

petition

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

----- :
Case 97-F-1563 – Application by Athens :
Generating Company, L.P. for a Certificate :
of Environmental Compatibility and :
Public Need to Construct and Operate a :
1,080 Megawatt Natural Gas-Fired :
Combined Cycle Combustion Turbine :
Generating Facility, in the Town of :
Athens, Greene County :
----- :

FILES
C97-F-1563

SUPPLEMENT TO THE PETITION OF ATHENS GENERATING COMPANY, L.P.
TO TRANSFER ITS ARTICLE X CERTIFICATE AND NOTICE
OF CHANGE OF OWNERSHIP

I. INTRODUCTION

On March 31, 2003, Athens Generating Company, L.P. ("AGC") petitioned the State of New York Board on Electric Generation Siting and the Environment (the "Siting Board") for approval to transfer its Certificate of Environmental Compatibility and Public Need (the "Certificate") for its 1080 megawatt generating facility in the Town of Athens, NY (the "Athens Generating Facility") to a wholly owned, direct subsidiary of AGC, New Athens Generating Company, LLC ("New AGC"). As part of the March 31, 2003 Petition (the "Initial Petition"), AGC and New AGC notified the Secretary of the Siting Board (the "Secretary") of a proposed change in indirect ownership of the Certificate as a result of the transfer of ownership of New AGC from AGC to a new company (referred to therein as "New GenHoldings") that would be owned by AGC's lenders. This proceeding was required as a result of the deteriorating financial condition of AGC's parent company, PG&E National Energy Group, Inc. ("PG&E NEG"). PG&E NEG is undertaking a global restructuring of its debt, including the sale or transfer of the Athens Generating Facility and others of its merchant generating facilities.

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As described in the Initial Petition, the transfer of the Athens Generating Facility (the "Transfer") would occur in a two-stage transaction. The first stage would involve an intracorporate reorganization in which AGC transfers all of its assets, including the Article X Certificate, to New AGC. After this first stage, New AGC would be a wholly owned, direct subsidiary of AGC. As described in the Initial Petition, in the second stage, AGC would transfer 100% of its ownership interests in New AGC to New GenHoldings, a newly formed company that will be owned by AGC's lenders. After completion of the Transfer, New AGC will be a wholly-owned subsidiary of New GenHoldings and will own the Athens Generating Facility. The parties intend to complete the proposed transfer by September 30, 2003.

AGC is hereby submitting this Supplement to the Initial Petition for the purpose of (1) providing required information that was not available at the time of the Initial Petition; (2) advising the Siting Board of certain pertinent factual developments that have occurred since filing the Initial Petition; and (3) requesting confirmation that certain potential modifications to the structure of the transaction that are being contemplated are not material items that would necessitate further Siting Board review.¹

II. SUBMISSION OF ADDITIONAL INFORMATION

A. Formation of New Holding Company

At the time of the Initial Petition, the name of the Company that was to be owned by the lenders to GenHoldings I, LLC and AGC lenders had not yet been formed. This company, referred to as "New GenHoldings" in Initial Petition, has now been formed and is named MACH Gen, LLC ("MACH Gen").²

¹ The verifications and affidavit required by 16 N.Y.C.R.R. § 1000.16(b) are attached.

² These lenders are: Société Générale, Citicorp USA, Inc., JPMorgan Chase Bank, ABN AMRO Bank N.V., The Royal Bank of Scotland plc, Credit Lyonnais New York Branch, The Governor and Company of the Bank of Scotland, Toronto Dominion (Texas), Inc., DZ Bank AG, Deutsche Zentral-Genossenschaftsbank, Frankfurt AM Main, New York Branch, Barclays Bank PLC, Bayerische Landesbank Gironzentrale, Fortis Capital Corp., Bayerische Hypo-und Vereinsbank AG, Dresdner Bank

B. Proposed Transfer Agreement

Drafts of transfer agreements that will govern the Transfer are attached hereto as Exhibit A. Although not yet executed and, as discussed below, still subject to approval and negotiation through the PG&E NEG bankruptcy process, the agreements to be entered into by the parties will provide for a transaction structure materially similar to that provided for in the agreements attached hereto as Exhibit A, subject to the potential modifications discussed below. The parties intend to complete the proposed Transfer by September 30, 2003.

III. FACTUAL DEVELOPMENTS – NEG BANKRUPTCY

Subsequent to the filing of the Initial Petition, PG&E NEG, the indirect parent of GenHoldings and AGC, has filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code. Although neither GenHoldings nor AGC has been included in the Chapter 11 filing, Bankruptcy Court approval is still required for PG&E NEG to authorize its subsidiaries to make the proposed transfer to MACH Gen. Although PG&E NEG and the Lenders have committed to working toward a September 30, 2003 closing of the Transfer, the actual Transfer may be delayed depending upon, among other things, when the necessary Bankruptcy Court approval is received.

IV. POTENTIAL MODIFICATIONS TO THE PROPOSED TRANSACTION

Due to the complex and dynamic nature of transferring AGC's assets and the assets of three other out-of-state subsidiaries of GenHoldings to MACH Gen, and especially given PG&E NEG's current financial condition and bankruptcy filing, Petitioner may elect to, or may be required to, modify the structure of the Transfer as proposed in the Initial Petition. In order to minimize the number of filings that need to be made with the Siting Board, Petitioner hereby respectfully requests that the Siting Board confirm that certain potential modifications to the

AG, New York and Grand Cayman Branches, Fleet National Bank, and Landesbank Schleswig-Holstein Girozentrale (collectively, the "Lenders").

EQUITY TRANSFER AGREEMENT

This Equity Transfer Agreement (this "Agreement"), dated as of _____, 2003, is made by and among MACH GEN, LLC, a Delaware limited liability company ("Transferee"), NEW ATHENS GENERATING COMPANY, LLC, a Delaware limited liability company (the "Company"), and ATHENS GENERATING COMPANY, L.P., a Delaware limited partnership ("Transferor").

RECITALS

A. The Company owns and operates a 1,080 MW natural gas-fired electric generating facility located in Athens, New York (the "Facility").

B. Transferor owns 100% of the membership interests of the Company (the "Membership Interests"), which constitutes all of the issued and outstanding Equity Securities of the Company.

C. Transferor is a party to that certain Project Company Guaranty, dated as of December 21, 2001 (the "Project Company Guaranty"), pursuant to which Transferor has guaranteed the obligations of GenHoldings I, LLC ("GenHoldings"), under that certain Amended and Restated Credit Agreement, dated as of March 15, 2002, among GenHoldings, the lenders party thereto (the "Banks"), Societe Generale, as administrative agent (in such capacity, the "Agent") for the Banks and as a lead arranger, Citibank, N.A., as syndication agent and as a lead arranger, JPMorgan Chase Bank, as issuer of the letters of credit, and the other arrangers, agents, CP conduits, related banks and lender group agents party thereto (as the same may be amended, modified or supplemented from time to time, the "Credit Agreement") under which [\$_____] is currently outstanding (the "Existing Debt") and [\$_____] of unused commitments are currently available to be drawn (the "Unfunded Debt").

D. Pursuant to that certain Pledge Agreement, dated as of [_____] 2003, (the "Subsidiary Pledge Agreement"), Transferor has pledged its ownership interests in the Company to the Agent as collateral security for the Project Company Guaranty.

E. Prior to or simultaneously with the consummation of the transactions contemplated by the Asset Transfer Agreement, each of Millennium Power Partners, L.P., Covert Generating Company, LLC and Harquahala Generating Company, LLC (each, an "Other Existing Project Company") will transfer all of its assets to a wholly-owned subsidiary of such Other Existing Project Company designated by the Agent, and simultaneously with the consummation of the transactions contemplated hereby, will transfer all of the membership interests it owns in such subsidiary designated by the Agent to Transferee, pursuant to an equity transfer agreement dated as of the date hereof (each, an "Other Equity Transfer Agreement"); and

F. In accordance with the foregoing, and in consideration for the release of Transferor (but not the Company) from any further obligations under the Project Company Guaranty, Transferee desires to acquire from Transferor, and Transferor desires to transfer to Transferee, all of the Membership Interests upon the terms and subject to the conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

1.1 Defined Terms. As used herein, the terms below shall have the following meanings:

"Affiliate" shall mean, with respect to any person or entity (the "referent person"), any person or entity that, directly or indirectly, controls the referent person, any person or entity that the referent person controls, or any person or entity that is under common control with the referent person. For purposes of the preceding sentence, the term "control" shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of a person or entity through voting securities, by contract or otherwise.

"Ancillary Agreements" shall mean the GenHoldings Assignment and Assumption Agreement and the Release.

"Assets" shall mean all of the Company's right, title and interest in and to the "Assets" as defined in the Asset Transfer Agreement.

"Asset Transfer Agreement" shall mean that certain Asset Transfer Agreement dated as of _____, 2003, by and between Transfer and the Company.

"Board of Directors" shall mean, (a) with respect to a corporation, the board of directors of the corporation; (b) with respect to a partnership, the board of directors of the general partner of the partnership; and (c) with respect to any other Person, the board or committee of such Person serving a similar function.

"Books and Records" shall mean, all of the books and records of the Company relating to the Assets or the Facility and all books and records of any Affiliate of the Company necessary to the operation of the Facility, including without limitation, (a) all records and lists pertaining to the Facility, (b) all product, business and marketing plans of the Company and (c) all books, ledgers, files, reports, plans, drawings and operating records of every kind maintained by the Company, including in each case all computer software and data in computer readable and/or human readable form used to maintain such books and records together with the media on which such software and data are stored and all documentation related thereto.

"Capital Stock" shall mean (i) in the case of a corporation, corporate stock, (ii) in the case of a partnership or limited liability company, partnership or membership interests or units (whether general or limited), and (iii) any other interest or participation that confers on a person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity.

"Cash" shall mean, with respect to the Company, cash and cash equivalents (including marketable securities and short term investments and checks received by the Company prior to the Closing Date).

"Closing Date" shall mean _____, 2003 or such other date as promptly thereafter as of which all of the conditions set forth in Articles V and VI shall have been satisfied or duly waived or, if the parties hereto shall mutually agree upon a different date, the date upon which they shall have mutually agreed.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Confidential Information" shall mean, as to any person, all proprietary and confidential manufacturing, financial, marketing, operational, organizational, know-how, personnel, customer vendor, technical and other data relating to the business of such person, including, without limitation, all correspondences, memoranda, notes, summaries, analyses, compilations, forecasts, studies, models, extracts of and documents and records reflecting, based upon or derived from Confidential Information, regardless of who prepares it, as well as all copies and other reproductions thereof, whether in writing or stored or maintained in or by electronic, magnetic or other means, media or devices.

"Credit Documents" shall have the meaning given in the Credit Agreement.

"Encumbrance" shall mean any claim, lien, judgment, pledge, escrow, option, liability, charge, easement, restrictive covenant, security interest, deed of trust, right of first refusal, mortgage, right-of-way, encroachment, building or use restriction, encumbrance or other right of third parties, whether voluntarily incurred or arising by operation of law, and includes, without limitation, any agreement to give any of the foregoing in the future, and any contingent or conditional sales agreement or other title retention agreement or lease in the nature thereof or the filing of, or agreement to give any financing statement, under the laws of any jurisdiction.

"Equity Securities" shall mean (i) shares of Capital Stock or other equity securities, (ii) subscriptions, calls, warrants, options or commitments of any kind or character relating to, or entitling any person or entity to purchase or otherwise acquire, any Capital Stock or other equity securities and (iii) securities convertible into or exercisable or exchangeable for shares of Capital Stock or other equity securities.

"Federal Power Act" shall mean the Federal Power Act of 1935, as amended.

"FERC" shall mean the Federal Energy Regulatory Commission.

"GAAP" shall mean accounting principles generally accepted in the United States of America, including generally accepted accounting principles as interpreted by the Securities Exchange Commission. For the avoidance of doubt, the term, "GAAP," when used herein, shall mean the accounting principles generally accepted by the Securities Exchange Commission as reflected in Regulation S-X promulgated under the Securities Exchange Act as in effect from time to time.

"GenHoldings Assignment and Assumption Agreement" shall mean the agreement pursuant to which GenHoldings assigns to Transferee, and Transferee assumes from GenHoldings certain obligations and Liabilities of GenHoldings, in substantially the form of Exhibit A hereto.

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

"Liabilities" shall mean any liability, indebtedness, obligation, co-obligation, commitment, expense, claim, deficiency, guaranty or endorsement of or by any person of any nature

(whether direct or indirect, known or unknown, absolute or contingent, liquidated or unliquidated, due or to become due, accrued or unaccrued, matured or unmatured).

"Permits" shall mean all licenses, permits, franchises, approvals, authorizations, consents or orders of, or filings with, or notifications to, any governmental authority, whether foreign, federal, state or local, or any other Person, necessary or desirable for the past, present or anticipated conduct of, or relating to the operation of the Facility or the ownership of the Assets.

"Permitted Encumbrances" shall have the meaning given in the Asset Transfer Agreement.

"Person" shall mean any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, limited liability company or government or other entity.

"Personnel" shall mean, with respect to the Company, all directors, officers, and consultants of the Company.

"Release" shall mean the Release of Obligations to be delivered by Transferee pursuant to Section 2.3(b)(i) hereof, substantially in the form of Exhibit B hereto.

"Returns" shall mean any and all returns, reports, declarations, documents and information statements with respect to Taxes required to be filed with any governmental authority or Tax authority or agency, whether domestic or foreign, including, without limitation, consolidated, combined and unitary returns and all amendments thereto or thereof and any documents with respect to or accompanying requests for the extension of time in which to file any such returns, reports, declarations, documents and information statements.

"Subsidiary" shall mean, with respect to any of the parties of this Agreement, any corporation or other business entity, whether or not incorporated, of which at least a majority of the securities or interests having, by their terms, ordinary voting power to elect members of the Board of Directors, or other persons performing similar functions with respect to such entity, is held, directly or indirectly, by such party.

"Tax(es)" shall mean all taxes, estimated taxes, withholding taxes, assessments, levies, imposts, fees and other charges, including, without limitation, any interest, fines, penalties, additions to tax or additional amounts that have or may become payable in respect thereof, imposed by any foreign, federal, state or local government or taxing authority, whether computed on a separate, consolidated, unitary, combined or any other basis, which taxes shall include, without limitation, all income taxes, service, license and net worth taxes, payroll and employee withholding taxes, unemployment insurance, retirement, social security, sales and use taxes, value-added taxes, excise taxes, franchise taxes, gross receipts taxes, occupation taxes, real and personal property taxes, stamp taxes, transfer and recording taxes, workers' compensation and other obligations of the same or of a similar nature.

