

(d) except for the Scheduled Maintenance Expenditures, make any maintenance expenditures, except that (i) the Sellers shall make any maintenance

expenditures requested by the Buyer provided that the Buyer will reimburse Sellers for such maintenance expenditures at least five (5) Business Days prior to the date payment for such expenditure is due, and (ii) the Sellers shall make any maintenance expenditures deemed necessary by the Sellers in accordance with Good Utility Practice ("Necessary Maintenance Expenditures") at Sellers' cost and expense, provided, however, that if the Buyer requests that the Sellers make enhancements / upgrades with a cost in excess of the cost of any Necessary Maintenance Expenditures, the Buyer shall reimburse the Sellers for the cost of such enhancements / upgrades to the extent the cost of such enhancement / upgrade exceeds the cost of the necessary maintenance expenditure at the time such enhancement/upgrade is performed;

(e) amend or terminate prior to the expiration date, or waive any material term or give consent to any material request with respect to any of the Sellers Agreements, Permits or Environmental Permits, except to the extent that such amendment, termination, waiver or consent (i) will not have a material impact on operations of the Purchased Assets, including the cost of said operations or (ii) is required by Applicable Law, including Applicable Environmental Law;

(f) enter into agreements for the purchase or sale of fuel (whether commodity or transportation):

(i) that extend more than sixty (60) days beyond April 30, 1999 if, in the aggregate, such agreements have remaining payment obligations of more than \$30 million after April 30, 1999; or

(ii) that extend more than thirty (30) days beyond October 31, 1999 if, in the aggregate, such agreements have remaining payment obligations of more than \$10 million after October 31, 1999; provided, however, that O&R shall consult with the Buyer regarding purchases or sales of fuel in excess of \$15 million if such commitments to purchase or sell will extend beyond April 30, 1999. The parties further agree to adjust the dates in this Section 7.1(f) if the Closing is anticipated to occur after April 30, 1999. Such adjustment will reflect the amount of time beyond April 30, 1999 by which the Closing is expected to occur at the time such an agreement is entered;

(g) enter into any power sales commitments:

(i) having a term greater than six (6) months and that extends beyond April 30, 1999 if the aggregate energy under such commitment and all other then outstanding commitments not previously consented to by the Buyer would in Sellers' judgment reasonably be expected to exceed 150,000 MW hours delivered after April 30, 1999; or

(ii) having a term greater than six (6) months and that extends beyond October 31, 1999 if the aggregate energy under such commitment and all other then outstanding commitments not previously consented to by the Buyer would in Sellers' judgment reasonably be expected to exceed 75,000 MW hours delivered after October 31, 1999;

provided, however, Sellers shall consult with the Buyer regarding entering into any power sales commitments in excess of \$5 million if such commitments will extend beyond April 30, 1999. The parties further agree to adjust the dates in this Section 7.1(g) if the Closing is anticipated to occur after April 30, 1999. Such adjustment will reflect the amount of time beyond April 30, 1999 by which the Closing is expected to occur at the time such an agreement is entered;

(h) sell, lease or otherwise dispose of Emission Allowances except to the extent necessary to operate the Purchased Assets in accordance with this Section 7.1;

(i) enter into any contract, agreement, commitment or arrangement, whether written or oral, with respect to any of the transactions set forth in the foregoing paragraphs (a) through (h); or

(j) make any new, or change any current, election with respect to Taxes affecting the Purchased Assets.

7.2. Access to Information. (a) Between the date of this Agreement and the Closing Date, during ordinary business hours and upon reasonable notice (i) O&R will give the Buyer and the Buyer Representatives reasonable access to its managerial personnel who are employed in connection with the Purchased Assets and to all books, records, plants, offices and other facilities and properties constituting the Purchased Assets to which the Buyer is permitted access by law, (ii) Sellers shall permit the Buyer to make such reasonable inspections thereof as the Buyer may reasonably request, including conducting environmental sampling at, on and underneath the Purchased Assets and performing compliance audits at the Purchased Assets, if Buyer reasonably deems such sampling necessary after reviewing further information which becomes available after the date hereof, so long as Sellers provide their consent to such sampling, which consent shall not be unreasonably withheld, (iii) O&R will cause its officers, engineers, operations and maintenance personnel and advisors to furnish the Buyer with such financial and operating data, Tax Returns (other than Income Tax Returns) and other information with respect to the Purchased Assets as the Buyer may from time to time reasonably request and assist Buyer in such inspections; (iv) Sellers cause its officers and advisors to furnish the Buyer a copy of each report, schedule or other document filed or received by either Seller with or from the SEC, NYPSC, NJBPU, PAPUC, FERC, ISO or other governmental authority with respect to the Purchased Assets; provided, however, that (A) any such

investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the Purchased Assets, (B) neither Seller shall be required to take any action which would constitute a waiver of the attorney-client privilege and (C) neither Seller need supply the Buyer with any information which it is under a legal obligation not to supply; provided, however, that Sellers shall have used commercially reasonable efforts to have such obligations waived. Notwithstanding anything in this Section 7.2 to the contrary, (i) O&R will only furnish or provide such access to employee medical records only as is permitted by law, and (ii) O&R will furnish or provide such access to personnel records only to the extent that the employee to which the personnel record relates has given its consent to the Sellers.

(b) All information furnished to or obtained by the Buyer and the Buyer Representatives pursuant to this Section 7.2 shall be subject to the provisions of Section 11.2 of this Agreement shall be treated as Confidential Information.

(c) Commencing February 1, 1999, the Buyer shall have the right to physically locate one designated representative (the "Designated Representative") of the Buyer at an office or in workspace at O&R's corporate offices to observe the operations of Bowline, as well as the operations of the Lovett Generating Station, the hydroelectric generating stations and the gas turbine generating stations, pursuant to the Other Sales Agreements; provided, however, that the Buyer shall not unreasonably interfere with the Seller's use of the Purchased Assets. O&R shall coordinate site



visits and provide the Designated Representative during such period prior to the Closing access to O&R's managerial personnel. The Designated Representative shall coordinate the Buyer's rights to access under Section 7.2(a) hereof during such period prior to the Closing.

(d) For a period of seven (7) years after the Closing Date, Sellers and their representatives shall have reasonable access to (i) information on employees covered by the O&R Management Employee Transition Program and (ii) all of the books and records of the Purchased Assets, as the case may be, transferred to the Buyer hereunder to the extent that such access (A) may reasonably be required by the Sellers in connection with matters relating to or affected by the operation of the Purchased Assets prior to the Closing Date and (B) is not otherwise prohibited by law. Such access shall be afforded by the Buyer upon receipt of reasonable advance written notice and during normal business hours. The Sellers shall be responsible for any costs or expenses incurred by them pursuant to this Section 7.2(d). If the Buyer shall desire to dispose of any such books and records prior to the expiration of such seven (7) year period, the Buyer shall, prior to such disposition, give the Sellers a reasonable opportunity at the Sellers' expense, to segregate and remove such books and records as the Sellers may select. Any information provided by Buyer to Sellers pursuant to this Section 7.2(d) shall be deemed Confidential Information..

7.3. Expenses. Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

7.4. Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of the parties hereto will use all commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets pursuant to this Agreement, including without limitation, the use of the Sellers' and the Buyer's commercially reasonable efforts to obtain all Permits and Environmental Permits necessary for the Buyer to operate the Purchased Assets. Neither of the Parties shall, without the prior written consent of the other Party, take or fail to take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or the Ancillary Agreements. From time to time after the date hereof, without further consideration, the Sellers will, at their own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order more effectively to vest in the Buyer good title to the Purchased Assets. From time to time after the date hereof, the Buyer will, at its own expense, execute and deliver such documents to the Sellers as the Sellers may reasonably

request in order to more effectively consummate the sale of the Purchased Assets pursuant to this Agreement. To the extent that any personal property lease, relating to any assets ("Leased Assets") which are principally used by the Sellers for generation purposes at the Purchased Assets, cannot be assigned to the Buyer, the Sellers will use their commercially reasonable efforts to acquire title to such Leased Assets and to include them in the Purchased Assets before the Closing Date unless Buyer directs Sellers in writing not to acquire any such Leased Asset. The Sellers' documented and reasonable costs associated with acquiring title to such Leased Assets shall be paid by the Buyer as part of the Purchase Price. Schedule 7.4 lists all of the Leased Assets.

(b) To the extent that any Sellers' rights under any guaranties, warranties and indemnification applicable to the Purchased Assets or the Assumed Liabilities are nontransferable or nonassignable, Sellers shall use its commercially reasonable efforts to provide to Buyer the benefits thereof in some other manner upon the request of Buyer.

7.5. Public Statements. The parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and shall not issue any such public announcement, statement or other disclosure prior to such consultation, except as may be required by law or stock exchange rules or regulations and except that the parties may make public announcements, statements or other disclosures with respect

to this Agreement and the transactions contemplated hereby to the extent that such public announcements, statements or other disclosures do not violate Section 11.2 of this Agreement.

7.6. Consents and Approvals. (a) The Sellers and the Buyer shall each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. The parties shall consult with each other as to the appropriate time of filing such notifications and shall use their best efforts to make such filings at the agreed upon time, to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing. Buyer shall bear the cost of all filing fees under the HSR Act.

(b) The Sellers and the Buyer shall cooperate with each other and (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, (iii) use all reasonable efforts to obtain the transfer or reissuance to the Buyer of all necessary Environmental Permits, Permits, consents, approvals and authorizations of all governmental bodies and (iv) use all reasonable efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the

foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, the Sellers Required Regulatory Approvals and the Buyer Required Regulatory Approvals) or required by the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which the Sellers or the Buyer is a party or by which either of them is bound. The Sellers shall have the right to review and approve in advance all characterizations of the information relating to Purchased Assets; and each of the Sellers and the Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby. The parties hereto agree that they will consult with each other with respect to the transferring to the Buyer or the obtaining by the Buyer of all such necessary Environmental Permits, Permits, consents, approvals and authorizations of all third parties and governmental bodies. The Sellers and the Buyer shall designate separate counsel with respect to all applications, notices, petitions and filings (joint or otherwise) relating to this Agreement and the transactions contemplated hereby on behalf of the Sellers, on the one hand and the Buyer on the other hand, with all governmental bodies. To the extent that a consent to an assignment of any material Sellers Agreement cannot be obtained before the Closing Date, the Sellers will enter into all such agreements with the Buyer

as are necessary to give the Buyer the rights, obligations and burdens of such Sellers Agreements.

(c) The parties hereto shall consult with each other prior to proposing or entering into any stipulation or agreement with any Federal, State or local governmental authority or agency or any third party in connection with any Federal, State or local governmental consents and approvals legally required for the consummation of the transactions contemplated hereby and shall not propose or enter into any such stipulation or agreement without the other party's prior written consent, which consent shall not be unreasonably withheld.

(d) Buyer shall assume primary responsibility for securing the transfer or reissuance of the Permits effective as of the Closing Date. Sellers shall cooperate with Buyer's efforts in this regard and shall use their best efforts to assist in the transfer or reissuance when so requested by Buyer. In the event that Buyer is unable, despite commercially reasonable efforts, to obtain a transfer or reissuance of one or more Permits as of the Closing Date, Buyer may use the Permits issued to Sellers to the extent permissible under applicable laws and regulations provided (i) Buyer notified Sellers prior to Closing, (ii) Buyer continues to make commercially reasonable efforts to obtain a transfer or reissuance of such Permits after the Closing, and (iii) Buyer indemnifies Sellers for any losses, claims or penalties suffered by Sellers in connection with the Permit that is not transferred or reissued as of the Closing Date

resulting from Buyer's operation of the Purchased Assets following the Closing Date. In no event shall Buyer use or otherwise rely on a Permit issued to Sellers beyond one year after Closing unless Buyer has, after exercising its commercially reasonable efforts, been unable to obtain same and such reliance is not prohibited by law.

7.7. Fees and Commissions. The Sellers and the Buyer each represent and warrant to the other that, except for Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), which is acting for and at the expense of the Sellers, and Credit Suisse First Boston Corporation, which is acting for and at the expense of the Buyer, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the party making such representation. The Sellers and the Buyer will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than as described above) incurred by reason of any action taken by such party.

7.8. Tax Matters. (a) Notwithstanding any other provision of this Agreement, all transfer, sales and similar Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Buyer, and the Buyer will, at its own expense, file, to the extent required by law, all necessary

Tax Returns with respect to all such Taxes, and, if required by applicable law, the Sellers will join in the execution of any such Tax Returns.

(b) With respect to Taxes to be prorated in accordance with Section 3.4 of this Agreement only, the Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Purchased Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. The Buyer's preparation of any such Tax Returns shall be subject to the Sellers' approval, which approval shall not be unreasonably withheld. The Buyer shall make such Tax Returns available for the Sellers' review and approval no later than twenty (20) days prior to the due date for filing such Tax Return. Within ten (10) days after receipt of such Tax Return, the Sellers shall pay to the Buyer its proportionate share of the amount shown as due on such Tax Return determined in accordance with the Section 3.4 of this Agreement.

(c) On and after the Closing Date until the maturity or redemption date of the Pollution Control Bonds which were issued to finance or refinance all or a portion of the cost of the Pollution Control Facilities (as defined hereinafter):

(i) Except as otherwise permitted in clause (ii) below, Buyer will not change or permit to be changed the character or nature of the use of those facilities listed in Schedule 7.8(c) hereto (the "Pollution Control Facilities") from the manner Seller has used said facilities prior to the sale of the



Purchased Assets, unless such changed use would constitute a use or purpose of the Pollution Control Facilities for which tax-exempt bonds could be issued pursuant to section 1313 of the Tax Reform Act of 1986, P.L. 99-514 (the "1986 Tax Act"), to refund bonds described in section 1312(a) of the 1986 Tax Act which, for purposes hereof, are assumed to have been issued to finance facilities of the same character and use or purpose as the Pollution Control Facilities;

(ii) Buyer and any transferee which becomes subject to the provisions of the foregoing clause (i) by reason of this clause (ii) will not sell or otherwise transfer any portion of the Pollution Control Facilities unless (A) the transferee covenants to satisfy the conditions of the foregoing clause (i) with respect to its ownership and use of the Pollution Control Facilities or (B) the transfer relates to personal property and is exclusively for cash the proceeds of which will be expended within six (6) months of the date of receipt on facilities for which tax-exempt bonds could be issued pursuant to section 1313 of the 1986 Tax Act, to refund bonds described in section 1312(a) of said act which, for purposes hereof, are assumed to have been issued to finance facilities of the same character and use or purpose as said facilities;

(iii) Buyer will cooperate with O&R and use commercially reasonable efforts to permit O&R to have access to the Pollution Control Facilities at reasonable times to examine them; and

(iv) The foregoing clause (i) shall not be construed to prevent Buyer (or any transferee) from ceasing to operate, maintain or repair any element or item of the Pollution Control Facilities, the operation, maintenance or repair of which becomes uneconomic to Buyer because of damage or destruction or obsolescence (including physical, functional or economic obsolescence), or because of any change in government standards and regulations or the termination of the operation of the Purchased Assets to which the element or item is an adjunct. O&R shall notify Buyer when the Pollution Control Bonds have matured or been redeemed.

(d) Each of the Buyer and the Sellers shall provide the other with such assistance (including access to the Purchased Assets) as may reasonably be requested by the other party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each will retain and provide the requesting party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 7.8 or pursuant to any other Section hereof providing for the sharing of

information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the parties hereto.

(e) O&R will consult with and allow Buyer to participate in all outstanding real property tax disputes concerning the Purchased Assets and shall take such positions as Buyer may request consistent with the positions previously communicated to Sellers by Buyer with respect to such tax disputes, to assist Buyer in obtaining a tax agreement with respect to such tax disputes for periods subsequent to the Closing Date. O&R will use its commercially reasonable efforts to assist Buyer in obtaining an agreement with the taxing authorities pursuant to which the assessed value for real estate tax purposes of the Purchased Assets will be the lowest value achievable. O&R shall not enter into any agreement with the taxing authorities with respect to such real property tax disputes relating to periods prior to the Closing Date without the written consent of Buyer which Buyer shall not unreasonably withhold as long as O&R has complied with this Section 7.8(e).

7.9. Supplements to Schedules. Prior to the Closing Date, the parties shall supplement or amend the Schedules required by Articles V and VI with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No supplement or amendment of any Schedule made pursuant to this Section shall be

deemed to cure any breach of any representation or warranty made in this Agreement unless the parties agree thereto in writing.

7.10. Employees. (a) Schedule 7.10(a) sets forth all collective bargaining agreements to which O&R is a party in connection with the Purchased Assets and all other labor agreements and amendments thereto, that are or may be associated with the Purchased Assets (the "Collective Bargaining Agreements"). Buyer shall offer employment to begin as of the Closing Date to the O&R's employees who work in connection with the Purchased Assets and who are included in the bargaining units covered by the Collective Bargaining Agreements ("Hourly Employees"), and the Buyer will assume the Collective Bargaining Agreements and all of O&R's obligations thereunder, including, without limitation, the terms and conditions of the employee benefit plans covering such hourly employees.

(b) Continued Employment; Service Credit. The Buyer shall, as of the Closing Date, offer employment to the employees of O&R (who will be listed on Schedule 7.10(b) by the Buyer), who worked at or directly serviced the Purchased Assets, who were employees immediately prior to the Closing Date, who were not Hourly Employees and who are approved by Buyer (the "Management Employees"). The Buyer shall provide Schedule 7.10(b) to O&R at least ninety (90) days prior to the date which the Closing is anticipated to occur (but in no event later than February 1, 1999, or such other date to which the Buyer and O&R mutually agree). The

Management Employees hired by the Buyer shall be given credit for all service with O&R or its subsidiaries (and service credited by O&R or such subsidiary), to the same extent as such service was credited for such purpose by O&R or such subsidiary, under all employee benefit plans, programs and policies, and fringe benefits of the Buyer in which they become participants for purposes of eligibility, vesting and determination of level of benefits (but not for purposes of benefit accrual). To the extent permissible under the terms thereof and required by applicable law, the Buyer shall (i) waive all limitations as to preexisting conditions exclusions and waiting periods with respect to participation and coverage requirements applicable to the Management Employees under any welfare benefit plans that such employees may be eligible to participate in after the Closing Date, other than limitations or waiting periods that are already in effect with respect to such employees and that have not been satisfied as of the Closing Date under any welfare benefit plan maintained for the Management Employees immediately prior to the Closing Date, and (ii) provide each Management Employee with credit for any co-payments and deductibles paid prior to the Closing Date in satisfying any applicable deductible or out-of-pocket requirements under any welfare plans that such employees are eligible to participate in after the Closing Date.

(c) Subject to applicable law, the Buyer shall maintain for a period of at least one year after the Closing Date, without interruption, such employee compen-

sation, welfare and benefit plans, programs, policies and fringe benefits as will, in the aggregate, provide benefits to the Management Employees that are no less favorable than those provided pursuant to such employee compensation, welfare and benefit plans, programs, policies and fringe benefits of the Sellers and their subsidiaries, as in effect on the Closing Date. During the period between the date hereof and the Closing Date, O&R shall use its best efforts to keep available all current Management Employees for employment by the Buyer (except those employees which the Buyer identifies in writing as Management Employees which the Buyer does not intend to employ).

(d) Notwithstanding the Buyer's assumption of the Collective Bargaining Agreement, the Buyer shall not assume sponsorship or any other obligation under any Benefit Plan of O&R or any ERISA Affiliate of the Sellers in connection with the assumption of such agreements or in connection with hiring any of the Hourly Employees. All benefits accrued under such Benefits Plans and all benefits currently payable as of the Closing Date shall be and shall remain the obligation of O&R and any individual covered under any such Benefit Plan that is a Group Health Plan (as defined in Section 4980B(g)(2) of the Code and Section 607(l) of ERISA) and who is eligible for continued coverage under such Group Health Plan as of the Closing Date, shall continue to be covered under such Group Health Plan after Closing pursuant to the provisions of COBRA.

(e) O&R agrees to perform timely and discharge all requirements, if any, under the WARN Act and under applicable state and local laws and regulations for the notification of their employees arising from the sale of the Purchased Assets to the Buyer up to and including the Closing Date. The Buyer will cooperate with O&R to provide O&R with such information as may be needed from the Buyer for inclusion in such notices, including providing O&R at least ninety (90) days prior to the date on which the Closing is anticipated to occur (but in no event, later than February 1, 1999 or such other date to which the Buyer and O&R mutually agree) with a list of all of O&R's employees to whom the Buyer will make offers of employment. After the Closing Date, the Buyer shall be responsible for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees with respect to the Purchased Assets.

(f) O&R shall be responsible for any payments required under its severance plan, including severance payment and other benefit enhancements, offered in connection with the transfer of the Purchased Assets. Within thirty (30) days following the last day that any employee may elect to participate in such plan, O&R shall provide Buyer with a list of all electing employees. In any event, Buyer is not required to establish this or any other severance or benefit plan.

(g) O&R shall comply with all of the requirements of COBRA arising from this Agreement with respect to all employees of O&R employed at the Purchased Assets who are not employed by Buyer.

(h) O&R shall pay, when due, to all Hourly Employees and Management Employees hired by the Buyer pursuant to Section 7.10 hereof, all compensation, bonus, severance, vacation and holiday compensation, workers' compensation or other employment benefits which have accrued to such Hourly Employees and Management Employees through and including the Closing Date.

(i) Following the execution of this Agreement, O&R will use its commercially reasonable best efforts to arrange meetings and interviews with such employees of O&R as Buyer shall reasonably request.

(j) O&R shall not, prior to the Closing Date, with respect to the Purchased Assets, (i) hire new employees or transfer current employees prior to the Closing to work at the Purchased Assets, other than to fill vacancies in existing positions in the reasonable discretion of Sellers, (ii) take any action prior to the Closing to affect a material change in the Collective Bargaining Agreement, or (iii) take any action prior to the Closing to increase the aggregate benefits payable to the employees employed in connection with the Purchased Assets, except (A) as otherwise required by the terms of the Collective Bargaining Agreement obligations to effects bargain, (B) as O&R shall reasonably deem appropriate in order to comply



with its obligations under the second sentence of Section 7.10(c) above, (C) for retention bonuses payable to Management Employees on or before the Closing Date and (D) increases in salary and benefits in the ordinary course of business, consistent with past practice.

7.11. Risk of Loss. (a) From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Purchased Assets shall be borne by the Sellers.

(b) If, before the Closing Date all or any portion of the Purchased Assets are taken by eminent domain, or is the subject of a pending or (to the knowledge of the Sellers after reasonable inquiry and investigation) contemplated taking which has not been consummated, the Sellers shall notify the Buyer promptly in writing of such fact. If such taking would have a Material Adverse Effect, the Buyer and the Sellers shall negotiate in good faith to settle the loss resulting from such taking (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and, upon such settlement, consummate the transaction contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after the Sellers has notified the Buyer of such taking, then the Buyer or the Sellers may, if such taking relates to the Purchased Assets, terminate this Agreement pursuant to Section 10.1(f).

(c) If, before the Closing Date all or any material portion of the Purchased Assets are damaged or destroyed by fire or other casualty, the Sellers shall notify the Buyer promptly in writing of such fact. If such damage or destruction would have a Material Adverse Effect and the Sellers have not notified the Buyer of its intention to cure such damage or destruction within fifteen (15) days after its occurrence, the Buyer and the Sellers shall negotiate in good faith to settle the loss resulting from such casualty (including, without limitation, by making a fair and equitable adjustment to the Purchase Price and assigning any insurance proceeds to Buyer at the Closing) and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after the Sellers have notified the Buyer of such casualty, then the Buyer may terminate this Agreement pursuant to Section 10.1(f).

7.12. Compliance with Cooling Water Usage Obligations. (a) The Buyer shall assume and agree to perform any environmental cooling water usage obligations that are imposed on Bowline under the Fourth Amended Stipulation of Settlement and Judicial Consent Order in NRDC v. NYSDEC among the New York State Department of Environmental Conservation, O&R, Con Edison, Central Hudson Gas and Electric Corporation, New York Power Authority, Natural Resources Defense Council, Scenic Hudson, Inc., and the Hudson Riverkeeper Fund, Inc.,

executed by the Honorable Justice Joseph C. Teresi on October 23, 1997 (the "Consent Order") in a manner consistent with the cross-plant outage credit chart set forth in Attachment E to the Consent Order.

(b) Notwithstanding the expiration of the Consent Order, for so long as the July outage requirement at Bowline, as specified in paragraph 3 of the Consent Order, may be met by drawing 2.8 unit-days of outage from Indian Point Unit No. 2's existing balance of unit-days of outage that were accrued in excess of those required under the Settlement Agreement, as provided for under paragraph 3 of the Consent Order, Con Edison shall provide Buyer with such 2.8 unit-days of outage for use at Bowline at no additional cost to either party.

(c) In subsequent permits, permit applications, and regulatory and judicial proceedings pertaining to cooling water usage obligations at Bowline which mandate outages at Bowline, including without limitation obligations imposed pursuant to the Clean Water Act §402, New York State Environmental Conservation Law Title 8, the Consent Order, or any successor order or permits, the parties shall take all commercially reasonable efforts to support, effect and implement arrangements for allocating cross-plant outage credits among the facilities subject to the Consent Order. Neither party shall be required to pay the other party for such credits (or comparable rights) other than the actual incremental costs, if any, incurred by one party to create and transfer such credits (or comparable rights) to the other party.

(d) The parties shall take such actions as may be necessary to (i) include Buyer in the working group composed of the electric generation companies who are parties to the Consent Order, and (ii) impose the conditions and provisions of this Section 7.12 upon all of its successors and assigns.

7.13. Real Estate Matters. (a) Buyer shall obtain an American Land Title Association ("ALTA") or New York Board of Title Underwriters ("NYBTU") owners standard form title policy commitment with respect to the Real Property (the "Title Commitment") from a title company of Buyer's choice (the "Title Company") covering title to the Real Property, together with an ALTA 3.1 zoning endorsement, if available, including parking and access, and such other endorsements as Buyer may reasonably request. Sellers shall provide the Title Company and Buyer such information as the Title Company or Buyer may reasonably request to assist the Title Company in connection with the Title Commitment. Without limiting the foregoing, Sellers shall provide the Title Company and Buyer a copy of the most recent surveys in their possession regarding the Real Property. Promptly after receiving the Title Commitment, Buyer shall notify Sellers in writing of any defects in title which are not Permitted Encumbrances and would cause title to the Real Property to be uninsurable (any of which is called herein a "Defect of Title"). Buyer shall be deemed to have waived any objection to any Defect of Title that was disclosed by the Title Commitment if Buyer fails to notify Sellers of such Defect of Title within thirty (30)

days after receipt of such Title Commitment. With respect to the existence of any Defect of Title that is not disclosed by the Title Commitment, but which arises prior to Closing, Buyer shall immediately notify the Sellers in writing of any such Defect of Title.

(b) O&R agrees that upon the written request of Buyer it will consent and cause its affiliates to consent to the relocation of the Operating Easements and Seller's Easements so long as (i) Buyer pays the cost of such relocation, (ii) such relocation will be to space within Buyer's ownership and will not materially adversely affect the operation of O&R's or its respective affiliates' transmission and distribution business except for the minimum downtime associated with the cut over for such relocation process in accordance with Good Utility Practice, and (iii) the Buyer's requested relocation is consistent with Good Utility Practices. O&R further agrees to condition any grant or assignment by O&R of the Operating Easements or Seller's Easements on the express agreement of its transferee to be bound by the terms and conditions of this Section 7.13(b).

(c) As to any Operating Easement or Sellers' Easement not currently of record or reserved or granted back to O&R at Closing, all of which are to be granted by Buyer at Closing concurrently with the transfer of title to Buyer and prior to any mortgage or other encumbrance, such Operating Easements and Seller's Easements shall include standard cross-indemnity provisions relating to personal

injury, death or property damage occurring as a result of gross negligence or willful misconduct in the use of such Easements, whereby each party agrees to indemnify the other for the consequences of the gross negligence or willful misconduct of those for whom the indemnifying party is legally responsible.

7.14. Year 2000. O&R shall (a) use its best efforts to cooperate with Buyer in formulating a plan to prepare the Purchased Assets to be ready for Year 2000 computer-related issues with a target completion date of October 1, 1999 and (b) perform until the Closing Date (or later, at O&R's election, pursuant to the second sentence of Section 7.15 of this Agreement) the tasks identified in such plan, consistent with Good Utility Practices and the expenditures contemplated in O&R's Year 2000 plans referred to in Section 5.23 hereof.

7.15. Scheduled Capital Expenditures and Scheduled Maintenance Expenditures. The Sellers shall perform, or caused to be performed, the Scheduled Capital Expenditures and the Scheduled Maintenance Expenditures, at Sellers' cost, prior to the Closing Date. To the extent that Scheduled Capital Expenditures and Scheduled Maintenance Expenditures are not completed by the Closing Date, the Sellers either (i) shall cause the Scheduled Capital Expenditures or Scheduled Maintenance Expenditures to be completed within a reasonable period of time following the Closing Date or (ii) shall pay Buyer its reasonable costs to complete such unfinished Scheduled Capital Expenditures or Scheduled Maintenance Expendi-

tures within thirty (30) days of Sellers' receipt from Buyer of a reasonably detailed invoice for such cost.

7.16. Expansion. The parties recognize that the Buyer may wish to add additional generating capacity at Bowline site ("Intended Use") and the value to Buyer for such Intended Use is included in the Purchase Price. Accordingly, to the extent such action or inaction does not interfere with or adversely affect O&R transmission and distribution business, O&R's agrees that, at Buyer's cost, it: (a) will use commercially reasonable efforts to cooperate with Buyer's reasonable request to remove or modify any (i) Permitted Encumbrances which materially adversely affect Buyer's Intended Use, or (ii) conditions (either physical or otherwise) which exist at Bowline or at any of the Purchased Assets which would prevent, hinder, or otherwise interfere with the Buyer's Intended Use, and (b) shall not, and shall ensure that their respective affiliates shall not, oppose, hinder, or interfere with Buyer's efforts to add such additional capacity and shall cooperate with Buyer's other reasonable requests with respect thereto.

7.17. Fuel Contract Renegotiation. At Buyers' request, O&R shall exercise commercially reasonable efforts to cooperate with Buyer in Buyer's efforts to renegotiate the Service Agreement for Service under OPT Rate schedule, between Columbia Gas Contract Transmission Corp. and O&R, dated July 1, 1991.

7.18. Environmental Insurance. If Buyer elects to purchase insurance coverage to cover liabilities arising from Hazardous Substances present or Released at, on, in or under the (i) Purchased Assets and (ii) the "Purchased Asset" or "Purchased Assets," as defined in each of the Other Sales Agreements, on or prior to the Closing Date ("Environmental Insurance"), Sellers shall share equally with Buyer the cost of premiums for such Environmental Insurance, up to a maximum payment by Sellers of \$200,000 in the aggregate for such insurance relating to (A) the Purchased Assets and (B) the "Purchased Asset" and "Purchased Assets" as defined in each of the Other Sales Agreements. If Buyer purchases such Environmental Insurance, Buyer shall add each Seller as an additional insured.

## ARTICLE VIII

### CLOSING CONDITIONS

8.1. Conditions to Each Party's Obligations to Effect the Transactions Contemplated Hereby. The respective obligations of each party to effect the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) The waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated



with no order, decree, judgment or injunction enjoining or prohibiting the consummation of the transactions contemplated hereby having been issued;

(b) No preliminary or permanent injunction or other order or decree by any federal or state court or governmental authority which prevents or is reasonably likely to prevent the consummation of the transactions contemplated hereby or by the Ancillary Agreements shall be pending or shall have been issued and remain in effect (each party agreeing to use its reasonable efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted or interpreted by any State or Federal government or governmental authority in the United States which prohibits the consummation of the transactions contemplated hereby;

(c) All Federal, State and local government orders, consents and approvals required for the consummation of the transactions contemplated hereby or by the Ancillary Agreements, including, without limitation, the Sellers Required Regulatory Approvals and the Buyer Required Regulatory Approvals, shall have become Final Orders (a "Final Order" means action by the relevant regulatory authority which has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transaction prescribed by law, regulation

or order have been satisfied), and such Final Order is in form and substance reasonably acceptable to the party that sought the consent or approval granted by such Final Order (for purposes of this clause (i), a Final Order shall be deemed to be reasonably acceptable to such party if it complies in all material respects with the terms and conditions of such party's application therefor and contains no additional terms or conditions which would have a Material Adverse Effect on such party or the operation of the Purchased Assets); provided, however, that if at the time such order, consent, or approval would otherwise be deemed to be a Final Order, there shall be pending or threatened any appeal or challenge thereto, which, if adversely determined, would cause such order, consent or approval to not be reasonably acceptable to the party that sought such order, consent or approval, then if such party who would be adversely affected notifies the other parties that such a pending or threatened appeal or challenge exists (such notification to be made as soon as reasonably practicable following knowledge of such pending or threatened appeal or challenge, but in no event later than fifteen (15) days from date on which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired and all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied), then such order, consent or approval shall be deemed to be a Final Order only after all opportunities for rehearing or judicial review are exhausted and provided, further, that if the designation of an order,

consent or approval as a Final Order shall be deferred pursuant to the foregoing provision, the Termination Date shall be automatically extended for a period of time equal to the period of time for which the designation as a Final Order has been deferred; and

(d) All consents and approvals required under the terms of any note, bond, mortgage, indenture, contract or other agreement to which the Sellers or the Buyer, or any of their subsidiaries, is a party for the consummation of the transactions contemplated hereby shall have been obtained, other than those (i) which if not obtained, would not, in the aggregate, have a Material Adverse Effect, or (ii) for which an agreement which is described in the last sentence of Section 7.6(b) has been entered into.

8.2. Conditions to Obligations of Buyer. The obligation of the Buyer to effect the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) There shall not have occurred and be continuing, a Material Adverse Effect, including, without limitation, any Material Adverse Effect regarding water usage at Bowline;

(b) The Sellers shall have performed and complied with the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date, and the representations and warranties of

the Sellers set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date, and the Buyer shall have received a certificate to that effect signed by an authorized officer of each Seller;

(c) The Buyer shall have received a certificate from an authorized officer of each Seller, dated the Closing Date, to the effect that to the best of such officers' knowledge, after reasonable inquiry and investigation, the conditions relating to such Seller and set forth in Sections 8.2(a) and (b) have been satisfied;

(d) The "Closing" as defined in the Lovett Generating Station Sales Agreement between O&R and Southern Energy Lovett, L.L.C., dated as of the date hereof, shall have occurred or shall occur concurrently with the Closing hereunder;

(e) The Buyer shall have received an opinion from Skadden, Arps, Slate, Meagher & Flom LLP, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that:

(1) O&R is a corporation organized, existing and in good standing under the laws of the State of New York and has the corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of

the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action taken on the part of O&R.

(2) this Agreement and the Ancillary Agreements have been executed and delivered by O&R and (assuming that the Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of O&R, enforceable against O&R in accordance with their terms, except that such enforcement thereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity);

(3) the execution, delivery and performance of this Agreement and the Ancillary Agreements by O&R will not (A) constitute a violation of the Certificate of Incorporation or By-Laws of O&R, or (B) to counsel's knowledge constitute a violation or default under those agreements or instruments set forth on a schedule to this opinion;

(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal or New York governmental authority is necessary for the consummation by O&R of the Closing other than (i) the Sellers Required Regulatory Approvals, which are addressed below, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals

relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate have a Material Adverse Effect or prevent O&R from performing its obligations hereunder; and

(5) The Bill of Sale, the Instrument of Assumption and the other agreements described in Section 4.3 are in proper form to transfer to Buyer such title to the Purchase Assets as was held by O&R.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel which are reasonably acceptable to Buyer and admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by O&R and appropriate officers and directors of O&R and by public officials.

(f) The Buyer shall have received an opinion from Riker, Danzig, Scherer, Hyland & Perretti, LLP (New Jersey Counsel), Nixon, Hargrave, Devans & Doyle, LLP (New York Counsel) and Morgan, Lewis & Bockius, LLP (Pennsylvania Counsel), or other local regulatory counsel for O&R reasonably acceptable by Buyer, dated the Closing Date and satisfactory in form and substance to the Buyer and its

counsel, substantially to the effect that: no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal governmental authority or any governmental authority in the States of New York, New Jersey and Pennsylvania is necessary for the consummation by O&R of the Closing other than (i) the Sellers Required Regulatory Approvals, which have been obtained and are in full force and effect with such terms and conditions as were imposed by the applicable governmental authorities, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate, have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel which are reasonably acceptable to Buyer and admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by O&R and appropriate officers and directors of O&R and by public officials.

(g) The Buyer shall have received an opinion from the General Counsel of Con Edison, which shall be reasonably acceptable to Buyer, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that:

(1) Con Edison is a corporation organized, existing and in good standing under the laws of the State of New York and has the corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby; and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by requisite corporate action taken on the part of Con Edison;

(2) this Agreement has been executed and delivered by Con Edison and (assuming that the Sellers Required Regulatory Approvals and the Buyer Required Regulatory Approvals are obtained) is a valid and binding obligation of Con Edison, enforceable against Con Edison in accordance with its terms, except that such enforcement thereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity);



(3) the execution, delivery and performance of this Agreement by Con Edison will not constitute a violation of the Certificate of Incorporation or By-Laws of Con Edison;

(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal governmental authority is necessary for the consummation by Con Edison of the Closing other than (i) the Sellers Required Regulatory Approvals, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate have a Material Adverse Effect.

(5) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal governmental authority or any governmental authority in the State of New York is necessary for the consummation by Con Edison of the Closing other than (i) the Sellers Required Regulatory Approvals, which have been obtained and are in full force and effect with such terms and conditions as were imposed by the applicable governmental authorities, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations,

filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by Con Edison and appropriate officers and directors of Con Edison and by public officials.

(h) Buyer shall have received the Title Commitment showing the Real Property to be insured as subject only to Permitted Encumbrances, and the effective date of the Title Commitment shall have been updated to the Closing Date and marked to show the satisfaction of all conditions to the issuance of the title policy other than conditions within the control of the Buyer; and

(i) Buyer shall have obtained a certificate of the Secretary of each Seller identifying by name and title and bearing the signature of the officer of such Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby.

8.3. Conditions to Obligations of the Sellers. The obligation of the Sellers to effect the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) The Buyer shall have performed its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date;

(b) The representations and warranties of the Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date;

(c) The Sellers shall have received a certificate from an authorized officer of the Buyer, dated the Closing Date, to the effect that, to the best of such officers' knowledge, the conditions set forth in Sections 8.3(a) and (b) have been satisfied; and

(d) The Sellers shall have received an opinion from Troutman Sanders LLP, counsel for the Buyer, dated the Closing Date and satisfactory in form and substance to the Sellers and their counsel, substantially to the effect that:

(1) The Buyer is a limited liability company organized, existing and in good standing under the laws of the State of Delaware and has the requisite power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and

the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action taken on the part of the Buyer;

(2) this Agreement and the Ancillary Agreements have been executed and delivered by the Buyer and (assuming that the Sellers Required Regulatory Approvals and the Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their terms, except (A) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefore may be brought;

(3) the execution, delivery and performance of this Agreement and the Ancillary Agreements by the Buyer will not constitute a violation of the Certificate of Formation or Limited Liability Company Agreement (or other similar governing documents), as currently in effect, of the Buyer; and

(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for the consummation by the Buyer of the Closing other than (i) the Buyer Required Regulatory Approvals, all of which have been obtained and are in full force and effect with

such terms and conditions as shall have been imposed by any applicable governmental authority, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the federal laws of the United States and the State of New York, such counsel may rely upon opinions of counsel admitted to practices in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of facts upon certificates furnished by appropriate Members and Managers of the Buyer and its subsidiaries and by public officials.

8.4. Extension of Closing Date. If the approval by the FERC of the establishment of the ISO (the "ISO Approval") shall not have been obtained on or prior to the Condition Fulfillment Date, the parties agree to defer the Closing Date until the date (the "Deferred Closing Date") which is the earlier of (a) the last day in the month in which the ISO Approval is deemed final under applicable law, provided that if there are less than five (5) Business Days in the month in which the ISO Approval is deemed final, then the last day in the month which follows the month in which the ISO Approval is

deemed final, and (b) August 31, 1999; provided, however, that all conditions set forth in Section 8.2(a) and all conditions set forth in Section 8.2(b) regarding the representations and warranties of Seller shall be deemed to be fulfilled on the Deferred Closing Date unless the nonfulfillment of such conditions primarily results from the acts or omissions of Sellers or from the occurrence of facts or circumstances that primarily relate to the Sellers' ownership and/or operation, or the physical condition, of the Purchased Assets. For purposes of this Agreement, the "Condition Fulfillment Date" shall mean the date on which all conditions set forth in Sections 8.1 and 8.2 shall have been fulfilled but not earlier than the later of (i) the date on which all conditions set forth in Section 8.3 have been fulfilled or waived and (ii) April 30, 1999.

## ARTICLE IX

### INDEMNIFICATION

9.1. Indemnification. The Sellers shall share all indemnification obligations and benefits arising under this Article 9 in proportion to their ownership of the Purchased Assets; two-thirds (66.667%) of all such benefits and obligations shall be allocated to Con Edison and one-third (33.333%) of all such benefits and obligations shall be allocated to O&R. In each instance the term "Sellers" is used in

this Article 9, such term shall mean each Seller in proportion to the allocation described in the previous sentence.

(a) The Sellers generally, and not joint and severally will indemnify, defend and hold harmless the Buyer, Buyer's affiliates, and their respective Members, Managers, employees and agents (each a "Buyer Indemnatee") from and against any and all causes of action, claims, demands or suits (by any Person), losses, liabilities, damages (excluding consequential and special damages), obligations, payments, costs, Taxes and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) to the extent the foregoing are not covered by insurance, (collectively, "Indemnifiable Losses"), asserted against or suffered by the Buyer Indemnatee relating to, resulting from or arising out of (i) any breach by the Sellers of any covenant or agreement of the Sellers contained in this Agreement; (ii) the Excluded Liabilities; (iii) the Excluded Assets; (iv) any breach of any representation in Sections 5.1, 5.2 and 5.3 hereof; (v) Sellers' non-compliance with any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement; or (vi) the gross negligence or willful misconduct of Sellers, or their affiliates or their best respective contractors while on Buyer's property (including, without limitation, any easement provided the Sellers with respect to such property)

after the Closing to the extent such Indemnifiable Loss is not caused by the negligence or willful misconduct of any Buyer Indemnatee.

(b) The Buyer will indemnify, defend and hold harmless the Sellers, Sellers' Affiliates, and their respective directors, officers, employees and agents (each, a "Seller Indemnatee") from and against any and all Indemnifiable Losses asserted against or suffered by the Sellers relating to, resulting from or arising out of (i) any breach by the Buyer of any covenant or agreement of the Buyer contained in this Agreement or (ii) the Assumed Liabilities; (iii) the operation of the Purchased Assets after the Closing Date, (iv) any breach of any representation in Article VI or (v) the gross negligence or willful misconduct of Buyer, its affiliates or their respective contractors while on Seller's property after the Closing, to the extent such Indemnifiable Loss is not caused by the negligence or willful misconduct of any Seller Indemnatee.

(c) Either the party required to provide indemnification under this Agreement (the "Indemnifying Party") or the entity or person entitled to receive indemnification under this Agreement (the "Indemnatee") may assert any offset or similar right in respect of its obligations under this Section 9.1 based upon any actual or alleged breach of any covenant or agreement contained in this Agreement.

(d) Any Indemnatee having a claim under these indemnification provisions shall make a good faith effort to recover all losses, damages, costs and



expenses from insurers of such Indemnatee under applicable insurance policies so as to reduce the amount of any Indemnifiable Loss hereunder. The amount of any Indemnifiable Loss shall be reduced (i) to the extent that Indemnatee receives any insurance proceeds with respect to an Indemnifiable Loss and (ii) to take into account any Tax or Income Tax benefit recognized by the Indemnatee arising from the recognition of the Indemnifiable Loss, net of any Tax or Income Tax detriment, and any payment actually received with respect to an Indemnifiable Loss.

(e) The expiration, termination or extinguishment of any covenant, agreement, representation or warranty shall not affect the parties' obligations under this Section 9.1 if the Indemnatee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(f) The Sellers and the Buyer shall have indemnification obligations with respect to Indemnifiable Losses asserted against or suffered by the Sellers or the Buyer, as the case may be, to the extent that the aggregate of all such Indemnifiable Losses exceed the Indemnification Floor. It is agreed and understood that neither the Sellers nor the Buyer, as the case may be, shall have any liability at any time for Indemnifiable Losses asserted against or suffered by the other party until the aggregate amount of Indemnifiable Losses asserted or suffered by such other party under this Section 9.1 shall exceed the Indemnification Floor, and then only to the extent

that the aggregate amount of Indemnifiable Losses exceeds the Indemnification Floor.

The term "Indemnification Floor" shall mean an amount equal to \$200,000.

(g) The rights and remedies of the Sellers and the Buyer under this Article IX are exclusive and in lieu of any and all other rights and remedies which the Sellers and the Buyer may have under this Agreement for monetary relief with respect to (i) any breach or failure to perform any covenant or agreement set forth in this Agreement; (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be; or (iii) any other liabilities described in Section 9.1(a) or 9.1(b). Rights and remedies under the Ancillary Agreements are as set forth therein.

9.2. Defense of Claims. (a) If any Indemnatee receives written notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a party to this Agreement or any affiliate of a party to this Agreement (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnatee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after the Indemnatee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and will indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnatee.

(b) The party defending the Third Party Claim shall (i) consult with the other throughout the pendency of the Third Party Claim regarding the investigation, defense, settlement, compromise, trial, appeal or other resolution thereof; and (ii) afford the other party the opportunity, by notice, to participate and be associated in the defense of any Third Party Claim through counsel chosen by such other party, at its own expense, in the defense of any Third Party Claim as to which a party has elected to conduct and control the defense thereof. The parties shall cooperate in the defense of any Third Party Claim. The Indemnatee shall make available to the Indemnifying Party or its representatives all records and other materials reasonably required for use in contesting any Third Party Claim (subject to such confidentiality provisions as the Indemnatee may reasonably require) and shall furnish such testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party in connection therewith. If requested by the Indemnifying Party, the Indemnatee shall cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest or, if appropriate, in making any counterclaim against the Person asserting the claim or demand, or any cross-complaint against any Person. The Indemnifying Party shall reimburse the Indemnatee for any expenses incurred by Indemnatee in cooperating with or acting at the request of the Indemnifying Party.

(c) If within ten (10) calendar days after an Indemnatee provides written notice to the Indemnifying Party of any Third Party Claim the Indemnatee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 9.2(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days (unless waiting twenty (20) calendar days would prejudice the Indemnatee's rights) after receiving notice from the Indemnatee that the Indemnatee believes the Indemnifying Party has failed to take such steps, the Indemnatee may assume its own defense, and the Indemnifying Party will be liable for all reasonable expenses thereof. Without the prior written consent of the Indemnatee, the Indemnifying Party will not enter into any settlement of (a) any Third Party Claim with respect to Income Taxes or (b) any other Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree

to such offer, the Indemnifying Party will give written notice to the Indemnatee to that effect. If the Indemnatee fails to consent to such firm offer (other than with respect to Income Taxes) within ten (10) calendar days after its receipt of such notice, the Indemnatee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnatee up to the date of such notice. Notwithstanding the foregoing, the Indemnatee shall have the right to pay, compromise, or settle any Third Party Claim (other than with respect to Income Taxes) at any time, provided that in such event the Indemnatee shall waive any right to indemnity hereunder unless the Indemnatee shall have first sought the consent of the Indemnifying Party in writing to such payment, settlement or compromise and such consent was unreasonably withheld or delayed, in which event no claim for indemnity therefor hereunder shall be waived.

(d) Any claim by an Indemnatee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event not later than thirty (30) calendar days after the Indemnatee becomes aware of such Direct Claim, and the Indemnifying Party will

have a period of thirty (30) calendar days (unless waiting thirty (30) days would prejudice the Indemnatee's rights, in which case such period as would likely not prejudice the Indemnatee's rights, but in no event less than ten (10) days) within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the Indemnifying Party will be deemed to have accepted such Direct Claim. If the Indemnifying Party rejects such Direct Claim, the Indemnatee will be free to seek enforcement of its rights to indemnification under this Agreement.

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

respect of such Indemnifiable Loss and (ii) until the Indemnatee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment is hereby made expressly subordinated and subjected in right of payment to the Indemnatee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnatee and Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights. Nothing in this Section 9.2(e) shall be construed to require any party hereto to obtain or maintain any insurance coverage.

(f) A failure to give timely notice as provided in this Section 9.2 will not affect the rights or obligations of any party hereunder except if, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced as a result of such failure.

## ARTICLE X

### TERMINATION AND ABANDONMENT

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

(b) This Agreement may be terminated by the Sellers jointly or Buyer if (i) the Closing shall not have been consummated on or before September 30, 1999 (the "Termination Date"); provided that the right to terminate this Agreement under this Section 10.1(b) shall not be available to either Seller or Buyer if its failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur on or before such date; and provided, further, that if on September 30, 1999 the conditions to the Closing set forth in Section 8.1(c) shall not have been fulfilled but all other conditions to the Closing shall be fulfilled or shall be capable of being fulfilled, then the Termination Date shall be the day which is eighteen (18) months from the date of this Agreement.

(c) This Agreement may be terminated by either the Sellers jointly or the Buyer if (i) any governmental or regulatory body, the consent of which is a condition to the obligations of the Sellers and the Buyer to consummate the transactions contemplated hereby, shall have determined not to grant its consent, or shall condition such consent upon any material change to the terms of this Agreement or the Ancillary Agreements or upon any other condition that materially and adversely



affects the value of the transactions contemplated herein or therein for either party, and all appeals of such determination shall have been taken and have been unsuccessful; (ii) any court of competent jurisdiction in the United States or any State shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby or in the Ancillary Agreements and such order, judgment or decree shall have become final and nonappealable; or (iii) any statute, rule or regulation shall have been enacted or interpreted by any State or Federal government or governmental agency in the United States which prohibits the transactions contemplated herein or in the Ancillary Agreements.

(d) This Agreement may be terminated by the Buyer, if there has been a material violation or breach by the Sellers of any agreement, representation or warranty contained in this Agreement which (i) has rendered the satisfaction of any condition to the obligations of the Buyer impossible and such violation or breach has not been waived by the Buyer or cured by Sellers within fifteen (15) days after receipt by Buyer of notice specifying same or (ii) causes a Material Adverse Effect, of which Buyer has notified Sellers, and which Sellers have not promptly exercised commercially reasonable efforts to cure but in no event later than twenty (20) days following such notification by Buyer.

(e) This Agreement may be terminated by the Sellers jointly, if there has been a material violation or breach by the Buyer of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of the Sellers impossible and such violation or breach has not been waived by the Sellers or cured by Buyer within fifteen (15) days after receipt by Buyer of notice specifying same.

(f) This Agreement may be terminated by either the Sellers jointly or the Buyer in accordance with the provisions of Section 7.11(b) or (c).

10.2. Procedure and Effect of Termination. In the event of termination of this Agreement by either or both of the parties pursuant to Section 10.1, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein, such termination shall be without any further liability of either party or parties to the other party or parties except as follows:

(a) in the event of termination of this Agreement by Sellers pursuant to Section 10.1(e), Sellers shall have the right to pursue all remedies available to them in equity or at law in connection with the violation or breach of this Agreement by Buyer;

(b) in the event of termination of this Agreement by Buyer pursuant to Section 10.1(d), Buyer shall have the right to pursue all remedies available to it in equity or at law in connection with the violation or breach of this Agreement by Sellers; and

(c) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other person to which they were made.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.1. Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of the Sellers and the Buyer.

11.2. Confidentiality. (a) All information regarding a party (the "Disclosing Party") that is furnished directly or indirectly to the other party (the "Recipient") pursuant to this Agreement and marked "Confidential" shall be deemed "Confidential Information." Notwithstanding the foregoing, Confidential Information does not include information that (i) is rightfully received from Recipient from a third party having an obligation of confidence to the Disclosing Party, (ii) is or becomes in the public domain, through no action on Recipient's part in violation of this Agree-

ment, (iii) is already known by Recipient as of the date hereof, or (iv) is developed by Recipient independently of any Confidential Information of the Disclosing Party. Information that is specific as to certain data shall not be deemed to be in the public domain merely because such information is embraced by more general disclosure in the public domain.

(b) Recipient shall keep the Confidential Information strictly confidential and not disclose any Confidential Information to any third party for a period of two (2) years from the date the Confidential Information was received by Recipient, except as otherwise provided herein.

(c) Recipient may disclose the Confidential Information to its and its affiliates' respective directors, officers, employees, consultants, advisors and agents who need to know the Confidential Information for the purpose of assisting Recipient with respect to its obligations under this Agreement. Recipient shall inform all such parties, in advance, of the confidential nature of the Confidential Information.

Recipient shall cause such parties to comply with the requirements of this Agreement and shall be responsible for the actions, uses, and disclosures of all such parties.

(d) If Recipient becomes legally compelled or required to disclose any of the Confidential Information (including, without limitation, pursuant to the rules or regulations of the NYPP, ISO or FERC), Recipient will provide the Disclosing Party with prompt written notice thereof so that the Disclosing Party may seek a protective

order or other appropriate remedy. Recipient will furnish only that portion of the Confidential Information which its counsel considers legally required, and Recipient will cooperate, at the Disclosing Party's expense, with the Disclosing Party's counsel to enable the Disclosing Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. It is further agreed that, in the event that a protective order or other remedy is not obtained, the Recipient will furnish only that portion of the Confidential Information which, in the written opinion of the Recipient's counsel, is legally required to be disclosed and, upon the Disclosing Party's request, use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

(e) Recipient shall promptly return to the Disclosing Party all items containing or constituting Confidential Information, together with all copies, extracts, or summaries thereof, upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of this Agreement.

11.3. Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obliga-

tion, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

11.4. No Survival. Subject to the provisions of Article X, each and every representation, warranty and covenant contained in this Agreement (other than (a) the covenants contained in Sections 3.2, 3.3, 3.4, 7.2(b), 7.2(c), 7.2(d), 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.10, 7.12, 7.13, 7.15, 7.16, 7.18, 9.1 and 9.2 and in Article XI (which covenants shall survive in accordance with their terms), (b) the representations and warranties contained in Sections 5.1, 5.2, 5.3, 6.1, 6.2 and 6.3 (which representations and warranties shall survive for twelve (12) months from the Closing) and (c) the representation and warranty in Section 5.21 (which representation and warranty shall survive for the applicable statute of limitations) shall expire with, and be terminated and extinguished by the consummation of the sale of the Purchased Assets and the transfer of the Assumed Liabilities pursuant to this Agreement and such representations, warranties and covenants shall not survive the Closing Date; and none of the Sellers, the Buyer or any officer, director, trustee or Affiliate of either of them shall be under any liability whatsoever with respect to any such representation, warranty or covenant.

11.5. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon receipt on a Business Day if during the normal business hours of the recipient, or if not, on the next Business Day, if deliv-

ered personally or by facsimile transmission, telexed or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to O&R, to:

Orange and Rockland Utilities, Inc.  
One Blue Hill Plaza  
Pearl River, NY 10965

Attention: Legal Department

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, NY 10022

Attention: Sheldon S. Adler, Esq.

(b) If to Con Edison, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003

Attention: Senior Vice President  
and General Counsel

with copies to:

Cravath, Swaine & Moore  
825 Eighth Avenue  
New York, NY 10019

Attention: George W. Bilicic, Jr., Esq.

(c) If to Buyer, to:

Southern Energy Bowline LLC  
c/o Southern Energy, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

Attention: Randy Harrison, Vice-President

with copies to:

Troutman Sanders LLP  
Nationsbank Plaza  
Suite 5200  
Atlanta, GA 30308

Attention: Robert C. Marshall, Esq.

and

Southern Company Services  
270 Peachtree Street  
Bin 918  
Atlanta, Georgia 30303

Attention: Vice President and Associate General Counsel



11.6. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law without the prior written consent of the other party, nor is this Agreement intended to confer upon any other Person except the parties hereto any rights or remedies hereunder. The Buyer acknowledges that O&R has entered into an Agreement and Plan of Merger whereby O&R will become a wholly-owned subsidiary of Consolidated Edison, Inc. ("CEI"). Notwithstanding any other provision of this Article 11.6, the Buyer agrees that this Agreement may be assigned to CEI, or a wholly-owned affiliate of CEI without the Buyer's consent. Notwithstanding the foregoing, (a) Buyer may assign all of its rights and obligations hereunder to any wholly owned subsidiary (direct or indirect) of Buyer or Buyer's parent and upon Sellers' receipt of notice from Buyer of any such assignment, such assignee will be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Buyer" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the parties hereto or such assignee; and (b) Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of its rights and interests hereunder to a trustee or lending institutions for the purposes of financing or refinanc-

ing the Purchased Assets, including upon or pursuant to the exercise of remedies with respect to such financing or refinancing, or by way of assignments, transfers, pledges, or other dispositions in lieu thereof; provided, however, that no such assignment or other disposition shall relieve or in any way discharge Buyer or such assignee from the performance of Buyer's obligations under this Agreement. Sellers agree, at Buyer's expense, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer pledge or other disposition of rights and interests hereunder so long as Sellers' rights under this Agreement are not thereby altered, amended, diminished or otherwise impaired.

11.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies, and the Sellers and the Buyer hereby agree to irrevocably and unconditionally submit to the exclusive jurisdiction of any State or Federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this Agreement. If requested by Sellers, Buyer will consent to appointing an agent for service of process in New York City.

11.8. Specific Performance. Sellers and Buyer agree that a material breach of this Agreement will cause the non-breaching party immediate and irrepara-

ble harm that monetary damages cannot adequately remedy, and therefore, in addition to all other remedies hereunder, the parties agree that, upon any actual or impending material breach of this Agreement, the non-breaching party shall be entitled to equitable relief, including injunctive relief and specific performance, without bond or proof of damages, and in addition to any other remedies that the non-breaching party may have under applicable law.

11.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.10. Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

11.11. Entire Agreement. This Agreement, the Ancillary Agreements, the Confidentiality Agreement, including the Exhibits and Schedules referred to herein or therein, and the Guaranty given to Sellers by Southern Energy, Inc. embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are

no restrictions, promises, representations, warranties, covenants or undertakings of the Sellers contained in any material made available to the Buyer pursuant to the terms of the Confidentiality Agreement (including the Information Memorandum, dated May 1998, previously made available to the Buyer by the Sellers and DLJ). This Agreement supersedes all prior agreements and understandings between the parties with respect to such transactions other than the Confidentiality Agreement.

11.12. Bulk Sales or Transfer Laws. The Buyer acknowledges that the Sellers will not comply with the provision of any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement. The Buyer hereby waives compliance by the Sellers with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

IN WITNESS WHEREOF, the Sellers and the Buyer have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By D L Peoples  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SOUTHERN ENERGY BOWLINE, L.L.C.


By \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President

IN WITNESS WHEREOF, the Sellers and the Buyer have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By \_\_\_\_\_  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By   
Name: J. Michael Evans  
Title: President and Chief Operating Officer

SOUTHERN ENERGY BOWLINE, L.L.C.

By \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President

IN WITNESS WHEREOF, the Sellers and the Buyer have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.

**ORANGE AND ROCKLAND UTILITIES, INC.**

By \_\_\_\_\_  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

**CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHERN ENERGY BOWLINE, L.L.C.**

By  \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President





EXHIBITS  
TO  
BOWLINE POINT GENERATING STATION  
SALES AGREEMENT

EXHIBIT A  
TO BOWLINE POINT GENERATING  
STATION SALES AGREEMENT

FORM OF  
BILL OF SALE

THIS BILL OF SALE, dated as of \_\_\_\_\_,  
by and among Orange and Rockland Utilities, Inc., a New  
York corporation, Consolidated Edison Company of New  
York, Inc., a New York corporation, (together, the "Sell-  
ers"), and Southern Energy Bowline, L.L.C., a Delaware  
limited liability company (the "Buyer").

