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January 11, 2001

**PUBLIC SERVICE COMMISSION  
RECEIVED**

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**FILES  
ALBANY, N.Y.**

**Via Overnight Mail**

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

**Re: Case 96-E-0897 - Con Edison Competitive Opportunities  
Proceeding -- Divestiture of Nuclear Generating Assets**

Dear Secretary Deixler:

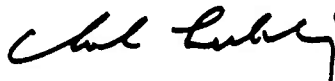
Enclosed are an original and five copies of a Joint Petition of Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 2, LLC for Authority Under Section 70 of the Public Service Law to Transfer Certain Generating and Related Assets and for Related Relief. Exhibit 2 to the Joint Petition and the affidavit addressing market power issues are not included in this filing and will be submitted shortly.

Petitioners request that the Joint Petition be approved expeditiously so that the transfer of the assets may be effectuated as soon as possible. Petitioners further urge that the Commission deny the request of the Attorney General for evidentiary hearings on the Joint Petition. In its November 21, 2000 letter, the Attorney General claims that evidentiary hearings are required for a "thorough and complete public examination to determine whether the sale would be in the public interest." The Attorney General's unsupported claim is without merit and granting the request for hearings would serve no useful purpose other than to unnecessarily delay the review process and consummation of the sale. As concluded by the Commission in dismissing similar claims by intervenors, including the Attorney General, in Orange and Rockland's divestiture proceeding: (a) there is no statutory requirement for either formal discovery or hearings of any type for a public interest determination under Section 70; (b) although consideration of concerns and issues raised by interested persons is an important part of the Commission's review, ratepayers' interests can be adequately protected by Staff's independent and comprehensive review of the auction process and terms and conditions of the sale; and (c) formal discovery and evidentiary hearings would be inconsistent with the confidential nature of the auction process, which must be preserved to protect bidders' business interests, the integrity of the subject auction and the success of all future auctions. Cases 96-E-0900 and 96-E-0897, Order on Investigation of Orange and Rockland's Auction Process and Extending Time for Comments (April 26, 1999).

See, also, Case 94-E-0098, et al., Order Confirming Prior Order Approving Transfer of the Oswego Generating Facility and Making Further Findings (December 24, 1999). Accordingly, the Attorney General's request for an adjudicatory proceeding should be denied.

Copies of the Joint Petition are being served by First Class Mail on all active parties to Case 96-E-0897.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Charles Lubin".

c: Staff Project Team  
CL#210833

**BEFORE THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION**

-----X  
**Joint Petition Of Consolidated Edison Company :**  
**Of New York, Inc. And Entergy Nuclear Indian :**  
**Point 2, LLC For Authority Under Section 70 :**  
**Of the Public Service Law To Transfer Certain :**  
**Generating And Related Assets And For :**  
**Related Relief :**  
-----X

**JOINT PETITION OF  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,  
AND  
ENTERGY NUCLEAR INDIAN POINT 2, LLC  
FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW  
TO TRANSFER CERTAIN GENERATING AND RELATED ASSETS  
TO ENTERGY NUCLEAR INDIAN POINT 2, LLC  
AND FOR RELATED RELIEF**

**January 11, 2001**

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**BEFORE THE NEW YORK STATE  
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ENTERGY NUCLEAR INDIAN POINT 2, LLC  
FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW  
TO TRANSFER CERTAIN GENERATING AND RELATED ASSETS  
TO ENTERGY NUCLEAR INDIAN POINT 2, LLC  
AND FOR RELATED RELIEF**

**I. OVERVIEW**

Pursuant to Section 70 of the Public Service Law, Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company") and Entergy Nuclear Indian Point 2, LLC ("Entergy Nuclear"),<sup>1</sup> hereby request authorization to transfer Con Edison's nuclear generating facilities and related assets identified herein, as well as certain obligations and liabilities associated with those assets (collectively, the "Nuclear Assets"), from Con Edison to Entergy Nuclear. The assets are to be transferred pursuant to agreements entered into by Petitioners on November 9, 2000 upon the conclusion of an auction of the Nuclear Assets conducted for Con Edison by Morgan Stanley & Co. Incorporated ("Morgan Stanley"). As will be described below

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<sup>1</sup> Con Edison and Entergy Nuclear will be referred to herein collectively as the "Petitioners."

and in the attached affidavit of Mr. Kenneth R. Marks, a Managing Director in the Investment Banking Division of Morgan Stanley, the process used by Morgan Stanley for the auction of the Nuclear Assets was reasonably designed to maximize the auction proceeds and was similar to the process used for divesting Con Edison's fossil plants as approved by the New York Public Service Commission ("the Commission" or "PSC").<sup>2</sup>

Specifically, Petitioners request authorization for the transfer of the Nuclear Assets to Entergy Nuclear, an indirect wholly owned subsidiary of Entergy Corporation, for a purchase price of \$502 million (subject to certain adjustments). In addition, Con Edison will sell to Entergy Nuclear its nuclear fuel and fuel oil inventories for their book value at time of closing. The current book value of such inventories is about \$107 million. The assets that will be transferred to Entergy Nuclear, which include real, personal and intangible property, are enumerated in the Generating Plant and Gas Turbine Asset Purchase and Sale Agreement between Con Edison and Entergy Nuclear, dated as of November 9, 2000 ("APSA"), and include the Indian Point 2 Generating Plant ("IP2"), the retired Indian Point 1 Generating Plant ("IP1") and three associated gas turbines, all located in Buchanan, New York. IP2 and its associated gas turbines have a combined net summer capability of about 990 MW. Also included in the sale are the Toddville Training Center, located in Cortlandt, New York, spare parts and materials and electric transmission and ancillary facilities, all associated with the Nuclear Assets. More detailed descriptions of the assets included in the sale, including a site diagram, are included in the affidavit of Mr. George Jee, Con Edison's project manager for the sale.

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<sup>2</sup> Case 96-E-0897, In the Matter of Consolidated Edison Company of New York, Inc.'s Plans for (1) Electric Rate/Restructuring Pursuant to Opinion No. 96-12; and (2) the Formation of a Holding Company Pursuant to PSL Sections 70, 108 and 110, and Certain Related Transactions, Order on Consolidated Edison Compliance Filing for Divestiture of Generating Facilities, issued August 5, 1998; Order Authorizing the Process for Auctioning of Generation Plant, issued July 21, 1998 ("Fossil Auction Orders").

Petitioners also request that the Commission approve the agreements executed, or to be executed, in connection with the transaction, including among others: the APSA; Indian Point Continuing Site Agreement; Power Purchase Agreement ("PPA"); Guarantee Agreement; Declaration of Easements Agreement; and GT Site Ground Lease. Copies of these agreements are enclosed herewith and are summarized in the affidavit of Mr. Jee.

In addition, as explained in the accompanying affidavit of Dr. William H. Hieronymus of PA Consulting Group, Petitioners request that the Commission determine that the proposed transfer of the Nuclear Assets to Entergy Nuclear comports with the Commission's horizontal and vertical market power guidelines incorporated in the Fossil Auction Orders and that the transaction will not create market power concerns.

Petitioners also request the Commission to make a written determination that allowing certain of the Nuclear Assets to be "eligible facilities" (as that term is defined in Section 32 of the Public Utility Holding Company Act of 1935 ("PUHCA")) (a) will benefit New York consumers, (b) is in the public interest, and (c) does not violate New York law, thereby enabling Entergy Nuclear to be recognized as an exempt wholesale generator ("EWG") by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 32 of PUHCA. Under the APSA, such a written determination by the Commission is a condition precedent to the closing on the sale of the Nuclear Assets. In a separate companion filing, Entergy Nuclear also requests that the Commission confirm that it qualifies for lightened regulation under the Public Service Law as a New York electric corporation.<sup>3</sup>

In addition, Petitioners request approval of Con Edison's proposed accounting and rate treatment for the sale and transfer of the Nuclear Assets, including the proposed treatment of the

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<sup>3</sup> Such regulatory treatment has been granted to other wholesale electric service providers. See, e.g., Case 00-E-1643, Dynegy Power Corporation, Order Providing for Lightened Regulation, December 20, 2000.

proceeds and any remaining stranded costs, as detailed in the accompanying affidavit of Mr. Edward J. Rasmussen, Con Edison's Vice President and Controller.

Finally, Petitioners respectfully request that the Commission act expeditiously on this Joint Petition. As set forth more fully below and in the enclosed affidavits, the proposed asset transfer will clearly benefit Con Edison's consumers. Through this transaction, Con Edison's consumers will benefit from the sale of the Nuclear Assets at fair market value. In addition, the sale adequately protects consumers from future responsibility for decommissioning costs and spent fuel management, minimizes consumers' financial exposure to operating and decommissioning risks, and provides replacement energy at stable prices currently estimated to be below market prices. The proposed transfer will also accomplish important objectives for the transformation of the electric industry in New York State which were articulated in the Commission's Opinion No. 96-12.<sup>4</sup>

Moreover, the proposed asset transfers will not affect (a) the Commission's jurisdiction over Con Edison's electric distribution functions or its gas and steam services, (b) Con Edison's role in meeting Provider of Last Resort ("POLR") responsibilities, or (c) Con Edison's other obligations under Con Edison's electric rate/restructuring settlements adopted by the Commission.<sup>5</sup> Con Edison's electric customers will continue to enjoy the benefits of the rate reductions, retail access and other provisions of these rate/restructuring settlements.

As described in the affidavit of Mr. Michael R. Kansler, Senior Vice President and Chief Operating Officer of Entergy Nuclear, Entergy Nuclear will appoint Entergy Nuclear Operations, Inc. ("ENO"), an indirect wholly owned subsidiary of Entergy Corporation, as its agent for

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<sup>4</sup> Cases 94-E-0952 *et al.*, Competitive Opportunities Regarding Electric Service, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (May 20, 1996).

<sup>5</sup> Case 96-E-0897, Opinion No. 00-14, *supra*, Opinion and Order Adopting Terms of Settlement, Subject to Modifications (November 30, 2000); Opinion No. 97-16, Order Adopting Terms of Settlement Subject to Conditions and Understandings (November 3, 1997) ("Rate/Restructuring Orders").

operating IP2 and maintaining IP1. ENO was formed in February 2000, and currently employs approximately 1700 persons, primarily at the Indian Point 3 and FitzPatrick Nuclear Power Stations. Entergy Corporation has the experience and expertise to operate the Nuclear Assets safely and efficiently, and possesses the financial resources required to meet its obligations to acquire the Nuclear Assets. Entergy Corporation has executed a parent guarantee in favor of Con Edison securing the performance of Entergy Nuclear under the APSA to close the transaction. In addition, as of the closing, Entergy Nuclear and ENO will have access to an established line of credit of \$20 million from an affiliate company, Entergy Global Investments, Inc., to provide any necessary working capital for the operation and maintenance of the plants, and up to \$35 million will be provided through a line of credit from Entergy International Ltd. LLC to provide additional financial resources as needed for the safe operation and maintenance of IP1 and IP2, including the costs of nuclear property damage insurance.

As set forth in the affidavit of Mr. Rasmussen, the cash consideration that Con Edison will receive for the Nuclear Assets is expected to be less than the remaining net book cost of those assets and related divestiture transaction costs, including taxes. However, as set forth in Mr. Jee's affidavit, the savings to consumers estimated to result from the PPA are expected to offset a substantial portion of the stranded costs resulting from the sale.

As also detailed in Mr. Rasmussen's affidavit, the APSA requires Con Edison to transfer to Entergy Nuclear at closing \$430 million from the nuclear decommissioning trust funds maintained by Con Edison, which will satisfy the minimum funding requirements of the Nuclear Regulatory Commission ("NRC") for decommissioning both IP1 and IP2 at the end of the

current license for IP2.<sup>6</sup> Upon the closing of the sale, Entergy Nuclear will assume the responsibility for decommissioning the Nuclear Assets.

Con Edison currently maintains two decommissioning trusts for IP1 and IP2, a Qualified Decommissioning Trust and a Nonqualified Decommissioning Trust. At closing of the sale, Con Edison will transfer all the assets of the Qualified Decommissioning Trust to Entergy Nuclear. To the extent the fair market value of the Qualified Decommissioning Trust assets exceeds \$430 million, the purchase price will be adjusted upward by such excess amount. However, if the fair market value of those assets at the time of closing is less than \$430 million, Con Edison will transfer assets of the Nonqualified Decommissioning Trust such that the aggregate fair market value of the decommissioning funds transferred to Entergy Nuclear equals \$430 million. Based on a mid-2001 closing, the Company estimates that it will be required to "top off," or contribute to the assets of the Nonqualified Decommissioning Trust, approximately \$15 million in addition to the unfunded internal reserve maintained for decommissioning, to bring the aggregate fair market value of the transferred funds up to the \$430 million level.

In addition, upon closing, Entergy Nuclear will assume title to and responsibility for the management, interim storage and ultimate disposal of spent nuclear fuel at IP1 and IP2. Con Edison will assign, and Entergy Nuclear will assume, Con Edison's rights and obligations under the Standard Contract for the Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the U.S. Department of Energy ("DOE"), excluding any claims with respect to damages to property or other economic loss of Con Edison pertaining to DOE's defaults under the Standard Contract accrued as of the closing date.

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<sup>6</sup> On January 31, 1996, the NRC accepted a plan for the decommissioning of IP1, which provides that IP1 will be maintained in a safe storage condition until the end of the IP2's current license in 2013.

This Joint Petition is submitted together with affidavits by the following individuals: George Jee of Con Edison; Edward J. Rasmussen of Con Edison; Michael R. Kansler of Entergy Nuclear; Kenneth R. Marks of Morgan Stanley; and William H. Hieronymus of PA Consulting Group. The information required to be presented under Parts 31 and 18 of the Commission's Rules and Regulations<sup>7</sup> is set forth in Exhibit 1. An Environmental Assessment Form together with a comprehensive assessment of environmental impacts ("EAF") is included as Exhibit 2.

## **II. DESCRIPTION OF THE PARTIES**

### **A. Con Edison**

Con Edison is an electric, gas and steam corporation organized under the laws of the State of New York, including the Transportation Corporations Law, and has its principal place of business at 4 Irving Place, New York, New York 10003. Con Edison supplies electric service in all of New York City (except part of Queens) and in most of Westchester County; gas service in Manhattan, the Bronx and parts of Queens and Westchester Counties; and steam service in part of Manhattan.

### **B. Entergy Nuclear**

Entergy Nuclear, a Delaware limited liability corporation, is an indirect wholly owned subsidiary of Entergy Corporation, and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3. Entergy Nuclear's plant office will be located in Buchanan, New York.

ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. ENO's Northeast office is located in White Plains, New York.

Entergy Corporation is a United States-based global energy company with power production, distribution and related diversified services. Entergy Corporation is the third largest

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<sup>7</sup> 16 NYCRR Parts 31 and 18.

power generator in the nation with more than 30,000 megawatts of generating capacity. As of September 30, 2000, Entergy Corporation had total assets of \$24 billion. Entergy Corporation is headquartered in New Orleans, Louisiana.

Through its subsidiaries, Entergy Corporation owns and operates eight nuclear power plants at seven sites - Arkansas Nuclear One Units 1 and 2, Grand Gulf Nuclear Station, River Bend Station, Waterford 3 Steam Electric Station, Pilgrim Nuclear Power Station, Indian Point Nuclear Generating Unit No. 3, and the J.A. FitzPatrick Nuclear Power Station. Entergy Corporation, through its subsidiaries, is also managing decommissioning activities at Maine Yankee in Wiscasset, Maine and Millstone Unit 1 in Waterford, Connecticut. Entergy Corporation has over twenty-five years experience owning and operating nuclear assets.

### **III. THE AUCTION PROCESS**

The affidavit of Mr. Marks describes Morgan Stanley's role as Con Edison's financial advisor and the auction administrator, and sets forth in detail the manner in which the auction of the Nuclear Assets was conducted. The Commission's Staff was consulted on each of the critical steps in the auction process.

As described in greater detail in Mr. Mark's affidavit, Morgan Stanley began the auction process by soliciting expressions of interest in the upcoming auction of the Nuclear Assets from a broad universe of potentially interested entities. Entities that signed confidentiality agreements received a confidential Information Memorandum as well as a set of CD-ROMs containing data, documents and diagrams relating to the Nuclear Assets, including detailed information on the environmental conditions of the assets. The Information Memorandum, which had been provided for review by the Commission's Staff, described the assets and the proposed material terms and conditions that would be set forth in the transaction agreements. Morgan Stanley invited Phase I bidders to submit non-binding initial bids.



The deadline for submission of Phase I proposals for the Nuclear Assets was June 26, 2000. After carefully reviewing each Phase I proposal, Morgan Stanley made recommendations as to which bidders should be invited into Phase II of the process. Morgan Stanley's recommendations were reviewed with the Commission's Staff.

Each Phase II bidder was invited to conduct further due diligence and received a second set of CD-ROMs concerning the Nuclear Assets. Con Edison also assembled and made available to all Phase II bidders all relevant documents in a data room located near the plant. Con Edison's management met with each Phase II bidder to give oral presentations, answer questions and conduct tours of the Nuclear Assets. Phase II bidders were also provided the opportunity to have unsupervised discussions with plant personnel. All Phase II bidders were sent drafts of the transaction agreements to be executed in connection with the transfer of the Nuclear Assets and were given an opportunity to comment on the agreements. After careful consideration of the bidders' comments, revised agreements were sent to all bidders, who were encouraged to submit final offers, with and without a PPA, based on the terms and conditions contained in the revised transaction agreements. The draft agreements also reflected input by the Commission's Staff.

The deadline for receiving Phase II bids for the Nuclear Assets was October 11, 2000. In assessing overall value, Con Edison considered price, compliance with the procedures and terms contained in the final bid letter, the financial qualifications of the bidder and the bidder's ability to fulfill its obligations with respect to the assets to be acquired, the proposed revisions to the transaction agreements, the proposed terms for the PPA and the ability of the bidder to close on the sale of the Nuclear Assets in a timely manner. Representatives of Con Edison consulted with Staff prior to completing the analysis.

On November 9, 2000, Con Edison executed definitive transaction agreements with Entergy Nuclear to acquire the Nuclear Assets, including a PPA under which Con Edison would

purchase the net energy output of IP2 through December 31, 2004.

Morgan Stanley provided a fairness opinion to the Board of Trustees of Con Edison that the consideration to be received by the Company pursuant to the transaction agreements is fair from a financial point of view to the Company.

#### **IV. APPLICATION OF THE NET PROCEEDS AND PROPOSED RATE TREATMENT**

As described in the affidavits of Mr. Rasmussen and Mr. Jee, the sale is expected to produce a net loss (i.e., total proceeds are expected to be less than the Company's unrecovered investment plus taxes and other sale-related costs), a substantial portion of which is expected to be offset by savings resulting from the PPA. As discussed by Mr. Rasmussen, pursuant to the terms of the settlement agreements adopted in the Commission's Rate/Restructuring Orders, the Company is to recover its incremental transaction costs, such as professional fees, from the gross proceeds, and any net after-tax loss on the sale of the Nuclear Assets, plus interest at the unadjusted customer deposit rate, is to be deferred until after March 31, 2005, at which time the Company would be afforded a reasonable opportunity to recover such stranded costs over a period no longer than the end of IP2's license term in year 2013.<sup>8</sup> In addition, the Company would flow through to customers, through the Monthly Adjustment Clause, energy payments to Entergy Nuclear under the PPA, subject to a 90/10 sharing between consumers and the Company of the difference between such payments and wholesale market prices for energy.<sup>9</sup>

As further discussed by Mr. Rasmussen, in order to avoid surcharges in rates that may be required after March 2005 to permit recovery of stranded costs relating to the Nuclear Assets, the

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<sup>8</sup> Opinion No. 00-14, supra, Attachment, Sections II.12 and II.16.

<sup>9</sup> Id., Section IV.9.

Company believes that it is feasible, and requests the Commission to consider, to begin to implement the stipulated recovery of some or all of such stranded costs from available ratepayer credits, such as the expected PPA savings and net gains on the sale of other assets, when such credits become available, with any remaining unrecovered stranded costs to be reflected in rates after March 31, 2005.

## **V. DESCRIPTION OF THE VARIOUS AGREEMENTS**

The terms of the transfer of the Nuclear Assets to Entergy Nuclear are set forth in the APSA and other transaction agreements, copies of which are filed herewith and summarized in greater detail in the affidavit of Mr. Jee.

Among other things, the APSA sets forth the assets and liabilities being transferred, retained and/or assumed by each of the parties. The APSA also specifies a purchase price of \$502 million, subject to certain adjustments and customary prorations of taxes, rents and fees. In addition, the APSA provides for payment by Entergy Nuclear of the book value, as of the date of the closing, of all nuclear fuel and fuel oil inventories.

The APSA also provides for the Company to transfer to Entergy Nuclear decommissioning funds totaling \$430 million and for Entergy Nuclear to assume responsibility for future decommissioning of IP1 and IP2, including the restoration of the site, as required by applicable laws and regulations. As further specified in the APSA, should Entergy Nuclear decommission the site in a manner different than currently contemplated, fifty percent of the excess decommissioning funds will be paid to Con Edison for the benefit of ratepayers.

The APSA also contains customary representations, warranties and covenants. The APSA also provides that Entergy Nuclear will assume, with certain limited exceptions as specified in the APSA, all known and unknown environmental liabilities arising from the ownership or operation of the Nuclear Assets and all spent fuel storage and disposal obligations.

Also, the APSA requires ENO to offer employment to all plant employees, assume the terms and conditions of the Company's collective bargaining agreement until its expiration, and maintain at least equivalent compensation and benefits to continuing non-union management employees for a period of three years.

The APSA also sets forth conditions precedent to each party's obligation to complete the transaction, including obtaining regulatory approvals such as sought by this Joint Petition.<sup>10</sup>

Other necessary regulatory approvals include a determination by the Commission and various other state regulatory authorities concerning EWG status, approval by the NRC to transfer the IP1 and IP2 licenses and various FERC approvals.

After the transfer of the Nuclear Assets, Con Edison will need access to parts of the Nuclear Assets, while Entergy Nuclear will need access to certain assets retained by Con Edison. Entergy Nuclear and Con Edison will also provide various ongoing services to each other. These items, among others, are addressed in the Indian Point Continuing Site Agreement executed between Con Edison and Entergy Nuclear. The easements necessary to enable the parties to access, operate and maintain their respective facilities and equipment are embodied in the GT Site Ground Lease Agreement and the Declaration of Easements Agreement, forms of which are appended as Exhibits A-3 and A-4, respectively, to the APSA.

Con Edison and Entergy Nuclear have also entered into a PPA, a copy of which is submitted herewith. Under the PPA, Con Edison will purchase the net energy output of IP2, from closing until December 31, 2004, at an annual average cost of \$39/MWh.

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<sup>10</sup> In addition to authorization for the transfer of the Nuclear Assets and the determination concerning EWG status, Entergy Nuclear's obligation to complete the transaction is conditioned upon a Commission determination that Entergy Nuclear qualifies for lightened regulatory treatment granted to other providers of wholesale electric service in New York which would not prevent it from competing on a comparable basis with such other providers.

Entergy Corporation and certain of its subsidiaries have executed a Guarantee Agreement in favor of Con Edison that secures the performance of Entergy Nuclear's obligations under the APSA prior to or at closing, including the payment of the purchase price as required under the APSA. Certain post-closing financial assurances will be provided by a subsidiary of Entergy Corporation pursuant to another Guarantee Agreement to be executed at closing, a form of which is appended as Exhibit F to the APSA.

## **VI. THE SALE OF THE NUCLEAR ASSETS IS IN THE PUBLIC INTEREST**

### **A. Divestiture Of IP2 Is Consistent With The Goal Of Developing A Competitive Electric Market.**

The transfer of the Nuclear Assets is consistent with the Commission's goals and objectives in creating a competitive electric market. Utility divestiture of generation was a key element of the Commission's vision of a competitive market for electric service. Op. No. 96-12, supra, p. 90. In adopting Con Edison's 1997 Settlement Agreement, the Commission stated (Op. No. 97-16, supra, p. 46):

Divestiture of generation is essential in the movement to competition ... Divestiture of assets through an auction has the potential to result in a dynamic and aggressive generation market, and also has the advantage of establishing a clear market value for generating assets.

Under the 1997 Settlement Agreement, the Company agreed to divest at least 50 percent of its in-City electric generating fossil-fueled capacity to unaffiliated third parties by year-end 2002. In addition, the Settlement Agreement requires the Company to transfer to its unregulated affiliates, by year-end 2002, all of its electric generating plants not sold to third parties, except for Indian Point No. 2 and its associated gas turbines. The Company has now divested to third parties virtually all of its electric generating capacity located in New York City, as well as its two-thirds share of the Bowline Point Generating Facility located in West

Haverstraw, New York. The Company is also in the process of divesting its 40-percent interest in the Roseton Generating Facility, located in Newburgh, New York. With the sale of IP2 and its associated gas turbines, the Company will have divested virtually all of its electric generating facilities other than the steam/electric plants required for Con Edison's steam system.

**B. Con Edison Will Remain Subject To PSC Jurisdiction After The Transfer Of The Nuclear Assets.**

The transfer of the Nuclear Assets will not affect the Commission's jurisdiction over Con Edison's electric distribution functions and gas and steam services. The PSC will retain jurisdiction over Con Edison pursuant to the Public Service Law. In addition, Con Edison remains subject to the terms and conditions set forth in the settlement agreements adopted by the Rate/Restructuring Orders.

**C. The Terms Of The Sale Are Beneficial To Consumers And Consistent With Market Indications For Nuclear Assets.**

Mr. Marks' affidavit confirms the efficacy of the sale process that was used, based on Morgan Stanley's broad experience with asset sales in the electric industry and other sectors. As noted in Mr. Marks' affidavit, the auction process used was commercially reasonable, broadly exposed the Nuclear Assets to the market and was reasonably designed to maximize the proceeds from the sale while assuring the continued safe and reliable operation of IP2. In addition, under the terms of the APSA, the sale of the Nuclear Assets will minimize ratepayers' future financial risks associated with the Nuclear Assets, including operating risks, decommissioning risks, environmental risks and market risks that could render IP2 uneconomical, while providing for appropriate decommissioning at the expiration of IP2's operating license. For the immediate future, consumers retain a hedge against high and volatile energy market prices through the PPA.