1.2 Other Defined Terms. In addition to the terms defined in the Introduction to this Agreement or in Section 1.1, the following terms shall have the meanings defined for such terms in the Sections set forth below:

Term

Section

"Agent"

Recitals

Transfer as described in the Initial Petition would not require further review under Article X. Specifically, Petitioner hereby seeks the flexibility to modify the structure of the Transfer described in the Initial Petition and in the attached agreements as follows:

A. One-Stage Transfer: Rather than the two-stage Transfer contemplated in the Initial Petition, MACH Gen, or one or more wholly-owned direct or indirect subsidiaries of MACH Gen, may directly acquire the assets of AGC. This direct acquisition could be accomplished via: (i) the sale of all the assets currently owned by AGC to MACH Gen, or to one or more wholly-owned direct or indirect subsidiaries of MACH Gen; (ii) the transfer of PG&E NEG's indirect ownership interest in GenHoldings to MACH Gen, or to one or more wholly-owned direct or indirect subsidiaries of MACH Gen; or (iii) the transfer by GenHoldings of its ownership interest in AGC directly to MACH Gen, or to one or more wholly-owned direct or indirect subsidiaries of MACH Gen.³ Therefore, after the Transfer, MACH Gen may own (directly or indirectly) one or more of: (a) GenHoldings, (b) New AGC, (c) AGC (the membership interests of which would be transferred from GenHoldings to MACH Gen or its wholly-owned subsidiary) or the intermediate subsidiaries between GenHoldings and AGC, or (d) the assets of AGC.

B. MACH Gen's Indirect Ownership of Subsidiaries: The Initial Petition proposed that, after the Transfer, New AGC would be a wholly-owned direct subsidiary of MACH Gen. As an alternative, MACH Gen may seek to establish an intermediate holding company (or companies) between MACH Gen and AGC, New AGC or AGC's assets. Thus, after the Transfer, AGC or New AGC may be either a wholly-owned direct subsidiary or a wholly-owned indirect subsidiary of MACH Gen.

³ It should be recognized that the potential modifications to the transactions listed in items (ii) and (iii) would involve only an indirect transfer of ownership of the Article X Certificate. Accordingly, if one of those options is selected, Petitioner will submit a supplemental notification to the Secretary in accordance with Section 1000.16(a) of the Siting Board's regulations.

C. Flexibility of Corporate Form: Rather than maintaining AGC in its existing form as a limited partnership or New AGC in its existing form as a limited liability company, as contemplated in the Initial Petition, AGC, New AGC or another subsidiary of MACH Gen, may be structured as either a limited partnership or a limited liability company. In other words, this flexibility would permit MACH Gen to convert its subsidiary entities to a different corporate form.

These potential modifications to the proposed Transfer should not alter the Siting Board's evaluation of this Petition (including both the Initial Petition and this Supplemental Petition). If any of the modifications are implemented, the only changes will be (i) the process by which the transfer of ownership will occur and (ii) the details of the final ownership structure. Under any of the proposed modifications, the end result will be essentially identical to the end result proposed in the Initial Petition and the attached draft transfer agreements, *i.e.*, the generating assets currently owned by AGC will be owned (either directly or indirectly) by MACH Gen and will no longer be indirectly owned by PG&E NEG.

V. REGULATORY REQUIREMENTS

In the Initial Petition, AGC demonstrated that the requirements of 16 N.Y.C.R.R. § 1000.16(b) are satisfied. This Supplemental Petition does not alter any of the analysis provided in the Initial Petition. As discussed above, even if the potential modifications described herein are implemented, the end result is the same as that in the Initial Petition, *i.e.*, the assets currently owned by AGC will ultimately be wholly owned, either directly or indirectly, by MACH Gen. Moreover, as described in the Initial Petition, the proposed Transfer will improve the financial stability of the Athens Generating Facility, and will enhance the likelihood that the Athens Generating Facility will be completed and operated. Construction and operation of the

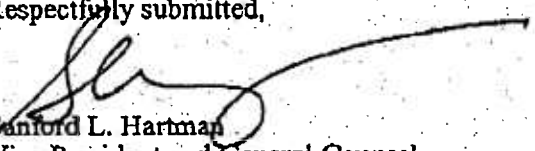
Athens Generating Facility is needed to help ensure that adequate energy and capacity is available in New York State in the immediate future.

The verifications required by 16 N.Y.C.R.R. § 1000.16(b) are attached.

VI. CONCLUSION

Based on the information presented above, AGC respectfully requests that the Siting Board approve the proposed transfer of the Certificate as described in the Initial Petition and this Supplemental Petition. In addition, Petitioner requests confirmation that the potential modifications to the Transfer, as described herein, are not material items that will necessitate further review by the Siting Board.

Respectfully submitted,



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Dated: August 26, 2003
Bethesda, MD

EXHIBIT A

ASSET TRANSFER AGREEMENT

by and between

NEW ATHENS GENERATING COMPANY, LLC
a Delaware limited liability company

as the **"Transferee"**

and

ATHENS GENERATING COMPANY, L.P. a Delaware limited partnership

as **"Transferor"**

Dated: _____, 2003

TABLE OF CONTENTS

	Page
ARTICLE I. DEFINITIONS	6
1.1 Defined Terms	6
1.2 Other Defined Terms	10
1.3 Construction	11
ARTICLE II. TRANSFER OF ASSETS	11
2.1 Transfer of Assets	11
2.2 Assumption of Liabilities	11
2.3 Allocation of Contract Cost	12
ARTICLE III. CLOSING	12
3.1 Closing	12
3.2 Transfer Taxes and Fees	12
3.3 Conveyances at Closing	12
3.4 Consents to Assignment and Transfer of Certain Rights and Liabilities.	14
3.5 Conditions to Closing	14
ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF TRANSFEROR	16
4.1 Organization	16
4.2 Authority	16
4.3 Assets	16
4.4 Contracts	16
4.5 Real Property	17
4.6 Equipment	17
4.7 Proprietary Rights	17
4.8 Insurance Policies	17
4.9 Permits	17
4.10 No Conflict or Violation; Consents and Approvals	17
4.11 Compliance with Law; Reports	18
4.12 Regulation	18
4.13 Litigation	18
4.14 Consents and Notices	18
4.15 Payment of Taxes	19
ARTICLE V. REPRESENTATIONS AND WARRANTIES OF TRANSFEREE	19
5.1 Organization	19
5.2 Authority	19
5.3 No Conflict or Violation; Consents and Approvals	19

ARTICLE VI. ACTIONS BY TRANSFEROR AND TRANSFEREE AFTER THE	
CLOSING.....	20
6.1 Further Assurances and Cooperation.....	20
6.2 Survival of Representations, Etc	20
6.3 Indemnity	20
ARTICLE VII. MISCELLANEOUS	21
7.1 Notices.....	21
7.2 Entire Agreement; Amendments	21
7.3 No Waiver	21
7.4 Counterparts	21
7.5 Successors and Assigns.....	21
7.6 Governing Law.....	21
7.7 Invalidity	22
7.8 Proceedings	22

LIST OF EXHIBITS AND SCHEDULES

Exhibit A	[Intentionally Omitted]
Exhibit B	Real Property Deed
Exhibit C	Assignment and Assumption Agreement
Schedule 1.1	Permitted Encumbrances
Schedule 2.3	Allocation of Contract Cost
Schedule 4.4	Contracts
Schedule 4.5	Real Property
Schedule 4.6	Equipment and Leasehold Improvements
Schedule 4.7	Proprietary Rights
Schedule 4.8	Insurance Policies
Schedule 4.9	Permits
Schedule 4.10	Transferor Conflicts
Schedule 4.13	Litigation
Schedule 4.14	Consents, Notices
Schedule 5.3	Transferee Conflicts

ASSET TRANSFER AGREEMENT

This Asset Transfer Agreement (the "Agreement") is entered into as of [____], 2003, by and between NEW ATHENS GENERATING COMPANY, LLC, a Delaware limited liability company ("Transferee"), and ATHENS GENERATING COMPANY, L.P., a Delaware limited partnership ("Transferor"), in recognition of the following facts:

RECITALS

A. Transferor owns certain assets which it uses in the conduct of its business, which is the ownership and operation of a 1,080 MW natural gas-fired electric generating facility located in Athens, New York (the "Facility").

B. Transferee is a single-member limited liability company, whose sole member is Transferor.

C. Transferor is a party to that certain Project Company Guaranty, dated as of December 21, 2001 (the "Project Company Guaranty"), pursuant to which Transferor has guaranteed the obligations of GenHoldings I, LLC, a Delaware limited liability company ("GenHoldings"), under that certain Amended and Restated Credit Agreement, dated as of March 15, 2002, among GenHoldings, the lenders party thereto (the "Banks"), Societe Générale, as administrative agent (in such capacity, the "Agent") for the Banks and as a lead arranger, Citibank, N.A., as syndication agent and as a lead arranger, JPMorgan Chase Bank, as issuer of the letters of credit, and the other arrangers, agents, CP conduits, related banks and lender group agents party thereto (as the same may be amended, modified or supplemented from time to time, the "Credit Agreement").

D. Pursuant to that certain Project Company Security Agreement dated as of December 21, 2001 (the "Existing Project Company Security Agreement") and the other Project Company Collateral Documents, the Transferor has granted the Agent a security interest in all of its then owned and thereafter acquired assets, including the Assets and the Membership Interests (each as hereinafter defined) as security for the Guaranteed Obligations (as defined in the Project Company Guaranty).

E. Pursuant to that certain Pledge Agreement among Transferor, Transferee and Agent, dated as of the date hereof, (the "Subsidiary Pledge Agreement"), Transferor has pledged its ownership interests in Transferee to the Agent as collateral security for the Project Company Guaranty.

F. The Agent and the Transferor have agreed that (i) Transferor shall transfer, pursuant to the terms and conditions of this Agreement, subject to the existing security interests of the Agent therein, all of Transferor's assets to Transferee, as the Agent's designee, (ii) Transferee shall become a party under the Project Company Collateral Documents; (iii) Transferee shall assume all liabilities of Transferor under certain of the Credit Documents, including the Project Company Guaranty (but subject to the Transferor remaining a co-guarantor as provided in Section 2.2 hereof) and (iv) following such transfer of assets and liabilities, Transferor shall transfer the membership interests in Transferee (the "Membership Interests") owned by Transferor to MACH, Gen, LLC, a Delaware limited liability company, pursuant to and in accordance with the terms of that certain Equity Transfer Agreement, dated as of the date hereof, by and among MACH Gen, LLC, as Transferee, and Transferor, (the "Equity Transfer Agreement").

G. In accordance with the foregoing, and as a condition precedent to the consummation of the transactions contemplated by the Equity Transfer Agreement, Transferee desires to acquire from Transferor, and Transferor desires to transfer to Transferee, all properties and other assets of Transferee, real and personal, tangible and intangible, in exchange for the assumption of all liabilities and obligations of Transferor by Transferee, upon the terms and subject to the conditions of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the respective covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

1.1 Defined Terms. As used herein, the terms below shall have the following meanings. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

“Affiliate” shall have the meaning set forth in the rules and regulations under the Exchange Act.

“Ancillary Agreements” shall mean, collectively, (a) the Real Property Deed(s), (b) the Assignment and Assumption Agreement(s) and (c) all other instruments, certificates and documents delivered by the parties pursuant to this Agreement, as each may be amended, modified or supplemented from time to time in accordance with its terms.

“Assets” shall mean all of Transferor’s right, title and interest in and to the Facility, and all properties, assets and rights of any kind, whether direct or indirect, tangible or intangible, real or personal, and constituting, or used or useful in connection with, or related to, the Facility or in which Transferor has any interest, including without limitation all of Transferor’s right, title and interest in the following:

(a) all accounts and notes receivable (whether current or noncurrent), refunds, deposits, prepayments or prepaid expenses (including without limitation my prepaid insurance premiums) of Transferor;

(b) all cash and cash equivalents held by Transferor, either directly or in accounts with any banking or similar institution, (including marketable securities and short term investments and checks received by Transferor prior to the Closing Date);

(c) all Contracts and Contract Rights;

(d) all Leasehold Estates;

(e) all Leasehold Improvements;

(f) all Owned Real Property;

- (g) all Equipment;
- (h) all Books and Records;
- (i) all Proprietary Rights;
- (j) all Permits;
- (k) all Insurance Policies;
- (l) all computers and software;

(m) all available supplies, sales literature, promotional literature, customer, supplier and distributor lists, art work, display units, telephone and fax numbers and purchasing records related to the operation of the Facility:

(n) all rights under or pursuant to all warranties, representations and guarantees made by suppliers in connection with the Assets or services furnished to Transferor pertaining to the Facility or affecting the Assets; and

(o) all claims, causes of action, choices in action, rights of recovery and rights of set-off of any kind, against any person or entity, including without limitation any liens, security interests, pledges or other rights to payment arising prior to the Closing Date.

"Books and Records" shall mean all of the books and records of Transferor relating to the Assets or the Facility and all books and records of any Affiliate of Transferor necessary to the operation of the Facility, including without limitation, (a) all records and lists pertaining to the Facility, (b) all product, business and marketing plans of Transferor and (c) all books, ledgers, files, reports, plans, drawings and operating records of every kind maintained by Transferor, including in each case all computer software and data in computer readable and/or human readable form used to maintain such books and records together with the media on which such software and data are stored and all documentation related thereto.

"Contract" shall mean any agreement, contract, note, loan, evidence of indebtedness, purchase order, letter of credit, indenture, security or pledge agreement, franchise agreement, undertaking, practice, covenant not to compete, employment agreement, severance agreement, license, instrument, obligation or commitment to which Transferor is a party or is bound, whether oral or written, and all Leases, including without limitation those listed on Schedule 4.4(a) hereto, but excluding this Agreement, the Existing Project Company Security Agreement and the Subsidiary Pledge Agreement.

"Contract Cost" shall mean the fair market value of the Assets minus the total amount of Liabilities as of the Closing Date.

"Contract Rights" shall mean all of Transferor's rights under the Contracts.

"Copyrights" shall mean registered copyrights, copyright applications and unregistered copyrights.

"Credit Documents" shall have the meaning assigned in the Credit Agreement.