W I T N E S S E T H

WHEREAS, pursuant to that certain Bowline Point  
Generating Station Sales Agreement, dated as of November  
24, 1998 (as amended, supplemented or otherwise modified  
from time to time, the "Bowline Point Sales Agreement"),  
by and among the Sellers and the Buyer, the Sellers have  
agreed to sell, assign, convey, transfer and deliver all  
of their right, title and interest in the Purchased  
Assets (as defined in the Bowline Point Sales Agreement)  
to the Buyer and the Buyer has agreed to purchase and ac-  
quire such Purchased Assets from the Sellers, all as more  
fully described in the Bowline Point Sales Agreement; and

WHEREAS, pursuant to the Bowline Point Sales  
Agreement, the Sellers and the Buyer have agreed to enter  
into this Bill of Sale pursuant to which that part of the  
Purchased Assets which constitutes personal property will  
be conveyed to the Buyer.

NOW, THEREFORE, in consideration of the forego-  
ing premises and for other good and valuable consider-  
ation, the receipt and adequacy of which is hereby ac-  
knowledgeed, the parties hereto hereby agree as follows:

1. Defined Terms. Capitalized terms which  
are used but not defined in this Bill of Sale shall have  
the meaning ascribed to such terms in the Bowline Point  
Sales Agreement.

2. Assignment. Except as set forth in Sec-  
tion 3 below and subject to the terms and conditions of  
the Bowline Point Sales Agreement, the Sellers do hereby  
sell, assign, convey, transfer and deliver to the Buyer

all of the Sellers' right, title and interest in and to all of the Purchased Assets which constitute personal property.

3. Excluded Assets Not Assigned. Notwithstanding anything herein to the contrary, the Excluded Assets are specifically excluded from the Purchased Assets and shall be retained by the Sellers at and following the Closing Date.

4. Appointment. The Sellers hereby constitute and appoint the Buyer, and its successors and assigns, as the Sellers' true and lawful attorney, with full power of substitution, in the Sellers' name and stead, by, on behalf of and for the benefit of the Buyer, and its successors and assigns, to demand and receive any and all of the Purchased Assets transferred hereunder and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute, at the expense and for the benefit of the Buyer, and its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, and its successors or assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets transferred hereunder or for the collection and enforcement of any claim or right of any kind hereby sold, assigned, conveyed, transferred and delivered, and to do all acts and things in relation to the Purchased Assets transferred hereunder which the Buyer, and its successors or assigns, shall deem desirable.

5. No Third Party Beneficiaries. Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person other than the Buyer, its successors and assigns any remedy or claim under or by reason of this instrument or any agreements, terms, covenants or conditions hereof, and all the agreements, terms, covenants and conditions contained in this instrument shall be for the sole and exclusive benefit of the Buyer and its successors and permitted assigns.

6. Binding Effect; Assignment. This Bill of Sale and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of

the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

8. Construction. This Bill of Sale is delivered pursuant to and is subject to the Bowline Point Sales Agreement. In the event of any conflict between the terms of the Bowline Point Sales Agreement and the terms of this Bill of Sale, the terms of the Bowline Point Sales Agreement shall prevail.

IN WITNESS WHEREOF, this Bill of Sale has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By \_\_\_\_\_  
Name:  
Title:

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By \_\_\_\_\_  
Name:  
Title:

SOUTHERN ENERGY BOWLINE, L.L.C.

By \_\_\_\_\_  
Name:  
Title:

EXHIBIT B  
TO BOWLINE POINT GENERATING  
STATION SALES AGREEMENT

FORM OF  
INSTRUMENT OF ASSUMPTION

Instrument of Assumption made, executed and delivered on this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by Southern Energy Bowline, L.L.C., a Delaware limited liability company (the "Buyer"), in favor of Orange and Rockland Utilities, Inc., a New York corporation, and Consolidated Edison Company of New York, Inc., a New York corporation (together, the "Sellers").

W I T N E S S E T H:

WHEREAS, pursuant to that certain Bowline Point Generating Station Sales Agreement, dated as of November 24, 1998 (as amended, supplemented or otherwise modified from time to time, the "Bowline Point Sales Agreement"), by and among the Sellers and the Buyer, the Sellers are concurrently herewith selling, assigning, conveying, transferring and delivering to the Buyer the Purchased Assets (as defined in the Bowline Point Sales Agreement); and

WHEREAS, in partial consideration therefor, the Bowline Point Sales Agreement requires that the Buyer assume and to agree to pay, perform or discharge or cause be paid, performed or discharged certain liabilities and obligations of the Sellers;

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Buyer agrees as follows:

1. Capitalized terms which are used in this Instrument of Assumption (including Appendix I hereto) but are not defined in this Instrument of Assumption shall have the meaning ascribed to such terms in the Bowline Point Sales Agreement.

2. The Buyer hereby assumes and agrees to pay, perform or discharge in accordance with their terms, subject to the limitations contained in this Instrument of Assumption, the liabilities and obligations of the Sellers which are described in Appendix I hereto (the "Assumed Liabilities").

3. It is understood and agreed that nothing in this Instrument of Assumption or in Section 2.3 of the Bowline Point Sales Agreement shall constitute a waiver or release of any claims arising out of the contractual relationships between the Sellers and the Buyer.

4. The assumption by the Buyer of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of the Buyer under the Bowline Point Sales Agreement.

5. Other than as specifically set forth in this Instrument of Assumption or in Section 2.3 of the Bowline Point Sales Agreement, the Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of the Sellers, direct or indirect, known or unknown, absolute or contingent, other than the Assumed Liabilities, including, without limitation, any liabilities or obligation in respect of any Excluded Assets.

6. This Instrument of Assumption shall be enforceable against the successors and assigns of the Buyer and shall inure to the benefit of the successors and assigns of the Sellers.

7. This Instrument of Assumption shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

8. This Instrument of Assumption is delivered pursuant to and is subject to the Bowline Point Sales Agreement. In the event of any conflict between the terms of the Bowline Point Sales Agreement and the terms of this Instrument of Assumption, the terms of the Bowline Point Sales Agreement shall prevail.

IN WITNESS WHEREOF, this Instrument of Assump-  
tion has been duly executed and delivered by the duly  
authorized officers of the Buyer as of the date first  
above written.

SOUTHERN ENERGY BOWLINE, L.L.C.

[Corporate Seal]

By \_\_\_\_\_

Name:

Title:

Attest:

\_\_\_\_\_  
Name:

Title:



APPENDIX I  
TO INSTRUMENT OF ASSUMPTION

Obligations Assumed

The Buyer shall assume and agree to discharge to the maximum extent permitted by law, all of the following liabilities and obligations of the Sellers which relate to the Purchased Assets, other than Excluded Liabilities, in accordance with the respective terms and subject to the respective conditions thereof:

[insert all sub-paragraphs under Section 2.3 of the  
Bowline Point Sales Agreement]

EXHIBIT C  
BOWLINE POINT GENERATING STATION  
SALES AGREEMENT  
SEPARATION DOCUMENT SUMMARY

BOWLINE POINT START-UP  
TRANSMISSION INTERCONNECTION

- The interconnection of the Bowline Point Start-Up Yard into the O&R Transmission System will be the Minisceongo switching station taps to the overhead transmission lines 56 and 561.
- The Bowline Point Start-Up Yard is integral to the O&R 138 kV transmission system. The operation and maintenance of the yard equipment, with the exception of the start-up bays (#555 and #655), will be the sole responsibility of O&R.

BOWLINE POINT UNIT #1  
TRANSMISSION INTERCONNECTION

- The interconnection of Unit #1 into the O&R Transmission System will be at the West Haverstraw 345 kV overhead structure. O&R will own the overhead section of line 67/671 and the Purchaser will own the underground section of line 67. The Buyer will own the line 67 protection system at Bowline Point and will be responsible for its maintenance.
- The Ladentown Bus arrangement is that of a ring bus with four transmission lines. Two lines connect to Bowline Point and two lines connect to the 345 kV system.
- The 345 kV transmission lines Y88 & W72 connect the Ladentown Bus into the bulk power system between Buchannon and Ramapo.

BOWLINE POINT UNIT #2  
TRANSMISSION INTERCONNECTION

- The interconnection of Unit #2 into the O&R Transmission System will be at the West Haverstraw 345 kV pothead structure. O&R will own the overhead section of line 68 and the Purchaser will own the underground section of line 68. The Buyer will own the line 68 protection system at Bowline and will be responsible for its maintenance.
- The Ladentown Bus arrangement is that of a ring bus with four transmission lines. Two lines connect to Bowline Point and two lines connect to the 345 kV system.
- The 345 kV transmission lines Y88 and W72 connect the Ladentown Bus into the bulk power system between Buchannon and Ramapo.

EXHIBIT D  
TO BOWLINE POINT GENERATING  
STATION SALES AGREEMENT

**BARGAIN AND SALE DEED**

This indenture, made the \_\_\_\_ day of \_\_\_\_\_, nineteen hundred and ninety \_\_\_\_, between ORANGE AND ROCKLAND UTILITIES, INC., a corporation organized under the laws of the State of New York, as party of the first part, and SOUTHERN ENERGY BOWLINE, L.L.C., a limited liability company organized under the laws of the State of Delaware, as party of the second part:

Witnesseth, that the party of the first part, in consideration of \_\_\_\_\_ dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, \_\_\_\_\_ and assigns forever, all \_\_\_\_\_ (description which will include property and any easements retained or granted by seller), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part \_\_\_\_\_ and assigns forever. And the party of the first part covenants that

it has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By: \_\_\_\_\_

Name:

Title:

CORPORATE SEAL

EXHIBIT E

THIS EXHIBIT E SHALL BE USED FOR BOTH SELLER AND BUYER EASEMENTS BY CHANGING REFERENCES TO "O&R" TO READ BUYER AND REFERENCES TO "BUYER" TO READ O&R

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration"), made as of the [ ] day of [ ], 199[], is BETWEEN ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation having an office at One Blue Hill Plaza, Pearl River, New York 10965 (together with its successors and assigns "O&R") and SOUTHERN ENERGY BOWLINE, L.L.C. ("Buyer"), a Delaware limited liability company having an office at [ ] (together with its successors and assigns "[ ]").

WITNESSETH, that O&R, in consideration of [ ] Dollars and other valuable consideration paid by Buyer, does hereby grant and release unto Buyer, its successors and assigns forever, the easements and rights more particularly described hereinafter, appurtenant to the Property (as hereinafter defined), which easements and rights are hereby declared to be part and parcel of the conveyance of the Property (as hereinafter defined) described in a certain deed of even date herewith (the "Deed");

WHEREAS, O&R is the owner in fee simple of certain premises in [ ] more particularly described on (a) Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, Buyer is the owner in fee simple of certain adjoining premises in [ ] consisting of [ ] more particularly described on Exhibit B attached hereto and made a part hereof (the "Buyer's Property") which were conveyed by O&R to Buyer pursuant to the Deed;

WHEREAS, there are certain defined terms used in this Declaration and such terms have the meanings ascribed to them in the Deed.

NOW THEREFORE, for the consideration recited above, O&R hereby grants and releases unto Buyer, its successors and assigns forever, the easements and rights described in Sections [ ], appurtenant to the Property, as follows:

GRANT OF EASEMENTS TO BUYER BURDENING O&R'S PREMISES

[Following are examples of types of easements which do not necessarily reflect the easements to be granted to Buyer]

1. [Roadway Easement.]
2. [Oil Tank Parcel Access Easement.]
3. [Gas Pipeline Easement.]
4. [Utility Pole Easement.]
5. Covenant Against Grantor Acts. Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatsoever.
6. Right to Easements. The easements and rights granted to Buyer herein shall run to the benefit of Buyer, its successors and assigns.

IN WITNESS WHEREOF, O&R and Buyer have duly executed  
this instrument as of the day and year first above written.

ORANGE AND ROCKLAND UTILITIES,  
INC.

By: \_\_\_\_\_  
Name:  
Title:





EXHIBIT A

**EXHIBIT B**

CONFIDENTIAL

1. The following information was obtained from a review of the files of the New York State Department of Social Services, Division of Child Welfare, for the period from January 1, 1964, to December 31, 1964.

2. The information was obtained from the files of the New York State Department of Social Services, Division of Child Welfare, for the period from January 1, 1964, to December 31, 1964.

3. The information was obtained from the files of the New York State Department of Social Services, Division of Child Welfare, for the period from January 1, 1964, to December 31, 1964.

4. The information was obtained from the files of the New York State Department of Social Services, Division of Child Welfare, for the period from January 1, 1964, to December 31, 1964.

5. The information was obtained from the files of the New York State Department of Social Services, Division of Child Welfare, for the period from January 1, 1964, to December 31, 1964.

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF LEASE  
(O&R as Lessee)

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT, made as of \_\_\_\_\_, 1998 (this "Assignment"), by and between ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation whose principal office is located at One Blue Hill Plaza, Pearl River, New York 10965 ("Assignor") and SOUTHERN ENERGY BOWLINE, L.L.C., a Delaware limited liability company whose principal office is located at [ ] ("Assignee").

WHEREAS, Assignor is the lessee under that certain Lease, dated [ ] by and between Assignor and [ ], as lessor, concerning premises/property located at [ ] (as the same may have been amended, modified, supplemented, extended and/or assigned, the "Lease");

WHEREAS, Assignor desires to assign the Lease to Assignee so that Assignee may have the benefit of the use of the property subject to the Lease; and

WHEREAS, this Assignment shall be effective as of the close of business on the date hereof, the date of the closing of the sale of the Bowline Generating Station as contemplated by Bowline Generating Station Sales Agreement, dated as of November 24, 1998 between Assignor and Southern Energy Bowline, L.L.C. (the "Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. Assignor hereby assigns and transfers all of its rights, title and interest as tenant, in, to and under the Lease, including, but not limited to, any security of Assignor held by lessor under the Lease, to Assignee, its successors and assigns from and after the effective date of this Assignment for the remainder of the

term of the Lease, subject to the rental, terms, covenants and conditions of the Lease and including, without limitation, any and all renewal and purchase options.

2. Assignee hereby assumes all liabilities and the performance of all of the terms, covenants and conditions arising out of the Lease, and with respect to the premises relating to such Lease, herein assigned by Assignor to Assignee to be paid or performed subsequent to this Assignment. Assignee agrees to pay the rent reserved by the Lease in accordance with the terms hereof until the termination of the Lease and will well and truly perform all the terms, covenants and conditions of the Lease herein assigned and hereinafter arising, all with full force and effect as if Assignee had signed the Lease originally as tenant named therein.

3. Nothing contained herein shall be deemed to vitiate any representations, warranties or agreements undertaken by Assignor or Assignee as set forth in or pursuant to the Agreement. Except as provided in the Agreement, Assignor makes no representations or warranties of any kind whatsoever.

4. Assignee hereby agrees that the obligations herein assumed by Assignee shall inure to the lessor named in the Lease and to its successors and assigns.

5. Assignor and Assignee each agrees to execute and deliver to the other party, if the other party so requests, such further instruments as may be reasonably required to complete or further evidence either the foregoing assignment or the foregoing assumption.

6. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one binding agreement.

7. It is understood and agreed that nothing in this Assignment and Assumption of Lease or in Section 2.3 of the Agreement shall constitute a waiver or release of any claims arising out of the contractual relationships between the Seller and the Buyer.

8. The assumption by the Buyer of the Lease shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of the Buyer under the Agreement.

9. Other than as specifically set forth in this Assignment and Assumption of Lease or in Section 2.3 of the Agreement, the Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of the Seller, direct or indirect, known or unknown, absolute or contingent, other than the Assumed Liabilities, including, without limitation, any liabilities or obligation in respect of any Excluded Assets.

10. This Assignment and Assumption of Lease shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

11. This Assignment and Assumption of Lease is delivered pursuant to and is subject to the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Assignment and Assumption of Lease, the terms of the Agreement shall prevail.

12. Capitalized terms which are used but not defined herein shall have the meaning ascribed to such term in the Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this instrument as of the date first set forth above.

ASSIGNOR:

ORANGE AND ROCKLAND UTILITIES, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE:

SOUTHERN ENERGY BOWLINE, L.L.C.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:





**SCHEDULES**  
**TO THE**  
**BOWLINE POINT GENERATING STATION SALES AGREEMENT**

## Bowline Agreement

### Schedule 1.1 (a)(12)

GENERATING STATION	NOX ALLOWANCES 1999 TO 2002*	SO2 ALLOWANCES 2000 TO 2009	SO2 ALLOWANCES 2010 AND THEREAFTER
BOWLINE	885	8,461	8,819

\* The NOx Budget Program regulations (6 NYCRR 227-3) have been issued and noticed for public comment. Since these regulations have not yet been adopted, the NOx allocation may be subject to change. Buyer will receive all NOx allowances allocated to Bowline.

**Schedule 1.1(a)(39)**

**Bowline Point Generating Station**

Bowline Point Generating Station ("Bowline") is located in the Town of Haverstraw, New York. Bowline station has two fossil-fueled electric generating units having a combined nominal capacity of 1200 MW. The following table shows the primary fuel and the Summer Dependable Maximum Net Capability as reported to the New York Power Pool for the 1997 Summer Capability Period on 09/26/97.

UNIT	NET CAPABILITY (MW)	PRIMARY FUEL
Unit 1	610.0	Oil/Gas
Unit 2	605.0	Oil/Gas
Total	1,215.0	

Bowline contains unit-specific and common equipment, systems and auxiliaries used to operate the two electric generating units. A listing of the major equipment is provided in the following table.

BOILERS				STEAM TURBINE GENERATORS		
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS	TYPE	MANUFACTURER	SERIAL NUMBERS
1	Drum Type, Controlled Circulation Radiant Heat (CCRR) Tangentially-Fired, Balanced Draft Furnace with 20 Burners	Combustion Engineering	2369	3600-rpm Tandem- Compound, Four-Flow, Three-Casing, Reheat	General Electric	Turbine: 170X508  Generator: 180X508  Exciter: 8384474(X508)
2	El Paso Drum Type, Natural Circulation, Front and Rear Wall Fired, Balanced Draft Furnace with 32 Burners	Babcock & Wilcox	Contract: 334-0488  RB488	3600-rpm Tandem- Compound, Four-Flow, Three-Casing, Reheat	General Electric	Turbine: 170X575  Generator: 180X575  Exciter: 161X475(X575)

The following table lists major plant systems at Bowline. These systems may be common to both units, or they may be unit specific for one or both units.

<b>LIST OF MAJOR SYSTEMS - BOWLINE</b>
--

**Mechanical Equipment**

Steam Generator and Auxiliaries  
Turbine-Generator and Auxiliaries  
Fuel Oil System  
Boiler Feedpump Turbine  
Lube Oil System  
Condenser and Auxiliaries  
Condensate and Feedwater System  
Circulating Water System  
Service Water System  
Bearing-Cooling Water System  
Fire System  
Demineralizer  
Electrodialysis Reversal Water Treatment System  
Chemical-Feed System  
Compressed Air  
Auxiliary Steam System  
Sampling Equipment  
Instrument and Control System  
Heating, Ventilation and Air Conditioning  
Wastewater Treatment Plant

**Electrical Equipment**

Main Transformer  
Unit Auxiliary Transformer  
Start Up Transformer  
Unit Substation Transformers  
Isolated Phase Bus  
13.8 kV Switchgear Buses  
4.16 kV Switchgear Buses  
480 V Load Centers  
277/480 V Motor Control Centers

120/240 V Inst AC Switchgear w/ Inverter  
DC Switchgear w/ Battery Chargers  
Station Batteries  
Emergency Engine Generator Unit

The main power house includes the plant maintenance shops. The plant site includes the following ancillary facilities: two concrete stacks with individual steel flues, intake pond, cooling water intake structure, sub-surface and surface cooling water discharges to the Hudson River, fresh water storage tank and fire protection pump house, railroad siding, natural gas metering station, six fuel oil storage tanks, dock and oil unloading facilities, three wastewater storage tanks, process waste water treatment facility, administration and service building, sewerage pump station, service garage, warehouse facilities and switchyard relay room.

The following are the critical spares for equipment at Bowline:

DESCRIPTION	STORAGE LOCATION ON SITE
Unit 1 or 2, (1) GE High Pressure Boiler Feed Pump Turbine Rotor	Back Warehouse
Unit 1, (1) set each type: Motor windings for ID and FD Fans	Back Warehouse
Unit 2, (1) set each type: Motor windings for ID and FD Fans	Back Warehouse
Unit 1, (1) ID Fan Shaft	Rear yard, Outside Main Warehouse
Unit 1, (1) ID or FD Fan Shaft Billet	Rear yard, Outside Main Warehouse
Unit 1, (1) High Pressure Boiler Feed Pump Internals	Main Warehouse
Unit 2, (1) High Pressure Boiler Feed Pump Internals	Main Warehouse
Unit 1, (1) Low Pressure Boiler Feed Pump Internals	Main Warehouse
Unit 2, (1) Low Pressure Boiler Feed Pump Internals	Main Warehouse
Unit 1, (1) Boiler Circulating Water Pump Internals	Main Warehouse
Unit 1, (2) Boiler Circulating Water Pump Motors, (1250 HP)	Main Warehouse
Unit 1, (1) set Burner Buckets to replace one burner level	Main Warehouse
Unit 1 or 2, (1) Complete Traveling Screen Frame Section	Rear yard, Outside Main Warehouse
Unit 1 or 2, (4) Generator Stator Bars	Turbine Deck
Unit 1 or 2, (1) set HP Turbine Packing	Main Warehouse

The warehouse contains sufficient inventory to repair all major pumps and smaller pumps located throughout the plant, and rebuild all turbine valves including stop valves, combined reheat valves and control valves.

The following is a list of Generating Step Up ("GSU") transformers at Bowline:

UNIT ID	SIZE	DATE OF MANUFACTURE
Unit 1 - Bk. 155 H409150	672 MVA	GE - 1972
Unit 2 - BK. 255 H409546	672 MVA	GE - 1974

The following is a list of major vehicles at Bowline:

ITEM	MANUFACTURER	MODEL NUMBER	SERIAL NUMBER	ORU ID NUMBER	OWN / LEASE
Pick-up Truck	Ford 1992	F350	VIN 2FTJW35H7 NCA84594	311	Own
Pick-up Truck	Ford 1989	F250	VIN 1FTHF25H XKNB4718 4	354	Own
Pick-up Truck	Ford 1990	F250	VIN 1FTEF25NX LNB04295	441	Own
Pick-up Truck	Ford 1987	F250	VIN FTEF255HN B16307	481	Own
Cherry Picker	Case	3330B - Carry Deck Crane	6225663		Own
Fork Lift	Caterpillar	510P - Tow Motor	24L912		Own



Fork Lift      Clark

GPS-25  
AV1537

Engine:  
HB7946;

Own

Trans.:  
183601;

Steering  
Axle:  
356992

**West Haverstraw Substation**

The following is a list of the major electrical equipment at the West Haverstraw Substation to be sold at the West Haverstraw Substation:

Line 67 Potheads

Line 67 Pothead Structure

Line 68 Potheads

Line 68 Pothead Structure

Line 67 & 68 Oil Pumping Plant

Line 67 & 68 Underground Cable

**Schedule 1.1 (a)(39)(o)**

Nothing to disclose.

**Bowline**  
**Schedule 1.1(a)(41)**  
**ORANGE AND ROCKLAND UTILITIES, INC.**  
**CAPITAL BUDGET**

			(Amounts in Thousands)			
<u>BUDGET#</u>		<u>Project Description</u>	<u>Nov.</u> <u>1998</u>	<u>Dec.</u> <u>1998</u>	<u>Total</u> <u>Nov-Dec</u> <u>1998</u>	<u>Through</u> <u>April</u> <u>1999</u>
		<u>Electric Production</u>				
		<u>Bowline at 100%</u>				
E 178	AX	Bowline 1 Condenser Dogbone	—	—	—	64.2
E 215	AX	Bowline 1 H2 Coolers	—	—	—	225.0
E 344	AX	BP1 Ash Hopper Replacement	—	—	—	546.0
E 354	AX	Bowline Year 2000 Computer Upgrade	—	—	—	275.0
E 358	AX	Bowline 1 Fuel/Air Aux Damper Drives	—	—	—	92.4
E 359	AX	Bowline 1 & 2 Upgrade Net 90 System	—	—	—	46.8
E 367	AX	Floor Washer Sweeper - Bowline	—	—	—	9.3
E 368	AX	Bowline 1 & 2 PMAX & CEM Compliance Tran	—	—	—	92.4
E 219	AX	Bowline 400' Piping Tank Farm	300.0	200.0	500.0	—
E 318	AX	Bowline Computer	85.0	—	85.0	—
E 329	AX	Bowline Forklift	29.3	—	29.3	—
E 981	AX	Bowline #1 Gas Pressure Reg. Value	100.0	27.0	127.0	—
E 220	AX	Bowline #1 ID Fan Turning Gear	—	—	—	161.1
E 357	AX	Bowline #1 Min. Pressure Regulator	—	—	—	29.6
		Total	514.3	227.0	741.3	1541.8

**Bowline**

**Schedule 1.1(a)(42)**

**ORANGE AND ROCKLAND UTILITIES, INC.  
MAINTENANCE EXPENDITURES  
PLANNED OVERHAULS AND Y2K EXPENSE**

**EXPENSE**

**THROUGH  
APRIL 1999**

**(Amounts in Thousands)**

**Bowline #1 Unit 1999 Winter Overhaul:**

**Electric Plant Workscope**

Inspect turbine generator #1, 2, 7, 8, 9, & 10 journal bearings, inspect and repair turbine generator steam valves. Dismantle and inspect the generator. Perform replacement of the generator field retaining rings and field leads. Rewind the generator field as required. Inspect and repair turbine generator auxiliaries. Overhaul 1A Circulating Water Pump and 1B Condensate Pump.

**\$2,050.0**

**Boiler Plant**

Inspect and repair boiler fans. Complete overhaul of 1A High Pressure Boiler Feed Pump Drive Turbine, inspect and repair burners, safety valves, sootblowers, pipe hangers and miscellaneous auxiliary equipment.

**\$850.0**

**Y2K Readiness in accordance with the plans described in  
Section 5.23 of the Agreement**

**\$100.0**

**Total**

**\$3,000.0**

**Schedule 2.2(d)**

**BOWLINE – EXCLUDED ASSETS**

- ◆ PRIMARY EQUIPMENT - 345KV YARD  
None
- ◆ PRIMARY EQUIPMENT - 138KV YARD  
None
- ◆ PROTECTIVE RELAY SYSTEMS  
None
- ◆ SCADA EQUIPMENT  
One (1) Westinghouse Redac 70h System
- ◆ TELECOMMUNICATION EQUIPMENT  
32HCGL225564

**Schedule 5.3(a)**

Nothing to disclose.

**Schedule 5.3(b)**

**Nothing to disclose.**

**Schedule 5.6**

**Nothing to disclose.**



**Schedule 5.7**

**Nothing to disclose.**

**Schedule 5.8**

**BOWLINE GENERATING STATION AND RIGHT OF WAY TO WEST HAVERSTRAW**

All or part of land and easements acquired by the following deeds,  
located in the Villages of Haverstraw and West Haverstraw and the Town of Haverstraw:

**1. Bowline Generating Station and Right of Way to West Haverstraw**

<b><u>ORU DEED #</u></b>	<b><u>GRANTOR</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
N/A	Orange and Rockland Utilities, Inc.*	08/02/77	08/15/77	995	420	Bowline to West Hav. T/L
N/A	Orange and Rockland Utilities, Inc.*	06/14/71	06/15/71	891	248	Bowline Point Joint use area
849	Town of Haverstraw	01/30/61	02/06/61	728	143	Railroad Siding
1002	Broadhaven Realty Corp.	05/22/73	05/13/74	946	960	Boundary Line Agreement
Easement	M. Gurran, et al	01/06/71	01/25/71	886	94	Railroad Siding Easement
Easement	Orange and Rockland Utilities Inc.	03/28/79	10/27/98	1998 - 0051274		gas regulator UG 345 at 138KV Sub
1000	State of New York	01/21/72	02/23/72	904	794	
949	Garnerville Holding Co., Inc.	01/26/76	05/09/77	991	34	
Easement	Garnerville Holding Co., Inc.	09/30/88	05/08/89	352	1784	Bowline to West Hav. T/L

\*Only a portion of the property described in this deed will be conveyed

<u>ORU DEED #</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED DATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
926	H&G Blackwell	12/23/71	12/28/71	902	233	
927	J. Mastromarino	12/23/71	12/28/71	902	230	
Easement	Village of West Haverstraw	03/30/70	04/06/70	874	686	Sewer Easement

**Excepting therefrom:**

Deed	County of Rockland (Grantee)	12/03/80	01/07/81	1053	1065	Samsondale Ave. Widening
Deed	Village & Town of Haverstraw (Grantee)	07/02/76	08/19/76	980	1065	Bowline Park Deed

**Schedule 5.9(a)**

**BOWLINE LEASES/AGREEMENTS**

<b><u>AGREEMENT/ LEASE</u></b>	<b><u>TENANT</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>NOTES</u></b>
Lease	Village of Haverstraw	02/29/96	Unrecorded	Greenway Lease
Permission Letter	Town of Haverstraw	12/01/86	Unrecorded	Gas Recover Grassy Pt. Rd.
Agreement	Town & Village of Haverstraw	06/29/74	Unrecorded	Park Agreement
Agreement	Town & Village of Haverstraw	06/25/76	Unrecorded	Revision to Park Agreement
Agreement	Town of Haverstraw	04/16/85	Unrecorded	Fishing Pier Bowline Pond
Lease	Village of Haverstraw & Town of Haverstraw	06/25/76	Unrecorded	Lease Around Bowline Pond
Agreement	Village of West Haverstraw	04/30/85	Unrecorded	Access Road Agreement Near Pecks Pond
Lease	Village of West Haverstraw	06/21/76	Unrecorded	Ballfield Lease
Lease	Village of West Haverstraw	02/08/91	Unrecorded	Grounds Ball Field Lease
Lease	Town of Haverstraw	07/29/87	Unrecorded	W/S Samsondale Ave.
Lease	Village of Haverstraw	09/17/84	Unrecorded	Jefferson Ave. Parking/Park
Lease	Village of Haverstraw	09/04/85	Unrecorded	Jefferson Ave. Fence
Lease/Agreement	Village of West Haverstraw	03/26/98	Unrecorded	Community Center Cul-de-sac

**Schedule 5.9(a)**

**BOWLINE LEASES/AGREEMENTS**

<b><u>AGREEMENT/ LEASE</u></b>	<b><u>TENANT</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>NOTES</u></b>
Lease	Thiells-Roseville Fire District	07/30/87	Unrecorded	Railroad Ave. Parking
Agreement #52	Conrail (Landlord)	07/07/71	Unrecorded	138 KV UG (south crossing)
Agreement #53	Conrail (Landlord)	07/07/71	Unrecorded	138 KV UG (north crossing)
Agreement #54	Conrail (Landlord)	08/17/71	Unrecorded	345KV UG and 16" gas line
Lease	Omnipoint Communications Inc.	02/01/97 (master lease); SLA 5/29/98	Unrecorded	Comm. Site Bowline Roof
Agreement	Town of Haverstraw	04/12/85	Unrecorded	Access across Railroad siding Westside Grassy Point Road
Agreement	Town of Haverstraw	03/31/98	Unrecorded	Access to permit Environmental monitoring and closure of adja- cent landfill

**Schedule 5.9(b)**

**Nothing to disclose.**

**Schedule 5.10(a)**

**Nothing to disclose.**

**Schedule 5.10(b)**

Nothing to disclose.



**Schedule 5.11(a)**

Nothing to disclose.

**Schedule 5.11(b)**

**Nothing to disclose.**

**Schedule 5.12(a)(i)**

O&R has received the following notification of an alleged violation of a Permit:

By letter dated March 4, 1998, the Riverkeeper, Inc. alleged that Sellers have violated § 9(a)(1)(B) of the Endangered Species Act by taking a listed endangered species (i.e., shortnose sturgeon) without a permit.

In addition, on occasion, Seller experiences exceedances of SPDES discharge parameters, opacity and joint regional leverage board requirements.

**Schedule 5.12(a)(ii)**

**BOWLINE PERMITS**

**BOWLINE**

PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
SPDES - Permit # NY - 0008010	NYSDEC	10/1/87	10/1/92
SPDES Renewal application filed on March 20, 1992; proceeding with SEQRA process as part of renewal procedure. Currently operating under original permit.			
Certificate to Operate Air Contamination Source ■ For Emission Points 00001 and 00002	NYSDEC	5/9/96 Application filed on 2/2/96. Permit issuance superseded by Title V application.	5/15/01
Certificate to Operate an Air Contamination Source - Boiler - Combustion Engineering 3578.4 MBTUH #6 Fuel @25200 GPH, Emission Source Reference #00001 - Boiler - Babcock & Wilcox 3493.2 MBTUH #6 Fuel @24600 GPH, Emission Source Reference #00002	RCHD	8/15/96	8/15/01
Title V Clean Air Act	NYSDEC	Application submitted on June 13, 1997; permit issuance pending	5 years after issuance
Major Onshore Facility License # 3-1680	NYSDEC	11/13/97	3/31/02
Chemical Bulk Storage (regulated under MOSF) 3-0000179			7/17/99
Petroleum Bulk Storage (regulated under MOSF)			
Joint Regional Sewer Discharge Permit # 87001	JRSB	3/13/97	3/13/02

**\* Environmental Acronyms**

- JRSB - Joint Regional Sewer Board (located in West Haverstraw, New York)
- NYSDEC - New York State Department of Environmental Conservation
- RCHD - Rockland County Health Department
- SEQRA - State Environmental Quality Review Act
- SPDES - State Pollutant Discharge Elimination System

**Schedule 5.12 (b)**

Nothing to disclose.

**Schedule 5.12 (c)**

**Consent Orders - Environmental**

1. Sellers have entered into the following outstanding Consent Orders:

- (a) Fourth amended Stipulation of Settlement and Judicial Consent Order in NRDC v. NYSDEC, executed by the Honorable Justice Joseph C. Teresi on October 23, 1997 by which Sellers agreed to certain operating limitations and biological monitoring requirements relating to Bowline.

- (b) Order on Consent, dated as of August 18, 1998, in DEC Index No. D3-9000-97-08 executed by Sellers and the New York State Department of Environmental Conservation, by which Sellers agreed to a stipulated schedule of penalties in the event of future excess opacity exceedances at Bowline and Lovett in violation of 6 NYCRR § 227 and ECL §§ 19-0301 and 19-0303.

**Schedule 5.12 (d)**

**Environmental Compliance Assessment Checklists\***

- 10/30/98 (Saksen)
  - 10/30/98 (Frisco)
  - 9/23/98
  - 9/17/98
1. Phase I Environmental Site Assessment, Bowline Point Generating Station, Haverstraw, New York prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.
  2. Phase II Environmental Site Investigation, Bowline Point Generating Station, Haverstraw, New York prepared by Woodward-Clyde for Orange and Rockland, dated October 1998.
  3. Report, Additional Phase II Environmental Site Investigations Orange and Rockland prepared by URS Greiner Woodward Clyde dated November 1998.

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**Note:** Environmental Assessments of Bowline are performed monthly by the (i) Environmental affairs Department - Electric Production Division and (ii) Environmental Services Department - Corporate. Completed assessments are retained for a two to three month period.

**Schedule 5.13**

Nothing to disclose.



**Schedule 5.14(a)**

Employees' Retirement Plan  
Hourly Group Savings Plan  
Management Employees' Savings Plan  
Severance Pay Plan  
Long-Term Performance Share Unit Plan  
Non-Officers' Supplemental Retirement Plan  
Eligible Employees' Insurance Program  
Eligible Employees' Compensation Deferral Plan  
Annual Team Incentive Plan  
Blanket Accident Policy  
Hourly, Management and Executive Long-Term Disability Insurance Policies  
Management Employee Transition Program  
Employees' Group Insurance Plan (Health, Life, Long-Term Disability)  
Flexible Benefit Plans  
Dependent Care Plans  
Employee Assistance Program  
Tuition Reimbursement Program

**Schedule 5.14(b)(i)**

**Nothing to disclose.**

**Schedule 5.14(b)(ii)**

Nothing to disclose.

**Schedule 5.14(b)(iii)**

Nothing to disclose.

**Schedule 5.14 (c)**

**Nothing to disclose.**

**Schedule 5.15**

**PERMITTED ENCUMBRANCES**

**I. BOWLINE GENERATING STATION AND RIGHT OF WAY TO WEST HAVERSTRAW**

**In addition to the Permitted Encumbrances listed below, various of the properties described in Schedule 5.8 shall be subject to the Operating Easement, consisting of the easement or easements or reservation of rights with respect to the Purchased Assets required by the Seller to operate its transmission and distribution business.**

<b><u>GRANTEE</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE*</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Joint Regional Sewerage Board, etc.	03/19/76	06/11/76	977	649	Sewer Line Easement
County of Rockland	01/21/75	01/31/75	958	737	Drainage Easement, Minisceongo Creek
Village of Haverstraw	01/29/87	02/29/87	209	160	Drainage Pipe Easement
Samsondale Haverstraw Equities, Ltd.	11/18/81	12/10/81	1066	754	Rt 9W Parking Easement
Village & Town of Haverstraw	07/02/76	08/19/76	980	1065	Bowline Park Deed
Spring Valley Water Co., Inc.	01/12/72	03/01/73	923	1084	Water Line Easement West Side Samsondale Ave.
Village of West Haverstraw	05/26/72	Unknown	—	—	Drainage Easement w/s Rt. 9W

Permitted Encumbrances as defined in Section 1.1(a)(37) of this Agreement.

In addition, the real property encumbrances or reservations of rights set forth in the deeds listed in Schedule 5.8.

**Schedule 5.17(a)**

**A. BOWLINE POINT GENERATING STATION**

- (1) Form of Service Agreement for Service Under OPT Rate Schedule, between Columbia Gas Transmission Corp. and O&R, dated July 1, 1991.
- (2) Operating Agreement between Consolidated Edison Company of New York, Inc. and O&R, dated October 10, 1969, as amended.
- (3) Purchase Order for Propane for Suffern, Orangeburg and Middletown Propane Plants and for Bowline Point Plant Between Canadian Enterprise Gas Products and O&R.\*
- (4) Purchase Order for Bowline Plant Maintenance of Thermal Insulation between AC&S and O&R, dated April 6, 1998.

**B. AGREEMENTS RELATING TO MULTIPLE FACILITIES**

- (5) Residual Fuel Oil Agreement between Consolidated Edison Company, of New York, Inc. and O&R, dated August 31, 1983, as amended. (Fuel oil for Bowline Point Generating Station and back-up fuel for Lovett).
- (6) Purchase Order for Diesel and Kerosene between Rad Energy and O&R, for Use Throughout the Company, Including at Generation Plants.\*\*
- (7) Rental Garment Service Agreement Between Cintas Corporation and O&R, dated February 11, 1998. (Uniforms for employees at Bowline, Lovett, Hydroelectric facilities, as well as other departments within the Company).\*\*\*

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\* This type of contract is entered into annually (with various vendors) with a term from October through March, including an original fill and a right to purchase additional gallons. If assigned, the assignment of the existing contract would only include the Bowline portion.

\*\* This Purchase Order covers the Company's diesel and kerosene requirements from December 1, 1997, through November 30, 1999. If assigned, the assignment would only include product for the generating facilities.

\*\*\* Agreement and purchase orders issued thereunder cover uniform requirements from January 1, 1998, through January 31, 2003. Assignment would include purchase orders relating to Bowline, Lovett and the hydroelectric facilities.

**Schedule 5.17(b)**

**A. BOWLINE POINT GENERATING STATION**

- (1) Operating Agreement between Consolidated Edison Company of New York, Inc. and O&R, dated October 10, 1969, as amended.

**B. AGREEMENTS RELATING TO MULTIPLE FACILITIES**

- (2) Residual Fuel Oil Agreement between Consolidated Edison Company of New York, Inc. and O&R, dated August 31, 1983, as amended.



**Schedule 5.17(c)**

**Nothing to disclose.**

### **Schedule 5.18**

#### **Bowline Point Generating Station**

1. BP Exploration & Oil, Inc., et al v. AGIP, USA, Inc., et al (Borne Hazardous Waste Site)
  - Superior Court of New Jersey – Chancery Division – Union County – Docket No. UNN-C-164-95 – Judge John M. Boyle
2. Metal Bank Cottman Avenue Superfund Site
  - United States Environmental Protection Agency – Region III – Docket No. III-98-082-DC
3. Energy Association of New York State, et al v. NYPSC
  - Supreme Court of the State of New York – Appellate Division – Third Department – Index No. 5830/96
4. Public Utility Law Project of New York, Inc., Thomas Albin v. the New York Public Service Commission, et al
  - Supreme Court, State of New York - County of Albany (5685-97) -- Judge Joseph C. Teresi
5. In re: Orange and Rockland Utilities, Inc. v. the Assessor of the Town of Haverstraw, et al
  - Supreme Court of the State of New York - County of Rockland – Justice Louis C. Palella
6. U.S.A. v. Helen Kramer et al. – State of New Jersey Dept. Of Environmental Protection v. Almo Anti Pollution et al. – Helen Kramer Landfill-Bechtel
  - United States District Court, District of New Jersey – Civil No.: 89-4240(JBS) – Civil No.: 89-4380(JBS) – Judge Jerome B. Simandle

**Schedule 5.19(a)**

**NON-ENVIRONMENTAL PERMITS/REGISTRATIONS**

**BOWLINE GENERATING STATION**

PERMIT TYPE	PERMIT NUMBER	EXPIRATION	COMMENTS
CHEMICAL BULK STORAGE	3-000179	7/1/99	CHEMICAL STORAGE OVER 180 GAL
BOWLINE HELIPORT	FAA SITE NO. 15391.11H	NA	MAINTENANCE OF STACK AND TOWER LIGHTS
RADIO LICENSE	9807D111295	7/1/03	RADIO LICENSE FOR ORU
ASBESTOS HANDLING LICENSE	98-0108	12/31/99	ISSUED FOR BOTH BOWLINE AND LOVETT

**Schedule 5.19(b)**

**Nothing to disclose.**

**Schedule 5.20(a)(i)**

O&R and its subsidiaries are not regulated as public utilities in any states other than New York, New Jersey and Pennsylvania.

**Schedule 5.20(a)(ii)**

Con Edison and its subsidiaries are not regulated as public utilities in any state other than New York.

**Schedule 5.20(b)**

**Regulation as a Public Utility**

O&R and certain of its subsidiaries are regulated as public utilities as follows:

- (a) O&R is an "electric corporation" under New York law and subject to regulation by the NYPSC.
- (b) O&R's wholly owned subsidiary, Rockland Electric Company ("RECO") is a "public utility" under New Jersey law and subject to regulation by the NJBPU.
- (c) O&R's wholly owned subsidiary, Pike County Light & Power Company ("Pike") is a "public utility" under Pennsylvania law and subject to regulation by the PAPUC.
- (d) O&R, RECO and Pike are also subject to regulation by the FERC and SEC.

Con Edison is regulated as a public utility as follows:

- (a) Con Edison is an "electric corporation" under New York law and subject to regulation by the NYPSC.
- (b) Con Edison is subject to regulation by the FERC.

**Schedule 5.21**

**Nothing to disclose.**



**Schedule 6.3(a)**

**Buyer's Regulatory Approvals**

1. FERC approval of "exempt wholesale generator" status for the Buyer under Section 32 of the Holding Company Act;
2. FERC approval of Buyer's acquisition of FERC jurisdictional assets under Section 203 of the Federal Power Act;
3. FERC approval under Section 204 of the Federal Power Act, to the extent necessary, of any issuance of securities by Buyer;
4. FERC approval under Section 205 of the Federal Power Act of any sales of electricity, transmission service, or ancillary services by Buyer, including, without limitation, Buyer's receipt from FERC of authority to sell electricity at wholesale market rates and the approval by FERC of any wholesale power sales agreements to be transferred by Seller to Buyer;
5. Any determinations or other approvals from state commissions necessary under Section 32(c) of the Holding Company Act for the Purchased Assets to be eligible facilities and for the Buyer to own such Purchased Assets as an exempt wholesale generator under Section 32 of the Holding Company Act;
6. Any approvals required under New York law for the Buyer to acquire, finance, own or operate the Purchased Assets or to sell or distribute power therefrom;
7. Any approval required from any governmental entity pursuant to any Environmental Law, in order to own or operate the Purchased Assets as they currently exist; and
8. The transfer of any Permits to the Buyer and the issuance or grant of any additional licenses, certificates, permits, consents, approvals or other authorizations from any governmental entity necessary for Buyer to acquire, own and operate the Purchased Assets and to sell power at wholesale.

## Schedule 6.5

### **Regulation as a Utility**

On the Closing Date, Buyer will be an exempt wholesale generator under the Holding Company Act, although it is a subsidiary of a registered public utility holding company under the Holding Company Act. On the Closing Date, Buyer also will be a public utility under the Federal Power Act.

Southern Energy, Inc. is not now a utility subject to the regulation of the New York State Public Service Commission. As of the date of closing, Buyer will become, by virtue of its ownership of an electric plant, as that term is defined by Section 2(12) of the New York State Public Service Law, an electric corporation, as that term is defined by Section 2(13) of the New York State Public Service Law. Electric corporations, subject to the certain exceptions not relevant here, are subject to the jurisdiction of the New York State Public Service Commission.

**Schedule 7.1**

**Nothing to disclose.**

**Schedule 7.4**

**Nothing to disclose.**

**Schedule 7.8(c)**

**POLLUTION CONTROL FACILITIES  
ASSOCIATED WITH THE BOWLINE POINT GENERATING STATION**

The following facilities as they are further described or referred to in the Tax Regulatory Agreement dated August 31, 1994 between New York State Energy Research and Development Authority and Orange and Rockland Utilities, Inc.:

A Wastewater Treatment Plant at O&R's Bowline Point Generating Plant, to the extent of O&R's one-third undivided interest therein, consisting of wastewater collection tanks, holding tanks, a chemical treatment system, including mixing and reaction tanks, solids contact clarifier, granular media, filters, surge units, oil skimmer and associated equipment, and appurtenances and property, real and personal, site work and certain necessary piping, pumps, process controls and monitors, sampling and service systems, chemical storage and pH-adjustment equipment.

The foregoing systems also include certain buildings, items of electrical equipment, pumping, piping, tanks, instrumentation, lighting and other equipment associated with the foregoing.

**Schedule 7.10(a)**

Agreement between O & R and Local Union No. 503 of the International Brotherhood of Electrical Workers effective June 1, 1997 through May 31, 2000, as supplemented by the operating agreements listed below.

- 1) Shift Swaps.
- 2) Vacation Schedules.
- 3) Painting Projects For Laborers.
- 4) Supplemental Agreement - Certified Welder/Repairman (Rules For Certified Welders Test).
- 5) Memo Of Understanding - One Day Vacation Policy.
- 6) Memo Of Understanding - Plant Operations And Utility Operators.
- 7) Supplemental Agreement - Plant Operators And Utility Operators (Bidding Procedures).
- 8) Memo Of Understanding For Split Vacation Week For Shift Workers At Lovett And Bowline Point Plants.
- 9) Memo Of Understanding - Laborers In The Electric Production Department - Cleaning Up Asbestos Containing Material (ACM) Spills.
- 10) Laborers At Plants Will Travel To Secure And Deliver Parts And Equipment For Operation And Maintenance Of Plants.
- 11) Agreement On The Use Of Surplus Operating Personnel At Lovett And Bowline Plants.
- 12) Jury Duty - Workers At Bowline And Lovett Plants (Letter Dated 3-1-93; Letter Dated 2-5-93; Schedule Assignment Memo).
- 13) Assignment Of Employees For Overtime Work (Memo).
- 14) Maintenance Of Regulator Stations At Lovett And Bowline Plants Connected To O&R Gas Department System (Memo).
- 15) Filling C.E.M. Position At Bowline.
- 16) Assistant Yardman And Yardman - Filling Future Positions (Grievance No. 074-88E-036 - Letter).
- 17) Rotating vs. Non-Rotating Work Schedules For Scheduled Workers At The Plants (Letter).
- 18) Annual Clothing Payment - Safety Clothing (Plus Addendum).
- 19) Small Scale Body Fluid Spills - Clean-Up Memo.
- 20) Off-Hour Defensive Driver Training - Use Of Union Instructors.
- 21) Safety Eyeglass Program (Revised July 1997).
- 22) Hillburn GT Mechanic Call Out.
- 23) Supplemental Agreement - Operation and Maintenance of Peaking Units - Eastern Division and Western Division.
- 24) Memo of Agreement - Siemens 4160 V Switchgear.
- 25) Memo of Understanding - Snow Plowing - Lovett Plant.
- 26) Lovett Maintenance Department - Overtime Procedure.

- 27) Guidelines When Calling Plant Operators and Utility Operators For Overtime.
- 28) Memo of Agreement - Results Tech Group - Mr. William Hessian (Letter).
- 29) Notice - Lovett Employees - Mileage Allowances.
- 30) Supplemental Agreement - Waste Water Treatment Facility - Lovett.
- 31) Memo of Understanding - Procedures For The Operation and Maintenance of The Lovett Vacuum Truck and Sweeper Attachment.
- 32) Lovett - Relay Rooms (Memo).
- 33) Memo of Understanding - Lay Up Unit #2.
- 34) Yardman - Maintenance Of Tank Farm.
- 35) Plant Electricians vs. Substation Electrician-Work Assignments.
- 36) Control Techs vs. Mechanical/Repairman - Work Assignment (Grievance #007-96E-007).
- 37) Partial List of One (1) Person Jobs.
- 38) Snow Removal - Bowline (Memo).
- 39) Outage Agreement - Personnel Assignment - Bowline.

**Schedule 7.10(b)**

) To be completed by Buyer and provided to O&R at least 90 days prior to the date on which Closing is anticipated to occur, but in no event later than February 1, 1999.



3

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LOVETT GENERATING STATION SALES AGREEMENT

BETWEEN

ORANGE AND ROCKLAND UTILITIES, INC.

AND

SOUTHERN ENERGY LOVETT, L.L.C.

November 24, 1998

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## LOVETT GENERATING STATION SALES AGREEMENT

LOVETT GENERATING STATION SALES AGREEMENT, dated as of November 24, 1998, between Orange and Rockland Utilities, Inc., a New York corporation ("Seller" or "O&R"), and Southern Energy Lovett, L.L.C., a Delaware limited liability company ("Buyer").

WHEREAS, the Seller owns and operates the Purchased Assets (as defined herein); and

WHEREAS, the Buyer desires to purchase and assume from the Seller, and the Seller desires to sell to Buyer, the Purchased Assets upon the terms and conditions hereinafter set forth in this Agreement.

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

### ARTICLE I

#### DEFINITIONS

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

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

(2) "Agreement" means this Lovett Generating Station Sales Agreement together with the Schedules and Exhibits hereto.

(3) "Ancillary Agreements" means the Operating Easement, the Load Pocket Agreement, the Continuing Site/Interconnection Agreement and the Transition Agreement.

(4) "Bill of Sale" means the Bill of Sale to be delivered at the Closing with respect to the Purchased Assets which constitute personal property and which are to be transferred at the Closing, substantially in the form of Exhibit A hereto.

(5) "Business Day" shall mean any day other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

(6) "Buyer Representatives" means the Buyer's accountants, counsel, environmental consultants, financial advisors and other authorized representatives.

(7) "CERCLA" means the Federal Comprehensive Environmental Response, Compensation and Liability Act.

(8) "Code" means the Internal Revenue Code of 1986, as amended.



(9) "Confidentiality Agreement" means the Confidentiality Agreement, dated June 19, 1998, between the Seller and Southern Energy, Inc.

(10) "Continuing Site/Interconnection Agreement" means the Continuing Site/Interconnection Agreement, dated as of the date of this Agreement, between the Seller and the Buyer.

(11) "Emission Allowances" means the sulfur dioxide allowances already allocated by the United States Environmental Protection Agency to Lovett and the nitrogen oxide allowances to be allocated by the New York State Department of Environmental Conservation to Lovett, all as set forth in Schedule 1.1(a)(11).

(12) "Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements activity and use limitations, conservation easements, deed restrictions, encumbrances and charges of any kind.

(13) "Environmental Laws" means all Federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, laws relating to Releases or threatened Releases of Hazardous Substances or coal ash (including, without limitation, ambient air, surface water, groundwater, land,

surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport or handling of Hazardous Substances or coal ash.

(14) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(15) "Estimated Inventory Adjustment Amount" means the lesser of the Seller's book value of its coal inventory, or \$48.50 per ton multiplied by the number of tons of coal in the coal inventory, used at or in connection with the Purchased Assets as of the date ten (10) days before the Closing Date, which valuation shall be provided to the Buyer by the Seller no later than five (5) days before the Closing Date. For the purposes of calculating the Estimated Inventory Adjustment Amount, the coal inventory shall include all coal whether above or below grade, except that any below grade coal, determined through a survey to be conducted by Seller prior to the Closing, whose use would be non-compliant with air emission regulations regarding SO<sub>2</sub> emissions, shall be excluded from such inventory.

(16) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(17) "Federal Power Act" means the Federal Power Act of 1935.

(18) "FERC" means the Federal Energy Regulatory Commission or any successor thereto.

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

(20) "Hazardous Substances" means (a) any petrochemical or petroleum products, oil, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely hazardous

substances," "toxic substances," "contaminants" or "pollutants" or words of similar meaning and regulatory effect; or (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(21) "Holding Company Act" means the Public Utility Holding Company Act of 1935, as amended.

(22) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(23) "Income Tax" means any tax, charge, fee, levy, penalty, or other assessment imposed by any U.S. federal, state, local or foreign taxing authority (a) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains taxes and alternative minimum taxes but excluding sales, transfer and similar taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on which such tax may be based, measured by or calculated with respect to, is described in clause (a), in each case together with any interest, penalties, or additions attributable thereto.

(24) "Income Tax Return" means any return, report, information return or other document (including any related or supporting information)

supplied or required to be supplied to any authority with respect to Income Taxes.

(25) "Independent Accounting Firm" means Arthur Andersen LLP or such other independent accounting firm of national reputation mutually appointed by the Seller and the Buyer.

(26) "Instrument of Assumption" means the Instrument of Assumption in the form of Exhibit B hereto.

(27) "Intellectual Property" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, copyrights and copyright rights, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights other than the names, trademarks, service marks or logos listed in Section 2.2(b) hereof.

(28) "Internal Revenue Service" means the United States Internal Revenue Service, or any successor thereto.

(29) "ISO" means the New York Independent System Operator, or its successor.

(30) "Load Pocket Agreement" means the Load Pocket Call Option Agreement, dated as of the date of this Agreement, between the Buyer and Seller.

(31) "Lovett" means the Lovett Generating Station located in Tomkins Cove, Rockland County, New York.

(32) "Material Adverse Effect" means any change in or effect on the Purchased Assets after the date of this Agreement that is, individually or in the aggregate, materially adverse to the condition (financial or physical) of (as compared to the condition on the date of this Agreement), or the ability to own or operate (as compared to the ownership and operation thereof prior to the date of this Agreement), any material part of the Purchased Assets, other than (i) any change or effect resulting from changes in the international, national, regional or local wholesale or retail markets for electric power, (ii) any change or effect resulting from changes in the international, national, regional or local markets for any fuel used at the Purchased Assets, (iii) any change or effect resulting from changes in the North American, national, regional or local electric transmission systems, (iv) any change or effect resulting from any regulation, rule or order adopted or proposed by or with respect to the ISO and its responsibility for, authority over and operation of the wholesale and retail electric energy, capacity and ancillary services electric power markets and (v) any materially adverse

change in or effect on the Purchased Assets which is cured (including by the payment of money) by the Seller before the Termination Date.

(33) "NJBPU" means the New Jersey Board of Public Utilities, or any successor thereto.

(34) "NYPSC" means the New York Public Service Commission or any successor thereto.

(35) "Operating Easement" means the operating easement providing the right to continue operating and maintaining certain distribution facilities at the substations, which will be prepared as described in the Continuing Site/Interconnection Agreement.

(36) "Other Sales Agreements" means the Bowline Generating Station Sales Agreement between the Seller and Southern Energy Bowline, L.L.C.; the Gas Turbines and Hydroelectric Generating Station Sales Agreement between the Seller and Southern Energy NY-Gen, L.L.C.; and the Bowline Adjacent Property Sales Agreement between the Seller and Southern Energy Bowline, L.L.C., each dated as of the date of this Agreement.

(37) "PAPUC" means the Pennsylvania Public Utility Commission or any successor thereto.

(38) "Permitted Encumbrances" means (i) those exceptions to title to the Purchased Assets contained in the documents listed on Schedules 5.8,

5.9(a), 5.9(b) and 5.15; (ii) any state of facts that a current survey of the Purchased Assets would disclose; (iii) mortgages, liens, pledges, charges, encumbrances and restrictions which are not in excess of \$100,000 incurred in connection with the Sellers' purchase of properties and assets to be conveyed to Buyer as part of the Purchased Assets after the date of this Agreement securing all or a portion of the purchase price therefor incurred in the ordinary course of business; (iv) the Operating Easement; (v) statutory liens for current Taxes, assessments or other governmental charges not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles, provided that the aggregate amount being so contested does not exceed \$500,000; (vi) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to the Sellers' obligations which are not yet due and payable or the validity of which are being contested in good faith by appropriate proceedings, provided that the aggregate amount of such liens does not exceed \$500,000; (vii) zoning, entitlement, conservation restrictions and other land use and environmental regulations by governmental authorities, provided that the foregoing do not materially interfere with the present use of the Purchased Assets; and (viii) such other liens, imperfections in or failure of title, charges, easements, restrictions and encumbrances



which do not materially detract from the value of or materially interfere with the present use of the Purchased Assets and neither secure indebtedness, nor individually or in the aggregate have or would have a Material Adverse Effect or which will be discharged or released prior to or simultaneously with the Closing.

(39) "Person" means an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an unincorporated organization or a governmental entity or any department or agency thereof.

(40) "Purchased Assets" means the real and personal property, tangible or intangible, constituting or used principally for generation purposes at, or otherwise for, the operation of Lovett, including, but not limited to, the following assets:

(a) two active steam electric generating units (Units 4 and 5) fired by coal, natural gas or heavy oil, one active steam electric generating unit fired by natural gas or oil (Unit 3) and two retired units formerly capable of being fired by natural gas or oil (Units 1 and 2) as listed or referred to in Schedule 1.1(a)(40);

(b) all of the Seller's right, title and interest in, to and under the Real Property (including all structures, buildings, facilities and

other improvements thereon and all appurtenances thereto) as further described on Schedule 5.8;

(c) all other machinery, equipment, furniture and other personal property owned by the Seller on the Closing Date and located at Lovett and listed or referred to in Schedule 1.1(a)(40);

(d) all inventories of fuels, supplies, spare parts and materials located at Lovett;

(e) the 69 kV and 138 kV transmission connections, described as being sold to Buyer in the separation document summary in Exhibit C;

(f) all contracts, agreements and personal property leases principally relating to Lovett, as further listed on Schedules 5.17(a), (b), and (c) and 7.10(a), respectively, as being associated with the Lovett Generating Station;

(g) all Environmental Permits and Permits listed on Schedules 5.12(a)(ii) and 5.19(a), respectively, as being associated with the Lovett Generating Station;

(h) the Emission allowances;

(i) the coal ash management facility ("CAMF") located adjacent to the Lovett, which consists of a clay-lined partially

covered twelve (12) acre coal ash disposal area, leachate pump station and detention pond, the coal ash and all equipment located at such facility and used in connection with the CAMF;

(j) the gas regulator station, station bypass piping and the 24 inch steel main downstream at the outlet of the regulator station;

(k) all books, operating records, reports, engineering or design plans, specifications, drawings, procedures, software or tools used to process and report environmental data, safety and maintenance manuals and similar items of the Seller relating specifically to the aforementioned assets;

(l) all of the Seller's right, title and interest in, to and under the Leases;

(m) copies of all filings made with regulatory agencies, as updated, relating to Seller's Year 2000 programs as such filings apply to the Purchased Assets;

(n) all unexpired, transferable warranties and guarantees from third parties with respect to any of the Purchased Assets, as of the Closing Date;

(o) the Intellectual Property, if any, relating to the Purchased Assets (including Seller's goodwill therein and the rights of

Seller in and to the name of Lovett) and all the rights, privileges, claims, causes of action, indemnification rights and options pertaining solely to the Purchased Assets or the Assumed Liabilities, including without limitation, those items listed on Schedule 1.1(a)(40)(o);

(p) the assets acquired by Seller pursuant to Section 7.4;

(q) the six inch and eight inch water mains extending from Lovett to connections with United Water Company Facilities located at (i) Park Road in Stony Point, New York and (ii) the intersection of Elm Avenue and Route 9W in Stony Point, New York, respectively subject to the terms of applicable easements which would not have a materially adverse effect thereon; and

(r) \$5.4 million in cash.