**D. The Purchaser Is Qualified To Own And Operate The Nuclear Assets.**

As set forth in the affidavit of Mr. Kansler, Entergy Corporation is qualified to own and operate electric generating facilities such as the Nuclear Assets and has the experience and expertise to operate the Nuclear Assets safely and efficiently. ENO's obligation to offer employment to the workforce that operates IP2 will further assure that it has the requisite personnel and expertise to operate IP2 in a safe and reliable manner. Thus, the operation and maintenance of Con Edison's nuclear facilities will be under the control of an entity that specializes in the safe, efficient and reliable operation of nuclear generating facilities.

**E. The Transfer Of The Nuclear Assets Is Will Not Adversely Affect Competition.**

The transfer of the Nuclear Assets to Entergy Nuclear will not create any horizontal market power concerns. As explained in the accompanying affidavit of Dr. Hieronymus, the transfer of the Nuclear Assets contemplated herein comports with the Commission's guidelines regarding horizontal market power set forth in the Fossil Auction Orders. Further, because Entergy Nuclear does not currently own any electric transmission or distribution assets in the region,<sup>11</sup> the transaction presents no vertical market power issues.

**F. The Labor Provisions Of The APSA Are Reasonable.**

The interests of the workers employed at the generating facilities proposed to be transferred to Entergy Nuclear are reasonably addressed. The APSA requires ENO to offer equivalent employment to all plant employees, assume the terms and conditions of the Company's collective bargaining agreement with respect to union employees until its expiration and maintain at least equivalent compensation and benefits to non-union management employees for a period of three years.

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<sup>11</sup> Any transmission facilities that will be acquired by Entergy Nuclear as part of the pending transaction will be incidental to the Nuclear Assets.

**G. The Transfer Of The Nuclear Assets Will Not Result In Any Potentially Significant Adverse Environmental Impacts.**

In May 1996, pursuant to the State Environmental Quality Review Act ("SEQRA"),<sup>12</sup> the Commission issued a Final Generic Environmental Impact Statement ("FGEIS") that addressed the statewide environmental, social and economic impacts of its policy to open New York's electric markets to competition. Petitioners have prepared an Environmental Assessment Form together with a comprehensive assessment ("EAF") in which they review the specific environmental impacts of the transfer of the Nuclear Assets pursuant to SEQRA. As detailed in the EAF, which is included as Exhibit 2, the transfer is not expected to result in any significant changes in existing structures or in the operation of the Nuclear Assets, or to have a substantial impact on the decision whether to continue to operate or retire the Nuclear Assets. Therefore, the Commission could reasonably conclude that the transfer will not result in any potentially significant adverse environmental impacts, consistent with SEQRA. Further, the Nuclear Assets will continue to be required to comply with all applicable environmental regulations following their transfer to Entergy Nuclear.

**VII. THE COMMISSION SHOULD ISSUE FINDINGS RELATED TO THE PURCHASER'S EXEMPT WHOLESALE GENERATOR STATUS**

A condition precedent to the transfer of the Nuclear Assets is the granting of EWG status under Section 32 of PUHCA to Entergy Nuclear. While EWG status ultimately must be obtained from FERC, certain written determinations must be made by the Commission with respect to those Nuclear Assets that were included in the retail rate base of Con Edison (other than through the purchase of wholesale power) as of October 24, 1992, the date of the enactment of Section 32 of PUHCA, in order for FERC to grant EWG status to Entergy Nuclear. As part of this Joint

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<sup>12</sup> N.Y. Env'tl. Conserv. §§ 8-0101-8-0117.



Petition, Petitioners request that the Commission make a specific determination that allowing the Nuclear Assets to be "eligible facilities" as defined in section 32 of PUHCA: (1) will benefit consumers; (2) is in the public interest, and (3) does not violate state law. With such a determination (and similar determinations by other state regulatory authorities), Entergy Nuclear may qualify as an EWG under Section 32 of PUHCA<sup>13</sup>. Allowing the Nuclear Assets to become "eligible facilities" will facilitate Entergy Nuclear's ability to participate in the new free market in electric power and will facilitate the Commission's goals and objectives in creating a competitive electric market. Thus, consumers will benefit and the public interest will be served. In addition, allowing these generation facilities to become "eligible facilities" does not violate any New York State law.

### VIII. CORRESPONDENCE AND COMMUNICATIONS

All communications and correspondence with respect to this Joint Petition should be addressed to the following:

Chanoch Lubling, Esq.  
Associate General Counsel  
Consolidated Edison Company of New York, Inc.  
4 Irving Place, Room 1815-S  
New York, New York 10003  
Tel: 212-460-3302  
Fax: 212-677-5850

Paul L. Gioia, Esq.  
LeBoeuf, Lamb Greene & MacRae, L.L.P.  
One Commerce Plaza, Suite 2020  
99 Washington Ave  
Albany, New York 11210  
Tel: 518-626-9000  
Fax: 518-626-9010

<sup>13</sup> Under Section 32 of PUHCA, certain generators of electricity may qualify for EWG status. EWGs must, in general, be exclusively engaged in the business of owning or operating "eligible facilities," and are generally exempt from regulation by the Securities and Exchange Commission under PUHCA. See 15 U.S.C. § 79z-5a(e). The purposes of this and related statutory provisions adopted in the Energy Policy Act of 1992 ("EP Act"), were to use market forces instead of government regulation to advance security goals, to encourage investment in generation, and to protect consumers. In the EP Act, Congress amended PUHCA to make it easier to invest in EWGs in order to develop a competitive market for wholesale electric power.

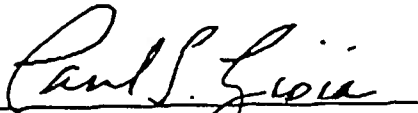
**IX. REQUEST FOR RELIEF**

The Petitioners respectfully request that the Commission:

- (1) authorize the transfer of the Nuclear Assets by Con Edison to Entergy Nuclear pursuant to the terms of the APSA as in the public interest under Section 70 of the Public Service Law;
- (2) determine that the transfer of the Nuclear Assets to Entergy Nuclear will not create market power concerns;
- (3) approve in their entirety the agreements relating to the proposed transfer of the Nuclear Assets to Entergy Nuclear, which agreements are enclosed with this Joint Petition, including: the Generating Plant and Gas Turbine Asset Purchase and Sale Agreement; the Indian Point Continuing Site Agreement; the Power Purchase Agreement; the Guarantee Agreement; and the other ancillary agreements and grants of deeds provided for in the above-enumerated agreements;
- (4) determine that the terms of the PPA are reasonable and confirm that Con Edison is entitled to recover all payments thereunder, subject to the sharing incentives;
- (5) determine that allowing the Nuclear Assets to be "eligible facilities" as that term is defined in section 32 of PUHCA (a) will benefit New York consumers, (b) is in the public interest, and (c) does not violate New York law;
- (6) grant Entergy Nuclear's companion petition and confirm that Entergy Nuclear qualifies for lightened regulation under the Public Service Law similar to the regulatory treatment granted to other providers of wholesale electric services in New York;
- (7) approve the proposed accounting and rate treatment for the transfer and sale of the Nuclear Assets, and the transaction costs related thereto, and the application of the proceeds to be received, as set forth in Mr. Rasmussen's affidavit; and

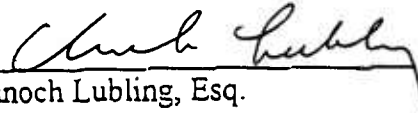
(8) grant other and further relief for which Petitioners may be entitled.

Respectfully submitted,



Paul L. Gioia, Esq.  
LeBoeuf, Lamb, Greene & MacRae, L.L.P.  
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99 Washington Ave  
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Tel: 518-626-9000  
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Counsel for Entergy Nuclear  
Indian Point 2, LLC



Chanoch Lubling, Esq.  
Associate General Counsel  
Consolidated Edison Company of  
New York, Inc.  
4 Irving Place, Room 1815-S  
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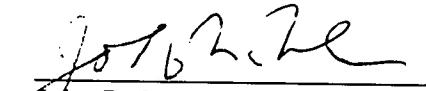
Counsel for Consolidated Edison Company  
of New York, Inc.

Dated: January 11, 2001

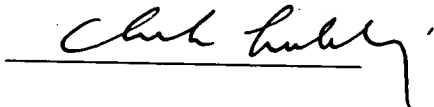
# VERIFICATION

STATE OF NEW YORK   )  
                                  :  
COUNTY OF NEW YORK )

John D. McMahon, being duly sworn, deposes and says that he is the Senior Vice President and General Counsel of Consolidated Edison Company of New York, Inc., one of the Petitioners above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.

  
John D. McMahon

Sworn to before me this  
11<sup>th</sup> of January, 2001

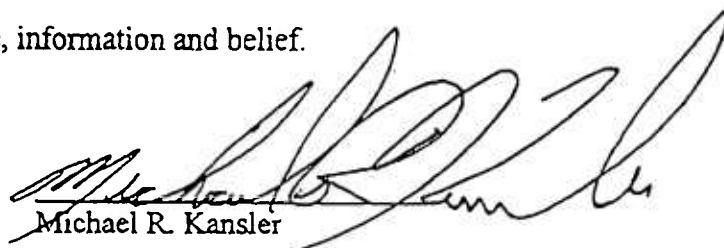


CHANOCH LUBLING  
NOTARY PUBLIC, State of New York  
No. 24-4748879  
Qualified in Kings County  
Commission Expires October 31, 2001

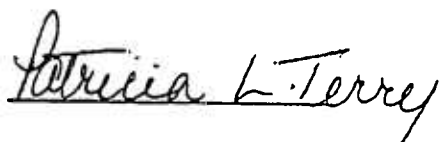
# VERIFICATION

STATE OF NEW YORK     )  
COUNTY OF WESTCHESTER    )

Michael R. Kansler, being duly sworn, deposes and says that he is the Senior Vice President and Chief Operating Officer of Entergy Indian Point 2, LLC, one of the Petitioners above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.

  
Michael R. Kansler

Sworn to before me this  
11<sup>th</sup> of January, 2001



Notary Public

PATRICIA L. TERRY  
Notary Public, State of New York  
No. 4991258  
Qualified in Westchester County  
Commission Expires Jan. 27, 2002



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

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

Section 31.1(a) - - Financial Condition.

This section requires that the petition provide the facts called for in subdivisions (f) - (i) and (p) of Section 18.1 applicable to the property to be transferred.<sup>14</sup> The information required by this section for Con Edison is set forth in **Appendix A**, attached hereto.

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

As described briefly in Section I of this Petition, and in more detail in the affidavit of George Jee, the facilities to be transferred include the Indian Point Units 1 and 2, the three associated Gas Turbines, the Toddville Training Center and certain associated electric facilities. A complete description of the property to be transferred is set forth in the APSA, a copy of which is enclosed with this Joint Petition.

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<sup>14</sup> These subdivisions of Section 18.1 require the Petitioners: (i) to identify the case number and date of any order authorizing any bonds, notes, or other evidences of indebtedness (Section 18.1 (f)); (ii) to give a brief description of each mortgage upon the property to be transferred (Section 18.1 (g)); (iii) to provide information for each bond issued (Section 18.1 (h)); (iv) to submit a separate statement for each affiliated interest as defined by the PSL (Section 18.1 (i)); and (v) to provide a detailed income statement and balance sheets for the latest fiscal year, and latest available income statement and balance sheets for 12 months (Section 18.1 (p)).

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

Con Edison's franchised retail operations will not be transferred, merged or consolidated as part of the proposed transaction. Contracts, leases and licenses related to the Nuclear Assets that were in existence as of the execution of the APSA and that are contemplated to be transferred are described in the APSA. Other contracts, leases and licenses related to the Nuclear Assets that have been or will be entered into following execution of the APSA may also be transferred.

Section 31.1 (d) - - Local Approvals.

Upon information and belief, no consents or approvals of any municipality in connection with the proposed transfer are required, other than authorization by a municipality for the change in occupancy that may be required.

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

Copies of the proposed agreements are enclosed with this Joint Petition.

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

See Appendix B.

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

See Appendix B.

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

See Appendix B

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

See Appendix B.



Section 31.1 (k)- - Statement of Contributions.

There are no contributions toward construction of any of the facilities to be transferred.

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

**Appendix C** sets forth an estimate of the revenues, expenses and taxes for the past three calendar years relating to the property to be transferred. The balance sheet of Con Edison is set forth in **Appendix A** to this exhibit. Entergy Nuclear Indian Point 2, LLC has no operating history to date and, hence, does not yet have a balance sheet. Therefore, Petitioners request that the Commission waive the requirement in this section for submission of a balance sheet as such requirement applies to Entergy Nuclear.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
LONG TERM DEBT  
As of June 30, 2000

Page 1 of 6

|  |              |        |            | Date of<br>Maturity | Amount of<br>Original Issue | Redemptions        | Amount<br>Outstanding |
|--|--------------|--------|------------|---------------------|-----------------------------|--------------------|-----------------------|
| <b>NYSERDA TAX-EXEMPT DEBT</b>         |              |        |            |                     |                             |                    |                       |
| 35 Yr.                                 | 7.2500%      | Series | 1989C Note | Nov-01-2024         | 150,000,000                 | 150,000,000        | -                     |
| 35 Yr.                                 | 7.5000%      | Series | 1990A Note | Jul-01-2025         | 150,000,000                 | 150,000,000        | -                     |
| 35 Yr.                                 | 7.5000%      | Series | 1991A Note | Jan-01-2026         | 128,150,000                 | -                  | 128,150,000           |
| 35 Yr.                                 | 6.7500%      | Series | 1992A Note | Jan-15-2027         | 100,000,000                 | -                  | 100,000,000           |
| 35 Yr.                                 | 6.3750%      | Series | 1992B Note | Dec-01-2027         | 100,000,000                 | -                  | 100,000,000           |
| 35 Yr.                                 | 6.0000%      | Series | 1993A Note | Mar-15-2028         | 101,000,000                 | -                  | 101,000,000           |
| 27 Yr.                                 | 5.2500%      | Series | 1993B Note | Aug-15-2020         | 127,715,000                 | -                  | 127,715,000           |
| 29 Yr.                                 | 5.3750%      | Series | 1993C Note | Sep-15-2022         | 19,760,000                  | -                  | 19,760,000            |
| 35 Yr.                                 | 7.1250%      | Series | 1994A Note | Dec-01-2029         | 100,000,000                 | -                  | 100,000,000           |
| 25 Yr.                                 | 6.1000%      | Series | 1995A Note | Aug-15-2020         | 128,285,000                 | -                  | 128,285,000           |
| 35 Yr.                                 | Variable (A) | Series | 1999A Note | May-01-2034         | 292,700,000                 | -                  | 292,700,000           |
| <b>TOTAL - NYSERDA TAX-EXEMPT DEBT</b> |              |        |            |                     | <b>1,397,610,000</b>        | <b>300,000,000</b> | <b>1,097,610,000</b>  |
| <b>DEBENTURES</b>                      |              |        |            |                     |                             |                    |                       |
| 8 Yr.                                  | 7.3750%      | Series | 1992A      | Sep-15-2000         | 150,000,000                 | -                  | 150,000,000 (1)       |
| 12 Yr.                                 | 7.6250%      | Series | 1992B      | Mar-01-2004         | 150,000,000                 | -                  | 150,000,000           |
| 8 Yr.                                  | 7.6000%      | Series | 1992C      | Jan-15-2000         | 125,000,000                 | 125,000,000        | 0                     |
| 7 Yr.                                  | 6.5000%      | Series | 1992D      | Sep-01-1999         | 75,000,000                  | 75,000,000         | 0                     |
| 8 Yr.                                  | 6.5000%      | Series | 1993B      | Feb-01-2001         | 150,000,000                 | -                  | 150,000,000 (1)       |
| 9 Yr.                                  | 6.6250%      | Series | 1993C      | Feb-01-2002         | 150,000,000                 | -                  | 150,000,000           |
| 10 Yr.                                 | 6.3750%      | Series | 1993D      | Apr-01-2003         | 150,000,000                 | -                  | 150,000,000           |
| 30 Yr.                                 | 7.5000%      | Series | 1993G      | Jun-15-2023         | 380,000,000                 | -                  | 380,000,000           |
| 35 Yr.                                 | 7.1250%      | Series | 1994A      | Feb-15-2029         | 150,000,000                 | -                  | 150,000,000           |
| 5 Yr.                                  | Variable     | Series | 1994B      | Jul-01-1999         | 150,000,000                 | 150,000,000        | 0                     |
| 10 Yr.                                 | 6.6250%      | Series | 1995A      | Jul-01-2005         | 100,000,000                 | -                  | 100,000,000           |
| 30 Yr.                                 | 7.7500%      | Series | 1996A      | Jun-01-2026         | 100,000,000                 | -                  | 100,000,000           |
| 5 Yr.                                  | Variable (B) | Series | 1996B      | Dec-15-2001         | 150,000,000                 | -                  | 150,000,000           |
| 5 Yr.                                  | Variable (C) | Series | 1997A      | Jun-15-2002         | 150,000,000                 | -                  | 150,000,000           |
| 10 Yr.                                 | 6.4500%      | Series | 1997B      | Dec-01-2007         | 330,000,000                 | -                  | 330,000,000           |
| 10 Yr.                                 | 6.2500%      | Series | 1998A      | Feb-01-2008         | 180,000,000                 | -                  | 180,000,000           |
| 30 Yr.                                 | 7.1000%      | Series | 1998B      | Feb-01-2028         | 105,000,000                 | -                  | 105,000,000           |
| 10 Yr.                                 | 6.1500%      | Series | 1998C      | Jul-01-2008         | 100,000,000                 | -                  | 100,000,000           |
| 30 Yr.                                 | 6.9000%      | Series | 1998D      | Oct-01-2028         | 75,000,000                  | -                  | 75,000,000            |
| 40 Yr.                                 | 7.3500%      | PINES  | 1999A      | Jul-01-2039         | 275,000,000                 | -                  | 275,000,000           |
| 10 Yr.                                 | 7.1500%      | Series | 1999B      | Dec-01-2009         | 200,000,000                 | -                  | 200,000,000           |
| 10 Yr.                                 | 8.1250%      | Series | 2000A      | May-01-2010         | 325,000,000                 | -                  | 325,000,000           |
| <b>TOTAL - DEBENTURES</b>              |              |        |            |                     | <b>3,720,000,000</b>        | <b>350,000,000</b> | <b>3,370,000,000</b>  |
| <b>SUBORDINATED DEBENTURES</b>         |              |        |            |                     |                             |                    |                       |
| 35 Yr.                                 | 7.7500%      | Series | 1996A      | Mar-31-2031         | 275,000,000                 | -                  | 275,000,000           |
| <b>TOTAL - LONG TERM DEBT</b>          |              |        |            |                     |                             |                    | <b>4,742,610,000</b>  |

(1) Due Within One Year \$ 300,000,000

(A) Interest rate reset weekly

(B) 6.25000% for period March 15, 2000 - June 14, 2000.

(C) 6.21000% through March 15 2000 - June 14, 2000.

## MORTGAGES

There are no mortgages upon the property to be transferred.

## STATEMENT OF AFFILIATED INTERESTS

There are no advances from affiliated interests or other indebtedness to affiliates.

## Consolidated Income Statement Consolidated Edison Company of New York, Inc.

| Year Ended December 31 (Thousands of Dollars)                  | 1999              | 1998              | 1997              |
|--|-------------------|-------------------|-------------------|
| <b>Operating revenues (Note A)</b>                             |                   |                   |                   |
| Electric   | \$ 5,672,348      | \$ 5,717,119      | \$ 5,635,575      |
| Gas  | 943,641           | 959,609           | 1,093,880         |
| Steam  | 340,026           | 321,932           | 391,799           |
| Non-utility  | -                 | -                 | 74,898            |
| <b>Total operating revenues</b>                                | <b>6,956,015</b>  | <b>6,998,660</b>  | <b>7,196,152</b>  |
| <b>Operating expenses</b>                                      |                   |                   |                   |
| Purchased power  | 1,669,227         | 1,252,035         | 1,349,587         |
| Fuel   | 430,174           | 579,006           | 596,824           |
| Gas purchased for resale                                       | 351,785           | 370,103           | 552,597           |
| Other operations   | 1,047,748         | 1,117,785         | 1,124,703         |
| Maintenance  | 423,322           | 477,413           | 474,788           |
| Depreciation and amortization (Note A)                         | 504,018           | 517,826           | 503,455           |
| Taxes, other than federal income tax                           | 1,134,079         | 1,202,610         | 1,181,156         |
| Federal income tax (Notes A and K)                             | 394,147           | 414,810           | 377,722           |
| <b>Total operating expenses</b>                                | <b>5,954,500</b>  | <b>5,931,588</b>  | <b>6,160,832</b>  |
| <b>Operating income</b>  | <b>1,001,515</b>  | <b>1,067,072</b>  | <b>1,035,320</b>  |
| <b>Other income (deductions)</b>                               |                   |                   |                   |
| Investment income (Note A)                                     | 8,647             | 6,162             | 12,214            |
| Allowance for equity funds used during construction (Note A)   | 3,805             | 2,431             | 4,448             |
| Other income less miscellaneous deductions                     | (9,344)           | (5,275)           | (4,100)           |
| Federal income tax (Notes A and K)                             | 28,066            | 575               | (1,998)           |
| <b>Total other income</b>                                      | <b>31,174</b>     | <b>3,893</b>      | <b>10,564</b>     |
| <b>Income before interest charges</b>                          | <b>1,032,689</b>  | <b>1,070,965</b>  | <b>1,045,884</b>  |
| Interest on long-term debt                                     | 305,261           | 308,671           | 318,158           |
| Other interest   | 17,363            | 18,400            | 17,083            |
| Allowance for borrowed funds used during construction (Note A) | (1,778)           | (1,246)           | (2,180)           |
| <b>Net interest charges</b>                                    | <b>320,846</b>    | <b>325,825</b>    | <b>333,061</b>    |
| <b>Net income</b>  | <b>711,843</b>    | <b>745,140</b>    | <b>712,823</b>    |
| <b>Preferred stock dividend requirements</b>                   | <b>13,593</b>     | <b>17,007</b>     | <b>18,344</b>     |
| <b>Net income for common stock</b>                             | <b>\$ 698,250</b> | <b>\$ 728,133</b> | <b>\$ 694,479</b> |

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

## Consolidated Statement of Retained Earnings Consolidated Edison Company of New York, Inc.

| Year Ended December 31 (Thousands of Dollars)        | 1999                | 1998                | 1997                |
|--|---------------------|---------------------|---------------------|
| <b>Balance, January 1</b>                            | <b>\$ 4,517,529</b> | <b>\$ 4,484,703</b> | <b>\$ 4,283,935</b> |
| Corporate restructuring to establish holding company | -                   | (198,362)           | -                   |
| <b>Net income for the year</b>                       | <b>711,843</b>      | <b>745,140</b>      | <b>712,823</b>      |
| <b>Total</b>   | <b>5,229,372</b>    | <b>5,031,481</b>    | <b>4,996,758</b>    |
| <b>Dividends declared on capital stock</b>           |                     |                     |                     |
| Cumulative Preferred, at required annual rates       | 13,593              | 17,007              | 18,146              |
| Cumulative Preference, 6% Convertible Series B       | -                   | -                   | 198                 |
| Common   | 1,327,786           | 496,945             | 493,711             |
| <b>Total dividends declared</b>                      | <b>1,341,379</b>    | <b>513,952</b>      | <b>512,055</b>      |
| <b>Balance, December 31</b>                          | <b>\$ 3,887,993</b> | <b>\$ 4,517,529</b> | <b>\$ 4,484,703</b> |

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

## Consolidated Balance Sheet Consolidated Edison Company of New York, Inc.

## Assets

| At December 31 (Thousands of Dollars)   | 1999                 | 1998                 |
|---|----------------------|----------------------|
| <b>Utility plant, at original cost (Note A)</b>   |                      |                      |
| Electric  | \$ 10,670,257        | \$ 12,039,082        |
| Gas   | 1,934,090            | 1,838,550            |
| Steam   | 722,265              | 604,761              |
| General   | 1,220,948            | 1,204,262            |
| <b>Total</b>  | <b>14,547,560</b>    | <b>15,686,655</b>    |
| <b>Less: Accumulated depreciation</b>   | <b>4,384,783</b>     | <b>4,726,211</b>     |
| <b>Net</b>  | <b>10,162,777</b>    | <b>10,960,444</b>    |
| Construction work in progress   | 359,431              | 347,262              |
| Nuclear fuel assemblies and components, less accumulated amortization                                     | 84,701               | 98,837               |
| <b>Net utility plant</b>  | <b>10,606,909</b>    | <b>11,406,543</b>    |
| <b>Current assets</b>   |                      |                      |
| Cash and temporary cash investments (Note A)  | 349,033              | 30,026               |
| Accounts receivable - customer, less allowance for uncollectible<br>accounts of \$22,600 in 1999 and 1998 | 541,978              | 491,493              |
| Other receivables   | 72,138               | 45,935               |
| Fuel, at average cost   | 23,641               | 33,289               |
| Gas in storage, at average cost   | 40,280               | 46,801               |
| Materials and supplies, at average cost   | 138,300              | 184,916              |
| Prepayments   | 178,693              | 130,198              |
| Other current assets  | 34,008               | 20,911               |
| <b>Total current assets</b>   | <b>1,378,071</b>     | <b>983,569</b>       |
| <b>Investments</b>  |                      |                      |
| Nuclear decommissioning trust funds   | 305,717              | 265,063              |
| Other   | 18,491               | 14,750               |
| <b>Total investments (Note A)</b>   | <b>324,208</b>       | <b>279,813</b>       |
| <b>Deferred charges</b>   |                      |                      |
| Regulatory assets (Notes A and J)   | 1,223,364            | 1,359,135            |
| Other deferred charges  | 149,600              | 143,737              |
| <b>Total deferred charges</b>   | <b>1,372,964</b>     | <b>1,502,872</b>     |
| <b>Total</b>  | <b>\$ 13,682,152</b> | <b>\$ 14,172,797</b> |