"Discharge" shall mean and include any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment or the workplace of any Hazardous Substance, and otherwise as defined in any Environmental Law.

"Encumbrances" shall mean any claim, mortgage, lien, pledge, encumbrance, easement, security interest, or charge of any kind.

"Environmental Laws" shall mean any Law relating to the regulation, protection or clean-up of the environment or the use, treatment, storage, transportation, generation, manufacture, processing, distribution, handling or disposal or Discharge of Hazardous Substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1990, as amended, 42 U.S.C. §9601 et seq., the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6901 et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §3908 et seq.

"Equipment" shall mean all of the furniture, fixtures, furnishings, machinery, automobiles, trucks, spare parts, supplies, equipment, tools, computer hardware and other personal property used in, or intended for use in connection with, the Facility, or located on the Real Property, and owned in each case or leased by Transferor or its Affiliates, including without limitation those items listed on Schedule 4.6(a) hereto, including, without limitation, turbines, generators, pipelines and transmission lines.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Federal Power Act" shall mean the Federal Power Act of 1935, as amended.

"FERC" shall mean the Federal Energy Regulatory Commission.

"Final Order" shall mean a final order of a Governmental Authority after all opportunities for rehearing are exhausted (whether or not any appeal thereof is pending) that has not been revised, stayed, enjoined, set aside, annulled or suspended, with respect to which any required waiting period has expired; and as to which all conditions to effectiveness prescribed therein or otherwise by Law, regulation or Governmental Order have been satisfied.

"Governmental Authority" shall mean any court, government (federal, state, local, foreign or multinational) or other regulatory, administrative or governmental agency or authority.

"Governmental Order" shall mean any judgment, decision, consent decree, injunction, ruling, writ or order of or entered by any Governmental Authority that is binding on any person or its property under applicable Law.

"Hazardous Substance" shall mean (i) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde, PCBs, and radon gas and (ii) any chemicals, materials or substances defined as "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants" or words of similar import under any Environmental Law.

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

"Insurance Policies" shall mean the insurance policies related to the Assets, including without limitation those policies listed on Schedule 4.8 hereto.

"Laws" means any laws, statutes, ordinances, regulations, rules, executive orders, court decisions and orders of any Governmental Authority.

"Leases" shall mean all existing leases, whether oral or written, with respect to the personal or real property leased to Transferor as lessee.

"Leasehold Estates" shall mean all of Transferor's rights and obligations as lessee under the Leases.

"Leasehold Improvements" shall mean all leasehold improvements situated in or on the Leased Real Property and owned by Transferor, including without limitation those listed on Schedule 4.6(b) hereto.

"Leased Real Property" shall mean all leased real property described in the Leases, including without limitation the real property listed on Schedule 4.5(b) hereto.

"Owned Real Property" shall mean real property owned by Transferor, together with all buildings, improvements, fixtures, easements, licenses, options, insurance proceeds and condemnation awards and all other rights of Transferor in or appurtenant thereto, including without limitation the real property listed on Schedule 4.5(a) hereto.

"Patents" shall mean all patents and patent applications and registered design and registered design applications and all rights in connection therewith.

"Permits" shall mean all licenses, permits, franchises, approvals, authorizations, consents or orders of, or filings with, any governmental authority, whether foreign, federal, state or local, or any other Person, necessary for the ownership, operation, and past, present or anticipated conduct of, the Assets, including without limitation those listed on Schedule 4.9 hereto.

"Permitted Encumbrances" shall mean (a) planning restrictions, easements, licenses, rights of way, declarations, reservations, provisions, covenants, conditions, waivers, irregularities, survey exceptions or other title matters or Encumbrances (and, with respect to Leasehold Estates, Encumbrances and other obligations incurred, created, assumed or permitted to exist and arising by, through or under a landlord or owner of the leased property, with or without consent of the lessee) which do not materially impair the use (in the manner currently used) or value of the parcel of property to which they relate, (b) zoning, entitlement, conservation restriction and other land use and environmental regulations imposed by Governmental Authorities, and (c) the liens created pursuant to the Project Company Collateral Documents in favor of Agent, in each case, as in existence on the date hereof and listed in sections (a) through (c) of Schedule 1.1 hereto, respectively.

"Person" shall mean any person or entity, whether an individual, trustee, corporation, partnership, limited partnership, limited liability company, trust, unincorporated organization, business association, firm, joint venture, governmental agency or authority.

"Project Company Collateral Documents" shall mean all Project Company Collateral Documents (as defined in the Credit Agreement) executed by Transferor.

"Proprietary Rights" shall mean all of Transferor's Copyrights, Patents, Trademarks, technology rights and licenses, computer software (including without limitation any source or object codes therefor or documentation relating thereto), trade secrets, franchises, know-how, inventions, designs, specifications, plans, drawings and intellectual property rights, including without limitation those listed on Schedule 4.7 hereto.

"Real Property" shall mean all Owned Real Property and all Leased Real Property.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Trademarks" shall mean registered trademarks, registered service marks, trademark and service mark applications and unregistered trademarks and service marks, and all goodwill associated with any of the foregoing.

"Transferee's Required Approvals" shall mean all consents, approvals and filings set forth on Schedule 5.3(b).

"Transferor's Required Approvals" shall mean all consents, approvals and filings set forth on Schedule 4.10(b).

1.2 Other Defined Terms. In addition to the terms defined in the Introduction to this Agreement or in Section 1.1, the following terms shall have the meanings defined for such terms in the Sections set forth below:

Term	Section
"Agent"	Recitals
"Allocation"	2.3
"Assignment and Assumption Agreement"	3.3(a)(iii)
"Banks"	Recitals
"Closing"	3.1
"Closing Date"	3.1
"Company Organizational Documents"	3.1(a)
"Credit Agreement"	Recitals
"Damages"	6.3
"Equity Transfer Agreement"	Recitals
"Facility"	Recitals
"GenHoldings"	Recitals
"Liabilities"	2.2
"Membership Interests"	Recitals
"Other Asset Transfer Agreements"	Recitals
"Other Existing Project Companies"	Recitals
"Project Company Guaranty"	Recitals
"Real Property Deed"	3.3(a)(2)
"Sales Taxes"	4.15
"Subsidiary Pledge Agreement"	Recitals
"Title Commitment"	3.5(h)
"Title Company"	3.5(h)
"Transferee Organizational Documents"	5.1
"Transferor Organizational Documents"	4.1

1.3 Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement; (v) the word "including" shall mean "including, without limitation;" (vi) the word "or" shall be disjunctive but not exclusive and (vii) the words "made available" shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available.

(b) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against either party.

(e) The annexes, schedules and exhibits to this Agreement are a material part hereof and shall be treated as if fully incorporated into the body of the Agreement.

(f) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified, and shall be counted from the day immediately following the date from which such number of days are to be counted.

(g) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

ARTICLE II. TRANSFER OF ASSETS

2.1 Transfer of Assets. Upon the terms and subject to the conditions set forth herein, at the Closing, Transferee shall acquire from Transferor, and Transferor shall convey, transfer, assign and deliver to Transferee, all of Transferor's rights, title and interests in the Assets free and clear of all Encumbrances other than Permitted Encumbrances (it being acknowledged and agreed that Transferee shall acquire the Assets subject to the liens and security interests created under the Project Company Collateral Documents).

2.2 Assumption of Liabilities. Upon the terms and subject to the conditions set forth herein, at Closing, Transferee shall assume all obligations, responsibilities and liabilities of Transferor under all Contracts and Permits (the "Liabilities"), arising out of or relating to events or occurrences happening or conditions existing on, before, or after the Closing Date from Transferor; *provided* that Transferor shall remain obligated as co-obligor under the Project Company Guaranty, until such time as the transactions contemplated by the Equity Transfer Agreement are consummated and the Agent executes and delivers to Transferor a release in the form attached as Exhibit B to the Equity Transfer Agreement (it being further

understood and agreed that the Assets shall remain subject to the liens and security interests created under the Project Company Collateral Documents).

2.3 Allocation of Contract Cost. The Contract Cost shall be allocated among the Assets in the manner required by Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder and as set forth on Schedule 2.3 hereto (the "Allocation"). Each of the parties agrees (a) to prepare and file on a timely basis with the Internal Revenue Service substantially identical initial and supplemental IRS Forms 8594 "Asset Acquisition Statements Under Section 1060" consistent with the Allocation and (b) to report this transaction for federal and state tax purposes in a manner consistent therewith.

ARTICLE III. CLOSING

3.1 Closing. The closing of the transactions contemplated hereby (the "Closing") shall be held on the date hereof (the "Closing Date") at 10:00 a.m. New York time at the offices of Latham & Watkins LLP, at 885 Third Avenue, New York, NY 10022, unless the parties mutually agree otherwise. To effect the transfer of the Assets and Liabilities, at the Closing, Transferor shall execute and deliver to Transferee the instruments listed in Section 3.3(a) hereof, and Transferee shall execute and deliver the instruments listed in Section 3.3(b) hereof. The parties agree that time shall be of the essence in connection with the transactions contemplated hereby and the Closing.

3.2 Transfer Taxes and Fees. Transferor shall be solely responsible for any documentary and transfer taxes and any sales, use or other taxes imposed by reason of the transfer of the Assets provided hereunder and any deficiency, interest or penalty asserted with respect thereto. Transferor shall pay the fees and costs of recording or filing all applicable conveyancing instruments, whether described herein or otherwise necessary to effect the transactions contemplated hereby.

3.3 Conveyances at Closing.

(a) To effect the transfer and assumption referred to in Sections 2.1 and 2.2 hereof, Transferor will, at the Closing, execute, to the extent necessary, and deliver to Transferee:

(i) An executed copy of this Agreement, whereby Transferor does hereby grant, bargain, transfer, assign, convey and deliver to Transferee all right, title and interest in and to the Assets, (subject to the liens and security interests created under the Project Company Collateral Documents) and pursuant to which Transferor for itself, its successors and assigns hereby covenants and agrees that, at any time and from time to time forthwith upon the written request of Transferee, Transferor will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, each and all of such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may reasonably be required by Transferee in order to assign, transfer, set over, convey, assure and confirm unto and vest in Transferee, its successors and assigns, title to the assets conveyed, transferred and delivered hereby;

(ii) one or more deeds of conveyance of the Real Property in substantially the form attached as Exhibit B hereto, conveying in the aggregate all of Transferor's Owned Real Property to Transferee (each, a "Real Property Deed") together with executed forms providing for the payment of any and all real estate transfer taxes payable in connection with the transfer of the Real Property;

(iii) subject to Section 3.4 hereof, one or more assignment documents in substantially the form attached as Exhibit C hereto executed by Transferor and assigning in the aggregate

all of Transferor's interest in the Leases, Contracts, Permits and all other Assets not transferred pursuant to clauses (i), (ii) and (vi) of this subparagraph (a) to Transferee (each, an "Assignment and Assumption Agreement");

(iv) copies of all consents duly obtained and notices duly given in connection with the transactions contemplated by this Agreement as listed on Schedule 4.14 hereto;

(v) a certificate executed by the Secretary or an Assistant Secretary of Transferor, certifying as of the Closing Date (A) a true, correct and complete copy of the Transferor Organizational Documents and all amendments thereto, (B) a true, correct and complete copy of the resolutions of the Board of Directors of Transferor authorizing the execution, delivery and performance of this Agreement and each Ancillary Agreement, as applicable, and (C) that the conditions set forth in Section 3.5 have been satisfied;

(vi) such other instruments as shall be reasonably requested by Transferee to vest in Transferee title in and to the Assets in accordance with the provisions hereof;

(vii) copies of the certificate of limited partnership of Transferor and all amendments thereto, certified as of a recent date by the Secretary of State of the State of Delaware;

(viii) a certificate of the Secretary of State of the State of Delaware certifying the good standing of Transferor; and

(ix) executed counterparts to each of the other Ancillary Agreements, as applicable.

(b) To effect the transactions contemplated hereby, Transferee shall, at the Closing, deliver to Transferor, or cause to be delivered to Transferor:

(i) subject to Section 3.4 hereof, executed counterparts to each Assignment and Assumption Agreement delivered by Transferor pursuant to Section 3.3(a)(iii), evidencing Transferee's assumption, in accordance with Section 2.2 hereof, of the Liabilities;

(ii) executed counterparts to each of the other Ancillary Agreements, as applicable;

(iii) copies of UCC-1 financing statements (or continuations thereof) to be filed with the appropriate office in the proper jurisdiction to vest, or to continue, in the Agent first priority security interests in all Assets of Transferee securing its obligations under the Credit Documents pursuant to the Project Company Collateral Documents;

(iv) a certificate executed by the Secretary or an Assistant Secretary of Transferee, certifying as of the Closing Date (A) a true, correct and complete copy of the certificate of formation of Transferee and the operating agreement of Transferee and all amendments thereto, and (B) a true, correct and complete copy of the resolutions of the Board of Directors of Transferee authorizing the execution, delivery and performance of this Agreement and each Ancillary Agreement, as applicable;

(v) copies of the certificate of formation of Transferee and the operating agreement of Transferee and all amendments thereto, certified as of a recent date by the Secretary of State of the State of Delaware;

(vi) a certificate of the Secretary of State of the State of Delaware certifying the good standing of Transferee; and

(vii) duly executed copies of supplements to the Project Company Collateral Documents pursuant to which the Transferee becomes a co-grantor and co-obligor with the Transferor thereunder.

3.4 Consents to Assignment and Transfer of Certain Rights and Liabilities. (a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any rights under any Contract or Permit or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the consent of a third party thereto, would constitute a breach or default thereof or give rise to a right of termination or cancellation thereunder, violate an effective restriction on transfer, or in any way materially adversely affect the rights of Transferee thereunder; provided, however, that the foregoing limitation will not restrict the transfer or rights under any Contract or Permit to the extent that any such provision providing for a right of breach or termination or otherwise restricting transfer would be rendered ineffective under the provision of Sections 9-406 or 9-408 of the Uniform Commercial Code as in effect in the applicable jurisdiction. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would materially adversely affect the rights of Transferee thereunder, Transferor will cooperate with Transferee, and use commercially reasonable efforts, at Transferor's expense, to provide to Transferee the benefits under any such Contract or Permit or claim or right, including, without limitation, enforcement for the benefit of Transferee of any and all rights of Transferor against a third party thereto arising out of the breach, default, termination or cancellation by such third party or otherwise or, at Transferor's option, to the maximum extent permitted by Law and such Contract or Permit, appoint Transferee to be Transferor's representative and agent with respect to such Contract or Permit, as applicable. Following the Closing, Transferee and Transferor shall continue to cooperate and use commercially reasonable efforts to effect the transfer to Transferee of such Contracts and Permits. Transferor shall indemnify, defend and hold harmless Transferee from and against any and all liabilities incurred by Transferee in connection with, arising out of or resulting from any actions taken by Transferor on or after the Closing Date with respect to any such Contract or Permit, other than actions taken in compliance with any such Contract or Permit or as directed by Transferee. In the event that the assignment of rights under any Contract is subject to any restrictions on transfer but such restrictions on transfer are ineffective under Sections 9-408 of the Uniform Commercial Code as in effect in the applicable jurisdiction to prevent the transfer but pursuant to the limitations of Section 9-408 of the Uniform Commercial Code the Transferee would be unable to enforce the Contract against the account debtor or other obligor, then the Transferor shall continue to use its commercially reasonable efforts after the closing to obtain any necessary consents to such assignment.