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

(42) "Scheduled Capital Expenditures" means those capital expenditures listed on Schedule 1.1(a)(42).

(43) "Scheduled Maintenance Expenditures" means those maintenance expenditures listed on Schedule 1.1(a)(43).

(44) "SEC" means the Securities and Exchange Commission or any successor thereto.

(45) "Securities Act" means the Securities Act of 1933, as amended.

(46) "Seller Agreements" means those agreements listed on Schedule 5.17(a) and the Collective Bargaining Agreements.

(47) "Separation Document" means the document, to be negotiated in good faith by the Seller and the Buyer within three (3) months from the date of this Agreement, which will delineate the Purchased Assets from the Seller's other assets and which will be consistent with the separation document summary attached hereto as Exhibit C.

(48) "Subsidiary" when used in reference to any other person means any corporation of which outstanding securities having ordinary voting power to elect a majority of the Board of Directors of such corporation are owned directly or indirectly by such other person.

(49) "Tax" means any tax, charge, fee, levy, penalty or other assessment imposed by any U.S. federal, state, local or foreign taxing authority, including, but not limited to, any income, gross receipts, license, stamp, occupation, environmental, excise, property, sales, transfer, payroll, unemployment,

withholding, social security or any other tax of any kind whatsoever, including any interest, penalties or additions attributable thereto.

(50) "Tax Return" means any return, report, information return, declaration, claim for refund or other document (including any schedule or other related or supporting information) supplied or required to be supplied to any authority with respect to Taxes and including any supplement or amendment thereof.

(51) "Transition Agreement" means the Transition Power Sales Agreement between the Buyer, Southern Energy Bowline, L.L.C., Southern Energy NY-Gen, L.L.C. and the Seller, dated as of the date of this Agreement.

(52) "WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988.

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

<u>Term</u>	<u>Section</u>
Adjustment Statement	3.2
ALTA	7.12
Assumed Liabilities	2.3
Benefit Plans	5.14
Buyer	Preamble
Buyer Required Regulatory Approvals	6.3
Buyer's Easements	4.3
Buyer's Indemnitee	9.1
CEI	11.5
Closing	4.1

<u>Term</u>	<u>Section</u>
Closing Date	4.1
Collective Bargaining Agreements	7.10
Defect of Title	7.12
Direct Claim	9.2
Disclosing Party	11.2
DLJ	7.7
Environmental Permits	5.12
ERISA Affiliate	2.4
ERISA Affiliate Plans	2.4
Estimated Purchase Price	4.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Final Order	8.1
Hourly Employees	7.10
Indemnifiable Losses	9.1
Indemnification Floor	9.1
Indemnifying Party	9.1
Indemnitee	9.1
Inventory Adjustment Amount	3.2
Leases	5.9
Leased Assets	7.4
Management Employees	7.10
Maintenance and Capital Expenditures Adjustment Amount	3.2
Massey	7.1
Materials and Supplies Adjustment Amount	3.2
Necessary Capital Expenditures	7.1(b)
Necessary Maintenance Expenditures	7.1(d)
NYBTU	7.12
Pension Benefit Plans	2.4
Permits	5.19
Pollution Control Bonds	2.4
Pollution Control Facilities	7.8
Purchase Price	3.1
Purchased Assets	Preamble
Real Property	5.8
Recipient	11.2
Seller	Preamble
Seller Balance Sheet	5.5
Seller Required Regulatory Approvals	5.3

<u>Term</u>	<u>Section</u>
Seller's Easements	4.3
Termination Date	10.1
Third Party Claim	9.2
Title Commitment	7.12
Title Company	7.12
1986 Tax Act	7.8

## ARTICLE II SALE AND PURCHASE

2.1 The Sale. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, the Seller will sell, assign, convey, transfer and deliver to the Buyer, and the Buyer will purchase and acquire from the Seller, free and clear of all Encumbrances (except for Permitted Encumbrances) all of the Seller's right, title and interest in, to and under the real and personal property, tangible or intangible, owned by the Seller and constituting the Purchased Assets.

2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include the following (herein referred to as the "Excluded Assets"):

- (a) all cash, bank deposits, cash equivalents and accounts receivable (other than the cash specified in Section 1.1(a)(40)(r) of the Agreement);



(b) the name "Orange and Rockland Utilities, Inc.", "Orange and Rockland", "O&R", "ORU" or any related or similar trade names, trade-marks, service marks or logos;

(c) distribution, substation and communication facilities and related support equipment described in Schedule 2.2(c);

(d) any refund, credit, penalty payment, adjustment or reconciliation (i) related to personal property or other Taxes (excluding Taxes relating to Real Property) paid prior to the Closing Date in respect of the Purchased Assets, whether such refund, adjustment or reconciliation is received as a payment or as a credit against future Taxes payable, or (ii) arising under any of the Seller Agreements and relating to a period before the Closing Date;

(e) except to the extent specifically required by law, all personnel records relating to any employees of the Seller; and

(f) the rights and assets to be described in the Separation Document as not part of the Purchased Assets.

2.3 Assumed Liabilities. On the Closing Date, the Buyer shall deliver to the Seller the Instrument of Assumption pursuant to which the Buyer shall assume and agree to discharge to the maximum extent permitted by law, all of the following liabilities and obligations of the Seller which relate to the Purchased Assets, other than

**Excluded Liabilities, in accordance with the respective terms and subject to the respective conditions thereof:**

**(a) all liabilities and obligations of the Seller arising or accruing after the Closing Date under (i) the Seller Agreements, the Environmental Permits, the Permits, real property leases, contracts and other agreements disclosed and assigned to the Buyer pursuant to this Agreement in accordance with the terms thereof, and (ii) the leases, contracts and other agreements entered into by the Seller with respect to the Purchased Assets after the date hereof consistent with the terms of this Agreement; except in each case, to the extent such liabilities and obligations, but for a breach or default by the Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arise out of any such breach or default or any event which after the giving of notice would constitute a default by Seller;**

**(b) all liabilities and obligations associated with the Purchased Assets in respect of Taxes for which the Buyer is liable pursuant to Section 7.8;**

**(c) any liabilities and obligations for which the Buyer has indemnified the Seller pursuant to Section 9.1;**

**(d) all liabilities to employees for which the Buyer is liable pursuant to Section 7.10, including the Collective Bargaining Agreements;**

(e) any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (i) any violation or alleged violation of Environmental Law, prior to the Closing Date, with respect to the ownership or operation of the Purchased Assets; (ii) loss of life, injury to persons or property or damage to natural resources (whether or not such loss, injury or damage arose or was made manifest before the Closing Date or arises or becomes manifest after the Closing Date), caused (or allegedly caused) by the presence or Release of Hazardous Substances or coal ash at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets prior to the Closing Date, including, but not limited to, Hazardous Substances or coal ash contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; and (iii) the investigation and/or remediation (whether or not such investigation or remediation commenced before the Closing Date or commences after the Closing Date) of Hazardous Substances or coal ash that is present or has been Released prior to the Closing Date at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets, including, but not limited to, Hazardous Substances or coal ash contained

in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; provided, as to all of the above, that nothing set forth in this subsection 2.3(e) shall require the Buyer to assume any liabilities that are expressly excluded in Section 2.4;

(f) any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (i) any violation or alleged violation of Environmental Law, on or after the Closing Date, with respect to the ownership or operation of the Purchased Assets; (ii) compliance with applicable Environmental Laws on or after the Closing Date with respect to the ownership or operation of the Purchased Assets; (iii) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by the presence or Release of Hazardous Substances or coal ash at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets on or after the Closing Date, including, but not limited to, Hazardous Substances or coal ash contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; (iv) loss of life,

injury to persons or property or damage to natural resources caused (or allegedly caused) by the off-site disposal, storage, transportation, discharge, Release, recycling, or the arrangement for such activities, of Hazardous Substances or coal ash, on or after the Closing Date, in connection with the ownership or operation of the Purchased Assets; (v) the investigation and/or remediation of Hazardous Substances or coal ash that is present or has been released on or after the Closing Date at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets, including, but not limited to, Hazardous Substances or coal ash contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells or in other environmental media at or adjacent to the Purchased Assets; and (vi) the investigation and/or remediation of Hazardous Substances or coal ash that is disposed, stored, transported, discharged, Released, recycled, or the arrangement of such activities, on or after the Closing Date, in connection with the ownership or operation of the Purchased Assets, at any off-site location; provided, that nothing set forth in this subsection shall require the Buyer to assume any liabilities that are expressly excluded in Section 2.4;

(g) all liabilities and obligations of the Seller with respect to the Purchased Assets under the agreements or consent orders set forth on Schedule 5.12(c);

(h) all liabilities incurred by the Seller with respect to maintenance and capital expenditures made with respect to the Purchased Assets by the Seller which are requested by Buyer;

(i) all liabilities or obligations relating to leases for the Purchased Assets; and

(j) all other liabilities or obligations other than those liabilities and obligations noted in (a) through (i) above, exclusively relating to the Purchased Assets no matter when the events or occurrences giving rise to such liabilities or obligations took place, the value of which liabilities and obligations, together with the liabilities and obligations relating to the "Purchased Asset" and the "Purchased Assets" as defined in the Other Sales Agreements, in the aggregate, shall not exceed \$3 million.

All of the foregoing liabilities and obligations to be assumed by the Buyer hereunder (excluding any Excluded Liabilities) are referred to herein as the "Assumed Liabilities."

It is understood and agreed that nothing in this Section 2.3 shall constitute a waiver or release of any claims arising out of the contractual relationships between the Seller and the Buyer.

2.4 Excluded Liabilities. The Buyer shall not assume or be obligated to pay, perform or otherwise discharge the following liabilities (the "Excluded Liabilities"):

(a) any liabilities or obligations of the Seller in respect of any Excluded Assets or other assets of the Seller which are not Purchased Assets;

(b) any liabilities or obligations in respect of Taxes attributable to the Purchased Assets for taxable periods ending on or before the Closing Date, except for Taxes for which the Buyer is liable pursuant to Section 7.8(a);

(c) any liabilities, obligations, or responsibilities relating to the disposal, storage, transportation, discharge, Release, recycling, or the arrangement for such activities of Hazardous Substances or coal ash that was generated at the Purchased Assets, at any off-site location, where the disposal, storage, transportation, discharge, Release, recycling or the arrangement for such activities at said off-site location occurred prior to the Closing Date, provided that for purposes of this Section, "off-site location" does not include any location to which Hazardous Substances or coal ash disposed of, discharged from, emitted from or Released at the Purchased Assets have migrated, including, but not limited to, surface waters that have received waste water discharges from the Purchased Assets;

(d) any liabilities, obligations or responsibilities arising after the Closing Date relating to (i) the transmission lines delineated in the Operating Easements or (ii) any Seller's operations on, or usage of, the Operating Easements, including, without limitation, liabilities, obligations or responsibilities

arising as a result of or in connection with (1) any violation or alleged violation of Environmental Law and (2) loss of life, injury to persons or property or damage to natural resources, except to the extent caused by Buyer;

(e) any liabilities, obligations or responsibilities arising prior to or after the Closing Date relating to the easements provided O&R under the Operating Easement, including, without limitation: (i) the transmission lines or other facilities of O&R delineated in the Operating Easements or (ii) O&R ownership rights, operations on, or usage of, the Operating Easements, including, without limitation, liabilities, obligations or responsibilities arising as a result of or in connection with (1) any violation or alleged violation of Environmental Law or Release of Hazardous Substances or coal ash and (2) loss of life, injury to persons or property or damage to natural resources, except in the case of (1) or (2), to the extent caused by the Buyer.

(f) any liabilities or obligations required to be accrued by the Seller in accordance with generally accepted accounting principles and/or the FERC Uniform System of Accounts on or before the Closing Date with respect to liabilities related to the Purchased Assets other than any liability assumed by Buyer under any provision of this Agreement, including without limitation, Section 2.3;



(g) any liabilities or obligations with respect to liabilities relating to the Purchased Assets relating to any personal injury including bodily injury (including, but not limited to workers' compensation claims), discrimination, wrongful discharge, or unfair labor practice or similar claim or cause of action with respect to any act or occurrence arising prior to or on the Closing Date, other than liabilities or obligations for injury to persons or loss of life assumed by the Buyer in Sections 2.3(e) and 2.3(f);

(h) any fines or penalties imposed by a governmental agency or authority resulting from (A) an investigation or proceeding with respect to any act or occurrence arising prior to or on the Closing Date or (B) illegal acts, willful misconduct or gross negligence of the Seller prior to or on the Closing Date;

(i) any payment obligations of the Seller for goods delivered or services rendered prior to the Closing;

(j) any liabilities or obligations imposed upon, assumed or retained by O&R pursuant to the Continuing Site/Interconnection Agreement or any other Ancillary Agreement;

(k) any liabilities, obligations or responsibilities relating to any deferred compensation, pension, profit-sharing and retirement plans, including multiemployer plans, and all welfare, severance, stock-based, bonus and

other employee benefit or fringe benefit plans, programs and arrangements, whether written or oral, maintained or with respect to which contributions have been in the last five (5) years or are made by O&R and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with the Seller under Section 414(b), (c), (m) or (o) of the Code ("ERISA Affiliate") or to which the Seller and any ERISA Affiliate contributed thereunder (the "ERISA Affiliate Plans"), including any multiemployer plan, maintained by, contributed to, or obligated to contribute to, at any time, by the Seller or any ERISA Affiliate; including without limitation, any liability (A) to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (B) with respect to non-compliance with the continuation requirements of COBRA; (C) with respect to any non-compliance with ERISA, the Code or any other applicable laws; (D) with respect to any suit, proceeding or claim which is brought against any ERISA Affiliate Plan, or any fiduciary or former fiduciary of any such or ERISA Affiliate Plan; (E) relating to a multiemployer plan; or (F) for any claim or suit for benefits accrued under an ERISA Affiliate Plan prior to Closing;

(I) any liabilities, obligations or responsibilities relating to the employment or termination of employment, by the Seller of any individual

(including, but not limited to, any employee of the Seller) attributable to any actions or inactions by the Seller prior to the Closing Date; and

(m) any liabilities relating to the \$55,000,000 New York State Energy Research and Development Authority Pollution Control Refunding Revenue Bonds (Orange and Rockland Utilities, Inc. Project) 1994 Series A and the \$44,000,000 New York Energy Research and Development Authority Pollution Control Refunding Revenue Bonds (Orange and Rockland Utilities, Inc. Projects) 1995 Series A (the "Pollution Control Bonds") and any agreements relating thereto.

### ARTICLE III

#### PURCHASE PRICE

3.1 Purchase Price. The purchase price for the Purchased Assets shall be an amount equal to the sum of (i) \$243,500,000, (ii) the Estimated Inventory Adjustment Amount, (iii) the Inventory Adjustment Amount and (iv) any amounts paid by the Seller to acquire title to Leased Assets pursuant to Section 7.4 (the "Purchase Price").

3.2 Purchase Price Adjustment. (a) Within sixty (60) days after the Closing, the Seller shall prepare and deliver to the Buyer a statement (the "Adjustment Statement") which sets forth an amount equal to (i) the lesser of (A) the Seller's book value, as of the Closing Date, of its coal inventory or (B) \$48.50 per ton multiplied by the number of tons of coal in the coal inventory, used at or in connection with the

Purchased Assets minus (ii) the Estimated Inventory Adjustment Amount (such difference is referred to as the "Inventory Adjustment Amount"). For the purposes of calculating the Estimated Inventory Adjustment Amount, the coal inventory shall include all coal whether above or below grade except that any below grade coal, determined through a survey to be conducted by Seller prior to the Closing, whose use would be non-compliant with air emission regulations regarding SO<sub>2</sub> emissions, shall be excluded from such inventory.

The Adjustment Statement shall be prepared using the same generally accepted accounting principles, policies and methods as the Seller has historically used in connection with the calculation of the items reflected on the Adjustment Statement, except that the price utilized for determining the unit price of coal in this Section 3.2(a) shall be the lower of the price determined in accordance with such historic method or \$48.50 per ton. The Buyer and the Seller agree to cooperate with the other in connection with the preparation of the Adjustment Statement and related information, and each shall provide to the other such books, records and information as may be reasonably requested from time to time.

(b) The Buyer may dispute the Inventory Adjustment Amount, provided, however, that the Buyer shall notify the Seller in writing of the disputed amount, and the basis of such dispute, within thirty (30) days of the Buyer's receipt of the Adjustment Statement. In the event of a dispute with respect to the Inventory

Adjustment Amount, the Buyer and the Seller shall attempt to reconcile their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the parties. If the Buyer and the Seller are unable to reach a resolution of such differences within thirty (30) days of receipt of the Buyer's written notice of dispute to the Seller, the Buyer and the Seller shall submit the amounts remaining in dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the parties, within thirty (30) days after such submission, upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the parties hereto with respect to the amounts disputed. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Buyer and the Seller so that the Buyer's share of such fees and disbursements shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by the Buyer to the Independent Accounting Firm that is unsuccessfully disputed by the Buyer (as finally determined by the Independent Accounting Firm) bears to the total amount of such remaining disputed amounts so submitted by the Buyer to the Independent Accounting Firm.

(c) If the Inventory Adjustment Amount is positive, within ten (10) Business Days after the Buyer's receipt of the Adjustment Statement, the Buyer shall pay the Seller all undisputed portions of the Inventory Adjustment Amount. If the Inventory Adjustment Amount is negative, within ten (10) Business Days after the Buyer's receipt

of the Adjustment Statement, the Seller shall pay the Buyer all undisputed portions of the Inventory Adjustment Amount. If there is a dispute with respect to any amount on the Adjustment Statement, within five (5) Business Days after the final determination of such disputed amounts on the Adjustment Statement, the Buyer shall pay the Seller an amount equal to the disputed portion of the Inventory Adjustment Amount as finally determined to be payable with respect to the Adjustment Statement; provided, however, that if such amount shall be less than zero, the Seller will pay to the Buyer the amount by which such amount is less than zero. All payments made pursuant to this Section 3.2(c) shall be paid together with interest thereon for the period commencing on the Closing Date through the date of payment, calculated at the prime rate of The Chase Manhattan Bank in effect on the Closing Date, in cash by federal or other wire transfer of immediately available funds.

3.3 Allocation of Purchase Price. The Buyer shall prepare an allocation of the Purchase Price consistent with Section 1060 of the Code and the Treasury Regulations thereunder within one hundred eighty (180) days of the date of this Agreement but in no event less than forty-five (45) days prior to the Closing and submit it to Seller. The Seller may dispute the allocation of the Purchase Price; provided, however, that the Seller shall notify the Buyer in writing of the disputed amount, and the basis of such dispute, and follow the procedures relating to a dispute described in Section 3.2(b) above. The Buyer and the Seller each agrees to file Internal Revenue Service

Form 8594, and all federal, state, local and foreign Tax Returns and Income Tax Returns, in accordance with such agreed allocation. Each of the Buyer and the Seller shall report the transactions contemplated by the Agreement for federal Income Tax and all other Tax purposes in a manner consistent with the allocation determined pursuant to this Section 3.3. The Buyer and the Seller each agrees to provide the other promptly with any other information required to complete Form 8594. Each of the Buyer and the Seller shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding regarding the agreed upon allocation of the Purchase Price.

3.4 Proration. (a) The Buyer and the Seller agree that all of the items normally prorated, including those listed below, relating to the business and operation of the Purchased Assets will be prorated as of the Closing Date, with the Seller liable to the extent such items relate to any time period through the Closing Date, and the Buyer liable to the extent such items relate to periods subsequent to the Closing Date:

(i) personal property, real estate, occupancy and any other Taxes (excluding Income Taxes), assessments and other charges, if any, on or with respect to the ownership, use or business and operation of the Purchased Assets;

(ii) rent, Taxes (excluding Income Taxes) and other items payable by or to the Seller under any of the Seller Agreements to be assigned to and assumed by the Buyer hereunder;

(iii) any permit, license or registration fees with respect to any Environmental Permit or other Permit; and

(iv) sewer rents and charges for water, telephone, electricity and other utilities.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which such actual Taxes or fees are available and such Taxes or fees shall be re prorated upon request of either the Seller or the Buyer made within sixty (60) days of the date that the actual amounts become available. The Seller and the Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.4.

#### ARTICLE IV

#### THE CLOSING

4.1 Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of



Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, at 10:00 A.M. (local time) on April 30, 1999, or at such other place or later date and time as the parties may agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."

4.2 Payment of Purchase Price. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Purchased Assets, the Buyer will pay or cause to be paid to the Seller at the Closing an amount (the "Estimated Purchase Price") in United States dollars, equal to the sum of (i) \$243,500,000, (ii) the Estimated Inventory Adjustment Amount for the Closing, and (iii) any amounts paid to acquire title to Leased Assets pursuant to Section 7.4 hereof, by wire transfer of immediately available funds or by such other means as are agreed to by the Seller and the Buyer.

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

- (a) The Bill of Sale, duly executed by the Seller for the personal property included in the Purchased Assets;
- (b) The executed consents to transfer the Seller Agreements, the Environmental Permits and the Permits, to the extent specifically required hereunder;

(c) Each Ancillary Agreement required to be delivered under this Agreement, duly executed by O&R;

(d) The certificates and the opinions of counsel contemplated by Sections 8.2(c), (e), (f) and (h);

(e) One or more bargain and sale deeds of conveyance in statutory form, with covenant against grantor's acts, transferring Seller's interest in the Property Interests to the Buyer, duly executed and acknowledged by O&R and in recordable form substantially in the form of Exhibit D hereto;

(f) One or more easements to the extent necessary to evidence the right of Buyer to use the real property of O&R (the "Buyer's Easements") that comprise the Excluded Assets, duly executed and acknowledged by O&R and in recordable form, each substantially in the form of Exhibit E hereto;

(g) The Assignment of Leases in the form attached hereto as Exhibit F assigning to Buyer all of Seller's right, title and interest as lessor (or lessee as the case may be) under the leases;

(h) Copies of the resolutions adopted by the board of directors of the Seller, certified by the Secretary of the Seller, as having been duly and validly adopted and as being in full force and effect, authorizing the execution and delivery by the Seller of this Agreement, the Bill of Sale and other closing

documents described in this Agreement to which the Seller is a party, and the performance by the Seller of its obligations hereunder and thereunder;

(i) All such other instruments of assignment or conveyance as shall, in the reasonable opinion of the Buyer and its counsel, be necessary to transfer to the Buyer the Purchased Assets in accordance with this Agreement and where necessary or desirable, in recordable form;

(j) A certification of non-foreign status in a form which complies with Section 1445 of the Code and the regulations thereunder; provided, however, that if the Seller shall fail to deliver such certification, the Buyer shall withhold at the Closing and pay over to the appropriate taxing authority any amount equal to 10% of the total Amount Realized (as defined under Section 1445 of the Code);

(k) Such other agreements, documents, instruments and writings as are required to be delivered by the Seller at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith; and

(l) \$5.4 million by wire transfer of immediately available funds or by such other means as are agreed to by the Seller and the Buyer.

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

(a) The Estimated Purchase Price by wire transfer of immediately available funds or by such other means as are agreed to by the Seller and the Buyer;

(b) Each Ancillary Agreement required to be delivered under this Agreement, duly executed by the Buyer;

(c) The certificate and opinion of counsel contemplated by Sections 8.3(c) and (d);

(d) The Instrument of Assumption, duly executed by the Buyer;

(e) All such other instruments of assumption as shall, in the reasonable opinion of the Seller and its counsel, be necessary for the Buyer to assume the Assumed Liabilities in accordance with this Agreement;

(f) One or more easements to the extent necessary for Seller to continue and maintain its transmission and distribution business, in favor of the Seller (the "Seller's Easements") with respect to real property conveyed to Buyer, duly executed and acknowledged by Buyer, each substantially in the form of Exhibit E hereto, and Buyer shall bear any transfer or similar tax incurred in connection herewith as set forth in Section 7.8;

(g) Copies of the resolutions adopted by the Members or Managers or similar governing body of the Buyer, certified by the Member of the

Buyer, as having been duly and validly adopted and as being in full force and effect, authorizing the execution and delivery by the Buyer of this Agreement and other closing documents described in this Agreement to which the Buyer is a party, and the performance by the Buyer of its obligations hereunder and thereunder; and

(h) Such other agreements, documents, instruments and writings as are required to be delivered by the Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller represents and warrants to the Buyer as follows:

5.1 Organization; Qualification. The Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each jurisdiction in which it operates the Purchased Assets and such jurisdiction requires it to be so qualified. The Seller has heretofore delivered to the Buyer complete and correct copies of its Certificate of Incorporation and By-Laws as currently in effect.

5.2 Authority Relative to this Agreement. The Seller has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of the Seller and no other corporate proceedings on the part of the Seller or its shareholders are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Seller, and assuming that this Agreement constitutes a valid and binding agreement of the Buyer, subject to the receipt of the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, constitutes a valid and binding agreement of the Seller, enforceable against the Seller in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

5.3 Consents and Approvals; No Violation. (a) Except as set forth in Schedule 5.3(a), and other than obtaining the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, neither the execution and delivery of this Agreement by the Seller nor the performance by the Seller of its obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any

provision of the Certificate of Incorporation or By-Laws of the Seller, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except (x) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not have a Material Adverse Effect or would not prohibit or restrain the execution, delivery or performance of this Agreement or the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby in any material respect or (y) for those requirements which become applicable to the Seller as a result of the specific regulatory status of the Buyer (or any of its affiliates) or as a result of any other facts that specifically relate to the business or activities in which the Buyer (or any of its affiliates) is or proposes to be engaged; (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Seller, or any of its subsidiaries, is a party or by which the Seller, or any of its subsidiaries, or any of the Purchased Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, individually or in the aggregate, would not have a Material Adverse Effect; or (iv) violate any order, writ, injunction, judgment, law, decree, statute, rule or regulation applicable to the Seller, or any of its assets, which violation would, individually or in the aggregate, have a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) and except for (i) any required approvals under the Federal Power Act, (ii) (A) notice by the Seller to, and an order by, the NYPSC approving the transactions contemplated by this Agreement or the Ancillary Agreements, (B) notice by the Seller to, and an order by, the NJBPU approving the transactions contemplated by this Agreement or the Ancillary Agreements and (C) notice by the Seller to, and an order by, the PAPUC approving the transactions contemplated by this Agreement or the Ancillary Agreements, (iii) the approval, if required, of the SEC pursuant to the Holding Company Act, and (iv) the filings by the Seller and the Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act (the filings and approvals referred to in clauses (i) through (iv) are collectively referred to as the "Seller Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by the Seller of the transactions contemplated hereby or by the Ancillary Agreements, other than such declarations, filings, registrations, notices, authorizations consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect and other than Permits and Environmental Permits.

5.4 Reports. Since January 1, 1996, O&R, pursuant to the Securities Act, the Exchange Act, the applicable State public utility laws, the Federal Power Act and the Holding Company Act, has filed or caused to be filed with the SEC, the applica-



ble state or local utility commissions or regulatory bodies, or the FERC, as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by them with respect to the business and operations of O&R as it relates to the Purchased Assets under each of the Securities Act, the Exchange Act, the applicable State public utility laws, the Federal Power Act and the Holding Company Act and the respective rules and regulations thereunder, all of which complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder in effect on the date each such report was filed.

5.5 Financial Statements. The Seller has previously furnished to the Buyer (i) audited consolidated balance sheets of the Seller as of December 31, 1997, and (ii) the related audited consolidated statements of income and retained earnings and changes in financial position of the Seller for the fiscal year then ended, together with the respective reports thereon of Arthur Andersen LLP. The consolidated balance sheet of the Seller as of December 31, 1997 is referred to as the "Seller Balance Sheet." Each of the balance sheets included in the financial statements referred to in this Section 5.5 (including the related notes thereto) presents fairly the financial position of the Seller as of their respective dates, and the other related statements included therein (including the related notes thereto) present fairly the results of operations and changes in financial position for the periods then ended, all in conformity with generally accepted accounting

principles as applicable to a regulated utility applied on a consistent basis, except as otherwise noted therein.

5.6 Undisclosed Liabilities. Except as set forth in Schedule 5.6, to the Seller's knowledge, the Seller has no liability or obligation relating to the business or operations of the Purchased Assets, secured or unsecured (whether absolute, accrued, contingent or otherwise, and whether due or to become due), of a nature required by generally accepted accounting principles to be reflected in a corporate balance sheet or disclosed in the notes thereto, which are not accrued or reserved against in the Seller Balance Sheet or disclosed in the notes thereto in accordance with generally accepted accounting principles, except those which either were incurred in the ordinary course of business, after the date of the Seller Balance Sheet, or those which in the aggregate are not material to the Purchased Assets.

5.7 Absence of Certain Changes or Events. Except (i) as set forth in Schedule 5.7, or in the reports, schedules, registration statements and definitive proxy statements filed by the Seller with the SEC and (ii) as otherwise contemplated by this Agreement, to the Seller's knowledge, since the date of the Seller Balance Sheet there has not been: (a) any Material Adverse Effect; (b) any damage, destruction or casualty loss, whether covered by insurance or not, which had a Material Adverse Effect; (c) any entry into any agreement, commitment or transaction (including, without limitation, any borrowing or capital financing) by the Seller, which is material to the business or

operations of the Purchased Assets, except agreements, commitments or transactions in the ordinary course of business or as contemplated herein; or (d) any change by the Seller, with respect to the Purchased Assets, in accounting methods, principles or practices except as required or permitted by generally accepted accounting principles.

5.8 Title. Set forth in Schedule 5.8 is a true and complete list of all real property which is part of or material to the business or operations of the Purchased Assets (the "Real Property") and other real property interests which are a part of or material to the business or operations of the Purchased Assets (together with the Real Property, the "Property Interests"). The Seller has leasehold or other contractual interests in all Purchased Assets identified in subsections (f), (l), (n) and (p) of Section 1.1(a)(40) and subject only to Permitted Encumbrances and the Leases, (i) good and marketable title to the Real Property and (ii) good and valid title to all Purchased Assets identified in subsections (a), (c), (d), (e), (g), (h), (i), (j), (k), (m), (o) and (q) of Section 1.1(a)(40). At the Closing, the Seller will have the cash available to pay the amount referred to in Section 1.1(a)(40)(r) of this Agreement.

5.9 Leasehold Interests. Schedule 5.9(a) lists all Real Property leases or subleases (the "Leases") relating to the Purchased Assets under which the Seller is a lessee, sublessee, lessor or sublessor and which are to be assigned to, and assumed by, the Buyer on the Closing Date. Except as set forth in Schedule 5.9(b), the Leases are valid, binding and enforceable in accordance with their terms, and are in full force and

effect; there are no existing material defaults by the Seller thereunder; and no event has occurred which (whether with or without notice, lapse of time or both) would constitute a material default thereunder. Seller has a valid and subsisting leasehold estate in and the right to quiet enjoyment of the Leases under which either Seller is a lessee or sublessee for the full term of such Leases, which leasehold interests are unencumbered other than by Permitted Encumbrances, and Seller has delivered to Buyer true and complete copies of all Leases.

5.10 Improvements. Except as set forth in Schedule 5.10(a), the Seller has not received any written notices from any governmental authority stating or alleging that any improvements with respect to the Purchased Assets have not been constructed in compliance with applicable law. Except as set forth in Schedule 5.10(b), no notice has been received by the Seller from any governmental authority requiring or advising as to the need for any repair, alteration, restoration or improvement in connection with the Purchased Assets.

5.11 Insurance. Except as set forth in Schedule 5.11(a), all material policies of fire, liability, worker's compensation and other forms of insurance purchased or held by and insuring or related to the Purchased Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on

substantially similar terms prior to the date of such cancellation. Except as described in Schedule 5.11(b), the Seller has not been refused any insurance with respect to the Purchased Assets nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last five (5) years nor have they received written notice from any insurer with respect to any Real Property or Lease of defects or inadequacies with respect thereto or the improvements located thereon that would materially adversely affect the insurability of same or cause the imposition of extraordinary premiums therefor.

5.12 Environmental Matters. (a) Except as disclosed in Schedule 5.12(a)(i), to the Seller's knowledge, the Seller holds, and is in compliance with, all permits, licenses, certificates and governmental authorizations ("Environmental Permits") required for the Seller to operate the Purchased Assets under applicable Environmental Laws, and the Seller is otherwise in compliance with applicable Environmental Laws with respect to the Purchased Assets except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, which, individually or in the aggregate, are not reasonably likely to have a Material Adverse Effect. Schedule 5.12(a)(ii) sets forth all Environmental Permits relating to the ownership or operation of the Purchased Assets.

(b) Except as disclosed in Schedule 5.12(b), Seller has not received any written request for information, or been notified that it is a potentially responsible

party, under CERCLA or any similar State law with respect to any on-site location related to the Purchased Assets, and no investigation and/or remediation is being conducted or is pending at the Purchased Assets (other than investigations or remediation conducted by or on behalf of Seller or Buyer in connection with this transaction) except for such liability under such laws or investigations or remediation as would not be reasonably likely to have a Material Adverse Effect.

(c) With respect to the Purchased Assets, no action, claim, investigation or other proceeding relating to any Environmental Law is pending, or to Seller's knowledge, threatened, and Seller has not entered into or agreed to any consent decree or order, and is not subject to any judgment, decree, or administrative or judicial order relating to compliance with any Environmental Law or to investigation or cleanup of Hazardous Substances or coal ash under any Environmental Law, except such consent decrees or orders, judgments, decrees or administrative or judicial orders, actions, claims, investigations or proceedings that (i) would not be reasonably likely to have a Material Adverse Effect or (ii) appear on Schedule 5.12(c), or (iii) relate to off-site disposal locations.

(d) All written reports of audits and studies performed by or on behalf of Seller, and in the possession of Seller, which concern Releases of Hazardous Substances or coal ash at, on, in, or under the Purchased Assets or compliance of Purchased

Assets with Environmental Laws conducted within the last two (2) years are listed in Schedule 5.12(d) and have been provided to Buyer.

(e) The representations and warranties made in this Section 5.12 are the Seller's exclusive representations and warranties to environmental matters.

5.13 Labor Matters. Schedule 7.10(a) lists and Seller has previously delivered to the Buyer true and correct copies of all labor union, Collective Bargaining Agreements and other labor agreements relating to the Purchased Assets to which Seller is a party or is subject. With respect to the Purchased Assets, except to the extent set forth in Schedule 5.13 and except for such matters as will not have a Material Adverse Effect, to the Seller's knowledge: (a) Seller is in compliance with all applicable laws respecting employment and employment practices, occupational health and safety, and wages and hours; (b) Seller has not received written notice of any unfair labor practice complaint against it pending before the National Labor Relations Board; (c) there is no labor strike, slowdown or stoppage actually pending or threatened against or affecting the Seller; (d) Seller has not received notice that any representation petition respecting its employees has been filed with the National Labor Relations Board; (e) no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending against the Seller; and (f) Seller has not experienced any primary work stoppage since at least December 31, 1994.

5.14 ERISA. (a) Schedule 5.14(a) lists all deferred compensation, pension, profit-sharing and retirement plans, including multiemployer plans, and all welfare, severance, stock-based, bonus and other employee benefit or fringe benefit plans, programs and arrangements, whether written or oral, maintained or with respect to which contributions have been in the last five (5) years or are made by O&R in respect of employees who are employed in connection with the Purchased Assets (such plans, programs and arrangements collectively, the "Benefit Plans"). To the Seller's knowledge, each Benefit Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and all other applicable laws. Accurate and complete copies of all such Benefit Plans and their summary descriptions, including multiemployer plans, have been made available to the Buyer.

(b) Except as set forth in Schedule 5.14(b)(i), with respect to employees at the Purchased Assets, to the Seller's knowledge, O&R and the ERISA Affiliates have fulfilled their respective obligations under the minimum funding requirements of Section 302 of ERISA, and Section 412 of the Code, with respect to each Benefit Plan that is a pension benefit plan as defined in Section 3(2) of ERISA (each, a "Pension Benefit Plan"). To the Seller's knowledge, neither O&R nor any ERISA Affiliate has incurred any liability to the Pension Benefit Guaranty Corporation in connection with any Pension Benefit Plan which is subject to Title IV of ERISA, including any withdrawal liability, nor is there any reportable event (as defined in Section 4043 of ERISA),



except as set forth in Schedule 5.14(b)(ii). Except as set forth in Schedule 5.14(b)(iii), the Internal Revenue Service has issued a letter for each Pension Benefit Plan which is intended to be qualified under Section 401(a) of the Code, determining that such plan is exempt from United States Federal Income Tax under Sections 401(a) and 501(a) of the Code, and to the Seller's knowledge there has been no occurrence since the date of any such determination letter which has adversely affected such qualification, and no withdrawal liability has been incurred by or asserted and none is anticipated against O&R with respect to any Pension Benefit Plan which is a "multiemployer plan" (as defined in Section 3(37) of ERISA).

(c) To the Seller's knowledge, neither Seller nor any ERISA Affiliate has engaged in any transaction within the meaning of Section 4069(b) or Section 4212(c) of ERISA. Except as set forth in Schedule 5.14(c), no Benefit Plan is a multi-employer plan.

(d) To the extent O&R maintained or maintains a "group health plan" within the meaning of Section 5000(b)(1) of the Code, to the Seller's knowledge, O&R has materially complied with the notice and continuation requirements of Section 4980B of the Code, COBRA Part 6 of Subtitle B of Title I of ERISA and the regulations thereunder.

5.15 Real Property Encumbrances. Schedule 5.15 lists all real property encumbrances affecting the Real Property including matters contained in deeds, ease-

ments and options. True and correct copies of all current surveys, abstracts, title opinions and policies of title insurance currently in force with respect to such Real Property have been delivered by the Seller to the Buyer. None of the Permitted Encumbrances materially adversely affect the existing use of the Real Property.

5.16 Condemnation. Neither the whole nor any part of the Real Property or any other real property or rights leased, used or occupied by the Seller in connection with the ownership or operation of the Purchased Assets is subject to any pending suit for condemnation or other taking by any public authority, and, to the knowledge of the Seller, no such condemnation or other taking is threatened or contemplated.

5.17 Certain Contracts and Arrangements.

(a) Except (i) as listed in Schedule 5.17(a), (ii) for contracts, agreements, personal property leases, commitments, understandings or instruments which will expire prior to the Closing Date, (iii) for agreements with suppliers entered into in the ordinary course of business (including contracts entered into in connection with the Scheduled Capital Expenditures and the Scheduled Maintenance Expenditures), and (iv) for contracts, agreements, personal property leases, commitments, understandings or instruments with a value less than \$200,000 or with annual or aggregate payments less than \$200,000, the Seller is not a party to any written contract, agreement, personal

property lease, commitment, understanding or instrument which is material to the business or operations of the Purchased Assets.

(b) Except as disclosed in Schedule 5.17(b), each Seller Agreement listed on Schedule 5.17(a) constitutes a valid and binding obligation of the parties thereto and is in full force and effect and may be transferred to the Buyer pursuant to this Agreement and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder.

(c) Except as set forth in Schedule 5.17(c), there is not, under any of the Seller Agreements listed on Schedule 5.17(a), any default or event which, with notice or lapse of time or both, would constitute a default on the part of any party thereto, except such events of default and other events as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a Material Adverse Effect.

5.18 Legal Proceedings, etc. Except as set forth in Schedule 5.18 or in any filing made by the Seller pursuant to the Securities Act or the Exchange Act, there are no claims, actions, or proceedings pending or investigation pending or, to the Seller's knowledge, threatened against the Seller relating to the Purchased Assets before any court, arbitrator, governmental or regulatory authority or body acting in an adjudicative capacity, which, if adversely determined, would have a Material Adverse Effect or

would prohibit or restrain the execution, delivery or performance of this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby in any material respect. Except as set forth in Schedule 5.18, the Seller is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court, governmental or regulatory authority relating to the Purchased Assets which would have a Material Adverse Effect.

5.19 Permits. The Seller has all material permits, licenses, franchises and other governmental authorizations, consents and approvals, other than with respect to Environmental Laws (collectively, "Permits") as set forth in Schedule 5.19(a), necessary to own or operate the Purchased Assets as presently owned or operated, except where the failure to have such Permits would not have a Material Adverse Effect. Except as set forth in Schedule 5.19(b), with respect to the Purchased Assets, the Seller has not received any written notification that it is in violation of any of such Permits, or any law, statute, order, rule, regulation, ordinance or judgment of any governmental or regulatory body or authority applicable to it, except for notifications of violations which would not, individually or in the aggregate, have a Material Adverse Effect. The Seller is in compliance with all Permits, laws, statutes, orders, rules, regulations, ordinances, or judgments of any governmental or regulatory body or authority applicable to Purchased Assets, except for violations which, in the aggregate, would not have a Material Adverse Effect.

5.20 Regulation as a Utility. O&R and certain of its subsidiaries are regulated as public utilities in the States of New York, New Jersey and Pennsylvania as set forth on Schedule 5.20(a), and in no other state. Except as set forth on Schedule 5.20(b), the Seller is not subject to regulation as a public utility or public service company (or similar designation) by the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

5.21 Taxes. Except as set forth in Schedule 5.21: (a) no notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of Seller in respect of the Purchased Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 5.21 is being contested in good faith through appropriate proceedings; (b) there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the Purchased Assets for any period; (c) there are no rulings or closing agreements executed with any taxing authority relating to the Purchased Assets that will be binding upon Buyer after the Closing; (d) none of the Purchased Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f)(8) of the Code or "tax-exempt use" property within the meaning of Section 168(h) of the Code; and (e) there are no powers of attorney in effect relating to Taxes relating to the Purchased Assets for any Post-Closing period.

5.22 Intellectual Property. Seller has all right, title and interest in or valid and binding rights under contract to use the Intellectual Property relating to the Purchased Assets. Seller has not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of the Purchased Assets, no claim is pending or has been made to such effect that has not been resolved and Seller is not infringing any Intellectual Property of any other Person the effect of which, individually or in the aggregate, would have a Material Adverse Effect.

5.23 Year 2000 Readiness. Seller has informed Buyer of its analysis of, the status of development of contingency plans for, and forecasted expenditures with respect to Year 2000 readiness of material computer software and computer firmware comprising the Purchased Assets, as such analysis, contingency plan development and forecast of expenditures exist on the date hereof.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer represents and warrants to the Seller as follows:

6.1 Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Buyer has heretofore delivered to the

Seller complete and correct copies of its Certificate of Formation and Limited Liability Company Agreement (or other similar governing documents), as currently in effect.

6.2 Authority Relative to this Agreement. The Buyer has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Managers or Members of the Buyer and the Board of Directors of both Southern Energy, Inc. and The Southern Company and no other company proceedings on the part of the Buyer or such Affiliates of the Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Buyer, and assuming that this Agreement constitutes a valid and binding agreement of the Seller, subject to the receipt of the Buyer Required Regulatory Approvals and the Seller Required Regulatory Approvals, constitutes a valid and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

6.3 Consents and Approvals: No Violation. (a) Except as set forth in Schedule 6.3(a), and other than obtaining the Buyer Required Regulatory Approvals and the Seller Required Regulatory Approvals, neither the execution and delivery of this

Agreement by the Buyer nor the purchase by the Buyer of the Purchased Assets pursuant to this Agreement will (i) conflict with or result in any breach of any provision of the Certificate of Formation or Limited Liability Company Agreement (or other similar governing documents) of the Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

(b) Except as set forth in Schedule 6.3(a) and except for the filings by the Buyer and the Seller required by the HSR Act (the filings and approvals referred to in Schedule 6.3(a) and with respect to the HSR Act are collectively referred to as the "Buyer Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by the Buyer of the transactions contemplated hereby.



6.4 Operating Easements. Buyer will grant Operating Easements to Seller as agreed to pursuant to the procedures set forth in the Continuing Site/Interconnection Agreement.

6.5 Regulation as a Utility. On the Closing Date, the Buyer will be an exempt wholesale generator under the Holding Company Act, although it is a subsidiary of a registered public utility holding company under the Holding Company Act. On the Closing Date, the Buyer also will be a public utility under the Federal Power Act. Except as set forth in Schedule 6.5, the Buyer is not subject to regulation as a public utility or public service company (or similar designation) by the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

6.6 Availability of Funds. The Buyer has sufficient funds available to it or will receive binding written commitments from responsible financial institutions to provide sufficient funds on the Closing Date to pay the Purchase Price.

## ARTICLE VII

### COVENANTS OF THE PARTIES

7.1 Conduct of Business Relating to the Purchased Assets. Except as described in Schedule 7.1, during the period from the date of this Agreement to the Closing Date, the Seller will operate and maintain the Purchased Assets according to its ordinary and usual course of business consistent with Good Utility Practice. Without

limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 7.1, prior to the Closing Date, without the prior written consent of the Buyer (unless such consent would be prohibited by law), the Seller will not with respect to the Purchased Assets:

(a) make any material change in the operations of the Purchased Assets (including, without limitation, the levels of fuel inventory and materials and supplies customarily maintained by the Seller other than consistent with past practice);

(b) except for Scheduled Capital Expenditures, make any capital expenditures with respect to the Purchased Assets or enter into any contract or commitment therefor, except that (i) the Seller shall make any capital expenditures requested by the Buyer, provided that the Buyer will reimburse Seller for such capital expenditures at least five (5) Business Days prior to the date payment for such expenditure is due, and (ii) the Seller shall make any capital expenditures deemed necessary by the Seller in accordance with Good Utility Practices ("Necessary Capital Expenditures") at Seller's cost and expense, provided, however, that if the Buyer requests that the Seller make enhancements/upgrades with a cost in excess of the cost of any Necessary Capital Expenditures, the Buyer shall reimburse the Seller for the cost of such enhancements/upgrades to the extent the cost of such an enhancement/upgrade exceeds

the cost of the Necessary Capital Expenditure at the time such enhancement/upgrade is performed;

(c) sell, lease (as lessor), transfer or otherwise dispose of, any of the Purchased Assets, other than assets used, consumed or replaced in the ordinary course of business consistent with Good Utility Practice and not mortgage or pledge, or impose or suffer to be imposed any Encumbrance on, any of the Purchased Assets other than Permitted Encumbrances in the ordinary course of business;

(d) except for Scheduled Maintenance Expenditures, make any maintenance expenditures, except that (i) the Seller shall make any maintenance expenditures requested by the Buyer provided that the Buyer will reimburse Seller for such maintenance expenditures at least five (5) Business Days prior to the date payment for such expenditure is due, and (ii) the Seller shall make any maintenance expenditures deemed necessary by the Seller in accordance with Good Utility Practices ("Necessary Maintenance Expenditures") at Seller's cost and expense, provided, however, that if the Buyer requests that the Seller make enhancements/upgrades with a cost in excess of the cost of any Necessary Maintenance Expenditures, the Buyer shall reimburse the Seller for the cost of such enhancements/upgrades to the extent the cost of such enhancement/upgrade

exceeds the cost of the Necessary Maintenance Expenditure at the time such enhancement/upgrade is performed;

(e) amend or terminate prior to the expiration date, or waive any material term or give consent to any material request with respect to any of the Seller's Agreements, Permits or Environmental Permits except to the extent that such amendment, termination, waiver or consent (i) will not have a material impact on operations of the Purchased Assets, including the cost of said operations or (ii) is required by applicable law, including applicable Environmental Law;

(f) enter into any agreements for the purchase or sale of fuel (whether commodity or transportation):

(i) that extend more than sixty (60) days beyond April 30, 1999 if, in the aggregate such agreements have remaining payment obligations of more than \$20 million after April 30, 1999 in each case, other than any agreements that are entered into pursuant to (A) the Letter of Intent for transportation of coal between Seller and CSX dated as of October 20, 1998 and (B) the letter between Seller and Massey Coal Sales Company, Inc. ("Massey") which memorializes the price reopener agreement in connection with the Coal Purchase and Sales Agreement between Massey and Seller dated March 9, 1984, as amended.

(ii) that extend more than thirty (30) days beyond October 31, 1999 if, in the aggregate, such agreements have remaining payment obligations of more than \$10 million after October 31, 1999 provided, however, that O&R shall consult with the Buyer regarding purchases or sales of fuel in excess of \$10 million if such commitments to purchase or sell will extend beyond April 30, 1999. The parties further agree to adjust the dates in this Section 7.1(f) if the Closing is anticipated to occur after April 30, 1999. Such adjustment will reflect the amount of time beyond April 30, 1999 by which the Closing is expected to occur at the time such an agreement is entered;

(g) enter into any power sales commitments:

(i) having a term greater than six (6) months and that extends beyond April 30, 1999 if the aggregate energy under such commitment and all other then outstanding commitments not previously consented to by the Buyer would in Seller's judgment reasonably be expected to exceed 100,000 MW hours delivered after April 30, 1999; or

(ii) having a term greater than six (6) months and that extends beyond October 31, 1999 if the aggregate energy under such commitment and all other then outstanding commitments not previ-

ously consented to by the Buyer would in Seller's judgment reasonably be expected to exceed 45,000 MW hours delivered after October 31, 1999;

provided, however, Seller shall consult with the Buyer regarding entering into any power sales commitments in excess of \$3 million if such commitments will extend beyond April 30, 1999. The parties further agree to adjust the dates in this Section 7.1(g) if the Closing is anticipated to occur after April 30, 1999. Such adjustment will reflect the amount of time beyond April 30, 1999 by which the Closing is expected to occur at the time such an agreement is entered;

(h) sell, lease or otherwise dispose of Emission Allowances except to the extent necessary to operate the Purchased Assets in accordance with this Section 7.1;

(i) enter into any contract, agreement, commitment or arrangement, whether written or oral, with respect to any of the transactions set forth in the foregoing paragraphs (a) through (h); or

(j) make any new, or change any current, election with respect to Taxes affecting the Purchased Assets.

7.2 Access to Information. (a) Between the date of this Agreement and the Closing Date, the Seller will, during ordinary business hours and upon reasonable notice (i) give the Buyer and the Buyer Representatives reasonable access

to its managerial personnel and to all books, records, plants, offices and other facilities and properties constituting the Purchased Assets to which the Buyer is permitted access by law, (ii) permit the Buyer to make such reasonable inspections thereof as the Buyer may reasonably request, including conducting environmental sampling at, on and underneath the Purchased Assets and performing compliance audits at the Purchased Assets, if Buyer reasonably deems such sampling necessary after reviewing further information which becomes available after the date hereof, so long as Seller provides its consent to such sampling, which consent shall not be unreasonably withheld, (iii) cause its officers, engineers, operations and maintenance personnel and advisors to furnish the Buyer with such financial and operating data, Tax Returns (other than Income Tax Returns) and other information with respect to the Purchased Assets as the Buyer may from time to time reasonably request and assist Buyer in such inspections, (iv) cause its officers and advisors to furnish the Buyer a copy of each report, schedule or other document filed or received by them with the SEC, NYPSC, NJBPU, PAPUC, FERC, ISO, or other governmental authority with respect to the Purchased Assets; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the Purchased Assets, (B) the Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege and (C) the Seller need not supply the Buyer with any information which the Seller is under a legal obligation not to

supply, provided, however, that Seller shall have used commercially reasonable efforts to have such obligations waived. Notwithstanding anything in this Section 7.2 to the contrary, (i) the Seller will furnish or provide such access to medical records only as is permitted by law, and (ii) the Seller will furnish or provide such access to personnel records only to the extent that the employee to which the personnel record relates has given his/her consent to the Seller.

(b) All information furnished to or obtained by the Buyer and the Buyer Representatives pursuant to this Section 7.2 shall be subject to the provisions of Section 11.2 hereof and shall be treated as Confidential Information.

(c) Commencing February 1, 1999, the Buyer shall have the right to physically locate one designated representative (the "Designated Representative") of the Buyer at an office or in workspace at Seller's corporate offices to observe the operations of Lovett, as well as the operations of the Bowline Point Generating Station, the hydroelectric generating stations and the gas turbine generating stations, pursuant to the Other Sales Agreements; provided, however, that the Buyer shall not unreasonably interfere with the Seller's use of the Purchased Assets. The Seller shall coordinate site visits and provide the Designated Representative during such period prior to the Closing access to Seller's managerial personnel. The Designated Representative shall coordinate the Buyer's rights to access under Section 7.2(a) hereof during the period prior to the Closing.



(d) For a period of seven (7) years after the Closing Date, the Seller and its representatives shall have reasonable access to (i) information on employees covered by the Seller's Management Employee Transition Program and (ii) all of the books and records of the Purchased Assets, as the case may be, transferred to the Buyer hereunder to the extent that such access (A) may reasonably be required by the Seller in connection with matters relating to or affected by the operation of the Purchased Assets prior to the Closing Date and (B) is not otherwise prohibited by law. Such access shall be afforded by the Buyer upon receipt of reasonable advance written notice and during normal business hours. The Seller shall be responsible for any costs or expenses incurred by it pursuant to this Section 7.2(d). If the Buyer shall desire to dispose of any such books and records prior to the expiration of such seven (7) year period, the Buyer shall, prior to such disposition, give the Seller a reasonable opportunity at the Seller's expense, to segregate and remove such books and records as the Seller may select. Any information provided by Buyer to Seller pursuant to this Section 7.2(d) shall be deemed Confidential Information.

7.3 Expenses. Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

7.4 Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of the parties hereto will use all commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets pursuant to this Agreement, including without limitation, the use of the Seller's and the Buyer's commercially reasonable efforts to obtain all Permits and Environmental Permits necessary for the Buyer to operate the Purchased Assets. Neither of the Parties shall, without the prior written consent of the other Party, take or fail to take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or the Ancillary Agreements. From time to time after the date hereof, without further consideration, the Seller will, at its own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order more effectively to vest in the Buyer good title to the Purchased Assets. From time to time after the date hereof, the Buyer will, at its own expense, execute and deliver such documents to the Seller as the Seller may reasonably request in order to more effectively consummate the sale of the Purchased Assets pursuant to this Agreement. To the extent that any personal property lease, relating to any assets ("Leased Assets") which are principally used by the Seller for generation purposes at the Purchased Assets, cannot be assigned to the Buyer, the Seller will use its commer-

cially reasonable efforts to acquire title to such Leased Assets and to include them in the Purchased Assets before the Closing Date unless Buyer directs Seller in writing not to acquire any such Leased Asset. The Seller's documented and reasonable costs associated with acquiring title to such Leased Assets shall be paid by the Buyer as part of the Purchase Price. Schedule 7.4 lists all of the Leased Assets.

(b) To the extent that any Seller's rights under any guaranties, warranties and indemnification applicable to the Purchased Assets or the Assumed Liabilities are nontransferable or nonassignable, Seller shall use its commercially reasonable efforts to provide to Buyer the benefits thereof in some other manner upon the request of Buyer.

7.5 Public Statements. The parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and shall not issue any such public announcement, statement or other disclosure prior to such consultation, except as may be required by law or stock exchange rules or regulations and except that the parties may make public announcements, statements or other disclosures with respect to this Agreement and the transactions contemplated hereby to the extent that such public announcements, statements or other disclosures do not violate Section 11.2 of this Agreement.

7.6 Consents and Approvals. (a) The Seller and the Buyer shall each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated hereby. The parties shall consult with each other as to the appropriate time of filing such notifications and shall use their best efforts to make such filings at the agreed upon time, to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing. Buyer shall bear the cost of all filing fees under the HSR Act.

(b) The Seller and the Buyer shall cooperate with each other and (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, (iii) use all reasonable efforts to obtain the transfer or reissuance to the Buyer of all necessary Environmental Permits, Permits, consents, approvals and authorizations of all governmental bodies and (iv) use all reasonable efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals) or

required by the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which the Seller or the Buyer is a party or by which either of them is bound. The Seller shall have the right to review and approve in advance all characterizations of the information relating to Purchased Assets; and the Seller and the Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby. The parties hereto agree that they will consult with each other with respect to the transferring to the Buyer or the obtaining by the Buyer of all such necessary Environmental Permits, Permits, consents, approvals and authorizations of all third parties and governmental bodies. The Seller and the Buyer shall designate separate counsel with respect to all applications, notices, petitions and filings (joint or otherwise) relating to this Agreement and the transactions contemplated hereby on behalf of the Seller, on the one hand and the Buyer on the other hand, with all governmental bodies. To the extent that a consent to an assignment of any material Seller Agreement cannot be obtained before the Closing Date, the Seller will enter into all such agreements with the Buyer as are necessary to give the Buyer the rights, obligations and burdens of such Seller Agreements.

(c) The parties hereto shall consult with each other prior to proposing or entering into any stipulation or agreement with any Federal, State or local

governmental authority or agency or any third party in connection with any Federal, State or local governmental consents and approvals legally required for the consummation of the transactions contemplated hereby and shall not propose or enter into any such stipulation or agreement without the other party's prior written consent, which consent shall not be unreasonably withheld.

(d) Buyer shall assume primary responsibility for securing the transfer or reissuance of the Permits effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and shall use its best efforts to assist in the transfer or reissuance when so requested by Buyer. In the event that Buyer is unable, despite commercially reasonable efforts, to obtain a transfer or reissuance of one or more Permits as of the Closing Date, Buyer may use the Permits issued to Seller to the extent permissible under applicable laws and regulations provided (i) Buyer notified Seller prior to Closing, (ii) Buyer continues to make commercially reasonable efforts to obtain a transfer or reissuance of such Permits after the Closing, and (iii) Buyer indemnifies Seller for any losses, claims or penalties suffered by Seller in connection with the Permit that is not transferred or reissued as of the Closing Date resulting from Buyer's operation of the Purchased Assets following the Closing Date. In no event shall Buyer use or otherwise rely on a Permit issued to Seller beyond one year after Closing unless Buyer has, after exercising its commercially reasonable efforts, been unable to obtain same and such reliance is not prohibited by law.

7.7 Fees and Commissions. The Seller and the Buyer each represent and warrant to the other that, except for Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), which is acting for and at the expense of the Seller, and Credit Suisse First Boston Corporation, which is acting for and at the expense of the Buyer, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the party making such representation. The Seller and the Buyer will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than as described above) incurred by reason of any action taken by such party.

7.8 Tax Matters. (a) Notwithstanding any other provision of this Agreement, all transfer, sales and similar Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Buyer, and the Buyer will, at its own expense, file, to the extent required by law, all necessary Tax Returns with respect to all such Taxes, and, if required by applicable law, the Seller will join in the execution of any such Tax Returns.

(b) With respect to Taxes to be prorated in accordance with Section 3.4 of this Agreement only, the Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Purchased Assets, if any, and shall duly and

timely pay all such Taxes shown to be due on such Tax Returns. The Buyer's preparation of any such Tax Returns shall be subject to the Seller's approval, which approval shall not be unreasonably withheld. The Buyer shall make such Tax Returns available for the Seller's review and approval no later than twenty (20) days prior to the due date for filing such Tax Return. Within ten (10) days after receipt of such Tax Return, the Seller shall pay to the Buyer its proportionate share of the amount shown as due on such Tax Return determined in accordance with the Section 3.4 of this Agreement.