**Capitalization and Liabilities**

| <b>At December 31 (Thousands of Dollars)</b>             | <b>1999</b>          | <b>1998</b>          |
|--|----------------------|----------------------|
| <b>Capitalization (see Statement of Capitalization)</b>  |                      |                      |
| Common shareholders' equity                              | \$ 4,393,771         | \$ 5,842,724         |
| Preferred stock subject to mandatory redemption (Note B) | 37,050               | 37,050               |
| Other preferred stock (Note B)                           | 212,563              | 212,563              |
| Long-term debt   | 4,243,080            | 4,050,108            |
| <b>Total capitalization</b>                              | <b>8,886,464</b>     | <b>10,142,445</b>    |
| <b>Noncurrent liabilities</b>                            |                      |                      |
| Obligations under capital leases                         | 34,406               | 37,295               |
| Other noncurrent liabilities                             | 204,148              | 203,543              |
| <b>Total noncurrent liabilities</b>                      | <b>238,554</b>       | <b>240,838</b>       |
| <b>Current liabilities</b>                               |                      |                      |
| Long-term debt due within one year (Note B)              | 275,000              | 225,000              |
| Notes payable  | 495,371              | -                    |
| Accounts payable   | 505,357              | 357,315              |
| Customer deposits  | 208,865              | 181,236              |
| Accrued taxes  | 23,272               | 17,621               |
| Accrued interest   | 51,581               | 76,507               |
| Accrued wages  | 79,408               | 83,555               |
| Other current liabilities                                | 202,657              | 184,989              |
| <b>Total current liabilities</b>                         | <b>1,841,511</b>     | <b>1,126,223</b>     |
| <b>Deferred credits</b>                                  |                      |                      |
| Accumulated deferred federal income tax (Note K)         | 2,121,054            | 2,382,273            |
| Regulatory liabilities (Note J)                          | 594,569              | 281,018              |
| <b>Total deferred credits</b>                            | <b>2,715,623</b>     | <b>2,663,291</b>     |
| <b>Contingencies (Note F)</b>                            |                      |                      |
| <b>Total</b>   | <b>\$ 13,682,152</b> | <b>\$ 14,172,797</b> |

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

## CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Indian Point Sale: Electric Plant in Service; Nuclear Production, Other Production,  
Generator Leads, Light and Power, Buildings and Yards and General Equipment  
Summary of Estimated Book Cost, Accumulated Provision for Depreciation and Net Book Cost,  
Including Construction Work in Progress As Of June 30, 2001  
(\$1,000s)

| CO.<br>ACCT.<br>NO. | FUNCTIONAL PLANT / ACCOUNT TITLE                | BOOK COST   | ACCUMULATED<br>PROVISION FOR<br>DEPRECIATION | NET<br>BOOK COST | CONSTRUCTION<br>WORK IN<br>PROGRESS |
|---------------------|---|-------------|--|------------------|-------------------------------------|
|                     | <u>Electric Plant in Service</u>                |             |  |                  |                                     |
|                     | <u>Production Plant - Nuclear Production</u>    |             |  |                  |                                     |
| 9452                | Land and Land Rights                            | \$839       | \$0  | \$839            | \$0                                 |
| 9456                | Structures and Improvements                     | 233,959     | 132,859                                      | 101,300          | 1,445                               |
| 9460                | Reactor Plant Equipment                         | 449,094     | 149,667                                      | 299,427          | 0                                   |
| 9462                | Turbogenerator Units                            | 166,884     | 97,442                                       | 69,442           | 4,715                               |
| 9465                | Accessory Electric Equipment                    | 25,604      | 13,590                                       | 12,014           | 2,048                               |
| 9468                | Miscellaneous Power Plant Equipment             | 62,547      | 37,067                                       | 25,480           | 0                                   |
|                     | Total Nuclear Production                        | 938,927     | 430,425                                      | 508,502          | 8,208                               |
|                     | <u>Production Plant - Other Production</u>      |             |  |                  |                                     |
|                     | <u>Indian Point Station</u>                     |             |  |                  |                                     |
| 9432                | Fuel Holders, Producers and Accessories         | 447         | 213  | 234              | 0                                   |
| 9434                | Generators                                      | 3,352       | 2,553  | 799              | 0                                   |
| 9435                | Accessory Electric Equipment                    | 270         | 227  | 43               | 0                                   |
|                     | Total Indian Point Station                      | 4,069       | 2,993  | 1,076            | 0                                   |
|                     | <u>Buchanan Station</u>                         |             |  |                  |                                     |
| 9431                | Structures and Improvements                     | 136         | 79   | 57               | 0                                   |
| 9432                | Fuel Holders, Producers and Accessories         | 624         | 427  | 197              | 0                                   |
| 9434                | Generators                                      | 4,453       | 2,122  | 2,331            | 0                                   |
| 9435                | Accessory Electric Equipment                    | 447         | 328  | 119              | 0                                   |
|                     | Total Buchanan Station                          | 5,660       | 2,956  | 2,704            | 0                                   |
|                     | Estimated Expenditures January 2001 - June 2001 | 0           | 0  | 0                | 9,795                               |
|                     | Total Production Plant                          | 948,656     | 436,374                                      | 512,282          | 18,003                              |
|                     | <u>Generator Leads</u>                          |             |  |                  |                                     |
| 9530                | Buchanan Substation                             | 16          | 0  | 16               | 0                                   |
| 9534                | Indian Point Station                            | 4,370       | 2,083  | 2,287            | 0                                   |
| 9534                | Buchanan Substation                             | 1,175       | 307  | 868              | 0                                   |
| 9534                | Spare Power Equipment                           | 3,222       | 517  | 2,705            | 0                                   |
|                     | Total Generator Leads                           | 8,783       | 2,907  | 5,876            | 0                                   |
|                     | <u>Light and Power</u>                          |             |  |                  |                                     |
| 9554                | Buchanan Substation                             | 350         | 97   | 253              | 0                                   |
|                     | <u>Buildings and Yards</u>                      |             |  |                  |                                     |
| 9810                | Indian Point Service Center                     | 5           | 0  | 5                | 0                                   |
| 9812                | Indian Point Service Center                     | 3,400       | 984  | 2,416            | 0                                   |
|                     | Total Buildings and Yards                       | 3,405       | 984  | 2,421            | 0                                   |
|                     | <u>General Equipment</u>                        |             |  |                  |                                     |
|                     | <u>Indian Point Station</u>                     |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 9,846       | 5,067  | 4,779            | 0                                   |
| 9816                | Office Furniture & Equipment                    | 3,604       | 1,782  | 1,812            | 0                                   |
| 9820                | Transportation Equipment                        | 259         | 130  | 129              | 0                                   |
| 9824                | Stores Equipment                                | 49          | 23   | 26               | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 4,671       | 2,516  | 2,155            | 0                                   |
| 9828                | Laboratory Equipment                            | 10,376      | 5,090  | 5,286            | 0                                   |
| 9829                | Power Operated Equipment                        | 447         | 262  | 185              | 0                                   |
| 9832                | Communication Equipment                         | 1,004       | 749  | 255              | 0                                   |
| 9834                | Miscellaneous Equipment                         | 2,526       | 1,321  | 1,205            | 0                                   |
|                     |   | 32,782      | 18,950                                       | 15,832           | 0                                   |
|                     | <u>One Park Place</u>                           |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 114         | 101  | 13               | 0                                   |
| 9816                | Office Furniture & Equipment                    | 37          | 18   | 19               | 0                                   |
| 9820                | Transportation Equipment                        | 933         | 598  | 335              | 0                                   |
| 9824                | Stores Equipment                                | 1           | 0  | 1                | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 137         | 17   | 120              | 0                                   |
| 9828                | Laboratory Equipment                            | 50          | 15   | 35               | 0                                   |
| 9829                | Power Operated Equipment                        | 112         | 55   | 57               | 0                                   |
| 9832                | Communication Equipment                         | 475         | 286  | 189              | 0                                   |
| 9834                | Miscellaneous Equipment                         | 7           | 3  | 4                | 0                                   |
|                     |   | 1,866       | 1,093  | 773              | 0                                   |
|                     | <u>Toddville Nuclear Training Center</u>        |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 2           | 1  | 1                | 0                                   |
| 9816                | Office Furniture & Equipment                    | 130         | 66   | 64               | 0                                   |
| 9820                | Transportation Equipment                        | 0           | 0  | 0                | 0                                   |
| 9824                | Stores Equipment                                | 0           | 0  | 0                | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 62          | 33   | 29               | 0                                   |
| 9828                | Laboratory Equipment                            | 489         | 223  | 266              | 0                                   |
| 9829                | Power Operated Equipment                        | 0           | 0  | 0                | 0                                   |
| 9832                | Communication Equipment                         | 5           | 3  | 2                | 0                                   |
| 9834                | Miscellaneous Equipment                         | 556         | 262  | 294              | 0                                   |
|                     |   | 1,244       | 588  | 656              | 0                                   |
|                     | <u>Indian Point Service Center</u>              |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 763         | 271  | 492              | 0                                   |
| 9816                | Office Furniture & Equipment                    | 89          | 43   | 46               | 0                                   |
| 9820                | Transportation Equipment                        | 480         | 232  | 248              | 0                                   |
| 9824                | Stores Equipment                                | 790         | 529  | 261              | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 718         | 448  | 270              | 0                                   |
| 9828                | Laboratory Equipment                            | 79          | 27   | 52               | 0                                   |
| 9829                | Power Operated Equipment                        | 1           | 0  | 1                | 0                                   |
| 9832                | Communication Equipment                         | 1,386       | 891  | 495              | 0                                   |
| 9834                | Miscellaneous Equipment                         | 83          | 23   | 60               | 0                                   |
|                     |   | 4,389       | 2,464  | 1,925            | 0                                   |
|                     | Estimated Expenditures January 2001 - June 2001 | 0           | 0  | 0                | 1,200                               |
|                     | Total General Equipment                         | 40,281      | 21,095                                       | 19,186           | 1,200                               |
|                     | Grand Total                                     | \$1,001,475 | \$461,457                                    | \$540,018        | \$19,203                            |



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

Statement of Method Used in Arriving at the Estimated  
Accrued Depreciation in the Property Divested

"In accordance with the provisions of the New York Public Service Commission Uniform Systems of Accounts, the Accumulated Provision for Depreciation is maintained by primary plant account and is therefore not a matter of separate record by individual location or facility within each such account. The amounts presented for nuclear production facilities represents an allocation of the balances of the Accumulated Provision for Depreciation on the books of the Company with respect to the specific facilities being divested, and is based upon a remaining life amortization method of depreciation. The amounts presented for non-nuclear production facilities represent a statistical allocation of the balances carried on the books of the Company and are based upon theoretical reserve calculations on a vintage basis with respect to the specific facilities being divested, using depreciation parameters approved by the Commission in Cases 91-E-0462, 93-M-1098, 94-E-0334 and 96-E-0897."

Appendix C

Consolidated Edison Company of New York, Inc.

Statement of Revenues, Expenses and Taxes  
Related to The Assets Being Divested  
 (\$1,000,000s)

|          | Year        |             |             |
|----------|-------------|-------------|-------------|
|          | <u>1999</u> | <u>1998</u> | <u>1997</u> |
| Revenues | \$324       | \$382       | \$330       |
| Expenses | \$226       | \$282       | \$225       |
| Taxes    | \$25        | \$23        | \$24        |



**Exhibit 2 Will Be  
Submitted Shortly**



## **AFFIDAVIT OF GEORGE JEE**

I, George Jee, being duly sworn, deposes and says:

1. I am Director – Corporate Planning of Consolidated Edison Company of New York, Inc. (“Con Edison” or the “Company”). I was the project manager for the divestiture by Con Edison of its nuclear assets. The purpose of this affidavit is to describe and summarize some of the material terms of the principal agreements relating to the sale by Con Edison to Entergy Nuclear Indian Point 2, LLC (“Entergy Nuclear”), a special purpose subsidiary of Entergy Corporation, of Con Edison’s nuclear generating facilities and related assets. The assets to be sold include the Indian Point Unit 2 Generating Plant (“IP2”), retired Indian Point Unit 1 Generating Plant (“IP1”), one oil-fired gas turbine and related support facilities, all situated on approximately 160 acres in the town of Buchanan, New York; two associated oil-fired gas turbines, located on approximately 16 acres adjacent to Con Edison’s Buchanan Substation; the Toddville Training Center, located on approximately 2.5 acres in the town of Cortlandt, New York; nuclear and fuel oil inventories; and spare parts and materials. IP2 and its associated gas turbines have a combined net summer capability of about 990 MW. Detailed description of the assets included in the sale (the “Nuclear Assets”), including a site diagram, are contained in Attachment A hereto.

### **Asset Purchase and Sale Agreement**

2. The Asset Purchase and Sale Agreement (“APSA”) sets forth, among other things, a description of the assets and liabilities being transferred, retained and/or assumed by the parties, the purchase price and adjustments thereto, the representations, warranties and covenants of Con Edison and Entergy Nuclear, the conditions to each party’s obligation to close the sale,

the parties' obligations with respect to employee matters, and the indemnification and termination rights of the parties.

3. Generally, the assets and liabilities being transferred or assumed relate to the generating facilities being sold, while the assets and liabilities being retained relate to Con Edison's electric transmission and distribution system. The APSA provides for Entergy Nuclear to assume all known and unknown environmental liabilities relating to the Nuclear Assets, except for those arising in respect to off-site disposal of hazardous substances prior to the closing and monetary fines relating to acts or omissions of Con Edison prior to the closing, in each case in accordance with the terms of the APSA. The APSA also requires Entergy Nuclear to assume all spent fuel storage and disposal obligations and the responsibility for decommissioning the Nuclear Assets.

4. The APSA specifies a purchase price of \$502 million, subject to certain adjustments to reflect, among other things: the extent to which capital expenditures through the closing in connection with scheduled 2001 capital projects are below a specified level; variations in excess of 5% in the level of materials and spare parts available when the APSA was executed; a specified sum for certain site clean-up work not completed as of closing less any amount paid for such work; the extent to which the estimated cost to dispose of certain low-level radioactive waste stored at the site exceeds a specified amount; and the extent to which the market value of the assets in the Qualified Decommissioning Fund transferred to Entergy Nuclear exceeds \$430 million. In addition, the APSA requires Entergy Nuclear to pay for the book value, as of the closing, of all nuclear fuel and fuel oil inventories. The current book value of such inventories is approximately \$107 million. Customary prorations of taxes, rents and fees are also provided for.

5. The APSA contains customary representations, warranties and covenants. Among the representations and warranties made by Con Edison are those relating to: its duly organized corporate status; authority to enter into the transaction contracts; possession of good and marketable title to the personal property included in the Nuclear Assets; legal proceedings and notices of violations in respect of the Nuclear Assets; liabilities required to be disclosed in accordance with GAAP; and compliance with legal requirements, including Nuclear Regulatory Commission ("NRC") requirements and rules applicable to the Qualified and Non-Qualified Decommissioning Trusts. Representations and warranties made by Entergy Nuclear generally relate to its duly organized corporate status; authority to enter into the transaction contracts; availability of sufficient funds to consummate the purchase; consents and approvals; absence of violations; and brokers.

6. The APSA requires Con Edison to meet certain conditions prior to closing, including transfer of all assets of the Qualified Decommissioning Trust to Entergy Nuclear; replacement of steam generators at IP2; restart of IP2 after such replacement and a demonstration that the unit will meet specified net electrical capacity ratings; and the absence, at closing, of an outage or a forced reduction of greater than five percent. To the extent that the fair market value of the Qualified Decommissioning Trust assets at the time of closing exceeds \$430 million, the purchase price will be adjusted upward by such excess amount. If, however, the fair market value of those assets at the time of closing is less than \$430 million, Con Edison will transfer to Entergy Nuclear assets of the Non-Qualified Decommissioning Trust which will be sufficiently funded such that the aggregate fair market value of the decommissioning funds transferred to Entergy Nuclear equals \$430 million.



7. The APSA also sets forth the conditions precedent to each party's obligation to complete the transaction, including the receipt of required regulatory approvals and satisfaction of the conditions specified in such approvals. Such approvals include authorization by the Commission pursuant to Section 70 of the Public Service Law, a determination by various state regulatory authorities, including the Commission, concerning EWG status, approval by the NRC to transfer the IP1 and IP2 licenses and various approvals by the Federal Energy Regulatory Commission.

8. Should Entergy Nuclear, as of the expiration date of the operating license for IP2 (as it may be extended by the NRC), determine that it will perform the required decommissioning by a means other than removal or decontamination of the structures, systems, components and equipment, the APSA requires Entergy Nuclear to pay Con Edison fifty percent of the amount, if any, by which the aggregate decommissioning funds held by Entergy Nuclear exceed the estimated cost of decommissioning by the safe storage or entombment methods. Should this provision of the APSA be triggered, any such payment of decommissioning funds from Entergy Nuclear to Con Edison will inure to the benefit of ratepayers.

9. The APSA requires Entergy Nuclear Operations, Inc. ("ENO"), an indirect wholly-owned subsidiary of Entergy Corporation that will operate IP2 on behalf of Entergy Nuclear, to offer equivalent employment to employees who are regularly assigned to work at the Nuclear Assets. The APSA also requires ENO to assume the terms and conditions of the applicable collective bargaining agreement until its expiration and comply with collective bargaining obligations under federal labor law. The currently-effective collective bargaining agreement with Local 1-2, Utility Workers Union of America expires on June 26, 2004.

10. Generally, the APSA requires ENO to maintain compensation and benefits for transferred employees that are at least equivalent to those provided by Con Edison at the time of closing. This obligation runs for three years for management employees and until the end of the applicable collective bargaining agreement for union employees. ENO must give transferred employees credit for all of their service with Con Edison, and must maintain pension plans that are identical in all material respects with Con Edison's pension plans. Con Edison will be responsible for the pension benefits accrued by employees up to the closing date; ENO is responsible for benefits accrued thereafter. The APSA also requires Entergy Nuclear to provide severance to transferred union employees whose employment is involuntarily terminated prior to the expiration of the collective bargaining agreement and to management employees whose employment is involuntarily terminated prior to three years after the closing.

11. The APSA also provides for each party to indemnify the other for, among other things, certain liabilities and breaches of the transaction agreements.

12. The APSA may be terminated at any time by (i) the mutual agreement of the parties; (ii) either party, if the closing has not occurred within fifteen months following execution of the APSA without fault of that party; or (iii) either party, if any prohibition on the sale has become final and non-appealable despite the reasonable best efforts of the party invoking that prohibition as a reason to terminate.

#### **Power Purchase Agreement**

13. The Power Purchase Agreement ("PPA") provides for the sale of the net energy generated by IP2 to Con Edison. The PPA does not provide for the sale of installed capacity or ancillary services. Beginning on the date of closing and continuing until December 31, 2004, Entergy Nuclear will sell to Con Edison the electric energy generated at IP2, except for auxiliary

power consumed by IP2 and up to 45 MW of station use energy provided to IP1 and Indian Point Unit 3 under certain conditions.

14. Con Edison will pay Entergy Nuclear an average of \$39 per MWh on an annual basis for the output of IP2 delivered to Con Edison. During the months of June, July and August, the price for energy delivered is set at \$46.80/MWh. For all other months of the year, the price is set at \$36.40/MWh. Based on current estimates of future market prices, the Company expects that total savings resulting from the PPA will be in the range of \$60 million to \$100 million.

15. The delivery point for energy sold under the PPA is Con Edison's Buchanan 345 kV substation.

16. Entergy Nuclear is not obligated to provide energy to Con Edison when IP2 is not operating nor is Entergy Nuclear required to procure substitute energy for Con Edison when the unit is not operating. However, the PPA requires Entergy Nuclear to use commercially reasonable efforts to schedule maintenance or other outages during non-summer periods.

17. The PPA contains appropriate provisions addressing the scheduling of energy deliveries with the New York Independent System Operator.

#### **Continuing Site Agreement**

18. The Continuing Site Agreement ("CSA") governs the on-going relationship between Con Edison and Entergy Nuclear. The CSA specifies the parties' rights and responsibilities for several areas of operational contact, including testing, operation and maintenance of various systems and equipment; services provided by each party to the other party; information reporting systems; communications protocols; interconnection; revenue metering; and work or access by one party on or to the other's property. In matters covered by

the CSA, the parties are generally required to conduct their respective operations in accordance with good industry practice and applicable law.

**Declaration of Easements Agreement**

19. The Declaration of Easements Agreement, a form of which is appended as Exhibit A-4 to the APSA, sets forth the operational easements required to be granted or retained by the parties to allow each to exercise its rights and discharge its obligations under the APSA and CSA.

**GT Site Ground Lease Agreement**

20. The GT Site Ground Lease Agreement, a form of which is appended as Exhibit A-3 to the APSA, is a net lease to Entergy Nuclear, for a term of 500 years, of a parcel of land adjacent to Con Edison's Buchanan Substation on which two oil-fired gas turbines included in the sale are situated. The agreement provides for a fixed rent of \$100 for the entire term and requires Entergy Nuclear to assume taxes and other liabilities associated with the parcel. Each party has the right to obtain the subdivision approval necessary to effect a transfer of fee title to the parcel and, upon obtaining such approval, may require such a transfer for the purchase price of \$100.

**Guarantee Agreements**

21. Entergy Corporation and certain of its subsidiaries have executed a Guarantee Agreement that secures the performance of Entergy Nuclear's obligations under the APSA prior to or at closing, including payment of the purchase price as required under the APSA. Certain post-closing financial assurances will be provided by a subsidiary of Entergy Corporation pursuant to another Guarantee Agreement, in the form of Exhibit F to the APSA, which will be executed at closing.

**DESCRIPTION OF ASSETS TO BE TRANSFERRED**

**I. PROPERTY/FACILITIES LOCATED AT THE INDIAN POINT SITE, THE  
GROUND LEASE PARCEL OR THE TODDVILLE TRAINING CENTER**

**All Indian Point Unit 1 Structures, Including:**

**Containment**

**Superheater Building**

**River Water Pump /Screen Well House**

**Wharf**

**Chemical Systems Building**

**Fuel Handling Building**

**Nuclear Service Building**

**Turbine Building**

**City Water Tank and Meter House** - Entergy Nuclear will own 16-inch city water piping downstream of outlet of city meter pit outlet stop valve off of branch connection from city water main located in Broadway.

**Fuel Oil Storage Facility**

2 - #2 fuel oil storage tanks (one retired and one in service)

1 – containment berm (for in-service tank)

Valve house

**Utility Tunnel and Air Monitor House**

**13.8 kV Feeders and Switchgear (Unit 1 L&P)**

**Gas Turbine 1**

300kW Black Start diesel

Starting Diesel radiator and foundation

Lube oil cooler and foundation

Slop Oil tank  
Auto Transformer, Slab, and Barrier Wall

**Unit 1 Transformer Slabs (transformers removed)**

**Outfall structure instrumentation, and sampling equipment in Discharge Canal**

**All Indian Point Unit 2 Structures, Including:**

**Containment**

4- New Steam Generators

**Primary Auxiliary Building**

**Spent Fuel Building**

**Control Building**

**Auxiliary Feedwater Pump Building**

**Diesel Generator Building**

**Main Steam / Feedwater Bridge**

**Turbine Building**

**Maintenance and Operations Building**

**Material Support Building**

**Intake Structure - Service Water Screenwell**

Including :

14-inch fish return line- extending 185 feet from the face of the intake structure into the Hudson River

16 inch Debris return line- extending 185 feet from the face of the intake structure into the Hudson River

**Transformer Yard**

2 - half-sized main power transformers – 542 MVA 20.3 kV/345kV delta/wye

1 - Unit auxiliary transformer - 48160 kVA delta/zig-zag

1 - Station auxiliary transformer - 48160 kVA delta/wye

Transformer slabs and barrier walls

**Fire Pump Building and Water Storage Tank****Condensate Storage Tank**

Nitrogen Gas Bulk Storage and Controls

**Refueling Water Storage Tank****Primary Water Storage Tank****New Simulator Building**

Simulator

Offices and classrooms

**Old Simulator Building**

Office and classroom space

Auditorium with projection room

Sculptures surrounding the visitors center

**Maintenance Fabrication Facility**

Training areas

Office space

Training Mock-ups include, but are not limited to:

480 Volt Breakers

Switchgear

Pump seals

Pump motor couplings

**Environmental Monitoring Building****Material Support Building****Buchanan Service Center**

City water lines (potable and Fire Protection)

Sewage Line

Fiber optic link

**Transmission Line Maintenance Building****Transmission Line Towers – 345/138 kV****Transmission Feeders and Associated Control Wiring**

W95

95332

**Distribution Feeders**

Portions of 4 kV feeder 59U1

### **Spare Steam Generator Storage Building**

**Steam Generator Storage Mausoleum (currently under construction)**

**Storage Yards – miscellaneous parts, buildings, sheds and cargo containers.**

### **Site Access Control Buildings**

2 – (1 – normal access, 1 – overflow access)

Security Diesel and fuel oil storage tank

Security CCTV towers

### **Miscellaneous**

Fencing and Security Barriers

Guard house

Plant Access Road

Parking lots

Trailers

Oil Water Separator Tank (near MSB)

Construction Office

Dumpster Slabs

Bulk Compressed Gas Storage slabs

Hydrogen

Carbon Dioxide

Nitrogen

Oxygen

Telecom interface building

Manholes

Station electrical ground network

### **Miscellaneous Large Spare Parts On-site**

Spare Low Pressure Turbine Rotor

Spare High Pressure Turbine Rotor

Spare Reactor Coolant Pump and Motor

Spare Circulating Pump

### **Gas Turbine Unit 2**

Westinghouse 251AA

Black start capability via manual alignment

Woodward Control system

### **Gas Turbine Unit 3**

Westinghouse 191A



- Black start diesel
- Woodward Control system
- GT site Fuel oil storage with containment moat and oil water separator tank
- Maintenance Shanty (at Gas Turbine Units 2&3 site)
- On-site monitoring well
- Trailer with small office, and restroom
- Onsite septic and leeching field
- Foamite Tank and pump house
- 1 – 6 inch City Water line downstream of meter pit outlet stop valve

#### **Toddville Training Facility**

- Building with classrooms and offices
- Portion of ballfield improvement
- Satellite dish and receiver
- Parking lots
- Training aids and equipment

#### **Various Vehicles**

### **II. PROPERTY/FACILITIES LOCATED AT CON EDISON'S RETAINED SITES**

The portion of 345 kV Feeder W95 located at the Substation and support tower 31 located at the Substation. Entergy Nuclear will own Feeder W95 up to and including the 345 kV Motor Operated Disconnect Switch F7-9 located at the Substation

Ground Switch 27 and structural supports located at the Substation

345 kV Motor Operated Disconnect Switch F7-9 and structural supports located at the Substation

The portion of 138 kV Feeder 95332 located at the Substation and Support Tower 21 located at the Substation. Entergy Nuclear will own Feeder 95332 up to and including the 138 kV Motor Operated Disconnect Switch F3A and structural supports located at the Substation

Ground Switches 14 and 43 and structural supports located at the Substation as well as the lightning arrester for Feeder 95332 located at the Substation

138 kV Motor Operated Disconnect Switch F3A and structural supports located at the Substation

Spare 138 kV cable for Feeder 95332 located between the 345 kV and 138 kV yards at the Substation

The portion of 13.8 kV Feeder 13W92 located at the Substation. Entergy Nuclear will own Feeder 13W92 up to and including 13.8 kV Breaker F2-3

13.8 kV Breaker F2-3 located at the Buchanan Substation

The portion of 13.8 kV Feeder 13W93 located at the Substation. Entergy Nuclear will own Feeder 13W93 from and including 13.8 kV Breaker F3-1 to the pothead at the Indian Point Unit 3 gas turbine substation

13.8 kV Breaker F3-1 located at the Buchanan

The portion of 13.8 kV Feeder 13W94L located at the Substation as well as the associated removable links located there. Entergy Nuclear will own Feeder 13W94L up to and including such removable links

The portion of 13.8 kV Feeder 13W88 from the property line splice connection BS8649 to the connection at the Distribution Network Transformer V8649. Con Edison will retain ownership of Feeder 13W88 up to and including the property line splice connection BS8649

Emergency plan equipment consisting of (3) RM-14 Friskers, (1) F520 Survey Instrument, and a Safety Assessment System (SAS) terminal located at the Alternate Emergency Operating Facility (AEOF) in Con Edison's Eastview facility

Con Edison's ownership interest in sirens and radiation monitors associated with the Indian Point Units to the extent located at sites to be retained by Con Edison.