(b) The Transferee agrees to execute such additional documents as may be reasonably requested by the Transferor in order to effect a novation of the Transferor's existing obligations under any Contract or Permit.

3.5 Conditions to Closing. The obligations of Transferee to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Transferee; provided, that notwithstanding anything in this Section 3.5 to the contrary, Transferee may terminate this Agreement at any time for any

reason (without penalty) and shall not be required to consummate this transaction notwithstanding the prior satisfaction of any or all of the following conditions:

(a) Representations and Warranties. All representations and warranties of Transferor contained in this Agreement, shall be true and correct as of the date hereof and as of the Closing Date. Transferor shall furnish Transferee with a certificate executed by a duly authorized officer of Transferor to the effect that the conditions set forth in this Section 3.5(a) are satisfied.

(b) No Law or Governmental Orders. No preliminary or permanent injunction or other Governmental Order which prevents the consummation of the transfer of the Assets contemplated hereby shall have been issued and remain in effect (each party agreeing to use its commercially reasonable efforts to have any such injunction or Governmental Order lifted) and no Law shall have been enacted which prohibits the consummation of the transfer of the Assets or assumption of the Liabilities.

(c) Governmental Consents and Approvals. All Federal, State and local government consents and approvals required for the consummation of the transfer of the Assets, including, without limitation, Transferor's Required Regulatory Approvals and Transferee's Required Regulatory Approvals, shall have been obtained or become Final Orders.

(d) Deliveries. Transferee shall have received from Transferor each of the deliveries described in Section 3.3(a) hereof.

(e) Certain Permits. Subject to Section 3.4 hereof, the Permits set forth on Schedule 4.9 hereto shall have been transferred to Transferee on the Closing Date, and all required consents and approvals of the applicable Governmental Authorities with respect to such transfers shall have been obtained, shall be in full force and effect and not subject to any transfer requirements or consent or approval obligations (including new Permit terms or conditions) imposed by the applicable Governmental Authority other than any such requirements or obligations that could reasonably be expected to materially adversely affect Transferee's ownership or operation of the Assets following the Closing, or the ability of Transferee to consummate the transactions contemplated hereby).

(f) Delivery of Estoppel Certificates. Transferee shall have received estoppel certificates, in form reasonably acceptable to Transferee, of the landlord with respect to each Lease of real property, in each case confirming: the nonexistence of any default under the relevant Lease, assent to assignment of the Lease to Transferee, a statement of the material monetary terms of the Lease and such other matters as Transferee may reasonably request.

(g) Delivery of Title Commitment to Real Property. Transferor shall have furnished to Transferee a commitment (in each case, a "Title Commitment") of a title insurance company (the "Title Company") reasonably acceptable to Transferee, to issue in favor of Transferee at the Title Company's regular rates an owner's extended coverage policy of title insurance (ALTA Owners Form B-1970) with respect to each parcel of Owned Real Property, and an extended coverage leasehold policy of title insurance with respect to each Lease for which a memorandum of lease has been recorded prior to the date hereof, in amounts designated by, and in forms satisfactory to Transferee. Each Title Commitment shall include no exception or reservation other than such standard printed exceptions not typically omitted or modified by reputable title companies and the Permitted Encumbrances, and shall contain customary endorsements and such other endorsements as Transferee reasonably requests. Transferor shall supply any documents (including prior title insurance policies to the extent in Transferor's possession or

reasonably available to Transferor) and affidavits reasonably requested by the Title Company and required thereby for the issuance of title insurance policies to Transferee

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF TRANSFEROR

Transferor hereby represents and warrants to Transferee as follows:

4.1 Organization. Transferor is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of Delaware. Transferor is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary. Transferor has delivered to Transferee true, correct and complete copies of the certificate of formation and limited partnership agreement of Transferor (in each case, as amended to date) (the "Transferor Organizational Documents"). Transferor is not in default under or in violation of any provision of the Transferor Organizational Documents, and such Transferor Organizational Documents are in effect without further amendment as of the Closing Date.

4.2 Authority. Transferor has full right, power and authority, and has taken all action necessary, to enter into this Agreement and the Ancillary Agreements and to perform its obligations hereunder; no other proceedings on the part of Transferor are necessary to authorize this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby; this Agreement has been duly executed and delivered by Transferor and assuming the due authorization, execution and delivery of this Agreement by Transferee, subject to the receipt of Transferor's Required Regulatory Approvals and Transferee's Required Regulatory Approvals, constitutes a legal, valid and binding obligation of Transferor, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors rights generally or (b) general principles of equity, whether considered in a proceeding at law or in equity.

4.3 Assets.

(a) Transferor has and will transfer to Transferee good and marketable title to, or a valid leasehold interest in, all of the Assets, and upon consummation of the transactions contemplated hereby, Transferee will acquire good and marketable title to, or a valid leasehold interest in, all of the Assets, free and clear of any Encumbrances other than the Permitted Encumbrances.

(b) Immediately following the Closing, Transferor will have no assets (including real or personal property) other than 100% of the Membership Interests, which will constitute all equity interests in Transferee as of the Closing Date.

4.4 Contracts.

(a) The Contracts listed on Schedule 4.4(a) hereto are all of the Contracts entered into by Transferor, or under which Transferor has any rights or obligations, or is bound in any way.

(b) Except as set forth on Schedule 4.4(b), (i) all of the Contracts are in full force and effect and constitute legal, valid and binding obligations of Transferor and, to the knowledge of Transferor, having undertaken a reasonable investigation, the other parties thereto, (ii) Transferor has fulfilled, or taken all action necessary to enable it to fulfill when due, all of its material obligations under each such Contract, (iii) Transferor is not in default in any material respect under any Contract, (iv) to Transferor's knowledge, having undertaken a reasonable investigation, no counterparty is in default in

any material respect, under any Contract and (v) to Transferor's knowledge, having undertaken a reasonable investigation, no event or condition exists which, with notice, lapse of time or both would constitute a default in any material respect of Transferor or any counterparty, under any Contract. Transferor has not received any written notice of cancellation or termination or any written notice of default under any Contract. Transferor has furnished Transferee with true and correct copies of each of the Contracts, together with all material amendments and supplements thereto.

4.5 Real Property.

(a) The real property listed on Schedule 4.5(a) hereto is all the Owned Real Property in which Transferor has any rights or obligations, or is bound in any way.

(b) The real property listed on Schedule 4.5(b) hereto is all the Leased Real Property in which Transferor has any rights or obligations, or is bound in any way.

4.6 Equipment.

(a) The Equipment listed on Schedule 4.6(a) hereto is all of the furniture, fixtures, furnishings, machinery, automobiles, trucks, spare parts, supplies, equipment, tools, computer hardware and other personal property located on the Real Property and owned or leased by Transferor or its Affiliates, or to which Transferor has any rights or obligations, or is bound in any way, or which is used or intended for use in connection with the Facility.

(b) The Equipment listed on Schedule 4.6(a), together with the Leasehold Improvements listed on Schedule 4.6(b) hereto, constitutes all tangible Assets comprising the Facility.

4.7 Proprietary Rights. The proprietary rights listed on Schedule 4.7 hereto are all of the Copyrights, Patents, Trademarks, technology rights and licenses, computer software (including without limitation any source or object codes therefor or documentation relating thereto), trade secrets, franchises, know-how, inventions, designs, specifications, plans, drawings and intellectual property rights owned or licensed for use by Transferor, or in which Transferor has any rights or obligations, or is bound in any way.

4.8 Insurance Policies. The insurance policies listed on Schedule 4.8 hereto are all of the insurance policies entered into by Transferor, or under which Transferor has any rights or obligations, or is bound or benefits in any way.

4.9 Permits.

(a) The permits listed on Schedule 4.9 hereto are all of the licenses, permits, franchises, approvals, authorizations, consents or orders of, or filings with, any Governmental Authority (including applications and draft permits under which Transferor is permitted to operate in accordance with applicable Environmental Laws), whether foreign, federal, state or local, or any other Person, necessary for the ownership, operation, and past, present or anticipated conduct of, the Assets, or under which Transferor has any rights or obligations, or is bound in any way.

(b) Except as set out on Schedule 4.9, such Permits are in full force and effect, and Transferor is not in default, nor has it received any written notice of any claim or default, with respect to any such Permit.

4.10 No Conflict or Violation; Consents and Approvals.

(a) Except as set forth in Schedule 4.10(a), neither the execution, delivery or performance by Transferor of this Agreement or the Ancillary Agreements nor the consummation by Transferor of the transactions contemplated hereby and thereby will (i) violate or conflict with any provision of the certificate of formation or limited partnership agreement of Transferor, (ii) violate, conflict with, or result in or constitute a breach or default under (with the giving of notice or passage of time or both), or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any agreement to which Transferor is a party or by which the Assets are bound or (iii) violate any Law or Governmental Order applicable to Transferor and/or the Assets.

(b) Except as set forth in Schedule 4.10(b), no consent, approval permit or authorization of or from, notice to or declaration, filing or registration with, any Governmental Authority or any other Person is required to be made or obtained by Transferor in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

4.11 Compliance with Law; Reports.

(a) Transferor is, in its ownership and operation of the Facility, in compliance in all material respects with all applicable Laws and Governmental Orders relating to the Facility and the Assets.

(b) Transferor has filed or caused to be filed with the applicable state or local utility commissions or regulatory bodies and the FERC, all material forms, statements, reports and documents (including all exhibits, amendments and supplements thereto) required to be filed by it with respect to the business and operations of Transferor as it relates to the Assets under each of the Securities Act, the Exchange Act, the New York State public utility laws, the Federal Power Act, 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.

4.12 Regulation. Transferor is a "public utility" within the meaning of the Federal Power Act. FERC has granted Transferor the authority to sell electric electricity, capacity and other services at market-based rates with all waivers of regulations and blanket authorizations as are customarily granted by FERC to a similarly situated "public utility" that sells wholesale energy, capacity and ancillary services at market-based rates under Section 205 of the FPA. Transferor is not a "holding company," a "public utility company," a "gas utility company," or an "electric utility company," as those terms are defined in the Holding Company Act. Transferor is an "exempt wholesale generator" and the Facility is an "Eligible Facility" within the meaning of the Holding Company Act.

4.13 Litigation. There is no suit, action, order, arbitration, or legal, administrative or other proceeding or governmental investigation, pending or threatened against or affecting Transferor or the Assets, other than those litigations listed on Schedule 4.13 hereof.

4.14 Consents and Notices.

(a) The consents and notices listed on Schedule 4.14 hereto are all consents and notices required (i) by law, rule, regulation or order of any Governmental Authority or (ii) by the provisions of any Contract or Permit in connection with the execution of this Agreement and necessary to effect the consummation of the transactions contemplated hereby;

(b) All such consents have been duly obtained in accordance with the terms of the Contract or Permit for which consent to transfer or assign was requested, and are in full force and effect;

(c) All such notices have been duly given in accordance with the terms of the Contract or Permit for which notice to transfer or assign was required, and are in full force and effect; and

(d) All such consents and notices required by law, rule, regulation or order of any Governmental Authority have been duly obtained or duly given in accordance with the requirements of such Governmental Authority to duly obtain such consents and duly give such notices.

4.15 Payment of Taxes. All state, local, foreign or other sales and use or income taxes (collectively, "Sales Taxes") in respect of periods beginning before the Closing Date, have been timely paid, or will be timely paid, and Transferor does not have any liability for Sales Taxes in excess of the amounts so paid.

ARTICLE V. REPRESENTATIONS AND WARRANTIES OF TRANSFEREE

Transferee hereby represents and warrants to Transferor as follows:

5.1 Organization. Transferee is a limited liability company, validly existing and in good standing under the laws of the State of Delaware. Transferee is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary. Transferee has delivered to Transferor true, correct and complete copies of the articles of formation and limited liability company agreement of Transferee (in each case, as amended to date) (the "Transferee Organizational Documents"). Transferee is not in default under or in violation of any provision of the Transferee Organizational Documents, and such Transferee Organizational Documents are in effect without further amendment as of the Closing Date.

5.2 Authority. Transferee has full right, power and authority, and has taken all action necessary, to enter into this Agreement and to execute and deliver this Agreement and the Ancillary Agreements to which it is a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations hereunder; no other proceedings on the part of Transferee are necessary to authorize this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby; this Agreement has been duly executed and delivered by Transferee and assuming the due authorization, execution and delivery of this Agreement by Transferor, subject to the receipt of Transferor's Required Regulatory Approvals and Transferee's Required Regulatory Approvals constitutes a legal, valid and binding obligation of Transferee, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors rights generally or (b) general principles of equity, whether considered in a proceeding at law or in equity;

5.3 No Conflict or Violation; Consents and Approvals.

(a) Except as set forth in Schedule 5.3(a), neither the execution, delivery or performance by Transferee of this Agreement or the Ancillary Agreements nor the consummation by Transferee of the transactions contemplated hereby and thereby will (i) violate or conflict with any provision of the certificate of formation or limited liability agreement of Transferee, (ii) violate, conflict with, or result in or constitute a breach or default under (with the giving of notice or passage of time or both), or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration under, any of the terms, conditions or provisions of any contract or agreement to which

Transferee is a party or by which its assets are bound or (iii) violate any Law or Governmental Order applicable to Transferee.

(b) Except as set forth in Schedule 5.3(b) no consent, approval or authorization of or from, notice to or declaration, filing or registration with any Governmental Authority or any other person is required to be made or obtained by Transferee in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE VI.