(c) On and after the Closing Date until the maturity or redemption date of the Pollution Control Bonds which were issued to finance or refinance all or a portion of the cost of the Pollution Control Facilities (as defined hereinafter):

(i) Except as otherwise permitted in clause (ii) below, Buyer will not change or permit to be changed the character or nature of the use of those facilities listed in Schedule 7.8(c) hereto (the "Pollution Control Facilities") from the manner Seller has used said facilities prior to the sale of the Purchased Assets, unless such changed use would constitute a use or purpose of the Pollution Control Facilities for which tax-exempt bonds could be issued pursuant to section 1313 of the Tax Reform Act of 1986, P.L. 99-514, or (the "1986 Tax Act"), to refund bonds described in section 1312(a) of the 1986 Tax Act which, for purposes hereof, are assumed to have been issued to finance



facilities of the same character and use or purpose as the Pollution Control Facilities;

(ii) Buyer and any transferee which becomes subject to the provisions of the foregoing clause (i) by reason of this clause (ii) will not sell or otherwise transfer any portion of the Pollution Control Facilities unless (A) the transferee covenants to satisfy the conditions of the foregoing clause (i) with respect to its ownership and use of the Pollution Control Facilities or (B) the transfer relates to personal property and is exclusively for cash the proceeds of which will be expended within six (6) months of the date of receipt on facilities for which tax-exempt bonds could be issued pursuant to section 1313 of the 1986 Tax Act, to refund bonds described in section 1312(a) of said act which, for purposes hereof, are assumed to have been issued to finance facilities of the same character and use or purpose as said facilities;

(iii) Buyer will cooperate with Seller and use commercially reasonable efforts to permit Seller to have access to the Pollution Control Facilities at reasonable times to examine them; and

(iv) The foregoing clause shall not be construed to prevent Buyer (or any transferee) from ceasing to operate, maintain or repair any element or item of the Pollution Control Facilities, the operation, maintenance or repair of which becomes uneconomic to Buyer because of damage or

destruction or obsolescence (including physical, functional or economic obsolescence), or because of any change in government standards and regulations or the termination of the operation of the Purchased Assets to which the element or item is an adjunct. Seller shall notify Buyer when the Pollution Control Bonds have matured or been redeemed.

(d) Each of the Buyer and the Seller shall provide the other with such assistance (including access to the Purchased Assets) as may reasonably be requested by the other party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each will retain and provide the requesting party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 7.8 or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the parties hereto.

(e) Seller will consult with and allow Buyer to participate in all outstanding real property tax disputes concerning the Purchased Assets and shall take such positions as Buyer may request consistent with the positions previously communicated to Seller by Buyer with respect to such tax disputes, to assist Buyer in obtaining a tax agreement with respect to such tax disputes for periods subsequent to the

Closing Date. Seller will use its commercially reasonable efforts to assist Buyer in obtaining an agreement with the taxing authorities pursuant to which the assessed value for real estate tax purposes of the Purchased Assets will be the lowest value achievable. Seller shall not enter into any agreement with the taxing authorities with respect to such real property tax disputes relating to periods prior to the Closing Date without the written consent of Buyer which Buyer shall not unreasonably withhold as long as Seller has complied with this Section 7.8(e).

7.9 Supplements to Schedules. Prior to the Closing Date, the parties shall supplement or amend the Schedules required by Article V and VI with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No supplement or amendment of any Schedule made pursuant to this Section shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the parties agree thereto in writing.

7.10 Employees. (a) Schedule 7.10(a) sets forth all collective bargaining agreements to which O&R is a party in connection with the Purchased Assets and all other labor agreements and amendments thereto, that are or may be associated with the Purchased Assets (the "Collective Bargaining Agreements"). Buyer shall offer employment to begin as of the Closing Date to the Seller's employees who work in connection with the Purchased Assets and who are included in the

bargaining units covered by the Collective Bargaining Agreements ("Hourly Employees"), and the Buyer will assume the Collective Bargaining Agreements and all of the Seller's obligations thereunder, including, without limitation, the terms and conditions of the employee benefit plans covering such hourly employees.

(b) Continued Employment; Service Credit. The Buyer shall, as of the Closing Date, offer employment to the employees of the Seller (who will be listed on Schedule 7.10(b) by the Buyer), who worked at or directly serviced the Purchased Assets, who were employees immediately prior to the Closing Date and who were not Hourly Employees and who are approved by Buyer (the "Management Employees"). The Buyer shall provide Schedule 7.10(b) at least ninety (90) days prior to the date on which the Closing is anticipated to occur (but in no event later than February 1, 1999, or such other date to which the Buyer and O&R mutually agree). The Management Employees hired by the Buyer shall be given credit for all service with Seller or its subsidiaries (and service credited by Seller or such subsidiary), to the same extent as such service was credited for such purpose by Seller or such subsidiary, under all employee benefit plans, programs and policies, and fringe benefits of the Buyer in which they become participants for purposes of eligibility, vesting and determination of level of benefits (but not for purposes of benefit accrual). To the extent permissible under the terms thereof and required by applicable law, the Buyer shall (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to

participation and coverage requirements applicable to the Management Employees under any welfare benefit plans that such employees may be eligible to participate in after the Closing Date, other than limitations or waiting periods that are already in effect with respect to such employees and that have not been satisfied as of the Closing Date under any welfare benefit plan maintained for the Management Employees immediately prior to the Closing Date, and (ii) provide each Management Employee with credit for any co-payments and deductibles paid prior to the Closing Date in satisfying any applicable deductible or out-of-pocket requirements under any welfare plans that such employees are eligible to participate in after the Closing Date.

(c) Subject to applicable law, the Buyer shall maintain for a period of at least one year after the Closing Date, without interruption, such employee compensation, welfare and benefit plans, programs, policies and fringe benefits as will, in the aggregate, provide benefits to the Management Employees that are no less favorable than those provided pursuant to such employee compensation, welfare and benefit plans, programs, policies and fringe benefits of the Seller and its subsidiaries, as in effect on the Closing Date. During the period between the date hereof and the Closing Date, the Seller shall use its best efforts to keep available all current Management Employees for employment by the Buyer (except those employees which the Buyer identifies in writing as Management Employees which the Buyer does not intend to employ).

(d) Notwithstanding the Buyer's assumption of the Collective Bargaining Agreement, the Buyer shall not assume sponsorship or any other obligation under any Benefit Plan of O&R or any ERISA Affiliate of the Seller in connection with the assumption of such agreements or in connection with hiring any of the Hourly Employees. All benefits accrued under such Benefits Plans and all benefits currently payable as of the Closing Date shall be and shall remain the obligation of O&R and any individual covered under any such Benefit Plan that is a Group Health Plan (as defined in Section 4980B(g)(2) of the Code and Section 607(l) of ERISA) and who is eligible for continued coverage under such Group Health Plan as of the Closing Date, shall continue to be covered under such Group Health Plan after Closing, pursuant to the provisions of COBRA.

(e) The Seller agrees to perform timely and discharge all requirements, if any, under the WARN Act and under applicable state and local laws and regulations for the notification of its employees arising from the sale of the Purchased Assets to the Buyer up to and including the Closing Date. The Buyer will cooperate with Seller to provide Seller with such information as may be needed from the Buyer for inclusion in such notices, including providing Seller at least ninety (90) days prior to the date on which the Closing is anticipated to occur (but in no event, later than February 1, 1999 or such other date to which the Buyer and O&R mutually agree) with a list of all of Seller's employees to whom the Buyer will make offers of employment.

After the Closing Date, the Buyer shall be responsible for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees with respect to the Purchased Assets.

(f) O&R shall be responsible for any payments required under its severance plan, including severance payment and other benefit enhancements, offered in connection with the transfer of the Purchased Assets. Within thirty (30) days following the last day that any employee may elect to participate in such plan, O&R shall provide Buyer with a list of all electing employees. In any event, Buyer is not required to establish this or any other severance or benefit plan.

(g) O&R shall comply with all of the requirements of COBRA arising from this Agreement with respect to all employees of O&R employed at the Purchased Assets who are not employed by Buyer.

(h) O&R shall pay, when due, to all Hourly Employees and Management Employees hired by the Buyer pursuant to Section 7.10 hereof, all compensation, bonus, severance, vacation and holiday compensation, workers' compensation or other employment benefits which have accrued to such Hourly Employees and Management Employees through and including the Closing Date.

(i) Following the execution of this Agreement, O&R will use its commercially reasonable best efforts to arrange meetings and interviews with such employees of O&R as Buyer shall reasonably request.

(j) O&R shall not, prior to the Closing Date, with respect to the Purchased Assets, (i) hire new employees or transfer current employees prior to the Closing to work at the Purchased Assets, other than to fill vacancies in existing positions in the reasonable discretion of Seller, (ii) take any action prior to the Closing to affect a material change in the Collective Bargaining Agreement, or (iii) take any action prior to the Closing to increase the aggregate benefits payable to the employees employed in connection with the Purchased Assets, except (A) as otherwise required by the terms of the Collective Bargaining Agreement obligations to effects bargain, (B) as O&R shall reasonably deem appropriate in order to comply with its obligations under the second sentence of Section 7.10(c) above, (C) for retention bonuses payable to Management Employees on or before the Closing Date and (D) increases in salary and benefits in the ordinary course of business, consistent with past practice.

7.11 Risk of Loss. (a) From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Purchased Assets shall be borne by the Seller.

(b) If, before the Closing Date all or any portion of the Purchased Assets are taken by eminent domain, or is the subject of a pending or (to the knowledge of the Seller after reasonable inquiry and investigation) contemplated taking which has not been consummated, the Seller shall notify the Buyer promptly in writing of such fact. If such taking would have a Material Adverse Effect, the Buyer



and the Seller shall negotiate in good faith to settle the loss resulting from such taking (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and, upon such settlement, consummate the transaction contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after the Seller has notified the Buyer of such taking, then the Buyer or the Seller may, if such taking relates to the Purchased Assets, terminate this Agreement pursuant to Section 10.1(f).

(c) If, before the Closing Date, all or any material portion of the Purchased Assets are damaged or destroyed by fire or other casualty, the Seller shall notify the Buyer promptly in writing of such fact. If such damage or destruction would have a Material Adverse Effect and the Seller has not notified the Buyer of its intention to cure such damage or destruction within fifteen (15) days after its occurrence, the Buyer and the Seller shall negotiate in good faith to settle the loss resulting from such casualty (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and assigning any insurance proceeds to Buyer at the Closing and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after the Seller has notified the Buyer of such casualty, then the Buyer may terminate this Agreement pursuant to Section 10.1(f).

7.12 Real Estate Matters. (a) Buyer shall obtain an American Land Title Association ("ALTA") or New York Board of Title Underwriters ("NYBTU") owners standard form title policy commitment with respect to the Real Property (the "Title Commitment") from a title company of Buyer's choice (the "Title Company") covering title to the Real Property, together with an ALTA 3.1 zoning endorsement, if available, including parking and access, and such other endorsements as Buyer may reasonably request. Seller shall provide the Title Company and Buyer such information as the Title Company or Buyer may reasonably request to assist the Title Company in connection with the Title Commitment. Without limiting the foregoing, Seller shall provide the Title Company and Buyer a copy of the most recent surveys in their possession regarding the Real Property. Promptly after receiving the Title Commitment, Buyer shall notify Seller in writing of any defects in title which are not Permitted Encumbrances and would cause title to the Real Property to be uninsurable (any of which is called herein a "Defect of Title"). Buyer shall be deemed to have waived any objection to any Defect of Title that was disclosed by the Title Commitment if Buyer fails to notify Seller of such Defect of Title within thirty (30) days after receipt of such Title Commitment. With respect to the existence of any Defect of Title that is not disclosed by the Title Commitment, but which arises prior to Closing, Buyer shall immediately notify the Seller in writing of any such Defect of Title.

(b) O&R agrees that upon the written request of Buyer it will consent and cause its affiliates to consent to the relocation of the Operating Easements and Seller's Easements so long as (i) Buyer pays the cost of such relocation, (ii) such relocation will be to space within Buyer's ownership and will not materially adversely affect the operation of Seller's or its respective affiliates' transmission and distribution business, except for the minimum downtime associated with the cut over for such relocation process in accordance with Good Utility Practices and (iii) the Buyer's requested relocation is consistent with Good Utility Practices. Seller further agrees to condition any grant or assignment by it of the Operating Easements or Seller's Easements on the express agreement of its transferee to be bound by the terms and conditions of this Section 7.12(b).

(c) As to any Operating Easement or Seller's Easement not currently of record or reserved or granted back to O&R at Closing, all of which are to be granted by Buyer at Closing concurrently with the transfer of title to Buyer and prior to any mortgage or other encumbrance, such Operating Easements and Seller's Easements shall include standard cross-indemnity provisions relating to personal injury, death or property damage occurring as a result of gross negligence or willful misconduct in the use of such Easements, whereby each party agrees to indemnify the other for the consequences of the gross negligence or willful misconduct of those for whom the indemnifying party is legally responsible.

7.13 Year 2000. O&R shall (a) use its best efforts to cooperate with Buyer in formulating a plan to prepare the Purchased Assets to be ready for Year 2000 computer-related issues with a target completion date of October 1, 1999 and (b) perform until the Closing Date (or later, at Seller's election, pursuant to the second sentence of Section 7.14 of this Agreement) the tasks identified in such plan, consistent with Good Utility Practices and the expenditures contemplated in its Year 2000 plans referred to in Section 5.23 hereof.

7.14 Scheduled Capital Expenditures and Scheduled Maintenance Expenditures. The Seller shall perform, or caused to be performed, the Scheduled Capital Expenditures and the Scheduled Maintenance Expenditures, at Seller's cost, prior to the Closing Date. To the extent that Scheduled Capital Expenditures and Scheduled Maintenance Expenditures are not completed by the Closing Date, the Seller either (i) shall cause the Scheduled Capital Expenditures or Scheduled Maintenance Expenditures to be completed within a reasonable time following the Closing Date, or (ii) shall pay Buyer its reasonable costs to complete such unfinished Scheduled Capital Expenditures or Scheduled Maintenance Expenditures within thirty (30) days of Seller's receipt from Buyer of a reasonably detailed invoice for such cost.

7.15 Expansion. The parties recognize that the Buyer may wish to add additional generating capacity at the Lovett site ("Intended Use") and the value to Buyer for such Intended Use is included in the Purchase Price. Accordingly, to the

extent such action or inaction does not interfere with or adversely affect the Seller's transmission and distribution business, Seller agrees that, at Buyer's cost, they: (a) will use commercially reasonable efforts to cooperate with Buyer's reasonable request to remove or modify any (i) Permitted Encumbrances which materially adversely affect Buyer's Intended Use, or (ii) conditions (either physical or otherwise) which exist at Bowline or at any of the Purchased Assets which would prevent, hinder, or otherwise interfere with the Buyer's Intended Use, and (b) shall not, and shall ensure that their respective affiliates shall not, oppose, hinder, or interfere with Buyer's efforts to add such additional capacity and shall cooperate with Buyer's other reasonable requests with respect thereto.

7.16 Fuel Contract Renegotiation. At Buyers' request, Seller shall exercise commercially reasonable efforts to cooperate with Buyer in Buyer's efforts to renegotiate (i) the Service Agreement for Service under OPT Rate schedule, between Columbia Gas Contract Transmission Corp. and O&R, dated July 1, 1991 and (ii) Coal Purchase and Sales Agreement between Massey and Seller dated March 9, 1984, as amended.

7.17 Environmental Insurance. If Buyer elects to purchase insurance coverage to cover liabilities arising from Hazardous Substances present or Released at, on, in or under (i) the Purchased Assets and (ii) the "Purchased Asset" and "Purchased Assets," as defined in each of the Other Sales Agreements on or prior to the Closing

Date ("Environmental Insurance"), Seller shall share equally with Buyer the cost of premiums for such Environmental Insurance, up to a maximum payment by Seller of \$200,000 in the aggregate for such insurance relating to (A) the Purchased Assets and (B) the "Purchased Asset" and "Purchased Assets" as defined in each of the Other Sales Agreements. If Buyer purchases such Environmental Insurance, Buyer shall add Seller as an additional insured.

## ARTICLE VIII

### CLOSING CONDITIONS

8.1 Conditions to Each Party's Obligations to Effect the Transactions Contemplated Hereby. The respective obligations of each party to effect the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) The waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated with no order, decree, judgment or injunction enjoining or prohibiting the consummation of the transactions contemplated hereby having been issued;

(b) No preliminary or permanent injunction or other order or decree by any federal or state court or governmental authority which prevents or is reasonably likely to prevent the consummation of the transactions con-

templated hereby or by the Ancillary Agreements shall be pending or shall have been issued and remain in effect (each party agreeing to use its reasonable efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted or interpreted by any State or Federal government or governmental authority in the United States which prohibits the consummation of the transactions contemplated hereby;

(c) All Federal, State and local government, orders, consents and approvals required for the consummation of the transactions contemplated hereby or by the Ancillary Agreements, including, without limitation, the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, shall have become Final Orders (a "Final Order" means action by the relevant regulatory authority which has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transaction prescribed by law, regulation or order have been satisfied), and such Final Order is in form and substance reasonably acceptable to the party that sought the consent or approval granted by such Final Order (for purposes of this clause (i), a Final Order shall be deemed to be reasonably acceptable to such party if it complies in all material respects with the terms

and conditions of such party's application therefor and contains no additional terms or conditions which would have a Material Adverse Effect on such party or the operation of the Purchased Assets) provided, however, that if at the time such order, consent, or approval would otherwise be deemed to be a Final Order, there shall be pending or threatened any appeal or challenge thereto, which, if adversely determined, would cause such order, consent or approval to not be reasonably acceptable to the party that sought such order, consent or approval, then if such party who would be adversely affected notifies the other party that such a pending or threatened appeal or challenge exists (such notification to be made as soon as reasonably practicable following knowledge of such pending or threatened appeal or challenge, but in no event later than fifteen (15) days from date on which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired and all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied), then such order, consent or approval shall be deemed to be a Final Order only after all opportunities for rehearing or judicial review are exhausted and provided, further, that if the designation of an order, consent or approval as a Final Order shall be deferred pursuant to the foregoing proviso, the Termination Date shall be automatically extended for a



period of time equal to the period of time for which the designation as a Final Order has been deferred; and

(d) All consents and approvals required under the terms of any note, bond, mortgage, indenture, contract or other agreement to which the Seller or the Buyer, or any of their subsidiaries, is a party for the consummation of the transactions contemplated hereby shall have been obtained, other than those (i) which if not obtained, would not, in the aggregate, have a Material Adverse Effect, or (ii) for which an agreement which is described in the last sentence of Section 7.6(b) has been entered into.

8.2 Conditions to Obligations of Buyer. The obligation of the Buyer to effect the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) There shall not have occurred and be continuing, a Material Adverse Effect;

(b) The Seller shall have performed and complied with the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date, and the representations and warranties of the Seller set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as

though made at and as of the Closing Date, and the Buyer shall have received a certificate to that effect signed by an authorized officer of the Seller;

(c) The Buyer shall have received a certificate from an authorized officer of the Seller, dated the Closing Date, to the effect that to the best of such officer's knowledge, after reasonable inquiry and investigation, the conditions set forth in Sections 8.2(a) and (b) have been satisfied;

(d) The "Closing" as defined in the Bowline Point Generating Station Sales Agreement between the Seller, Consolidated Edison Company of New York, Inc. and the Buyer, dated as of the date hereof, shall have occurred or shall occur concurrently with the Closing hereunder;

(e) The Buyer shall have received an opinion from Skadden, Arps, Slate, Meagher & Flom LLP, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that:

(1) the Seller is a corporation organized, existing and in good standing under the laws of the State of New York and has the corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of

the transactions contemplated hereby and thereby have been duly authorized by requisite corporate action taken on the part of the Seller.

(2) this Agreement and the Ancillary Agreements have been executed and delivered by the Seller and (assuming that the Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of the Seller, enforceable against the Seller in accordance with their terms, except that such enforcement thereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity);

(3) the execution, delivery and performance of this Agreement and the Ancillary Agreements by the Seller will not (A) constitute a violation of the Certificate of Incorporation or By-Laws of the Seller or (B) to counsel's knowledge constitute a violation or default under those agreements or instruments set forth on a schedule to this opinion;

(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal or New York governmental authority is necessary for the consummation by the

Seller of the Closing other than (i) the Seller Required Regulatory Approvals which are addressed below, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate have a Material Adverse Effect or prevent Seller from performing its obligations hereunder; and

(5) the Bill of Sale, the Instrument of Assumption and the other agreements described in Section 4.3 are in proper form to transfer to Buyer such title to the Purchase Assets as was held by Seller.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel which are reasonably acceptable to Buyer admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by the Seller and appropriate officers and directors of the Seller and by public officials.

(f) The Buyer shall have received an opinion from Riker, Danzig, Scherer, Hyland & Perretti, LLP (New Jersey Counsel), Nixon, Hargrave, Devans & Doyle, LLP (New York Counsel) and Morgan, Lewis & Bockius, LLP (Pennsylvania Counsel), or other local regulatory counsel for O&R reasonably acceptable by Buyer, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal governmental authority or any governmental authority in the States of New York, New Jersey and Pennsylvania is necessary for the consummation by the Seller of the Closing other than (i) the Seller Required Regulatory Approvals, which have been obtained and are in full force and effect with such terms and conditions as were imposed by the applicable governmental authorities, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of

counsel which are reasonably acceptable to Buyer and admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by the Seller and appropriate officers and directors of the Seller and by public officials.

(g) Buyer shall have received the Title Commitment showing the Real Property to be insured as subject only to Permitted Encumbrances, and the effective date of the Title Commitment shall have been updated to the Closing Date and marked to show the satisfaction of all conditions to the issuance of the title policy other than conditions within the control of the Buyer; and

(h) Buyer shall have obtained a certificate of the Secretary of Seller identifying by name and title and bearing the signature of the officer of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby.

8.3 Conditions to Obligations of Seller. The obligation of the Seller to effect the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) The Buyer shall have performed its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date;

(b) The representations and warranties of the Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date;

(c) The Seller shall have received a certificate from an authorized officer of the Buyer, dated the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Sections 8.3(a) and (b) have been satisfied; and

(d) The Seller shall have received an opinion from Troutman Sanders LLP, counsel for the Buyer, dated the Closing Date and satisfactory in form and substance to the Seller and its counsel, substantially to the effect that:

(1) The Buyer is a limited liability company organized, existing and in good standing under the laws of the State of Delaware and has the requisite power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and

the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action taken on the part of the Buyer;

(2) this Agreement and the Ancillary Agreements have been executed and delivered by the Buyer and (assuming that the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their terms, except (A) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefore may be brought;

(3) the execution, delivery and performance of this Agreement and the Ancillary Agreements by the Buyer will not constitute a violation of the Certificate of Formation or Limited Liability Company Agreement (or other similar governing documents), as currently in effect, of the Buyer; and



(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for the consummation by the Buyer of the Closing other than (i) the Buyer Required Regulatory Approvals, all of which have been obtained and are in full force and effect with such terms and conditions as shall have been imposed by any applicable governmental authority, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the federal laws of the United States and the State of New York, such counsel may rely upon opinions of counsel admitted to practices in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of facts upon certificates furnished by appropriate Members and Managers of the Buyer and its subsidiaries and by public officials.

8.4 Extension of Closing Date. If the approval by the FERC of the establishment of the ISO (the "ISO Approval") shall not have been obtained on or prior to the Condition Fulfillment Date, the parties agree to defer the Closing Date until the date (the "Deferred Closing Date") which is the earlier of (a) the last day in the month in which the ISO Approval is deemed final under applicable law, provided that if there are less than five (5) Business Days in the month in which the ISO Approval is deemed final, then the last day in the month which follows the month in which the ISO Approval is deemed final, or (b) August 31, 1999; provided, however, that all conditions set forth in Section 8.2(a) and all conditions set forth in Section 8.2(b) regarding the representations and warranties of Seller shall be deemed to be fulfilled on the Deferred Closing Date unless the nonfulfillment of such conditions primarily results from the acts or omissions of Seller or from the occurrence of facts or circumstances that primarily relate to the Seller's ownership and/or operation, or the physical condition, of the Purchased Assets. For purposes of this Agreement, the "Condition Fulfillment Date" shall mean the date on which all conditions set forth in Sections 8.1 and 8.2 shall have been fulfilled but not earlier than the later of (i) the date on which all conditions set forth in Section 8.3 have been fulfilled or waived and (ii) April 30, 1999.

## ARTICLE IX

### INDEMNIFICATION

9.1 Indemnification. (a) The Seller will indemnify, defend and hold harmless the Buyer, Buyer's affiliates, and their respective Members, Managers, employees and agents (each a "Buyer's Indemnitee") from and against any and all causes of action, claims, demands or suits (by any Person), losses, liabilities, damages (excluding consequential and special damages), obligations, payments, costs, Taxes and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) to the extent the foregoing are not covered by insurance, (collectively, "Indemnifiable Losses"), asserted against or suffered by the Buyer Indemnitee relating to, resulting from or arising out of (i) any breach by the Seller of any covenant or agreement of the Seller contained in this Agreement, (ii) the Excluded Liabilities, (iii) the Excluded Assets, (iv) any breach of any representation in Sections 5.1, 5.2 and 5.3 hereof, (v) Seller's non-compliance with any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement, or (vi) the gross negligence or willful misconduct of Seller, or its affiliates or their best respective contractors while on Buyer's property (including, without limitation, any easement provided the Seller with respect to such property) after the

Closing to the extent such Indemnifiable Loss is not caused by the negligence or willful misconduct of any Buyer Indemnitee.

(b) The Buyer will indemnify, defend and hold harmless the Seller, Seller's Affiliates, and their respective directors, officers, employees and agents (each, a "Seller Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by the Seller relating to, resulting from or arising out of (i) any breach by the Buyer of any covenant or agreement of the Buyer contained in this Agreement, (ii) the Assumed Liabilities, (iii) the operation of the Purchased Assets after the Closing Date, (iv) any breach of any representation in Article VI, or (v) the gross negligence or willful misconduct of Buyer, its affiliates or their respective contractors while on Seller's property after the Closing, to the extent such Indemnifiable Loss is not caused by the negligence or willful misconduct of any Seller Indemnitee.

(c) Either the party required to provide indemnification under this Agreement (the "Indemnifying Party") or the entity or person entitled to receive indemnification under this Agreement (the "Indemnitee") may assert any offset or similar right in respect of its obligations under this Section 9.1 based upon any actual or alleged breach of any covenant or agreement contained in this Agreement.

(d) Any Indemnitee having a claim under these indemnification provisions shall make a good faith effort to recover all losses, damages, costs and

expenses from insurers of such Indemnatee under applicable insurance policies so as to reduce the amount of any Indemnifiable Loss hereunder. The amount of any Indemnifiable Loss shall be reduced (i) to the extent that Indemnatee receives any insurance proceeds with respect to an Indemnifiable Loss and (ii) to take into account any Tax or Income Tax benefit recognized by the Indemnatee arising from the recognition of the Indemnifiable Loss, net of any Tax or Income Tax detriment, and any payment actually received with respect to an Indemnifiable Loss.

(e) The expiration, termination or extinguishment of any covenant, agreement, representation or warranty shall not affect the parties' obligations under this Section 9.1 if the Indemnatee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(f) The Seller and the Buyer shall have indemnification obligations with respect to Indemnifiable Losses asserted against or suffered by the Seller or the Buyer, as the case may be, to the extent that the aggregate of all such Indemnifiable Losses exceed the Indemnification Floor. It is agreed and understood that neither the Seller nor the Buyer, as the case may be, shall have any liability at any time for Indemnifiable Losses asserted against or suffered by the other party until the aggregate amount of Indemnifiable Losses asserted or suffered by such other party under this Section 9.1 shall exceed the Indemnification Floor, and then only to the extent that the

aggregate amount of Indemnifiable Losses exceeds the Indemnification Floor. The term "Indemnification Floor" shall mean an amount equal to \$200,000.

(g) The rights and remedies of the Seller and the Buyer under this Article IX are exclusive and in lieu of any and all other rights and remedies which the Seller and the Buyer may have under this Agreement for monetary relief with respect to (i) any breach or failure to perform any covenant or agreement set forth in this Agreement, or (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be or (iii) any other liabilities described in Section 9.1(a) or 9.1(b). Rights and remedies under the Ancillary Agreements are as set forth therein.

9.2 Defense of Claims. (a) If any Indemnitee receives written notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a party to this Agreement or any affiliate of a party to this Agreement (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and will indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee.

(b) The party defending the Third Party Claim shall (i) consult with the other throughout the pendency of the Third Party Claim regarding the investigation, defense, settlement, compromise, trial, appeal or other resolution thereof; and (ii) afford the other party the opportunity, by notice, to participate and be associated in the defense of any Third Party Claim through counsel chosen by such other party, at its own expense, in the defense of any Third Party Claim as to which party has elected to conduct and control the defense thereof. The parties shall cooperate in the defense of the Third Party Claim. The Indemnatee shall make available to the Indemnifying Party or its representatives all records and other materials reasonably required for use in contesting any Third Party Claim (subject to such confidentiality provisions as the Indemnatee may reasonably require) and shall furnish such testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party in connection therewith. If requested by the Indemnifying Party, the Indemnatee shall cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest or, if appropriate, in making any counterclaim against the Person asserting the claim or demand, or any cross-complaint against any Person. The Indemnifying Party shall reimburse the Indemnatee for any expenses incurred by Indemnatee in cooperating with or acting at the request of the Indemnifying Party.

(c) If within ten (10) calendar days after an Indemnatee provides written notice to the Indemnifying Party of any Third Party Claim the Indemnatee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 9.2(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days (unless waiting twenty (20) calendar days would prejudice the Indemnatee's rights) after receiving notice from the Indemnatee that the Indemnatee believes the Indemnifying Party has failed to take such steps, the Indemnatee may assume its own defense, and the Indemnifying Party will be liable for all reasonable expenses thereof. Without the prior written consent of the Indemnatee, the Indemnifying Party will not enter into any settlement of (i) any Third Party Claim with respect to Income Taxes or (ii) any other Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to



such offer, the Indemnifying Party will give written notice to the Indemnatee to that effect. If the Indemnatee fails to consent to such firm offer (other than with respect to Income Taxes) within ten (10) calendar days after its receipt of such notice, the Indemnatee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnatee up to the date of such notice. Notwithstanding the foregoing, the Indemnatee shall have the right to pay, compromise, or settle any Third Party Claim (other than with respect to Income Taxes) at any time, provided that in such event the Indemnatee shall waive any right to indemnity hereunder unless the Indemnatee shall have first sought the consent of the Indemnifying Party in writing to such payment, settlement or compromise and such consent was unreasonably withheld or delayed, in which event no claim for indemnity therefor hereunder shall be waived.

(d) Any claim by an Indemnatee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event not later than thirty (30) calendar days after the Indemnatee becomes aware of such Direct Claim, and the Indemnifying Party will have a period of thirty (30) calendar days (unless waiting thirty (30) days would

prejudice the Indemnatee's rights, in which case such period as would likely not prejudice the Indemnatee's rights, but in no event less than ten (10) days) within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the Indemnifying Party will be deemed to have accepted such Direct Claim. If the Indemnifying Party rejects such Direct Claim, the Indemnatee will be free to seek enforcement of its rights to indemnification under this Agreement.

(e) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith (together with interest thereon from the date of payment thereof at the prime rate then in effect of the Chase Manhattan Bank), will promptly be repaid by the Indemnatee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnatee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided, however, that (i) the Indemnifying Party will then be in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss and (ii) until the Indemnatee recovers full payment of its

Indemnifiable Loss, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment is hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights. Nothing in this Section 9.2(e) shall be construed to require any party hereto to obtain or maintain any insurance coverage.

(f) A failure to give timely notice as provided in this Section 9.2 will not affect the rights or obligations of any party hereunder except if, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced as a result of such failure.

## ARTICLE X

### TERMINATION AND ABANDONMENT

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

(b) This Agreement may be terminated by the Seller or Buyer if (i) the Closing shall not have been consummated on or before September 30, 1999 (the "Termination Date"); provided that the right to terminate this Agreement under this Section 10.1(b) shall not be available to Seller or Buyer

if its failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur on or before such date; and provided, further, that if on September 30, 1999 the conditions to the Closing set forth in Section 8.1(c) shall not have been fulfilled but all other conditions to the Closing shall be fulfilled or shall be capable of being fulfilled, then the Termination Date shall be the day which is eighteen (18) months from the date of this Agreement.

(c) This Agreement may be terminated by either the Seller or the Buyer if (i) any governmental or regulatory body, the consent of which is a condition to the obligations of the Seller and the Buyer to consummate the transactions contemplated hereby, shall have determined not to grant its consent or shall condition such consent upon any material change to the terms of this Agreement or the Ancillary Agreements or upon any other condition that materially and adversely affects the value of the transactions contemplated herein or therein for either party, and all appeals of such determination shall have been taken and have been unsuccessful, (ii) any court of competent jurisdiction in the United States or any State shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby or the Ancillary Agreements and such order, judgment or decree shall have become final and nonappealable, or (iii)

any statute, rule or regulation shall have been enacted or interpreted by any State or Federal government or governmental agency in the United States which prohibits the transactions contemplated herein or in the Ancillary Agreements.

(d) This Agreement may be terminated by the Buyer, if there has been a material violation or breach by the Seller of any agreement, representation or warranty contained in this Agreement which (i) has rendered the satisfaction of any condition to the obligations of the Buyer impossible and such violation or breach has not been waived by the Buyer or cured by Seller within fifteen (15) days after receipt by Buyer of notice specifying same or (ii) causes a Material Adverse Effect, of which Buyer has notified Seller, and which Seller has not promptly exercised commercially reasonable efforts to cure but in no event later than twenty (20) days following such notification by Buyer.

(e) This Agreement may be terminated by the Seller, if there has been a material violation or breach by the Buyer of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the obligations of the Seller impossible and such violation or breach has not been waived by the Seller or cured by Seller within fifteen (15) days after receipt by Buyer of notice specifying same.

(f) This Agreement may be terminated by either the Seller or the Buyer in accordance with the provisions of Section 7.11(b) or (c).

10.2 Procedure and Effect of Termination. In the event of termination of this Agreement by either or both of the parties pursuant to Section 10.1, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein, such termination shall be without any further liability of either party or parties except as follows:

(a) in the event of termination of this Agreement by Seller pursuant to Section 10.1(e), Seller shall have the right to pursue all remedies available to it in equity or at law in connection with the violation or breach of this Agreement by Buyer;

(b) in the event of termination of this Agreement by Buyer pursuant to Section 10.1(d), Buyer shall have the right to pursue all remedies available to it in equity or at law in connection with the violation or breach of this Agreement by Seller; and

(c) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other person to which they were made.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.1 Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of the Seller and the Buyer.

11.2 Confidentiality. (a) All information regarding a party (the "Disclosing Party") that is furnished directly or indirectly to the other party (the "Recipient") pursuant to this Agreement and marked "Confidential" shall be deemed "Confidential Information." Notwithstanding the foregoing, Confidential Information does not include information that (i) is rightfully received from Recipient from a third party having an obligation of confidence to the Disclosing Party, (ii) is or becomes in the public domain, through no action on Recipient's part in violation of this Agreement, (iii) is already known by Recipient as of the date hereof, or (iv) is developed by Recipient independently of any Confidential Information of the Disclosing Party. Information that is specific as to certain data shall not be deemed to be in the public domain merely because such information is embraced by more general disclosure in the public domain.

(b) Recipient shall keep the Confidential Information strictly confidential and not disclose any Confidential Information to any third party for a

period of two years (2) from the date the Confidential Information was received by Recipient, except as otherwise provided herein.

(c) Recipient may disclose the Confidential Information to its and its affiliates' respective directors, officers, employees, consultants, advisors and agents who need to know the Confidential Information for the purpose of assisting Recipient with respect to its obligations under this Agreement. Recipient shall inform all such parties, in advance, of the confidential nature of the Confidential Information. Recipient shall cause such parties to comply with the requirements of this Agreement and shall be responsible for the actions, uses, and disclosures of all such parties.

(d) If Recipient becomes legally compelled or required to disclose any of the Confidential Information (including, without limitation, pursuant to the rules or regulations of the NYPP, ISO or FERC), Recipient will provide the Disclosing Party with prompt written notice thereof so that the Disclosing Party may seek a protective order or other appropriate remedy. Recipient will furnish only that portion of the Confidential Information which its counsel considers legally required, and Recipient will cooperate, at the Disclosing Party's expense, with the Disclosing Party's counsel to enable the Disclosing Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. It is further agreed that in the event that a protective order or other remedy is not obtained, the Recipient will furnish only that portion of the Confidential Information



which, in the written opinion of the Recipient's counsel, is legally required to be disclosed and, upon the Disclosing Party's request, use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

(e) Recipient shall promptly return to the Disclosing Party all items containing or constituting Confidential Information, together with all copies, extracts, or summaries thereof, upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of this Agreement.

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

11.4 No Survival. Subject to the provisions of Article X, each and every representation, warranty and covenant contained in this Agreement (other than (a) the covenants contained in Sections 3.2, 3.3, 3.4, 7.2(b), 7.2(c), 7.2(d), 7.3, 7.4, 7.5, 7.6, 7.7, 7.8, 7.10, 7.12, 7.14, 7.15, 7.16, 7.17, 9.1 and 9.2 and in Article XI (which covenants shall survive in accordance with their terms), (b) the representations and

warranties contained in Sections 5.1, 5.2, 5.3, 6.1, 6.2 and 6.3 (which representations and warranties shall survive for twelve (12) months from the Closing) and (c) the representation and warranty in Section 5.21 (which representation and warranty shall survive for the applicable statute of limitations) shall expire with, and be terminated and extinguished by the consummation of the sale of the Purchased Assets and the transfer of the Assumed Liabilities pursuant to this Agreement and such representations, warranties and covenants shall not survive the Closing Date; and none of the Seller, the Buyer or any officer, director, trustee or Affiliate of either of them shall be under any liability whatsoever with respect to any such representation, warranty or covenant.

11.5 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon receipt on a Business Day if during the normal business hours of the recipient, or if not, on the next Business Day, if delivered personally or by facsimile transmission, telexed or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice:

(a) If to the Seller, to:

Orange and Rockland Utilities, Inc.  
One Blue Hill Plaza  
Pearl River, NY 10965  
Attention: Legal Department

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, NY 10022  
Attention: Sheldon S. Adler, Esq.

(b) if to the Buyer, to:

Southern Energy Lovett, L.L.C.  
c/o Southern Energy, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338

Attention: Randy Harrison, Vice-President

with copies to:

Troutman Sanders LLP  
Nationsbank Plaza  
Suite 5200  
Atlanta, GA 30308

Attention: Robert C. Marshall, Esq.

and

Southern Company Services  
270 Peachtree Street  
Bin 918  
Atlanta, Georgia 30303

Attention: Vice President and Associate  
General Counsel

11.6 Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law without the prior written consent of the other party, nor is this Agreement intended to confer upon any other Person except the parties hereto any rights or remedies hereunder. The Buyer acknowledges that O&R has entered into an Agreement and Plan of Merger whereby O&R will become a wholly-owned subsidiary of Consolidated Edison, Inc. ("CEI"). Notwithstanding any other provision of this Article 11.6, the Buyer agrees that this Agreement may be assigned to CEI, or a wholly-owned affiliate of CEI without the Buyer's consent. Notwithstanding the foregoing, (a) Buyer may assign all of its rights and obligations hereunder to any wholly owned subsidiary (direct or indirect) of Buyer or Buyer's parent and upon Seller's receipt of notice from Buyer of any such assignment, such assignee will be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Buyer" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the parties hereto or such assignee; and (b) Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of its rights and interests hereunder to a trustee or lending institutions for the purposes of financing or refinancing the

Purchased Assets, including upon or pursuant to the exercise of remedies with respect to such financing or refinancing, or by way of assignments, transfers, pledges, or other dispositions in lieu thereof; provided, however, that no such assignment or other disposition shall relieve or in any way discharge Buyer or such assignee from the performance of Buyer's obligations under this Agreement. Seller agrees, at Buyer's expense, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer pledge or other disposition of rights and interests hereunder so long as Seller's rights under this Agreement are not thereby altered, amended, diminished or otherwise impaired.

11.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies, and the Seller and the Buyer hereby agree to irrevocably and unconditionally submit to the exclusive jurisdiction of any State or Federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this Agreement. If requested by Seller, Buyer will consent to appointing an agent for service of process in New York City.

11.8 Specific Performance. Sellers and Buyer agree that a material breach of this Agreement will cause the non-breaching party immediate and irrepara-

ble harm that monetary damages cannot adequately remedy, and therefore, in addition to all other remedies hereunder, the parties agree that, upon any actual or impending material breach of this Agreement, the non-breaching party shall be entitled to equitable relief, including injunctive relief and specific performance, without bond or proof of damages, and in addition to any other remedies that the non-breaching party may have under applicable law.

11.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.10 Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

11.11 Entire Agreement. This Agreement, the Ancillary Agreements, the Confidentiality Agreement, including the Exhibits and Schedules referred to herein or therein, and the Guaranty given to Seller by Southern Energy, Inc. embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no

restrictions, promises, representations, warranties, covenants or undertakings of Seller contained in any material made available to the Buyer pursuant to the terms of the Confidentiality Agreement (including the Information Memorandum, dated May 1998, previously made available to the Buyer by the Seller and DLJ). This Agreement supersedes all prior agreements and understandings between the parties with respect to such transactions other than the Confidentiality Agreement.

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

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

ORANGE AND ROCKLAND UTILITIES, INC.

By: D L Peoples  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

SOUTHERN ENERGY LOVETT, L.L.C.

By: \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President



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

ORANGE AND ROCKLAND UTILITIES, INC.

By: \_\_\_\_\_  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

SOUTHERN ENERGY LOVETT, L.L.C.

By:  \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President



**EXHIBITS**  
**TO**  
**LOVETT GENERATING STATION**  
**SALES AGREEMENT**

FORM OF  
BILL OF SALE

THIS BILL OF SALE, dated as of \_\_\_\_\_,  
by and between Orange and Rockland Utilities, Inc., a New  
York corporation (the "Seller"), and Southern Energy  
Lovett, L.L.C., a Delaware limited liability company (the  
"Buyer").

W I T N E S S E T H

WHEREAS, pursuant to that certain Lovett Gener-  
ating Station Sales Agreement, dated as of November 24,  
1998 (as amended, supplemented or otherwise modified from  
time to time, the "Asset Sales Agreement"), by and be-  
tween the Seller and the Buyer, the Seller has agreed to  
sell, assign, convey, transfer and deliver all of its  
right, title and interest in the Purchased Assets (as de-  
fined in the Asset Sales Agreement) to the Buyer and the  
Buyer has agreed to purchase and acquire such Purchased  
Assets from the Seller, all as more fully described in  
the Asset Sales Agreement; and

WHEREAS, pursuant to the Asset Sales Agreement,  
the Seller and the Buyer have agreed to enter into this  
Bill of Sale pursuant to which that part of the Purchased  
Assets which constitutes personal property will be con-  
veyed to the Buyer.

NOW, THEREFORE, in consideration of the forego-  
ing premises and for other good and valuable consider-  
ation, the receipt and adequacy of which is hereby ac-  
knowledged, the parties hereto hereby agree as follows:

1. Defined Terms. Capitalized terms which  
are used but not defined in this Bill of Sale shall have  
the meaning ascribed to such terms in the Asset Sales  
Agreement.

2. Assignment. Except as set forth in Sec-  
tion 3 below and subject to the terms and conditions of  
the Asset Sales Agreement, the Seller does hereby sell,  
assign, convey, transfer and deliver to the Buyer all of  
the Seller's right, title and interest in and to all of  
the Purchased Assets which constitute personal property.

3. Excluded Assets Not Assigned. Notwithstanding anything herein to the contrary, the Excluded Assets are specifically excluded from the Purchased Assets and shall be retained by the Seller at and following the Closing Date.

4. Appointment. The Seller hereby constitutes and appoints the Buyer, and its successors and assigns, as the Seller's true and lawful attorney, with full power of substitution, in the Seller's name and stead, by, on behalf of and for the benefit of the Buyer, and its successors and assigns, to demand and receive any and all of the Purchased Assets transferred hereunder and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute, at the expense and for the benefit of the Buyer, and its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, and its successors or assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets transferred hereunder or for the collection and enforcement of any claim or right of any kind hereby sold, assigned, conveyed, transferred and delivered, and to do all acts and things in relation to the Purchased Assets transferred hereunder which the Buyer, and its successors or assigns, shall deem desirable.

5. No Third Party Beneficiaries. Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person other than the Buyer, its successors and assigns any remedy or claim under or by reason of this instrument or any agreements, terms, covenants or conditions hereof, and all the agreements, terms, covenants and conditions contained in this instrument shall be for the sole and exclusive benefit of the Buyer and its successors and permitted assigns.

6. Binding Effect; Assignment. This Bill of Sale and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

8. Construction. This Bill of Sale is delivered pursuant to and is subject to the Asset Sales Agreement. In the event of any conflict between the terms of the Asset Sales Agreement and the terms of this Bill of Sale, the terms of the Asset Sales Agreement shall prevail.

IN WITNESS WHEREOF, this Bill of Sale has been  
duly executed and delivered by the duly authorized offi-  
cers of the parties hereto as of the date first above  
written.

ORANGE AND ROCKLAND UTILITIES, INC.

By \_\_\_\_\_  
Name:  
Title:

SOUTHERN ENERGY LOVETT, L.L.C.

By \_\_\_\_\_  
Name:  
Title:

FORM OF  
INSTRUMENT OF ASSUMPTION

Instrument of Assumption made, executed and delivered on this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by Southern Energy Lovett, L.L.C., a Delaware limited liability company (the "Buyer"), in favor of Orange and Rockland Utilities, Inc., a New York corporation (the "Seller").

W I T N E S S E T H:

WHEREAS, pursuant to that certain Lovett Generating Station Sales Agreement, dated as of November \_\_, 1998 (as amended, supplemented or otherwise modified from time to time, the "Asset Sales Agreement"), by and between the Seller and the Buyer, the Seller is concurrently herewith selling, assigning, conveying, transferring and delivering to the Buyer the Purchased Assets (as defined in the Asset Sales Agreement); and

WHEREAS, in partial consideration therefor, the Asset Sales Agreement requires that the Buyer assume and agree to pay, perform or discharge or cause to be paid, performed or discharged certain liabilities and obligations of the Seller;

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Buyer agrees as follows:

1. Capitalized terms which are used in this Instrument of Assumption (including Appendix I hereto) but are not defined in this Instrument of Assumption shall have the meaning ascribed to such terms in the Asset Sales Agreement.

2. The Buyer hereby assumes and agrees to pay, perform or discharge in accordance with their terms, subject to the limitations contained in this Instrument



of Assumption, the liabilities and obligations of the Seller which are described in Appendix I hereto (the "Assumed Liabilities").

3. It is understood and agreed that nothing in this Instrument of Assumption or in Section 2.3 of the Asset Sales Agreement shall constitute a waiver or release of any claims arising out of the contractual relationships between the Seller and the Buyer.

4. The assumption by the Buyer of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of the Buyer under the Asset Sales Agreement.

5. Other than as specifically set forth in this Instrument of Assumption or in Section 2.3 of the Asset Sales Agreement, the Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of the Seller, direct or indirect, known or unknown, absolute or contingent, other than the Assumed Liabilities, including, without limitation, any liabilities or obligation in respect of any Excluded Assets.

6. This Instrument of Assumption shall be enforceable against the successors and assigns of the Buyer and shall inure to the benefit of the successors and assigns of the Seller.

7. This Instrument of Assumption shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

8. This Instrument of Assumption is delivered pursuant to and is subject to the Asset Sales Agreement. In the event of any conflict between the terms of the Asset Sales Agreement and the terms of this Instrument of Assumption, the terms of the Asset Sales Agreement shall prevail.

IN WITNESS WHEREOF, this Instrument of Assump-  
tion has been duly executed and delivered by the duly  
authorized officers of the Buyer as of the date first  
above written.

SOUTHERN ENERGY LOVETT, L.L.C.

[Corporate Seal]

By \_\_\_\_\_

Name:

Title:

Attest:

\_\_\_\_\_  
Name:

Title:

APPENDIX I  
TO INSTRUMENT OF ASSUMPTION

Obligations Assumed

The Buyer shall assume and agree to discharge to the maximum extent permitted by law, all of the following liabilities and obligations of Seller, which relate to the Purchased Assets, other than Excluded Liabilities, in accordance with the respective terms and subject to the respective conditions thereof:

[insert all sub-paragraphs under Section 2.3 of the Asset Sales Agreement]

SEPARATION DOCUMENT SUMMARY

Lovett Unit #1

Transmission Interconnection

- Lovett Unit #1 will be interconnected with the O&R transmission system at the bus taps to the 69 kV Bus in O&R Substation #33. The Buyer will be responsible for the protection systems associated with the systems on the generator side of the interconnection. O&R shall be responsible for the 69 kV bus differential system.
- Presently the taps from the bus have been removed as the unit is retired.
- The Lovett 69 kV bus is connected to the O&R transmission system through the 85MW Bank 147 and Line 55 which is rated 91MW.

Lovett Unit #2

Transmission Interconnection

- Lovett Unit #2 will be interconnected with the O&R transmission system at the bus taps to the 69 kV Bus in O&R Substation #33. The Buyer will be responsible for the protection systems associated with the systems on the generator side of the interconnection. O&R shall be responsible for the 69 kV bus differential system.
- Presently the taps from the bus have been removed as the unit is retired.
- The Lovett 69 kV bus is connected to the O&R transmission system through the 85MW Bank 147 and Line 55 which is rated 91MW.

### Lovett Unit #3

#### Transmission Interconnection

- Lovett Unit #3 will be interconnected with the O&R transmission system at the bus taps to the 69 kV Bus in O&R Substation #33. The Buyer will be responsible for the protection systems associated with the systems on the generator side of the interconnection. O&R shall be responsible for the 69 kV bus differential system.
- The Lovett Plant start-up transformer #733 shall be the responsibility of the Buyer and shall be connected to the O&R transmission system at the bus taps to the 69 kV bus in O&R Substation #33.
- The Lovett Plant start-up transformer #533 shall be the responsibility of the Buyer and shall be connected to the O&R transmission system at the taps between the 633-A and 533-A switches in O&R Substation #33. The 533-A switch will be the responsibility of the Buyer.
- The Lovett 69 kV Bus is connected to the O&R transmission system through the 85MW Bank 147 and Line 55 which is rated 91MW.

### Lovett Unit #4

#### Transmission Interconnection

- Lovett Unit #4 will be interconnected with the O&R System at the bus taps to the 138 kV bus in O&R Substation #47. The Buyer will be responsible for the protection systems associated with the systems on the generator side of the interconnection. O&R shall be responsible for the 138 kV bus differential system.
- The Lovett Plant start-up transformer #647 shall be the responsibility of the Buyer and shall be connected to the O&R transmission system at the bus taps to the 138 kV bus in O&R Substation #47.
- The Lovett 138 kV bus is connected to the O&R transmission system through transmission lines 53, 54, and 56. Each line is rated 224MW.

Lovett Unit #5  
Transmission Interconnection

- Lovett Unit #5 will be interconnected with the O&R transmission system at the bus taps to the 138KV bus in O&R Substation #47. The Buyer will be responsible for the protection systems associated with the systems on the generator side of the interconnection. O&R shall be responsible for the 138 kV bus differential system.
- The Lovett 138 kV bus is connected to the O&R transmission system through transmission lines 53, 54, and 56. Each line is rated 224MW.
- The Lovett #5 generator leads are underground cables that share the oil pumping plant with Line 53 & 54.

EXHIBIT D

**BARGAIN AND SALE DEED**

This indenture, made the \_\_\_\_ day of \_\_\_\_\_, nineteen hundred and ninety \_\_\_\_, between ORANGE AND ROCKLAND UTILITIES, INC., a corporation organized under the laws of the State of New York, as party of the first part, and SOUTHERN ENERGY NY-GEN, L.L.C., a limited liability company organized under the laws of the State of Delaware, as party of the second part:

Witnesseth, that the party of the first part, in consideration of \_\_\_\_\_ dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, \_\_\_\_\_ and assigns forever, all \_\_\_\_\_ (description which will include property and any easements retained or granted by seller)(the "Property"), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part \_\_\_\_\_ and assigns forever. And the party of the first part covenants that

it has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By: \_\_\_\_\_  
Name:  
Title:

CORPORATE SEAL



EXHIBIT E

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration"), made as of the [ ] day of [ ], 199[ ], is BETWEEN ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation having an office at One Blue Hill Plaza, Pearl River, New York 10965 (together with its successors and assigns "O&R") and SOUTHERN ENERGY LOVETT, L.L.C., a Delaware limited liability company having an office at [ ] (together with its successors and assigns the "Buyer").

WITNESSETH, that O&R, in consideration of [ ] Dollars and other valuable consideration paid by Buyer, does hereby grant and release unto Buyer, its successors and assigns forever, the easements and rights more particularly described hereinafter, appurtenant to the Property (as hereinafter defined), which easements and rights are hereby declared to be part and parcel of the conveyance of the Property (as hereinafter defined) described in a certain deed of even date herewith (the "Deed");

WHEREAS, O&R is the owner in fee simple of certain premises in [ ] more particularly described on (a) Exhibit A attached hereto and made a part hereof (the "Property");

WHEREAS, [BUYER] is the owner in fee simple of certain adjoining premises in [ ] consisting of [ ] more particularly described on Exhibit B attached hereto and made a part hereof (the "Buyer's Property") which were conveyed by O&R to Buyer pursuant to the Deed;

WHEREAS, there are certain defined terms used in this Declaration and such terms have the meanings ascribed to them in the Deed.

NOW THEREFORE, for the consideration recited above, O&R hereby grants and releases unto Buyer, its successors and assigns forever, the easements and rights described in Sections [ ], appurtenant to the Property, as follows:

GRANT OF EASEMENTS TO BUYER BURDENING O&R'S PREMISES

[Following are examples of types of easements which do not necessarily reflect the easements to be granted to Buyer]

1. [Roadway Easement.]
2. [Oil Tank Parcel Access Easement.]
3. [Gas Pipeline Easement.]
4. [Utility Pole Easement.]
5. Covenant Against Grantor Acts. Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatsoever.
6. Right to Easements. The easements and rights granted to Buyer herein shall run to the benefit of Buyer, its successors and assigns.

IN WITNESS WHEREOF, O&R and Buyer have duly executed  
this instrument as of the day and year first above written.

ORANGE AND ROCKLAND UTILITIES,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

On the       day of       , 199 before me personally came  
     , to me known, who, being by me duly sworn, did depose and say  
that he resides at No.       ; that he is  
the       of Orange and Rockland Utilities, Inc., the  
corporation described in and which executed the foregoing instru-  
ment; and that he signed his name thereto by authority of the  
board of directors of said corporation.

---

Notary Public

STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

On the       day of       , 199 before me personally came  
     , to me known, who, being by me duly sworn, did depose and say  
that he resides at No.       ; that he is the  
     of Southern Energy Lovett, L.L.C., the limited liabil-  
ity company described in and which executed the foregoing instru-  
ment; and that he signed his name thereto by authority of the  
board of directors of said corporation.

---

Notary Public

EXHIBIT A

EXHIBIT B

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF LEASE  
(O&R as Lessee)

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT, made as of \_\_\_\_\_, 1998 (this "Assignment"), by and between ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation whose principal office is located at One Blue Hill Plaza, Pearl River, New York 10965 ("Assignor") and SOUTHERN ENERGY LOVETT, L.L.C., a Delaware limited liability company whose principal office is located at [ ] ("Assignee").

WHEREAS, Assignor is the lessee under that certain Lease, dated [ ] by and between Assignor and [ ], as lessor, concerning premises/property located at [ ] (as the same may have been amended, modified, supplemented, extended and/or assigned, the "Lease");

WHEREAS, Assignor desires to assign the Lease to Assignee so that Assignee may have the benefit of the use of the property subject to the Lease; and

WHEREAS, this Assignment shall be effective as of the close of business on the date hereof, the date of the closing of the sale of the Lovett Generating Station as contemplated by that certain Lovett Generating Station Sales Agreement, dated as of November 24, 1998 between Assignor and Southern Energy Lovett, L.L.C. (the "Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. Assignor hereby assigns and transfers all of its rights, title and interest as tenant, in, to and under the Lease, including, but not limited to, any security of Assignor held by lessor under the Lease, to Assignee, its successors and assigns from and after the effective date of this Assignment for the remainder of the

term of the Lease, subject to the rental, terms, covenants and conditions of the Lease and including, without limitation, any and all renewal and purchase options.

2. Assignee hereby assumes all liabilities and the performance of all of the terms, covenants and conditions arising out of the Lease, and with respect to the premises relating to such Lease, herein assigned by Assignor to Assignee to be paid or performed subsequent to this Assignment. Assignee agrees to pay the rent reserved by the Lease in accordance with the terms hereof until the termination of the Lease and will well and truly perform all the terms, covenants and conditions of the Lease herein assigned and hereinafter arising, all with full force and effect as if Assignee had signed the Lease originally as tenant named therein.

3. Nothing contained herein shall be deemed to vitiate any representations, warranties or agreements undertaken by Assignor or Assignee as set forth in or pursuant to the Agreement. Except as provided in the Agreement, Assignor makes no representations or warranties of any kind whatsoever.

4. Assignee hereby agrees that the obligations herein assumed by Assignee shall inure to the lessor named in the Lease and to its successors and assigns.

5. Assignor and Assignee each agrees to execute and deliver to the other party, if the other party so requests, such further instruments as may be reasonably required to complete or further evidence either the foregoing assignment or the foregoing assumption.

6. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one binding agreement.

7. It is understood and agreed that nothing in this Assignment and Assumption of Lease or in Section 2.3 of the Agreement shall constitute a waiver or release of any claims arising out of the contractual relationships between the Seller and the Buyer.

8. The assumption by the Buyer of the Lease shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of the Buyer under the Agreement.



9. Other than as specifically set forth in this Assignment and Assumption of Lease or in Section 2.3 of the Agreement, the Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of the Seller, direct or indirect, known or unknown, absolute or contingent, other than the Assumed Liabilities, including, without limitation, any liabilities or obligation in respect of any Excluded Assets.

10. This Assignment and Assumption of Lease shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

11. This Assignment and Assumption of Lease is delivered pursuant to and is subject to the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Assignment and Assumption of Lease, the terms of the Agreement shall prevail.

12. Capitalized terms which are used but not defined herein shall have the meaning ascribed to such term in the Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this instrument as of the date first set forth above.

ASSIGNOR:

ORANGE AND ROCKLAND UTILITIES, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE:

SOUTHERN ENERGY LOVETT, L.L.C.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**SCHEDULES**  
**TO THE**  
**LOVETT GENERATING STATION SALES AGREEMENT**

**Schedule 1.1 (a)(11)**

<b>GENERATING STATION</b>	<b>NOX ALLOWANCES 1999 TO 2002*</b>	<b>SO2 ALLOWANCES 2000 TO 2009</b>	<b>SO2 ALLOWANCES 2010 AND THEREAFTER</b>
LOVETT	2,585	9,762	9,827

\* The NOx Budget Program regulations (6 NYCRR 227-3) have been issued and noticed for public comment. Since these regulations have not yet been adopted, the NOx allocation may be subject to change. Buyer will receive all NOx allowances allocated to these generating stations.

**Schedule 1.1(a)(40)**

**Lovett Generating Station**

Lovett Generating Station ("Lovett") is located in Tomkins Cove, New York. Lovett has three active fossil-fueled electric generating units having a combined nominal capacity of 453 MW and two retired units. The following table shows the primary fuel and the Summer Dependable Maximum Net Capability as reported to the New York Power Pool for the 1997 Summer Capability Period on 09/26/97.

UNIT	NET CAPABILITY (MW)	PRIMARY FUEL
Unit 1	0	(Retired)
Unit 2	0	(Retired)
Unit 3	69.3	Oil/Gas
Unit 4	176.8	Coal/Oil/Gas
Unit 5	197.3	Coal/Oil/Gas
Total	443.4	

Lovett contains unit-specific and common equipment, systems and auxiliaries used to operate the three active electric generating units. A listing of the major equipment for the units is provided in the following table.