### **III. PROPERTY/FACILITIES LOCATED AT THE INDIAN POINT UNIT 3 SITE**

The portion of 13.8 kV Feeder 13W93 within the Indian Point Unit 3 property up to the pothead at the Indian Point Unit 3 gas turbine substation switchyard

The 6.9 kV feeder extending from the GT Auto Transformer near Gas Turbine Unit 1 to Intertie Breaker 52 GT/BT located at the Indian Point Unit 3 gas turbine substation

Interest as a tenant in common to the meteorological tower located on the Indian Point Unit 3 property

Chemistry lab equipment and supplies owned by Con Edison and located at the Indian Point Unit 3 Hill Training Facilities (the inductively coupled plasma spectrometer, total organic carbon analyzer, gas chromatograph, ion chromatograph system, and the polarized light microscope)

Con Edison's ownership interest in sirens and radiation monitors associated with the Indian Point Units to the extent located at the Indian Point Unit 3 site.

#### **IV. PROPERTY/FACILITIES LOCATED AT OTHER SITES**

Various equipment and machinery owned by Con Edison at the Joint News Center facility leased by Indian Point Unit 3 at the Westchester County Airport

The portion of overhead 138 kV Feeder 95332 and overhead 345 kV Feeder W95 crossing and/or within Broadway in the Village of Buchanan

The portion of the underground control cabling (used for relay protection, control and indication) for Feeders 95332 and W95 crossing and/or within Broadway in the Village of Buchanan

The portion of underground Feeder 13.8 kV Feeder 13W92 crossing and/or within Broadway in the Village of Buchanan

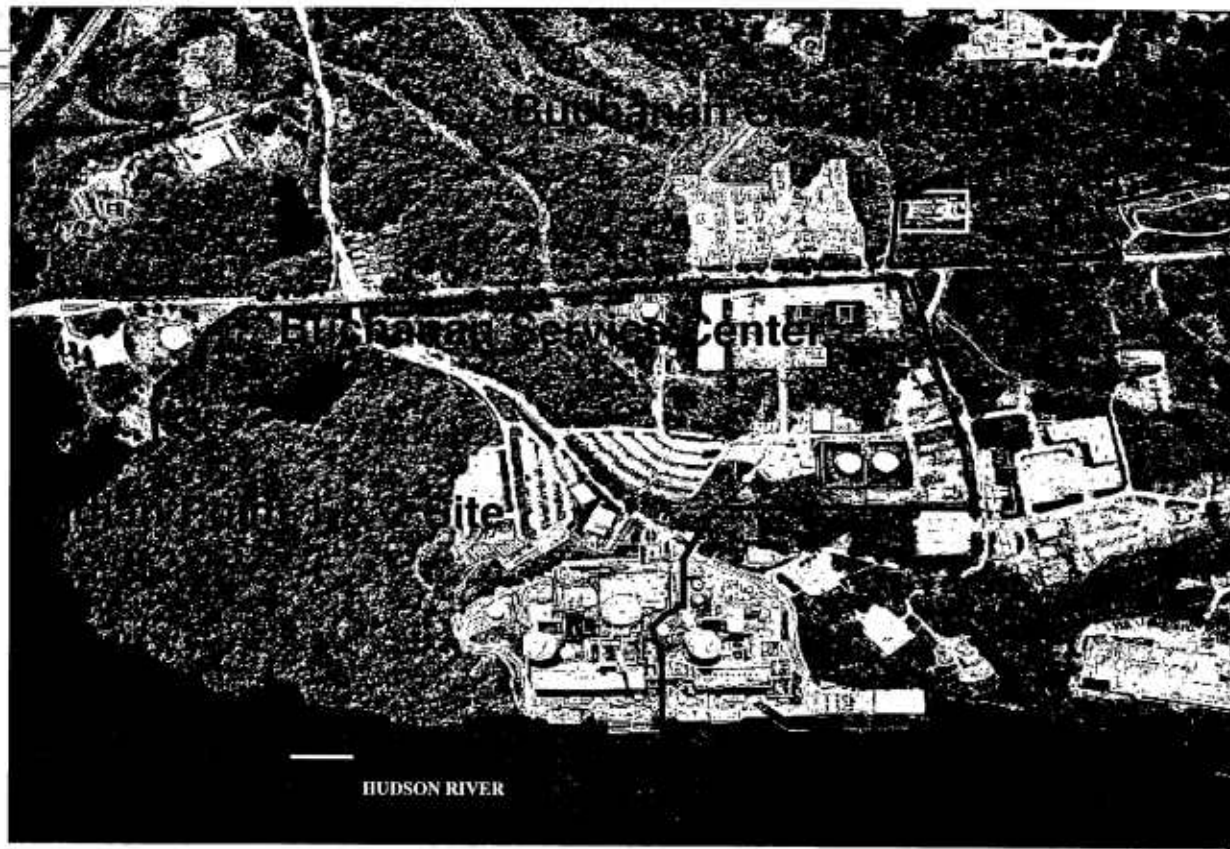
The portion of underground 13.8 kV Feeder 13W93 crossing and/or within Broadway in Buchanan and within Indian Point Unit 3's switchyards

The portion of underground 13.8 kV Feeder 13W94L crossing and/or within Broadway in the Village of Buchanan

Instrumentation and sampling systems associated with the discharge canal serving Indian Points Units 2 and 3 and located on property owned by NYSERDA

Con Edison's ownership interest in sirens and radiation monitors associated with the Indian Point Units to the extent located at sites owned by others.

# Assets to be Divested



State of New York     )  
                              ) ss:  
County of New York    )

George Jee, being duly sworn, says:

The foregoing affidavit and the information contained therein is true and correct to the best of my knowledge and belief.

George Jee

Sworn to before me this

10<sup>th</sup> day of January, 2001

Chanoch Lubling

#209520

CHANOCH LUBLING  
NOTARY PUBLIC, State of New York  
No. 24-4748879  
Qualified in Kings County  
Commission Expires October 31, 2001



### **AFFIDAVIT OF EDWARD J. RASMUSSEN**

I, Edward J. Rasmussen, being duly sworn, deposes and says as follows:

1. I am Vice President and Controller of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"). The purpose of this affidavit is to provide preliminary calculations of the net after-tax loss to be incurred by Con Edison from the sale of its nuclear assets -- including the Indian Point Generating Units 1 and 2, Gas Turbine Units 1, 2 and 3 and the Toddville Training Center -- to Entergy Nuclear Indian Point 2, LLC ("Entergy Nuclear"), the proposed ratemaking treatment for such net loss and preliminary accounting entries necessary to implement the sale of the plant and ratemaking treatment. A more detailed description of the assets included in the sale to Entergy Nuclear is included in the affidavit of Mr. George Jee, Con Edison's project manager for the sale.

#### **Net After-Tax Loss**

2. Under the Generating Plant and Gas Turbine Asset Purchase and Sale Agreement ("APSA"), dated November 9, 2000, Entergy Nuclear agreed to pay Con Edison \$502,000,000 for the generating facilities and related assets, including associated electric transmission and ancillary facilities and real property, plus the book value, as of the date of closing, of all nuclear fuel and fuel oil inventories. The gross purchase price is subject to adjustments as more fully described in Mr. Jee's affidavit.

3. The calculation of Con Edison's estimated net after-tax loss on the transaction is shown on Attachment 1 to my affidavit. As shown on page 1 of Attachment 1, the original book cost (including construction work in progress) of the assets to be transferred to Entergy Nuclear

and the accrued depreciation thereon, as of June 30, 2001, is estimated to be \$1,020,678,000 and \$461,457,000, respectively, the components of which are shown on Attachment 2 to my affidavit. The estimated net after-tax loss on the sale was calculated, as shown on page 1 of Attachment 1, by subtracting from the gross purchase price (the \$502 million specified in the APSA plus the unrecovered book cost, as of October 2000, of nuclear fuel and fuel oil inventories of \$106,801,000 and \$587,000, respectively): (a) the estimated net book cost of the assets (original book cost less accrued depreciation), including construction work in progress, amounting to \$559,221,000 as of June 30, 2001; (b) the unrecovered Indian Point Regulatory Study costs that were reclassified in 1985 pursuant to a Commission order from plant in service to extraordinary property losses, totaling \$5,104,000; (c) the estimated unrecovered book cost of nuclear fuel and fuel oil inventories, that will be reimbursed by Entergy Nuclear at closing and which I have included in the gross proceeds at their October 2000 book cost of \$107,388,000; (d) the estimated book value of the materials and spare parts inventory totaling \$33,095,000 that is included in the \$502 million purchase price; (e) the estimated nuclear decommissioning "top off" amount of \$15,351,000, which represents the estimated shortfall, as of June 2001, between the level of decommissioning funds to be transferred to Entergy Nuclear at closing and the accumulated amounts for decommissioning collected from ratepayers, including interest thereon; (f) the incremental divestiture-related costs estimable at this time that the Company expects to incur in connection with the sale process, totaling \$5,875,000; (g) the site separation-related costs estimable at this time that the Company expects to incur in connection with the sale, totaling \$6,000,000; (h) a credit of \$7,197,000 representing the revenues deferred on the books of account as the result of Indian Point Refueling Outage Accounting, which would otherwise be used to offset the 2002 refueling outage costs; (i) unrecovered amounts paid to NYSERDA and



interest credits thereon to establish a low level radioactive waste disposal facility in New York State, totaling \$19,517,000, the associated rights to which will be transferred to Entergy Nuclear as part of the sale; (j) amounts payable to the DOE through October 2006 for nuclear fuel consumed prior to closing related to the Decontamination and Decommissioning of DOE's Uranium Enrichment Facilities, totaling \$18,528,000; (k) pre-paid expenses to Westinghouse in connection with the 2002 scheduled refueling outage totaling \$2,399,000, absent alternative uses for these credit amounts which the Company is exploring with Westinghouse; and (l) the Federal income tax payable in connection with the sale, net of previously deferred Federal income taxes, estimated to total \$12,747,000. The calculation of the estimated Federal income tax is fully reflected on page 2 of Attachment 1. As shown on page 1 of Attachment 1, the above-described calculations yield an estimated net after-tax loss on the sale of the nuclear assets of \$168,640,000. As described in the affidavit of Mr. Jee, a substantial portion of this loss is expected to be offset by savings resulting from the Power Purchase Agreement ("PPA") between the Company and Entergy Nuclear. The Company will provide an updated calculation of the net loss that will be incurred on the sale after the closing, when the actual adjustments to the purchase price will be known.

4. I have not included in the above calculation of the net loss on the sale of the nuclear assets any future payments on claims for pre-closing injuries and damages (including workers compensation) associated with the nuclear assets. I recommend that the Commission approve the same rate treatment adopted for the fossil plant divestitures, which would allow the Company to continue to recover through electric rates the actual level of payments made for claims for injuries and damages associated with the divested nuclear assets. In the absence of that rate treatment, the above calculation will need to be adjusted.

5. Under the APSA, all transfer, sales and similar taxes incurred in connection with the sale will be borne by Entergy Nuclear.

6. As indicated above, the divestiture-related costs and site separation costs estimable at this time that will be incurred by Con Edison in connection with the sale will total \$5,875,000 and \$6,000,000, respectively. As shown on page 1 of Attachment 3 hereto, estimated divestiture-related costs include, among other things, investment banking, legal, environmental investigations, engineering assessments and other costs associated with carrying out the sales process. At this time I have not included an estimate of possible employee-related costs, such as severance costs to employees and support personnel associated with the divested assets. If such employee-related costs are incurred, I will reflect them in my update. The Company is currently reviewing the costs of canceling any contracts that will not be assumed by Entergy Nuclear. A list of the type of site separation activities that will be performed is included on page 2 of Attachment 3 to my affidavit. A detailed description of the actual divestiture costs incurred for the Indian Point sale as of December 31, 2000 is provided on page 3 of Attachment 3.

**Decommissioning and Spent Fuel**

7. Under the APSA, Entergy Nuclear has agreed to assume the responsibility for the future decommissioning of Indian Point Generating Station Units 1 and 2, including the restoration of the sites, as required by applicable laws and regulations. The APSA also requires Con Edison to transfer to Entergy Nuclear at closing decommissioning funds totaling \$430 million, consisting of all of the assets of the Qualified Decommissioning Trust and, to the extent necessary to reach the \$430 million level, the assets of the Non-Qualified Decommissioning Trust. The \$430 million to be transferred at closing represents the "present value" of the

minimum amount that would be acceptable to the Nuclear Regulatory Commission ("NRC") when approving the transfer of the IP1 and IP2 licenses and the decommissioning liability to a new owner. The NRC minimum amount, in year 2000 constant dollars, is \$558 million at the expiration of the licenses in 2013. In determining the "present value" of the NRC minimum amount to be transferred, the NRC permits the inclusion of a real growth rate on the decommissioning funds of up to 2% annually. Discounting the NRC minimum amount of \$558 million by 2% annually results in a minimum amount required to be transferred at closing of \$430 million. As part of the sales process, Con Edison commissioned SCIENTECH NES, INC. ("NES") to prepare a new decommissioning cost study. The NES study concluded that if Indian Point Units 1, 2 and 3 were decommissioned by a single owner, the cost of decommissioning Units 1 and 2 would be \$578 million, in year 2000 constant dollars, or \$20 million more than the current NRC minimum. Additionally, the NES study estimated the additional cost to restore the Indian Point Units 1 and 2 property to an unrestricted and natural state, sometimes referred to as a "Greenfield" state, would be approximately \$47 million in year 2000 constant dollars.

8. As of October 31, 2000, the market value of the assets in the Qualified and Non-Qualified Decommissioning Trusts were approximately \$257 million and \$86 million, respectively, for a total of \$343 million. Additionally, the Company maintains an unfunded internal reserve for decommissioning of approximately \$55 million, for a total amount set-aside for decommissioning of approximately \$398 million. The Company will continue to make deposits to the Decommissioning Trusts and accruals to the internal reserve up to the date of closing. The Company estimates that the total funds accumulated for decommissioning, including interest, as of June 2001 will amount to \$414,649,000, and that a "top off" amount of about \$15,351,000 will be required to transfer \$430 million to Entergy Nuclear.

9. With regard to the Federal and State income tax consequences of transferring both the Qualified and Non-Qualified Decommissioning Trusts to Entergy Nuclear, the Company has requested a Private Letter Ruling from the Internal Revenue Service and will be requesting an Advisory Opinion from New York State that seeks to transfer the funds without any adverse tax consequences. The Company will inform Staff as to the outcome of the Company's requests of the taxing authorities when received.

10. Under the APSA, Entergy Nuclear will assume responsibility for the management, storage and disposal of all spent nuclear fuel located at IP1 and IP2. The APSA also requires Con Edison to assign to Entergy Nuclear, and for Entergy Nuclear to assume, the Company's rights and obligations under the Standard Contract for the Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste with the U.S. Department of Energy ("DOE"), excluding certain claims of the Company accrued prior to closing. The NES study commissioned by the Company also estimated the cost of spent fuel management. Assigning variables as to on-site vs. off-site storage, the timing for the opening of a repository by the DOE to accept the high level waste materials and the rate of acceptance for such materials, the NES study concluded that the costs (in year 2000 constant dollars) of spent fuel management could range from a low of \$147 million to a high of \$362 million.

11. The Company currently collects in rates some \$23.1 million annually for decommissioning and spent nuclear fuel management.

#### **Proposed Ratemaking**

12. As indicated above, the proposed sale of the Company's nuclear assets is expected to result in a net after-tax loss of approximately \$169 million, including approximately \$53 million relating to decommissioning and fees to NYSDERDA and DOE associated with nuclear

fuel consumed at IP2 prior to closing. Under the terms of the 1997 Settlement Agreement adopted by the Commission in Opinion No. 96-17, as revised by the 2000 Settlement Agreement adopted by the Commission in Opinion No. 00-14 (the "Rate/Restructuring Orders"), the Company would cease collecting in the Monthly Adjustment Clause, after the closing of the sale, any reductions in embedded or other costs resulting from the sale of the nuclear assets (2000 Settlement Agreement, Sections II.9 and IV.9.). In addition, after recovery by the Company from the gross proceeds of its transaction costs, such as professional fees and site separation costs, any net after-tax loss on the sale, plus interest at the unadjusted customer deposit rate, is to be deferred until after March 31, 2005, at which time the Company would be afforded a reasonable opportunity to recover such stranded costs over a period no longer than the end of IP2's license term in the year 2013 (2000 Settlement Agreement, Sections II.12 and II.16). The Company requests authorization to establish a regulatory asset for such stranded costs. Such regulatory asset will be drawn down as such stranded costs are recovered by the Company in rates.

13. The Rate and Restructuring Orders also provide for a flow-through to customers of energy payments to Entergy Nuclear under the PPA, subject to a 90/10 (customer/shareholder) sharing of the difference between the Company's payments to Entergy Nuclear under the PPA and the NYISO market prices for energy, up to a specified maximum annual amount for such sharing incentives/penalties (2000 Settlement Agreement, Section IV.9). In his affidavit, Mr. Jee estimates the total savings (relative to the NYISO market prices for energy) to be realized from the PPA in the range of \$60 million to \$100 million.

14. In order to avoid surcharges in rates that may be required after March 2005 to permit recovery of stranded costs relating to the sale of the nuclear assets, the Company believes

it is feasible, and requests the Commission to consider, to begin to implement the stipulated recovery of some or all of such stranded costs from available ratepayer credits, such as PPA savings and net gains on the sale of other assets, when such credits become available, with any remaining unrecovered stranded costs to be reflected in rates after March 31, 2005.

15. Partial recovery can also be effectuated by continuing the current level of rate recovery of costs relating to decommissioning and spent nuclear fuel and/or relating to payments to DOE for decontamination and decommissioning associated with nuclear fuel consumed prior to the sale of nuclear assets. I would note that, in determining the disposition of net gains resulting from the Company's fossil plant divestitures, the Commission accelerated the schedule for disposition of such gains that was specified in the 1997 Settlement Agreement (Section II.13).

#### **Use of Proceeds and Accounting**

16. At this time, the Company has not determined the precise use of the cash proceeds from the sale of its nuclear assets but is considering a variety of alternative uses of the proceeds, including utility and other investments. The Company will advise senior Commission Staff respecting such use in a manner consistent with the Settlement Agreements.

17. Preliminary accounting entries necessary to implement the sale of the nuclear assets are enumerated on Attachment 4 to my affidavit.

Consolidated Edison Company of New York, Inc.

Estimated Results of The Sale of The Indian Point Generating Station Units 1 and 2,  
Gas Turbines 1, 2 and 3 and The Toddville Training Center  
As Of June 30, 2001

|  |                    | <u>Amount</u>          |
|--|--------------------|------------------------|
| <u>Sales Proceeds</u>  |                    |                        |
| Sales Price, Including Materials and Spare Parts Inventory   |                    | \$502,000,000          |
| Nuclear Fuel, Assemblies and Components                      |                    | 106,801,000            |
| Fuel Oil Inventory   |                    | <u>587,000</u>         |
| Total Sales Proceeds   |                    | <u>\$609,388,000</u>   |
| <u>Deductions</u>  |                    |                        |
| Book Cost of Plant, Including CWIP                           | \$1,020,678,000    |                        |
| Accumulated Provision for Depreciation                       | <u>461,457,000</u> |                        |
| Net Plant  |                    | 559,221,000            |
| Indian Point Regulatory Study Costs                          |                    | 5,104,000              |
| Book Cost of Nuclear Fuel, Assemblies and Components         | \$201,477,000      |                        |
| Accumulated Provision for Amortization                       | <u>94,676,000</u>  |                        |
| Nuclear Fuel   |                    | 106,801,000            |
| Fuel Oil Inventory   |                    | 587,000                |
| Materials and Spare Parts Inventory                          |                    | 33,095,000             |
| Decommissioning Expenses - Top Off Amount                    |                    | 15,351,000             |
| Divestiture Expenses   |                    | 5,875,000              |
| Site Separation Expenses                                     |                    | 6,000,000              |
| Indian Point Refueling Outage Accounting - Deferred Revenues |                    | (7,197,000)            |
| NYS Low Level Waste Disposal Facility Fees                   |                    | 19,517,000             |
| DOE Decontamination and Decommissioning Fees                 |                    | 18,528,000             |
| Prepaid Expenses - Indian Point Refueling Outage             |                    | <u>2,399,000</u>       |
| Total Deductions   |                    | <u>765,281,000</u>     |
| Income Before Federal Income Tax                             |                    | (155,893,000)          |
| Federal Income Tax (Page 2)                                  |                    | <u>12,747,000</u>      |
| Income After Federal Income Tax                              |                    | <u>(\$168,640,000)</u> |

Consolidated Edison Company of New York, Inc.

Estimated Results of The Sale of The Indian Point Generating Station Units 1 and 2,  
Gas Turbines 1, 2 and 3 and The Toddville Training Center  
As Of June 30, 2001

|   |                    | <u>Amount</u>       |
|---|--------------------|---------------------|
| <u>Federal Income Tax Calculation</u>                     |                    |                     |
| Income Before Federal Income Tax                          |                    | (\$155,893,000)     |
| <u>Required Adjustments</u>                               |                    |                     |
| <u>Additions to Book Income</u>                           |                    |                     |
| Book Basis of Net Plant                                   | \$559,221,000      |                     |
| Indian Point Regulatory Study Costs                       | 5,104,000          |                     |
| Book Basis of Nuclear Fuel                                | <u>106,801,000</u> |                     |
| Total Additions   | <u>671,126,000</u> |                     |
| <u>Subtractions from Book Income</u>                      |                    |                     |
| Tax Basis of Net Plant                                    | 244,036,000        |                     |
| Tax Basis of Nuclear Fuel                                 | 61,147,000         |                     |
| Transfer of Decommissioning Funds Not Previously Deducted | <u>148,063,000</u> |                     |
| Total Subtractions  | <u>453,246,000</u> |                     |
| Total Adjustments To Book Income                          |                    | <u>217,880,000</u>  |
| Taxable Income  |                    | <u>\$61,987,000</u> |
| Federal Income Tax Payable @ 35%                          |                    | \$21,695,000        |
| <u>Other Adjustments</u>                                  |                    |                     |
| <u>Accumulated Deferred Income Taxes (A)</u>              |                    |                     |
| Depreciation  | (48,084,000)       |                     |
| Nuclear Fuel  | (12,686,000)       |                     |
| Transfer of Decommissioning Funds Not Previously Deducted | 44,471,000         |                     |
| Future Tax Benefit of Decommissioning                     | <u>7,351,000</u>   |                     |
| Total Other Adjustments                                   |                    | <u>(8,948,000)</u>  |
| Federal Income Tax  |                    | <u>\$12,747,000</u> |

(A) Excludes Excess Accumulated Deferred Federal income tax - Depreciation and  
Accumulated Deferred Investment Tax Credits of \$(2,432,000) and \$(3,993,000), respectively.



## CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Indian Point Sale; Electric Plant in Service; Nuclear Production, Other Production,  
Generator Leads, Light and Power, Buildings and Yards and General Equipment  
Summary of Estimated Book Cost, Accumulated Provision for Depreciation and Net Book Cost,  
Including Construction Work In Progress As Of June 30, 2001  
(\$1,000s)

| CO.<br>ACCT.<br>NO. | FUNCTIONAL PLANT / ACCOUNT TITLE                | BOOK COST   | ACCUMULATED<br>PROVISION FOR<br>DEPRECIATION | NET<br>BOOK COST | CONSTRUCTION<br>WORK IN<br>PROGRESS |
|---------------------|---|-------------|--|------------------|-------------------------------------|
|                     | <u>Electric Plant in Service</u>                |             |  |                  |                                     |
|                     | <u>Production Plant - Nuclear Production</u>    |             |  |                  |                                     |
| 9452                | Land and Land Rights                            | \$839       | \$0  | \$839            | \$0                                 |
| 9456                | Structures and Improvements                     | 233,959     | 132,659                                      | 101,300          | 1,445                               |
| 9460                | Reactor Plant Equipment                         | 449,094     | 149,687                                      | 299,427          | 0                                   |
| 9462                | Turbogenerator Units                            | 166,884     | 97,442                                       | 69,442           | 4,715                               |
| 9465                | Accessory Electric Equipment                    | 25,604      | 13,580                                       | 12,014           | 2,048                               |
| 9468                | Miscellaneous Power Plant Equipment             | 62,547      | 37,087                                       | 25,460           | 0                                   |
|                     | Total Nuclear Production                        | 938,927     | 430,425                                      | 508,502          | 8,208                               |
|                     | <u>Production Plant - Other Production</u>      |             |  |                  |                                     |
|                     | <u>Indian Point Station</u>                     |             |  |                  |                                     |
| 9432                | Fuel Holders, Producers and Accessories         | 447         | 213  | 234              | 0                                   |
| 9434                | Generators                                      | 3,352       | 2,553  | 799              | 0                                   |
| 9435                | Accessory Electric Equipment                    | 270         | 227  | 43               | 0                                   |
|                     | Total Indian Point Station                      | 4,069       | 2,993  | 1,076            | 0                                   |
|                     | <u>Buchanan Station</u>                         |             |  |                  |                                     |
| 9431                | Structures and Improvements                     | 136         | 79   | 57               | 0                                   |
| 9432                | Fuel Holders, Producers and Accessories         | 624         | 427  | 197              | 0                                   |
| 9434                | Generators                                      | 4,453       | 2,122  | 2,331            | 0                                   |
| 9435                | Accessory Electric Equipment                    | 447         | 328  | 119              | 0                                   |
|                     | Total Buchanan Station                          | 5,660       | 2,956  | 2,704            | 0                                   |
|                     | Estimated Expenditures January 2001 - June 2001 | 0           | 0  | 0                | 9,795                               |
|                     | Total Production Plant                          | 948,656     | 436,374                                      | 512,282          | 18,003                              |
|                     | <u>Generator Leads</u>                          |             |  |                  |                                     |
| 9530                | Buchanan Substation                             | 16          | 0  | 16               | 0                                   |
| 9534                | Indian Point Station                            | 4,370       | 2,083  | 2,287            | 0                                   |
| 9534                | Buchanan Substation                             | 1,175       | 307  | 868              | 0                                   |
| 9534                | Spare Power Equipment                           | 3,222       | 517  | 2,705            | 0                                   |
|                     | Total Generator Leads                           | 8,783       | 2,907  | 5,876            | 0                                   |
|                     | <u>Light and Power</u>                          |             |  |                  |                                     |
| 9554                | Buchanan Substation                             | 350         | 97   | 253              | 0                                   |
|                     | <u>Buildings and Yards</u>                      |             |  |                  |                                     |
| 9810                | Indian Point Service Center                     | 5           | 0  | 5                | 0                                   |
| 9812                | Indian Point Service Center                     | 3,400       | 984  | 2,416            | 0                                   |
|                     | Total Buildings and Yards                       | 3,405       | 984  | 2,421            | 0                                   |
|                     | <u>General Equipment</u>                        |             |  |                  |                                     |
|                     | <u>Indian Point Station</u>                     |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 9,846       | 5,087  | 4,779            | 0                                   |
| 9816                | Office Furniture & Equipment                    | 3,604       | 1,792  | 1,812            | 0                                   |
| 9820                | Transportation Equipment                        | 259         | 130  | 129              | 0                                   |
| 9824                | Stores Equipment                                | 49          | 23   | 26               | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 4,671       | 2,516  | 2,155            | 0                                   |
| 9828                | Laboratory Equipment                            | 10,376      | 5,080  | 5,286            | 0                                   |
| 9829                | Power Operated Equipment                        | 447         | 262  | 185              | 0                                   |
| 9832                | Communication Equipment                         | 1,004       | 749  | 255              | 0                                   |
| 9834                | Miscellaneous Equipment                         | 2,526       | 1,321  | 1,205            | 0                                   |
|                     |   | 32,782      | 16,950                                       | 15,832           | 0                                   |
|                     | <u>One Park Place</u>                           |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 114         | 101  | 13               | 0                                   |
| 9816                | Office Furniture & Equipment                    | 37          | 18   | 19               | 0                                   |
| 9820                | Transportation Equipment                        | 933         | 598  | 335              | 0                                   |
| 9824                | Stores Equipment                                | 1           | 0  | 1                | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 137         | 17   | 120              | 0                                   |
| 9828                | Laboratory Equipment                            | 50          | 15   | 35               | 0                                   |
| 9829                | Power Operated Equipment                        | 112         | 55   | 57               | 0                                   |
| 9832                | Communication Equipment                         | 475         | 286  | 189              | 0                                   |
| 9834                | Miscellaneous Equipment                         | 7           | 3  | 4                | 0                                   |
|                     |   | 1,866       | 1,093  | 773              | 0                                   |
|                     | <u>Toddville Nuclear Training Center</u>        |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 2           | 1  | 1                | 0                                   |
| 9816                | Office Furniture & Equipment                    | 130         | 66   | 64               | 0                                   |
| 9820                | Transportation Equipment                        | 0           | 0  | 0                | 0                                   |
| 9824                | Stores Equipment                                | 0           | 0  | 0                | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 62          | 33   | 29               | 0                                   |
| 9828                | Laboratory Equipment                            | 489         | 223  | 266              | 0                                   |
| 9829                | Power Operated Equipment                        | 0           | 0  | 0                | 0                                   |
| 9832                | Communication Equipment                         | 5           | 3  | 2                | 0                                   |
| 9834                | Miscellaneous Equipment                         | 556         | 262  | 294              | 0                                   |
|                     |   | 1,244       | 588  | 656              | 0                                   |
|                     | <u>Indian Point Service Center</u>              |             |  |                  |                                     |
| 9815                | Electronic Data Processing Equipment            | 763         | 271  | 492              | 0                                   |
| 9816                | Office Furniture & Equipment                    | 89          | 43   | 46               | 0                                   |
| 9820                | Transportation Equipment                        | 480         | 232  | 248              | 0                                   |
| 9824                | Stores Equipment                                | 790         | 529  | 261              | 0                                   |
| 9830                | Tools, Shop & Garage Equipment                  | 718         | 448  | 270              | 0                                   |
| 9828                | Laboratory Equipment                            | 79          | 27   | 52               | 0                                   |
| 9829                | Power Operated Equipment                        | 1           | 0  | 1                | 0                                   |
| 9832                | Communication Equipment                         | 1,386       | 891  | 495              | 0                                   |
| 9834                | Miscellaneous Equipment                         | 83          | 23   | 60               | 0                                   |
|                     |   | 4,389       | 2,484  | 1,925            | 0                                   |
|                     | Estimated Expenditures January 2001 - June 2001 | 0           | 0  | 0                | 1,200                               |
|                     | Total General Equipment                         | 40,281      | 21,095                                       | 19,186           | 1,200                               |
|                     | Grand Total                                     | \$1,001,475 | \$461,457                                    | \$540,018        | \$19,203                            |

Consolidated Edison Company of New York, Inc.

Estimated Indian Point Divestiture Expenses  
(\$1,000s)

| <u>Function</u>               | <u>Amount</u>  |
|-------------------------------|----------------|
| Financial / Strategic         | \$2,900        |
| Market Power                  | 100            |
| Legal                         | 1,500          |
| Engineering                   | 350            |
| Real Estate                   | 200            |
| Environmental                 | 250            |
| Data Room / Transition Office | <u>575</u>     |
| Sub-total                     | <u>\$5,875</u> |
| Contract Cancellation Costs   |                |
| Employee Costs                |                |
| Grand Total                   | <u>\$5,875</u> |

Consolidated Edison Company of New York, Inc.

Estimated Indian Point Site Separation Expenses  
(\$1,000s)

| <u>Location / Project</u>               | <u>Amount</u>  |
|---|----------------|
| <u>Indian Point Generating Station</u>  |                |
| Telecommunications                      | \$500          |
| Information Resources                   | <u>500</u>     |
| Total - Indian Point Generating Station | <u>1,000</u>   |
| <br><u>Buchanan Gas Turbines</u>        |                |
| System Reinforcement                    | <u>5,000</u>   |
| <br>Grand Total                         | <u>\$6,000</u> |

Consolidated Edison Company of New York, Inc.

Actual Indian Point Divestiture Expenses - As Of December 31, 2000  
(\$1,000s)

| <u>Consultant / Vendor</u>         | <u>Function</u>                               | <u>Amount</u>         |
|------------------------------------|---|-----------------------|
| <u>Financial / Strategic</u>       |   |                       |
| Morgan Stanley & Co.               | Investment Bankers                            | \$1,143               |
| HGP, Inc.                          | Strategic Consultant - Nuclear Plant Sales    | 159                   |
| NES Sciencetech, Inc.              | Decommissioning Cost Study                    | 80                    |
| George S. Buck Consulting          | Actuarial Consultants                         | 33                    |
| <u>Legal</u>                       |   |                       |
| Cravath, Swaine & Moore            | Principal Divestiture Legal Counsel           | 1,058                 |
| <u>Engineering</u>                 |   |                       |
| Peter Szabados                     | Technical Support Services                    | 42                    |
| Mansell Associates Inc.            | Asset Demarcation Support Services            | 29                    |
| BGA, LLC                           | Asset Demarcation Support Services            | 27                    |
| Rudell and Associates              | Engineering Documentation                     | 7                     |
| <u>Real Estate</u>                 |   |                       |
| Badey and Watson                   | Land Surveying Services                       | 61                    |
| Anthony M. Loscalzo L.S.           | Land Surveying Services                       | 35                    |
| Dennis E. Walden                   | Hydrographic Surveying Services               | 5                     |
| <u>Environmental</u>               |   |                       |
| Earth Tech                         | Phase I and Phase II Environmental Assessment | 162                   |
| Tanknology - NDE Corp.             | Spent Fuel Pool Tightness Testing             | 14                    |
| Konrad Consulting                  | Miscellaneous Environmental Issues            | 10                    |
| ENSR                               | Miscellaneous Environmental Issues            | 10                    |
| DAQ Inc.                           | Review Phase II Radiation Survey              | 9                     |
| Michalski & Associates, Inc.       | Hydrogeologic Consulting Services             | 8                     |
| <u>Data Room/Transition Office</u> |   |                       |
| New York City Temps                | Paralegal, Document Management Staffing       | 74                    |
| Smooth Solutions                   | Reproduction of Data Room Materials           | 40                    |
| Arenson Office Furnishings         | Rental of Office Furniture                    | 34                    |
| Pronto Printer                     | Reproduction of Data Room Materials           | 25                    |
| COPELCO Capital, Inc.              | Lease of High Speed Printers                  | 24                    |
| ADECCO Employment Service          | Paralegal, Document Management Staffing       | 10                    |
| Furniture Etc. Inc.                | Rental of Office Furniture                    | 11                    |
| CMI                                | Design, Construction, Furniture and Files     | 9                     |
| MCS Business Solutions, Inc.       | Lease of High Speed Drawing Plotter           | 8                     |
| All Other                          | Miscellaneous (17 Items)                      | 75                    |
|                                    | <b>Grand Total</b>                            | <b><u>\$3,202</u></b> |

Consolidated Edison Company of New York, Inc.

Proposed Journal Entries - Indian Point Sale - As Of June 30, 2001

|  | <u>Debit</u>    | <u>Credit</u>   |
|--|-----------------|-----------------|
| 1 Accounts Receivable  | \$609,388,000   |                 |
| Other Deferred Debits - Loss on Sale   |                 | \$609,388,000   |
| Cash   | \$609,388,000   |                 |
| Accounts Receivable  |                 | \$609,388,000   |
| To record the sale, receipt of cash and defer the income effect.                           |                 |                 |
| 2 Accumulated Provision for Depreciation   | \$1,001,475,000 |                 |
| Plant in Service   |                 | \$1,001,475,000 |
| Other Deferred Debits - Loss on Sale   | \$19,203,000    |                 |
| Construction Work in Progress  |                 | \$19,203,000    |
| Other Deferred Debits - Loss on Sale   | \$1,001,475,000 |                 |
| Accumulated Provision for Depreciation   |                 | \$1,001,475,000 |
| Accumulated Provision for Depreciation   | \$461,457,000   |                 |
| Other Deferred Debits - Loss on Sale   |                 | \$461,457,000   |
| To retire plant in service and CWIP and defer the income effect.                           |                 |                 |
| 3 Other Deferred Debits - Loss on Sale   | \$5,104,000     |                 |
| Indian Point Regulatory Study Costs  |                 | \$5,104,000     |
| To write-off the Indian Point Regulatory Study Costs and defer the income effect.          |                 |                 |
| 4 Other Deferred Debits - Loss on Sale   | \$106,801,000   |                 |
| Accumulated Provision for Amortization   | \$94,676,000    |                 |
| Nuclear Fuel   |                 | \$201,477,000   |
| To record the sale of the nuclear fuel inventory and defer the income effect.              |                 |                 |
| 5 Other Deferred Debits - Loss on Sale   | \$587,000       |                 |
| Fuel Oil Inventory   |                 | \$587,000       |
| To record the sale of the fuel oil inventory and defer the income effect.                  |                 |                 |
| 6 Other Deferred Debits - Loss on Sale   | \$33,095,000    |                 |
| Materials and Spare Parts  |                 | \$33,095,000    |
| To record the sale of the materials and spare parts inventory and defer the income effect. |                 |                 |
| 7a External Decommissioning Trust Funds  | \$15,351,000    |                 |
| Cash   |                 | \$15,351,000    |
| To record the "top off" amount.  |                 |                 |
| 7b External Decommissioning Trust Funds  | \$56,073,000    |                 |
| Cash   |                 | \$56,073,000    |
| To fund the Non-Qualified Decommissioning Trust equal to the Unfunded Internal Reserve.    |                 |                 |
| 7c Other Deferred Debits - Loss on Sale  | \$430,000,000   |                 |
| External Decommissioning Trust Funds   |                 | \$430,000,000   |
| Accumulated Reserve for Decommissioning  | \$414,649,000   |                 |
| Other Deferred Debits - Loss Account   |                 | \$414,649,000   |
| To recognize the transfer of the External Decommissioning Trust Funds.                     |                 |                 |

Consolidated Edison Company of New York, Inc.

Proposed Journal Entries - Indian Point Sale - As Of June 30, 2001

|  | <u>Debit</u>   | <u>Credit</u>  |
|--|----------------|----------------|
| 8 Other Deferred Debits  | \$5,875,000    |                |
| Cash   |                | \$5,875,000    |
| Other Deferred Debits - Loss on Sale   | \$5,875,000    |                |
| Other Deferred Debits  |                | \$5,875,000    |
| To record the payment of Divestiture Expenses and defer the income effect.                                   |                |                |
| 9 Other Deferred Debits  | \$6,000,000    |                |
| Cash   |                | \$6,000,000    |
| Other Deferred Debits - Loss on Sale   | \$6,000,000    |                |
| Other Deferred Debits  |                | \$6,000,000    |
| To record the payment of Site Separation Expenses and defer the income effect.                               |                |                |
| 10 Other Deferred Credits  | \$7,197,000    |                |
| Other Deferred Debits - Loss on Sale   |                | \$7,197,000    |
| To record the transfer of previously deferred revenues.  |                |                |
| 11 Other Deferred Debits - Loss Account  | \$19,517,000   |                |
| Other Deferred Debits  |                | \$19,517,000   |
| To record the transfer of the NYSLW Fund Fees and defer the income effect.                                   |                |                |
| 12 Other Deferred Debits - Loss Account  | \$18,528,000   |                |
| Other Deferred Debits  |                | \$18,528,000   |
| To record the transfer of the DOE D&D Fees and defer the income effect.                                      |                |                |
| 13 Other Deferred Debits - Loss Account  | \$2,399,000    |                |
| Prepayments  |                | \$2,399,000    |
| To record the transfer of prepaid expenses and defer the income effect.                                      |                |                |
| 14 Other Deferred Debits - Loss Account  | \$21,695,000   |                |
| Federal Income Tax Payable   |                | \$21,695,000   |
| To record the payment of Federal Income tax and defer the income effect.                                     |                |                |
| 15 Accumulated Deferred Federal Income Tax   | (\$48,084,000) |                |
| Other Deferred Debits - Loss on Sale   |                | (\$48,084,000) |
| To reverse and defer the effect of previously normalized Federal Income Tax benefits - depreciation.         |                |                |
| 16 Accumulated Deferred Federal Income Tax   | \$12,686,000   |                |
| Other Deferred Debits - Loss on Sale   |                | \$12,686,000   |
| To reverse and defer the effect of previously normalized Federal Income Tax benefits - nuclear fuel.         |                |                |
| 17 Other Deferred Debits - Loss on Sale  | \$44,471,000   |                |
| Accumulated Deferred Federal Income Tax  |                | \$44,471,000   |
| To reverse and defer the effect of previously normalized Federal Income Tax benefits - decommissioning.      |                |                |
| 18 Other Deferred Debits - Loss on Sale  | \$7,351,000    |                |
| Other Deferred Debits  |                | \$7,351,000    |
| To reverse and defer the effect of the future tax benefits of decommissioning previously reflected in rates. |                |                |

STATE OF NEW YORK     )  
                                   )     SS.:  
COUNTY OF NEW YORK    )

EDWARD J. RASMUSSEN, being duly sworn, says:

The foregoing affidavit and the information contained therein is true and correct  
to the best of my knowledge and belief.

  
EDWARD J. RASMUSSEN

Sworn to before me this  
11<sup>th</sup> day of January, 2001



CHANOCH LUBLING  
NOTARY PUBLIC, State of New York  
No. 24-4748879  
Qualified in Kings County  
Commission Expires October 31, 2001

HIERONYMUS



**The Market Power Affidavit Will  
Be Submitted Shortly**

MARKS

## AFFIDAVIT OF KENNETH R. MARKS

### I. Introduction

I am submitting this affidavit on behalf of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"). The purpose of this affidavit is to describe the auction process employed by Con Edison to sell Indian Point Units 1 and 2, three associated gas turbines, and certain other related assets (collectively, "Indian Point").

### Profile and Qualifications

I am a Managing Director in the Investment Banking Division of Morgan Stanley & Co. Incorporated ("Morgan Stanley"), which is located at 1585 Broadway, New York, New York 10036. I received a Bachelor of Science degree in electrical engineering from Bucknell University, a Master of Business Administration degree from the Wharton School at the University of Pennsylvania, and a Ph.D in finance from New York University.

Morgan Stanley is a subsidiary of Morgan Stanley Dean Witter & Co. which is a global investment banking and financial services firm. Morgan Stanley Dean Witter & Co. has offices in New York, London, Tokyo, Hong Kong and other principal financial centers around the world. Morgan Stanley Dean Witter & Co. has over 582 offices operating in 28 countries. As a part of its investment banking services, Morgan Stanley provides advice in connection with mergers, acquisitions and corporate restructurings, which include asset divestitures, across all industries. Morgan Stanley has substantial experience with respect to asset divestitures within the utility arena. Morgan Stanley also advised Con Edison on the sale of three bundles of fossil fuel generation assets: the Ravenswood Bundle comprised of the Ravenswood Generating Station and the Ravenswood Gas Turbine Site, the Arthur Kill Bundle comprised of the Arthur Kill Generating Station and the Astoria Gas Turbine Site and the Astoria Bundle comprised of the Astoria Generating Station and the Gowanus and Narrows Gas Turbine Sites. In addition to advising Con Edison on the sale of Indian Point and the three bundles of fossil fuel generation assets, Morgan Stanley has served as financial advisor to the following utilities in connection with their respective generating asset divestitures: Pacific Gas & Electric Company, San Diego Gas & Electric Company, The United Illuminating Company and GPU Inc.

Morgan Stanley was engaged by Con Edison on December 14, 1999 to act as financial advisor in connection with the sale of Indian Point. In this capacity, Morgan Stanley has assisted Con Edison in, among other things, developing a strategy for the sale, designing the auction process, preparing the confidential Information Memorandum, formulating and contacting a list of potentially interested parties, assisting in the preparation of management presentations, coordinating plant tours and site visits and facilitating the due diligence process. As discussed below, Morgan Stanley also reviewed the non-binding preliminary and definitive bids with the Company. I led the team that worked with Con Edison on this divestiture project.

## II. Sales Process

### A. Objective

The primary objective of the auction process for Indian Point was to implement a competitive auction process which broadly exposed Indian Point to the market and was reasonably designed to maximize the value received for Indian Point. The auction process used was similar to the process used for divesting Con Edison's fossil generation as approved by the New York Public Service Commission ("PSC"). The PSC Staff was consulted on all aspects of the auction, including the design and implementation of the auction, the progress of the auction while in process, and the development and negotiation of the Asset Purchase and Sale Agreement and related Agreements (the "Agreements").

### B. Process

Morgan Stanley worked closely with Con Edison personnel and its attorneys to develop the timetable and process for the auction. Based upon our experience in asset divestitures, we recommended that the auction proceed in a three-phase process: (a) Phase I, the identification of potential purchasers, initial due diligence performed by interested parties and the submission of non-binding initial bids ("Phase I Bids"); (b) Phase II, further due diligence followed by the submission of final, binding bids ("Phase II Bids"); and (c) Phase III, the evaluation and selection of final proposals from qualified Phase II bidders.

### C. Confidentiality

Several measures to preserve confidentiality were implemented. Interested parties were required to execute confidentiality agreements concerning the information obtained throughout the auction process. Signing the confidentiality agreement was a prerequisite to receiving the Offering Materials (as defined below) describing Indian Point.

Bidders were instructed to direct all inquiries to Morgan Stanley and not to contact directly, officers, employees or other representatives of Con Edison or any of Con Edison's affiliates or other advisors, on matters related to the auction, unless provided by the Company otherwise. Company personnel were also instructed to refer all contacts from prospective bidders to Morgan Stanley. To the extent practical, all communication was done using bidder code names. To the best of my knowledge, the identity of each bidder and information relating to its bid was limited, on a need-to-know basis, to the Morgan Stanley auction team, Con Edison employees and advisors, and PSC Staff project members.

### D. Preliminary Phase

Con Edison and Morgan Stanley identified potential purchasers of Indian Point through letters and/or telephone calls to a broad universe of potentially interested parties. The

Company prepared announcement materials which were sent to potentially interested parties.

A notification letter, accompanied by an executable Confidentiality Agreement, was sent to potentially interested parties identified by Con Edison and Morgan Stanley. The notification letter described in general the auction process as well as some of the characteristics of Indian Point. Interested parties were instructed to return an executed copy of the Confidentiality Agreement to the Company's attorneys in order to receive the Offering Materials. Certain amendments to the Confidentiality Agreement, on a case-by-case basis, were accepted but only after having been negotiated by the Company's attorneys on behalf of the Company with the prospective buyer.

#### E. Phase I

The Information Memorandum describing the Assets was distributed by Morgan Stanley beginning in January 2000. The Information Memorandum was accompanied by a cover letter describing in detail the auction process and required elements of the Phase I proposal. In addition to the Information Memorandum, Morgan Stanley distributed CD-ROMs containing detailed information relating to Indian Point (collectively, the "Offering Materials").

The Phase I proposal requested specific qualification information in connection with the submission of a Phase I bid, including a preliminary non-binding estimate of the proposed cash purchase price, an indication of the source of financing and the financial statements of the entity which would purchase Indian Point, a discussion of operational capability of the bidder, a list of additional information required to finance a definitive acquisition proposal, and a list of corporate, shareholder or regulatory approvals required for the bidder to consummate a transaction.

The deadline for submission of Phase I proposals for Indian Point was June 26, 2000. After carefully reviewing each Phase I proposal, Morgan Stanley made recommendations as to which bidders should be invited by Con Edison into Phase II of the process.

#### F. Phase II

Following the approval of Con Edison, Morgan Stanley invited such interested parties to participate in Phase II of the process.

The Phase II bidders were invited to conduct further due diligence. Each Phase II bidder received a second set of compact discs providing detailed information relating to Indian Point. Phase II bidders were also invited to participate in extensive management presentations, breakout sessions and plant tours to assess the facilities. In addition, Con Edison also assembled and made available for review by Phase II bidders all relevant documents at a data room at 1 Park Place, Peekskill, New York, located nearby Indian Point.

In addition to all of the information presented to the bidders, Morgan Stanley distributed to all bidders all written responses to questions posed by bidders pertaining to Indian Point. Con Edison established an internal project team with the specific responsibility of providing responses to these questions. Employees of Con Edison and advisors also made themselves available for meetings and conference calls with Phase II bidders in order to address each bidder's individual requests for information.

Phase II also included the development of the Agreements. These included the Asset Purchase and Sale Agreement, Continuing Site Agreement, and Gas Turbine Site Ground Lease, among others. On July 30, 2000, Morgan Stanley distributed to each Phase II bidder the proposed texts of the Agreements to be signed by Con Edison and the bidder selected to purchase Indian Point. Morgan Stanley invited each Phase II bidder to submit in writing, by August 28, 2000, the material changes, if any, the Phase II bidder would require in order to execute the Agreements.