ACTIONS BY TRANSFEROR AND TRANSFEE AFTER THE CLOSING

6.1 Further Assurances and Cooperation. Upon the terms and subject to the conditions contained herein, each of the parties hereto agrees, both before and after the Closing, (a) to use all commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement, (b) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the transactions contemplated hereunder, (c) to execute all documents or instruments necessary and take any other actions required to maintain perfection and priority of the liens described in clause (c) of the definition of Permitted Encumbrances and (d) to cooperate with each other in connection with the foregoing, including using their respective best efforts to (i) defend all actions challenging this Agreement, the Ancillary Agreements or the consummation of the transactions contemplated hereby, and (ii) fulfill all conditions to this Agreement.

6.2 Survival of Representations, Etc. All representations and warranties of Transferor contained in this Agreement or in any certificate, exhibit, instrument or conveyance delivered by or on behalf of Transferor are material, shall be deemed to have been relied upon by Transferee and shall indefinitely survive the Closing regardless of any investigation. All representations and warranties of Transferee contained in this Agreement or in any certificate, exhibit, instrument or conveyance delivered by or on behalf of Transferee shall terminate upon the Closing. The termination of the representations and warranties of Transferor provided herein shall not affect the rights of a party in respect of any claim for Damages resulting from the breach of any such representation or warranty if such claim is made by Transferee in a writing received by Transferor prior to the expiration of the survival period provided herein.

6.3 Indemnity. Transferor shall indemnify, defend and hold harmless Transferee against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees (collectively, "Damages"), that Transferee shall incur or suffer, which arise, result from, or relate to (i) any breach of any representation or warranty of Transferor contained in this Agreement; (ii) any breach of any covenant or agreement made by Transferor in or pursuant to this Agreement; (iii) any Damages suffered by Transferee as a result of Transferee's status as an acquiror of the Assets; and (iv) any payments made by Transferee as a result of Transferee's attempts, whether successful or not, to preserve a former business relationship of Transferor, which may include all reasonable efforts of Transferee to continue prior relationships with customers, suppliers and other trade creditors in Transferee's sole discretion. Transferee shall promptly notify Transferor of the existence of any claim, demand, or other matter to which Transferor's indemnification obligations would apply.

ARTICLE VII.
MISCELLANEOUS

7.1 Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if delivered or sent by facsimile transmission, upon receipt, or if sent by registered or certified mail, upon the sooner of the date on which receipt is acknowledged or the expiration of three (3) days after deposit in United States post office facilities properly addressed with postage prepaid. All notices to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

If to Transferee: New Athens Generating
 Company, LLC
 [Address]
 Attn: []
 Fax: []

Copy to: Willkie Farr & Gallagher
 [Address]
 Attn:
 Fax:

If to Transferor: Athens Generating Company,
 L.P.
 [Address]
 Attn: []
 Fax: []

Copy to: Willkie Farr & Gallagher
 [Address]
 Attn:
 Fax:

7.2 Entire Agreement; Amendments. This Agreement (together with all Exhibits and Schedules hereto) and the Ancillary Agreements constitute the entire agreement among the parties pertaining to the subject matter hereof and thereof and supersede all prior and contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties.

7.3 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed by the party making the waiver.

7.4 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.

7.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective affiliates, successors and assigns.

7.6 Governing Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of New York without regard to the conflicts of law

provisions thereof (other than Sections 5-1401 and 5-1402 of the General Obligations of Law of the State of New York).

7.7 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

7.8 Proceedings.

(a) Service of Process. Each party hereto irrevocably consents to the service of any process, pleading, notices or other papers by the mailing of copies thereof by registered, certified or first class mail, postage prepaid, to such party at such party's address set forth herein, or by any other method provided or permitted under New York law.

(b) Consent and Jurisdiction. Each party hereto irrevocably and unconditionally (i) agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the United States District Court for the Southern District of New York or, if such court does not have jurisdiction or will not accept jurisdiction, in any court of general jurisdiction in the County of New York, New York; (ii) consents to the jurisdiction of any such court in any such suit, action or proceeding; and (iii) waives any objection which such party may have to the laying of venue or the convenience of the forum of any such suit, action or proceeding in any such court.

(c) Waiver of Jury Trial. Each of the parties hereto irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

NEW ATHENS GENERATING COMPANY, LLC

By: _____
Name:
Title:

ATHENS GENERATING COMPANY, L.P.

By: _____
Name:
Title:

EXHIBIT A

Intentionally Omitted.

EXHIBIT B

FORM OF REAL PROPERTY DEED

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment and Assumption Agreement") is made as of the ___ day of _____, 2003 by and between ATHENS GENERATING COMPANY, L.P., a Delaware limited partnership ("Transferor"), and NEW ATHENS GENERATING COMPANY, LLC, a Delaware limited liability company ("Transferee").

RECITALS

WHEREAS, pursuant to an Asset Transfer Agreement dated as of [_____, 2003], by and between Transferee and Transferor (the "Transfer Agreement"), Transferor has agreed to transfer to Transferee and Transferee has agreed to acquire from Transferor all Assets (as defined in the Transfer Agreement) for the consideration and upon the terms and conditions set forth in the Transfer Agreement;

WHEREAS, pursuant to Section 3.3 of the Transfer Agreement, Transferee and Transferor have agreed to enter into and deliver this Assignment and Assumption Agreement; and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Transfer Agreement.

NOW THEREFORE, pursuant to the Transfer Agreement and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is hereby agreed that:

1. Assignment. Transferor hereby conveys, transfers, assigns and delivers to Transferee all of Transferor's right, title and interest in and to the Contracts and Permits listed on Schedule 1 hereto in accordance with Section 2.1 of the Transfer Agreement.

2. Assumption of Liabilities. Transferee hereby assumes all Liabilities in accordance with Section 2.2 of the Transfer Agreement.

3. Consents to Transfer. Transferee and Transferor hereby agree that, notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any rights under any Contract or Permit or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment or transfer thereof, without the consent of a third party thereto, would constitute a breach or default thereof or give rise to a right of termination or cancellation thereunder, or in any way materially adversely affect the rights of Transferee thereunder; provided, however, that the foregoing limitation will not restrict the transfer or rights under any Contract or Permit to the extent that any such provision providing for a right of breach or termination or otherwise restricting transfer would be rendered ineffective under the provision of Sections 9-406 or 9-408 of the Uniform Commercial Code as in effect in the applicable jurisdiction.. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would materially adversely affect the rights of Transferee thereunder, Transferor will cooperate with Transferee, and use commercially reasonable efforts, at Transferor's expense, to provide to Transferee the benefits under any such Contract or Permit or claim or right, including, without limitation, enforcement for the benefit of Transferee of any and all rights of Transferor against a third party thereto arising out of the breach, default, termination or cancellation by such third party or otherwise or, at Transferor's option, to the maximum extent permitted by Law and such Contract or Permit, appoint Transferee to be Transferor's representative and agent with

respect to such Contract or Permit, as applicable. Following the Closing, Transferee and Transferor shall continue to cooperate and use commercially reasonable efforts to effect the transfer to Transferee of such Contracts and Permits. Transferor shall indemnify, defend and hold harmless Transferee from and against any and all liabilities incurred by Transferee in connection with, arising out of or resulting from any actions taken by Transferor on or after the Closing Date with respect to any such Contract or Permit, other than actions taken in compliance with any such Contract or Permit or as directed by Transferee. In the event that the assignment of rights under any Contract is subject to any restrictions on transfer but such restrictions on transfer are ineffective under Sections 9-408 of the Uniform Commercial Code as in effect in the applicable jurisdiction to prevent the transfer but pursuant to the limitations of Section 9-408 of the Uniform Commercial Code Transferee would be unable to enforce the Contract against the account debtor or other obligor, then Transferor shall continue to use its commercially reasonable efforts after the closing to obtain any necessary consents to such assignment.

4. Conflicts With the Transfer Agreement. In the event of inconsistency between this Assignment and Assumption Agreement and the Transfer Agreement, the Transfer Agreement shall govern.

5. Governing Law. This Assignment and Assumption Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of New York without regard to the conflicts of law provisions thereof (other than Sections 5-1401 and 5-1402 of the General Obligations of Law of the State of New York).

6. Counterparts. This Assignment and Assumption 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.

7. Invalidity. In the event that any one or more of the provisions contained in this Assignment and Assumption Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Assignment and Assumption Agreement or any other such instrument.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Assignment and Assumption Agreement to be executed in their names as of the date first above written.

ATHENS GENERATING COMPANY, L.P.

By: _____
_____, _____

NEW ATHENS GENERATING COMPANY, LLC

By: _____
_____, _____

EQUITY TRANSFER AGREEMENT

by and among

MACH Gen, LLC
a Delaware limited liability company

as **"Transferee"**

NEW ATHENS GENERATING COMPANY, LLC
a Delaware limited liability company

as the **"Company"**

and

ATHENS GENERATING COMPANY, L.P.
a Delaware limited partnership

as **"Transferor"**

Dated: _____, 2003

<u>ARTICLE I. DEFINITIONS.....</u>	<u>2</u>
1.1 Defined Terms	2
1.2 Other Defined Terms	4
1.3 Construction.....	5
<u>ARTICLE II. TRANSFER OF THE EQUITY SECURITIES</u>	<u>6</u>
2.1 Transfer of the Equity Securities.....	6
2.2 Closing.	6
2.3 Deliveries at Closing.....	7
2.4 Other Closing Matters.....	8
<u>ARTICLE III. REPRESENTATIONS AND WARRANTIES OF TRANSFEROR.....</u>	<u>8</u>
3.1 Organization	8
3.2 Ownership	9
3.3 Capitalization	9
3.4 Authorization	9
3.5 No Conflict or Violation	10
3.6 Consents and Approvals.....	10
3.7 Compliance with Law	11
3.8 Ownership of Membership Interests.....	11
3.9 Asset Transfer Agreement Representations and Warranties	11
3.10 Regulation	11
<u>ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF TRANSFEREE.....</u>	<u>11</u>
4.1 Organization	11
4.2 Authorization	12
4.3 Governmental Consents and Approvals.....	12
4.4 No Conflict or Violation	12
<u>ARTICLE V. CONDITIONS TO TRANSFEROR'S OBLIGATIONS</u>	<u>12</u>
5.1 Representations, Warranties and Covenants.....	12
5.2 Closing Deliveries	13
<u>ARTICLE VI. CONDITIONS TO TRANSFEREE'S OBLIGATIONS</u>	<u>13</u>
6.1 Representations, Warranties and Covenants.....	13
6.2 Consents	13
6.3 No Proceedings or Litigation.....	13
6.4 Resignations.....	13
6.5 Closing Deliveries	13
6.6 Opinion of Counsel.....	13
6.7 Corporate Proceedings	14
6.8 Asset Transfer	14
6.9 Ancillary Agreements	14

6.10	Simultaneous Closings.....	14
6.11	Delivery of Title Commitment to Real Property.....	14
6.12	Bankruptcy Court and Other Approvals.....	14

ARTICLE VII. ACTIONS BY TRANSFEROR, TRANSFEREE AND THE

COMPANY AFTER THE CLOSING.....14

7.1	Books and Records	14
7.2	Survival of Representations, etc.....	15
7.3	Further Assurances	15
7.4	Obligations of the Company.....	15
7.5	Litigation Support.....	15
7.6	Publicity	15

ARTICLE VIII. INDEMNIFICATION.....16

8.1	General Indemnification.....	16
8.2	Tax Indemnification and Other Tax Matters	16
8.3	Right to Indemnification Not Affected by Knowledge or Waiver	17

ARTICLE IX. MISCELLANEOUS.....17

9.1	Assignment.....	17
9.2	Notices	18
9.3	Choice of Law; Service of Process; Venue	18
9.4	Effectiveness: Entire Agreement; Amendments and Waivers.....	19
9.5	Multiple Counterparts	19
9.6	Invalidity	19
9.7	Titles; Currency; Schedules.....	20
9.8	Specific Performance	20
9.9	Representation of Counsel; Mutual Negotiation.....	20
9.10	Knowledge of Transferor	20
9.11	No Third Party Beneficiaries	20
9.12	Performance by the Company.....	20
9.13	Time of Essence	20

EXHIBITS

Exhibit AGENHOLDINGS ASSIGNMENT AND ASSUMPTION AGREEMENT
Exhibit B.....RELEASE

Disclosure Schedule

<u>Term</u>	<u>Section</u>
"Asset Transfer Agreement"	Recitals
"Banks"	Recitals
"Closing"	2.2
"Company Organizational Documents"	3.1(a)
"Credit Agreement"	Recitals
"Damages"	8.1
"Disclosure Schedule"	Article III Preamble
"Existing Debt"	Recitals
"Facility"	Recitals
"GenHoldings"	Recitals
"Laws"	3.7
"Matter"	7.1
"Membership Interests"	Recitals
"Other Equity Transfer Agreement"	Recitals
"Other Existing Project Company"	Recitals
"Post-Closing Partial Period"	8.2(a)
"Pre-Closing Partial Period"	8.2(a)
"Pre-Closing Period"	8.2(a)
"Project Company Guaranty"	Recitals
"Straddle Period"	8.2(a)
"Subsidiary Pledge Agreement"	Recitals
"Title Commitment"	6.11
"Title Company"	6.11
"Title Representations"	7.2
"Transferee Organizational Documents"	4.4
"Transferor Organizational Documents"	3.1
"Transferor's Tax Period"	8.2(d)
"Unfunded Debt"	Recitals

1.3 Construction.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (iv) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement; (v) the word "including" shall mean "including, without limitation;" (vi) the word "or" shall be disjunctive but not exclusive and (vii) the words "made available" shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available.

(b) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against either party.

(e) The annexes, schedules and exhibits to this Agreement are a material part hereof and shall be treated as if fully incorporated into the body of the Agreement.

(f) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless business days are specified, and shall be counted from the day immediately following the date from which such number of days are to be counted.

(g) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

ARTICLE II. TRANSFER OF THE EQUITY SECURITIES

2.1 Transfer of the Equity Securities.

(a) Transfer of Membership Interests. Upon the terms and subject to the conditions contained herein, on the Closing Date, Transferor shall sell, convey, transfer, assign and deliver to Transferee, and Transferee shall accept from Transferor, the Membership Interests, free and clear of any and all Encumbrances. Such conveyances, transfers, assignments and deliveries to Transferee in accordance with the terms hereof shall be made in full satisfaction of Transferor's obligations under the Project Company Guaranty (but not the obligations of the Company or GenHoldings under the Credit Documents), and Transferor shall have no further obligations thereunder following the Closing.