BOILERS				STEAM TURBINE GENERATORS		
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS	TYPE	MANUFACTURER	SERIAL NUMBERS
1	Integral Furnace (Retired)	Babcock & Wilcox	Contract # F-1282  15543	3600-rpm 18- stage condens- ing	General Electric	Turbine: 80967  Generator: 5727980
2	Integral Furnace (Retired)	Babcock & Wilcox	Contract # F-1699  16787	3600-rpm 18- stage condens- ing	General Electric	Turbine: 83652  Generator: 675066T
3	Two pass, Tangential-fired, Balanced draft	Combustion Engineer- ing	Contract #: 6851  MFR # 17401	3600-rpm, 25 stage, Tandem-Com- pound Flow, Reheat	General Electric	Turbine: 99623  Generator: 6918105

BOILERS				STEAM TURBINE GENERATORS		
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS	TYPE	MANUFACTURER	SERIAL NUMBERS
4	Reheat type, natural-circulation, Single steam Drum, Front wall-fired (Converted to balanced draft in 1987.	Foster Wheeler	Contract #: 2-79-2004 Waterwalls: 36-4122 Economizer: 28-76772 Reheater: 74-19869 Superheater: 75-19370	3600-rpm, 22 stage, Tandem-Compound, Double Flow, Reheat	General Electric	Turbine: 118323  Generator: 8245877
5	Reheat type, Natural Circulation, Single Steam Drum, Front wall-fired, Pressurized Furnace	Babcock & Wilcox	RB444  BW 22477	3600-rpm, 21 stage, Tandem-Compound, Double Flow, Reheat	General Electric	Turbine: 170X386  Generator: 180X386

The following table lists major plant systems at Lovett. These systems may be common to each of the units, or may be unit specific for one or more units.

<b>LIST OF MAJOR SYSTEMS - LOVETT</b>
---------------------------------------

Mechanical Equipment

Steam Generator and Auxiliaries, including Pulverizing Equipment, Fans, Air Heating Equipment.,  
 Sootblowers  
 Coal Handling System  
 Fuel Oil System  
 Turbine-Generator and Auxiliaries  
 Boiler Feed Pumps  
 Lube Oil System  
 Condenser and Auxiliaries  
 Condensate and Feedwater System, including  
     Feedwater Heaters and Deaerators  
 Circulating Water System  
 Service Water System  
 Bearing-Cooling Water System  
 Fire System



Demineralizer  
Chemical-Feed System  
Compressed Air  
Sampling Equipment  
Instrument and Control Systems  
Heating, Ventilation, and Air Conditioning  
Wastewater Treatment Plant

Electrical Equipment

Main Transformers  
Unit Auxiliary Transformers  
Start Up Transformers  
Unit Substation Transformers  
Isolated Phase Bus  
13.8 kV Switchgear Buses  
4.16 kV Switchgear Buses  
480 V Load Centers  
277/480 V Motor Control Centers  
120/240 V Inst AC Switchgear w/ Inverter  
DC Switchgear w/ Battery Chargers  
Station Batteries  
Emergency Engine Generator Unit

The Lovett site includes the following ancillary facilities: a common concrete stack for Units 4 and 5 (with individual steel flues); cooling water intake structures for each unit; sub-surface and surface cooling to the Hudson River water discharges for each unit; two fresh water storage tanks and a fire protection pump house; coal pile, coal handling facilities, coal handling equipment and maintenance facility; railroad unloading facility, railroad siding and natural gas metering station; three fuel oil storage tanks; dock and oil unloading facilities; electrostatic precipitators (ESP's) on Units 4 and 5, fly ash handling systems, two flyash storage silos, fly ash unloading facilities and bottom ash handling facility; two waste water storage tanks, process waste water treatment facility, sanitary waste treatment facility, service building, air compressor building, flyash equipment maintenance building, coal ash management facility, leachate and runoff pump station and treatment pond and warehouse.

The following are the critical spares for equipment at Lovett:

DESCRIPTION	STORAGE LOCATION ON SITE
Unit 4, (1) FD Fan Motor	Bowline Point Warehouse
Unit 4, (2) ID Fan Motors	Bowline Point Warehouse
Unit 4, (1) Circ. Water Pump Motor	Bowline Point Warehouse
Unit 4, (1) Pulverizer Motor	Bowline Point Warehouse
Unit 4, (1) Primary Air Fan Motor	Warehouse
Unit 5, (1) FD Fan Motor	Bowline Point Warehouse
Unit 4, (1) 200 MVA GSU 19kV - 138 kV	Substation Yard
Unit 5, (1) Boiler Feed Pump Motor	Bowline Point Warehouse
Unit 5, (1) Primary Air Fan Motor	Warehouse
Unit 3, (1) Boiler Feed Pump Internals	Warehouse
Unit 4, (1) Boiler Feed Pump Internals	Warehouse
Unit 5, (1) Boiler Feed Pump Internals	Warehouse

The warehouse contains sufficient inventory to repair all major pumps and smaller pumps located throughout the plant, and rebuild all turbine valves including stop valves, combined reheat valves and control valves.

The following is a list of GSU transformers at Lovett:

UNIT ID	SIZE	DATE OF MANUFACTURE
Unit 1 - Bank 133 8278606 (note: unit is retired)	Type HT, 25 MVA	GE
Unit 2 - Bank 233 B-202664 (note: unit is retired)	Type OA-T, 25 MVA	GE
Unit 3 - Bk. 333 B533850	84 MVA	GE - 1954
Unit 4 - BK. 447 C-06039-5-1	200/224 MVA	McGraw-Edison - 1984
Unit 5 - Bk 547 D590865	180 MVA	GE - 1969

The following is a list of major vehicles at Lovett:

ITEM	MANUFACTURER	MODEL NUMBER	SERIAL NUMBER	ORU ID NUMBER	OWN / LEASE
Boat and Trailer	Duranautic	22' Boat with 115 Hp Engine (Mercury)	DNV 36977 M80B	Boat and Trailer	Own
Pick-up Truck	Ford 1990	F250	VIN 1FTEF25N1 LNB04296	535	Own
Pick-up Truck	Ford 1988	F250	VIN 1FTEF25N7J NB44525	477	Own
Dump Truck	Caterpillar 1985	350C	35DA-7315	DJB-1	Own

ITEM	MANUFACTURER	MODEL NUMBER	SERIAL NUMBER	ORU ID NUMBER	OWN / LEASE
Dump Truck	Caterpillar 1985	350C	35DA-7582	DJB-2	Own
Diesel Lo-comotive	GM	SW-8	53A-187-567B	Big Cam	Own
Diesel Lo-comotive	GM	SW-8	53A-188-567B	Little Cam	Own
Roller	Caterpillar 1987	CS553	7AD262	Roller	Own
Dozer	Caterpillar	D-8K	66V4228	D-8K	Own
Water Truck	Caterpillar	DW 21, 8000 gal		Water Truck	Own
Bucket Loader	Caterpillar 1987	980C	70V23202	980C	Own
Dozer	Caterpillar 1987	D-9N	01JD00837	D-9N	Own
Bucket Loader	Caterpillar 1987	920		920	Own
Vacuum Truck	Ford 1988 L9000	Peabody and Myers Vactor Body	VIN 1FDZY90X4 KVA11439	VACTOR	Own
Dozer	Case	1150G	JJG0218242	1150G	Own
Dump Truck	GM 1995	Top Kick	VIN GDM7H1J2S J500169	Dump Truck	Own
Fork Lift	Hyster	60	187043	Fork Lift (Maintenance)	Own
Fork Lift	Yale	GLP050RB JUAT080	P380515	Fork Lift (Warehouse)	Own
Pallet Truck	Crown	35RRTT	W29663	Pallet Truck (Warehouse)	Own

ITEM	MANUFACTURER	MODEL NUMBER	SERIAL NUMBER	ORU ID NUMBER	OWN / LEASE
Crane	Broderson	IC 8010	132026	Crane	Own
Manlift	Genie Boom	Z-45/22		Manlift	Own

**Schedule 1.1(a)(40)(o)**

Nothing to disclose.

**Lovett**

**Schedule 1.1(a)(42)**

**ORANGE AND ROCKLAND UTILITIES, INC.  
CAPITAL BUDGET**

			(Amounts in Thousands)			
<b><u>BUDGET#</u></b>	<b><u>Project Description</u></b>		<b><u>Nov. 1998</u></b>	<b><u>Dec. 1998</u></b>	<b><u>Total Nov-Dec 1998</u></b>	<b><u>Through April 1999</u></b>
<b>Electric Production Lovett</b>						
E 336	AX	Lovett #4 Data Acquisition Upgrade	—	—	—	80.4
E 337	AX	Lovett #5 Data Acquisition Upgrade	—	—	—	80.2
E 317	AX	Lovett Computer	99.7	—	99.7	—
E 323	AX	Lovett #4 Silo Blaster Upgrade	—	12.5	12.5	—
E 324	AX	Lovett #5 Silo Blaster Upgrade	—	12.5	12.5	—
E 502	AX	Lovett #3&#4 Control Rms. Steel Plate Flooring	49.9	—	49.9	—
— — —		Lovett Thaw Shed Heater	20.0	100.0	120.0	—
E 204	AX	Lovett #5 Boiler Casing Expansion Joints	—	—	—	107.2
E 339	AX	Lovett #4 Coal System Damper Drives	—	—	—	106.2
E 350	AX	Lovett #5 Hot Reheat Piping	—	—	—	77.5
E 373	AX	Lovett #5 Distributed Controls	—	—	—	317.8
			—	—	—	—
<b>Total</b>			<b>169.6</b>	<b>125.0</b>	<b>294.6</b>	<b>769.3</b>

**Lovett**

**Schedule 1.1(a)(43)**

**ORANGE AND ROCKLAND UTILITIES, INC.  
MAINTENANCE EXPENDITURES  
PLANNED OVERHAULS AND Y2K EXPENSE**

**EXPENSE**

**Through  
April 1999**

(Amounts in Thousands)

Y2K Readiness consistent with the plans described in  
Section 5.23 of the Agreement (Lovett)

\$ 80.0

Lovett #5 Unit 1999 Spring Overhaul

**ELECTRIC PLANT WORKSCOPE**

Inspect and repair all turbine generator steam valves and  
journal bearings. Perform an EBOP Test and an In Place  
Last Stage Turbine Blade Inspection. Overhaul the 5A &  
B Circulating Water Pumps. Inspect main and auxiliary  
transformers. Perform circuit breaker maintenance.

\$590.0

**BOILER PLANT WORKSCOPE**

Overhaul boiler safety valves, inspect and repair burners,  
complete ash hopper repairs. Inspect and adjust high  
energy piping hangers. Overhaul 5A FD Fan Motor, 5A  
Boiler Feed Pump and Motor. Inspect and repair  
pulverizers, Ash Removal System, Air pre-heaters, coal  
feeders and the deaerator. Clean ash internal and external  
to boiler.

\$610.0



**Schedule 2.2(c)**

***LOVETT – EXCLUDED ASSETS***

◆ PRIMARY EQUIPMENT - 69kV YARD

*OCB'S* – L-33-2X, L-33-2Y, 147-33-2X, 147-33-2Y, 55-33-2X, 55-33-2Y  
*DISCONNECTS* – L-33-1X, L-33-3X, L-33-3Y, L-33-1Y, 147-33-1X, 147-33-3X,  
147-33-3Y, 147-33-1Y, 55-33-1X, 55-33-3X, 55-33-3Y, 55-33-1Y, 633-A  
69kV BUS X, BUS Y  
*BANK 633 & SWITCHGEAR*

◆ PRIMARY EQUIPMENT - 138kV YARD

*OCB'S* – 53-47-2, 54-47-2, 56-47-2, 147-2  
*DISCONNECTS* – 147-1, 147-3, 56-47-1, 56-47-3, 53-47-1, 53-47-3,  
54-47-1, 54-47-3, 147-5, 56-47-5, 53-47-5 138KV BUS A, BUS B, BUS C  
*BANK 147 AND DELUGE SYSTEM*  
138kV Control House

◆ PROTECTIVE RELAY SYSTEMS

Line 55 Relay Protection  
Line 56 Relay Protection  
Line 53 Relay Protection  
Line 54 Relay Protection  
Bank 147 Relay Protection  
69kV Bus X & Bus Y Relay Protection  
138kV Bus A, B, & C Relay Protection

◆ SCADA EQUIPMENT

One (1) Westinghouse Redac 70h System (138 kV Yard)  
One (1) Westinghouse Redac 70h System (Plant)

◆ TELECOMMUNICATION EQUIPMENT

RTU Telephone Line # 32LGGL292227 (138 kV Yard)  
RTU Telephone Line # 32HCGL225566 (Plant)  
Station Voicemail Phone Number 786-3332

**Schedule 5.3(a)**

Nothing to disclose.

**Schedule 5.3(b)**

Nothing to disclose.

**Schedule 5.6**

Nothing to disclose.

**Schedule 5.7**

**Nothing to disclose.**

Schedule 5.8

LOVETT GENERATING STATION

Lands in the Town of Stony Point, acquired by the following deeds:

<u>ORU DEED #</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED DATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
713	New York Trap Rock	11/06/46	11/08/46	456	116	
728	H.W. Johnson	04/05/50	04/06/50	509	44	
762	State of New York	11/17/50	01/24/51	522	512	
765	Vaughn Teachers Rest	03/19/54	03/23/54	577	336	
808	New York Central Railroad	05/07/57	07/29/57	653	22	
827	H. Grimm	09/28/59	09/30/59	704	354	
831	New York Trap Rock	11/23/59	12/21/59	707	708	
845	New York Central Railroad	05/24/60	06/02/60	716	149	
846	R.A. Hoke	06/14/60	06/22/60	717	305	
885	Fresh Air Association of St. John	10/13/66	10/14/66	817	361	
886	Martin Marietta Corp.	03/14/68	04/03/68	840	1060	
895	R.A. Hoke	03/13/69	03/13/69	856	673	

\* Recording References are to Rockland County Clerk's Office.

<u>ORU DEED #</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED DATE*</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
896	S. & E. Kovach	03/14/69	03/17/69	856	826	
899	H. Grimm	03/19/69	03/21/69	857	32	
903	Battlefields, Inc.	04/25/69	05/27/69	865	188	
917	State of New York	12/24/70	02/03/71	886	478	
918	State of New York	12/24/70	02/03/71	886	474	
955	Jekapo Associates	08/11/80	08/22/80	1047	384	
956	D. & D. Lyons	11/19/80	11/21/80	1051	419	
971	Tilcon Minerals Inc.	12/12/86	12/19/86	194	2581	
Easement	Battlefields Inc.	05/06/69	05/07/69	859	263	Water Line
Easement	New York Trap Rock Corp.	01/20/49	02/09/49	492	94	Water Line
Easement	KCOR Corporation	12/23/66	12/27/66	820	803	Water Line

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\* Recording References are to Rockland County Clerk's Office.

**Schedule 5.9(a)**

**LOVETT GENERATING STATION**

**Leases/Agreements**

<b><u>AGREEMENT/ LEASE</u></b>	<b><u>LICENSOR</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Lease	Tilcon Minerals, Inc.	7/14/86	12/23/86	195	2208	RR Siding
License (#13)	Conrail (formerly NY Central)	7/15/49	N/A			6" Water Line
License (#26)	Conrail (formerly NY Central)	11/2/56	N/A			8" Carrier Pipe
License (#40)	Conrail (formerly NY Central)	5/22/67	N/A			138KV OH
License (#51)	Conrail (formerly Penn Central)	12/1/70	N/A			138KV UG
License (#43)	Conrail (formerly NY Central)	10/18/65	N/A			69 KV OH
Lease	Conrail	08/01/86	N/A			Siding Lease
Agreement	Conrail	07/25/86	N/A			Side Track Agreement asso- ciated with Siding Lease dated 8/1/86



<u>AGREEMENT/ LEASE</u>	<u>LICENSEE</u>	<u>DATE</u>	<u>RECORDED DATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
Agreement	S. & A. Palefsky	11/1/89				Water Agreement
Agreement	L. Metti	1971				Water Agreement
Agreement	M. Mangracasale	1971				Water Agreement
Agreement	G. Hansen	1971				Water Agreement
Agreement	F. & C. MacMillan	10/6/93				Water Agreement
Agreement	P. Ferriter	5/8/87				Water Agreement
Agreement	Town of Stony Point	12/9/88				Fire Hydrant
Agreement	H. & K. Hansen	4/15/81				Water Agreement
Agreement	Tomkins Memorial Church	12/6/82				Water Agreement
Agreement	M. Marsh, L. & R. Babcock, W. Ireland, G. Hansen, H. Hansen, B. Hansen, L. Nemeth, K. Hansen, M. Ryder, W & T Felter	11/23/73				Water Agreement
Agreement	E. & D. Fredenburg	11/29/73				Lighthouse Court
Agreement	G. & G. McElroy	11/16/73				Water Agreement
Agreement	Town of Stony Point	03/08/74				Fire Hydrant - Gays Hill Rd.

**Schedule 5.9(b)**  
**Nothing to disclose.**

**Schedule 5.10(a)**

Nothing to disclose.

**Schedule 5.10(b)**

Nothing to disclose.

**Schedule 5.11(a)**

**Nothing to disclose.**

**Schedule 5.11(b)**

Nothing to disclose.

**Schedule 5.12(a)(i)**

1. Seller has received the following notifications of its alleged violation of its Permits:
  - (a) By letter dated February 3, 1998 the Riverkeeper, Inc. alleged that Seller has violated and continues to violate "an effluent standard or limitation" under § 505(a)(1)(A) of the Clean Water Act ("CWA") by failing to comply with the SPDES Permit No. NY-0005711 issued under § 402 of the CWA for Lovett. Seller allegedly is in violation of this permit by maintaining cooling water intake structures that do not reflect the best technology available ("BTA") for minimizing adverse environmental impact.
  - (b) NYSDEC Solid Waste Management Facility Inspection Report dated 9/29/98 listing areas of non-compliance at Seller's Coal Ash Management Facilities.
  - (c) NYSDEC Solid Waste Management Facility Inspection Report dated 10/24/98 listing areas of non-compliance at Seller's Coal Ash Management Facility.
2. In addition, on occasion Seller experiences exceedances of SPDES discharge parameters and opacity.

**Schedule 5.12(a)(ii)**

**LOVETT PERMITS**

**LOVETT**

PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
SPDES - Plant Permit # NY-0005711	NYSDEC	10/1/91	10/1/96
SPDES Renewal application filed March 19, 1996, currently operating under original permit			
SPDES Permit # NY-0166456 CAMF	NYSDEC	7/1/94	7/1/99
Part 360 Permit 3-3928-00030-00001-0(CAMF)	NYSDEC	6/30/94	6/30/99
Certificate to Operate an Air Contamination Source - For Emission Points - 00001; 00002; 00003; 00004; 00005; 00007; 00041; 00042; 00043; 00044; 00051; 00052; 00053; 00054; 0006B	NYSDEC	5/9/96	5/15/01
Certificate to Operate an Air Contamination Source	RCHD		
<ul style="list-style-type: none"> <li>■ Boiler-Combustion Engineering 7.27E8 BTU/hr. #6 Fuel Oil/Natural Gas, Emission Source Reference # 00003</li> <li>■ Unit 4 Built Up Boiler, Fuel: Oil-gas-coal, Emission Source Reference #00004</li> <li>■ Unit 5 Built Up Boiler, Fuel: Oil-gas-coal, Emission Source Reference #00005</li> <li>■ Pyrites Storage Silo Vent Filter Fabric Collector, Emission Reference #0006B</li> <li>■ Emergency Generator. Emission Reference #00007</li> <li>■ Transfer Building Dust Collection system. Emission Reference #41</li> <li>■ Unit #4 Fly Ash storage air filter vent. Emission Reference #42.</li> <li>■ Crusher Building Dust Collection System. Emission Reference #51.</li> <li>■ Unit 5 fly ash storage silo mechanical exhauster. Emission Reference #52.</li> <li>■ Unit 4 Coal Storage Silo. Emission reference #00043.</li> <li>■ Unit 4 Fly Ash Aeration System. Emission reference #00044.</li> <li>■ Unit 5 Coal Storage Silo. Emission reference #00053.</li> <li>■ Unit 5 Fly Ash Aeration System. Emission reference #00054.</li> </ul>		1/24/96  6/1/96  6/1/96  6/1/96  3/4/97  1/25/96  1/25/96  1/25/96  1/25/96  6/1/96  6/1/96  6/1/96  6/1/96	1/24/01  6/1/01  6/1/01  6/1/01  3/4/02  1/25/01  1/25/01  1/25/01  1/25/01  6/1/01  6/1/01  6/1/01  6/1/01



PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
Title V Clean Air Act	NYSDEC	Application submitted on June 13, 1997; permit issuance pending	5 years after issuance
Major Onshore Facility License # 3-K20	NYSDEC	8/12/96	3/31/99
Chemical Bulk Storage (regulated under MOSF) # 3-000178	NYSDEC		7/17/99
Petroleum Bulk Storage Permit (regulated under MOSF)			
Solid Waste Management Facility Operating Permit - Part 360	NYSDEC	6/30/94	6/30/99

Permits Pending			
SPDES Permit # NY-0005711	NYSDEC	10/1/91	10/1/96
SPDES Renewal application filed March 19, 1996, currently operating under original permit			
Title V application/Clean Air Act	NYSDEC	application submitted on June 13, 1997; permit issuance pending	5 years after issuance

**\* Environmental Acronyms**

CAMF - Coal Ash Management Facility  
 MOSF - Major Oil Storage Facility  
 NYSDEC - New York State Department of Environmental Conservation  
 RCHD - Rockland County Health Department  
 SPDES - State Pollutant Discharge Elimination System

**Schedule 5.12(b)**

**Nothing to disclose.**

**Schedule 5.12 (c)**

**Consent Orders - Environmental**

1. Seller has entered into the following outstanding Consent Orders:

Order on Consent, dated as of August 18, 1998, in DEC Index No. D3-9000-97-08 executed by Seller and the New York State Department of Environmental Conservation, by which Seller agreed to a stipulated schedule of penalties in the event of future excess opacity exceedances at Lovett as well as Bowline in violation of 6 NYCRR § 227 and ECL §§ 19-0301 and 19-0303.

**Schedule 5.12(d)**

1. Environmental Compliance Assessment Checklist\*
  - 10/30/98 (Saksen)
  - 10/30/98 (Frisco)
  - 9/23/98
  - 9/17/98
2. 2/19/98 - Lovett Unit #5 - Turbine oil cooler leaked causing oil to discharge into Hudson River. NYSDEC spill # 97-12893, NRC spill # 425101.
3. Phase I Environmental Site Assessment, Lovett Generating Station, Tomkins Cove, New York, prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.
4. Phase II Environmental Site Investigation, Lovett Generating Station, Tomkins Cove, New York, dated October 1998.
5. Report, Additional Phase II Environmental Site Investigations, Orange and Rockland prepared by URS Greiner Woodward-Clyde, dated November 1998.

\* Note: Environmental assessments of Lovett are performed monthly by the (i) Environmental Affairs Department - Electric Production Division and (ii) Environmental Services Department - Corporate. Completed assessments are retained for a two to three month period.

**Schedule 5.13**

Nothing to disclose.

**Schedule 5.14(a)**

- Employees' Retirement Plan
- Hourly Group Savings Plan
- Management Employees' Savings Plan
- Severance Pay Plan
- Long-Term Performance Share Unit Plan
- Non-Officers' Supplemental Retirement Plan
- Eligible Employees' Insurance Program
- Eligible Employees' Compensation Deferral Plan
- Annual Team Incentive Plan
- Blanket Accident Policy
- Hourly, Management and Executive Long-Term Disability Insurance Policies
- Management Employee Transition Program
- Employees' Group Insurance Plan (Health, Life, Long-Term Disability)
- Flexible Benefit Plans
- Dependent Care Plans
- Employee Assistance Program
- Tuition Reimbursement Program

**Schedule 5.14(b)(i)**

Nothing to disclose.

**Schedule 5.14(b)(ii)**

Nothing to disclose.



**Schedule 5.14(b)(iii)**

Nothing to disclose.

**Schedule 5.14(c)**

Nothing to disclose.

**Schedule 5.15**

**PERMITTED ENCUMBRANCES**

**Lovett Generating Station**

**In addition to the Permitted Encumbrances listed below, various of the properties described in Schedule 5.8 shall be subject to the Operating Easement, consisting of the easement or easements or reservation of rights with respect to the Purchased Assets required by the Seller to operate its transmission and distribution business.**

<b><u>AGREEMENT/ LEASE</u></b>	<b><u>GRANTEE</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Easement	New York Telephone	01/16/98				(Affects Deed #955 from Lovett Schedule 5.8)
Easement	Orange and Rockland Utilities, Inc. and Consolidated Edison of New York, Inc.	08/02/77	08/15/77	995	407	
Agreement	Orecchio, Mr. & Mrs. R.	08/06/86	Unrecorded			Deck Extension
Letter	R. Baldwin	06/27/73				Swim Pool Permission

**Schedule 5.17(a)**

**A. LOVETT GENERATING STATION**

- (1) Coal Purchase and Sales Agreement between Massey Coal Sales Company, Inc. and O&R dated March 9, 1984, as Amended.
- (2) Transportation Contract between Consolidated Rail Corporation and O&R, as Amended July 1, 1996.
- (3) Transportation Contract between Norfolk Southern Railway Company and O&R dated May 4, 1987, as Amended.
- (4) Through Transportation Contract Among Norfolk and Western Railway Company (now Norfolk Southern Railway Company), Consolidated Rail Corporation and O&R, dated May 4, 1987, as Amended.
- (5) Sidetrack Agreement for Lovett Plant between Consolidated Rail Corporation and O&R dated July 25, 1986.
- (6) Agreement for the Removal of Coal Ash between McNeil Brothers, Inc. and O&R, dated April 24, 1997.
- (7) Purchase Order for Lovett Plant Maintenance of Thermal Insulation between AC&S, Inc. and O&R, dated April 6, 1998.
- (8) Agreement between Foster Wheeler Energy Corporation and O&R, dated March 23, 1994, as Amended.
- (9) Agreement between Burns and Roe Enterprises, Inc. and O&R, dated May 28, 1993, as Amended.
- (10) Letter of Intent dated October 20, 1998 regarding Railroad Transportation Service Agreement between CSX Transportation Corporation and Orange and Rockland Utilities, Inc.

**B. AGREEMENTS RELATING TO MULTIPLE FACILITIES**

- (11) Residual Fuel Oil Agreement between Consolidated Edison Company, of New York, Inc. and O&R, dated August 31, 1983, as amended. (back-up fuel for Lovett).

- (12) Purchase Order for Diesel and Kerosene between Rad Energy and O&R, for Use Throughout the Company, Including at Generation Plants.\*
- (13) Rental Garment Service Agreement Between Cintas Corporation and O&R, dated February 11, 1998. (Uniforms for employees at Lovett as well as other departments within the Company)."

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\* This Purchase Orders covers the Company's diesel and kerosene requirements from December 1, 1997, through November 30, 1999. If assigned, the assignment would only include product for the generating facilities.

\*\* Agreement and purchase orders issued thereunder cover uniform requirements from January 1, 1998, through January 31, 2003. Assignment would include purchase orders relating to Bowline, Lovett and the hydroelectric facilities.

**Schedule 5.17(b)**

**A. AGREEMENTS RELATING TO MULTIPLE FACILITIES**

- (1) Residual Fuel Oil Agreement between Consolidated Edison Company of New York, Inc. and O&R, dated August 31, 1983, as amended.**

**Schedule 5.17(c)**

Nothing to disclose.

**Schedule 5.18**

**Lovett Generating Station**

1. Metal Bank Cottman Avenue Superfund Site
  - United States Environmental Protection Agency – Region III – Docket No. III-98-082-DC
2. Energy Association of New York State, et al v. NYPSC
  - Supreme Court of the State of New York – Appellate Division – Third Department – Index No. 5830/96
3. Public Utility Law Project of New York, Inc., Thomas Albin v. the New York Public Service Commission, et al
  - Supreme Court, State of New York - County of Albany (5685-97) – Judge Joseph C. Teresi
4. Riverkeeper, Inc./Lovett SPDES Permit Issue
  - N/A
    - ◆ A Notice Letter from Riverkeeper alleges that the Company has violated and continues to violate the Federal Clean Water Act by its failure to maintain cooling water intake structures at the Company's Lovett Generating Station ("Lovett") that "reflect best technology available for minimizing adverse environmental impact" ("BTA") as required by Lovett's SPDES permit and the Clean Water Act. According to the Notice Letter, Riverkeeper believes that it is entitled to re-institute its claims against the Company from a previous lawsuit, and purports to notify the Company that it intends to bring a civil suit against the Company.
5. Riverkeeper, Inc./Bowline Shortnose Sturgeon Issue
  - N/A
    - ◆ In a Notice Letter, Riverkeeper alleges that the Company has violated the Federal Endangered Species Act by operating the Bowline Generating Station in such a way which results in the improper "taking" of shortnose sturgeon.



**Schedule 5.19(a)**

**NON-ENVIRONMENTAL PERMITS/REGISTRATIONS**

**LOVETT GENERATING STATION**

PERMIT TYPE	PERMIT NUMBER	EXPIRATION	COMMENTS
RADIOACTIVE MATERIALS LICENSE	1986-1218	8/1/99	COAL DETECTOR CELLS
RADIO LICENSE	10821	1/1/99	RADIO LICENSE FOR ORU
CHEMICAL BULK STORAGE	3-000178	7/1/99	CHEMICAL STORAGE OVER 180 GAL
ASBESTOS HANDLING LICENSE	98-0108	12/31/99	ISSUED FOR BOTH BOWLINE AND LOVETT

\* In addition to the above Permits/Registrations, Seller is required to notify the local fire department prior to performing Hotwork

**Schedule 5.19(b)**

**Nothing to disclose.**

**Schedule 5.20(a)**

The Seller and its subsidiaries are not regulated as public utilities in any states other than New York, New Jersey and Pennsylvania.

**Schedule 5.20(b)**

**Regulation as a Public Utility**

Seller and certain of its subsidiaries are regulated as public utilities as follows:

- (a) Seller is an "electric corporation" under New York law and subject to regulation by the NYPSC.
- (b) Seller's wholly owned subsidiary, Rockland Electric Company ("RECO") is a "public utility" under New Jersey law and subject to regulation by the NJBPU.
- (c) Seller's wholly owned subsidiary, Pike County Light & Power Company ("Pike") is a "public utility" under Pennsylvania law and subject to regulation by the PAPUC.
- (d) Seller, RECO and Pike are also subject to regulation by the FERC and SEC.

**Schedule 5.21**

**Nothing to disclose.**

**Schedule 6.3(a)**

**Buyer's Regulatory Approvals**

1. FERC approval of "exempt wholesale generator" status for the Buyer under Section 32 of the Holding Company Act;
2. FERC approval of Buyer's acquisition of FERC jurisdictional assets under Section 203 of the Federal Power Act;
3. FERC approval under Section 204 of the Federal Power Act, to the extent necessary, of any issuance of securities by Buyer;
4. FERC approval under Section 205 of the Federal Power Act of any sales of electricity, transmission service, or ancillary services by Buyer, including, without limitation, Buyer's receipt from FERC of authority to sell electricity at wholesale market rates and the approval by FERC of any wholesale power sales agreements to be transferred by Seller to Buyer;
5. Any determinations or other approvals from state commissions necessary under Section 32(c) of the Holding Company Act for the Purchased Assets to be eligible facilities and for the Buyer to own such Purchased Assets as an exempt wholesale generator under Section 32 of the Holding Company Act;
6. Any approvals required under New York law for the Buyer to acquire, finance, own or operate the Purchased Assets or to sell or distribute power therefrom;
7. Any approval required from any governmental entity pursuant to any Environmental Law, in order to own or operate the Purchased Assets as they currently exist; and
8. The transfer of any Permits to the Buyer and the issuance or grant of any additional licenses, certificates, permits, consents, approvals or other authorizations from any governmental entity necessary for Buyer to acquire, own and operate the Purchased Assets and to sell power at wholesale.

## Schedule 6.5

### **Regulation as a Utility**

On the Closing Date, Buyer will be an exempt wholesale generator under the Holding Company Act, although it is a subsidiary of a registered public utility holding company under the Holding Company Act. On the Closing Date, Buyer also will be a public utility under the Federal Power Act.

Southern Energy, Inc. is not now a utility subject to the regulation of the New York State Public Service Commission. As of the date of closing, Buyer will become, by virtue of its ownership of an electric plant, as that term is defined by Section 2(12) of the New York State Public Service Law, an electric corporation, as that term is defined by Section 2(13) of the New York State Public Service Law. Electric corporations, subject to the certain exceptions not relevant here, are subject to the jurisdiction of the New York State Public Service Commission.

**Schedule 7.1**

**Nothing to disclose.**



**Schedule 7.4**

**Nothing to disclose.**

**Schedule 7.8(c)**

**POLLUTION CONTROL FACILITIES  
ASSOCIATED WITH THE LOVETT GENERATING STATION**

The following facilities as they are further described or referred to in the Tax Regulatory Agreement dated August 31, 1994 between New York State Energy Research and Development Authority ("NYSERDA") and Orange and Rockland Utilities, Inc. (the "Company") and the Tax Regulatory Agreement dated July 27, 1995 between NYSERDA and the Company (collectively, the "1994 and 1995 Tax Regulatory Agreements."):

1. The Particulate Control System consists of ductwork leading to precipitators; the precipitators; ductwork leading from the precipitators to a stack; electrical equipment and instrumentation associated with the foregoing, and civil work - pilings, foundations, platforms, steel superstructure and the like - for support, protection, access and maintenance of the foregoing. The system does not include a portion of the foregoing because of possible economic benefit as described in the Tax Regulatory Agreement.
2. The Wastewater Treatment System consists of an oil separator; oil holding tank; two wastewater retention basins; a waste transfer pump; a Lamella type solids separator; caustic, acid, coagulant and polymer feed systems; a sludge sump and sump pumps; two pressure filters, automatic pH-control recycling equipment; other necessary pumps, piping, electrical equipment, instrumentation; and impervious slurry wall surrounding the coal pile, drain lines, and necessary pumps and sump.
3. The Fly-Ash Handling System provides, with respect to each of two precipitators, a discrete sub-system consisting of valves; erosion resistant pipe; fly-ash silos, equipped with vent-filter, bag-filter, wet unloading devices (including a service-water tank); heater and fluidizing blowers; the necessary electricity-supply equipment and instrumentation for the foregoing and civil work - pilings, foundations, platforms and the like - necessary for protection, support, access and maintenance. The system also includes interconnecting pipe and transport blowers common to both systems.
4. The Bottom-Ash Handling System consists of dewatering bins and appurtenant equipment and pumps, pipes and tankage used to recirculate water. The appurtenant equipment includes the dewatering bin sump and sump pumps; baffles, to assure that overflow water will be as free of solids as possible; overflow weirs and troughs; a decanting system; a power operated vertical lifting ash discharge gate; heaters for freeze protection; freeze protection drainage; access openings and poke holes; and material level indicators.

5. An Ash Disposal Facility, which is designed to store ash in a quarry adjacent to the Corporation's Lovett Generating Plant, consisting of approximately twenty acres of land, site preparation thereon, a building, a surface water collection system, including a detention pond and monitoring wells.

6. The major equipment in the Sewerage Treatment System - an equalization tank, aeration tank, clarifier and chlorine contact tank - comprises a package unit capable of handling an 8000 gallon per day flow from the sanitary sewer system. The system also includes connecting piping, pumps, controls, and electricity-supplying equipment. The foregoing equipment is housed in a 25 x 44 foot building featuring a steel frame, insulated metal siding, and a built-up roof over a metal deck.

The foregoing systems also include certain roads, pilings, buildings, steel or concrete items, items of electrical equipment, pumping, piping, tanks, trenching, instrumentation, lighting and other equipment associated with the foregoing.

The following additional facilities as they are further described in the 1994 and 1995 Tax Regulatory Agreements:

1. A portion of the Particulate Control System.
2. An induced draft fan and appurtenances.
3. Boiler modification or additions.
4. Features for the disposal of boiler bottom ash to the extent that such features are not the dewatering bins, appurtenant equipment and pumps, pipes and tankage used to recirculate water comprising the Bottom-Ash Handling System.
5. Coal handling equipment, warehousing, office and laboratory space.
6. A stack.
7. Closure costs associated with the Ash Disposal System.

### **Schedule 7.10(a)**

Agreement between O & R and Local Union No. 503 of the International Brotherhood of Electrical Workers effective June 1, 1997 through May 31, 2000, as supplemented by the operating agreements listed below.

- 1) Shift Swaps.
- 2) Vacation Schedules.
- 3) Painting Projects For Laborers.
- 4) Supplemental Agreement - Certified Welder/Repairman (Rules For Certified Welders Test).
- 5) Memo Of Understanding - One Day Vacation Policy.
- 6) Memo Of Understanding - Plant Operations And Utility Operators.
- 7) Supplemental Agreement - Plant Operators And Utility Operators (Bidding Procedures).
- 8) Memo Of Understanding For Split Vacation Week For Shift Workers At Lovett And Bowline Point Plants.
- 9) Memo Of Understanding - Laborers In The Electric Production Department - Cleaning Up Asbestos Containing Material (ACM) Spills.
- 10) Laborers At Plants Will Travel To Secure And Deliver Parts And Equipment For Operation And Maintenance Of Plants.
- 11) Agreement On The Use Of Surplus Operating Personnel At Lovett And Bowline Plants.
- 12) Jury Duty - Workers At Bowline And Lovett Plants (Letter Dated 3-1-93; Letter Dated 2-5-93; Schedule Assignment Memo).
- 13) Assignment Of Employees For Overtime Work (Memo).
- 14) Maintenance Of Regulator Stations At Lovett And Bowline Plants Connected To O&R Gas Department System (Memo).
- 15) Filling C.E.M. Position At Bowline.
- 16) Assistant Yardman And Yardman - Filling Future Positions (Grievance No. 074-88E-036 - Letter).
- 17) Rotating vs. Non-Rotating Work Schedules For Scheduled Workers At The Plants (Letter).
- 18) Annual Clothing Payment - Safety Clothing (Plus Addendum).
- 19) Small Scale Body Fluid Spills - Clean-Up Memo.
- 20) Off-Hour Defensive Driver Training - Use Of Union Instructors.
- 21) Safety Eyeglass Program (Revised July 1997).
- 22) Hillburn GT Mechanic Call Out.
- 23) Supplemental Agreement - Operation and Maintenance of Peaking Units - Eastern Division and Western Division.
- 24) Memo of Agreement - Siemens 4160 V Switchgear.

- 25) Memo of Understanding - Snow Plowing - Lovett Plant.
- 26) Lovett Maintenance Department - Overtime Procedure.
- 27) Guidelines When Calling Plant Operators and Utility Operators For Overtime.
- 28) Memo of Agreement - Results Tech Group - Mr. William Hessian (Letter).
- 29) Notice - Lovett Employees - Mileage Allowances.
- 30) Supplemental Agreement - Waste Water Treatment Facility - Lovett.
- 31) Memo of Understanding - Procedures For The Operation and Maintenance of The Lovett Vacuum Truck and Sweeper Attachment.
- 32) Lovett - Relay Rooms (Memo).
- 33) Memo of Understanding - Lay Up Unit #2.
- 34) Yardman - Maintenance Of Tank Farm.
- 35) Plant Electricians vs. Substation Electrician-Work Assignments.
- 36) Control Techs vs. Mechanical/Repairman - Work Assignment (Grievance #007-96E-007).
- 37) Partial List of One (1) Person Jobs.
- 38) Snow Removal - Bowline (Memo).
- 39) Outage Agreement - Personnel Assignment - Bowline.

**Schedule 7.10(b)**

To be completed by Buyer and provided to Seller at least 90 days prior to the date on which Closing is anticipated to occur, but in no event later than February 1, 1999, or such other date as Buyer and Seller mutually agree.

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**GAS TURBINE AND HYDROELECTRIC GENERATING  
STATIONS SALES AGREEMENT**

**BETWEEN**

**ORANGE AND ROCKLAND UTILITIES, INC.**

**AND**

**SOUTHERN ENERGY NY-GEN, L.L.C.**

**November 24, 1998**

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**GAS TURBINE AND HYDROELECTRIC GENERATING  
STATIONS SALES AGREEMENT**

**GAS TURBINE AND HYDROELECTRIC GENERATING STATIONS  
SALES AGREEMENT**, dated as of November 24, 1998, between Orange and Rockland  
Utilities, Inc., a New York corporation ("Seller" or "O&R"), and Southern Energy NY-  
Gen, L.L.C., a Delaware limited liability company ("Buyer").

WHEREAS, Seller owns and operates the Gas Turbines (as defined  
herein) and the Hydroelectric Assets (as defined herein) (collectively, the "Purchased  
Assets"); and

WHEREAS, the Buyer desires to purchase, and Seller desires to sell, the  
Purchased Assets upon the terms and conditions hereinafter set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, repre-  
sentations, warranties and agreements hereinafter set forth, and intending to be legally  
bound hereby, the parties hereto agree as follows:

**ARTICLE I**

**DEFINITIONS**

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

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

(2) "Agreement" means this Gas Turbine and Hydroelectric Generating Stations Sales Agreement together with the Schedules and Exhibits hereto.

(3) "Ancillary Agreements" means the Operating Easement, the Seller's Easements, the Load Pocket Agreement, the Continuing Site/Interconnection Agreement and the Transition Agreement.

(4) "Bill of Sale" means the Bill of Sale to be delivered at the Closing with respect to the Purchased Assets which constitute personal property and which are to be transferred at the Closing, substantially in the form of Exhibit A hereto.

(5) "Business Day" shall mean any day other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

(6) "Buyer Representatives" means the Buyer's accountants, counsel, environmental consultants, financial advisors and other authorized representatives.

(7) "CERCLA" means the Federal Comprehensive Environmental Response, Compensation and Liability Act.

(8) "Code" means the Internal Revenue Code of 1986, as amended.

(9) "Confidentiality Agreement" means the Confidentiality Agreement, dated June 19, 1998, between Seller and Southern Energy, Inc.

(10) "Continuing Site/Interconnection Agreement" means the Continuing Site/Interconnection Agreement, dated as of the date of this Agreement, between Seller and the Buyer.

(11) "Emission Allowances" means the nitrogen oxide allowances to be allocated by the New York State Department of Environmental Conservation to the Gas Turbines, as set forth in Schedule 1.1(a)(11).

(12) "Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, conservation, easements, deed restrictions, encumbrances and charges of any kind.

(13) "Environmental Laws" means all Federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders relating to pollution or protection of the environment, natural resources or human health and safety, including, without

limitation, laws relating to Releases or threatened Releases of Hazardous Substances (including, without limitation, ambient air, surface water, groundwater, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport or handling of Hazardous Substances.

(14) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(15) "Estimated Inventory Adjustment Amount" means the value of the JP4 fuel inventory used at or in connection with the Gas Turbines, as published in the Journal of Commerce, on the date ten (10) days before the Closing Date, or the most recently published date prior to such date (ten days before the Closing) which valuation shall be provided to the Buyer by Seller no later than five (5) days before the Closing Date.

(16) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(17) "Federal Power Act" means the Federal Power Act of 1935.

(18) "FERC" means the Federal Energy Regulatory Commission or any successor thereto.



(19) "Gas Turbines" means the Hillburn Gas Turbine and the Shoemaker Gas Turbine.

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

(21) "Hazardous Substances" means (a) any petrochemical or petroleum products, oil, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid which may contain levels of polychlorinated biphenyls; (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "restricted hazardous materials," "extremely

hazardous substances," "toxic substances," "contaminants" or "pollutants" or words of similar meaning and regulatory effect; or (c) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

(22) "Hillburn Gas Turbine" means the gas turbine generating station which includes the real and personal property, tangible or intangible, constituting and used principally for generation purposes at or otherwise for the operation of the Hillburn Gas Turbine Generating Station located in the Village of Hillburn, Town of Ramapo, Rockland County, New York, including, but not limited to, the following assets:

(a) all of the Seller's right, title and interest in, to and under the Real Property (including all structures, buildings, facilities and other improvements thereon and all appurtenances thereto) as further described on Schedule 5.8 as associated with the Hillburn Gas Turbine Generating Station;

(b) all of the Seller's right, title and interest in, to and under the Leases described on Schedule 5.9(a) as associated with the Hillburn Gas Turbine Generating Station;

(c) all inventories of fuels, supplies, spare parts and materials located at the Hillburn Gas Turbine Generating Station on the Closing Date;

(d) the machinery, equipment, furniture and other personal property owned by Seller and located at the Hillburn Gas Turbine Generating Station on the Closing Date, including, without limitation, the items of personal property included on Schedule 1.1(a)(22);

(e) the turbines currently leased by Seller and located at the Hillburn Gas Turbine Generating Station (the contract relating to this lease is listed on Schedule 5.17(a));

(f) the 69 kv transmission connections, described as being sold to the Buyer in the separation document summary in Exhibit C, between the Hillburn Gas Turbine Generating Station and Seller's transmission system;

(g) all contracts, agreements and personal property leases principally relating to the Hillburn Gas Turbine Generating Station as further listed on Schedules 5.17(a) and 7.10(a), respectively, associated with Hillburn Gas Turbine Generating Station;

(h) the Environmental Permits and Permits listed on Schedules 5.12(a)(ii) and 5.19(a), respectively, as being associated with the Hillburn Gas Turbine Generating Station;

(i) the Emission Allowances relating to the Hillburn Gas Turbine Generating Station;

(j) all books, operating records, reports engineering or design plans, specifications, drawings, procedures, softwares or tools used to process and report environmental data safety and maintenance manuals and similar items of Seller relating specifically to the aforementioned assets;

(k) copies of filings made with regulatory agencies, as updated, relating to Seller's Year 2000 programs as such filings apply to the Hillburn Gas Turbine Generating Station;

(l) all unexpired, transferable warranties and guarantees from third parties with respect to the Hillburn Gas Turbine Generating Station, as of the Closing Date;

(m) the Intellectual Property relating to the Hillburn Gas Turbine Generating Station (including Seller's goodwill therein and the rights of Seller in and to the name of Hillburn Gas Turbine) and all rights, privileges, claims, causes of action, indemnification rights and

options pertaining solely to the Hillburn Gas Turbine or the Assumed Liabilities, relating to the Hillburn Gas Turbine, including, without limitation, those items listed on Schedule 1.1(a)(22)(m);

(n) all assets acquired by Seller pursuant to Section 7.4; and

(o) \$200,000 in cash.

(23) "Holding Company Act" means the Public Utility Holding Company Act of 1935, as amended.

(24) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(25) "Hydroelectric Assets" means the Mongaup Hydroelectric Station (Units 1, 2, 3 and 4) ("Mongaup"), the Swinging Bridge Hydroelectric Station (Units 1 and 2) ("Swinging Bridge"), the Rio Hydroelectric Station (Units 1 and 2) ("Rio") and an interest (the assignment of which interest is subject to the approval of New York City pursuant to Article XIII of an agreement between The City of New York and The Rockland Light and Power Company, a predecessor company to the Seller, dated February 2, 1951) in the Grahamsville Hydroelectric Station ("Grahamsville", and with Mongaup, Swinging Bridge and Rio, the "Hydroelectric Generating Stations") including the real and personal property, tangible or intangible, owned by the Seller and

located at and used principally for generation purposes in connection with such stations, including, but not limited to, the following assets:

(a) all of the Seller's right, title and interest in, to and under the Real Property (including all structures, buildings, facilities and other improvements thereon and all appurtenances thereto) described on Schedule 5.8;

(b) the machinery, equipment, furniture and other personal property owned by the Seller and located in or on the Hydroelectric Generating Stations on the Closing Date, including, without limitation, the items of personal property listed or referred to in Schedule 1.1(a)(25);

(c) all inventories of fuels, supplies, spare parts and materials relating to the Hydroelectric Generating Stations and located at, or in transit to, the Hydroelectric Generating Stations on the Closing Date;

(d) the 69 kv transmission connections, described as being sold to the Buyer in the separation document summary in Exhibit C between the Hydroelectric Generating Stations and the Seller's transmission system.

(e) all contracts, agreements and personal property leases principally relating to the Hydroelectric Generating Stations, as further listed on Schedules 5.17(a) and 7.10(a), respectively, as being associated with the Hydroelectric Generating Stations;

(f) all Environmental Permits and Permits listed on Schedules 5.12(a)(ii) and 5.19(a), respectively, as being associated with the Hydroelectric Generating Stations;

(g) all books, operating records, reports, engineering or design plans, specifications, drawings, procedures, software or tools used to process and report environmental data, safety and maintenance manuals and similar items of the Seller relating specifically to the aforementioned assets.

(h) all of the Seller's right, title and interest in, to and under the Leases described on Schedule 5.9(a) as associated with the Hydroelectric Assets;

(i) copies of all filings made with regulatory agencies, as updated, relating to Seller's Year 2000 programs as such filings apply to the Hydroelectric Generating Station;

(j) all unexpired, transferable warranties and guarantees from third parties with respect to the Hydroelectric Generating Station, as of the Closing Date;

(k) the Intellectual Property relating to the Hydroelectric Generating Station (including Seller's goodwill therein and the rights of Seller in and to the name of the Hydroelectric Generating Stations) and all rights, privileges, claims, causes of action, indemnification rights and options pertaining solely to the Hydroelectric Assets or the Assumed Liabilities relating to the Hydroelectric Assets, including, without limitation, those items as listed on Schedule 1.1(a)(25)(k);

(l) all assets acquired by Seller pursuant to Section 7.4; and

(m) \$200,000 in cash.

(26) "Income Tax" means any tax, charge, fee, levy, penalty, or other assessment imposed by any U.S. federal, state, local or foreign taxing authority (a) based upon, measured by or calculated with respect to net income, profits or receipts (including, without limitation, capital gains taxes and alternative minimum taxes but excluding sales, transfer and similar taxes) or (b) based upon, measured by or calculated with respect to multiple bases (including, without limitation, corporate franchise taxes) if one or more of the bases on



which such tax may be based, measured by or calculated with respect to, is described in clause (a), in each case with any interest, penalties, or additions attributable thereto.

(27) "Income Tax Return" means any return, report, information return or other document (including any related or supporting information) supplied or required to be supplied to any authority with respect to Income Taxes.

(28) "Independent Accounting Firm" means Arthur Andersen LLP or such other independent accounting firm of national reputation mutually appointed by Seller and the Buyer.

(29) "Instrument of Assumption" means the Instrument of Assumption in the form of Exhibit B hereto.

(30) "Intellectual Property" means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, copyrights and copyright rights, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights other than the names, trademarks, service marks or logos listed in Section 2.2(b) hereof.

(31) "Internal Revenue Service" means the United States Internal Revenue Service or any successor thereto.

(32) "ISO" means the New York Independent System Operator, or its successor.

(33) "Load Pocket Agreement" means the Load Pocket Call Option Agreement, dated as of the date of this Agreement, between the Buyer and Seller.

(34) "Material Adverse Effect" means any change in or effect on the Purchased Assets after the date of this Agreement that is, individually or in the aggregate, materially adverse to the condition (financial or physical) of (as compared to the condition on the date of this Agreement), or the ability to own or operate (as compared to the ownership and operation thereof prior to the date of this Agreement), any material part of the Purchased Assets, other than (i) any change or effect resulting from changes in the international, national, regional or local wholesale or retail markets for electric power, (ii) any change or effect resulting from changes in the international, national, regional or local markets for any fuel used at the Purchased Assets, (iii) any change or effect resulting from changes in the North American, national, regional or local electric transmission systems, (iv) any change or effect resulting from any regulation, rule or order adopted or proposed by or with respect to the ISO and its responsibility

for, authority over and operation of the wholesale and retail electric energy, capacity and ancillary services electric power markets and (v) any materially adverse change in or effect on the Purchased Assets which is cured (including by the payment of money) by Seller before the Termination Date.

(35) "NJBPU" means the New Jersey Board of Public Utilities or any successor thereto.

(36) "NYPSC" means the New York Public Service Commission or any successor thereto.

(37) "Operating Easement" means the operating easement providing the right to continue operating and maintaining certain distribution facilities at the substations, which will be prepared as described in the Continuing Site/Interconnection Agreement.

(38) "Other Sales Agreements" means the Bowline Point Generating Station Sales Agreement between the Seller, Consolidated Edison Company of New York, Inc. and Southern Energy Bowline, L.L.C.; the Bowline Adjacent Property Sales Agreement between the Seller and Southern Energy Bowline, L.L.C.; and the Lovett Generating Station Sales Agreement between the Seller and Southern Energy Lovett, L.L.C., each dated as of the date of this Agreement.

(39) "PAPUC" means the Pennsylvania Public Utility Commission or any successor thereto.

(40) "Permitted Encumbrances" means (i) those exceptions to title to the Purchased Assets contained in the documents listed on Schedules 5.8, 5.9(a), 5.9(b) and 5.15; (ii) all exceptions, restrictions, easements, covenants, charges, rights of way and monetary and non-monetary encumbrances of record or that are set forth in an applicable FERC project license, except for such encumbrances which secure indebtedness; (iii) the Operating Easements; (iv) any state of facts that a current survey of the Purchased Assets would disclose; (vi) mortgages, liens, pledges, charges, encumbrances and restrictions which are not in excess of \$50,000 incurred in connection with the Seller's purchase of properties and assets to be conveyed to Buyer as part of the Purchased Assets after the date of this Agreement securing all or a portion of the purchase price therefor incurred in the ordinary course of business; (vii) statutory liens for current Taxes, assessments or other governmental charges not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with generally accepted accounting principles, provided that the aggregate amount being so contested does not exceed \$50,000; (viii) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary

course of business relating to Seller's obligations which are not yet due and payable or the validity of which are being contested in good faith by appropriate proceedings, provided that the aggregate amount of such liens does not exceed \$500,000; (ix) zoning, entitlement, conservation restrictions and other land use and environmental regulations by governmental authorities, provided that the foregoing do not materially interfere with the present use of the Purchased Assets; and (x) such other liens, imperfections in or failure of title, charges, easements, restrictions and encumbrances which do not materially detract from the value of or materially interfere with the present use of the Purchased Assets and, neither secure indebtedness, nor individually or in the aggregate have or would have a Material Adverse Effect or which will be discharged or released prior to or simultaneously with the Closing.

(41) "Person" means an individual, a partnership, a joint venture, a corporation, a limited liability company, a limited liability partnership, a trust, an unincorporated organization or a governmental entity or any department or agency thereof.

(42) "Real Property" means each parcel of real property owned in fee or by easement by Seller (or in which Seller holds an interest), including, buildings, structures and improvements located thereon, fixtures contained

therein and appurtenances thereto and easements and other rights relating thereto and as more fully described on Schedule 5.8.

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

(44) "Scheduled Capital Expenditures" means those capital expenditures listed on Schedule 1.1(a)(44).

(45) "Scheduled Maintenance Expenditures" means those maintenance expenditures listed on Schedule 1.1(a)(45).

(46) "SEC" means the Securities and Exchange Commission, or any successor thereto.

(47) "Securities Act" means the Securities Act of 1933, as amended.

(48) "Seller Agreements" means those agreements listed on Schedule 5.17(a) and the Collective Bargaining Agreements.

(49) "Separation Document" means the document, to be negotiated in good faith by the Buyer and Seller within three (3) months from the date of this Agreement, which will delineate the Purchased Assets from Seller's other assets and which will be consistent with the separation document summary attached hereto as Exhibit C.

(50) "Shoemaker Gas Turbine" means the gas turbine generating station which includes the personal property, tangible or intangible, constituting or used principally for generation purposes at, or otherwise for the operation of the Shoemaker Gas Turbine Generating Station, located in the Towns of Wawayanda and Wallkill, City of Middletown, Orange County, New York, including, but not limited to, the following assets:

(a) all of the Seller's right, title and interest in, to and under the Leases described on Schedule 5.9(a) as associated with the Shoemaker Gas Turbine Generating Station;

(b) all inventories of fuels, supplies spare parts and materials located at the Shoemaker Gas Turbine Generating Station on the Closing Date;

(c) the machinery, equipment, vehicles, furniture and other personal property owned by Seller and located at the Shoemaker Gas Turbine Generating Station on the Closing Date, including, without limitation, the items of personal property included on Schedule 1.1(a)(50);

(d) the turbines currently leased by Seller and located at the Shoemaker Gas Turbine Generating Station (the contract relating to this lease is listed on Schedule 5.17(a));

(e) the 69 kv transmission connections, described as being sold to the Buyer in the separation document summary in Exhibit C, between the Shoemaker Gas Turbine Generating Station and Seller's transmission system;

(f) all contracts, agreements and personal property leases listed on Schedules 5.17(a) and 7.10(a), respectively, as being associated with Shoemaker Gas Turbine Generating Station;

(g) the Environmental Permits and Permits listed on Schedules 5.12(a)(ii) and 5.19(a), respectively, as being associated with the Shoemaker Gas Turbine Generating Station;

(h) the Emission Allowances relating to the Shoemaker Gas Turbine Generating Station;

(i) all books, operating records, reports, engineering or design plans, specifications, drawings, procedures, software or tools used to process and report environmental data, safety and maintenance manuals and similar items of Seller relating specifically to the aforementioned assets.

(j) copies of all filings made with regulatory agencies as, updated, relating to Seller's Year 2000 programs as such filings apply to the Shoemaker Gas Turbine Generating Station;



(k) all unexpired, transferable warranties and guarantees from third parties with respect to the Shoemaker Gas Turbine Generating Station, as of the Closing Date;

(l) the Intellectual Property relating to the Shoemaker Gas Turbine Generating Station (including Seller's goodwill therein and the rights of Seller in and to the name of Shoemaker Gas Turbine) and all rights, privileges, claims, causes of action, indemnification rights and options pertaining solely to the Shoemaker Gas Turbine or the Assumed Liabilities relating to the Shoemaker Gas Turbine, including, without limitation, those items listed on Schedule 1.1(a)(50)(l);

(m) all assets acquired by Seller pursuant to Section 7.4; and

(n) \$200,000 in cash.

(51) "Subsidiary" when used in reference to any other person means any corporation of which outstanding securities having ordinary voting power to elect a majority of the Board of Directors of such corporation are owned directly or indirectly by such other person.

(52) "Tax" means any tax, charge, fee, levy, penalty or other assessment imposed by any U.S. federal, state, local or foreign taxing authority, including, but not limited to, any income, gross receipts, license, stamp, occupa-

tion, environmental, excise, property, sales, transfer, payroll, unemployment, withholding, social security or any other tax of any kind whatsoever, including any interest, penalties or additions attributable thereto.

(53) "Tax Return" means any return, report, information return declaration, claim for refund or other document (including any schedule or other related or supporting information) supplied or required to be supplied to any authority with respect to Taxes and including any supplement or amendment thereof.

(54) "Transition Agreement" means the Transition Power Sales Agreement between the Buyer, Southern Energy Bowline, L.L.C., Southern Energy Lovett, L.L.C. and Seller, dated as of the date of this Agreement.

(55) "WARN Act" means the Federal Worker Adjustment Retraining and Notification Act of 1988.