Con Edison, Morgan Stanley and its legal advisors worked intensively to review the comments received and to revise the Agreements to reflect accepted comments. Revised Agreements that reflected accepted comments were circulated to Phase II bidders on September 23, 2000, who were encouraged to submit final offers, with and without a power purchase agreement ("PPA"), based on the terms and conditions contained in the revised Agreements.

#### G. Phase III (Post-Bid Process)

The deadline for receiving Phase II binding bids for Indian Point was October 11, 2000. In assessing overall value, Con Edison considered price, compliance with the procedures and terms contained in the final bid letter, the financial qualifications of the bidder and the bidder's ability to fulfill its obligations with respect to the assets to be acquired, the proposed revisions to the Agreements, the proposed terms for the PPA and the ability of the bidder to close on the sale of Indian Point in a timely manner.

On November 9, 2000, Con Edison executed definitive transaction agreements with a special purpose subsidiary of Entergy Corporation to acquire Indian Point for approximately \$600 million, including approximately \$100 million for nuclear fuel. The parties also executed a PPA under which Con Edison would purchase the output of Indian Point Unit 2 through December 31, 2004.

Morgan Stanley provided a fairness opinion to the Board of Trustees of Con Edison that the consideration to be received by the Company pursuant to the Agreements is fair from a financial point of view to the Company.

### III. Conclusion

The auction of Indian Point was conducted according to the process discussed in this affidavit and in a manner similar to the process approved by the PSC for Con Edison's fossil generation divestiture. To the best of my knowledge, all bidders were given equal

access to information on a non-discriminatory basis and confidentiality of bidders' identities and information relating to their bids was maintained during the process.

I believe that the auction process outlined above was commercially reasonable and resulted in a competitive auction process which broadly exposed Indian Point to the market and was reasonably designed to maximize the value received for Indian Point.

Our review of precedent nuclear asset sales indicates that the value to be received by Con Edison for Indian Point, on a \$/kW basis, is in the high end of the range of values received in the precedent nuclear asset sales.



KENNETH R. MARKS

Sworn to before me this

10<sup>th</sup> day of January 2001



CHANOCH LUBLING  
NOTARY PUBLIC, State of New York  
No. 24-4748879  
Qualified in Kings County  
Commission Expires October 31, 2001

KANSLER



**BEFORE THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION**

----- x  
**Joint Petition of Consolidated Edison Company :**  
**of New York, Inc. and Entergy Nuclear Indian :** Case No. \_\_\_\_\_  
**Point 2, LLC for Authority Under Section 70 of :**  
**the Public Service Law to Transfer Certain :**  
**Generating Assets and for Related Relief :**  
----- x

STATE OF NEW YORK            )  
COUNTY OF WESTCHESTER )

**AFFIDAVIT OF MICHAEL R. KANSLER**

Michael R. Kansler, having been duly sworn, deposes and says:

1. I am the Senior Vice President and Chief Operating Officer of Entergy Nuclear Indian Point 2, LLC. I am also the Senior Vice President and Chief Operating Office of Entergy Nuclear Operations, Inc.

2. The purpose of my affidavit is to provide information in support of the Joint Petition of Consolidated Edison Company of New York, Inc. and Entergy Nuclear Indian Point 2, LLC for authority under Section 70 of the Public Service Law to transfer certain generation and related assets. The information contained in this Affidavit is also being supplied in support of the petition for a declaratory ruling that lightened regulation apply to Entergy Nuclear Indian Point 2, LLC. In specific, I address financial and operational aspects of Entergy Nuclear Indian Point 2, LLC ("Entergy Nuclear") and Entergy Nuclear Operations, Inc. ("ENO").

3. Entergy Nuclear entered into an Asset Purchase and Sale Agreement ("APSA") with Consolidated Edison Company of New York, Inc. ("Con Edison") to acquire the Indian Point 2 Generating Plant ("IP2"), the retired Indian Point 1 Generating Plant ("IP1"), three associated gas turbines, and related assets. Also included in the transaction is the Toddville Training Center located in Cortlandt, New York.

4. Entergy Nuclear is a limited liability company duly organized and validly existing, and in good standing, under the laws of Delaware. Entergy Nuclear is an indirect wholly owned subsidiary of Entergy Corporation, and an indirect wholly owned subsidiary of Entergy Nuclear Holding Company #3. Entergy Nuclear's plant office will be located in Buchanan, New York.

5. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. ENO's Northeast office is located in White Plains, New York. ENO will be appointed as

BEFORE THE NEW YORK STATE  
PUBLIC SERVICE COMMISSION

----- x  
Joint Petition of Consolidated Edison Company :  
of New York, Inc. and Entergy Nuclear Indian :  
Point 2, LLC for Authority Under Section 70 of :  
the Public Service Law to Transfer Certain :  
Generating Assets and for Related Relief :  
----- x

Case No. \_\_\_\_\_

STATE OF NEW YORK            )  
COUNTY OF WESTCHESTER )

AFFIDAVIT OF MICHAEL R. KANSLER

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5. ENO, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation and a direct wholly owned subsidiary of Entergy Nuclear Holding Company #2. ENO's Northeast office is located in White Plains, New York. ENO will be appointed as

Entergy Nuclear's agent to operate and maintain IP2, and to maintain IP1. ENO currently employs approximately 1700 persons, primarily at the Indian Point 3 and FitzPatrick nuclear power stations and its White Plains office. ENO also employs personnel in Connecticut, Maine and Mississippi.

6. Entergy Corporation is a United States-based global energy company with power production, distribution operations and related diversified services. Entergy Corporation is the third largest power generator in the nation with more than 30,000 megawatts of generating capacity. Entergy Corporation, through its subsidiaries, owns and operates the Indian Point 3 and James A. FitzPatrick plants in New York, and the Pilgrim Nuclear Station at Plymouth, Massachusetts. In addition, Entergy Corporation, through its subsidiaries, owns and operates five nuclear power reactors at four locations in Arkansas, Mississippi and Louisiana. Entergy Corporation has over twenty-five years of experience owning and operating nuclear assets. Entergy Corporation is headquartered in New Orleans, Louisiana.

7. Entergy Corporation, through its subsidiaries is also managing decommissioning activities at Maine Yankee in Wiscasset, Maine and Millstone Unit 1 in Waterford, Connecticut.

8. Entergy Nuclear and ENO plan to own and operate IP2 in a safe, efficient and reliable manner and to continue safe maintenance of IP1. ENO is a recognized leader in providing safe, reliable, and efficient nuclear generation. Entergy's nuclear program has an excellent safety record with top-quartile operating performance. At Entergy's plants, safety is always #1.

9. Entergy Corporation, through its subsidiary Entergy Nuclear, is purchasing the assets described in the APSA to pursue its nuclear growth strategy in the Northeast and, in general, to further its business plan as the pre-eminent owner and operator of nuclear generating facilities in the United States.

10. As part of the IP2 and IP1 transaction, Entergy Corporation executed a parent guarantee securing the performance of Entergy Nuclear prior to and at the closing. In addition, as of the closing, Entergy Nuclear and ENO will have access to an established line of credit of \$20 million from an affiliate company, Entergy Global Investments, Inc. This line of credit will be available to Entergy Nuclear and ENO to provide any necessary working capital for the operation and maintenance of the plants. Entergy Nuclear and ENO will also have access to a line of credit up to an amount of \$35 million from Entergy International Ltd. LLC to provide additional financial resources as needed for the safe and reliable operation and maintenance of IP1 and IP2.

11. Entergy Nuclear and ENO plan to own and operate the IP2 Unit at least through the term of its operating license. The IP2 license currently expires in 2013.

12. The electricity produced by IP2 will be sold to Con Edison through 2004, pursuant to a Power Purchase Agreement. Thereafter, it is anticipated that electricity produced by IP2 will be sold directly into the competitive wholesale electricity market. Entergy Nuclear and ENO do not plan to serve retail electric customers. In addition, Entergy Nuclear and ENO

do not have any plans to build or acquire transmission facilities other than the ancillary facilities related to the operation of IP2 and the related gas turbine generation facilities contemplated in the APSA, or to provide transmission or distribution service.

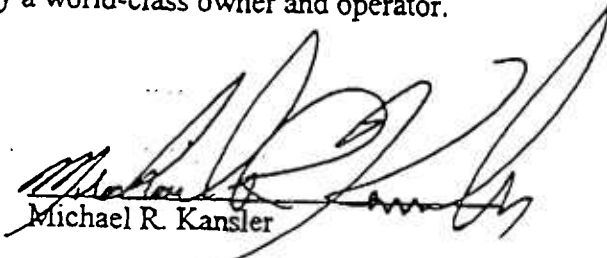
13. The sale of IP1 and IP2 to Entergy Nuclear will place all three units at the Indian Point site under a single owner for the first time in their twenty-five year operating history.

14. Entergy Corporation and its subsidiaries have been successful at attracting and developing the very best nuclear managers. Entergy Corporation and its subsidiaries are also committed to a team concept and value their relationship with their employees. ENO and Entergy Nuclear plan to continue this concept with employees at IP2. As a part of the APSA, Entergy Nuclear and ENO agreed to offer employment to all plant employees, assume the terms and conditions of Con Edison's collective bargaining agreement until its expiration, and maintain at least equivalent compensation and benefits to continuing non-union management employees for a period of three years.

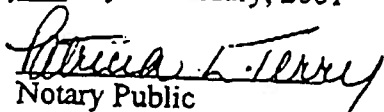
15. As part of the APSA, Entergy Nuclear will assume responsibility for the future decommissioning of IP1 and IP2. The APSA requires Con Edison to transfer \$430 million from its decommissioning trusts at the closing, which is the amount that meets the United States Nuclear Regulatory Commission's requirements on the anticipated closing date. Con Edison will transfer all of the assets of Con Edison's Qualified Decommissioning Trust to Entergy Nuclear. To the extent the fair market value of the assets of that trust exceed \$430 million, the purchase price will be adjusted upward by the excess amount. If the fair market value of the assets of Con Edison's Qualified Decommissioning Trust is less than \$430 million, Con Edison will transfer assets from its Nonqualified Decommissioning Trust such that the aggregate fair market value of the decommissioning funds transferred to Entergy Nuclear equals \$430 million. Entergy Nuclear plans to decommission both IP1 and IP2 at the end of the license for IP2.

16. The New York State Public Service Commission's approval of the APSA and associated agreements as in the public interest will promote the state and federal goal of fostering a competitive electricity supply market. The Commission will likewise ensure the long-term, safe and reliable operation of the nuclear assets at issue by a world-class owner and operator.

Dated: January 11, 2001

  
Michael R. Kansler

Sworn to before me this  
11<sup>th</sup> day of January, 2001

  
Notary Public

PATRICIA L. TERRY  
Notary Public, State of New York  
No. 4991258  
Qualified in Westchester County  
Commission Expires Jan. 27, 2002

arrange for service and pay charges under any applicable NYISO schedule that are necessary for delivery of its energy to Con Edison's system.

### **3.2 Taxes**

Each party hereto will be liable to the appropriate tax authorities for sales, use, gross receipts or other similar or different taxes imposed upon the revenues derived or services rendered by such party.

### **3.3 Con Edison Service**

Con Edison will provide usage information for Customer to the NYISO to enable the NYISO to reconcile energy and installed generating capacity.

Con Edison will provide the following services to Customer upon request, at the rates set forth in the Retail Access Schedule, or the Operating Procedure:

Special Meter Readings

Additional Customer Information

Account Separation

### **3.4 Metering, Billing, and Payment**

- A. Retail delivery service will be metered at the point of service termination in accordance with General Rule III (8) of the Full Service Schedule and Sections 7.1 and 7.2 of the Operating Procedure. Con Edison will administer each Customer's account and render to each Customer a single combined bill for each account that includes charges and fees for services pursuant to Section 7 of the Operating Procedure.
- B. The provisions of General Rule III (11) of the Full Service Schedule are applicable with respect to payment matters such as backbills, estimated bills, plural-meter billing, tampered equipment, inability to gain access, deferred payment agreements, late payment charges, and interest on overpayments.
- C. Customer shall pay the full amount stated in any invoice from Con Edison to Customer, without deduction, set-off or counterclaim, within twenty (20) days from the date of such invoice. Claims that any invoice is not correct will be made no more than three (3) months after the invoice date.

**D.** Upon failure of Customer to make any payment when due under this Agreement, Con Edison will assess a late payment charge at the rate stated in the Full Service Schedule on all overdue billed amounts, including arrears and unpaid late payment charges.

### **3.5 Customer Accounts**

Con Edison will provide Customer with Customer's billing determinants and such other information as is detailed in the Operating Procedure. Such information will be provided in accordance with the procedures set forth in the Operating Procedure.

## **ARTICLE IV**

### **4.1 Complaint Procedure for Anti-Competitive Claims**

Customer or any competitor of Con Edison that believes that Con Edison has violated the standards of conduct established in the Agreement and Settlement may file a complaint in writing with Con Edison. The Company will respond to the complaint within twenty (20) business days after receipt of the complaint. Within fifteen (15) business days after filing of such response, Con Edison and the complaining party will meet in an attempt to resolve the matter informally. If Con Edison and the complaining party are not able to resolve the matter informally, the matter will be referred promptly to the PSCNY for disposition.

### **4.2 Resolution of Disputes**

Any dispute arising with respect to service under this Agreement (other than a dispute under Section 4.1), will be resolved pursuant to Section 7.6 of the Operating Procedure.

### **4.3 Liability**

Con Edison will endeavor at all times to provide regular and uninterrupted transmission and distribution services, but in case such services shall be interrupted or irregular or defective or fail from causes beyond its control or through ordinary negligence of employees, servants, or agents, Con Edison shall not be liable therefor. In accordance with operating policies established by the Company or the New York Independent System Operator, conditions on the electric transmission or distribution system could require remedial actions, including voltage reduction or load shedding, in the interests of preserving

system safety and reliability. Such actions shall constitute a circumstance beyond the control of the Company for which the Company shall not be liable.

#### 4.4 Notices

Any notice to be given by Customer or Con Edison to each other hereunder will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that party (or at such other address as that party may from time to time designate by giving notice thereof):

To Con Edison: Consolidated Edison Company of New York, Inc.  
Retail Choice Group  
4 Irving Place 9<sup>th</sup> Floor  
New York, New York 10003  
Attention: Section Manager  
Phone No. 212-460 2079

To Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone No. \_\_\_\_\_

#### 4.5 Amendments

Notwithstanding any provision of this Agreement, Con Edison may at any time propose and file with the PSCNY changes to the rates, terms, and conditions of Retail Access Schedule, and/or major changes to the Operating Procedure. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the PSCNY.

#### 4.6 Prior Agreements Superseded.

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, supersedes any and all previous understandings between the parties with respect to the subject matter hereof, and binds and inures to the benefit of the parties, their successors and permitted assigns.

**4.7 Waiver and Modification.**

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the parties hereto. Any waiver will be effective only for the particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

**4.8 Applicable Law and Forum.**

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of New York except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Customer irrevocably consents that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York or a federal court of the United States of America located in the State of New York, County of New York. Customer irrevocably waives any objection that it may now or in the future have to the State of New York, County of New York as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

**4.9 Severability.**

If one or more provisions herein will be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

**4.10 Agency.**

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between Con Edison and Customer or to impose any such obligation or liability upon Con Edison.



**4.11 Not for the Benefit of Non-Parties**

This Agreement is for the benefit of Customer and Con Edison, and is not for the benefit of third parties.

**IN WITNESS WHEREOF**, Con Edison and Customer have executed this Agreement.

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

By: \_\_\_\_\_

Name:

Title:

Date:

[Customer]

By: \_\_\_\_\_

Name:

Title:

Date:

**APPENDIX NO. 1**

**CUSTOMER INFORMATION FORM**

## CUSTOMER INFORMATION

1. Name: \_\_\_\_\_  
DBA Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Town/City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code + 4: \_\_\_\_\_ Room: \_\_\_\_\_
2. Mailing Address, if different from above:  
DBA Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Town/City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code + 4: \_\_\_\_\_ Room: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax No.: \_\_\_\_\_
3. Customer Contact Personnel (Name and Telephone Number)
4. Internet Address \_\_\_\_\_ @ \_\_\_\_\_
5. Provide Names and Titles of Officers of All Partners on a separate sheet include mailing address and telephone number if different from above.
6. Attach a copy of the determination of eligibility issued by the New York State Department of Public Service.
7. Attach a copy of the executed NYISO service agreements.
8. Do you have an established ongoing business relationship with Con Edison, either as a seller, purchaser, or both? If so, provide details on a separate sheet.
9. What is the sales tax status of your business? Check one:  
( ) Taxable ( ) Non-taxable ( ) Partially tax exempt
10. If you claim tax exemption, attach a copy of the appropriate exempt certificate to this form.
11. Tax Identification Number (Required): \_\_\_\_\_
12. Provide two bank references.



# APPLICATION FOR SERVICE FOR NON-RESIDENTIAL CUSTOMERS

Welcome! This is your application to the Consolidated Edison Company of New York, Inc. for non-residential electric service, gas service or both. If you want to apply for residential rates, use a different form. If you have any questions regarding which form to use, or the rates available, refer to the attached **IMPORTANT INFORMATION FOR ALL APPLICANTS** or speak with a service representative.

As a Consolidated Edison non-residential customer you agree to pay for service supplied at the rates, charges, and terms of your service classification, and in accordance with the provisions of the applicable (electricity or gas) Consolidated Edison rate schedule. Copies of our rate schedules are available upon request.

Please read all questions carefully and answer to the best of your knowledge. **PLEASE PRINT YOUR ANSWERS, AND SIGN THE APPLICATION ON THE REVERSE SIDE.**

Today's Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## PART A. NEW ACCOUNT INFORMATION

1. (a) **ACCOUNT NAME:** List the name(s) of the person(s) and/or business who owns or leases the premises where service will be used and who will be responsible for the new account.

\_\_\_\_\_  
\_\_\_\_\_

- (b) **ACCOUNT ADDRESS:** Please enter the address where you want to receive electric or gas service:

Street: \_\_\_\_\_

Room/Floor/Office #: \_\_\_\_\_

Town/City: \_\_\_\_\_

ZIP + 4: \_\_\_\_\_

2. (a) **MAILING ADDRESS WHERE WE SHOULD SEND BILLS, IF DIFFERENT FROM ABOVE:** If you want your Consolidated Edison bills to be mailed to a name or address different than that shown above, enter name and address here:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

Room/Floor/Office #: \_\_\_\_\_

Town/City: \_\_\_\_\_

State: \_\_\_\_\_

ZIP + 4: \_\_\_\_\_

- (b) **TELEPHONE NUMBER:** What is the telephone number for the account?  
Is there another telephone number where we can reach you?

\_\_\_\_\_

\_\_\_\_\_

3. **ACCESS TO THE ELECTRIC AND GAS METERS:**  
If access to your meter is controlled by another person, enter the name and address of the person who can provide access:

Name: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Street: \_\_\_\_\_

Room/Floor/Office #: \_\_\_\_\_

Town/City: \_\_\_\_\_

ZIP + 4: \_\_\_\_\_

## PART B. SERVICE CLASSIFICATION

### IMPORTANT INFORMATION

It is important for you to answer the following questions accurately and completely to determine the proper service classification for your account. For further information on your rights as a customer, see pamphlet entitled "YOUR RIGHTS AND RESPONSIBILITIES AS A NON-RESIDENTIAL CUSTOMER," and the attached "IMPORTANT INFORMATION FOR ALL APPLICANTS," or speak with a Consolidated Edison service representative.

1. **SERVICE BEING REQUESTED:**

☐ Electric ☐ Gas

2. **DATE YOU ARE RESPONSIBLE FOR ACCOUNT:**

\_\_\_\_ / \_\_\_\_ / \_\_\_\_

3. **NON-RESIDENTIAL USE:** To determine if the premises will be used exclusively for non-residential purposes, answer the following question(s).

Do you or your employees plan to live at this premises?

☐ Yes ☐ No

If YES, do you plan to use service primarily for residential purposes?

☐ Yes ☐ No

4. **RELIGIOUS ORGANIZATIONS, COMMUNITY RESIDENCES AND VETERANS' ORGANIZATIONS:**

The Public Service Law, Section 76, permits any corporation or association organized and conducted in good faith for religious purposes, certain community residences, and any post or hall owned or leased by a not-for-profit corporation that is a veterans' organization to receive services at rates no greater than the rates charged to residential customers. For electric service, residential and religious rates *may* be lower than non-residential rates for many customers that are religious organizations, community residences, and veterans' organizations but not for every customer. Qualification for residential rates will be applicable to both electric and gas service. To determine if you are eligible for residential rates, refer to attached "IMPORTANT INFORMATION FOR ALL APPLICANTS" or speak with a service representative.

**PLEASE COMPLETE THE BACK OF THIS APPLICATION. THE FOLLOWING QUESTIONS ARE IMPORTANT IN DETERMINING YOUR RATE CLASSIFICATION AND WHETHER YOU WILL BE REQUIRED TO PAY A DEPOSIT.**

- Indicate type:
- ☐ Store, Restaurant, Commercial Office.
  - ☐ Medical or professional office building or suite
  - ☐ Apartment or premises, in a residential building, where business is also conducted (doctor's office, beauty parlor, real estate, etc.)
  - ☐ Hotel, motel, hospital, nursing home, flea market (If a hotel, please discuss with service representative)
  - ☐ Religious use, such as a house of worship, living quarters for the clergy, rectory or parochial school
  - ☐ Other (Describe) \_\_\_\_\_
  - ☐ Veterans' Organizations' use: a post or hall owned or leased by a not-for-profit veterans' organization

Which of the following best describes your use of electricity? (Check only one)

- ☐ Exclusively for hall lighting, elevators, and other common areas of apartment or commercial buildings
  - ☐ Entire premises for your own use (Example: retail store)
  - ☐ Entire premises, including redistributing electricity to:
    - ☐ Residential tenants
    - ☐ Commercial tenants
- (If you are redistributing service to others, please speak with a service representative)

Do you have (Check all that apply):

- ☐ An emergency generator
- ☐ Electric space heating
- ☐ Electric hot water heating
- ☐ Yes ☐ No

Have you made, or do you plan to make, wiring changes on this location?

**GAS INFORMATION:** The amount of gas you use and how you use it will generally determine the rate at which you will be billed. Which of the following best describes your business or premises? (Check only one)

- ☐ Apartment house (4 or more apartments)
- ☐ Religious use, as a house of worship, living quarters for the clergy, rectory or parochial school
- ☐ Store, Restaurant, Commercial Office
- ☐ Veterans' Organizations' use: a post or hall owned or leased by a not-for-profit veterans' organization

Check ALL the uses of gas which apply to this account:

- ☐ Hot water heating
- ☐ Space heating
- ☐ Dual-fuel burner
- ☐ Laundry dryers
- ☐ Gas air-conditioning
- ☐ Gas redistribution to tenants for cooking
- ☐ Commercial cooking
- ☐ Electricity Generator

☐ Other \_\_\_\_\_ ☐ Yes ☐ No

Have you made, or do you plan to make, gas piping changes to this location?

**Buildings of Public Assembly:** Will you operate a building with a capacity of 75 or more persons to which the public is generally admitted? (e.g. church/temple, theatre, restaurant, etc.)

☐ Yes ☐ No  
☐ Yes ☐ No

Will you operate a factory which normally employs 75 or more persons?

### ART C. INFORMATION ABOUT OTHER CONSOLIDATED EDISON ACCOUNTS

**EXISTING OR PRIOR NON-RESIDENTIAL ACCOUNT WITH CONSOLIDATED EDISON:** If you now have, or previously had, a Consolidated Edison non-residential account, you may not have to pay a deposit for this new account. Do you now, or did you previously have, a non-residential account with Consolidated Edison?

- ☐ (a) I do not now, nor did I previously, have a Consolidated Edison non-residential account.
- ☐ (b) I currently have a Consolidated Edison non-residential account. Acct. No.: \_\_\_\_\_

DO YOU WANT THE OTHER ACCOUNT TO BE TURNED OFF? ☐ Yes ☐ No

Name: \_\_\_\_\_

Street: \_\_\_\_\_

Town/City: \_\_\_\_\_

Room/Floor/Office #: \_\_\_\_\_

ZIP + 4 \_\_\_\_\_

- ☐ (c) I previously had a non-residential account with Consolidated Edison, which is now closed, at:

Name: \_\_\_\_\_

Street: \_\_\_\_\_

Town/City: \_\_\_\_\_

Room/Floor/Office #: \_\_\_\_\_

ZIP + 4 \_\_\_\_\_

### ART D. ADDITIONAL INFORMATION

**1. SALES TAX STATUS:** What is sales tax status of business? ☐ Taxable ☐ Non-taxable ☐ Partially Tax Exempt

**IF YOU CLAIM TAX EXEMPTION, ATTACH THE APPROPRIATE EXEMPT CERTIFICATION TO THIS FORM.**

- ☐ ST-119.1: New York State and Local Sales and Use Tax - Exempt Organization Certification
- ☐ ST-121: New York State and Local Sales and Use Tax - Exempt Use Certification
- ☐ TP-385: Certification of Residential Use - Sales Tax Reduction on Energy Purchases

(Copies of these forms are available at our office)

**2. IDENTIFICATION NUMBER:** Enter Tax Identification #, or if you do not have a Tax ID #, your Social Security # \_\_\_\_\_

**3. BANK REFERENCE:** Name and Address of Bank: \_\_\_\_\_

Account in name of: \_\_\_\_\_

### ART E. SIGNATURE

Before signing this application, the applicant should carefully read the section concerning eligibility of religious organizations, community residences, and veterans' organizations for residential rates, which is located at the bottom of the first page of this application, and the attached IMPORTANT INFORMATION FOR ALL APPLICANTS. Call us if you have questions about your rights and responsibilities as a Con Edison customer.

To the best of my knowledge, the information provided here is accurate and no attempt has been made to misrepresent the facts. By my signature below, I also acknowledge that I have been given the pamphlet entitled "YOUR RIGHTS AND RESPONSIBILITIES AS A NON-RESIDENTIAL CUSTOMER".