(b) Consideration for the Membership Interests. Upon the terms and subject to the conditions contained herein, in satisfaction of the Project Company Guaranty and as consideration for the acquisition of the Membership Interests and the membership interests to be acquired from each Other Existing Project Company in connection with the Other Equity Transfer Agreements: (i) Transferee shall assume all Liabilities of GenHoldings under the Credit Documents existing on the date hereof, including the Unfunded Debt, pursuant to and in accordance with the terms of the GenHoldings Assignment and Assumption Agreement, (ii) Transferee shall assume all Liabilities of GenHoldings in respect of guaranties or other support undertakings provided by GenHoldings to third parties in connection with the construction, maintenance or operation by Transferor or the Company of the Facility pursuant to and in accordance with the terms of the GenHoldings Assignment and Assumption Agreement, (iii) Transferee shall become a co-grantor under the Existing Project Company Security Agreement, and (iv) the Agent shall release GenHoldings, Transferor and any of their Affiliates (other than the Company and the other wholly-owned subsidiaries of the Other Existing Project Companies, each of which upon consummation of the transactions contemplated hereby and by the Other Equity Transfer Agreements shall no longer be deemed an Affiliates of GenHoldings or Transferor) from all obligations (whether contingent or noncontingent, matured or unmatured, and including both the Existing Debt and the Unfunded Debt and all guarantees thereof) under the Credit Documents (other than the Existing Project Company Security Agreement), pursuant to and in accordance with the terms of the Release.

2.2 Closing. Upon the terms and conditions set forth herein, and subject to Section 9.1, the closing (the "Closing") of the transactions contemplated herein shall occur at 9:00 a.m. local time on the Closing Date at the offices of Latham & Watkins LLP, 885 Third Avenue, Suite 1000, New York, New York 10022 (or by the exchange of documents and instruments by mail, courier, facsimile or telecopy to

the extent mutually acceptable to the parties hereto) or such other place or time agreed to by Transferor and Transferee.

2.3 Deliveries at Closing. To effect the transfer of the Membership Interests, Transferor and Transferee shall, in addition to all deliveries required by Articles VI and VII, on the Closing Date, deliver the following:

(a) Transferor:

(i) executed certificates representing all of the Membership Interests, duly endorsed in the name of Transferee by an "appropriate person" as defined in Section 8-107 of the UCC and in proper form for transfer, together with any other documents and instruments, as shall be necessary or appropriate to warrant and vest in Transferee good and marketable right, title and interest in and to all of the Membership Interests free of any and all Encumbrances, together with evidence that the Company has elected to treat its membership securities as securities pursuant to UCC Section 8-103;

(ii) evidence of full payment of any and all amounts owing in connection with obtaining consents, waivers, agreements and permits required for, and transfer taxes and any sales, use or other taxes imposed by reason of, the transfer of the Membership Interests to Transferee and any deficiency, interest or penalty, as applicable, asserted with respect thereto;

(iii) a certificate executed by the Secretary or an Assistant Secretary of the Company, certifying as of the Closing Date (A) a true, correct and complete copy of the Company Organizational Documents and all amendments thereto and (B) a true, correct and complete copy of the resolutions of the Board of Directors of the Company authorizing the execution, delivery and performance of this Agreement and each Ancillary Agreement, as applicable;

(iv) a certificate executed by the Secretary or an Assistant Secretary of Transferor, certifying as of the Closing Date (A) a true, correct and complete copy of the Transferor Organizational Documents and all amendments thereto, (B) a true, correct and complete copy of the resolutions of the Board of Directors of Transferor authorizing the execution, delivery and performance of this Agreement and each Ancillary Agreement, as applicable, and (C) that the conditions set forth in Article VI have been satisfied;

(v) copies of the Company Organizational Documents and Transferor Organizational Documents and all amendments thereto, certified as of a recent date by the Secretary of State of the State of Delaware;

(vi) certificates of the Secretary of State of the State of Delaware certifying the good standing of the Company and Transferor;

(vii) a statement prepared in accordance with Section 1445 of the Code and Treasury Regulations thereunder certifying that each of Transferor and the Company is not, and was not at any time after January 1, 1993, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code;

(viii) all membership records of the Company certified as true and correct and complete by the Secretary of the Company;

(ix) the minute books and corporate seals of the Company; and

(x) (A) all Books and Records, tangible assets, Permits, policies, contracts and other instruments owned by or pertaining to the Company that are in the possession of Transferor or any of its Affiliates and (B) all other documents and certificates (x) required to be delivered to Transferee pursuant to the terms of this Agreement and (y) as may be reasonably requested by Transferee prior to the Closing Date.

(b) Transferee:

(i) executed counterparts of: (1) the GenHoldings Assignment and Assumption Agreement and (2) the Release;

(ii) a certificate executed by the Secretary or an Assistant Secretary of Transferee certifying as of the Closing Date (A) a true and correct copy of the Transferee Organizational Documents and (B) a true and correct copy of the resolutions of the Board of Directors of Transferee authorizing the execution, delivery and performance of this Agreement by Transferee and the consummation of the transactions contemplated hereby; and

(iii) a certificate executed by an officer of Transferee certifying that, as of the Closing Date, the conditions set forth in Article V have been satisfied.

2.4 Other Closing Matters. Each of the parties shall take such other actions required hereby to be performed by it prior to or on the Closing Date, including, without limitation, satisfying the conditions set forth in Articles V and VI. Transferor shall take all additional reasonable steps as may be necessary or desirable, including the execution and delivery of additional documents, to consummate the transactions contemplated hereby and by the Ancillary Agreements, including, but not limited to, to ensure that the Company maintains possession of and good and marketable title to all of the Assets, free and clear of all Encumbrances other than Permitted Encumbrances, and to maintain the first priority security interest held by the Agent in the Assets pledged pursuant to the Project Company Collateral Documents.

**ARTICLE III.
REPRESENTATIONS AND WARRANTIES
OF TRANSFEROR**

As an inducement to Transferee to enter into this Agreement, Transferor hereby makes, as of the date hereof and as of the Closing Date, the following representations and warranties to Transferee, except as otherwise set forth in the disclosure schedule (the "Disclosure Schedule") attached hereto, which contains schedules numbered to correspond to various sections of this Article III and which sets forth certain exceptions to the representations and warranties contained in this Article III and certain other information called for by this Agreement. Unless otherwise specified, (1) each reference in this Agreement to any numbered schedule is a reference to that numbered schedule that is included in the Disclosure Schedule and (2) no disclosure made in any particular numbered schedule of the Disclosure Schedule shall be deemed made in any other numbered schedule of the Disclosure Schedule unless expressly made therein (by cross-reference or otherwise).

3.1 Organization. Each of Transferor and the Company is duly organized, validly existing and in good standing as a limited liability company or limited partnership, as the case may be, under the laws of Delaware and has full limited liability company or limited partnership, as the case may be, power and authority to own, lease and operate its assets and to conduct its business as it is now conducted and presently proposed to be conducted. Each of Transferor and the Company is duly qualified to do business as a foreign entity and is in good standing in each jurisdiction in which such qualification is necessary

under the applicable law as a result of the conduct of its business or the ownership of its properties. Each jurisdiction in which Transferor or the Company is qualified to do business as a foreign corporation is listed on Schedule 3.1. The Company has delivered to Transferee true, correct and complete copies of the articles of organization and limited liability company agreement of the Company (in each case, as amended to date) (the "Company Organizational Documents"). The Company is not in default under or in violation of any provision of the Company Organizational Documents, and such Company Organizational Documents are in effect without further amendment as of the Closing Date. Transferor has delivered to Transferee true, correct and complete copies of the articles of organization and limited partnership agreement of Transferor (in each case, as amended to date) (the "Transferor Organizational Documents"). Transferor is not in default under or in violation of any provision of the Transferor Organizational Documents, and such Transferor Organizational Documents are in effect without further amendment as of the Closing Date.

3.2 Ownership.

(a) Subsidiaries. The Company has no Subsidiaries.

(b) Interests in Other Entities. The Company does not, directly or indirectly, own or have the right to acquire any equity interest in any other corporation, partnership, joint venture or other business organization. The Company has not made any investment in or advance of Cash or other extension of credit to any entity or individual.

3.3 Capitalization.

(a) The authorized Equity Securities of the Company consists of [] Membership Interests, of which [] Membership Interests are issued and outstanding. The Company has no other Capital Stock authorized, issued or outstanding.

(b) All outstanding Membership Interests of the Company have been duly authorized and validly issued, are fully paid and nonassessable, were issued and sold in accordance with federal and applicable state securities laws and were not issued in violation of any preemptive or other similar rights. There are no outstanding subscriptions, warrants, options, calls, rights of first offer, rights of first refusal, tag along rights, drag along rights, or commitments or rights of any character relating to or entitling any person to purchase or otherwise acquire any Equity Securities of the Company, and there are no obligations or securities having the right to vote on any matters on which Transferor may vote or convertible into or exchangeable for any Equity Securities of the Company or any commitments of any character relating to or entitling any person to purchase or otherwise acquire any such obligations or securities. There are no stockholder agreements, voting trusts, proxies or other agreements, instruments or understandings with respect to the purchase, sale or voting of the outstanding Equity Securities of the Company. There are no contracts under which the Company is obligated to repurchase, redeem or otherwise acquire any Equity Securities of the Company. No Equity Securities of the Company are reserved for issuance. As of the date hereof, Transferor owns, and as of the Closing Date, Transferor will own, of record and beneficially, all of the Membership Interests, free and clear of any and all Encumbrances, as set forth on Schedule 3.3(b). At the Closing, Transferee will acquire all of the Membership Interests free and clear of all Encumbrances.

3.4 Authorization. Each of Transferor and the Company has the requisite power, capacity and authority to, and has taken all action necessary to execute and deliver this Agreement and each Ancillary Agreement to which it is (or will be) a party, to consummate the transactions contemplated hereby and thereby and to perform its obligations contained herein and therein, and no other proceedings on the part of Transferor or the Company are necessary to authorize this Agreement, each Ancillary

Agreement to which it is (or will be) a party, and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by each of Transferor and the Company and is a valid and binding obligation of each of Transferor and the Company, enforceable against Transferor or the Company in accordance with its terms, except as the enforceability thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors rights generally or (b) general principles of equity, whether considered in a proceeding at law or in equity. Each Ancillary Agreement to which Transferor or the Company is (or will be) a party has been (or will be) duly executed and delivered by Transferor or the Company, and is (or will be) a valid and binding obligation of Transferor or the Company, enforceable against Transferor or the Company in accordance with its terms, except as the enforceability thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors rights generally or (b) general principles of equity, whether considered in a proceeding at law or in equity.

3.5 No Conflict or Violation. None of the execution, delivery and performance of this Agreement or any Ancillary Agreement, compliance with any of the provisions hereof or thereof or the consummation of the transactions contemplated hereby and thereby, by Transferor or the Company will result in (a) a violation of or a conflict with any provision of the Company Organizational Documents or the Transferor Organizational Documents, (b) a violation of, conflict with, breach of, default under (with or without notice or passage of time), termination of, acceleration of the performance required by, or the creation of any right of any party to accelerate, modify, terminate or cancel, any term or provision of, any contract, indebtedness, Encumbrance, Permit, authorization or concession to which the Company or Transferor is a party or by which they or any of their respective assets are bound, (c) a violation by the Company or Transferor of any applicable Laws, (d) an impairment of any material right of the Company or Transferor under any contract to which the Company or Transferor is a party or by which their respective assets are bound or under any permit relating to the operation of their respective business or otherwise, or (e) an imposition of any Encumbrance, restriction or charge on any of the Assets or the Facility, except Permitted Encumbrances.

3.6 Consents and Approvals.

(a) Government Consents and Approvals. No consent, waiver, agreement, approval, Permit or authorization of, or declaration, filing, notice or registration to or with, or assignment by, any federal, state, local or foreign governmental or regulatory authority, agency, department, body or instrumentality is required to be made or obtained by Transferor or the Company in connection with the execution, delivery and performance of this Agreement and any Ancillary Agreement, the consummation of the transactions contemplated hereby and thereby, other than those consents, waivers, agreements, approvals, Permits, authorization, declarations, filings, notices, registrations or assignments, that have been, or will be prior to the Closing Date, obtained or made, all of which are set forth on Schedule 3.6(a).

(b) Other Third Party Consents and Approvals. No consent, waiver, agreement, approval, permit or authorization of, or declaration, filing, notice or registration to or with, or assignment by person or entity that is not a federal, state, local or foreign governmental or regulatory authority, agency, department, body or instrumentality (including any party to any contract of the Company) is required to be made or obtained by Transferor or the Company in connection with the execution, delivery and performance of this Agreement and any Ancillary Agreement, the consummation of the transactions contemplated hereby and thereby, other than those consents, waivers, agreements, approvals, Permits, authorization, declarations, filings, notices, registrations or assignments, that have been, or will be prior to the Closing Date, obtained or made, all of which are set forth on Schedule 3.6(b).

3.7 Compliance with Law. The Company has not violated, and is in compliance with (a) all applicable laws, statutes, ordinances, regulations, decrees, rules and orders of every federal, state, local or foreign government and every federal, state, local or foreign court or other governmental or regulatory agency, department, authority, body or instrumentality and (b) any judgment, decision, decree or order of any court or governmental or regulatory agency, department, authority, body or instrumentality ((a) and (b), collectively, "Laws"), relating to the Assets, Equity Securities, business or operations of the Company. The Company has not received any notice to the effect that, and Transferor does not have any knowledge that, (i) the Company is not currently in compliance with, or is in violation of, any applicable Laws, (ii) any federal, state, local or foreign government or federal, state, local or foreign court or other governmental or regulatory agency has any intention to conduct any investigation or review or any investigation or review by any federal, state, local or foreign government or federal, state, local or foreign court or other governmental or regulatory agency is pending or threatened or (iii) any currently existing circumstances are likely to result in a failure of the Company to comply with, or a violation by the Company of, any Laws.