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

<u>Term</u>	<u>Section</u>
Adjustment Statement	3.2
ALTA	7.12
Assumed Liabilities	2.3
Benefit Plans	5.14
Buyer	Preamble
Buyer Indemnitee	9.1
Buyer Required Regulatory Approvals	6.3
Buyer's Easements	4.3

<u>Term</u>	<u>Section</u>
CEI	11.6
Closing	4.1
Closing Date	4.1
Collective Bargaining Agreements	7.10
Condition Fulfillment Date	8.4
Confidential Information	11.2
Defect of Title	7.12
Deferred Closing Date	8.4
Designated Representative	7.2
Direct Claim	9.2
Disclosing Party	11.2
DLJ	7.7
Environmental Insurance	7.15
Environmental Permits	5.12
EPA	7.16
ERISA Affiliate	2.4
ERISA Affiliate Plans	2.4
Estimated Purchase Price	4.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Final Order	8.1
Hourly Employees	7.10
Indemnifiable Losses	9.1
Indemnification Floor	9.1
Indemnifying Party	9.1
Indemnatee	9.1
Inventory Adjustment Amount	3.2
ISO Approval	8.4
Leases	5.9
Leased Assets	7.4
Management Employees	7.10
Necessary Capital Expenditures	7.1
Necessary Maintenance Expenditures	7.1
NYSDEC	7.16
PAHs	7.16
Pension Benefit Plans	5.14
Permits	5.19
Property Interests	5.8

<u>Term</u>	<u>Section</u>
Purchase Price	3.1
Purchased Assets	Preamble
Recipient	11.2
Seller	Preamble
Seller Balance Sheet	5.5
Seller Indemnitee	9.1
Seller Required Regulatory Approvals	5.3
Seller's Easements	4.3
Termination Date	10.1
Third Party Claim	9.2
Title Company	7.13

## ARTICLE II

### PURCHASE AND SALE

2.1. The Sale. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, Seller will sell, assign, convey, transfer and deliver to the Buyer, and the Buyer will purchase and acquire from Seller, free and clear of all Encumbrances (except for Permitted Encumbrances) all of Seller's right, title and interest in, to and under the real and personal property, tangible or intangible, owned by Seller and constituting the Purchased Assets.

2.2. Excluded Assets. Notwithstanding any provision herein to the contrary, the Purchased Assets shall not include the following (herein referred to as the "Excluded Assets"):

(a) all cash, bank deposits, cash equivalents and accounts receivable (except for the cash specified in Section 1.1(a) (22) (o), 1.1(a) (25) (m) and 1.1(a) (50) (n) of this Agreement);

(b) the name "Orange and Rockland Utilities, Inc.", "Orange and Rockland", "O&R", "ORU" or any related or similar trade names, trade-marks, service marks or logos;

(c) distribution, substation and communication facilities and related support equipment described in Schedule 2.2(c);

(d) any refund, credit, penalty payment, adjustment or reconciliation (i) related to personal property or other Taxes (excluding Taxes relating to real property) paid prior to the Closing Date in respect of the Purchased Assets, whether such refund, adjustment or reconciliation is received as a payment or as a credit against future Taxes payable, or (ii) arising under any of Seller Agreements and relating to a period before the Closing Date;

(e) except to the extent specifically required by law, all personnel records relating to any employees of Seller; and

(f) the rights and assets to be described in the Separation Document as not part of the Purchased Assets.

2.3. Assumed Liabilities. On the Closing Date, the Buyer shall deliver to Seller the Instrument of Assumption pursuant to which the Buyer shall assume and agree to discharge to the maximum extent permitted by law, all of the following liabilities and obligations of Seller, which relate to the Purchased Assets, other than Excluded Liabilities, in accordance with the respective terms and subject to the respective conditions thereof;

(a) all liabilities and obligations of Seller arising or accruing after the Closing Date under (i) Seller Agreements, the Environmental Permits, the Permits, real property leases, contracts and other agreements disclosed and assigned to the Buyer pursuant to this Agreement in accordance with the terms

thereof, and (ii) the leases, contracts and other agreements entered into by Seller with respect to the Purchased Assets after the date hereof consistent with the terms of this Agreement; except in each case, to the extent such liabilities and obligations, but for a breach or default by Seller, would have been paid, performed or otherwise discharged on or prior to the Closing Date or to the extent the same arise out of any such breach or default or in any event which after the giving of notice would constitute a default by Seller;

(b) all liabilities and obligations associated with the Purchased Assets in respect of Taxes for which the Buyer is liable pursuant to Section 7.8;

(c) any liabilities and obligations for which the Buyer has indemnified Seller pursuant to Section 9.1;

(d) all liabilities to employees for which the Buyer is liable pursuant to Section 7.10, including the Collective Bargaining Agreements;

(e) any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (i) any violation or alleged violation of Environmental Law, prior to the Closing Date, with respect to the ownership or operation of the Purchased Assets; (ii) loss of life, injury to

persons or property or damage to natural resources (whether or not such loss, injury or damage arose or was made manifest before the Closing Date or arises or becomes manifest after the Closing Date), caused (or allegedly caused) by the presence or Release of Hazardous Substances at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets prior to the Closing Date, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; and (iii) the investigation and/or remediation (whether or not such investigation or remediation commenced before the Closing Date or commences after the Closing Date) of Hazardous Substances that are present or have been Released prior to the Closing Date at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; provided, as to all of the above, that nothing set forth in this subsection 2.3(e) shall require the Buyer to assume any liabilities that are expressly excluded in Section 2.4;



(f) any liability, obligation or responsibility under or related to former, current or future Environmental Laws or the common law, whether such liability or obligation or responsibility is known or unknown, contingent or accrued, arising as a result of or in connection with (i) any violation or alleged violation of Environmental Law, on or after the Closing Date, with respect to the ownership or operation of the Purchased Assets; (ii) compliance with applicable Environmental Laws on or after the Closing Date with respect to the ownership or operation of the Purchased Assets; (iii) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by the presence or Release of Hazardous Substances at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets on or after the Closing Date, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells, or in other environmental media at or adjacent to the Purchased Assets; (iv) loss of life, injury to persons or property or damage to natural resources caused (or allegedly caused) by the off-site disposal, storage, transportation, discharge, Release, recycling, or the arrangement for such activities, of Hazardous Substances, on or after the Closing Date, in connection with the ownership or operation of the Purchased Assets; (v) the investigation and/or remediation of Hazardous Substances that are present or

have been released on or after the Closing Date at, on, in, under, adjacent to, discharged from, emitted from or migrating from the Purchased Assets, including, but not limited to, Hazardous Substances contained in building materials at the Purchased Assets or in the soil, surface water, sediments, groundwater, landfill cells or in other environmental media at or adjacent to the Purchased Assets; and (vi) the investigation and/or remediation of Hazardous Substances that are disposed, stored, transported, discharged, Released, recycled, or the arrangement of such activities, on or after the Closing Date, in connection with the ownership or operation of the Purchased Assets, at any off-site location; provided, that nothing set forth in this subsection shall require the Buyer to assume any liabilities that are expressly excluded in Section 2.4;

(g) all liabilities and obligations of Seller with respect to the Purchased Assets under the agreements or consent orders set forth on Schedule 5.12(c);

(h) all liabilities incurred by Seller with respect to maintenance and capital expenditures made with respect to the Purchased Assets by Seller which are requested by Buyer;

(i) all liabilities or obligations relating to leases for the Purchased Assets; and

(j) all other liabilities or obligations other than those liabilities and obligations noted in (a) through (i) above, exclusively relating to the Purchased Assets no matter when the events or occurrences giving rise to such liabilities or obligations took place, the value of which liabilities and obligations together with the liabilities and obligations relating to the "Purchased Asset" and "Purchased Assets" as defined in the Other Sales Agreements, in the aggregate, shall not exceed \$3 million.

All of the foregoing liabilities and obligations to be assumed by the Buyer hereunder (excluding any Excluded Liabilities) are referred to herein as the "Assumed Liabilities." It is understood and agreed that nothing in this Section 2.3 shall constitute a waiver or release of any claims arising out of the contractual relationships between Seller and the Buyer.

2.4. Excluded Liabilities. The Buyer shall not assume or be obligated to pay, perform or otherwise discharge the following liabilities (the "Excluded Liabilities"):

(a) any liabilities or obligations of Seller in respect of any Excluded Assets or other assets of Seller which are not Purchased Assets;

(b) any liabilities or obligations with respect to Taxes attributable to the Purchased Assets for taxable periods ending on or before the

Closing Date, except for Taxes for which the Buyer is liable pursuant to Section 7.8(a);

(c) any liabilities, obligations, or responsibilities relating to the disposal, storage, transportation, discharge, Release, recycling, or the arrangement for such activities, of Hazardous Substances that were generated at the Purchased Assets, at any off-site location, where the disposal, storage, transportation, discharge, Release, recycling or the arrangement for such activities at said off-site location occurred prior to the Closing Date, provided that for purposes of this Section, "off-site location" does not include any location to which Hazardous Substances disposed of, discharged from, emitted from or Released at the Purchased Assets have migrated, including, but not limited to, surface waters that have received waste water discharges from the Purchased Assets;

(d) any liabilities, obligations or responsibilities arising after the Closing Date relating to (i) the transmission lines delineated in the Operating Easements or (ii) any Seller's operations on, or usage of, the Operating Easements, including, without limitation, liabilities, obligations or responsibilities arising as a result of or in connection with (1) any violation or alleged violation of Environmental Law and (2) loss of life, injury to persons or property or damage to natural resources, except to the extent caused by Buyer;

(e) any liabilities, obligations or responsibilities arising prior to or after the Closing Date relating to the easements provided Seller under the Operating Easement, including, without limitation: (i) the transmission lines or other facilities of Seller delineated in the Operating Easements or (ii) Seller's ownership rights, operations on, or usage of, the Operating Easements, including, without limitation, liabilities, obligations or responsibilities arising as a result of or in connection with (1) any violation or alleged violation of Environmental Law or Release of Hazardous Substances and (2) loss of life, injury to persons or property or damage to natural resources, except in the case of (1) or (2) to the extent caused by the Buyer;

(f) any liabilities or obligations required to be accrued by Seller in accordance with generally accepted accounting principles and/or the FERC Uniform System of Accounts on or before the Closing Date with respect to liabilities related to the Purchased Assets other than any liability assumed by Buyer under Section 2.3 of this Agreement;

(g) any liabilities or obligations with respect to liabilities relating to the Purchased Assets relating to any personal injury including bodily injury (including, but not limited to workers' compensation claims), discrimination, wrongful discharge, or unfair labor practice or similar claim or cause of action with respect to any act or occurrence arising prior to or on the Closing

Date other than liabilities or obligations for injury to persons or loss of life assumed by the Buyer in Sections 2.3(e) and 2.3(f);

(h) any fines or penalties imposed by a governmental agency or authority resulting from (A) an investigation or proceeding with respect to any act or occurrence arising prior to or on the Closing Date or (B) illegal acts, willful misconduct or negligence of Seller prior to or on the Closing Date;

(i) any payment obligations of Seller for goods delivered or services rendered prior to the Closing;

(j) any liabilities or obligations imposed upon, assumed or retained by Seller pursuant to the Continuing Site/Interconnection Agreement or any other Ancillary Agreement;

(k) any liabilities, obligations or responsibilities relating to any deferred compensation, pension, profit-sharing and retirement plans, including multiemployer plans, and all welfare, severance, stock-based, bonus and other employee benefit or fringe benefit plans, programs and arrangements, whether written or oral, maintained or with respect to which contributions have been in the last five (5) years or are made by Seller and any trade or business (whether or not incorporated) which are or have ever been under common control, or which are or have ever been treated as a single employer, with Seller under Section 414(b), (c), (m) or (o) of the Code ("ERISA Affiliate") or to

which Seller and any ERISA Affiliate contributed thereunder (the "ERISA Affiliate Plans"), including any multiemployer plan, maintained by, contributed to, or obligated to contribute to, at any time, by Seller or any ERISA Affiliate, including without limitation, any liability (A) to the Pension Benefit Guaranty Corporation under Title IV of ERISA; (B) with respect to non-compliance with the continuation requirements of COBRA; (C) with respect to any non-compliance with ERISA, the Code, or any other applicable laws; (D) with respect to any suit, proceeding or claim which is brought against Seller, any ERISA Affiliate Plan, or any fiduciary or former fiduciary of any such ERISA Affiliate Plan; (E) relating to a multiemployer plan; or (F) for any claim or suit for benefits accrued under an ERISA Affiliate Plan prior to Closing; and

(I) any liabilities, obligations or responsibilities relating to the employment or termination of employment, by Seller of any individual (including, but not limited to, any employee of Seller) attributable to any actions or inactions by Seller prior to the Closing Date.

### ARTICLE III

#### PURCHASE PRICE

3.1. Purchase Price. The purchase price for the Purchased Assets shall be an amount equal to the sum of (i) \$20,440,000, (ii) the Estimated Inventory

Adjustment Amount, (iii) the Inventory Adjustment Amount and (iv) any amounts paid by Seller to acquire title to Leased Assets pursuant to Section 7.4 (the "Purchase Price").

3.2. Purchase Price Adjustment. (a) Within sixty (60) days after the Closing, Seller shall prepare and deliver to the Buyer a statement (the "Adjustment Statement") which sets forth: an amount equal to (A) the weighted average value for the twenty (20) consecutive days prior to the Closing Date of all JP4 fuel inventory to be used at or in connection with the Purchased Assets as determined by using the price of fuel in the Journal of Commerce as of the Closing Date, or if no price is available for such date, as of the most recent date such price is available prior to the Closing Date, minus (B) the Estimated Inventory Adjustment Amount (such difference is referred to as the "Inventory Adjustment Amount").

The Adjustment Statement shall be prepared using the same generally accepted accounting principles, policies and methods as Seller has historically used in connection with the calculation of the items reflected on the Adjustment Statement. The Buyer and Seller agree to cooperate with Seller in connection with the preparation of the Adjustment Statement and related information, and each shall provide to the other such books, records and information as may be reasonably requested from time to time.

(b) The Buyer may dispute the Inventory Adjustment Amount; provided, however, that the Buyer shall notify Seller in writing of the disputed amount, and the basis of such dispute, within thirty (30) days of the Buyer's receipt of the



Adjustment Statement. In the event of a dispute with respect to the Inventory Adjustment Amount, the Buyer and Seller shall attempt to reconcile their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the parties. If the Buyer and Seller are unable to reach a resolution of such differences within thirty (30) days of receipt of the Buyer's written notice of dispute to Seller, the Buyer and Seller shall submit the amounts remaining in dispute for determination and resolution to the Independent Accounting Firm, which shall be instructed to determine and report to the parties, within thirty (30) days after such submission, upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the parties hereto with respect to the amounts disputed. The fees and disbursements of the Independent Accounting Firm shall be allocated between the Buyer and Seller so that the Buyer's share of such fees and disbursements shall be in the same proportion that the aggregate amount of such remaining disputed amounts so submitted by the Buyer to the Independent Accounting Firm that is unsuccessfully disputed by the Buyer (as finally determined by the Independent Accounting Firm) bears to the total amount of such remaining disputed amounts so submitted by the Buyer to the Independent Accounting Firm.

(c) If the Inventory Adjustment Amount is positive, within ten (10) Business Days after the Buyer's receipt of the Adjustment Statement, the Buyer shall pay Seller all undisputed portions of the Inventory Adjustment Amount. If the Inven-

tory Adjustment Amount is negative, within ten (10) Business Days after the Buyer's receipt of the Adjustment Statement, Seller shall pay the Buyer all undisputed portions of the Inventory Adjustment Amount. If there is a dispute with respect to any amount on the Adjustment Statement, within five (5) Business Days after the final determination of such disputed amounts on the Adjustment Statement, the Buyer shall pay Seller an amount equal to the disputed portion of the Inventory Adjustment Amount as finally determined to be payable with respect to the Adjustment Statement; provided, however, that if such amount shall be less than zero, Seller will pay to the Buyer the amount by which such amount is less than zero. All payments made pursuant to this Section 3.2(c) shall be paid together with interest thereon for the period commencing on the Closing Date through the date of payment, calculated at the prime rate of The Chase Manhattan Bank in effect on the Closing Date, in cash by federal or other wire transfer of immediately available funds.

3.3. Allocation of Purchase Price. The Buyer shall prepare an allocation of the Purchase Price consistent with Section 1060 of the Code and the Treasury Regulations thereunder within one hundred eighty (180) days of the date of this Agreement but in no event less than forty-five (45) days prior to the Closing and submit it to Seller. Seller may dispute the allocation of the Purchase Price; provided, however, that Seller shall notify the Buyer in writing of the disputed amount, and the basis of such dispute, and follow the procedures relating to a dispute described in

Section 3.2(b) above. The Buyer and Seller agree to file Internal Revenue Service Form 8594, and all federal, state, local and foreign Tax Returns and Income Tax Returns, in accordance with such agreed allocation. Each of the Buyer and Seller shall report the transactions contemplated by the Agreement for federal Income Tax and all other Tax purposes in a manner consistent with the allocation determined pursuant to this Section 3.3. The Buyer and Seller agree to provide the other promptly with any other information required to complete Form 8594. Each of the Buyer and Seller shall notify and provide the other with reasonable assistance in the event of an examination, audit or other proceeding regarding the agreed upon allocation of the Purchase Price.

3.4. Proration. (a) The Buyer and Seller agree that all of the items normally prorated, including those listed below, relating to the business and operation of the Purchased Assets will be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period through the Closing Date, and the Buyer liable to the extent such items relate to periods subsequent to the Closing Date:

- (i) personal property, real estate, occupancy and any other Taxes (excluding Income Taxes), assessments and other charges, if any, on or with respect to the ownership, use or business and operation of the Purchased Assets;

(ii) rent, Taxes (excluding Income Taxes) and other items payable by or to Seller under any of Seller Agreements to be assigned to and assumed by the Buyer hereunder;

(iii) any permit, license or registration fees with respect to any Environmental Permit or other Permit; and

(iv) sewer rents and charges for water, telephone, electricity and other utilities.

(b) In connection with such proration, in the event that actual figures are not available at the Closing Date, the proration shall be based upon the actual amount of such Taxes or fees for the preceding year (or appropriate period) for which such actual Taxes or fees are available and such Taxes or fees shall be re prorated upon request of either Seller or the Buyer made within sixty (60) days of the date that the actual amounts become available. Seller and the Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 3.4.

#### ARTICLE IV

##### THE CLOSING

4.1. Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of

Skadden, Arps, Slate, Meagher & Flom LLP, 919 Third Avenue, New York, New York 10022, at 10:00 A.M. (local time) on April 30, 1999; or at such other place or later date and time as the parties may agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date."

4.2. Payment of Purchase Price. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, in consideration of the aforesaid sale, assignment, conveyance, transfer and delivery of the Purchased Assets, the Buyer will pay or cause to be paid to Seller at the Closing an amount (the "Estimated Purchase Price") in United States dollars, equal to the sum of (i) \$20,440,000, (ii) the Estimated Inventory Adjustment Amount for the Closing, and (iii) any amounts paid to acquire title to Leased Assets pursuant to Section 7.4 hereof, by wire transfer of immediately available funds or by such other means as are agreed to by Seller and the Buyer.

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

- (a) The Bill of Sale, duly executed by Seller for the personal property included in the Purchased Assets;
- (b) The executed consents to transfer the Seller Agreements, the Environmental Permits and the Permits, to the extent specifically required hereunder;

(c) Each Ancillary Agreement required to be delivered under this Agreement, duly executed by the Seller;

(d) The certificates and the opinions of counsel contemplated by Sections 8.2(c), (e), (f) and (h);

(e) One or more bargain and sale deeds of conveyance in statutory form, with covenant against grantor's acts, transferring Seller's interest in the Property Interests to the Buyer, duly executed and acknowledged by Seller and in recordable form substantially in the form of Exhibit D hereto;

(f) One or more easements to the extent necessary to evidence the right of Buyer to use the real property of Seller (the "Buyer's Easements") that comprise part of the Excluded Assets, duly executed and acknowledged by Seller and in recordable form, each substantially in the form of Exhibit E hereto;

(g) The Assignment of Leases in the form attached hereto as Exhibit F assigning to Buyer all of Seller's right, title and interest as lessor (or lessee as the case may be) under the leases;

(h) Copies of the resolutions adopted by the board of directors of Seller, certified by the Secretary of Seller, as having been duly and validly adopted and as being in full force and effect, authorizing the execution and delivery by the Seller of this Agreement, the Bill of Sale and other closing

documents described in this Agreement to which Seller is a party, and the performance by Seller of its obligations hereunder and thereunder;

(i) All such other instruments of assignment or conveyance as shall, in the reasonable opinion of the Buyer and its counsel, be necessary to transfer to the Buyer the Purchased Assets in accordance with this Agreement and where necessary or desirable, in recordable form;

(j) A certification of non-foreign status in a form which complies with Section 1445 of the Code and the regulations thereunder; provided, however, that if Seller shall fail to deliver such certification, the Buyer shall withhold at the Closing and pay over to the appropriate taxing authority any amount equal to ten (10) percent of the total Amount Realized (as defined under Section 1445 of the Code);

(k) \$600,000 by wire transfer of immediately available funds or by such other means as are agreed to by the Seller and the Buyer; and

(l) Such other agreements, documents, instruments and writings as are required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

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

(a) The Estimated Purchase Price by wire transfer of immediately available funds or by such other means as are agreed to by Seller and the Buyer;

(b) Each Ancillary Agreement required to be delivered under this Agreement, duly executed by the Buyer;

(c) The certificate and opinion of counsel contemplated by Sections 8.3(c) and (d);

(d) The Instrument of Assumption, duly executed by the Buyer;

(e) All such other instruments of assumption as shall, in the reasonable opinion of Seller and its counsel, be necessary for the Buyer to assume the Assumed Liabilities in accordance with this Agreement;

(f) One or more easements to the extent necessary for Seller to continue and maintain their transmission and distribution business, in favor of the Seller (the "Seller's Easements") with respect to Real Property conveyed to Buyer, duly executed and acknowledged by Buyer, each substantially in the form of Exhibit E hereto, and Buyer shall bear any transfer or similar tax incurred in connection herewith as set forth in Section 7.8;

(g) Copies of the resolutions adopted by the Members or Managers or similar governing body of the Buyer, certified by a Member of the



Buyer, as having been duly and validly adopted and as being in full force and effect, authorizing the execution and delivery by the Buyer of this Agreement and other closing documents described in this Agreement to which the Buyer is a party, and the performance by the Buyer of its respective obligations hereunder and thereunder; and

(h) Such other agreements, documents, instruments and writings as are required to be delivered by the Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to the Buyer as follows:

5.1. Organization; Qualification. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each foreign jurisdiction in which it operates the Purchased Assets and such foreign jurisdiction requires it to be so qualified. Seller has heretofore delivered to the Buyer complete and correct copies of its Certificate of Incorporation and By-Laws as currently in effect.

5.2. Authority Relative to this Agreement. Seller has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of Seller and no other corporate proceedings on the part of Seller or its shareholders are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller, and assuming that this Agreement constitutes a valid and binding agreement of the Buyer, subject to the receipt of Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, constitutes a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

5.3. Consents and Approvals; No Violation. (a) Except as set forth in Schedule 5.3(a), and other than obtaining Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, neither the execution and delivery of this Agreement by Seller nor performance by Seller of its obligations under this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the

Certificate of Incorporation or By-Laws of Seller, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, except (x) where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, would not have a Material Adverse Effect or would not prohibit or restrain the execution, delivery or performance of this Agreement or the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby in any material respect or (y) for those requirements which become applicable to Seller as a result of the specific regulatory status of the Buyer (or any of its affiliates) or as a result of any other facts that specifically relate to the business or activities in which the Buyer (or any of its affiliates) is or proposes to be engaged; (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Seller, or any of its subsidiaries, is a party or by which Seller or any of its subsidiaries, or any of the Purchased Assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, individually or in the aggregate, would not have a Material Adverse Effect; or (iv) violate any order, writ, injunction, judgment, law, decree, statute, rule or regulation applicable to Seller, or any of its assets, which violation would, individually or in the aggregate, have a Material Adverse Effect.

(b) Except as set forth in Schedule 5.3(b) and except for (i) any required approvals under the Federal Power Act, (ii) (A) notice by Seller to, and an order by, the NYPSC approving the transactions contemplated by this Agreement or the Ancillary Agreements, (B) notice by Seller to, and an order by, the NJBPU approving the transactions contemplated by this Agreement or the Ancillary Agreements and (C) notice by Seller to, and an order by, the PAPUC approving the transactions contemplated by this Agreement or the Ancillary Agreements, (iii) the approval, if required, of the SEC pursuant to the Holding Company Act, and (iv) the filings by Seller and the Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act (the filings and approvals referred to in clauses (i) through (iv) are collectively referred to as "Seller Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by Seller of the transactions contemplated hereby or by the Ancillary Agreements, other than such declarations, filings, registrations, notices, authorizations consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect and other than Permits and Environmental Permits.

5.4. Reports. Since January 1, 1996, Seller pursuant to the Securities Act, the Exchange Act, the applicable State public utility laws, the Federal Power Act and the Holding Company Act, has filed or caused to be filed with the SEC, the

applicable state or local utility commissions or regulatory bodies, or the FERC, as the case may be, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by them with respect to the business and operations of Seller as it relates to the Purchased Assets under each of the Securities Act, the Exchange Act, the applicable State public utility laws, the Federal Power Act and the Holding Company Act and the respective rules and regulations thereunder, all of which complied in all material respects with all applicable requirements of the appropriate act and the rules and regulations thereunder in effect on the date each such report was filed.

5.5. Financial Statements. Seller has previously furnished to the Buyer (i) audited consolidated balance sheets of Seller as of December 31, 1997, and (ii) the related audited consolidated statements of income and retained earnings and changes in financial position of Seller for the fiscal year then ended, together with the respective reports thereon of Arthur Andersen LLP. The consolidated balance sheet of Seller as of December 31, 1997 is referred to as the "Seller Balance Sheet." Each of the balance sheets included in the financial statements referred to in this Section 5.5 (including the related notes thereto) presents fairly the financial position of Seller as of their respective dates, and the other related statements included therein (including the related notes thereto) present fairly the results of operations and changes in financial position for the periods then ended, all in conformity with generally accepted account-

ing principles as applicable to a regulated utility applied on a consistent basis, except as otherwise noted therein.

5.6. Undisclosed Liabilities. Except as set forth in Schedule 5.6, to the Seller's knowledge, the Seller has no liability or obligation relating to the business or operations of the Purchased Assets, secured or unsecured (whether absolute, accrued, contingent or otherwise, and whether due or to become due), of a nature required by generally accepted accounting principles to be reflected in a corporate balance sheet or disclosed in the notes thereto, which are not accrued or reserved against in Seller Balance Sheet or disclosed in the notes thereto in accordance with generally accepted accounting principles, except those which either were incurred in the ordinary course of business, after the date of Seller Balance Sheet, or those which in the aggregate are not material to the Purchased Assets.

5.7. Absence of Certain Changes or Events. Except (i) as set forth in Schedule 5.7, or in the reports, schedules, registration statements and definitive proxy statements filed by Seller with the SEC and (ii) as otherwise contemplated by this Agreement, to the Seller's knowledge, since the date of Seller Balance Sheet there has not been: (a) any Material Adverse Effect; (b) any damage, destruction or casualty loss, whether covered by insurance or not, which had a Material Adverse Effect; (c) any entry into any agreement, commitment or transaction (including, without limitation, any borrowing or capital financing) by Seller, which is material to the business or operations

of the Purchased Assets, except agreements, commitments or transactions in the ordinary course of business or as contemplated herein; or (d) any change by Seller, with respect to the Purchased Assets, in accounting methods, principles or practices except as required or permitted by generally accepted accounting principles.

5.8. Title. Set forth in Schedule 5.8 is a true and complete list of all real property which is part of or material to the business or operations of the Purchased Assets (the "Real Property") and other real property interests which are a part of or material to the business or operations of the Purchased Assets (together with the Real Property, the "Property Interests"). The Seller has leasehold or other contractual interests in all Purchased Assets identified in subsections (b), (g), (l) and (n) of Section 1.1(a)(22) and, as of the date of this Agreement, the Purchased Asset identified in subsection (e) of Section 1.1(a)(22); subsections (e), (h), (j) and (l) of Section 1.1(a)(25) and subsections (a), (f), (k) and (m) of Section 1.1(a)(50) and, as of the date of this Agreement, the Purchased Asset identified in subsection (d) of Section 1.1(a) (50); and subject only to Permitted Encumbrances and the Leases: (i) good and marketable record title to the real property and the Buyer's Easements and (ii) good and valid title to all Purchased Assets identified in subsections (c), (d), (f), (h), (i), (j), (k) and (m) of Section 1.1(a)(22); subsections (b), (c), (d), (f), (g), (i) and (k) of Section 1.1(a)(25) and subsections (b), (c), (e), (g), (h), (i), (j) and (l) of Section 1.1(a)(50). As of the Closing Date, the Seller will have good and valid title to the Purchased Assets identified in

subsection (e) of Section 1.1(a)(22) and subsection (d) of Section 1.1(a)(50). At Closing, Seller will have the cash available to the amounts referred to in Sections 1.1(a)(22) (o), 1.1(a) (25) (m) and 1.1(a) (50) (n) of this Agreement.

5.9. Leasehold Interests. Schedule 5.9(a) lists, all Real Property leases or subleases (the "Leases") relating to the Purchased Assets under which Seller is a lessee, sublessee, lessor or sublessor and which are to be assigned to, and assumed by, the Buyer on the Closing Date. Except as set forth in Schedule 5.9(b), the Leases are valid, binding and enforceable in accordance with their terms, and are in full force and effect; there are no existing material defaults by Seller thereunder; and no event has occurred which (whether with or without notice, lapse of time or both) would constitute a material default thereunder. Seller has a valid and subsisting leasehold estate in and the right to quiet enjoyment of the Leases under which Seller is a lessee or sublessee for the full term of such Leases which leasehold interests are unencumbered other than by Permitted Encumbrances, and Seller has delivered to Buyer true and complete copies of all Leases.

5.10. Improvements. Except as set forth in Schedule 5.10(a), Seller has not received any written notices from any governmental authority stating or alleging that any improvements with respect to the Purchased Assets have not been constructed in compliance with applicable law. Except as set forth in Schedule 5.10(b), no written notice has been received by Seller from any governmental authority requiring or



advising as to the need for any repair, alteration, restoration or improvement in connection with the Purchased Assets.

5.11. Insurance. Except as set forth in Schedule 5.11(a), all material policies of fire, liability, worker's compensation and other forms of insurance purchased or held by and insuring or relating to the Purchased Assets are in full force and effect, all premiums with respect thereto covering all periods up to and including the date as of which this representation is being made have been paid, and no notice of cancellation or termination has been received with respect to any such policy which was not replaced on substantially similar terms prior to the date of such cancellation. Except as described in Schedule 5.11(b), Seller has not been refused any insurance with respect to the Purchased Assets nor has its coverage been limited by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance during the last five (5) years nor has Seller received written notice from any insurer with respect to any Real Property or Lease of defects or inadequacies with respect thereto or the improvements located thereon that would materially adversely affect the insurability of same or cause the imposition of extraordinary premiums therefor.

5.12. Environmental Matters. (a) Except as disclosed in Schedule 5.12(a)(i), to the Seller's knowledge, Seller holds, and is in compliance with, all permits, licenses, certificates and governmental authorizations ("Environmental Permits") required for the Seller to operate the Purchased Assets under applicable Environmental

Laws, and Seller is otherwise in compliance with applicable Environmental Laws with respect to the Purchased Assets except for such failures to hold or comply with required Environmental Permits, or such failures to be in compliance with applicable Environmental Laws, which, individually or in the aggregate, are not reasonably likely to have a Material Adverse Effect. Schedule 5.12(a)(ii) sets forth all Environmental Permits relating to the ownership or operation of the Purchased Assets.

(b) Except as disclosed in Schedule 5.12(b), Seller has not received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar State law with respect to any on-site location related to the Purchased Assets, and no investigation and/or remediation is being conducted or is pending at the Purchased Assets (other than investigations or remediation conducted by or on behalf of Seller or Buyer in connection with this transaction), except for such liability under such laws or investigations or remediation as would not be reasonably likely to have a Material Adverse Effect.

(c) With respect to the Purchased Assets, no action, claim, investigation or other proceeding relating to any Environmental Law is pending or to Seller's knowledge, threatened, and the Seller has not entered into or agreed to any consent decree or order, and is not subject to any judgment, decree, or administrative or judicial order relating to compliance with any Environmental Law or to investigation or cleanup of Hazardous Substances under any Environmental Law, except such consent decrees or

orders, judgments, decrees or administrative or judicial orders, actions, claims, investigations or proceedings that (i) would not be reasonably likely to have a Material Adverse Effect, (ii) appear on Schedule 5.12(c), or (iii) relate to off-site disposal locations.

(d) All written reports of audits and studies performed by or on behalf of Seller, and in the possession of the Seller, which concern Releases of Hazardous Substances at, on, in, or under the Purchased Assets or compliance of Purchased Assets with Environmental Laws, conducted within the last two (2) years, are listed in Schedule 5.12(d) and have been provided to Buyer.

(e) The representations and warranties made in this Section 5.12 are Seller's exclusive representations and warranties relating to environmental matters.

5.13. Labor Matters. Schedule 7.10(a) lists and Seller has previously delivered to the Buyer true and correct copies of all labor union, Collective Bargaining Agreements and other labor agreements relating to the Purchased Assets to which Seller is a party or subject. With respect to the Purchased Assets, except to the extent set forth in Schedule 5.13 and except for such matters as will not have a Material Adverse Effect, to the Seller's knowledge: (a) the Seller is in compliance with all applicable laws respecting employment and employment practices, occupational health and safety, and wages and hours; (b) Seller has not received written notice of any unfair labor practice complaint against it pending before the National Labor Relations Board; (c) there is no

labor strike, slowdown or stoppage actually pending or threatened against or affecting Seller; (d) Seller has not received notice that any representation petition respecting its employees has been filed with the National Labor Relations Board; (e) no grievance or arbitration proceeding arising out of or under collective bargaining agreements is pending against Seller; and (f) Seller has not experienced any primary work stoppage since at least December 31, 1994.

5.14. ERISA. (a) Schedule 5.14(a) lists all deferred compensation, pension, profit-sharing and retirement plans, including multiemployer plans, and all welfare, severance, stock-based, bonus and other employee benefit or fringe benefit plans, programs and arrangements, whether written or oral, maintained or with respect to which contributions have been in the last five (5) years or are made by the Seller in respect of employees who are employed in connection with the Purchased Assets (such plans, programs and arrangements, collectively, the "Benefit Plans"). To the Seller's knowledge, each Benefit Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and all other applicable laws. Accurate and complete copies of all such Benefit Plans and their summary descriptions, including multiemployer plans, have been made available to the Buyer.

(b) Except as set forth in Schedule 5.14(b)(i), with respect to employees at the Purchased Assets, to the Seller's knowledge, the Seller and the ERISA Affiliates have fulfilled their respective obligations under the minimum funding requirements of

Section 302 of ERISA, and Section 412 of the Code, with respect to each Benefit Plan that is a pension benefit plan as defined in Section 3(2) of ERISA (each, a "Pension Benefit Plan"). To the Seller's knowledge, neither the Seller nor any ERISA Affiliate has incurred any liability to the Pension Benefit Guaranty Corporation in connection with any Pension Benefit Plan which is subject to Title IV of ERISA, including any withdrawal liability, nor is there any reportable event (as defined in Section 4043 of ERISA), except as set forth in Schedule 5.14(b)(ii). Except as set forth in Schedule 5.14(b)(iii), the Internal Revenue Service has issued a letter for each Pension Benefit Plan which is intended to be qualified under Section 401(a) of the Code, determining that such plan is exempt from United States Federal Income Tax under Sections 401(a) and 501(a) of the Code, and to the Sellers's knowledge, there has been no occurrence since the date of any such determination letter which has adversely affected such qualification, and no withdrawal liability has been incurred by or asserted and none is anticipated against Seller with respect to any Pension Benefit Plan which is a "multiemployer plan" (as defined in Section 3(37) of ERISA).

(c) To the Seller's knowledge, neither the Seller nor any ERISA Affiliate has engaged in any transaction within the meaning of Section 4069(b) or Section 4212(c) of ERISA. Except as set forth in Schedule 5.14(c), no Benefit Plan is a multi-employer plan.

(d) To the extent the Seller maintained or maintains a "group health plan" within the meaning of Section 5000(b)(1) of the Code, to the Seller's knowledge, the Seller has materially complied with the notice and continuation requirements of Section 4980B of the Code, COBRA, Part 6 of Subtitle B of Title I of ERISA and the regulations thereunder.

5.15. Real Property Encumbrances. Schedule 5.15 lists all real property encumbrances affecting Seller's Real Property including matters contained in deeds, easements and options. True and correct copies of all current surveys, abstracts, title opinions and policies of title insurance currently in force with respect to such Real Property have been delivered by Seller to the Buyer. None of the Permitted Encumbrances materially adversely affect the existing use of the Real Property.

5.16. Condemnation. Neither the whole nor any part of the Real Property or any other real property or rights leased, used or occupied by Seller in connection with the ownership or operation of the Purchased Assets is subject to any pending suit for condemnation or other taking by any public authority, and, to the knowledge of Seller, no such condemnation or other taking is threatened or contemplated.

5.17. Certain Contracts and Arrangements. (a) Except (i) as listed in Schedule 5.17(a), (ii) for contracts, agreements, personal property leases, commitments, understandings or instruments which will expire prior to the Closing Date, (iii) for

agreements with suppliers entered into in the ordinary course of business (including contracts entered into in connection with the Scheduled Capital Expenditures and the Scheduled Maintenance Expenditures), and (iv) for contracts, agreements, personal property leases, commitments, understandings or instruments with a value less than \$200,000 or with annual or aggregate payments less than \$200,000, Seller is not a party to any written contract, agreement, personal property lease, commitment, understanding or instrument which is material to the business or operations of the Purchased Assets.

(b) Except as disclosed in Schedule 5.17(b), each Seller Agreement listed on Schedule 5.17(a) constitutes a valid and binding obligation of the parties thereto and is in full force and effect and may be transferred to the Buyer pursuant to this Agreement and will continue in full force and effect thereafter, in each case without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder.

(c) Except as set forth in Schedule 5.17(c), there is not, under any of Seller Agreements listed on Schedule 5.17(a), any default or event which, with notice or lapse of time or both, would constitute a default on the part of any party thereto, except such events of default and other events as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, have a Material Adverse Effect.

5.18. Legal Proceedings, etc. Except as set forth in Schedule 5.18 or in any filing made by Seller pursuant to the Securities Act or the Exchange Act, there are no claims, actions, or proceedings pending or investigations pending, or to Seller's knowledge, threatened against Seller relating to the Purchased Assets before any court, arbitrator, governmental or regulatory authority or body acting in an adjudicative capacity, which, if adversely determined, would have a Material Adverse Effect or would prohibit or restrain the execution, delivery or performance of this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby in any material respect. Except as set forth in Schedule 5.18, Seller is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court, governmental or regulatory authority relating to the Purchased Assets which would have a Material Adverse Effect.

5.19. Permits. Seller has all material permits, licenses, franchises and other governmental authorizations, consents and approvals, other than with respect to Environmental Laws (collectively, "Permits") as set forth in Schedule 5.19(a), necessary to own or operate the Purchased Assets as presently owned or operated, except where the failure to have such Permits would not have a Material Adverse Effect. Except as set forth in Schedule 5.19(b), with respect to the Purchased Assets, Seller has not received any written notification that it is in violation of any of such Permits, or any law, statute, order, rule, regulation, ordinance or judgment of any governmental or



regulatory body or authority applicable to it, except for notifications of violations which would not, individually or in the aggregate, have a Material Adverse Effect. Seller is in compliance with all Permits, laws, statutes, orders, rules, regulations, ordinances, or judgments of any governmental or regulatory body or authority applicable to Purchased Assets, except for violations which, in the aggregate, would not have a Material Adverse Effect.

5.20. Regulation as a Utility. The Seller and certain of its subsidiaries are regulated as public utilities in the States of New York, New Jersey and Pennsylvania as set forth on Schedule 5.20(a), and in no other state. Except as set forth on Schedule 5.20(b), Seller is not subject to regulation as a public utility or public service company (or similar designation) by the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

5.21. Taxes. Except as set forth in Schedule 5.21, (a) no notice of deficiency or assessment has been received from any taxing authority with respect to Seller's liabilities for Taxes in respect of the Purchased Assets, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 5.21 is being contested in good faith through appropriate proceedings; (b) there are no outstanding agreements or waivers extending the applicable statutory periods of limitations for Taxes associated with the Purchased Assets for any period; (c) there are no rulings or closing agreements executed with any taxing authority relating to the Purchased Assets

that will be binding upon Buyer after the Closing; (d) none of the Purchased Assets is property that is required to be treated as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f)(8) of the Code, or "tax-exempt use" property within the meaning of Section 168(h) of the Code; and (e) there are no powers of attorney in effect relating to Taxes relating to the Purchased Assets for any Post-Closing period.

5.22. Intellectual Property. The Seller has all right, title and interest in or valid and binding rights under contract to use the Intellectual Property relating to the Purchased Assets. Seller has not received notice that it is infringing any Intellectual Property of any other Person in connection with the operation or business of the Purchased Assets, no claim is pending or has been made to such effect that has not been resolved and Seller is not infringing any Intellectual Property of any other Person the effect of which, individually or in the aggregate, would have Material Adverse Effect.

5.23. Year 2000 Readiness. Seller has informed Buyer of its analysis of, the status of development of contingency plans for, and forecasted expenditures with respect to Year 2000 readiness of material computer software and computer firmware comprising the Purchased Assets, as such analysis, contingency plan development and forecast of expenditures exist on the date hereof.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BUYER

The Buyer represents and warrants to Seller as follows:

6.1. Organization. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Buyer has heretofore delivered to Seller complete and correct copies of its Certificate of Formation and Limited Liability Company Agreement (or other similar governing documents), as currently in effect.

6.2. Authority Relative to this Agreement. The Buyer has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Managers or Members of the Buyer and the Board of Directors of both Southern Energy, Inc. and The Southern Company and no other company proceedings on the part of the Buyer or such Affiliates are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Buyer, and assuming that this Agreement constitutes a valid and binding agreement of Seller, subject to the receipt of the Buyer Required Regulatory Approvals and Seller Required Regulatory

Approvals, constitutes a valid and binding agreement of the Buyer, enforceable against the Buyer in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

6.3. Consents and Approvals: No Violation. (a) Except as set forth in Schedule 6.3(a), and other than obtaining the Buyer Required Regulatory Approvals and Seller Required Regulatory Approvals, neither the execution and delivery of this Agreement by the Buyer nor the purchase by the Buyer of the Purchased Assets pursuant to this Agreement will (i) conflict with or result in any breach of any provision of the Certificate of Formation or Limited Liability Company Agreement (or other similar governing documents) of the Buyer, (ii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority, (iii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which the Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

(b) Except as set forth in Schedule 6.3(a) and except for the filings by the Buyer and Seller required by the HSR Act (the filings and approvals referred to

in Schedule 6.3(a) and with respect to the HSR Act are collectively referred to as the "Buyer Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental or regulatory body or authority is necessary for the consummation by the Buyer of the transactions contemplated hereby.

6.4. Operating Easements. Buyer shall grant Operating Easements to Seller as agreed to pursuant to the procedures set forth in the Continuing Site/Interconnection Agreement.

6.5. Regulation as a Utility. On the Closing Date, the Buyer will be an exempt wholesale generator under the Holding Company Act, although it is a subsidiary of a registered public utility holding company under the Holding Company Act. On the Closing Date, the Buyer also will be a public utility under the Federal Power Act. Except as set forth in Schedule 6.5, the Buyer is not subject to regulation as a public utility or public service company (or similar designation) by the United States, any State of the United States, any foreign country or any municipality or any political subdivision of the foregoing.

6.6. Availability of Funds. The Buyer has sufficient funds available to it or will receive binding written commitments from responsible financial institutions to provide sufficient funds on the Closing Date to pay the Purchase Price.

## ARTICLE VII

### COVENANTS OF THE PARTIES

7.1. Conduct of Business Relating to the Purchased Assets. Except as described in Schedule 7.1, during the period from the date of this Agreement to the Closing Date, Seller will operate and maintain the Purchased Assets according to its ordinary and usual course of business consistent with Good Utility Practice. Without limiting the generality of the foregoing, and, except as contemplated in this Agreement or as described in Schedule 7.1, prior to the Closing Date, without the prior written consent of the Buyer (unless such consent would be prohibited by law), Seller will not with respect to the Purchased Assets:

(a) make any material change in the operations of the Purchased Assets (including, without limitation, the levels of fuel inventory and materials and supplies customarily maintained by Seller other than consistent with past practice);

(b) except for Scheduled Capital Expenditures, make any capital expenditures with respect to the Purchased Assets or enter into any contract or commitment therefor, except that (i) Seller shall make any capital expenditures requested by the Buyer, provided that the Buyer will reimburse Seller for such capital expenditures at least five (5) Business Days prior to the date payment for such expenditure is due, and (ii) Seller shall make any capital

expenditures deemed necessary by Seller in accordance with Good Utility Practices ("Necessary Capital Expenditures") at Seller's cost and expense, provided, however, that if the Buyer requests that Seller make enhancements/upgrades with a cost in excess of the cost of any Necessary Capital Expenditures, the Buyer shall reimburse Seller for the cost of such enhancements/upgrades to the extent the cost of such enhancement/upgrade exceeds the cost of the Necessary Capital Expenditure at the time such enhancement/upgrade is performed.

(c) sell, lease (as lessor), transfer or otherwise dispose of, any of the Purchased Assets, other than assets used, consumed or replaced in the ordinary course of business consistent with Good Utility Practice and not mortgage or pledge, or impose or suffer to be imposed any Encumbrance on, any of the Purchased Assets other than Permitted Encumbrances in the ordinary course of business;

(d) except for Scheduled Maintenance Expenditures, make any maintenance expenditures, except that (i) Seller shall make any maintenance expenditures requested by the Buyer, provided that the Buyer will reimburse Seller for such maintenance expenditures at least five (5) Business Days prior to the date payment for such expenditure is due, and (ii) Seller shall make any maintenance expenditures deemed necessary by Seller in accordance with Good

Utility Practice ("Necessary Maintenance Expenditures") at Seller's cost and expense, provided, however, that if the Buyer requests that Seller make enhancements/upgrades with a cost in excess of the cost of any Necessary Maintenance Expenditures, the Buyer shall reimburse Seller for the cost of such enhancements/ upgrades to the extent the cost of such enhancement/upgrade exceeds the cost of the Necessary Maintenance Expenditure at the time such enhancement/upgrade is performed;

(e) amend or terminate prior to the expiration date, or waive any material term or give consent to any material request with respect to any of Seller's Agreements, Permits or Environmental Permits, except to the extent that such amendment, termination, waiver or consent (i) will not have a material impact on operations of the Purchased Assets, including the cost of said operations or (ii) is required by applicable law, including applicable Environmental Law;

(f) enter into agreements for the purchase or sale of fuel (whether commodity or transportation) other than agreements entered into in the ordinary course of business, for which commitments to purchase or sell under such agreement would not exceed a one week time period;



(g) enter into any power sales commitments, other than short term contracts under which power sales commitment(s) would not exceed a two week time period;

(h) sell, lease or otherwise dispose of Emission Allowances except to the extent necessary to operate the Purchased Assets in accordance with this Section 7.1;

(i) enter into any contract, agreement, commitment or arrangement, whether written or oral, with respect to any of the transactions set forth in the foregoing paragraphs (a) through (h); or

(j) make any new, or change any current, election with respect to Taxes affecting the Purchased Assets.

7.2. Access to Information. (a) Between the date of this Agreement and the Closing Date, Seller will, during ordinary business hours and upon reasonable notice (i) give the Buyer and the Buyer Representatives reasonable access to its managerial personnel and to all books, records, plants, offices and other facilities and properties constituting the Purchased Assets to which the Buyer is permitted access by law, (ii) permit the Buyer to make such reasonable inspections thereof as the Buyer may reasonably request, including conducting environmental sampling at, on and underneath the Purchased Assets and performing compliance audits at the Purchased Assets, if Buyer reasonably deems such sampling necessary after reviewing further information

which becomes available after the date hereof, so long as Seller provides its consent to such sampling, which consent shall not be unreasonably withheld, (iii) cause its officers, engineers, operations and maintenance personnel and advisors to furnish the Buyer with such financial and operating data, Tax Returns (other than Income Tax Returns) and other information with respect to the Purchased Assets as the Buyer may from time to time reasonably request and assist Buyer in such inspections, (iv) cause its officers and advisors to furnish the Buyer a copy of each report, schedule or other document filed or received by it with or from the SEC, NYPSC, NJBPU, PAPUC, FERC, ISO or other governmental authority with respect to the Purchased Assets; provided, however, that (A) any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of the Purchased Assets, (B) Seller shall not be required to take any action which would constitute a waiver of the attorney-client privilege and (C) Seller need not supply the Buyer with any information which Seller is under a legal obligation not to supply, provided, however, that Seller shall have used commercially reasonable efforts to have such obligations waived. Notwithstanding anything in this Section 7.2 to the contrary, (i) Seller will furnish or provide such access to medical records only as is permitted by law, and (ii) Seller will furnish or provide such access to personnel records only to the extent that the employee to which the personnel record relates has given his/her consent to the Seller.

(b) All information furnished to or obtained by the Buyer and the Buyer Representatives pursuant to this Section 7.2 shall be subject to the provisions of Section 11.2 of this Agreement shall be treated as Confidential Information.

(c) Commencing February 1, 1999, the Buyer shall have the right to physically locate one designated representative (the "Designated Representative") of the Buyer at an office or in workspace at the Seller's corporate offices to observe the operations of the Gas Turbines and the Hydroelectric Assets, as well as the operations of the Lovett Generating Station, and the Bowline Generating Stations, pursuant to the Lovett Generating Sales Agreement and the Bowline Generating Stations Sales Agreement entered into the date hereof between the Seller and the Buyer and the Seller, Consolidated Edison Company of New York, Inc. and the Buyer, respectively, provided, however, that the Buyer shall not unreasonably interfere with the Seller's use of the Purchased Assets. The Seller shall coordinate site visits and provide the Designated Representative during such period prior to the Closing access to Seller's managerial personnel. The Designated Representative shall coordinate the Buyer's rights to access under Section 7.2(a) hereof during such period prior to the Closing.

(d) For a period of seven (7) years after the Closing Date, Seller and its representatives shall have reasonable access to (i) information on employees covered by Seller's Management Employee Transition Program and (ii) all of the books and records of the Purchased Assets, as the case may be, transferred to the Buyer hereunder

to the extent that such access (A) may reasonably be required by Seller in connection with matters relating to or affected by the operation of the Purchased Assets prior to the Closing Date and (B) is not otherwise prohibited by law. Such access shall be afforded by the Buyer upon receipt of reasonable advance written notice and during normal business hours. Seller shall be responsible for any costs or expenses incurred by them pursuant to this Section 7.2(d). If the Buyer shall desire to dispose of any such books and records prior to the expiration of such seven (7) year period, the Buyer shall, prior to such disposition, give Seller a reasonable opportunity at Seller's expense, to segregate and remove such books and records as Seller may select. Any information provided by Buyer to Seller pursuant to this Section 7.2(d) shall be deemed Confidential Information.

7.3. Expenses. Except to the extent specifically provided herein, whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses.

7.4. Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of the parties hereto will use all commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the sale of the Purchased Assets pursuant to this Agreement,

including without limitation, the use of Seller's and the Buyer's commercially reasonable efforts to obtain all Permits and Environmental Permits necessary for the Buyer to operate the Purchased Assets. Neither of the Parties shall, without the prior written consent of the other Party, take or fail to take any action which might reasonably be expected to prevent or materially impede, interfere with or delay the transactions contemplated by this Agreement or the Ancillary Agreements. From time to time after the date hereof, without further consideration, Seller will, at its own expense, execute and deliver such documents to the Buyer as the Buyer may reasonably request in order more effectively to vest in the Buyer good title to the Purchased Assets. From time to time after the date hereof, the Buyer will, at its own expense, execute and deliver such documents to Seller as Seller may reasonably request in order to more effectively consummate the sale of the Purchased Assets pursuant to this Agreement. To the extent that any personal property lease, relating to any assets ("Leased Assets") which are principally used by Seller for generation purposes at the Purchased Assets, cannot be assigned to the Buyer, Seller will use its commercially reasonable efforts to acquire title to such Leased Assets and to include them in the Purchased Assets before the Closing Date unless Buyer directs Seller in writing not to acquire any such Leased Asset. Seller's documented and reasonable costs associated with acquiring title to such Leased Assets shall be paid by the Buyer as part of the Purchase Price, except for any and all

costs of acquiring the title to the leased Gas Turbines as described in Section 7.17.

Schedule 7.4 lists all of the Leased Assets.

(b) To the extent that any Seller's rights under any guaranties, warranties and indemnification applicable to the Purchased Assets or the Assumed Liabilities are nontransferable or nonassignable, Seller shall use its commercially reasonable efforts to provide to Buyer the benefits thereof in some other manner upon the request of Buyer.

7.5. Public Statements. The parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement or the transactions contemplated hereby and shall not issue any such public announcement, statement or other disclosure prior to such consultation, except as may be required by law or stock exchange rules or regulations and except that the parties may make public announcements, statements or other disclosures with respect to this Agreement and the transactions contemplated hereby to the extent that such public announcements, statements or other disclosures do not violate Section 11.2 of this Agreement.

7.6. Consents and Approvals. (a) Seller and the Buyer shall each file or cause to be filed with the Federal Trade Commission and the United States Department of Justice any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated

hereby. The parties shall consult with each other as to the appropriate time of filing such notifications and shall use their best efforts to make such filings at the agreed upon time, to respond promptly to any requests for additional information made by either of such agencies, and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing. Buyer shall bear the cost of all filing fees under the HSR Act.

(b) Seller and the Buyer shall cooperate with each other and

- (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents,
- (iii) use all reasonable efforts to obtain the transfer or reissuance to the Buyer of all necessary Environmental Permits, Permits, consents, approvals and authorizations of all governmental bodies and (iv) use all reasonable efforts to obtain all necessary consents, approvals and authorizations of all other parties, in the case of each of the foregoing clauses (i), (ii), (iii) and (iv), necessary or advisable to consummate the transactions contemplated by this Agreement (including, without limitation, Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals) or required by the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which Seller or the Buyer is a party or by which either of them is bound. Seller shall have the right to review and approve in advance all characterizations of the information relating to Purchased Assets;

and each of Seller and the Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing made in connection with the transactions contemplated hereby. The parties hereto agree that they will consult with each other with respect to the transferring to the Buyer or the obtaining by the Buyer of all such necessary Environmental Permits, Permits, consents, approvals and authorizations of all third parties and governmental bodies. Seller and the Buyer shall designate separate counsel with respect to all applications, notices, petitions and filings (joint or otherwise) relating to this Agreement and the transactions contemplated hereby on behalf of Seller, on the one hand and the Buyer on the other hand, with all governmental bodies. To the extent that a consent to an assignment of any material Seller Agreement cannot be obtained before the Closing Date, Seller will enter into all such agreements with the Buyer as are necessary to give the Buyer the rights, obligations and burdens of such Seller Agreements.

(c) The parties hereto shall consult with each other prior to proposing or entering into any stipulation or agreement with any Federal, State or local governmental authority or agency or any third party in connection with any Federal, State or local governmental consents and approvals legally required for the consummation of the transactions contemplated hereby and shall not propose or enter into any such stipula-



tion or agreement without the other party's prior written consent, which consent shall not be unreasonably withheld.

(d) Buyer shall assume primary responsibility for securing the transfer or reissuance of the Permits effective as of the Closing Date. Seller shall cooperate with Buyer's efforts in this regard and shall use its best efforts to assist in the transfer or reissuance when so requested by Buyer. In the event that Buyer is unable, despite commercially reasonable efforts, to obtain a transfer or reissuance of one or more Permits as of the Closing Date, Buyer may use the Permits issued to Seller to the extent permissible under applicable laws and regulations provided (i) buyer notified Seller prior to Closing, (ii) Buyer continues to make commercially reasonable efforts to obtain a transfer or reissuance of such Permits after the Closing, and (iii) Buyer indemnifies Seller for any losses, claims or penalties suffered by Seller in connection with the Permit that is not transferred or reissued as of the Closing Date resulting from Buyer's operation of the Purchased Assets following the Closing Date. In no event shall Buyer use or otherwise rely on a Permit issued to Seller beyond one year after Closing unless Buyer has, after exercising its commercially reasonable efforts, been unable to obtain same and such reliance is not prohibited by law.

7.7. Fees and Commissions. Seller and the Buyer each represent and warrant to the other that, except for Donaldson, Lufkin & Jenrette Securities Corporation ("DLJ"), which is acting for and at the expense of Seller, and Credit Suisse First

Boston Corporation, which is acting for and at the expense of the Buyer, no broker, finder or other Person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by the party making such representation. Seller and the Buyer will pay to the other or otherwise discharge, and will indemnify and hold the other harmless from and against, any and all claims or liabilities for all brokerage fees, commissions and finder's fees (other than as described above) incurred by reason of any action taken by such party.

7.8. Tax Matters. (a) Notwithstanding any other provision of this Agreement, all transfer, sales and similar Taxes incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Buyer, and the Buyer will, at its own expense, file, to the extent required by law, all necessary Tax Returns with respect to all such Taxes, and, if required by applicable law, the Seller will join in the execution of any such Tax Returns.

(b) With respect to Taxes to be prorated in accordance with Section 3.4 of this Agreement only, the Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Purchased Assets, if any, and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. The Buyer's preparation of any such Tax Returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld. The Buyer shall make such Tax Returns available for Seller's review and approval no later than twenty (20) days prior to the due date for

filing such Tax Return. Within ten (10) days after receipt of such Tax Return, Seller shall pay to the Buyer its proportionate share of the amount shown as due on such Tax Return determined in accordance with the Section 3.4 of this Agreement.

(c) Each of the Buyer and Seller shall provide the other with such assistance (including access to the Purchased Assets) as may reasonably be requested by the other party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each will retain and provide the requesting party with any records or information which may be relevant to such return, audit or examination, proceedings or determination. Any information obtained pursuant to this Section 7.8 or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the parties hereto.

(d) Seller will consult with and allow Buyer to participate in all outstanding real property tax disputes concerning the Purchased Assets and shall take such positions as Buyer may request consistent with the positions previously communicated to Seller by Buyer with respect to such tax disputes, to assist Buyer in obtaining a tax agreement with respect to such tax disputes for periods subsequent to the Closing Date. Seller will use its commercially reasonable efforts to assist Buyer in obtaining an agreement with the taxing authorities pursuant to which the assessed value for real

estate tax purposes of the Purchased Assets will be the lowest value achievable. Seller shall not enter into any agreement with the taxing authorities with respect to such real property tax disputes relating to periods prior to the Closing Date without the written consent of Buyer which Buyer shall not unreasonably withhold as long as Seller has complied with this Section 7.8(d).

7.9. Supplements to Schedules. Prior to the Closing Date, parties shall supplement or amend the Schedules required by Articles V and VI with respect to any matter hereafter arising which, if existing or occurring at the date of this Agreement, would have been required to be set forth or described in such Schedules. No supplement or amendment of any Schedule made pursuant to this Section shall be deemed to cure any breach of any representation or warranty made in this Agreement unless the parties agree thereto in writing.

7.10. Employees. (a) Schedule 7.10(a) sets forth all collective bargaining agreements to which Seller is a party in connection with the Purchased Assets and all other labor agreements and amendments thereto, that are or may be associated with the Purchased Assets (the "Collective Bargaining Agreements"). Buyer shall offer employment to begin as of the Closing Date to Seller's employees who work in connection with the Purchased Assets and who are included in the bargaining units covered by the Collective Bargaining Agreements ("Hourly Employees"), and the Buyer will assume the Collective Bargaining Agreements and all of Seller's obligations

thereunder, including, without limitation, the terms and conditions of the employee benefit plans covering such hourly employees.

(b) Continued Employment; Service Credit. The Buyer shall, as of the Closing Date, offer employment to the employees of Seller (who will be listed on Schedule 7.10(b) by the Buyer) who worked at or directly serviced the Purchased Assets, who were employees immediately prior to the Closing Date, who were not Hourly Employees and who are approved by Buyer (the "Management Employees"). The Buyer shall provide Schedule 7.10(b) to Seller at least ninety (90) days prior to the date on which the Closing is anticipated to occur (but in no event later than February 1, 1999, or such other date to which the Buyer and Seller mutually agree). The Management Employees hired by the Buyer shall be given credit for all service with Seller or its subsidiaries (and service credited by Seller or such subsidiary), to the same extent as such service was credited for such purpose by Seller or such subsidiary, under all employee benefit plans, programs and policies, and fringe benefits of the Buyer in which they become participants for purposes of eligibility, vesting and determination of level of benefits (but not for purposes of benefit accrual). To the extent permissible under the terms thereof and required by applicable law, the Buyer shall (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to the Management Employees under any welfare benefit plans that such employees may be eligible to participate in

after the Closing Date, other than limitations or waiting periods that are already in effect with respect to such employees and that have not been satisfied as of the Closing Date under any welfare benefit plan maintained for the Management Employees immediately prior to the Closing Date, and (ii) provide each Management Employee with credit for any co-payments and deductibles paid prior to the Closing Date in satisfying any applicable deductible or out-of-pocket requirements under any welfare plans that such employees are eligible to participate in after the Closing Date.