Application submitted by:

Print Name \_\_\_\_\_

Position/Title \_\_\_\_\_

Full Signature \_\_\_\_\_

Affiliation to person responsible for account:

- ☐ Owner
- ☐ Corporate Officer
- ☐ Partner
- ☐ Agent
- ☐ Other (explain below) \_\_\_\_\_

## IMPORTANT INFORMATION FOR ALL APPLICANTS

The important information below provides further explanation regarding your application for service. Retain this form for your records.

**RT A. NEW ACCOUNT INFORMATION:** Attach a copy of your lease or deed. If you purchased real estate and don't have your deed yet, submit a copy of closing papers. Provide a letter of authorization from the customer if the person signing the application is not the customer.

**RT B. SERVICE CLASSIFICATION:** The cost and benefits of service vary under different rate classifications, so it is important that your account be properly classified at the time it is established. If your account meets the eligibility criteria for two different service classifications, you may choose a more beneficial classification. Con Edison relies on the information you provide to properly classify your account. If your information is inaccurate or incomplete, you may be subject to backbilling. If your use of service or equipment changes at any time, you must notify Con Edison immediately to ensure that you continue to be billed under the proper service classification. The more you can tell us about the kind of equipment you have and how you use it, the better we can assist you in determining whether you may be more economically served at a different rate.

In Edison's most frequently assigned non-residential electric and gas classifications are described below.

**Electric:** Most non-residential customers are billed under electric service classification 2 (EL2), whereby they are billed for their consumption, measured in kilowatt-hours (kWhrs). EL2 is assigned to customers whose maximum demand requirements are 10 kilowatts (kW) or less and who generally use less than 3,000 kWhrs a month. Common usage situations under EL2 are small stores, offices, newsstands, and public areas in small buildings.

Users of more electricity are assigned to service classification EL4, EL8, EL9, or EL12, whereby they are billed for both kWhr and kW usage.

EL9 is applicable to customers who have general uses, such as department stores, restaurants, supermarkets, or other businesses.

EL8 is applicable to apartment houses which receive electric service from Con Edison and redistribute it to the dwelling units.

EL4 is applicable if more than 10% of the space served is used by someone other than the customer for commercial or industrial purposes.

Both EL8 and EL4 have special provisions for electric heating customers.

EL12 is for light, heat, and power used in a multiple dwelling where the entire space heating requirements of the residential tenants are supplied by electricity purchased from Con Edison. Some smaller EL12 customers are billed for kilowatt-hour consumption only.

**Time-of-Use (TOU) Rates:** Customers may elect to be billed under TOU rates, whereby they are charged for electricity based on when the service is used. Electricity is most expensive during "peak" hours (weekdays from 8AM to 10PM) and least expensive during "off-peak" hours (weekdays from 10PM to 8AM and on weekends). If your business uses a large portion of its electricity during "off-peak" times, you may be able to save money under these rates. Our largest electricity customers (those whose demand is over 1,500 kW) are required to take service at TOU rates.

**Gas:** Most non-residential gas customers are billed under gas service classification 2 (GS2), a general gas classification covering uses such as heating for office buildings and cooking in restaurants. GS2 customers can purchase gas for their own use or for redistribution to tenants for cooking. Gas service classification 3 (GS3) is assigned for space heating of multiple-dwellings used predominantly for residential occupancy. Gas service classification 12 (GS12) is available to customers who have alternate energy capability, such as a dual-fuel (gas and oil) burners. Service under this rate may be interrupted by Con Edison for certain reasons.

### You May Be Eligible For Special Rate Reductions:

Area Development rates are available to businesses that begin or expand operations in designated areas.

Business Incentive rates are available to businesses that occupy vacant or newly constructed commercial or industrial buildings receiving real property tax abatements.

Economic Development Zone rates are available to eligible businesses in areas designated by New York State.

For information on these rate reductions, consult our Schedules for electric and gas service, which are available for review in all Customer Service Centers, ask one of our representatives, or call (212) 460-4000.

### You May Qualify For Electric Residential Rates or Benefits:

Customers who live and work in their home, whether it is a private house or an apartment, may be eligible for electric residential rates EL1 or EL7 provided that the commercial space does not exceed 25% of the total floor space, and the commercial activities are confined to only one room. In addition, only residents of the premises may work in the space, and there can be no change in the premises outward appearance.

Employers paying the energy bills for an employee's residence may be eligible for residential rates.

Customers who use their electric or gas service primarily for residential purposes may qualify for certain benefits and protections afforded residential customers even though they are billed at non-residential rates.

If you are applying for residential rates as a religious organization, community residence or veteran's organization:  
If you have gas service and qualify for EL1 or EL7, your gas service classification will also be changed to a residential rate.

Religious organizations, certain community residences and veterans' organizations have the choice of being billed under either residential rates or commercial rates.

For most customers, residential rates are more economical. To receive service under residential rates, you must document your eligibility by attaching the requested information to the Application For Service For Non-Residential Customers. If you submit documentation to Con Edison at a later date, the account will be transferred to residential rates as of the date we receive the documents.

If this is a religious organization, you are eligible for residential rates if all of the following apply: the premises are used solely by the religious organization which is applying for service; no part is leased or subleased to another; and activities are conducted primarily for religious purposes. To qualify for residential rates, you must provide documentation of your eligibility. Examples of acceptable proof include, but are not limited to: Certificate of Incorporation under the NYS Religious Corporations Law or Education Law; religious charter; letter from a recognized "parent" religious organization; religious designation from the IRS or other governmental agency; or other reasonable documentation that shows your group is organized, in good faith, for religious purposes. If you apply for, and are denied, residential rates, you may request, in writing, that we inspect the premises and review the rate determination in light of the information obtained from the inspection. You may also appeal the rate classification to the Public Service Commission.

If this is a community residence, you are eligible for residential rates if all of the following apply: the premise is occupied as a supervised or supportive living facility (as defined by the Mental Hygiene Law, Section 1.03, subdivision 28-a or 28-b); the premises provides living accommodations for 14 or fewer residents; and it is operated by a not-for-profit corporation. To qualify for residential rates, you must document your eligibility by providing a copy of your Certificate of Incorporation under the Not-For-Profit Corporation Law and license from the NYS Office of Mental Hygiene or the NYS Office of Mental Retardation and Developmental Disabilities.

If this is a veterans' organization, you are eligible for residential rates if the organization is not a not-for-profit corporation and the service is used in connection with the organization at a post or hall owned or leased by the organization.

**Con Edison Rate Schedules Are Available:** For a detailed description of all Con Edison rates and the other terms and conditions of service, consult our Schedules for electric and gas service, which are available for review at all Con Edison Customer Service Centers. If you have any questions regarding your rate or service, ask a Customer Service Representative for assistance.

#### **PART C. INFORMATION ABOUT CONSOLIDATED EDISON ACCOUNTS**

**You May Be Required To Pay A Deposit:** You may be required to pay a deposit when applying for service. You can call in advance to find out approximately what that amount will be. We determine the amount of the deposit by estimating the cost of two monthly bills. For heating customers, we base the deposit on the cost of two months' service during the heating season. There are alternatives to paying a security deposit by cash, check, or money order. Ask us about the possibility of providing a surety bond or a letter of credit instead of a cash deposit.

**Security Deposit Information:** New non-residential customers are required to pay a deposit when applying for service. Interest is applied to your account annually at a rate set by the Public Service Commission. We hold the security deposit for three years, at which time we review the account and refund the deposit, with interest, if there were no late payments during the 36-month period. If there was one or more late payments, we will continue to review the account monthly and refund the deposit once there are 36 consecutive months without a late payment.

#### **PART D. ADDITIONAL INFORMATION**

**You May Be Fully or Partially Exempt From Paying State or Local Sales Tax.** Please attach the applicable tax form:

- **Form ST-121, NYS and Local Sales and Use Tax-Exempt Use Certificates:** The sales tax exemption is available to manufacturers and other who use electricity to produce tangible personal property. (NYC also offers a tax refund for manufacturers, which can be obtained by filing a NYC Form 9.5. Claim for Credit Applied to General Corporation Tax and Banking Corporation Tax. Contact the NYC Dept. of Finance at (718) 935-6000 for information.)
- **Form TP-385, Certification of Residential Use Sales Tax Reduction on Energy Purchases:** The sales tax reduction is available to customers who use all or some of the premises receiving electric or gas service for residential purposes. The reduction is proportionate to the square footage used for residential purposes. This form should also be filed by any customer who is fully tax exempt and requests interruptible gas service under service classification GS12.
- **Form ST-119.1, NYS and Local Sales and Use Tax-Exempt Organization Certification:** The sales tax exemption is available to any organization, including a religious organization, that has been certified as tax-exempt by the State of New York.

If you have questions about any of the above items, please check with your accountant or call the NYS Dept. of Taxation and Finance at 1 (800) 225-5829.

#### **Enlightened Energy Program**

Con Edison offers cash rebates for the installation of high-efficiency lighting, motors, and cooling equipment. The program is designed to reduce the initial equipment cost and help customers realize operating cost savings for years to come. Call our Energy Guideline at 1 (800) 343-4646 to find out more about rebates or to arrange an appointment with one of our specialists to visit your business and identify opportunities for greater energy efficiency and operating cost savings.

#### **Controlling Your Bill**

**Demand** is a measure of the greatest amount of electricity you use for a full 30 minutes during the billing period. EL2 customers are charged for kilowatt-hour consumption only. When an EL2 customer's consumption exceeds 3,000 kilowatt-hours for two consecutive months, we begin monitoring the demand. If the demand exceeds 10 kilowatts for two consecutive months, the account is assigned to a service classification under which customers are charged for demand as well as kilowatt-hour usage.

Customers who use small amounts of electricity, or who use large amounts of electricity sporadically during the month, will normally pay less under classification EL12. However, those who use large amounts of electricity on a more consistent basis might do better under an electric rate which has charges for demand as well as kilowatt-hour usage, such as EL4, EL8, EL9, or EL12.

Customers assigned to service classifications where there are charges for demand as well as kilowatt-hour usage can manage their bills by keeping their demand constant and avoiding large surges in electric usage. When you first turn on large electrical equipment, such as heavy machinery, air conditioning, and refrigeration, a lot of power is used immediately; that surge causes the demand to rise or "peak". You can reduce the "peak" in any 30-minute period by not turning on all your appliances at the same time. Instead, turn on your appliances over a longer time period. You might also consider replacing older, less efficient appliances with newer energy-efficient models.

#### **Exporting Assistance**

The Export Opportunity Hotline can provide you with valuable information about expanding your business through international exporting. The toll-free number is 1 (800) 285-9204.

#### **Con Edison's Payment Policy**

Payment is due upon receipt of the bill. Your payment is considered late if it is not received within 23 days of the date we mailed the bill to you. Late payment charges will be imposed on all past-due balances on non-residential accounts at a rate of 1.5 percent a month. If you make two or more late payments in a twelve-month period, you may be required to pay a deposit or pay an additional deposit.

If you have a problem paying Con Edison, give us a call to arrange a payment agreement. The terms of a payment agreement generally require that you pay 30% of the amount owed, or twice your monthly bill, when you sign the agreement, with the balance paid in installments.

#### **How to Reach Us By Phone**

It's never too early or too late to reach us by phone. Our Tele-Choice phone service is available to you 7-days-a-week, 24-hours-a-day. You can speak with a Con Edison Service Representative or, using a touch-tone phone, select our self-service option to get the information you want. Tele-Choice is quick and easy to use. Just call the number for your area listed below. Have your account number ready, and follow these easy instructions:

| AREA                | TELE-CHOICE #  | TELE-CHOICE INSTRUCTIONS  |
|---------------------|----------------|---|
| The Bronx .....     | (718) 409-7100 | 1. Call us at the Tele-Choice number for your area shown at left.                           |
| Brooklyn .....      | (718) 802-6000 | 2. Dial or Press 1 if you want to report an emergency.                                      |
| Manhattan .....     | (212) 338-3000 | 3. Dial or Press 1 if you have a touch-tone phone and wish to access your account directly. |
| Queens .....        | (718) 830-7400 | 4. Dial or Press 1 to access your account.  |
| Staten Island ..... | (718) 390-6400 | 5. Enter your account number.   |
| Westchester .....   | (914) 925-6900 | 6. Select any of the options shown below.   |



#### **TELE-CHOICE SELF-SERVICE OPTIONS**

|                |                |                |                |                |                |
|----------------|----------------|----------------|----------------|----------------|----------------|
| <b>PRESS 1</b> | <b>PRESS 2</b> | <b>PRESS 3</b> | <b>PRESS 4</b> | <b>PRESS 5</b> | <b>PRESS #</b> |
|----------------|----------------|----------------|----------------|----------------|----------------|

**CON EDISON NUCLEAR DIVESTITURE**

**INDIAN POINT SALE – FINAL CONTRACTS**

**NOVEMBER 9, 2000**

**GENERATING PLANT AND GAS TURBINE ASSET PURCHASE  
AND SALE AGREEMENT**

**GUARANTEE AGREEMENT**

**INDIAN POINT CONTINUING SITE AGREEMENT**

**MUTUAL CONSENT AND WAIVER AGREEMENT**

**POWER PURCHASE AGREEMENT**





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GENERATING PLANT  
AND GAS TURBINE  
ASSET PURCHASE AND SALE AGREEMENT

FOR

INDIAN POINT GENERATING STATION  
UNITS 1 AND 2 AND GAS TURBINE UNITS 1, 2 AND 3  
AND  
TODDVILLE TRAINING CENTER

LOCATED AT VILLAGE OF BUCHANAN AND/OR  
THE TOWN OF CORTLANDT  
WESTCHESTER COUNTY, NEW YORK

By and Between

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

ENTERGY NUCLEAR INDIAN POINT 2, LLC

Dated as of November 9, 2000

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GENERATING PLANT AND GAS TURBINE  
ASSET PURCHASE AND SALE AGREEMENT (including  
the Schedules hereto, this "Agreement") dated  
as of November 9, 2000, by and between  
CONSOLIDATED EDISON COMPANY OF NEW YORK,  
INC., a New York corporation ("Seller"), and  
ENTERGY NUCLEAR INDIAN POINT 2, LLC, a  
Delaware limited liability company  
("Buyer") (Buyer and Seller are sometimes  
herein referred to collectively as the  
"Parties" and individually as a "Party").

WHEREAS Seller has conducted an auction process in  
which it has solicited proposals to purchase the Auctioned  
Assets (as defined herein); and

WHEREAS Buyer desires to purchase, and Seller  
desires to sell, the Auctioned Assets upon the terms and  
conditions hereinafter set forth.

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

## ARTICLE I

### Definitions

SECTION 1.01. Definitions. As used in this  
Agreement, the following terms have the following meanings:

"Accountants" shall have the meaning set forth in  
Section 3.03(b).

"Adjustment Amount" shall have the meaning set  
forth in Section 3.03(a).

"Adjustment Date" shall have the meaning set forth  
in Section 3.03(c).

"Adjustment Statement" shall have the meaning set  
forth in Section 3.03(a).

"Affected Employees" shall have the meaning set  
forth in Section 8.01(a).

"Affected Union Employees" shall have the meaning  
set forth in Section 8.01(b).



"Affiliate" shall have the meaning set forth in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended.

"Agreement" shall have the meaning set forth in the Preamble.

"Allocation" shall have the meaning set forth in Section 3.04.

"Ancillary Agreements" means the Continuing Site Agreement, the Declaration of Easements Agreement, the GT Site Ground Lease, the Power Purchase Agreement, the Bill of Sale, the deeds contemplated by Section 7.02(e)(i) and any other agreement to which Buyer and Seller are party and which is expressly identified by its terms as an Ancillary Agreement hereunder.

"ANI" means American Nuclear Insurers.

"Assumed Obligations" shall have the meaning set forth in Section 2.03(a).

"Atomic Energy Act" means the Atomic Energy Act of 1954, as amended, and the rules and regulations promulgated thereunder.

"Auctioned Assets" shall have the meaning set forth in Section 2.02(a).

"Benefit Plans" shall have the meaning set forth in Section 4.12.

"Bidder Confidentiality Agreements" shall have the meaning set forth in Section 6.02(b).

"Bill of Sale" shall have the meaning set forth in Section 7.02(q)(i).

"Bowline" shall have the meaning set forth in Section 6.15(b).

"Business Day" means any day other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in New York are authorized or required by Law or other action of a Governmental Authority to close.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Assets" means any property, machinery, equipment, facilities or systems (including Buyer Facilities) that are from time to time owned or leased by Buyer or its Affiliates after Closing and are employed by Buyer in connection with the performance of the activities contemplated by the Ancillary Agreements.

"Buyer Benefit Plans" shall have the meaning set forth in Section 8.02(c).

"Buyer Decommissioning Funds" means the trust funds maintained by Buyer into which the Decommissioning Funds are transferred at Closing, or any successor funds thereto.

"Buyer Facilities" shall mean the "Buyer Facilities" under the Declaration of Easements Agreement.

"Buyer Indemnities" shall have the meaning set forth in Section 9.01(a).

"Buyer Material Adverse Effect" shall have the meaning set forth in Section 5.03(a).

"Buyer Real Estate" shall have the meaning set forth in Section 2.02(a)(i).

"Buyer Required Regulatory Approvals" shall have the meaning set forth in Section 5.03(b).

"Buyer's 401(k) Plans" shall have the meaning set forth in Section 8.04(a).

"Buyer's Pension Plans" shall have the meaning set forth in Section 8.03(a).

"Buyer's Severance Plan" shall have the meaning set forth in Section 8.08(a).

"Buyer's Welfare Plans" shall have the meaning set forth in Section 8.05(a).

"Closing" shall have the meaning set forth in Section 3.01.

"Closing Date" shall have the meaning set forth in Section 3.01.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act.

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

"Collective Bargaining Agreement" shall have the meaning set forth in Section 8.01(b).

"Communications Equipment" means the equipment, systems, switches and lines used in connection with voice, data and other communications activities.

"Confidentiality Agreement" means the Confidentiality Agreement dated February 1, 2000 between Seller and Buyer.

"Consent Order" shall have the meaning set forth in Section 6.15(a).

"Consumer Price Index" shall have the meaning set forth in Section 6.08(b).

"Continued Employees" shall have the meaning set forth in Section 8.01(a).

"Continued Employee Records" shall have the meaning set forth in Section 2.02(a)(vi).

"Continued Non-Union Employee" shall have the meaning set forth in Section 8.02(a).

"Continued Union Employee" shall have the meaning set forth in Section 8.01(b).

"Continuing Site Agreement" means the Continuing Site Agreement dated as of even date herewith between Seller and Buyer.

"Contracts" shall have the meaning set forth in Section 2.02(a)(iv).

"Conveyance Plans" means the Indian Point Conveyance Plan and the Toddville Conveyance Plan.

"Declaration of Easements Agreement" means the Declaration of Easements Agreement to be entered into between Seller and Buyer in the form of Exhibit A-4.

"Decommissioning" means the complete retirement and removal of the Auctioned Assets from service and

the restoration of the Buyer Real Estate (and all surface and subsurface elements thereof including soils, surface water and groundwater), as well as any planning and other activities relating thereto, including (i) the dismantlement, decontamination, removal, storage or entombment of the Auctioned Assets, in whole or in part, and any reduction or removal, whether before or after termination of the NRC operating license for the Auctioned Assets, of radioactivity at the Buyer Real Estate (and all surface and subsurface elements thereof including soils, surface water and groundwater), and (ii) any activities necessary for the retirement, dismantlement, decontamination, removal, storage and entombment of the Auctioned Assets to comply with applicable Laws, the NRC operating license for the Auctioned Assets and any related decommissioning plan. "Decommission" shall have a correlative meaning.

"Decommissioning Accounting Records" shall have the meaning set forth in Section 2.02(a)(vi).

"Decommissioning Funds" means the Qualified Decommissioning Fund and the Nonqualified Decommissioning Fund, collectively.

"Decommissioning Indentures" means the Master Nuclear Decommissioning Trust Agreement between Seller and Harris Trust and Savings Bank made as of December 30, 1988, as amended, regarding the Qualified Decommissioning Fund (it being understood that Mellon Bank (DE) National Association, rather than Harris Trust and Savings Bank, is currently Trustee) and the Master Nuclear Decommissioning Trust Agreement between Seller and Harris Trust and Savings Bank made as of June 30, 1993, as amended, regarding the Nonqualified Decommissioning Fund (it being understood that Mellon Bank (DE) National Association, rather than Harris Trust and Savings Bank, is currently Trustee).

"Decon" means the process by which the radioactive structures, systems, components and equipment of a generating facility are removed or decontaminated to a level that permits termination of such facility's NRC operating license after cessation of operations and release of such facility by the NRC in accordance with applicable NRC regulations.

"Deeds" shall have the meaning set forth in Section 7.02(e).

"Department of Energy" means the United States Department of Energy or any successor thereto.

"Department of Energy Decontamination and Decommissioning Fees" means all fees related to the Department of Energy's Special Assessment of utilities for the Uranium Enrichment Decontamination and Decommissioning Fund pursuant to the Atomic Energy Act, or any similar fees assessed under applicable Law relating to separative work units purchased from the Department of Energy in order to decommission the Department of Energy's gaseous diffusion enrichment facilities.

"DOE Standard Contract" means the Contract For Disposal of Spent Nuclear Fuel And/Or High Level Radioactive Waste, No. DE-CR01-83-NE44373, dated as of June 17, 1983, between the United States of America, represented by the United States Department of Energy, and Seller, as amended.

"Electric Service Contract" means an agreement for service in accordance with Seller's Schedule for Electricity Service, P.S.C. No. 9 - Electricity or Seller's Schedule for Retail Access, P.S.C. No. 2 - Retail Access, as such Schedules may be revised or superseded from time to time, using (i) an Application for Service for Non-Residential Customers in the form of Exhibit I, (ii) a Direct Retail Customer Operating and Transmission Service Agreement in the form of Exhibit J and (iii) a Direct Customer Operating Agreement in the form of Exhibit K.

"Encumbrances" means any mortgages, pledges, liens, security interests, conditional and installment sale agreements, activity and use limitations, exceptions, easements, rights-of-way, deed restrictions, encumbrances, charges of any kind, and any related documents and/or instruments of record.

"Energy Reorganization Act" means the Energy Reorganization Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ENO" means Entergy Nuclear Operations, Inc., an Affiliate of Buyer.

"Entomb" means the process by which radioactive structures, systems, components and equipment of a generating facility are encased in a structurally long-lived substance, such as concrete, whereby the entombed

structure is appropriately maintained, and continued surveillance is carried out until the radioactivity decays to a level that permits termination of the NRC operating licenses for such facility.

"environment" (i) means ambient air, surface water and groundwater (including potable water, navigable water and wetlands), land surface or subsurface strata or (ii) shall have the meaning set forth in any Environmental Law.

"Environmental Laws" means all former, current and future federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), Environmental Permits and New York State Department of Environmental Conservation Technical Administrative Guidance Memoranda, in each case, relating to pollution, protection of the environment, natural resources or human health and safety, including laws relating to the presence, Release of, or exposure to, Hazardous Substances, or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

"Environmental Liability" means all liabilities, obligations, claims, causes of action, actions, suits, judgments, orders, damages, injunctive relief, losses, fines, penalties, fees, expenses and costs arising from, relating to, or in connection with or alleged to arise from, relate to, or be connected with (i) any actual or alleged violation of or compliance or noncompliance with, Environmental Laws prior to, on, or after the Closing Date in connection with the Auctioned Assets or any ownership, operation, maintenance or control thereof; (ii) the presence, Release, use or generation of, or exposure to, Hazardous Substances at, in, under, upon, above, in connection with, or migrating to or from the Auctioned Assets prior to, on, or after the Closing Date or the transportation, or the arrangement thereof, of Hazardous Substances to or from the Auctioned Assets prior to, on, or after the Closing Date; (iii) any action to address such presence, Release, use or generation of, or exposure to, Hazardous Substances at, in, under, upon, above, in connection with, or migrating to or from the Auctioned Assets, whether such action commenced before or commences on or after the Closing Date, including

(A) sampling, analysis, monitoring, investigation, assessment, treatment, remediation, cleanup, containment, removal, mitigation, response, Decommissioning, closure, restoration, reclamation, institutional controls, deed restrictions, evacuation or "precautionary evacuation" (as defined under the Atomic Energy Act and the rules and regulations promulgated thereunder); (B) obtaining any Permits or Environmental Permits or NRC Permits necessary to conduct or cease any such activities; (C) preparing and implementing any plans or studies for any such activities; (D) fees and expenses of engineers, consultants, laboratories and attorneys; and (E) permitting and licensing fees, administrative oversight costs, insurance premiums and related costs and costs to establish and maintain financial assurance funds; and (iv) any loss of life, injury to persons, property or business or damage to natural resources (regardless of whether such loss, injury or damage arose or was made manifest or is alleged to have arisen or manifested itself prior to, on, or after the Closing Date) arising from, relating to, or in connection with or alleged to arise from, relate to, or be connected with any of the matters described in (i), (ii) or (iii) above.

"Environmental Permits" means all permits, licenses, consents, approvals and other governmental authorizations with respect to Environmental Laws relating primarily to the operations of the Generating Plants or the Gas Turbines, but not including any NRC Permits.

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

"ERISA Affiliate" shall have the meaning set forth in Section 4.12.

"Estimated Adjustment Amount" shall have the meaning set forth in Section 3.02(d).

"Estimated Closing Statement" shall have the meaning set forth in Section 3.02(d).

"Excess Decommissioning Funds" means, as of the Expiration Date, the amount, if any, by which the aggregate Decommissioning funds held by Buyer exceed the estimated cost to Buyer of Decommissioning by Safstor or Entomb. For purposes of this definition, the estimated cost to Buyer of Decommissioning by

Safstor or Entomb shall be determined as of the Expiration Date in accordance with the cost estimates filed with the NRC by Buyer and standard industry practices.