3.8 Ownership of Membership Interests. As of the date hereof, Transferor has good and marketable title to, and owns of record and beneficially, and as of the Closing Date, Transferor will have good and marketable title to, and own of record and beneficially, the Membership Interests free and clear of any and all Encumbrances, voting restrictions, restrictions on transfer, charges or claims, and has (and will have) full right and power and authority to deliver such Membership Interests as herein agreed. At the Closing, Transferee will acquire the Membership Interests free and clear of any and all Encumbrances other than Permitted Encumbrances. Other than Transferor, no other person owns, nor has any option or right to acquire, any Membership Interests of the Company. Transferor has no assets other than the Membership Interests of the Company.

3.9 Asset Transfer Agreement Representations and Warranties. All representations and warranties of Transferor set forth in the Asset Transfer Agreement are hereby incorporated into this Agreement in their entirety, as if made by Transferor directly to Transferee immediately prior to the closing of the transactions contemplated by the Asset Transfer Agreement.

3.10 Regulation. The Company is a "public utility" within the meaning of the Federal Power Act. FERC has granted the Company the authority to sell electric electricity, capacity and ancillary services at market-based rates with all waivers of regulations and blanket authorizations as are customarily granted by FERC to a similarly situated "public utility" that sells wholesale energy, capacity and ancillary services at market-based rates under Section 205 of the FPA. The Company is not a "holding company," a "public utility company," a "gas utility company," or an "electric utility company" as those terms are defined in the Holding Company Act. The Company is an "exempt wholesale generator" and the Facility is an "Eligible Facility" within the meaning of the Holding Company Act.

ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF TRANSFEE

Transferee hereby makes the following representations and warranties as of the date hereof and as of the Closing Date:

4.1 Organization. Transferee is duly organized, validly existing and in good standing under the laws of the State of Delaware.

4.2 Authorization. Transferee has the requisite limited liability company power, capacity and authority to, and has taken all limited liability company action necessary on its part to, execute and deliver this Agreement and the Ancillary Agreements to which it is (or will be) a party, to consummate the transactions contemplated hereby and thereby and to perform all of its obligations hereunder and thereunder, and no other proceedings on the part of Transferee are necessary to authorize the execution, delivery and performance of this Agreement or the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Transferee and is a valid and binding obligation of Transferee, enforceable against Transferee in accordance with its terms, except as the enforceability thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors rights generally or (b) general principles of equity, whether considered in a proceeding at law or in equity. Each of the Ancillary Agreements to which Transferee is a party has been (or will be) duly executed and delivered by Transferee and is (or will be) a valid and binding obligation of Transferee enforceable against Transferee in accordance with its terms, except as the enforceability thereof may be limited by (a) applicable bankruptcy, insolvency, moratorium, reorganization or similar laws in effect which affect the enforcement of creditors rights generally or (b) general principles of equity, whether considered in a proceeding at law or in equity.

4.3 Governmental Consents and Approvals. No consent, waiver, agreement, approval, or authorization of, or declaration, filing, notice or registration to or with, or assignment by person or entity that is not a federal, state, local or foreign governmental or regulatory authority, agency, department, body or instrumentality (including any party to any contract of the Company) is required to be made or obtained by Transferee in connection with the execution, delivery and performance of this Agreement or any Ancillary Agreement, the consummation of the transactions contemplated hereby and thereby, other than those consents, waivers, agreements, approvals, Permits, authorization, declarations, filings, notices, registrations or assignments, that have been, or will be prior to the Closing Date, obtained or made, all of which are set forth on Schedule 3.6(a) and (b).

4.4 No Conflict or Violation. None of the execution, delivery and performance of this Agreement or any Ancillary Agreement, the consummation of the transactions contemplated hereby and thereby, or compliance with any of the provisions hereof or thereof by Transferee will result in (a) a violation of or a conflict with any provision of the certificate of formation or limited liability agreement of Transferee (the "Transferee Organizational Documents"), (b) a violation of, conflict with, breach of, or a default under, the termination or acceleration of the performance required by, or the creation of any right of any party to accelerate, modify, terminate or cancel any term or provision of any contract, indebtedness, lease, encumbrance, permit, authorization or concession to which Transferee is a party or by which any of its assets are bound or (c) a violation by Transferee of any applicable Law.

ARTICLE V. CONDITIONS TO TRANSFEROR'S OBLIGATIONS

The obligations of Transferor to sell the Membership Interests to Transferee on the Closing Date and to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Transferor in accordance with Section 9.5:

5.1 Representations, Warranties and Covenants. All representations and warranties of Transferee contained in Article IV shall be true and correct in all material respects on and as of the Closing Date as if such representations and warranties were made on and as of the Closing Date, and Transferee shall have performed all obligations arising under agreements and covenants required hereby to be performed by it prior to or at the Closing Date.

5.2 Closing Deliveries. Transferor shall have received, at or prior to the Closing, the deliveries set forth in Section 2.3(b).

ARTICLE VI.

CONDITIONS TO TRANSFeree'S OBLIGATIONS

The obligations of Transferee to acquire the Membership Interests and to consummate the transactions contemplated hereby are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived by Transferee in accordance with Section 9.5; provided, that notwithstanding anything in this Article VI to the contrary, Transferee may terminate this Agreement at any time for any reason (without penalty) and shall not be required to consummate this transaction notwithstanding the prior satisfaction of any or all of the following conditions:

6.1 Representations, Warranties and Covenants. Each of the representations and warranties contained in Article III shall be true and correct at and as of the date hereof and Closing Date, as though such representations and warranties were made on the Closing Date (except to the extent that any such representations and warranties were made as of a specified date, which representations and warranties shall continue on the Closing Date to have been true in all respects as of such specified date). The Company and Transferor shall have performed, on or before the Closing Date, all obligations under this Agreement that by the terms hereof are to be performed by it on or before the Closing Date.

6.2 Consents. All consents, waivers, agreements, approvals, Permits or authorizations of, or declarations, filings, notices or registrations to or with, or assignments by, lending, governmental and regulatory authorities and other entities or persons required to consummate the transactions set forth herein or contemplated hereby or by the Ancillary Agreements or required under any Laws or for the ownership and operation of the Facility after the Closing as they are now conducted and presently proposed to be conducted, including without limitation those consents identified on Schedules 3.6(a) and 3.6(b) hereof, shall have been made or obtained and copies thereof shall have been delivered to Transferee.

6.3 No Proceedings or Litigation. No actions by any court, governmental authority or any other entity or person shall have been instituted or threatened for the purpose of enjoining or preventing, or which question the validity or legality of, the transactions contemplated hereby or by the Ancillary Agreements and which could reasonably be expected to damage Transferee or the value of the Membership Interests, the Facility or the Assets of the Company if the transactions contemplated hereby and thereby are consummated, including any material adverse effect on the right or ability of Transferee to own, operate or transfer the Company after the Closing. There shall not be any Law that makes the acquisition of the Membership Interests contemplated hereby or thereby illegal or otherwise prohibited or that otherwise may have a material adverse effect on the Company.

6.4 Resignations. Each member of the Board of Directors of the Company listed on Schedule 6.4 shall have tendered resignations from the Board of Directors of the Company, and each officer of the Company listed on Schedule 6.4 shall have tendered resignations from the applicable offices of the Company and Transferee shall have received signed copies of such resignations.

6.5 Closing Deliveries. Transferee shall have received, at or prior to the Closing, (i) the deliveries set forth in Section 2.3(a).

6.6 Opinion of Counsel. The Company shall have delivered to Transferee such opinions of counsel as Transferee may reasonably request.

6.7 Corporate Proceedings. All proceedings of the Company and Transferor that are required in connection with the transactions contemplated by this Agreement and by the Ancillary Agreements shall be reasonably satisfactory in form and substance to Transferee and its counsel.

6.8 Asset Transfer. The transactions contemplated by the Asset Transfer Agreement shall have been consummated and executed copies of the Asset Transfer Agreement shall have been delivered to Transferee.

6.9 Ancillary Agreements. Each of the Ancillary Agreements shall have been executed and delivered by each party thereto other than, where applicable, Transferee. All of the conditions precedent to the obligations of the parties to each of the Ancillary Agreements shall have been satisfied or waived by the party or parties for whose benefit they were established.

6.10 Simultaneous Closings. The transactions contemplated by each Other Equity Transfer Agreement shall have been consummated.

6.11 Delivery of Title Commitment to Real Property. Transferor shall have furnished to Transferee a commitment (in each case, a "Title Commitment") of a title insurance company (the "Title Company") reasonably acceptable to Transferee, to issue in favor of Transferee at the Title Company's regular rates an owner's extended coverage policy of title insurance (ALTA Owners Form B-1970) with respect to each parcel of Owned Real Property, and an extended coverage leasehold policy of title insurance with respect to each parcel of Leased Real Property for which a memorandum of lease has been recorded prior to the date hereof, in amounts designated by, and in forms satisfactory to Transferee. Each Title Commitment shall include no exception or reservation other than such standard printed exceptions not typically omitted or modified by reputable title companies and the Permitted Encumbrances, and shall contain customary endorsements and such other endorsements as Transferee reasonably requests. Transferor shall supply any documents (including prior title insurance policies to the extent in Transferor's possession or reasonably available to Transferor) and affidavits reasonably requested by the Title Company and required thereby for the issuance of title insurance policies to Transferee.

6.12 Bankruptcy Court and Other Approvals. All applicable approvals of or orders from any bankruptcy or other court having jurisdiction with respect to the transactions contemplated herein shall have been obtained.

ARTICLE VII.

ACTIONS BY TRANSFEROR, TRANSFEE AND THE COMPANY AFTER THE CLOSING

7.1 Books and Records. Transferor and Transferee agree that each will cooperate with and make available to the other party, during normal business hours, all Books and Records and Personnel (without any disruption of employment) retained and remaining in existence after the Closing Date that are necessary in connection with any tax inquiry, audit, investigation or dispute, any litigation or investigation or any other matter (a "Matter") requiring such Books and Records or Personnel for any reasonable business purpose. All such Books and Records relating to any such Matter shall be retained until the earlier of (a) seven (7) years or (b) the expiration of the relevant statute of limitations with respect to any such Matter or until the termination of any litigation with respect to such Matter. The party requesting access to any such Books and Records or Personnel shall bear all of the out-of-pocket costs and expenses (including, without limitation, attorneys' fees, but excluding reimbursement for salaries and employee benefits) reasonably incurred in connection with providing access to such Books and Records and Personnel.

7.2 Survival of Representations, etc. All representations and warranties of Transferor contained in this Agreement or in any certificate, exhibit, instrument or conveyance delivered by or on behalf of Transferor are material, shall be deemed to have been relied upon by Transferee and shall indefinitely survive the Closing regardless of any investigation. All representations and warranties of Transferee contained in this Agreement or in any certificate, exhibit, instrument or conveyance delivered by or on behalf of Transferee shall terminate upon the Closing.

7.3 Further Assurances. Transferor shall use commercially reasonable efforts to take all actions and to do all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement and by the Ancillary Agreements (including, without limitation, satisfying the closing conditions in Articles V and VI hereto). Following the Closing, Transferor agrees to execute such documents, instruments or conveyances and take such actions as may be requested by Transferee's counsel and otherwise cooperate in a reasonable manner with Transferee, its Affiliates and their respective representatives in connection with any action that may be necessary, proper or advisable to carry out the provisions hereof or transactions contemplated hereby and by the Ancillary Agreements.

7.4 Obligations of the Company. The Company hereby reaffirms its continuing liabilities and obligations under the Project Company Guaranty (including the guaranty thereunder of both the Existing Debt and the Unfunded Debt) and all other Credit Documents and Project Documents to which it is a party, whether as original signatory thereto, as successor to Transferor pursuant to the transactions contemplated by the Asset Transfer Agreement or otherwise, and confirms that none of the transactions contemplated by this Equity Transfer Agreement, any Ancillary Agreement, the Asset Transfer Agreement, any of the Other Asset Transfer Agreements (as defined in the Asset Transfer Agreement) or any of the Other Equity Transfer Agreements shall in any way serve to alter such obligations or relieve the Company of such obligations, notwithstanding any release of Transferor's obligations under the Project Company Guaranty or of GenHoldings' obligations under the Credit Agreement.

7.5 Litigation Support. In the event and for so long as any party hereto is actively contesting or defending against any charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand in connection with (a) any transaction contemplated under this Agreement or the Ancillary Agreements or (b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction involving the Company, the Assets or the Facility, each of the other parties will cooperate with such party and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification hereunder). The covenant contained in this Section 7.5 shall not apply if one or more parties to this Agreement have an adverse charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand against another one or more parties to this Agreement, but shall apply equally with respect to any Ancillary Agreement and shall not be in lieu of or otherwise limit the indemnification obligations of the parties pursuant to Article VIII hereof.

7.6 Publicity. Transferor shall not issue any press release or make any public statement regarding the transactions contemplated hereby or by the Ancillary Agreements or consummated hereunder or thereunder, without the prior approval of Transferee. Notwithstanding the preceding sentence, nothing herein shall be deemed to prohibit (a) Transferor from making any disclosure which its counsel deems reasonably necessary in order to fulfill Transferor's disclosure obligations imposed by law; *provided* that Transferor shall, to the extent reasonably practicable, afford Transferee the opportunity to review and comment on the proposed disclosure in advance of such issuance; *provided, further*, that in the event that it is not reasonably practicable, Transferor shall provide Transferee a copy promptly

thereafter or (b) Transferee or its Affiliates from making disclosures regarding the transactions contemplated herein.

ARTICLE VIII. INDEMNIFICATION

8.1 General Indemnification. Transferor shall indemnify, defend and hold harmless Transferee against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees (collectively, "Damages"), that Transferee shall incur or suffer, which arise, result from, or relate to (i) any breach of any representation or warranty of Transferor contained in this Agreement; (ii) any breach of any covenant or agreement made by Transferor in or pursuant to this Agreement; (iii) any Damages suffered by Transferee as a result of Transferee's status as an acquiror of the Membership Interests; and (iv) any payments made by Transferee as a result of Transferee's attempts, whether successful or not, to preserve a former business relationship of Transferor, which may include all reasonable efforts of Transferee to continue prior relationships with customers, suppliers and other trade creditors in Transferee's sole discretion. Transferee shall promptly notify Transferor of the existence of any claim, demand, or other matter to which Transferor's indemnification obligations would apply.