(c) Subject to applicable law, the Buyer shall maintain for a period of at least one year after the Closing Date, without interruption, such employee compensation, welfare and benefit plans, programs, policies and fringe benefits as will, in the aggregate, provide benefits to the Management Employees that are no less favorable than those provided pursuant to such employee compensation, welfare and benefit plans, programs, policies and fringe benefits of the Seller and its subsidiaries, as in effect on the Closing Date. During the period between the date hereof and the Closing Date, Seller shall use its best efforts to keep available all current Management Employees for employment by the Buyer (except those employees which the Buyer identifies in writing as Management Employees which the Buyer does not intend to employ).

(d) Notwithstanding the Buyer's assumption of the Collective Bargaining Agreement, the Buyer shall not assume sponsorship or any other obligation under any Benefit Plan of the Seller or any ERISA Affiliate of the Seller in connection

with the assumption of such agreements or in connection with hiring any of the Hourly Employees. All benefits accrued under such Benefits Plans and all benefits currently payable as of the Closing Date shall be and shall remain the obligation of Seller and any individual covered under any such Benefit Plan that is a Group Health Plan (as defined in Section 4980B(g)(2) of the Code and Section 607(1) of ERISA) and who is eligible for continued coverage under such Group Health Plan as of the Closing Date, shall continue to be covered under such Group Health Plan after Closing pursuant to the provisions of COBRA.

(e) Seller agrees to perform timely and discharge all requirements, if any, under the WARN Act and under applicable state and local laws and regulations for the notification of its employees arising from the sale of the Purchased Assets to the Buyer up to and including the Closing Date. The Buyer will cooperate with Seller to provide Seller with such information as may be needed from the Buyer for inclusion in such notices, including providing Seller at least ninety (90) days prior to the date on which the Closing is anticipated to occur (but in no event, later than February 1, 1999 or such other date to which the Buyer and Seller mutually agree) with a list of all of Seller's employees to whom the Buyer will make offers of employment. After the Closing Date, the Buyer shall be responsible for performing and discharging all requirements under the WARN Act and under applicable state and local laws and regulations for the notification of its employees with respect to the Purchased Assets.

(f) Seller shall be responsible for any payments required under its severance plan, including severance payments and other benefit enhancements, offered in connection with the transfer of the Purchased Assets. Within thirty (30) days following the last day that any employee may elect to participate in such plan, Seller shall provide Buyer with a list of all electing employees. In any event, Buyer is not required to establish this or any other severance or benefit plan.

(g) Seller shall comply with all of the requirements of COBRA arising from this Agreement with respect to all employees of Seller employed at the Purchased Assets who are not employed by Buyer.

(h) Seller shall pay, when due, to all Hourly Employees and Management Employees hired by the Buyer pursuant to Section 7.10 hereof, all compensation, bonus, severance, vacation and holiday compensation, workers' compensation or other employment benefits which have accrued to such Hourly Employees and Management Employees through and including the Closing Date.

(i) Following the execution of this Agreement Seller will use its commercially reasonable best efforts to arrange meetings and interviews with such employees of Seller as Buyer shall reasonably request.

(j) Seller shall not, prior to the Closing Date, with respect to the Purchased Assets, (i) hire new employees or transfer current employees prior to the Closing to work at the Purchased Assets, other than to fill vacancies in existing posi-



tions in the reasonable discretion of Seller, (ii) take any action prior to the Closing to affect a material change in the Collective Bargaining Agreement, or (iii) take any action prior to the Closing to increase the aggregate benefits payable to the employees employed in connection with the Purchased Assets, except (A) as otherwise required by the terms of the Collective Bargaining Agreement obligations to effects bargain, (B) as Seller shall reasonably deem appropriate in order to comply with its obligations under the second sentence of Section 7.10(c) above, (C) for retention bonuses payable to Management Employees on or before the Closing Date and (D) increases in salary and benefits in the ordinary course of business, consistent with past practice.

7.11. Risk of Loss. (a) From the date hereof through the Closing Date, all risk of loss or damage to the property included in the Purchased Assets shall be borne by Seller.

(b) If, before the Closing Date all or any portion of the Purchased Assets are taken by eminent domain, or is the subject of a pending or (to the knowledge of Seller), after reasonable inquiry and investigation contemplated taking which has not been consummated, Seller shall notify the Buyer promptly in writing of such fact. If such taking would have a Material Adverse Effect, the Buyer and Seller shall negotiate in good faith to settle the loss resulting from such taking (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and, upon such settlement, consummate the transaction contemplated by this Agreement pursuant to the

terms of this Agreement. If no such settlement is reached within sixty (60) days after Seller has notified the Buyer of such taking, then the Buyer or Seller may, if such taking relates to the Purchased Assets, terminate this Agreement pursuant to Section 10.1(f).

(c) If, before the Closing Date, all or any material portion of the Purchased Assets are damaged or destroyed by fire or other casualty, Seller shall notify the Buyer promptly in writing of such fact. If such damage or destruction would have a Material Adverse Effect and Seller has not notified the Buyer of its intention to cure such damage or destruction within fifteen (15) days after its occurrence, the Buyer and Seller shall negotiate in good faith to settle the loss resulting from such casualty (including, without limitation, by making a fair and equitable adjustment to the Purchase Price) and assigning any insurance proceeds to Buyer at the Closing and, upon such settlement, consummate the transactions contemplated by this Agreement pursuant to the terms of this Agreement. If no such settlement is reached within sixty (60) days after Seller has notified the Buyer of such casualty, then the Buyer may terminate this Agreement pursuant to Section 10.1(f).

7.12. Real Estate Matters. (a) Buyer shall obtain an American Land Title Association ("ALTA") or New York Board of Title Underwriters ("NYBTU") owners standard form title policy commitment with respect to the Real Property (the "Title Commitment") from a title company of Buyer's choice (the "Title Company") covering title to the Real Property together with an ALTA 3.1 zoning endorsement, if

available, including parking and access, and such other endorsements as Buyer may reasonably request. Seller shall provide the Title Company and Buyer such information as the Title Company or Buyer may reasonably request to assist the Title Company in connection with the Title Commitment. Without limiting the foregoing, Seller shall provide the Title Company and Buyer a copy of the most recent surveys in their possession regarding the Real Property. Promptly after receiving the Title Commitment, Buyer shall notify Seller in writing of any defects in title which are not Permitted Encumbrances and would cause title to the Real Property to be uninsurable (any of which is called herein a "Defect of Title"). Buyer shall be deemed to have waived any objection to any Defect of Title that was disclosed by the Title Commitment if Buyer fails to notify Seller of such Defect of Title within thirty (30) days after receipt of such Title Commitment. With respect to the existence of any Defect of Title that is not disclosed by the Title Commitment, but which arises prior to Closing, Buyer shall immediately notify Seller in writing of any such Defect of Title.

(b) Seller agrees that upon the written request of Buyer it will consent and cause its affiliates to consent to the relocation of the Operating Easements and Seller's Easements so long as (i) Buyer pays the cost of such relocation, (ii) such relocation will be to space within Buyer's ownership and will not materially adversely affect the operation of Seller's or its affiliates' transmission and distribution business, except for the minimum downtime associated with the cut over for such relocation

process in accordance with Good Utility Practices, and (iii) the Buyer's requested relocation is consistent with Good Utility Practices. Seller further agrees to condition any grant or assignment by it of the Operating Easements or Sellers Easements on the express agreement of its transferee to be bound by the terms and conditions of this Section 7.12(b).

(c) As to any Operating Easement or Sellers Easement not currently of record or reserved or granted back to Seller at Closing, all of which are to be granted by Buyer at Closing concurrently with the transfer of title to Buyer and prior to any mortgage or other encumbrance, such Operating Easements and Sellers Easements shall include standard cross-indemnity provisions relating to personal injury, death or property damage occurring as a result of gross negligence or willful misconduct in the use of such Easements, whereby each party agrees to indemnify the other for the consequences of the gross negligence or willful misconduct of those for whom the indemnifying party is legally responsible.

7.13. Year 2000. Seller shall (a) use its best efforts to cooperate with Buyer in formulating a plan to prepare the Purchased Assets to be ready for Year 2000 computer-related issues with a target completion date of October 1, 1999 and (b) perform until the Closing Date (or later, at Seller's election pursuant to the second sentence of Section 7.14 of this Agreement) the tasks identified in such plan, consistent

with Good Utility Practices and the expenditures contemplated in its Year 2000 plans referred to in Section 5.23 hereof.

7.14. Scheduled Capital Expenditures and Scheduled Maintenance Expenditures. The Seller shall perform, or caused to be performed, the Scheduled Capital Expenditures and the Scheduled Maintenance Expenditures, at Seller's cost, prior to the Closing Date. To the extent that Scheduled Capital Expenditures and Scheduled Maintenance Expenditures are not completed by the Closing Date, the Seller either (i) shall cause the Scheduled Capital Expenditures or Scheduled Maintenance Expenditures to be completed within a reasonable period of time following the Closing Date or (ii) shall pay Buyer its reasonable costs to complete such unfinished Scheduled Capital Expenditures or Scheduled Maintenance Expenditures within thirty (30) days of Seller's receipt from Buyer of a reasonably detailed invoice for such cost.

7.15. Environmental Insurance. If Buyer elects to purchase insurance coverage to cover liabilities arising from Hazardous Substances present or Released at, on, in or under (i) the Purchased Assets and (ii) the "Purchased Asset" and "Purchased Assets" as defined in each of the Other Sales Agreements on or prior to the Closing Date ("Environmental Insurance"), Seller shall share equally with Buyer the cost of premiums for such Environmental Insurance, up to a maximum payment by Seller of \$200,000 in the aggregate for such insurance relating to (A) the Purchased Assets and (B) the "Purchased Asset" and "Purchased Assets" as defined in each of the Other Sales

Agreements. If Buyer purchases such Environmental Insurance, Buyer shall add Seller as an additional insured.

7.16. Environmental Remediation.

(a) Seller will, at its own expense, be responsible for remediating, in accordance with applicable Environmental Laws, the following areas located at the Hillburn Gas Turbine Generating Station identified on page 6-2 of the Report, Additional Phase II Environmental Site Investigations Orange and Rockland prepared by URS Greiner Woodward Clyde, dated November 1998: (i) PCB-contaminated soils in two areas at the 34.5 kv Substation; (ii) PCB-contaminated soils in the Gas Turbine Switching Transformer Substation; (iii) stained soils and associated contamination in the 69 kv Substation containing polyaromatic hydrocarbons ("PAHs"); and (iv) stained soils and associated contamination in the Equipment Storage Area containing PAHs. Seller's obligation to remediate these conditions is limited to remediation of affected soils in the areas identified above. Seller shall remediate such soils to meet the least stringent New York cleanup standards applicable to the Hillburn Gas Turbine Generating Station as it is currently used; provided however, that the cleanup standards which govern the remedial work under this subparagraph (a) shall be at least as stringent as the New York State Department of Environmental Conservation ("NYSDEC") soil cleanup standards to protect groundwater. To the extent that the NYSDEC or the United States Environmental Protection Agency ("EPA") is involved in the oversight of any of the

remediation described above, Seller shall remediate such soils to the extent required by the NYSDEC or the EPA, as the case may be. Seller shall prepare a work plan for the remedial work required by this subparagraph (a) and shall submit the work plan for Buyer's review and comment. Seller shall conduct confirmation sampling which demonstrates the completion of the remedial work required by this subparagraph (a) and shall prepare a report discussing the work. Except as otherwise required by applicable Environmental Law, neither party shall notify NYSDEC or EPA concerning the remedial work without the prior consent of the other party. Seller shall be responsible for all negotiations with the NYSDEC or the EPA with respect to such remedial work and, provided Seller is in substantial compliance with this Section 7.16, Buyer shall not engage in any discussions with NYSDEC or the EPA with respect to the remedial work, except to the extent authorized by Seller.

(b) Seller shall exercise reasonable efforts to complete the remedial work described in subparagraph (a) prior to the Closing. If Seller has not completed the remedial work described in subparagraph (a) as of the Closing, Seller will continue to be responsible for completing said remediation as soon as reasonably possible after the Closing. In undertaking said remedial work, Seller shall (i) comply in all material respects with applicable Environmental Laws; (ii) provide Buyer with copies of all final and complete data, documents, correspondence and reports related to the remedial work; (iii) provide Buyer with at least five (5) Business Days' advance notice prior to under-

taking any field work at the Hillburn Gas Turbine Generating Station; (iv) take all reasonable precautions to ensure that performance of the remedial work does not unreasonably interfere with operations at the Hillburn Gas Turbine Generating Station; and (v) repair and restore, to the extent practicable, any areas of the Hillburn Gas Turbine Generating Station adversely impacted by the remedial work.

(c) If Seller is required to complete the remedial work described in subparagraph (a) after the Closing, Buyer shall undertake reasonable efforts to enable Seller, Seller's agents and representatives to undertake the remedial work. To this end, Buyer shall afford Seller and its agents and representatives, including, but not limited to, environmental contractors and consultants, with reasonable cooperation, including, but not limited to, reasonable access to any of the real property upon which remedial work is to be conducted, relevant records and utility services (including, but not limited to water and electricity); obtaining additional environmental permits (at Seller's expense) in order to undertake the required remediation; and filing any necessary reports (at Seller's expense) with relevant governmental authorities.

7.17. Buyout of Leases. The Seller shall exercise its purchase option, at Seller's cost, under the Amendment to Lease Agreement, effective as of August 1, 1996, between Seller and Fleet Capital Corporation, which amends the Lease Agreement, dated as of February 1, 1991, between United States Trust Company of New York, as Trustee, Lessor and Seller, Lessee.



**ARTICLE VIII**  
**CLOSING CONDITIONS**

**8.1. Conditions to Each Party's Obligations to Effect the Transactions Contemplated Hereby.** The respective obligations of each party to effect the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) The waiting period under the HSR Act applicable to the consummation of the transactions contemplated hereby shall have expired or been terminated with no order, decree, judgment or injunction enjoining or prohibiting the consummation of the transactions contemplated hereby having been issued;

(b) No preliminary or permanent injunction or other order or decree by any federal or state court or governmental authority which prevents or is reasonably likely to prevent the consummation of the transactions contemplated hereby or by the Ancillary Agreements shall be pending or shall have been issued and remain in effect (each party agreeing to use its reasonable efforts to have any such injunction, order or decree lifted) and no statute, rule or regulation shall have been enacted or interpreted by any State or Federal government or governmental authority in the United States which prohibits the consummation of the transactions contemplated hereby;

(c) All Federal, State and local government orders, consents and approvals required for the consummation of the transactions contemplated hereby, or by the Ancillary Agreements, including, without limitation, Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, shall have become Final Orders (a "Final Order" means action by the relevant regulatory authority which has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired, and as to which all conditions to the consummation of such transaction prescribed by law, regulation or order have been satisfied) and such Final Order is in form and substance reasonably acceptable to the party that sought the consent or approval granted by such Final Order (for purposes of this clause (i), a Final Order shall be deemed to be reasonably acceptable to such party if it complies in all material respects with the terms and conditions of such party's application therefor and contains no additional terms or conditions which would

have a Material Adverse Effect on such party or the operation of the Purchased Assets); provided, however, that if at the time such order, consent, or approval would otherwise be deemed to be a Final Order, there shall be pending or threatened any appeal or challenge thereto, which, if adversely determined, would cause such order, consent or approval to not be reasonably acceptable to the party that sought such order, consent or approval, then if such party who would be adversely affected notifies the other party that such a pending or threatened appeal or challenge exists (such notification to be made as soon as reasonably practicable following knowledge of such pending or threatened appeal or challenge, but in no event later than fifteen (15) days from date on which any waiting period prescribed by law before the transactions contemplated hereby may be consummated has expired and all conditions to the consummation of such transactions prescribed by law, regulation or order have been satisfied), then such order, consent or approval shall be deemed to be a Final Order only after all opportunities for rehearing or judicial review are exhausted and provided, further, that if the designation of an order, consent or approval as a Final Order shall be deferred pursuant to the foregoing proviso, the Termination Date shall be automatically extended for a period of time equal to the period of time for which the designation as a Final Order has been deferred;

(d) All consents and approvals required under the terms of any note, bond, mortgage, indenture, contract or other agreement to which Seller or the Buyer, or any of their subsidiaries, is a party for the consummation of the transactions contemplated hereby shall have been obtained, other than those (i) which if not obtained, would not, in the aggregate, have a Material Adverse Effect, or (ii) for which an agreement which is described in the last sentence of Section 7.6(b) has been entered into.

8.2. Conditions to Obligations of Buyer. The obligation of the Buyer to effect the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) There shall not have occurred and be continuing, a Material Adverse Effect;

(b) Seller shall have performed and complied with the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date, and the representations and warranties of Seller set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date, and the Buyer shall have received a certificate to that effect signed by an authorized officer of Seller;

(c) The Buyer shall have received a certificate from an authorized officer of Seller, dated the Closing Date, to the effect that to the best of such officers' knowledge, after reasonable inquiry and investigation, the conditions set forth in Sections 8.2(a) and (b) have been satisfied;

(d) The "Closing" as defined in each of the Lovett Generating Station Sales Agreement between the Seller and Southern Energy Lovett, L.L.C. and the Bowline Point Generating Station Sales Agreement among Seller, Consolidated Edison Company of New York, Inc. and Southern Energy Bowline, L.L.C., each dated as of the date hereof, shall have occurred or shall occur concurrently with the Closing hereunder.

(e) The Buyer shall have received an opinion from Skadden, Arps, Slate, Meagher & Flom LLP, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that:

(1) Seller is a corporation organized, existing and in good standing under the laws of the State of New York and has the corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the trans-

actions contemplated hereby and thereby have been duly authorized by all requisite corporate action taken on the part of Seller.

(2) this Agreement and the Ancillary Agreements have been executed and delivered by Seller and (assuming that Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of Seller, enforceable against Seller in accordance with their terms, except that such enforcement thereof may be limited by (A) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally, and (B) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity);

(3) the execution, delivery and performance of this Agreement and the Ancillary Agreements by Seller will not (A) constitute a violation of the Certificate of Incorporation or By-Laws of Seller, or (B) to counsel's knowledge constitute a violation or default under those agreements or instruments set forth on a schedule to this opinion;

(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal or New York governmental authority is necessary for the consummation by Seller of the Closing other than (i) Seller Required Regulatory Approvals which

are addressed below, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate have a Material Adverse Effect or prevent Seller from performing its obligations hereunder; and

(5) The Bill of Sale, the Instrument of Assumption and the other agreements described in Section 4.3 are in proper form to transfer to Buyer such title to the Purchase Assets as was held by Seller.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel which are reasonably acceptable to Buyer and admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by Seller and appropriate officers and directors of Seller and by public officials.

(f) The Buyer shall have received an opinion from Riker, Danzig, Scherer, Hyland & Perretti, LLP (New Jersey Counsel), Nixon,

Hargrave, Devans & Doyle, LLP (New York Counsel) and Morgan, Lewis & Bockius, LLP (Pennsylvania Counsel), or other local regulatory counsel for O&R reasonably acceptable by Buyer, dated the Closing Date and satisfactory in form and substance to the Buyer and its counsel, substantially to the effect that no declaration, filing or registration with, or notice to, or authorization, consent or approval of any federal governmental authority or any governmental authority in the States of New York, New Jersey and Pennsylvania is necessary for the consummation by Seller of the Closing other than (i) Seller Required Regulatory Approvals, which have been obtained and are in full force and effect with such terms and conditions as were imposed by the applicable governmental authorities, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the Federal laws of the United States or the laws of the State of New York, such counsel may rely upon opinions of counsel which are reasonably acceptable to Buyer and admitted in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered



together with the opinion of such counsel. Such opinion may expressly rely as to matters of fact upon certificates furnished by Seller and appropriate officers and directors of Seller and by public officials.

(g) Buyer shall have received the Title Commitment showing the Real Property to be insured as subject only to Permitted Encumbrances, and the effective date of the Title Commitment shall have been updated to the Closing Date and marked to show the satisfaction of all conditions to the issuance of the title policy other than conditions within the control of the Buyer.

(h) Buyer shall have obtained a certificate of the Secretary of Seller identifying by name and title and bearing the signature of the officer of Seller authorized to execute and deliver this Agreement and the other agreements and instruments contemplated hereby.

8.3. Conditions to Obligations of Seller. The obligation of Seller to effect the transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing Date of the following additional conditions:

(a) The Buyer shall have performed its covenants and agreements contained in this Agreement required to be performed on or prior to the Closing Date;

(b) The representations and warranties of the Buyer set forth in this Agreement shall be true and correct as of the date of this Agreement and as of the Closing Date as though made at and as of the Closing Date;

(c) Seller shall have received a certificate from an authorized officer of the Buyer, dated the Closing Date, to the effect that, to the best of such officers' knowledge, the conditions set forth in Sections 8.3(a) and (b) have been satisfied; and

(d) Seller shall have received an opinion from Troutman Sanders LLP, counsel for the Buyer, dated the Closing Date and satisfactory in form and substance to Seller and its counsel, substantially to the effect that:

(1) The Buyer is a limited liability company organized, existing and in good standing under the laws of the State of Delaware and has the requisite power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby; and the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action taken on the part of the Buyer;

(2) this Agreement and the Ancillary Agreements have been executed and delivered by the Buyer and (assuming that Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals are obtained) are valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their terms, except (A) that such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and (B) that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to certain equitable defenses and to the discretion of the court before which any proceeding therefore may be brought;

(3) the execution, delivery and performance of this Agreement and the Ancillary Agreements by the Buyer will not constitute a violation of the Certificate of Formation or Limited Liability Company Agreement (or other similar governing documents), as currently in effect, of the Buyer.

(4) no declaration, filing or registration with, or notice to, or authorization, consent or approval of any governmental authority is necessary for the consummation by the Buyer of the Closing other than (i) the Buyer Required Regulatory Approvals, all of which

have been obtained and are in full force and effect with such terms and conditions as shall have been imposed by any applicable governmental authority, (ii) declarations, filings or registrations with, or notices to, or authorizations, consents or approvals relating to Permits and Environmental Permits and (iii) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, in the aggregate have a Material Adverse Effect.

As to any matter contained in such opinion which involves the laws of any jurisdiction other than the federal laws of the United States and the State of New York, such counsel may rely upon opinions of counsel admitted to practices in such other jurisdictions. Any opinions relied upon by such counsel as aforesaid shall be delivered together with the opinion of such counsel. Such opinion may expressly rely as to matters of facts upon certificates furnished by appropriate Members and Managers of the Buyer and its subsidiaries and by public officials.

8.4. Extension of Closing Date. If the approval by the FERC of the establishment of the ISO (the "ISO Approval") shall not have been obtained on or prior to the Condition Fulfillment Date, the parties agree to defer the Closing Date until the date (the "Deferred Closing Date") which is the earlier of (a) the last day in the month in which the ISO Approval is deemed final under applicable law, provided that if there are less than five (5) Business Days in the month in which the ISO Approval is deemed

final, then the last day in the month which follows the month in which the ISO Approval is deemed final, or (b) August 31, 1999; provided, however, that all conditions set forth in Section 8.2(a) and all conditions set forth in Section 8.2(b) regarding the representations and warranties of Seller shall be deemed to be fulfilled on the Deferred Closing Date unless the nonfulfillment of such conditions primarily results from the acts or omissions of Seller or from the occurrence of facts or circumstances that primarily relate to the Seller's ownership and/or operation, or the physical condition of the Purchased Assets. For purposes of this Agreement, the "Condition Fulfillment Date" shall mean the date on which all conditions set forth in Sections 8.1 and 8.2 shall have been fulfilled but not earlier than the later of (i) the date on which all conditions set forth in Section 8.3 have been fulfilled or waived and (ii) April 30, 1999.

## ARTICLE IX

### INDEMNIFICATION

9.1. Indemnification. (a) Seller will indemnify, defend and hold harmless the Buyer, Buyer's affiliates, and their respective Managers, Members, employees and agents (each a "Buyer Indemnitee") from and against any and all claims, causes of action, demands or suits (by any Person), losses, liabilities, damages (excluding consequential and special damages), obligations, payments, costs, Taxes and expenses (including, without limitation, the costs and expenses of any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating

thereto and reasonable attorneys' fees and reasonable disbursements in connection therewith) to the extent the foregoing are not covered by insurance, (collectively, "Indemnifiable Losses"), asserted against or suffered by the Buyer Indemnitee relating to, resulting from or arising out of (i) any breach by Seller of any covenant or agreement of Seller contained in this Agreement, (ii) the Excluded Liabilities; (iii) the Excluded Assets; (iv) any breach of any representation in Sections 5.1, 5.2 and 5.3 hereof; (v) Seller's non-compliance with any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement, or (vi) the gross negligence or willful misconduct of the Seller, or its affiliates or its contractors while on Buyer's property (including without limitation, any easement provided Seller with respect to such property) after the Closing to the extent such Indemnifiable Loss is not caused by a the negligence or willful misconduct of any Buyer Indemnitee.

(b) The Buyer will indemnify, defend and hold harmless Seller, Seller's Affiliates, and their respective directors, officers, employees and agents (each, a "Seller Indemnitee") from and against any and all Indemnifiable Losses asserted against or suffered by Seller relating to, resulting from or arising out of (i) any breach by the Buyer of any covenant or agreement of the Buyer contained in this Agreement, (ii) the Assumed Liabilities; (iii) the operation of the Purchased Assets after the Closing Date, (iv) any breach of any representation in Article VI, or (v) the gross negligence or willful misconduct of Buyer, its affiliates or their respective contractors while on Seller's

property after the Closing, to the extent such Indemnifiable Loss is not caused by the negligence or willful misconduct of any Seller Indemnitee.

(c) Either the party required to provide indemnification under this Agreement (the "Indemnifying Party") or the entity or person entitled to receive indemnification under this Agreement (the "Indemnitee") may assert any offset or similar right in respect of its obligations under this Section 9.1 based upon any actual or alleged breach of any covenant or agreement contained in this Agreement.

(d) Any Indemnitee having a claim under these indemnification provisions shall make a good faith effort to recover all losses, damages, costs and expenses from insurers of such Indemnitee under applicable insurance policies so as to reduce the amount of any Indemnifiable Loss hereunder. The amount of any Indemnifiable Loss shall be reduced (i) to the extent that Indemnitee receives any insurance proceeds with respect to an Indemnifiable Loss and (ii) to take into account any Tax or Income Tax benefit recognized by the Indemnitee arising from the recognition of the Indemnifiable Loss, net of any Tax or Income Tax detriment, and any payment actually received with respect to an Indemnifiable Loss.

(e) The expiration, termination or extinguishment of any covenant, agreement, representation or warranty shall not affect the parties' obligations under this Section 9.1 if the Indemnitee provided the Indemnifying Party with proper notice of the

claim or event for which indemnification is sought prior to such expiration, termination or extinguishment.

(f) Seller and the Buyer shall have indemnification obligations with respect to Indemnifiable Losses asserted against or suffered by Seller or the Buyer, as the case may be, to the extent that the aggregate of all such Indemnifiable Losses exceed the Indemnification Floor. It is agreed and understood that neither Seller nor the Buyer, as the case may be, shall have any liability at any time for Indemnifiable Losses asserted against or suffered by the other party until the aggregate amount of Indemnifiable Losses asserted or suffered by such other party under this Section 9.1 shall exceed the Indemnification Floor, and then only to the extent that the aggregate amount of Indemnifiable Losses exceeds the Indemnification Floor. The term "Indemnification Floor" shall mean an amount equal to \$200,000.

(g) The rights and remedies of Seller and the Buyer under this Article IX are exclusive and in lieu of any and all other rights and remedies which Seller and the Buyer may have under this Agreement for monetary relief with respect to (i) any breach or failure to perform any covenant or agreement set forth in this Agreement or (ii) the Assumed Liabilities or the Excluded Liabilities, as the case may be; or (iii) any other liabilities described in Section 9.1(a) or 9.1(b). Rights and remedies under the Ancillary Agreements are as set forth therein.



9.2. Defense of Claims. (a) If any Indemnitee receives written notice of the assertion of any claim or of the commencement of any claim, action, or proceeding made or brought by any Person who is not a party to this Agreement or any affiliate of a party to this Agreement (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable detail and will indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee.

(b) The party defending the Third Party Claim shall (a) consult with the other throughout the pendency of the Third Party Claim regarding the investigation, defense, settlement, compromise, trial, appeal or other resolution thereof; and (b) afford the other party the opportunity, by notice, to participate and be associated in the defense of any Third Party Claim through counsel chosen by such other party, at its own expense, in the defense of any Third Party Claim as to which a party has elected to conduct and control the defense thereof. The parties shall cooperate in the defense of any Third Party Claim. The Indemnitee shall make available to the Indemnifying Party or its representatives all records and other materials reasonably required for use in contesting any Third Party Claim (subject to such confidentiality provisions as the

Indemnatee may reasonably require) and shall furnish such testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by the Indemnifying Party in connection therewith. If requested by the Indemnifying Party, the Indemnatee shall cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest or, if appropriate, in making any counterclaim against the Person asserting the claim or demand, or any cross-complaint against any Person. The Indemnifying Party shall reimburse the Indemnatee for any expenses incurred by Indemnatee in cooperating with or acting at the request of the Indemnifying Party.

(c) If within ten (10) calendar days after an Indemnatee provides written notice to the Indemnifying Party of any Third Party Claim the Indemnatee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 9.2(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days (unless waiting twenty (20) calendar days would prejudice the Indemnatee's rights) after receiving notice from the Indemnatee that the Indemnatee believes the Indemnifying Party has failed to take such steps, the Indemnatee may assume its own defense, and the

Indemnifying Party will be liable for all reasonable expenses thereof. Without the prior written consent of the Indemnitee, the Indemnifying Party will not enter into any settlement of (a) any Third Party Claim with respect to Income Taxes or (b) any other Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder. If a firm offer is made to settle a Third Party claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party will give written notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer (other than with respect to Income Taxes) within ten (10) calendar days after its receipt of such notice, the Indemnitee may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such notice. Notwithstanding the foregoing, the Indemnitee shall have the right to pay, compromise, or settle any Third Party Claim (other than with respect to Income Taxes) at any time, provided that in such event the Indemnitee shall waive any right to indemnity hereunder unless the Indemnitee shall have first sought the consent of the Indemnifying Party in writing to such payment, settlement or compromise and such consent was unreasonably

withheld or delayed, in which event no claim for indemnity therefor hereunder shall be waived.

(d) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a "Direct Claim") will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable, but in any event not later than thirty (30) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party will have a period of thirty (30) calendar days (unless waiting thirty (30) days would prejudice the Indemnitee's rights, in which case such period as would likely not prejudice the Indemnitee's rights, but in no event less than ten (10) days) within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such thirty (30) calendar day period, the Indemnifying Party will be deemed to have accepted such Direct Claim. If the Indemnifying Party rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

(e) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by or against any other entity, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith

(together with interest thereon from the date of payment thereof at the prime rate then in effect of the Chase Manhattan Bank), will promptly be repaid by the Indemnitee to the Indemnifying Party. Upon making any indemnity payment, the Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any third party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided, however, that (i) the Indemnifying Party will then be in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnifying Party against any such third party on account of said indemnity payment is hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such third party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnifying Party will duly execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights. Nothing in this Section 9.2(e) shall be construed to require any party hereto to obtain or maintain any insurance coverage.

(f) A failure to give timely notice as provided in this Section 9.2 will not affect the rights or obligations of any party hereunder except if, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced as a result of such failure.

## ARTICLE X

### TERMINATION AND ABANDONMENT

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

(b) This Agreement may be terminated by Seller or Buyer if (i) the Closing shall not have been consummated on or before September 30, 1999 (the "Termination Date"); provided that the right to terminate this Agreement under this Section 10.1(b) shall not be available to Seller or Buyer if its failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing Date to occur on or before such date; and provided, further, that if on September 30, 1999, the conditions to the Closing set forth in Section 8.1(c) shall not have been fulfilled but all other conditions to the Closing shall be fulfilled or shall be capable of being fulfilled, then the Termination Date shall be the day which is eighteen (18) months from the date of this Agreement.

(c) This Agreement may be terminated by either Seller or the Buyer if (i) any governmental or regulatory body, the consent of which is a condition to the obligations of Seller and the Buyer to consummate the transactions contemplated hereby, shall have determined not to grant its consent or shall condition such consent upon any material change to the terms of this Agreement or the Ancillary Agreements or upon any other condition that materially and adversely affects the value of the

transactions contemplated herein or therein for either party and all appeals of such determination shall have been taken and have been unsuccessful; (ii) any court of competent jurisdiction in the United States or any State shall have issued an order, judgment or decree permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby or in the Ancillary Agreements and such order, judgment or decree shall have become final and nonappealable; or (iii) any statute, rule or regulation shall have been enacted or interpreted by any State or Federal government or governmental agency in the United States which prohibits the transactions contemplated herein or in the Ancillary Agreements.

(d) This Agreement may be terminated by the Buyer, if there has been a material violation or breach by Seller of any agreement, representation or warranty contained in this Agreement which (i) has rendered the satisfaction of any condition to the obligations of the Buyer impossible and such violation or breach has not been waived by the Buyer or cured by the Seller within fifteen (15) days after receipt by Buyer of notice specifying same or (ii) causes a Material Adverse Effect, of which Buyer has notified Seller, and which Seller has not promptly exercised commercially reasonable efforts to cure but in no event later than twenty (20) days following such notification by Buyer.

(e) This Agreement may be terminated by Seller, if there has been a material violation or breach by the Buyer of any agreement, representation or warranty contained in this Agreement which has rendered the satisfaction of any condition to the

obligations of Seller impossible and such violation or breach has not been waived by Seller or cured by Buyer within fifteen (15) days after receipt by Buyer of notice specifying same.

(f) This agreement may be terminated by either Seller or the Buyer in accordance with the provisions of Section 7.11(b) or (c).

10.2. Procedure and Effect of Termination. In the event of termination of this Agreement by either or both of the parties pursuant to Section 10.1, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein said termination shall be without any further liability of either party or parties except as follows:

(a) in the event of termination of this Agreement by Seller pursuant to Section 10.1(e), Seller shall have the right to pursue all remedies available to it in equity or at law in connection with the violation or breach of this Agreement by Buyer;

(b) in the event of termination of this Agreement by Buyer pursuant to Section 10.1(d), Buyer shall have the right to pursue all remedies available to it in equity or at law in connection with the violation or breach of this Agreement by Seller;  
and



(c) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other person to which they were made.

## ARTICLE XI

### MISCELLANEOUS PROVISIONS

11.1. Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified or supplemented only by written agreement of Seller and the Buyer.

11.2. Confidentiality. (a) All information regarding a party (the "Disclosing Party") that is furnished directly or indirectly to the other party (the "Recipient") pursuant to this Agreement and marked "Confidential" shall be deemed "Confidential Information." Notwithstanding the foregoing, Confidential Information does not include information that (i) is rightfully received from Recipient from a third party having an obligation of confidence to the Disclosing Party, (ii) is or becomes in the public domain, through no action on Recipient's part in violation of this Agreement, (iii) is already known by Recipient as of the date hereof, or (iv) is developed by Recipient independently of any Confidential Information of the Disclosing Party. Information that is specific as to certain data shall not be deemed to be in the public domain merely because such information is embraced by more general disclosure in the public domain.

(b) Recipient shall keep the Confidential Information strictly confidential and not disclose any Confidential Information to any third party for a period of two (2) years from the date the Confidential Information was received by Recipient, except as otherwise provided herein.

(c) Recipient may disclose the Confidential Information to its and its affiliates' respective directors, officers, employees, consultants, advisors and agents who need to know the Confidential Information for the purpose of assisting Recipient with respect to its obligations under this Agreement. Recipient shall inform all such parties, in advance, of the confidential nature of the Confidential Information. Recipient shall cause such parties to comply with the requirements of this Agreement and shall be responsible for the actions, uses, and disclosures of all such parties.

(d) If Recipient becomes legally compelled or required to disclose any of the Confidential Information (including, without limitation, pursuant to the rules or regulations of the NYPP, ISO or FERC), Recipient will provide the Disclosing Party with prompt written notice thereof so that the Disclosing Party may seek a protective order or other appropriate remedy. Recipient will furnish only that portion of the Confidential Information which its counsel considers legally required, and Recipient will cooperate, at the Disclosing Party's expense, with the Disclosing Party's counsel to enable the Disclosing Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. It

is further agreed that in the event that a protective order or other remedy is not obtained, the Recipient will furnish only that portion of the Confidential Information which, in the written opinion of the Recipient's counsel, is legally required to be disclosed and, upon the Disclosing Party's request, use commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

(e) Recipient shall promptly return to the Disclosing Party all items containing or constituting Confidential Information, together with all copies, extracts, or summaries thereof, upon the earlier of (i) the Disclosing Party's request, or (ii) the termination or expiration of this Agreement.

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

11.4. No Survival. Subject to the provisions of Article X, each and every representation, warranty and covenant contained in this Agreement other than (a) the covenants contained in Sections 3.2, 3.3, 3.4, 7.2(b), 7.2(c), 7.2(d), 7.3, 7.5, 7.6,

7.7, 7.8, 7.10, 7.14, 9.1 and 9.2 and in Article XI (which covenants shall survive in accordance with their terms); (b) the representations and warranties contained in Sections 5.1, 5.2, 5.3, 6.1, 6.2, and 6.3 (which representations and warranties shall survive for twelve (12) months from the Closing) and (c) the representation and warranty in Section 5.21 (which representation and warranty shall survive for the applicable statute of limitations) shall expire with, and be terminated and extinguished by the consummation of the sale of the Purchased Assets and the transfer of the Assumed Liabilities pursuant to this Agreement and such representations, warranties and covenants shall not survive the Closing Date; and none of Seller, the Buyer or any officer, director, trustee or Affiliate of either of them shall be under any liability whatsoever with respect to any such representation, warranty or covenant.

11.5. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon receipt on a Business Day if during the normal business hours of the recipient, or if not, on the next Business Day if delivered personally or by facsimile transmission, telexed or mailed by overnight courier or registered or certified mail (return receipt requested), postage prepaid, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Seller, to:

Orange and Rockland Utilities, Inc.  
One Blue Hill Plaza  
Pearl River, NY 10965  
Attention: Legal Department

with copies to:

Skadden, Arps, Slate, Meagher & Flom LLP  
919 Third Avenue  
New York, NY 10022  
Attention: Sheldon S. Adler, Esq.

(b) if to the Buyer, to:

Southern Energy NY-Gen, L.L.C.,  
c/o Southern Energy, Inc.  
900 Ashwood Parkway  
Suite 500  
Atlanta, Georgia 30338  
Attention: Randy Harrison, Vice-President

with copies to:

Troutman Sanders LLP  
Nationsbank Plaza  
Suite 5200  
Atlanta, GA 30308  
Attention: Robert C. Marshall, Esq.

and

Southern Company Services  
270 Peachtree Street  
Box 918  
Atlanta, Georgia 30303  
Attention: Vice President and Associate General Counsel

11.6. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law without the prior written consent of the other party, nor is this Agreement intended to confer upon any other Person except the parties hereto any rights or remedies hereunder. The Buyer acknowledges that Seller has entered into an Agreement and Plan of Merger whereby Seller will become a wholly-owned subsidiary of Consolidated Edison, Inc. ("CEI"). Notwithstanding any other provision of this Article 11.6, the Buyer agrees that this Agreement may be assigned to CEI, or a wholly-owned affiliate of CEI without the Buyer's consent. Notwithstanding the foregoing, (a) Buyer may assign all of its rights and obligations hereunder to any wholly-owned subsidiary (direct or indirect) of Buyer or Buyer's parent and upon Seller's receipt of notice from Buyer of any such assignment, such assignee will be deemed to have assumed, ratified, agreed to be bound by and perform all such obligations, and all references herein to "Buyer" shall thereafter be deemed to be references to such assignee, in each case without the necessity for further act or evidence by the parties hereto or such assignee; and (b) Buyer or its permitted assignee may assign, transfer, pledge or otherwise dispose of its rights and interests hereunder to a trustee or lending institutions for the purposes of financing or refinancing the Purchased Assets,

including upon or pursuant to the exercise of remedies with respect to such financing or refinancing, or by way of assignments, transfers, pledges, or other dispositions in lieu thereof; provided however, that no such assignment or other disposition shall relieve or in any way discharge Buyer or such assignee from the performance of Buyer's obligations under this Agreement. Seller agrees, at Buyer's expense, to execute and deliver such documents as may be reasonably necessary to accomplish any such assignment, transfer, pledge or other disposition of rights and interests hereunder so long as Seller's rights under this Agreement are not thereby altered, amended, diminished or otherwise impaired.

11.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies, and Seller and the Buyer hereby agree to irrevocably and unconditionally submit to the exclusive jurisdiction of any State or Federal court sitting in New York City over any suit, action or proceeding arising out of or relating to this Agreement. If requested by Seller, Buyer will consent to appointing an agent for service of process in New York City.

11.8. Specific Performance. Seller and Buyer agree that a material breach of this Agreement will cause the non-breaching party immediate and irrepara-

ble harm that monetary damages cannot adequately remedy, and therefore, in addition to all other remedies hereunder, the parties agree that, upon any actual or impending material breach of this Agreement, the non-breaching party shall be entitled to equitable relief, including injunctive relief and specific performance, without bond or proof of damages, and in addition to any other remedies that the non-breaching party may have under applicable law.

11.9. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.10. Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

11.11. Entire Agreement. This Agreement, the Ancillary Agreements, the Confidentiality Agreement, including the Exhibits and Schedules referred to herein or therein, and the Guaranty given to the Seller by Southern Energy, Inc. embody the entire agreement and understanding of the parties hereto in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no



restrictions, promises, representations, warranties, covenants or undertakings of Seller contained in any material made available to the Buyer pursuant to the terms of the Confidentiality Agreement (including the Information Memorandum, dated May 1998 (previously made available to the Buyer by Seller and DLJ). This Agreement supersedes all prior agreements and understandings between the parties with respect to such transactions other than the Confidentiality Agreement.

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

IN WITNESS WHEREOF, Seller and the Buyer have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By D L Peoples  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

SOUTHERN ENERGY NY-GEN, L.L.C.

By \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President

IN WITNESS WHEREOF, Seller and the Buyer have caused this agreement to be signed by their respective duly authorized officers as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By \_\_\_\_\_  
Name: D. Louis Peoples  
Title: Vice Chairman and Chief Executive Officer

SOUTHERN ENERGY NY-GEN, L.L.C.

By  \_\_\_\_\_  
Name: Randy Harrison  
Title: Vice President



**EXHIBITS**  
**TO**  
**GAS TURBINE AND HYDROELECTRIC**  
**SALES AGREEMENT**

FORM OF  
BILL OF SALE

THIS BILL OF SALE, dated as of \_\_\_\_\_,  
by and between Orange and Rockland Utilities, Inc., a New  
York corporation (the "Seller"), and Southern Energy NY-  
Gen, L.L.C., a Delaware limited liability company (the  
"Buyer").

W I T N E S S E T H

WHEREAS, pursuant to that certain Gas Turbine  
and Hydroelectric Generating Stations, dated as of Novem-  
ber \_\_, 1998 (as amended, supplemented or otherwise  
modified from time to time, the "Asset Sales Agreement"),  
by and between the Seller and the Buyer, the Seller has  
agreed to sell, assign, convey, transfer and deliver all  
of its right, title and interest in the Purchased Assets  
(as defined in the Asset Sales Agreement) to the Buyer  
and the Buyer has agreed to purchase and acquire such  
Purchased Assets from the Seller, all as more fully de-  
scribed in the Asset Sales Agreement; and

WHEREAS, pursuant to the Asset Sales Agreement,  
the Seller and the Buyer have agreed to enter into this  
Bill of Sale pursuant to which that part of the Purchased  
Assets which constitutes personal property will be con-  
veyed to the Buyer.

NOW, THEREFORE, in consideration of the forego-  
ing premises and for other good and valuable consider-  
ation, the receipt and adequacy of which is hereby ac-  
knowledged, the parties hereto hereby agree as follows:

1. Defined Terms. Capitalized terms which  
are used but not defined in this Bill of Sale shall have  
the meaning ascribed to such terms in the Asset Sales  
Agreement.

2. Assignment. Except as set forth in Sec-  
tion 3 below and subject to the terms and conditions of  
the Asset Sales Agreement, the Seller does hereby sell,  
assign, convey, transfer and deliver to the Buyer all of  
the Seller's right, title and interest in and to all of  
the Purchased Assets which constitute personal property.

3. Excluded Assets Not Assigned. Notwithstanding anything herein to the contrary, the Excluded Assets are specifically excluded from the Purchased Assets and shall be retained by the Seller at and following the Closing Date.

4. Appointment. The Seller hereby constitutes and appoints the Buyer, and its successors and assigns, as the Seller's true and lawful attorney, with full power of substitution, in the Seller's name and stead, by, on behalf of and for the benefit of the Buyer, and its successors and assigns, to demand and receive any and all of the Purchased Assets transferred hereunder and to give receipts and releases for and in respect of the same, and any part thereof, and from time to time to institute and prosecute, at the expense and for the benefit of the Buyer, and its successors and assigns, any and all proceedings at law, in equity or otherwise, which the Buyer, and its successors or assigns, may deem proper for the collection or reduction to possession of any of the Purchased Assets transferred hereunder or for the collection and enforcement of any claim or right of any kind hereby sold, assigned, conveyed, transferred and delivered, and to do all acts and things in relation to the Purchased Assets transferred hereunder which the Buyer, and its successors or assigns, shall deem desirable.

5. No Third Party Beneficiaries. Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person other than the Buyer, its successors and assigns, any remedy or claim under or by reason of this instrument or any agreements, terms, covenants or conditions hereof, and all the agreements, terms, covenants and conditions contained in this instrument shall be for the sole and exclusive benefit of the Buyer and its successors and permitted assigns.

6. Binding Effect; Assignment. This Bill of Sale and all of the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

7. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

8. Construction. This Bill of Sale is delivered pursuant to and is subject to the Asset Sales Agreement. In the event of any conflict between the terms of the Asset Sales Agreement and the terms of this Bill of Sale, the terms of the Asset Sales Agreement shall prevail.



IN WITNESS WHEREOF, this Bill of Sale has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By \_\_\_\_\_  
Name:  
Title:

SOUTHERN ENERGY NY-GEN, L.L.C.

By \_\_\_\_\_  
Name:  
Title:

FORM OF  
INSTRUMENT OF ASSUMPTION

Instrument of Assumption made, executed and delivered on this \_\_\_\_\_ day of \_\_\_\_\_, 1999 by Southern Energy NY-Gen, L.L.C., a Delaware limited liability company (the "Buyer"), in favor of Orange and Rockland Utilities, Inc., a New York corporation (the "Seller").

W I T N E S S E T H:

WHEREAS, pursuant to that certain Gas Turbine and Hydroelectric Generating Station Sales Agreement, dated as of November 24, 1998 (as amended, supplemented or otherwise modified from time to time, the "Asset Sales Agreement"), by and between the Seller and the Buyer, the Seller is concurrently herewith selling, assigning, conveying, transferring and delivering to the Buyer the Purchased Assets (as defined in the Asset Sales Agreement); and

WHEREAS, in partial consideration therefor, the Asset Sales Agreement requires that the Buyer assume and agree to pay, perform or discharge or cause to be paid, performed or discharged certain liabilities and obligations of the Seller;

NOW, THEREFORE, in consideration of these premises and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Buyer agrees as follows:

1. Capitalized terms which are used in this Instrument of Assumption (including Appendix I hereto) but are not defined in this Instrument of Assumption shall have the meaning ascribed to such terms in the Asset Sales Agreement.

2. The Buyer hereby assumes and agrees to pay, perform or discharge in accordance with their terms,

subject to the limitations contained in this Instrument of Assumption, the liabilities and obligations of the Seller which are described in Appendix I hereto (the "Assumed Liabilities").

3. It is understood and agreed that nothing in this Instrument of Assumption or in Section 2.3 of the Asset Sales Agreement shall constitute a waiver or release of any claims arising out of the contractual relationships between the Seller and the Buyer.

4. The assumption by the Buyer of the Assumed Liabilities shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of the Buyer under the Asset Sales Agreement.

5. Other than as specifically set forth in this Instrument of Assumption or in Section 2.3 of the Asset Sales Agreement, the Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of the Seller, direct or indirect, known or unknown, absolute or contingent, other than the Assumed Liabilities, including, without limitation, any liabilities or obligation in respect of any Excluded Assets.

6. This Instrument of Assumption shall be enforceable against the successors and assigns of the Buyer and shall inure to the benefit of the successors and assigns of the Seller.

7. This Instrument of Assumption shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

8. This Instrument of Assumption is delivered pursuant to and is subject to the Asset Sales Agreement. In the event of any conflict between the terms of the Asset Sales Agreement and the terms of this Instrument of Assumption, the terms of the Asset Sales Agreement shall prevail.

IN WITNESS WHEREOF, this Instrument of Assump-  
tion has been duly executed and delivered by the duly  
authorized officers of the Buyer as of the date first  
above written.

SOUTHERN ENERGY NY-GEN, L.L.C.

[Corporate Seal]

By \_\_\_\_\_  
Name:  
Title:

Attest:

\_\_\_\_\_  
Name:  
Title:

APPENDIX I  
TO INSTRUMENT OF ASSUMPTION

Obligations Assumed

The Buyer shall assume and agree to discharge to the maximum extent permitted by law, all of the following liabilities and obligations of Seller, which relate to the Purchased Assets, other than Excluded Liabilities, in accordance with the respective terms and subject to the respective conditions thereof:

[insert all sub-paragraphs under Section 2.3 of the Asset Sales Agreement]

EXHIBIT C  
TO  
GAS TURBINE AND HYDROELECTRIC  
GENERATING STATIONS  
SALES AGREEMENT

SEPARATION DOCUMENT SUMMARY

EXHIBIT C

HILLBURN GT TRANSMISSION  
INTERCONNECTION

- The Hillburn GT will be interconnected with the O&R transmission system at the bus taps to the 69 kV Bus in O&R Substation #17. The Buyer will be responsible for the protection systems associated with the system on the generator side of the interconnection. O&R shall be responsible for the 69 kV bus differential system.
- The Hillburn 69 kV bus is connected to the O&R transmission system through transmission lines 31, 51, 52, 59 & 89. The combined rating of these lines is 473MW.

Shoemaker GT Transmission  
Interconnection

- The Shoemaker GT will be interconnected with the O&R transmission system at the bus taps to the 69 kV Bus in O&R Substation #11. The Buyer will be responsible for the protection systems associated with the system on the generator side of the interconnection. O&R shall be responsible for the 69 kV bus differential system.
- The Shoemaker 69 kV bus is connected to the O&R transmission system through transmission lines 24, 25, & 27. The combined rating of these lines is 246MW.

Rio Hydro  
Transmission Interconnection

- The Rio Hydro will be interconnected with the O&R transmission system at the bus taps to the 69 kV bus in O&R Substation #3. The Buyer will be responsible for the protection systems associated with the system on the generator side of the interconnection.

- The Rio 69 kV Bus is connected to the O&R Transmission System through two transmission lines, lines 15 & 18. The combined rating of these lines is 53MW.

**Mongaup Hydro**  
**Transmission Interconnection**

- The Mongaup Hydro will be interconnected with the O&R System at the bus taps to the 69 kV bus in O&R Substation #2. The Buyer will be responsible for the protection systems associated with the system on the generator side of the interconnection.
- The Mongaup 69 kV bus is connected to the O&R Transmission System through transmission lines 12, 13, & 15. The combined rating of these lines is 105MW.

**Swinging Bridge Hydro**  
**Transmission Interconnection**

- The Swinging Bridge #1 Hydro will be interconnected with the O&R Transmission System at the bus taps to the 69 kV bus from Switch 11-3 in O&R Substation #3. The Buyer will be responsible for the protection systems associated with the system on the generator side of the interconnection.
- The Swinging Bridge #1A Hydro will be interconnected with the O&R Transmission System at the Line 9 taps to the 69 kV line 9 to Mongaup just outside O&R Substation #3. The Buyer will be responsible for the protection systems associated with the system on the generator side of the interconnection.
- The Swinging Bridge 69 kV bus is connected to the O&R Transmission System through transmission line 9. The rating of this line is 22MW.

**Grahamsville Hydro**  
**Transmission Interconnection**

- The Grahamsville Hydro will be interconnected with the Central Hudson Transmission System at the bus taps to the 69 kV Central Hudson HG lines in O&R



Substation #4. The Buyer will be responsible for the protection systems associated with the generator and the substation, including the protection systems associated with the Central Hudson transmission lines.

- The existing Orange and Rockland Wheeling Agreement with Central Hudson will be assigned to the Buyer.

EXHIBIT D

**BARGAIN AND SALE DEED**

This indenture, made the \_\_\_\_ day of \_\_\_\_\_, nineteen hundred and ninety \_\_\_\_, between ORANGE AND ROCKLAND UTILITIES, INC., a corporation organized under the laws of the State of New York, as party of the first part, and SOUTHERN ENERGY NY-GEN, L.L.C., a limited liability company organized under the laws of the State of Delaware, as party of the second part:

Witnesseth, that the party of the first part, in consideration of \_\_\_\_\_ dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, \_\_\_\_\_ and assigns forever, all \_\_\_\_\_ (description which will include property)(the "Property"), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises (together with the Property, the "Premises")

To have and to hold the Premises herein granted unto the party of the second part \_\_\_\_\_ and assigns forever. And the party of the first part covenants that

it has not done or suffered anything whereby the said premises have been encumbered in any way whatever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

ORANGE AND ROCKLAND UTILITIES, INC.

By: \_\_\_\_\_  
Name:  
Title:

CORPORATE SEAL

EXHIBIT E

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration"), made as of the [ ] day of [ ], 199[], is BETWEEN ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation having an office at One Blue Hill Plaza, Pearl River, New York 10965 (together with its successors and assigns "O&R") and SOUTHERN ENERGY NY-GEN, L.L.C., a Delaware limited liability company having an office at [ ] (together with its successors and assigns "Buyer"). ]

WITNESSETH, that O&R, in consideration of [ ] Dollars and other valuable consideration paid by Buyer, does hereby grant and release unto Buyer, its successors and assigns forever, the easements and rights more particularly described hereinafter, appurtenant to the Property, which easements and rights are hereby declared to be part and parcel of the conveyance of the Property described in a certain deed of even date herewith (the "Deed");

WHEREAS, O&R is the owner in fee simple of certain premises in [ ] more particularly described on (a) Exhibit A attached hereto and made a part hereof (the "[ ]");

WHEREAS, [BUYER] is the owner in fee simple of certain adjoining premises in [ ] consisting of [ ] more particularly described on Exhibit B attached hereto and made a part hereof (the "[ ]") which were conveyed by O&R to Buyer pursuant to the Deed;

WHEREAS, there are certain defined terms used in this Declaration and such terms have the meanings ascribed to them in the Deed.

NOW THEREFORE, for the consideration recited above, O&R hereby grants and releases unto Buyer, its successors and assigns forever, the easements and rights described in Sections [ ], appurtenant to the [Premises], as follows:

GRANT OF EASEMENTS TO BUYER BURDENING O&R'S PREMISES

[Following are examples of types of easements which do not necessarily reflect the easements to be granted to Buyer]

1. [Roadway Easement.]
2. [Oil Tank Parcel Access Easement.]
3. [Gas Pipeline Easement.]
4. [Utility Pole Easement.]
5. Covenant Against Grantor Acts. Grantor covenants that it has not done or suffered anything whereby the said premises have been encumbered in any way whatsoever.
6. Right to Easements. The easements and rights granted to Buyer herein shall run to the benefit of Buyer, its successors and assigns.

IN WITNESS WHEREOF, O&R and Buyer have duly executed  
this instrument as of the day and year first above written.

ORANGE AND ROCKLAND UTILITIES,  
INC.

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT A

EXHIBIT B





On the       day of       , 199   before me personally came   , to me known, who, being by me duly sworn, did depose and say that he resides at No.   ; that he is the   of Southern Energy NY-Gen, L.L.C., the limited liability company described in and which executed the foregoing instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

**Notary Public**

EXHIBIT F

ASSIGNMENT AND ASSUMPTION OF LEASE  
(O&R as Lessee)

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT, made as of \_\_\_\_\_, 1998 (this "Assignment"), by and between ORANGE AND ROCKLAND UTILITIES, INC., a New York corporation whose principal office is located at One Blue Hill Plaza, Pearl River, New York 10965 ("Assignor") and SOUTHERN ENERGY NY-GEN, L.L.C., a Delaware limited liability company whose principal office is located at [ ] ("Assignee").

WHEREAS, Assignor is the lessee under that certain Lease, dated [ ] by and between Assignor and [ ], as lessor, concerning premises/property located at [ ] (as the same may have been amended, modified, supplemented, extended and/or assigned, the "Lease");

WHEREAS, Assignor desires to assign the Lease to Assignee so that Assignee may have the benefit of the use of the property subject to the Lease; and

WHEREAS, this Assignment shall be effective as of the close of business on the date hereof, the date of the closing of the sale of the Gas Turbine and Hydroelectric Generating Stations as contemplated by Gas Turbine and Hydroelectric Generating Station Sales Agreement, dated as of November 24, 1998 between Assignor and Southern Energy NY-Gen, L.L.C. (the "Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged:

1. Assignor hereby assigns and transfers all of its rights, title and interest as tenant, in, to and under the Lease, including, but not limited to, any security of Assignor held by lessor under the Lease, to Assignee, its successors and assigns from and after the effective date of this Assignment for the remainder of the

term of the Lease, subject to the rental, terms, covenants and conditions of the Lease and including, without limitation, any and all renewal and purchase options.

2. Assignee hereby assumes all liabilities and the performance of all of the terms, covenants and conditions arising out of the Lease, and with respect to the premises relating to such Lease, herein assigned by Assignor to Assignee to be paid or performed subsequent to this Assignment. Assignee agrees to pay the rent reserved by the Lease in accordance with the terms hereof until the termination of the Lease and will well and truly perform all the terms, covenants and conditions of the Lease herein assigned and hereinafter arising, all with full force and effect as if Assignee had signed the Lease originally as tenant named therein.

3. Nothing contained herein shall be deemed to vitiate any representations, warranties or agreements undertaken by Assignor or Assignee as set forth in or pursuant to the Agreement. Except as provided in the Agreement, Assignor makes no representations or warranties of any kind whatsoever.

4. Assignee hereby agrees that the obligations herein assumed by Assignee shall inure to the lessor named in the Lease and to its successors and assigns.

5. Assignor and Assignee each agrees to execute and deliver to the other party, if the other party so requests, such further instruments as may be reasonably required to complete or further evidence either the foregoing assignment or the foregoing assumption.

6. This Assignment may be executed in one or more counterparts, each of which shall constitute an original and all of which when taken together shall constitute one binding agreement.

7. It is understood and agreed that nothing in this Assignment and Assumption of Lease or in Section 2.3 of the Agreement shall constitute a waiver or release of any claims arising out of the contractual relationships between the Seller and the Buyer.

8. The assumption by the Buyer of the Lease shall not be construed to defeat, impair or limit in any way the rights, claims or remedies of the Buyer under the Agreement.