8.2 Tax Indemnification and Other Tax Matters.

(a) Notwithstanding anything to the contrary in this Agreement, Transferor shall indemnify, save and hold harmless Transferee from and against any and all Damages incurred in connection with, arising out of, resulting from or relating or incident to any and all Taxes of the Company (A) with respect to all periods ending on or prior to the Closing Date (the "Pre-Closing Period") and (B) with respect to any period beginning before the Closing Date and ending after the Closing Date (the "Straddle Period"), but only with respect to the portion of such period up to and including the Closing Date (such portion shall be referred to herein as the "Pre-Closing Partial Period") and the portion of such period after the Closing Date shall be referred to herein as the "Post-Closing Partial Period").

(b) Any Taxes for a period including a Pre-Closing Partial Period and a Post-Closing Partial Period shall be apportioned between such Pre-Closing Partial Period and such Post-Closing Partial Period, based, in the case of real and personal property Taxes, on a per diem basis and, in the case of other Taxes, on the actual activities or income of the Company during such Pre-Closing Partial Period and Post-Closing Partial Period.

(c) Transferor shall be responsible for the filing of the Returns of the Company for the Pre-Closing Period. Transferee shall cause the Company to prepare and file all Returns in respect of Taxes for Straddle Periods and reasonably determine the contents of such Returns. Promptly after the Company or Transferee acquires actual knowledge of an amount of Taxes of the Company due and unpaid with respect to any Straddle Period, the Company or Transferee, as the case may be, shall give notice and claim with respect thereto to Transferor of the amount of such Taxes allocable to the Pre-Closing Partial Period, together with the relevant portion of the Return in connection with such claim. Transferor shall pay the amount of such Taxes to the Company or Transferee, as the case may be, not later than the earlier of (i) the date on which such Taxes became due or (ii) thirty (30) days after the receipt of such notice. If Transferor disagrees with the computation of such amount, Transferor shall notify Transferee of such disagreement in writing at the time of payment. Transferee and Transferor shall use their respective best efforts to resolve any such disagreement, and if no resolution is achieved within two months, Transferor and Transferee shall mutually select an independent accounting firm, whose determination of the issue for which there is disagreement shall be final and binding on Transferor and Transferee. Upon resolution or determination of such issue, there shall be made a payment, if necessary,

between Transferee and Transferor in order to take into account the results of such resolution or determination.

(d) Transferor shall have the right at its option either to (i) control the conduct of any audit or other proceeding involving Taxes for which Transferor would be obligated to indemnify Transferee pursuant to this Section 8.3 with respect to (x) any Tax period ending prior to the Closing Date or (y) the Pre-Closing Partial Period (collectively, the "Transferor's Tax Period"), if Transferor demonstrates to the reasonable satisfaction of Transferee that it will be able to satisfy such indemnity obligation or (ii) have Transferee conduct any such proceeding; *provided* that any reasonable expenses incurred by Transferee pursuant to this Section 8.3(d)(ii) shall be borne by Transferor. Transferee's right to indemnity hereunder shall not be affected by which option under this Section 8.3(d) Transferor exercises. In the event that Transferor or Transferee receives notice of a claim, audit or other proceeding against the Company with regard to Transferor's Tax Period from any Tax authority, such party shall promptly notify the other party of such claim.

(e) Neither Transferor nor Transferee may settle or otherwise resolve any claim, audit or proceeding involving Taxes for Transferor's Tax Period without the consent of the other party, which consent shall not be unreasonably withheld.

(f) Transferor and Transferee shall furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance (including access to books and records) relating to the Company as is reasonably necessary for the preparation of any Return, claim for refund or audit, and the prosecution or defense of any claim, suit or proceeding relating to any proposed adjustment.

8.3 Right to Indemnification Not Affected by Knowledge or Waiver.

(a) The right to indemnification based upon breach of representations, warranties, covenants, agreements or obligations will not be affected by any investigation conducted with respect to, or knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant, agreement or obligation.

(b) The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant, agreement or obligation, will not affect the right to indemnification, payment of Damages or other remedy based on such representations, warranties, covenants, agreements and obligations.

ARTICLE IX. MISCELLANEOUS

9.1 Assignment. None of this Agreement, the Ancillary Agreements or any of the rights or obligations hereunder or thereunder may be assigned by the Company or Transferor without the prior written consent of Transferee. Transferor and the Company agree to the assignment by Transferee of its rights pursuant to this Agreement at any time to any Person, whether or not in connection with the sale of the Membership Interests or all or substantially all of the Assets of the Company, or to any lender as collateral security, and Transferor and the Company agree to execute any and all appropriate agreements or instruments that Transferee may reasonably request in order to effect or evidence such assignment or consent. Subject to the foregoing, this Agreement and the Ancillary Agreements shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and no other Person shall have any right, benefit or obligation hereunder.

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

Case 97-F-1563 – Application by Athens
Generating Company, L.P. for a Certificate
of Environmental Compatibility and
Public Need to Construct and Operate a
1,080 Megawatt Natural Gas-Fired
Combined Cycle Combustion Turbine
Generating Facility, in the Town of
Athens, Greene County

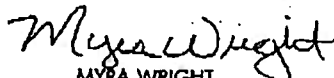
VERIFICATION

I, Ernest K. Hauser, Senior Vice President of New Athens Generating Company, LLC, in
the above entitled proceeding, have read the foregoing petition and know the contents
thereof and that the same is true and accurate to the best of my knowledge, information
and belief.



SWORN TO BEFORE ME THIS

25TH DAY OF AUGUST, 2003



MYRA WRIGHT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires January 19, 2004

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

Case 97-F-1563 - Application by Athens
Generating Company, L.P. for a Certificate
of Environmental Compatibility and
Public Need to Construct and Operate a
1,080 Megawatt Natural Gas-Fired
Combined Cycle Combustion Turbine
Generating Facility, in the Town of
Athens, Greene County

VERIFICATION

I, NINA M. ROSS, Authorized Representative of MACH Gen, LLC, in the
above entitled proceeding, have read the foregoing petition and know the contents thereof and
that the same is true and accurate to the best of my knowledge, information and belief.

Nina M. Ross

SWORN TO BEFORE ME THIS

26TH DAY OF AUGUST, 2003

Donna Thomas

DONNA THOMAS, NOTARY PUBLIC
State of New York, No. 03-4994538
Qualified in Westchester County
Cert. Filed in New York County
Commission Expires April 6, 2006

DC3617029.1

AFFIDAVIT OF SERVICE

IN THE MATTER
- of the -

Case 97-F-1563 – Application by Athens
Generating Company, L.P. for a Certificate
of Environmental Compatibility and
Public Need Pursuant to Article X of the New
York State Public Service Law

AFFIDAVIT OF SERVICE

State of)
) SS:
County of)

I, George D. Cannon, Jr., being duly sworn, deposes and says: that on the 26th day of August 2003, true and complete copies of the Supplement to the Petition of Athens Generating Company, L.P. to Transfer its Article X Certificate and Notice of Change of Ownership were served upon each party or person on the attached list by regular mail.



George D. Cannon, Jr.
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20008
Tel: (202) 637-2217



FAITH OWEN
Notary Public, District of Columbia
My Commission Expires July 14, 2006

Sworn to before me this
26th day of August, 2003

Robert J. Glasser, Esq.
Thompson Hine, LLP
New York, NY 10005-1401
Tel: (212) 344-5680

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Paul W. Diehl, Esq.
Iroquois Pipeline Operating Company
One Corporate Drive, Ste. 600
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Robert C. LaFleur
Arthur Fossa
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Latham, NY 12110

Michael W. Murphy, Esq.
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Niagara Mohawk Power Corporation
300 Erie Boulevard West
Syracuse, NY 13202-4250

Steven R. Blow, Esq.
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

9.2 Notices. All notices, consents, waivers, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given when received if personally delivered; if transmitted by facsimile, upon receipt of telephonic or electronic confirmation; the day after it is sent, if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

If to the Company prior to the Closing or to Transferor,
addressed to:

Athens Generating Company, L.P.

Tel: _____

Fax: _____

With a copy to:

Willkie Farr & Gallagher

Tel: _____

Fax: _____

Attention: _____

If to Transferee, addressed to:

MACH Gen, LLC

Tel: _____

Fax: _____

Attention: _____

With a copy to:

Luskin, Stern & Eisler LLP

330 Madison Avenue

New York, New York 10017

Attn: Richard Stern, Esq.

Fax: (212) 293-2705

or to such other place and with such other copies as either party may designate as to itself by written notice to the others.

9.3 Choice of Law; Service of Process; Venue. This Agreement shall be construed and interpreted and the rights of the parties determined in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York, other than Sections 5-1401 and 5-1402 of the General Obligations law of the State of New York and except with respect to matters of law concerning the internal corporate affairs of

any corporate entity which is a party to or the subject of this Agreement, and as to those matters the law of the jurisdiction under which the respective entity derives its powers shall govern. Transferor and the Company irrevocably consent to the service of any and all process in any action or proceeding arising out of or relating to this Agreement by the registered or certified mailing of copies of such process to Transferor and Willkie Fair & Gallagher at the addresses specified in Section 9.2. Transferee consents and agrees that such party may be served with process in the same manner as a notice may be given under Section 9.3. Each of the parties hereto consents and voluntarily submits to personal jurisdiction in the State of New York and in the courts in such state located in New York County and the United States District Court for the Southern District of New York in any proceedings arising out of or relating to this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby and agrees that all claims in respect of any such proceeding may be heard and determined in any such court. Transferor agrees that any action instituted against Transferee with respect to this Agreement will be instituted exclusively in the United States District Court for the Southern District of New York or, if such Court does not have jurisdiction to adjudicate such action, in the courts of New York located in New York County. Each party hereto irrevocably and unconditionally waives and agrees not to plead, to the fullest extent permitted by law, any objection that they may now or hereafter have to the laying of venue or the convenience of the forum of any action with respect to this Agreement in the United States District Court for the Southern District of New York and the courts of the State of New York located in New York County. Each party agrees that a final judgment, subject to appeal rights, in any proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law or in equity. Each of the parties hereto irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

9.4 Effectiveness: Entire Agreement; Amendments and Waivers. This Agreement shall become effective on the parties hereto when all parties hereto have executed and delivered this Agreement. This Agreement, together with all exhibits and schedules hereto (including, without limitation, the Disclosure Schedule) and the Ancillary Agreements, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties; *provided* that the forms of agreements and opinions attached hereto as exhibits shall be superseded by the copies of such agreements and opinions executed and delivered by the respective parties thereto, the execution and delivery of such agreements and opinions by the parties thereto to be conclusive evidence of such parties' approval of any change or modification therein. Except as set forth in the prior sentence, no amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all of the parties hereto indicating their intention to amend this Agreement. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the Ancillary Agreements will operate as a waiver of any right, power or privilege under this Agreement, and no waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in such waiver in writing. In addition, no notice to or demand on one party will be deemed a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or in the Ancillary Agreements.

9.5 Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

9.6 Invalidity. In the event that any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal

or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument; *provided*, that in no event shall Transferee be required to acquire less than all of the Membership Interests

9.7 Titles; Currency; Schedules. The titles, captions or headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Unless otherwise specified, all references contained in this Agreement or in any Ancillary Agreement to dollars or "\$" will mean United States Dollars. Disclosure of any item in any section or part of this Agreement or the Disclosure Schedule will not constitute disclosure of such item in any other section or part of this Agreement or the Disclosure Schedule, whether or not the existence of the item or its contents should be or is relevant to any other section or part of this Agreement or the Disclosure Schedule, unless an explicit cross-reference thereto appears in such other section or part.

9.8 Specific Performance. In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the party or parties who are or are to be thereby aggrieved will have the right of specific performance and injunctive relief giving effect to its or their rights under this Agreement, in addition to any and all other rights and remedies such party may otherwise have at law or in equity. Except as otherwise set forth herein, all such rights and remedies will be cumulative, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies. The parties agree that any such breach or threatened breach would cause irreparable injury, that the remedies at law for any such breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived.

9.9 Representation of Counsel; Mutual Negotiation. Each party has been represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

9.10 Knowledge of Transferor. Whenever used in this Agreement, "to the knowledge of Transferor" or a similar phrase shall mean the knowledge (actual or constructive) of one or more officers of Transferor or the Company after such individuals undertook a reasonable investigation to confirm the truth and accuracy of such statement.

9.11 No Third Party Beneficiaries. This Agreement and the Ancillary Agreements shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement or the Ancillary Agreements, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement or the Ancillary Agreements, including, without limitation, by way of subrogation, except as specifically set forth in Article 9 hereof.

9.12 Performance by the Company. Transferor will cause to be performed and hereby guarantees the performance of all actions, agreements and obligations set forth herein to be performed at or prior to the Closing by the Company.

9.13 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on their respective behalf, by their respective officers thereunto duly authorized, all as of the day and year first above written.

MACH GEN, LLC, AS TRANSFEREE

By: _____
Name: _____
Title: _____

NEW ATHENS GENERATING COMPANY,
LLC, AS THE COMPANY

By: _____
Name: _____
Title: _____

ATHENS GENERATING COMPANY, L.P., AS
TRANSFEROR

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF GENHOLDINGS ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT B

FORM OF RELEASE

VERIFICATIONS

STATE OF NEW YORK
BOARD ON ELECTRIC GENERATION
SITING AND THE ENVIRONMENT

Case 97-F-1563 - Application by Athens
Generating Company, L.P. for a Certificate
of Environmental Compatibility and
Public Need to Construct and Operate a
1,080 Megawatt Natural Gas-Fired
Combined Cycle Combustion Turbine
Generating Facility, in the Town of
Athens, Greens County


VERIFICATION

I, Ernest K. Hauser, Senior Vice President of Athens Generating Company, L.P., in the
above entitled proceeding, have read the foregoing petition and know the contents thereof
and that the same is true and accurate to the best of my knowledge, information and
belief.



SWORN TO BEFORE ME THIS

25TH DAY OF AUGUST, 2003


MYRA WRIGHT
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires January 19, 2004

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J. Michael Harrison
Administrative Law Judge
NYS Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

James M. Melius, MD, Dr. P.H.
New York State Laborers' – Employers'
Cooperation and Education Trust Fund
New York State Laborers' Health and Safety
Trust Fund
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Daniel P. O'Connell
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NYS Dept. of Environmental Conservation
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Albany, NY 12233-1550

Columbia Greene Community College Librar
Route 23
Hudson, New York 12534

Hon. Janet Hand Deixler
Secretary
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

Hudson Area Library
State Street
Hudson, New York 12534

D.R. Evarts Library
Ms. Pat VanValkenburg, Librarian
Second Street
Athens, New York 12015

Mr. Edward Lauzon
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