9. Other than as specifically set forth in this Assignment and Assumption of Lease or in Section 2.3 of the Agreement, the Buyer shall not assume or be obligated to pay, perform or otherwise discharge any liability or obligation of the Seller, direct or indirect, known or unknown, absolute or contingent, other than the Assumed Liabilities, including, without limitation, any liabilities or obligation in respect of any Excluded Assets.

10. This Assignment and Assumption of Lease shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable New York principles of conflicts of laws).

11. This Assignment and Assumption of Lease is delivered pursuant to and is subject to the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Assignment and Assumption of Lease, the terms of the Agreement shall prevail.

12. Capitalized terms which are used but not defined herein shall have the meaning ascribed to such term in the Agreement.

IN WITNESS WHEREOF, Assignor and Assignee have executed this instrument as of the date first set forth above.

ASSIGNOR:

ORANGE AND ROCKLAND UTILITIES, INC.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE:

SOUTHERN ENERGY NY-GEN, L.L.C.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:

State of \_\_\_\_\_ )  
 )ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_,  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s)  
whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on  
the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the  
instrument.

WITNESS my hand and official seal.

NOTARIAL SEAL

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**SCHEDULES**  
**TO THE**  
**GAS TURBINE AND HYDROELECTRIC GENERATING STATIONS**  
**SALES AGREEMENT**



**Schedule 1.1 (a)(11)**

<b>GENERATING STATION</b>	<b>NOX ALLOWANCES 1999 TO 2002*</b>	<b>SO2 ALLOWANCES 2000 TO 2009</b>	<b>SO2 ALLOWANCES 2010 AND THEREAFTER</b>
HILLBURN	6	—	—
SHOEMAKER	15	—	—
<b>TOTAL</b>	<b>21</b>	<b>—</b>	<b>—</b>

\* The NOx Budget Program regulations (6 NYCRR 227-3) have been issued and noticed for public comment. Since these regulations have not yet been adopted, the NOx allocation may be subject to change. Buyer will receive all NOx allowances allocated to these generating stations.

**Schedule 1.1(a)(22)**

**Hillburn Gas Turbine Generating Station**

Seller's Hillburn Generating Station is located in Hillburn, New York. This station consists of two aircraft engines used as gas generators, one double flow power turbine and an electric generator. The Hillburn Generating Station has a nominal capacity of 40 MW.

The following table shows the primary fuel and the Summer Dependable Maximum Net Capability as reported to the New York Power Pool for the 1997 Summer Capability Period on 09/26/97.

UNIT	NET CAPABILITY (MW)	PRIMARY FUEL
Hillburn	37.9	Oil/Gas

The station contains unit-specific and common equipment, systems and auxiliaries used to operate the electric generating unit. A listing of the major equipment for the unit is provided in the following table.

ENGINES			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Hillburn "A"	GG-4A-12DF	Pratt & Whitney	675261
Hillburn "B"	GG-4A-7DF	Pratt & Whitney	675445

EXPANDERS			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Hillburn	ER-224 Double Flow Power Turbine	Worthington	SN# 28653 Shop Order #16689

GENERATORS			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Hillburn	Turbo-Type 46,500 KVA	Electric Machinery Mfg. Co.	1-70146810 Rotor: 170152311 Stator: 169198711 Exciter: 70146870 Assembly & Test Pro- duction: 169198711

The following table lists major plant systems:

<b>LIST OF MAJOR SYSTEMS - Gas Turbines</b>
---

Hillburn

Mechanical Equipment

Gas Generators  
Gas Generators Lubrication System  
Gas Generators Fuel Systems  
Gas Generators Air Storage System  
Power Turbine  
Power Turbine and Electric Generator Lubrication  
System  
Instrument and Control System  
Heating, Ventilation, and Air Conditioning  
Fire Extinguishing System

Electrical Equipment

Electric Generator and Exciter  
Main Transformer  
Station Service Auxiliary Transformer  
Grounding Transformer  
Switchgear  
AC and DC Motor Control Centers  
DC Storage Batteries and Charger  
Emergency Engine Generator Unit

The following is a description of the Generating Step Up ("GSU") transformer at the Hillburn Gas Turbine Generating Station:

UNIT ID	SIZE	DATE OF MANUFACTURE
Hillburn - Bank 617 SN: 2-8225-52481-1	Class: FOA; 50,000 KVA	Allis - Chalmers 1970

**Schedule 1.1(a)(22)(m)**

**Nothing to disclose.**

**Schedule 1.1(a)(25)**

**Hydroelectric Generating Stations**

The four Hydroelectric Generating Stations (i.e., Mongaup, Swinging Bridge, Rio and Grahamsville) operated by- Seller are located in Sullivan and Orange Counties in the southeastern section of New York State. The four stations have a combined nominal capacity of 44 MW. The following table shows the primary fuel (water) and the Summer Dependable Maximum Net Capability as reported to the New York Power Pool for the 1997 Summer Capability Period on 09/26/97.

UNIT	NET CAPABILITY (MW)	PRIMARY FUEL
Mongaup 1	0.9	Water
Mongaup 2	1.0	Water
Mongaup 3	1.0	Water
Mongaup 4	1.0	Water
Swinging Bridge 1	4.7	Water
Swinging Bridge 2	7.8	Water
Rio 1	5.1	Water
Rio 2	5.1	Water
Grahamsville	18.0	Water

Each station contains unit-specific and common equipment, systems and auxiliaries used to operate the electric generating units. A listing of the major equipment for the units is provided in the following table.

HYDRAULIC TURBINES			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Mongaup 1	Francis Vertical Shaft 1645 Hp @ 110 ft Head	S. Morgan Smith	3940227
Mongaup 2	Francis Vertical Shaft 1645 Hp @ 110 ft Head	S. Morgan Smith	3940226
Mongaup 3	Francis Vertical	S. Morgan Smith	3940225

### HYDRAULIC TURBINES

UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
	Shaft 1645 Hp @ 110 ft Head		
Mongaup 4	Francis Vertical Shaft 1645 Hp @ 110 ft Head	S. Morgan Smith	3940224
Swinging Bridge 1	Francis Vertical Shaft 5980 Hp @ 110 ft Head	S. Morgan Smith	8466
Swinging Bridge 2	Francis Vertical Shaft 9500 Hp @ 110 ft Head	S. Morgan Smith	8926
Rio 1	Francis Vertical Shaft 7000 Hp @ 170 ft Head	S. Morgan Smith	8321
Rio 2	Francis Vertical Shaft 7000 Hp @ 170 ft Head	S. Morgan Smith	8322
Grahamsville	Francis Vertical Shaft 28,000 HP @ 330 ft Head	Newport News	

### TURBINE GOVERNOR

UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Mongaup 1	H.R. Size: 7.74 X 12	Woodward Governor Co.	4864
Mongaup 2	H.R. Size: 7.74 X 12	Woodward Governor Co.	4865
Mongaup 3	H.R.	Woodward Governor	4866

### TURBINE GOVERNOR

UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
	Size: 7.74 X 12	Co.	
Mongaup 4	H.R. Size: 7.74 X 12	Woodward Governor Co.	5574
Swinging Bridge 1	G.S. Size: 27	Woodward Governor Co.	
Swinging Bridge 2	H.P. Size: 15 X 16	Woodward Governor Co.	9967
Rio 1	H.R. Size: 12.5 X 16	Woodward Governor Co.	174151
Rio 2	H.R. Size: 12.5 X 16	Woodward Governor Co.	174152
Grahamsville	Cabinet	Woodward Governor Co.	307606

### GENERATOR

UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Mongaup 1	A.T.B. Vertical	General Electric Co.	3940227
Mongaup 2	A.T.B. Vertical	General Electric Co.	3940226
Mongaup 3	A.T.B. Vertical	General Electric Co.	3940225
Mongaup 4	A.T.B. Vertical	General Electric Co.	4097784
Swinging Bridge 1	Vertical	Allis-Chalmers	
Swinging Bridge 2	Vertical	Westinghouse	158P250
Rio 1	A.T.B. Vertical	General Electric Co.	4731153
Rio 2	A.T.B. Vertical	General Electric Co.	4731152
Grahamsville	Vertical	Westinghouse	1S46P706

The following is a list of the main transformers at the Hydroelectric Generating Facilities:

<u>UNIT ID</u>	<u>SIZE</u>	<u>DATE OF MANUFACTURE</u>
Mongaup- Bank 52 C 160184	5000 KVA	General Electric - 1987
Swinging Bridge - Bank 11 714571	6000 KVA	Allis - Chalmers Mfg. Co. - 1925
Swinging Bridge - Bank 21 1643194	7500 KVA	Allis - Chalmers Mfg. Co. - 1939
Rio - Bank 13 3510858	12000 MVA	Allis - Chalmers - 1986
Grahamsville - Bank 14 5069693	20000 KVA	Westinghouse - 1953

The following table lists major plant systems. These systems may be common to each of the units, or may be unit specific for one or more units.

<p align="center"><b>LIST OF MAJOR SYSTEMS - HYDROELECTRIC GEN- ERATING STATIONS</b></p>
--

Mongaup Falls

Mechanical Equipment

Hydraulic Turbines

Turbine Governors

Governor Oil Pressure Pump Motor

Generator and Auxiliaries

Exciters

Lube Oil Systems

Compressed Air Systems

Powerhouse Crane

Head Gates and Hoists

Instrument and Control Systems

Penstock Stop Valves and Motors

Penstock

Dam

Spillway

By-Pass Works



## **Water Quality Monitoring Systems**

### **Electrical Equipment**

**Main Transformers**

**Unit Auxiliary Transformers**

**Gate House Power & Lighting Transformers**

**Oil Circuit Breaker**

**Emergency Engine Generator Unit**

### **Rio**

#### **Mechanical Equipment**

**Hydraulic Turbines**

**Turbine Governors**

**Governor Oil Pressure Pump Motor**

**Generator and Auxiliaries**

**Exciters**

**Lube Oil Systems**

**Compressed Air Systems**

**Powerhouse Crane**

**Head Gates and Hoists**

**Filler Gate**

**Instrument and Control Systems**

**Penstock Butterfly Valves and Motors**

**Penstock**

**Dam**

**Spillway**

**By-Pass Works**

**Water Quality Monitoring Systems**

### **Electrical Equipment**

**Main Transformers**

**Unit Auxiliary Transformers**

**Gate House Power & Lighting Transformers**

**Oil Circuit Breaker**

### **Swinging Bridge**

**Mechanical Equipment**

Hydraulic Turbines  
Turbine Governors  
Governor Oil Pressure Pump Motor  
Generator and Auxiliaries  
Exciters  
Lube Oil Systems  
Compressed Air Systems  
Powerhouse Cranes  
Fire System  
Head Gates and Hoists  
Instrument and Control Systems  
Penstock Stop Valves and Motors  
Swinging Bridge Penstocks  
    Toronto, Cliff Lake, and Swinging Bridge Dams  
    Toronto, Cliff Lake, and Swinging Bridge Spillways  
    Toronto Gate House with Upper and Lower Slide  
        Gates and Power Generator  
Cliff Lake to Swinging Bridge Interconnecting Tunnel with  
Shutoff Gate  
    Swinging Bridge #2 By-Pass Works  
    Water Quality Monitoring Systems

**Electrical Equipment**

Main Transformers  
Unit Auxiliary Transformers  
Gate House Power & Lighting Transformers  
Oil Circuit Breaker

**Grahamsville**

**Mechanical Equipment**

Hydraulic Turbine  
Turbine Governor  
Governor Oil Pressure Pump Motor  
Generator and Auxiliaries

Exciter  
Lube Oil System  
Compressed Air System  
Powerhouse Crane  
Head Gate and Hoist  
Instrument and Control Systems

Electrical Equipment

Main Transformers  
Unit Auxiliary Transformers  
Oil Circuit Breaker

The following are the critical spares for equipment at the Hydroelectric Generating Facilities

<b>DESCRIPTION</b>	<b>STORAGE LOCATION ON SITE</b>
Grahamsville, (1) Main Turbine Bearing	Grahamsville Warehouse

The hydroelectric warehouses contain sufficient inventory to repair all major equipment located throughout the plants.

The following is a list of major vehicles at the hydroelectric generating facilities:

<b>ITEM</b>	<b>MANUFACTURER</b>	<b>MODEL NUMBER</b>	<b>SERIAL NUMBER</b>	<b>ORU ID NUMBER</b>	<b>OWN / LEASE</b>
Pick-up Truck	GMC (Pontiac)	Sierra		318	Own
Pick-up Truck	Ford 1990	E250		356	Own
Pick-up Truck	Ford 1993	F150		361	Own
Pick-up Truck	Ford 1989	F350		312	Own
Pick-up Truck	Ford 1997	Ranger		344	Own
Rackbody Truck	Ford 1993	F800		738	Own
Dump Truck	Ford 1993	F800		831	Own
Backhoe- Bucket Loader	Case - 1989	480E		861	Own
Boat, Motor & Trailer					Own

**Schedule 1.1(a)(25)(k)**

Nothing to disclose.

**Schedule 1.1(a)(44)**

**CAPITAL EXPENDITURES**

Nothing to disclose.

**Schedule 1.1(a)(45)**

**MAINTENANCE EXPENDITURES  
PLANNED OVERHAULS AND Y2K EXPENSE**

**EXPENSE**

**Through April 1999**  
**(Amounts in Thousands)**

**Overhauls**

G.T. Hillburn "A" Engine

**\$170.00**

**Schedule 1.1(a)(51)**

**Shoemaker Gas Turbine Generating Station**

Seller's Shoemaker Generating Station is located in Middletown, New York. The station consists of two aircraft engines used as gas generators, one double flow power turbine and an electric generator. This Station is equipped with a natural gas compressor which is used to raise its gas supply to the required pressure level. The Generating Station has a nominal capacity of 40 MW.

The following table shows the primary fuel and the Summer Dependable Maximum Net Capability as reported to the New York Power Pool for the 1997 Summer Capability Period on 09/26/97.

UNIT	NET CAPABILITY (MW)	PRIMARY FUEL
Shoemaker	36.3	Oil/Gas

The station contains unit-specific and common equipment, systems and auxiliaries used to operate the electric generating unit. A listing of the major equipment for the units is provided in the following table.

ENGINES			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Shoemaker "A"	GG-4A-7DF	Pratt & Whitney	675444
Shoemaker "B"	GG-4A-7DF	Pratt & Whitney	675443

EXPANDERS			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Shoemaker	ER-224 Double Flow Power Turbine	Worthington	SN# 28654 Shop Order # 16691



GENERATORS			
UNIT	TYPE	MANUFACTURER	SERIAL NUMBERS
Shoemaker	Turbo-Type 46,500 KVA	Electric Machinery Mfg. Co.	2-70146810 Rotor: 370154911 Stator: 269198711  Assembly & Test Pro- duction: 269198711

The following table lists major plant systems:

<b>LIST OF MAJOR SYSTEMS - Gas Turbines</b>
---

Shoemaker

Mechanical Equipment

- Gas Generators
- Gas Generators Lubrication System
- Gas Generators Fuel Systems, including Gas Com-  
pressor
- Gas Generators Air Storage System
- Power Turbine
- Power Turbine and Electric Generator Lubrication  
System
- Instrument and Control System
- Heating, Ventilation, and Air Conditioning
- Fire Extinguishing System

Electrical Equipment

- Electric Generator and Exciter
- Main Transformer
- Station Service Auxiliary Transformer
- Grounding Transformer
- Switchgear
- AC and DC Motor Control Centers
- DC Storage Batteries and Charger
- Emergency Engine Generator Unit

The following is a description of the Generating Step Up ("GSU") transformer at the Shoemaker Gas Turbine Generating Station:

UNIT ID	SIZE	DATE OF MANUFACTURE
Shoemaker - Bank 511 SN: 2-8225-52481-2	Class: FOA; 50,000 KVA	Allis - Chalmers 1970

**Schedule 1.1(a)(51)(i)**

**Nothing to disclose.**

**Schedule 2.2(c)**

**HILLBURN -- EXCLUDED ASSETS**

◆ **PRIMARY EQUIPMENT - 69KV YARD**

*OCB'S -- 89-17-2Y, T-89-59, 59-17-2X, 317-2Y, T317-65, 65-17-2X, 31-17-2Y,  
31-17-2X, 23-17-2Y, T917-23, 917-2X*

*DISCONNECTS -- 89-17-1Y, 89-17-3Y, T-89-3, T-59-3, 59-17-3X, 59-17-1X,  
317-1Y, 317-3Y, T317-3, T65-3, 65-17-3X, 65-17-1X, 31-17-1Y,  
31-17-3Y,  
T-31-3, 31-17-3X, 31-17-1X, 23-17-1Y, 23-17-3Y, T23-3, T917-3,  
917-3X,  
917-1X, 52-17-4*

*BANK 317, BANK 917*

◆ **PROTECTIVE RELAY SYSTEMS**

*Line 52 Relay Protection*

*Line 89 Relay Protection*

*Line 31 Relay Protection*

*Line 65 Relay Protection*

*Line 59 Relay Protection*

*Bank 317 Relay Protection*

*Bank 917 Relay Protection*

*Bus X & Bus Y Relay Protection*

◆ **SCADA EQUIPMENT**

*One (1) Westinghouse Redac 70 H System*

◆ **TELECOMMUNICATION EQUIPMENT**

*RTU Telephone Circuit #88QLV3550*

*Station Voiceline Phone Number 357-0097*

◆ **BRICK CONTROL BUILDING**

◆ **TRANSMISSION LINES & TOWERS (in addition to lines connected to station)**

*345KV Line 69*

*345KV Line 70*

*138 KV Line 26*

*138 KV Line 51*

◆ **STORED EQUIPMENT**  
**All Stored Equipment**

**Schedule 2.2(c)**

**SHOEMAKER – EXCLUDED ASSETS**

- ◆ **PRIMARY EQUIPMENT - 35KV YARD**  
All Equipment Is Excluded
- ◆ **PRIMARY EQUIPMENT - 69KV YARD**  
  
OCB'S – 12-11-2, 13-11-2, 24-11-2, 25-11-2, 120-11-2, 119-11-2,  
C1-11-2, 811-2  
DISCONNECTS – 311-A, T-11-1, 311-X, 311-Y, C1-11-1, S111-4, 511-X,  
511-Y, 12-X, 24-Y, 12-11-3, 12-11-1, 12-11-5, 13-11-1, 13-11-3,  
13-11-5, 24-11-1, 24-11-3, 24-11-5, 25-11-1, 25-11-3, 25-11-5, 13-X,  
25-Y, 119-X, 119-Y, 120-Y, 120-3, 119-3, 811-1  
*BANK 311, CAP BANK C1*
- ◆ **PRIMARY EQUIPMENT - 138KV YARD**  
All Equipment Is Excluded
- ◆ **PROTECTIVE RELAY SYSTEMS**  
All 35kv Yard Relay Protection  
Line 12 Relay Protection  
Line 13 Relay Protection  
Line 24 Relay Protection  
Line 25 Relay Protection  
Line 119 Relay Protection  
Line 120 Relay Protection  
Cap Bank C1 Relay Protection  
Bus X & Bus Y Relay Protection  
All 138kv Yard Relay Protection
- ◆ **SCADA EQUIPMENT**  
None
- ◆ **TELECOMMUNICATION EQUIPMENT**  
None

**Schedule 2.2(c)**

**SWINGING BRIDGE- EXCLUDED ASSETS**

- ◆ PRIMARY EQUIPMENT - 69KV YARD  
  
    *DISCONNECTS -- 9-1-4, 41-A*  
    *BANK 41*
- ◆ PROTECTIVE RELAY SYSTEMS  
    Line 9 Relay Protection
- ◆ SCADA EQUIPMENT  
    One (1) Westinghouse Redac 70 H System
- ◆ TELECOMMUNICATION EQUIPMENT  
    RTU Telephone Circuit # 97PLNA004072C  
    Station Voiceline # 856-2612

**Schedule 2.2(c)**

**MONGAUP – EXCLUDED ASSETS**

◆ **PRIMARY EQUIPMENT - 69KV YARD**

*OCB – 9-2-2, 12-2-2, 131-2-2, 15-2-2*

*DISCONNECTS – 12-A, 12-2-1, 12-2-3, 12-2-4, 131-2-1, 131-2-3, 131-2-4,  
15-2-1, 15-2-3, 15-2-4, 9-2-1, 9-2-3, 9-2-4, 2-1-2K*

*BANK 12*

◆ **PROTECTIVE RELAY SYSTEMS**

Line 9 Relay Protection

Line 12 Relay Protection

Line 131 Relay Protection

Line 15 Relay Protection

◆ **SCADA EQUIPMENT**

One (1) Westinghouse Redac 70 H System

◆ **TELECOMMUNICATION EQUIPMENT**

RTU Telephone Circuit # 97PLNA004074C

Station Voiceline Phone # 856-2109



**Schedule 2.2(c)**

**RIO - EXCLUDED ASSETS**

◆ **PRIMARY EQUIPMENT - 69KV YARD**

*OCB* -- 15-3-2, 53-2, 3-1D-2, 18-3-2

*DISCONNECTS* -- 15-3-1, 15-3-3, 15-3-4, 53-1, 53-3, 53-A, 18-3-1, 18-3-3,  
18-3-5, 3-1D-1, 3-1D-3, 3-1D-5, S-3-1

*BANK 53*

◆ **PROTECTIVE RELAY SYSTEMS**

Line 15 Relay Protection

Line 18 Relay Protection

Line 1d Relay Protection

Bank 53 Relay Protection

◆ **SCADA EQUIPMENT**

One (1) Westinghouse Redac 70 H System

◆ **TELECOMMUNICATION EQUIPMENT**

RTU Telephone Circuit # 97PLNA004073C

Station Voice Phone # 856-5711

**Schedule 2.2(c)**

**GRAHAMSVILLE – EXCLUDED ASSETS**

- ◆ PRIMARY EQUIPMENT - 69KV YARD  
None
- ◆ PROTECTIVE RELAY SYSTEMS  
None
- ◆ REVENUE METER EQUIPMENT  
None
- ◆ SCADA EQUIPMENT  
None
- ◆ TELECOMMUNICATION EQUIPMENT  
None

**Schedule 5.3(a)**

**Nothing to disclose.**

**Schedule 5.3(b)**

Nothing to disclose.

**Schedule 5.6**

**Nothing to disclose.**

**Schedule 5.7**

**Nothing to disclose.**

**Schedule 5.8**

**HILLBURN GAS TURBINE**

<b><u>ORU DEED #</u></b>	<b><u>GRANTOR</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>
250	F. & E. Snow	01/26/03	01/26/03	212	57
252	F. & E. Snow	11/7/05	11/17/05	222	456
253/176	E. Snow	11/25/24	11/25/24	297	334
779	J&E Rapp	06/14/55	10/03/55	612	473
778	F&R Ominski	12/07/55	10/12/55	615	214
766	G.S. Bristow	05/07/54	05/12/54	580	216

**Excepting therefrom:**

Land conveyed for a road widening of Fourth Street and easements for N.Y.S. Thruway construction.

**SHOEMAKER GAS TURBINE**

Note: Easement to be granted to Buyer on lands acquired by Seller from the following:

<b><u>ORU DEED #</u></b>	<b><u>GRANTOR</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>
569	S. Golub	01/21/31	03/30/31	716	148

Depending on location of easement granted to Buyer, may also include part of:

939	Barmann & Sons	06/19/74	07/18/74	1984	227
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**Schedule 5.8**

**Toronto Reservoir**

**All or part of the following lands located in the Town of Bethel, Sullivan County, State of New York**

<b><u>ORU DEED</u></b>	<b><u>GRANTOR</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE*</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
99	Estate of Chester H. Chapin, deceased	04/06/25	10/06/25	241	449	
147	Iroquois Hunting & Fishing Club, Inc.	07/23/25	08/06/25	240	210	
148	Catskill Power Corp.	07/23/25	08/09/25	240	194	
149	Henry A. & Mary S. Ingraham	05/26/25	05/29/25	238	569	
150	Daniel P. & Myrtle L. French	06/29/25	06/29/25	239	259	
151	George and Josephine Wells	06/29/25	07/01/25	239	279	
152	Anna Hansaker	06/29/25	07/01/25	239	276	
153	Jerry B. Miller and Others	07/15/25	08/03/25	240	142	
154	Willard Conklin	07/31/25	08/03/25	240	145	
155	Willard Conklin & Rose Miller	07/31/25	08/03/25	240	146	
158	Calvin & Minnie Conklin	06/29/25	07/23/25	240	21	
159	Henry Harmon	06/29/25	07/01/25	239	278	

\* Recording references are to Sullivan County Clerk's office.



<u>ORU DEED</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED DATE*</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
160	Anthony & Lena Schaefer	08/26/25	09/08/25	240	561	
161	Lawrence Phillips	07/22/25	07/23/25	240	23	
162	Richard Dauch	09/24/25	09/25/25	241	330	
410	Edwin & Marie M. Corneille	05/27/25	05/29/25	238	570	
Easement	Clove Development Corporation	10/19/90	10/24/90	1490	117	Flowage, Flood Inundation, Access, Electric Distribution

**Excepting therefrom:**

Lands conveyed to Clove Development Corp. by deed dated 12/31/71, but together with rights for access reserved in said deed, recorded 3/22/72, Book 1902, Page 106, Sullivan County Clerk's Office.

**Note: Seller or its subsidiary Clove Development Corporation will provide an easement for flood inundation purposes to Buyer over certain lands located between Toronto Reservoir and Cliff Lake.**

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\* Recording references are to Sullivan County Clerk's office.

**Schedule 5.8**

**GRAHAMSVILLE**

<b><u>ORU DEED #</u></b>	<b><u>GRANTOR</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE*</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
738	Dagobert D. Runes	09/16/49	09/24/49	483	116	
739/740	Francis E. Manley	10/27/50	10/31/50	445	58	
811	Town of Neversink	12/24/51	01/03/52	461	495	
Easement	Dagobert D. Runes	12/17/51	12/26/51	461	344	Road R/W
Easement	Ralph A. Hornbeck & Doris Hornbeck	12/13/51	12/26/51	461	349	Road R/W
Easement	Harry Robinson & Beatrice Robinson	12/13/51	12/26/51	461	354	Road R/W

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\* Recording references are to Ulster County Clerk's office.

**Schedule 5.8**

**RIO**

All or part of the following lands located in the Towns of Forestburgh and Lumberland in Sullivan County and Deerpark in Orange County, State of New York:

<b><u>ORU</u></b> <b><u>DEED #</u></b>	<b><u>GRANTOR</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED</u></b> <b><u>DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>COUNTY</u></b>
146	James Britton Young & Sallie C. Young, wife	3/20/26	03/26/26	662	555	Orange
370	Alexander Boyd and others	01/31/28	02/20/28	683	367	Orange
962	New York Land Exchange, Inc.	03/15/83	04/08/83	2248	115	Orange
140	Ella Adams	12/30/25	12/31/25	243	293	Sullivan
141	Eleanor V. Culver	03/02/26	03/08/26	244	252	Sullivan
193	James Linley & Addie Linley, wife	09/17/26	10/07/26	248	403	Sullivan
265	Minnie M. Wright, widow of Charles F. Wright	05/19/26	05/24/26	245	519	Sullivan
266	James S. Holden	05/20/26	05/24/26	245	524	Sullivan
267	F.M. Wright & C.W. Glidden, Executors of Estate of Charles F. Wright, deceased	05/18/26	05/24/26	245	528	Sullivan
275	Agnes J. and Martha G. Wilson	05/29/26	06/02/26	246	27	Sullivan
281	Loula Mae K. McLean	11/04/26	11/12/26	249	206	Sullivan
347	Frederick C. and Louise Kengeter, wife	04/06/27	04/08/27	251	536	Sullivan

<u>ORU</u> <u>DEED #</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED</u> <u>DATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>COUNTY</u>
348	Wm. Bullivant, Guardian of Wilburta Cornwell	06/22/27	06/24/27	253	308	Sullivan
361	Frederick C. Kengeter & Louise Kengeter, wife	12/28/27	12/29/27	257	121	Sullivan
371	Fredericka S. Mack	05/21/23	05/23/23	226	27	Sullivan
372	Charles H. Mack	05/21/23	05/23/23	226	23	Sullivan
373	Charles H. Mack	05/21/23	05/23/23	226	26	Sullivan
382	F. Miller Wright, Minnie M. Wright, Jas. S. & Elsie H. Holden, wife	09/19/28	09/27/28	262	203	Sullivan
383	James S. & Elsie H. Holden	09/26/28	09/27/28	262	211	Sullivan
680	Nancy Olds Culver	09/25/42	09/26/42	357	59	Sullivan
986	S.H. Spangenberg	03/03/92	03/05/92	1572	173	Sullivan
988	A. & P. Lopez	03/30/92	03/31/92	1577	195	Sullivan
989	B. & C. Tufano	03/30/92	03/31/92	1577	192	Sullivan
990	R. & J. Sullivan	04/01/92	04/07/92	1579	46	Sullivan
991	R. & H. Moore	04/03/92	04/07/92	1579	43	Sullivan
992	A. Gilson	04/03/92	04/07/92	1579	52	Sullivan
993	D. & M. DeGroat	04/03/92	04/07/92	1579	49	Sullivan
994	V. & F. Russo	04/10/92	04/16/92	1581	154	Sullivan
996	D. & L. Storms	04/22/92	05/06/92	1585	363	Sullivan

<u>ORU</u> <u>DEED #</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED</u> <u>DATE</u>	<u>BOOK</u>	<u>PAGE</u>	<u>COUNTY</u>
997	D. & N. Costescu	04/20/92	05/21/92	1589	54	Sullivan
998	L. R. Scharffenberg	08/27/92	09/03/92	1613	131	Sullivan
Easement	Monmouth Council, Inc., Boy Scouts of America	09/23/92	10/28/92	1624	35	Sullivan
Easement	Metauke Falls Sportsman's Club, Inc.	03/12/93	05/20/93	1667	1	Sullivan
Easement	Clove Development Corporation	10/19/90	10/24/90	1490	135	Slope and Laydown Easement
Easement	Clove Development Corporation	10/19/90	10/24/90 (Sullivan County)	1490	114	Flowage, Flood Inundation,
			10/24/90 (Orange County)	3364	118	Access, Electric Distribution
Deed	Orange and Rockland Utilities, Inc.	10/24/90	10/24/90	1490	398	Reserved Rights from DEC Land Sale

**Excepting therefrom:**

Lands conveyed to Clove Development Corporation by deed dated 12/31/71, but together with rights for access reserved in said deed, recorded 03/28/72, Book 1902, Page 106, Sullivan County Clerk's Office.

**Also Excepting therefrom:**

Lands conveyed to the County of Sullivan by deed dated 09/19/94, recorded 12/06/94, Book 1781, Page 544, Sullivan County Clerk's Office.

**Schedule 5.8**

**SWINGING BRIDGE, CLIFF LAKE, MONGAUP**

All or part of the following lands located in the Towns of Bethel, Highland, Thompson, Lumberland, Forestburgh  
Sullivan County, State of New York

<b><u>ORU DEED</u></b>	<b><u>GRANTOR</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE*</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
99	Estate of Chester W. Chapin, Deceased	04/06/25	10/06/25	241	449	
104	Atlantic Utilities Corporation	06/03/24	06/09/24	232	473	
165	Wm. J. Hamilton	03/15/26	03/30/26	244	479	
354	Marcella Nolan and Daniel Nolan, Jr.	05/26/27	06/11/27	253	119	
355	Frank Beezer, George C. Titmuss and Margaret L. Titmuss, his wife	05/26/27	05/31/27	252	541	
356	William Jones and Margaret Jones, his wife	05/26/27	05/31/27	252	540	
357	John W. Kiersted and Eda Kiersted, his wife	05/26/27	05/31/27	252	543	
358	Frances M. Stroh	09/20/27	09/21/27	255	112	
363	Carlisle Estates, Inc.	12/12/27	12/23/27	257	71	
364	Walter E. Sexton and Ida E. Sexton, his wife	12/14/27	12/23/27	257	69	
365	Starlight Hunting and Fishing Club, Inc.	12/19/27	12/23/27	257	78	
367	Sanford C. Smith and Radia E. Smith, wife	10/22/27	11/07/27	256	207	

<u>ORU DEED</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED DATE*</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
379	Mary Agnes Hickey	03/12/28	03/15/28	258	314	
381	Adam Deidle and Catherine Deidle	08/10/28	08/11/28	261	165	
386	William Nolan and others	12/11/28	01/10/29	264	275	
395	Chas. F. Gallagher et. al.	05/15/29	05/21/29	266	231	
411	Charles H. Tenney, Edward M. Bradley, D. Edgar Manson	06/30/25	07/02/25	239	294	
429	John Clasper Roffe and Emeline, his wife	07/19/29	07/24/29	267	375	
451	John W. Kiersted and Eda, his wife	11/09/29	11/12/29	269	453	
479	Alfred and Amelia Brenner	12/05/29	12/05/29	271	5	
482	School District No. 3 of the Town of Thompson	12/05/29	12/05/29	271	11	
492	Yerington Realty and Building Co., Inc.	01/02/30	01/03/30	271	134	
495	Frank F. Obermeyer, as Executor and An- other	01/11/30	01/13/30	270	311	
525	Mongaup Valley Co., Inc.	05/06/30	05/07/30	272	482	
526	Mongaup Valley Company, Inc.	05/06/30	05/07/30	272	488	
527	Starlight Farms Development Co., Inc.	05/06/30	05/07/30	272	474	
528	Starlight Farms Company, Inc.	05/06/30	05/07/30	272	480	
529	Phillip Le Del Fungo Giera	05/06/30	05/07/30	272	490	
538	John B. Hickey	07/08/30	07/17/30	274	115	
540	Mongaup Valley Company, Inc.	08/10/29	08/12/29	267	551	

<u>ORU DEED</u>	<u>GRANTOR</u>	<u>DEED DATE</u>	<u>RECORDED DATE*</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
541	Mary Agnes Hickey	01/11/30	01/11/30	271	194	
681	Morris Shapiro and Rose Shapiro, wife	09/28/42	10/20/42	357	334	
682	Morris Shapiro and Rose Shapiro, wife	10/20/42	10/20/42	357	336	
709	Fred J. Kitz	02/24/48	02/24/48	414	370	
Easement	Clove Development Corporation	10/19/90	10/24/90	1490	114	Flowage, Flood Inundation Access, Electric Distribution
Easement	G. E. O'Learhy, et al.	03/20/95	04/04/95	1801	152	Flood Inunda- tion
Agreement	G. E. O'Learhy, et al.	03/20/95	not recorded	---	---	Cabin Re- moval
Deed	Orange and Rockland Utilities, Inc.	10/24/90	10/24/90	1490	398	Reserved Rights from DEC Land Sale

**Excepting therefrom:**

Lands conveyed to Clove Development Corporation by deed dated 12/31/71, but together with rights for access reserved in said deed, recorded 03/28/72, Book 1902, Page 106, Sullivan County Clerk's Office.

In addition, if pending sale to Nehmadi is consummated (see draft Purchase Agreement dated March 1998), that would be an additional exception.



**Schedule 5.9(a)**

**GRAHAMSVILLE**

**LEASES/AGREEMENTS**

<b><u>AGREEMENT/ LEASE</u></b>	<b><u>TENANT/LANDLORD</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Lease	Rocky Brook Hunting Club (Tenant)	10/28/97	N/A	N/A	N/A	Hunting Lease
Agreement	City of New York	02/02/51	N/A	N/A	N/A	Grahamsville Water Agreement as Amended

**Schedule 5.9(b)**

**Nothing to disclose.**

**Schedule 5.10(a)**

Nothing to disclose.

**Schedule 5.10(b)**

**Nothing to disclose.**

**Schedule 5.11(a)**

**Nothing to disclose.**

**Schedule 5.11(b)**

Nothing to disclose.

**Schedule 5.12(a)(i)**

On occasion, Seller does not meet the dissolved oxygen requirements contained in state ambient water quality standards.

**Schedule 5.12(a)(ii)**

**GAS TURBINES PERMITS**

**Shoemaker**

PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
Certificate to Operate an Air Contamination Source ■ Pratt and Whitney Jet Engine, 512mmBTU/hr. Emission reference point 00001. ■ Waukesha Internal Combustion Gas Engine. Emission reference point 00002.	NYSDEC	Application submitted on 2/16/96. Permit issuance superseded by Title V application. This permit will not be issued but will instead be covered under the Title V Permit when issued.	
TITLE V Clean Air Act	NYSDEC	Application submitted on June 13, 1997; permit issuance pending	5 years after issuance
Petroleum Bulk Storage #3-412643	NYSDEC	4/28/98	4/19/03

**Hillburn**

PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
Certificate to Operate an Air Contamination Source ■ Pratt and Whitney Jet Engine, 512 mmBTU/hr. Emission reference point 00001.	NYSDEC	Application submitted on 2/16/96. Permit will not be issued but will instead be covered under Title V Permit when issued.	
TITLE V Clean Air Act	NYSDEC	Application submitted on June 13, 1997; permit issuance pending	5 years after issuance
Petroleum Bulk Storage #3-490437	NYSDEC	6/27/97	12/27/01

**\* Environmental Acronyms**

NYSDEC - New York State Department of Environmental Conservation



**Schedule 5.12(a)(ii)**

**HYDRO PERMITS**

**Mongaup Plant**

PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
Petroleum Bulk Storage #3-412694	NYSDEC	4/23/98	4/19/03

**Grahamsville Plant**

PERMIT	AGENCY	DATE ISSUED	EXPIRATION DATE
Petroleum Bulk Storage #3-413828	NYSDEC	5/4/98	4/19/03

**Rio Project**

LICENSE NO.	AGENCY	DATE ISSUED	EXPIRATION DATE
9690	FERC	4/14/92	4/20/22

**Mongaup Falls Project**

LICENSE NO.	AGENCY	DATE ISSUED	EXPIRATION DATE
10481	FERC	4/14/92	4/20/22

**Swinging Bridge Project**

LICENSE NO.	AGENCY	DATE ISSUED	EXPIRATION DATE
10482	FERC	4/14/92	4/20/22

**\* Environmental Acronyms**

FERC - Federal Energy Regulatory Commission  
NYSDEC - New York State Department of Environmental Conservation

**Schedule 5.12(b)**

Nothing to disclose.

**Schedule 5.12 (c)**

Nothing to disclose.

**Schedule 5.12(d)**

1. **Environmental Compliance Assessment Checklist\***
    - 9/9/98 Hillburn
    - 9/9/98 Shoemaker
  2. **Phase I Environmental Site Assessment, Shoemaker Generating Station, Middletown, New York, prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.**
  3. **Phase I Environmental Site Assessment, Hillburn Generating Station, Hillburn, New York prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.**
  4. **Phase II Environmental Site Investigation, Hillburn and Shoemaker Generating Stations prepared by Woodward-Clyde for Orange and Rockland, dated October 1998.**
  5. **Report, Additional Phase II Environmental Site Investigations Orange and Rockland prepared by USR Greiner Woodward-Clyde, dated November 1998.**
- \* Note:** Environmental Assessments of the gas turbine facilities are performed every six months by the (i) Environmental Affairs Department - Electric Production Division and (ii) Environmental Services Department - corporate. Only the then current assessment report is retained.

**Schedule 5.12(d)**

1. **Environmental Compliance Assessment Checklist\***
  - **Grahamsville**      **9/11/98; 5/29/98**
  - **Swinging Bridge**    **9/11/98; 5/29/98**
  - Mongaup**            **9/11/98; 5/29/98**
  - Rio**                    **9/11/98; 5/29/98**
2. **Phase I Environmental Site Assessment, Rio Generating Station Deerpark, Forestburg and Lumberland, New York prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.**
3. **Phase I Environmental Site Assessment, Grahamsville Generating Station, Grahamsville, New York prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.**
4. **Phase I Environmental Site Assessment, Swinging Bridge Generating Station, Forestburg, Lumberland and Thompson, New York prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.**
5. **Phase I Environmental Site Assessment, Mongaup Generating Station, Forestburg and Lumberland, New York prepared by Woodward-Clyde for Orange and Rockland, dated August 1998.**
6. **Phase II Environmental Site Investigation, Grahamsville, Mongaup, Rio and Swinging Bridge Generating Stations prepared by Woodward-Clyde for Orange and Rockland, dated October 1998.**
7. **Report, Additional Phase II Environmental Site Investigations Orange and Rockland prepared by URS Greiner Woodward Clyde, dated November 1998.**

**\* Note:**      **Environmental assessments of the hydro facilities are performed twice a year by the (i) Environmental Affairs Department - Electric Production Division and (ii) Environmental Service Depart - Corporate. Only the then current report is notarized.**

**Schedule 5.13**

**Nothing to disclose.**

**Schedule 5.14(a)**

- **Employees' Retirement Plan**
- **Hourly Group Savings Plan**
- **Management Employees' Savings Plan**
- **Severance Pay Plan**
- **Long-Term Performance Share Unit Plan**
- **Non-Officers' Supplemental Retirement Plan**
- **Eligible Employees' Insurance Program**
- **Eligible Employees' Compensation Deferral Plan**
- **Annual Team Incentive Plan**
- **Blanket Accident Policy**
- **Hourly, Management and Executive Long-Term Disability Insurance Policies**
- **Management Employee Transition Program**
- **Employees' Group Insurance Plan (Health, Life, Long-Term Disability)**
- **Flexible Benefit Plans**
- **Dependent Care Plans**
- **Employee Assistance Program**
- **Tuition Reimbursement Program**

**Schedule 5.14(b)(i)**

**Nothing to disclose.**



**Schedule 5.14(b)(ii)**

**Nothing to disclose.**

**Schedule 5.14(b)(iii)**

Nothing to disclose.

**Schedule 5.14(c)**

**Nothing to disclose.**

**Schedule 5.15**

**PERMITTED ENCUMBRANCES**

**Hillburn Gas Turbine**

In addition to the Permitted Encumbrances listed below, various of the properties described in Schedule 5.8 shall be subject to the Operating Easement, consisting of the easement or easements or reservation of rights with respect to the Purchased Assets required by the Seller to operate its transmission and distribution business.

<b><u>AGREEMENT/ LEASE</u></b>	<b><u>GRANTEE</u></b>	<b><u>DATE</u></b>	<b><u>RECORDED DATE</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Easement	Spring Valley Water Co.	10/05/79	10/10/79	1033	505	Water Line/Wells
Easement	Spring Valley Water Co.	05/19/81	05/28/81	1058	320	Water Line

**Schedule 5.15**

**PERMITTED ENCUMBRANCES**

**Swinging Bridge, Cliff Lake, Mongaup**

In addition to the Permitted Encumbrances listed below, various of the properties described in Schedule 5.8 shall be subject to the Operating Easement, consisting of the easement or easements or reservation of rights with respect to the Purchased Assets required by the Seller to operate its transmission and distribution business.

<b><u>ORU DEED</u></b>	<b><u>GRANTEE</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE*</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Easement	Clove Development Corp.	10/19/90	10/24/90	1490	81	Cliff Lake South Access
Easement	Clove Development Corp.	10/19/90	10/24/90	1490	99	Cliff Lake North Access
Easement	NYSDEC	10/24/90	10/24/90	1490	469	Conservation Easement
Easement	NYSDEC	10/24/90	10/24/90	1490	539	Conservation Easement
Deed	NYSDEC	10/24/90	10/24/90	1490	398	Restrictions on Reserved Easements
Easement	Clove Development Corp.	10/31/90	12/03/90	1497	120	Lakeside Forest Restrictions Patrol Easement
Easement	Lakeside Forest Preservation Trust	09/14/90	12/03/90	1497	140	Lakeside Forest Patrol Easement

<u>ORU DEED</u>	<u>GRANTEE</u>	<u>DEED DATE</u>	<u>RECORDED DATE*</u>	<u>BOOK</u>	<u>PAGE</u>	<u>NOTES</u>
Easement	G.O'Learhy, et al.	pending execution				Access Road off Plank Rd, Forestburgh
Easement	Clove Development Corp.	09/14/90	12/03/90	1497	111	Lakeside Forest Reservoir Access
Easement	State of New York Dept. of Environmental Conservation	10/04/90	04/05/91	1515	609	Lakeside Forest Patrol Easement
Easement	Town of Forestburgh	10/31/90	04/05/91	1515	629	Lakeside Forest Patrol Easement
Easement	G. & M. McKean	03/11/82		1034	84	Reservoir Access
Easement	General Telephone Company	12/17/71	12/21/71	761	847	Telephone Right of Way for Service
Easement	Mongaup Valley Company, Inc.	05/02/30	05/07/30	272	498	Reservoir Access
Easement	Clove Development Corp.	07/22/86	07/25/86	1231	242	Swinging Bridge Overlook Reservoir Access
Easement	Clove Development Corp.	07/22/86	07/25/86	1231	230	Tannery Woods Reservoir Access

**In addition, the permitted encumbrances set forth on this schedule include the provisions regarding (i) public access and use and (ii) Seller's use and/or conveyance of the hydroelectric properties as such provisions are contained in (1) the FERC Hydro licenses issued 4/14/92 for Swinging Bridge (license no. 10482) and Mongaup (license no. 10481); (2) the Memorandum of Understanding between Seller and the New York State Department of Environmental Conservation transmitted by cover letter dated 7/16/90; and (3) the Section 401 Water Quality Certifications for Swinging Bridge and Mongaup dated 9/11/89.**

**Schedule 5.15****RIO**

In addition to the Permitted Encumbrances listed below, various of the properties described in Schedule 5.8 shall be subject to the Operating Easement, consisting of the easement or easements or reservation of rights with respect to the Purchased Assets required by the Seller to operate its transmission and distribution business.

<b><u>ORU DEED</u></b>	<b><u>GRANTEE</u></b>	<b><u>DEED DATE</u></b>	<b><u>RECORDED DATE*</u></b>	<b><u>BOOK</u></b>	<b><u>PAGE</u></b>	<b><u>NOTES</u></b>
Easement	NYSDEC	10/24/90	10/24/90	1490	469	Conservation Easement
Option	NYSDEC	10/24/90	10/24/90	1490	644	Option to Acquire Recreation Area
Easement	NYSDEC	10/24/90	10/24/90	1490	597	Conservation Easement on Rio Recreation Area
Easement	Clove Development Corp.	10/19/90	10/24/90	3364 (Orange	235 County)	Rio Reservoir Access
Deed	NYSDEC	10/24/90	10/24/90	1490	398	Restriction on Reserved Easements
Easement	General Telephone Company	12/17/71	12/21/71	761	847	Telephone Company Right of Way for Service

In addition, the permitted encumbrances set forth on this schedule include the provisions regarding (i) public access and use and (ii) Seller's use and/or conveyance of the hydroelectric properties as such provisions are contained in (1) the FERC Hydro license issued 4/14/92 for Rio (license no. 9690); (2) the Memorandum of Understanding between Seller and the New York State Department of Environmental Conservation transmitted by cover letter dated 7/16/90; and; and (3) the Section 401 Water Quality Certifications for Rio dated 9/11/89.

**Schedule 5.15**

**Toronto Reservoir**

**Various properties described in Schedule 5.8 shall be subject to the Operating Easement, consisting of the easement or easements or reservation of rights with respect to the Purchased Assets required by the Seller to operate its transmission and distribution business.**

**In addition, the permitted encumbrances for this reservoir include the provisions regarding (i) public access and use and (ii) Seller's use and/or conveyance of the hydroelectric properties as such provisions are contained in (1) the FERC Hydro license issued 4/14/92 for Swinging Bridge (license no. 10482); (2) the Memorandum of Understanding between Seller and the New York State Department of Environmental Conservation transmitted by cover letter dated 7/16/90; and; and (3) the Section 401 Water Quality Certifications for Swinging Bridge dated 9/11/89.**



## **Schedule 5.17(a)**

### **A. GAS TURBINES**

1. Jet Fuel Purchase Order for Hillburn and Shoemaker Gas Turbines between Coastal Refining & Marketing and O&R.<sup>1</sup>
2. Lease Agreement dated as of February 1, 1971 between United States Trust Company of New York, as Trustee, Lessor and Orange and Rockland Utilities, Inc., Lessee, as amended by Amendment to Lease Agreement, effective as of August 1, 1996 between Orange and Rockland Utilities, Inc. and Fleet Capital Corporation pursuant to which Seller currently leases the Hillburn and Shoemaker Gas Turbines.<sup>2</sup>

### **B. AGREEMENTS RELATING TO MULTIPLE FACILITIES**

3. Residual Fuel Oil Agreement between Consolidated Edison Company, of New York, Inc. and O&R, dated August 31, 1983. as amended (Fuel oil for Bowline Point Generating Station and back-up fuel for Lovett).
4. Purchase Order for Diesel and Kerosene between Rad Energy and O&R, for Use Throughout the Company, Including at Generation Plants.<sup>3</sup>
5. Rental Garment Service Agreement Between Cintas Corporation and O&R, dated February 11, 1998. (Uniforms for employees at Bowline, Lovett, Hydroelectric facilities, as well as other departments within the Company).<sup>4</sup>

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<sup>1</sup> This contract is entered into annually (with various vendors) with a term from November through March, including an original fill and a right to purchase additional gallons.

<sup>2</sup> Seller will transfer title to the Hillburn Gas Turbine and Shoemaker Gas Turbine at Seller's cost, to the Buyer on the Closing Date. Restrictions exist as to when purchase option may be exercised.

<sup>3</sup> This Purchase Order covers the Company's diesel and kerosene requirements from December 1, 1997, through November 30, 1999. If assigned, the assignment would only include product for the generating facilities.

<sup>4</sup> Agreement and purchase orders issued thereunder cover uniform requirements from January 1, 1998, through January 31, 2003. Assignment would include purchase orders relating to Bowline, Lovett and the hydroelectric facilities.

**Schedule 5.17(a)**

**A. HYDROELECTRIC ASSETS**

1.     **Grahamsville Water Agreement, dated February 2, 1951, as Amended.**
2.     **Grahamsville Supplemental Excess Water Purchase Agreement dated January 1, 1979.**
3.     **Grahamsville Hydroelectric Generating Plant Electric Transmission Agreement between Central Hudson Gas & Electric Corporation and O&R, dated August 16, 1963.**

**B. AGREEMENTS RELATING TO MULTIPLE FACILITIES**

4.     **Purchase Order for Diesel and Kerosene between Rad Energy and O&R, for Use Throughout the Company, Including at Generation Plants.\***
5.     **Rental Garment Service Agreement Between Cintas Corporation and O&R, dated February 11, 1998. (Uniforms for employees at Bowline, Lovett, Hydroelectric facilities, as well as other departments within the Company).\*\***

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\*       This Purchase Order covers the Company's diesel and kerosene requirements from December 1, 1997, through November 30, 1999. If assigned, the assignment would only include product for the generating facilities.

\*\*      Agreement and purchase orders issued thereunder cover uniform requirements from January 1, 1998, through January 31, 2003. Assignment would include purchase orders relating to Bowline, Lovett and the hydroelectric facilities.

**Schedule 5.17(b)**

A. **AGREEMENTS RELATING TO MULTIPLE FACILITIES**

- (1) Residual Fuel Oil Agreement between Consolidated Edison Company of New York, Inc. and O&R, dated August 31, 1983, as amended.

**Schedule 5.17(c)**

**Nothing to disclose.**

### **Schedule 5.18**

#### **Gas Turbines Generating Stations**

##### **Shoemaker Station**

1. Metal Bank Cottman Avenue Superfund Site
  - United States Environmental Protection Agency – Region III – Docket No. III-98-082-DC
2. Energy Association of New York State, et al v. NYPSC
  - Supreme Court of the State of New York – Appellate Division – Third Department – Index No. 5830/96
3. Public Utility Law Project of New York, Inc., Thomas Albin v. the New York Public Service Commission, et al
  - Supreme Court, State of New York - County of Albany (5685-97) -- Judge Joseph C. Teresi

##### **Hillburn Station**

1. Metal Bank Cottman Avenue Superfund Site
  - United States Environmental Protection Agency – Region III – Docket No. III-98-082-DC
2. Energy Association of New York State, et al v. NYPSC
  - Supreme Court of the State of New York – Appellate Division – Third Department – Index No. 5830/96
3. Public Utility Law Project of New York, Inc., Thomas Albin v. the New York Public Service Commission, et al
  - Supreme Court, State of New York - County of Albany (5685-97) -- Judge Joseph C. Teresi
4. Howard and Marion Madlin, and others similarly situated v. Orange and Rockland Utilities, Inc.
  - United States District Court - Southern District of New York – 98Civ0894(BDP) – Hon. Barrington D. Parker

## **Schedule 5.18**

### **Hydroelectric Generating Stations**

1. **Metal Bank Cottman Avenue Superfund Site**
  - **United States Environmental Protection Agency – Region III – Docket No. III-98-082-DC**
2. **Energy Association of New York State, et al v. NYPSC**
  - **Supreme Court of the State of New York – Appellate Division – Third Department – Index No. 5830/96**
3. **Public Utility Law Project of New York, Inc., Thomas Albin v. the New York Public Service Commission, et al**
  - **Supreme Court, State of New York - County of Albany (5685-97) – Judge Joseph C. Teresi**

**Schedule 5.19(a)**

**NON-ENVIRONMENTAL PERMITS**

Nothing to disclose.

**Schedule 5.19(b)**

**Nothing to disclose.**



**Schedule 5.20(a)**

The Seller and its subsidiaries are not regulated as public utilities in any states other than New York, New Jersey and Pennsylvania.

**Schedule 5.20(b)**

**Regulation as a Public Utility**

**Seller and certain of its subsidiaries are regulated as public utilities as follows:**

- (a) Seller is an "electric corporation" under New York law and subject to regulation by the NYPSC.**
- (b) Seller's wholly owned subsidiary, Rockland Electric Company ("RECO") is a "public utility" under New Jersey law and subject to regulation by the NJBPU.**
- (c) Seller's wholly owned subsidiary, Pike County Light & Power Company ("Pike") is a "public utility" under Pennsylvania law and subject to regulation by the PAPUC.**
- (d) Seller, RECO and Pike are also subject to regulation by the FERC and SEC.**

**Schedule 5.21**

**Nothing to disclose.**

**Schedule 6.3(a)**

**Buyer's Regulatory Approvals**

1. FERC approval of "exempt wholesale generator" status for the Buyer under Section 32 of the Holding Company Act;
2. FERC approval of Buyer's acquisition of FERC jurisdictional assets under Section 203 of the Federal Power Act;
3. FERC approval under Section 204 of the Federal Power Act, to the extent necessary, of any issuance of securities by Buyer;
4. FERC approval under Section 205 of the Federal Power Act of any sales of electricity, transmission service, or ancillary services by Buyer, including, without limitation, Buyer's receipt from FERC of authority to sell electricity at wholesale market rates and the approval by FERC of any wholesale power sales agreements to be transferred by Seller to Buyer;
5. Any determinations or other approvals from state commissions necessary under Section 32(c) of the Holding Company Act for the Purchased Assets to be eligible facilities and for the Buyer to own such Purchased Assets as an exempt wholesale generator under Section 32 of the Holding Company Act;
6. Any approvals required under New York law for the Buyer to acquire, finance, own or operate the Purchased Assets or to sell or distribute power therefrom;
7. Any approval required from any governmental entity pursuant to any Environmental Law, in order to own or operate the Purchased Assets as they currently exist; and
8. The transfer of any Permits to the Buyer and the issuance or grant of any additional licenses, certificates, permits, consents, approvals or other authorizations from any governmental entity necessary for Buyer to acquire, own and operate the Purchased Assets and to sell power at wholesale.

## Schedule 6.5

### **Regulation as a Utility**

On the Closing Date, Buyer will be an exempt wholesale generator under the Holding Company Act, although it is a subsidiary of a registered public utility holding company under the Holding Company Act. On the Closing Date, Buyer also will be a public utility under the Federal Power Act.

Southern Energy, Inc. is not now a utility subject to the regulation of the New York State Public Service Commission. As of the date of closing, Buyer will become, by virtue of its ownership of an electric plant, as that term is defined by Section 2(12) of the New York State Public Service Law, an electric corporation, as that term is defined by Section 2(13) of the New York State Public Service Law. Electric corporations, subject to the certain exceptions not relevant here, are subject to the jurisdiction of the New York State Public Service Commission.

**Schedule 7.1**

On or before August 1, 1999, Seller shall exercise the purchase option, at Seller's cost, under paragraph 6(b) of the Amendment to Lease Agreement, effective as of August 1, 1996, between Orange and Rockland Utilities, Inc. and Fleet Capital Corporation, which amends the Lease Agreement, Dated as of February 1, 1971 between United States Trust Company of New York, as Trustee, Lessor and Orange and Rockland Utilities, Inc., Lessee.

**Schedule 7.4**

**Nothing to disclose.**

### **Schedule 7.10(a)**

Agreement between O & R and Local Union No. 503 of the International Brotherhood of Electrical Workers effective June 1, 1997 through May 31, 2000, as supplemented by the operating agreements listed below.

- 1) Shift Swaps.
- 2) Vacation Schedules.
- 3) Painting Projects For Laborers.
- 4) Supplemental Agreement - Certified Welder/Repairman (Rules For Certified Welders Test).
- 5) Memo Of Understanding - One Day Vacation Policy.
- 6) Memo Of Understanding - Plant Operations And Utility Operators.
- 7) Supplemental Agreement - Plant Operators And Utility Operators (Bidding Procedures).
- 8) Memo Of Understanding For Split Vacation Week For Shift Workers At Lovett And Bowline Point Plants.
- 9) Memo Of Understanding - Laborers In The Electric Production Department - Cleaning Up Asbestos Containing Material (ACM) Spills.
- 10) Laborers At Plants Will Travel To Secure And Deliver Parts And Equipment For Operation And Maintenance Of Plants.
- 11) Agreement On The Use Of Surplus Operating Personnel At Lovett And Bowline Plants.
- 12) Jury Duty - Workers At Bowline And Lovett Plants (Letter Dated 3-1-93; Letter Dated 2-5-93; Schedule Assignment Memo).
- 13) Assignment Of Employees For Overtime Work (Memo).
- 14) Maintenance Of Regulator Stations At Lovett And Bowline Plants Connected To O&R Gas Department System (Memo).
- 15) Filling C.E.M. Position At Bowline.
- 16) Assistant Yardman And Yardman - Filling Future Positions (Grievance No. 074-88E-036 - Letter).
- 17) Rotating vs. Non-Rotating Work Schedules For Scheduled Workers At The Plants (Letter).
- 18) Annual Clothing Payment - Safety Clothing (Plus Addendum).
- 19) Small Scale Body Fluid Spills - Clean-Up Memo.
- 20) Off-Hour Defensive Driver Training - Use Of Union Instructors.
- 21) Safety Eyeglass Program (Revised July 1997).
- 22) Hillburn GT Mechanic Call Out.
- 23) Supplemental Agreement - Operation and Maintenance of Peaking Units - Eastern Division and Western Division.
- 24) Memo of Agreement - Siemens 4160 V Switchgear.
- 25) Memo of Understanding - Snow Plowing - Lovett Plant.



- 26) Lovett Maintenance Department - Overtime Procedure.
- 27) Guidelines When Calling Plant Operators and Utility Operators For Overtime.
- 28) Memo of Agreement - Results Tech Group - Mr. William Hessian (Letter).
- 29) Notice - Lovett Employees - Mileage Allowances.
- 30) Supplemental Agreement - Waste Water Treatment Facility - Lovett.
- 31) Memo of Understanding - Procedures For The Operation and Maintenance of The Lovett Vacuum Truck and Sweeper Attachment.
- 32) Lovett - Relay Rooms (Memo).
- 33) Memo of Understanding - Lay Up Unit #2.
- 34) Yardman - Maintenance Of Tank Farm.
- 35) Plant Electricians vs. Substation Electrician-Work Assignments.
- 36) Control Techs vs. Mechanical/Repairman - Work Assignment (Grievance #007-96E-007).
- 37) Partial List of One (1) Person Jobs.
- 38) Snow Removal - Bowline (Memo).
- 39) Outage Agreement - Personnel Assignment - Bowline.

**Schedule 7.10(b)**

To be completed by Buyer and provided to Seller at least 90 days prior to the date on which the Closing is anticipated to occur (but in no event later than February 1, 1999, or such other date to which the Buyer and Seller mutually agree).