"Expiration Date" shall have the meaning set forth in Section 6.08.

"Fair Market Value" means, with respect to the assets of the Decommissioning Funds, the value of such assets (including any accrued interest and dividends relating to such assets) as of the close of the Business Day immediately preceding the Closing Date, which fair market value shall be determined based on a statement prepared on behalf of Seller on a basis consistent with past practice by the financial institutions managing the Decommissioning Funds and listing such assets, together with the purchase price and fair market value of each asset.

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

"Federal Power Act" shall have the meaning set forth in Section 4.03(b).

"Final Order" shall have the meaning set forth in Section 7.01(a).

"Franchise Property" shall have the meaning set forth in Section 2.05(a).

"GAAP" shall have the meaning set forth in Section 1.02.

"Gas Turbines" means the three gas turbines designated as Indian Point Gas Turbine Units 1, 2 and 3.

"Generating Facilities" means the Generating Plants, the Gas Turbines and any additional generating plants, gas turbines or other generating facilities constructed by Buyer after the Closing Date at the site of any Auctioned Assets.

"Generating Plants" means the two nuclear generating units designated as and known as Indian Point Unit 1 and Indian Point Unit 2.

"Governmental Authority" means any federal, state, local, domestic or foreign government or any court,



administrative or regulatory agency, board, committee or commission or other governmental entity or instrumentality, domestic, foreign or supranational or any department thereof.

"Greenfield" means the complete decontamination, dismantlement, and removal of a generating facility such that the NRC operating license for such facility is terminated and the site at which such facility is located is restored to an unrestricted and natural state.

"GT Site" shall have the meaning set forth in Section 2.02(a) (i) (B) (1).

"GT Site Ground Lease" means the GT Site Ground Lease to be entered into between Buyer and Seller in the form of Exhibit A-3.

"Guarantee Agreement" means the Guarantee Agreement to be entered into between Guarantor and Seller substantially in the form of Exhibit F.

"Guarantor" means Entergy International Holdings Ltd LLC, a Delaware limited liability company and an Affiliate of Buyer.

"Hazardous Substances" means (i) any petroleum, petroleum products or byproducts and all other hydrocarbons, petrochemicals, crude oil or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons and other ozone-depleting substances; (ii) radiation, radioactive materials or wastes, including "low-level" or "high-level radioactive wastes," "source material," "special nuclear material," "byproduct material," "spent nuclear fuel," and "transuranic waste," as those terms are defined under the Atomic Energy Act; and (iii) any chemical, material, substance or waste (including thermal discharges) that is prohibited, limited or regulated by or pursuant to any Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

"Income Tax" means any U.S. federal, state, local or foreign Tax or surtax (i) based upon, measured by or calculated with respect to net income, profits or

receipts, including the New York State Gross Receipts Tax (including any municipal gross receipts Taxes and excise Taxes, capital gains Taxes and minimum Taxes) or (ii) based upon, measured by or calculated with respect to multiple bases (including corporate franchise Taxes) if one or more of the bases on which such Tax may be based, measured by or calculated with respect to, is described in clause (i), in each case, together with any interest, penalties, or additions to such Tax.

"Indemnifiable Loss" shall have the meaning set forth in Section 9.01(a).

"Indemnifying Party" shall have the meaning set forth in Section 9.01(c).

"Indemnitee" shall have the meaning set forth in Section 9.01(c).

"Independent Appraiser" shall have the meaning set forth in Section 3.04.

"Indian Point Conveyance Plan" means the ALTA/ACSM Land Title Survey prepared for Consolidated Edison Company of New York, Inc., captioned "Indian Point Generating Station Site Survey" (Sheets 1 - 7) completed on August 2, 2000 (Buyer Parcel - Indian Point) and August 17, 2000 (Buyer Parcel - GT Site), last revised on October 27, 2000, and prepared by Badey & Watson Surveying & Engineering, PC, as may hereafter be amended by Seller in immaterial respects.

"Indian Point Unit 1" means the nuclear generating unit located in the Village of Buchanan, New York designated as and known as Indian Point Unit 1.

"Indian Point Unit 2" means the nuclear generating unit located in the Village of Buchanan, New York designated as and known as Indian Point Unit 2.

"Information Memorandum" means the Information Memorandum dated January 2000 describing the Generating Plants and the Gas Turbines, and the materials delivered with such Information Memorandum, as such Information Memorandum and such materials may have been amended or supplemented.

"Intellectual Property" means all trade secrets, copyrights, copyright applications, trademarks, trademark applications, trade names, service marks,

service mark applications, designs, samples, specifications and know-how owned by Seller.

"Interconnection Facilities" means switching equipment, switchyard controls, protective relays and related facilities of Seller that are used by Seller in connection with the provision of Interconnection Services.

"Interconnection Services" means the service provided by Seller to Buyer to interconnect the Generating Facilities to the Transmission System.

"Inventory" means all materials and supplies (other than fuel, Nuclear Fuel or Spent Nuclear Fuel), spare parts (including the spare parts listed in Schedule 2.02(a)(ii)) and chemical and gas inventories owned by Seller at Closing and relating primarily to or used primarily in the operation of the Generating Plants and the Gas Turbines.

"IRS" means the Internal Revenue Service or any successor thereto.

"ISO" means the New York Independent System Operator or any successor thereto.

"joint rulings" shall have the meaning set forth in Section 6.06(e).

"Knowledge" means the actual, current knowledge (without independent investigation) of a Party's or its Affiliates' board of directors, any of their officers or managers or any of the following persons: Dan Keuter, Connie Wells, Curt Bregar, Renee Millison, Stuart Wentworth, Carl Crawford, Brent Dorsey, Dan Churchman, Jay Brister, Jay Adler, Dan Ropson, Frank Rives or Tom Ober.

"Law" means any statute, law (including common law), treaty, order, judgment, decree, directive, code, ordinance, rule or regulation or similar issuance by a Governmental Authority having the effect of law.

"Local 1-2" shall have the meaning set forth in Section 8.01(a).

"Local 1-2 Collective Bargaining Agreement" shall have the meaning set forth in Section 8.01(b).

"Low-level Radioactive Waste" shall have the meaning set forth in 42 U.S.C.A. § 2021b(9) (1994) and the rules and regulations promulgated thereunder.

"Material Adverse Effect" means any change or effect on the Auctioned Assets that is materially adverse to the business, operations or condition (financial or otherwise) of the Auctioned Assets, taken as a whole, other than (i) any change or effect resulting from changes in the international, national, regional or local wholesale or retail energy, capacity or ancillary services markets, (ii) any change or effect resulting from changes in the international, national, regional or local markets for fuel used or usable in connection with the Generating Facilities, (iii) any change or effect resulting from changes in the national, regional or local electric transmission systems, (iv) any change or effect resulting from any bid cap, price limitation, market power mitigation measure or other Law in respect of transmission services or the wholesale or retail energy, capacity or ancillary services markets adopted or approved (or failed to be adopted or approved) by any Governmental Authority or proposed by any person, (v) any change or effect resulting from any other Law adopted or approved by any Governmental Authority or proposed by any person (other than any change or effect resulting from (a) any New York State Law that becomes effective after the date of this Agreement or (b) any NRC Law that becomes effective after the date of this Agreement and relates solely to the Auctioned Assets), (vi) any change or effect resulting from any regulation, rule, procedure or order adopted or proposed (or failed to be adopted or proposed) by or with respect to, or relating to, the ISO, (vii) any change or effect resulting from any action or measure taken or adopted, or proposed to be taken or adopted, by any local, state, regional, national or international reliability organization and (viii) any materially adverse change in or effect on the Auctioned Assets which is cured by Seller prior to Closing.

"Metaphase" means the Corporate Drawing Management System, which is an information resources system served by Seller's mainframe computer.

"MMS" means the Material Management System, which is an information resources system served by Seller's mainframe computer.

"NEIL" means Nuclear Electric Insurance Limited.

"1975 Deed" shall have the meaning set forth in Section 7.02(j).

"Nitrogen Oxide Allowance" means the authorizations by the NYSDEC under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or any year thereafter.

"Non-Disputed Amount" shall have the meaning set forth in Section 3.02(b).

"Nonqualified Decommissioning Fund" means the external trust fund that does not meet the requirements of Section 468A of the Code and Treas. Reg. Section 1.468A-5, and which is maintained by Seller with respect to the Auctioned Assets prior to Closing pursuant to the applicable Decommissioning Indenture.

"Non-Union Transition Period" shall have the meaning set forth in Section 8.02(a).

"NPMEL" means the Nuclear Power Material Equipment List, which is a system that uses extract data from PPMIS.

"NRC" means the Nuclear Regulatory Commission or any successor thereto.

"NRC Permits" means all certificates, permits, licenses, consents, approvals and other governmental authorizations issued by the NRC on the basis of which Seller is authorized by the NRC to own, possess, use and operate the Generating Plants and the Gas Turbines prior to Closing, including Facility Operating License Nos. DPR 5 and DPR 26, but not including any Environmental Permits.

"Nuclear Fuel" means all fuel assemblies in the Generating Plants' reactors as of Closing, any irradiated fuel assemblies that have been temporarily removed from the Generating Plants' reactors as of Closing (except any irradiated fuel assemblies that may have been removed from Indian Point Unit 1 for reprocessing prior to Closing), all unirradiated fuel assemblies awaiting insertion into the Generating Plants' reactors and all fuel constituents in any stage of the fuel cycle which are in process for use in the Generating Plants' reactors as of Closing.

"Nuclear Insurance Policies" means all insurance policies carried by or for the benefit of Seller with respect to the Auctioned Assets, including all liability, property damage and business interruption policies in respect thereof. Without limiting the generality of the foregoing, the term "Nuclear Insurance Policies" includes all policies issued or administered by NEIL or ANI.

"NYPA" means the Power Authority of the State of New York or any successor thereto.

"NYSDEC" means the New York State Department of Environmental Conservation or any successor thereto.

"NYSERDA" means the New York State Energy Research Development Agency or any successor thereto.

"Off-Site" means any location except (i) the Buyer Real Estate (and all surface and subsurface elements thereof including soils, surface water and groundwater) and (ii) any location to or under which Hazardous Substances present or Released at or from the Auctioned Assets have migrated.

"Operating Records" shall have the meaning set forth in Section 2.02(a)(vi).

"Parties" and "Party" shall have the respective meanings set forth in the Preamble.

"Patents" means with respect to the patented items or processes relating primarily to, or used primarily in the operation of, the Generating Plants or the Gas Turbines, (i) a royalty-free license from Seller to use such patented items or processes owned by Seller or (ii) Seller's existing license (or any part thereof) or a separate license to the extent required to authorize Buyer's use of such patented items or processes owned by third parties, in each case, at or in connection with the Auctioned Assets in a manner consistent with Seller's use of such patented items or processes pursuant to the terms and conditions of Seller's license.

"Payment Amount" shall have the meaning set forth in Section 6.08.

"Payment Date" shall have the meaning set forth in Section 6.08(b).

"PBGC" shall have the meaning set forth in Section 4.12.

"Permits" means all certificates, permits, licenses, consents, approvals and other governmental authorizations (other than Environmental Permits and NRC Permits) relating primarily to the Auctioned Assets, or the ownership, operation or use thereof.

"Permitted Exceptions" means (i) all exceptions, restrictions, easements, charges, rights-of-way and monetary and nonmonetary encumbrances which are set forth in any Permits, Environmental Permits or NRC Permits; (ii) all statutory liens for current Taxes or assessments not yet delinquent, subject to proration as provided herein; (iii) all mechanics', carriers', workers', repairers' and other similar liens relating to obligations as to which Seller is not in default or the validity of which is being contested in good faith by appropriate proceedings, provided that Seller shall cause the Title Company to omit such liens from the title insurance policy described in Section 7.02; (iv) all zoning, building code, entitlement, conservation restriction and other land use and Environmental Laws by Governmental Authorities; (v) all matters set forth in Schedules B-2 to Certificates of Title Nos. 231-W-08707 and 231-W-10117 issued by First American Title Insurance Company of New York, Inc., both effective as of September 25, 2000 and last revised on October 26, 2000 and November 2, 2000, respectively, provided that the generic exception for "rights of tenants or persons in possession" shall be limited to the rights of tenants or other parties under leases or other agreements which constitute Contracts; (vi) all matters disclosed on the Conveyance Plans; (vii) all Encumbrances or other restrictions created pursuant to this Agreement or any Ancillary Agreement; (viii) all restrictions and regulations imposed by the ISO, any Governmental Authority or any local, state, regional, national or international reliability organization; and (ix) all Encumbrances on, imperfections in or failures of title which do not secure indebtedness for borrowed money and which would not, individually or in the aggregate, reasonably be expected to materially impair the continued use and operation of the Auctioned Assets as currently conducted. Notwithstanding the foregoing, Seller shall discharge or cause the Title Company to omit or insure over all liens which secure indebtedness for borrowed money, judgments against Seller and any other liquidated sums of money capable of precise

determination. Nothing in this definition is intended to affect the obligations of the Parties with respect to Prorated Items.

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

"Power Purchase Agreement" means the Power Purchase Agreement dated as of even date herewith between Seller and Buyer.

"PPMIS" means the Power Plant Maintenance Information System, which is an information resources system served by Seller's mainframe computer.

"Price-Anderson Act" means Section 170 of the Atomic Energy Act and related provisions of Section 11 of the Atomic Energy Act.

"Prorated Items" shall have the meaning set forth in Section 2.03(a) (x).

"Protective Relaying System" means the system relating to the Generating Facilities comprised of components collectively used to detect defective power system elements or other conditions of an abnormal nature, initiate appropriate control circuit action in response thereto and isolate the appropriate system elements in order to minimize damage to equipment and interruption to service.

"Prudent Utility Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the nuclear power generation industry during the relevant time period, or any of the practices, methods or acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with applicable Laws and good business practices, reliability, safety and expedition. Prudent Utility Practices are not intended to be limited to only the optimum practice, method or act to the exclusion of all others, but rather are intended to include practices, methods or acts generally accepted in the nuclear power generation industry.

"PSC" means the New York State Public Service Commission or any successor thereto.



"PUHCA" shall have the meaning set forth in Section 4.03(b).

"Purchase Price" shall have the meaning set forth in Section 3.02(a).

"Qualified Decommissioning Fund" means the external trust fund that meets the requirements of Section 468A of the Code and Treas. Reg. Section 1.468A-5, and which is maintained by Seller with respect to the Auctioned Assets prior to Closing pursuant to the applicable Decommissioning Indenture.

"Release" means (i) any "extraordinary nuclear occurrence" or "nuclear incident," as those terms are defined under the Atomic Energy Act, and (ii) any actual or threatened release, spill, emission, emptying, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment or within any building, structure, facility or fixture.

"Required Capital Expenditures Amount" means:

- (i) if Closing occurs on or after January 1, 2001 but on or prior to March 31, 2001, an amount equal to the product of (A) \$5,120,000 divided by 90 and (B) the number of days, up to a maximum of 90 days, between January 1, 2001 and the Closing Date;
- (ii) if Closing occurs on or after April 1, 2001 but on or prior to June 30, 2001, an amount equal to the sum of (i) \$5,120,000 and (ii) the product of (A) \$7,950,000 divided by 90 and (B) the number of days, up to a maximum of 90 days, between April 1, 2001 and the Closing Date;
- (iii) if Closing occurs on or after July 1, 2001 but on or prior to September 30, 2001, an amount equal to the sum of (i) \$13,070,000 and (ii) the product of (A) \$6,470,000 divided by 90 and (B) the number of days, up to a maximum of 90 days, between July 1, 2001 and the Closing Date;
- (iv) if Closing occurs on or after October 1, 2001 but on or prior to December 31, 2001, an amount equal to the sum of (i) \$19,540,000 and (ii) the product of (A) \$7,380,000

divided by 90 and (B) the number of days, up to a maximum of 90 days, between October 1, 2001 and the Closing Date; and

- (v) if Closing occurs on or after January 1, 2002, \$26,920,000.

"Required Contracts" means those contracts, agreements and other legally binding arrangements set forth in Schedule 7.02(d)(i).

"Required Software" means, with respect to the software set forth in Schedule 7.02(d)(ii), Seller's existing license (or any part thereof) or a separate license, in each case, to the extent required to authorize Buyer's use of such software at or in connection with the Auctioned Assets in a manner consistent with Seller's use of such software pursuant to the terms and conditions of Seller's license.

"Restraints" shall have the meaning set forth in Section 7.01(b).

"Retained Assets" shall have the meaning set forth in Section 2.02(b).

"Retained Liabilities" shall have the meaning set forth in Section 2.03(b).

"Revenue Meters" means all meters measuring demand, energy and reactive components, and all pulse isolation relays, pulse conversion relays and associated totalizing and remote access pulse recorder equipment, in each case, required to measure the transfer of energy between the Parties.

"Revocable Consent" shall have the meaning set forth in Section 2.05(a).

"Safstor" means the procedure by which a generating facility is temporarily placed in a safe condition and maintained in that state until it is subsequently decontaminated and dismantled to levels that permit termination of the NRC operating licenses for such facility and release of such facility by the NRC in accordance with applicable NRC regulations.

"Segregated Reimbursement Accounts" shall have the meaning set forth in Section 8.05(b).

"Seller" shall have the meaning set forth in the Preamble.

"Seller Assets" means any property, machinery, equipment, facilities or systems (including Seller Facilities but other than any Protective Relaying System or Substation Interface Cables) that are from time to time owned or leased by Seller or its Affiliates after Closing and are employed by Seller in connection with the performance of the activities contemplated by the Ancillary Agreements.

"Seller Facilities" shall mean the "Seller Facilities" under the Declaration of Easements Agreement.

"Seller Indemnitees" shall have the meaning set forth in Section 9.01(b).

"Seller Material Adverse Effect" means any change, effect, event, occurrence or state of facts that is materially adverse to the business, operations, assets, properties, condition (financial or otherwise), results of operations or prospects of Seller.

"Seller Real Estate" means all real property and leaseholds or other interests in real property of Seller (including the premises on which the Substation is located), other than Buyer Real Estate.

"Seller Required Regulatory Approvals" shall have the meaning set forth in Section 4.03(b).

"Seller's 4.12 Benefits" shall have the meaning set forth in Section 8.02(a).

"Seller's 401(k) Plans" shall have the meaning set forth in Section 8.04(a).

"Seller's Pension Plans" shall have the meaning set forth in Section 8.03(a).

"Seller's Reimbursement Account Plans" shall have the meaning set forth in Section 8.05(b).

"Seller's Severance Plan" shall have the meaning set forth in Section 8.08(a).

"Settlement Agreement" means that certain Settlement Agreement entered into on December 19, 1980, as amended, among Seller, Orange & Rockland Utilities,

Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation, NYPA, NYSDEC, the Attorney General of the State of New York, the United States Environmental Protection Agency, Hudson River Fisherman's Association (currently d/b/a the Hudson Riverkeeper Fund, Inc.), Scenic Hudson Preservation Conference (currently Scenic Hudson, Inc.) and the National Resources Defense Council, in connection with their disputes relating to the National Pollutant Discharge Elimination System permits issued to certain utilities in 1975, which, by its terms, has expired.

"Special Affected Employee" shall have the meaning set forth in Section 8.01(a).

"Spent Nuclear Fuel" means Nuclear Fuel that has been withdrawn or discharged from a nuclear reactor following irradiation and has not been chemically separated into its constituent elements by reprocessing. "Spent Nuclear Fuel" includes the special nuclear material, byproduct material, source material and other radioactive materials associated with nuclear fuel assemblies.

"Spent Nuclear Fuel Fees" means those fees assessed on electricity generated at the Generating Plants and sold, as provided in the Nuclear Waste Policy Act of 1982, as amended, and the rules and regulations promulgated thereunder.

"Substation" shall have the meaning set forth in Section 2.02(b)(i).

"Substation Interface Cables" means (i) control cables and associated conduits located in the Substation which connect the Generating Facilities with Buyer Assets located in the Substation and (ii) control and low voltage power cables and associated conduits located in the Substation which connect Seller Assets with Buyer Assets.

"Tax Basis" means the adjusted Tax basis determined for U.S. federal income Tax purposes under Section 1011(a) of the Code.

"Tax Benefit" means, with respect to any Indemnifiable Loss for any person, the positive excess, if any, of the Tax liability of such person without regard to such Indemnifiable Loss over the Tax liability of such person taking into account such

Indemnifiable Loss, with all other circumstances remaining unchanged.

"Tax Claim" shall have the meaning set forth in Section 9.03(a).

"Tax Contest" shall have the meaning set forth in Section 9.03(c).

"Tax Cost" means, with respect to any indemnity payment for any person, the positive excess, if any, of the Tax liability of such person taking such indemnity payment into account over the Tax liability of such person without regard to such payment, with all other circumstances remaining unchanged.

"Taxes" means all taxes, surtaxes, charges, fees, levies, penalties or other assessments imposed by any U.S. federal, state or local or foreign taxing authority, including income tax, excise, property, sales, transfer, franchise, special franchise, payroll, recording, withholding, social security or other taxes, or any liability for taxes incurred by reason of joining in the filing of any consolidated, combined or unitary Tax Returns, in each case, including any interest, penalties or additions attributable thereto.

"Tax Refund Suit" shall have the meaning set forth in Section 9.03(b).

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

"Termination Date" shall have the meaning set forth in Section 10.01(b).

"Third Party Claim" shall have the meaning set forth in Section 9.02(a).

"Title Company" means First American Title Insurance Company of New York, Inc. and Commonwealth Land Title Insurance Company on a 50/50 coinsurance basis or one or more other title insurance companies reasonably acceptable to Buyer and Seller.

"TNMS" means the Tag Numbering Management System, which is an information resources system served by Seller's mainframe computer.

"Toddville Conveyance Plan" means the ALTA/ACSM Land Title Survey prepared for Seller captioned "Toddville School Site Survey" (Sheet 1 of 1) completed on September 15, 2000 by Badey & Watson Surveying & Engineering, PC, as may hereafter be amended by Seller in immaterial respects.

"Toddville Training Center" means the training facility owned by Seller and located at Three Locust Avenue in the Town of Cortlandt, New York.

"Transferable Permits" shall have the meaning set forth in Section 2.02 (a) (v) .

"Transmission System" shall have the meaning set forth in Section 2.02 (b) (i) .

"Trustee" means the trustee of the Decommissioning Funds appointed by Seller pursuant to the applicable Decommissioning Indenture.

"Union Transition Period" shall have the meaning set forth in Section 8.01 (b) .

"Updated Schedules" shall have the meaning set forth in Section 6.17.

"Westinghouse Contract" shall have the meaning set forth in Section 6.01 (e) .

SECTION 1.02. Accounting Terms. Any accounting terms used in this Agreement or the Ancillary Agreements shall, unless otherwise specifically provided, have the meanings customarily given them in accordance with United States generally accepted accounting principles ("GAAP") and all financial computations hereunder or thereunder shall, unless otherwise specifically provided, be computed in accordance with GAAP consistently applied.

## ARTICLE II

### Purchase and Sale; Assumption of Certain Liabilities

SECTION 2.01. Purchase and Sale. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at Closing, Seller agrees to sell, assign, convey, transfer and deliver or cause to be sold, assigned, conveyed, transferred or delivered to Buyer, and Buyer agrees to purchase, assume and acquire from Seller all the Auctioned Assets.

SECTION 2.02. Auctioned Assets and Retained Assets. (a) Auctioned Assets. The term "Auctioned Assets" means all the assets, real and personal property, goodwill and rights of Seller of whatever kind and nature, whether tangible or intangible, in each case, constituting, relating primarily to, or used primarily in the operation of, the Generating Plants or the Gas Turbines, other than the Retained Assets, including:

(i) (A) all land owned by Seller relating primarily to the operations of the Generating Plants shown on the Indian Point Conveyance Plan as "Buyer Parcel - Indian Point" and described in Schedule 2.02(a)(i)(A) together with all buildings and improvements erected thereon, (B) both (1) the leasehold interest in the land shown on the Indian Point Conveyance Plan as "Buyer Parcel - GT Site" and described in Schedule 2.02(a)(i)(B) (the "GT Site") to be created pursuant to the GT Site Ground Lease, and (2) all buildings and improvements erected on the GT Site, and (C) all land owned by Seller constituting, relating primarily to, or used primarily in the operation of the Toddville Training Center shown on the Toddville Conveyance Plan and described in Schedule 2.02(a)(i)(C) together with all buildings and improvements erected thereon, subject in each case to all Permitted Exceptions (the "Buyer Real Estate");

(ii) subject, in each case, to Permitted Exceptions, all inventories of fuels (relating primarily to, or used primarily in the operation of, the Generating Plants or the Gas Turbines) and Nuclear Fuel, in each case owned by Seller on the Closing Date, Spent Nuclear Fuel located on Buyer Real Estate on the Closing Date, and all Inventory, in each case other than assets that are used, consumed, replaced or disposed of in the ordinary course of business consistent with past practice or as permitted by this Agreement, together with all warranties from third parties, including manufacturers and vendors relating thereto, to the extent transferable;

(iii) subject, in each case, to Permitted Exceptions, all machinery (mobile or otherwise), equipment, facilities, furniture and other personal property relating primarily to, or used primarily in the operation of, the Generating Plants or the Gas Turbines or the Toddville Training Center, including the items of personal property listed in Schedule 2.02(a)(iii), together with all warranties from third parties, including manufacturers and vendors relating

thereto, to the extent transferable, other than assets that are used, consumed, replaced or disposed of in the ordinary course of business consistent with past practice or as permitted by this Agreement;

(iv) subject to Sections 2.02(b)(x) and 2.04, all right, title and interest of Seller in, to and under all contracts, agreements, leases, licenses (whether Seller is lessor, lessee, licensor or licensee thereunder), commitments, and all other legally binding arrangements (A) set forth in Schedule 2.02(a)(iv), (B) associated with emergency preparedness (including those relating to emergency sirens or radiation monitors), (C) between Seller and NYPA primarily related to the operation or maintenance of the Auctioned Assets, but excluding any such contracts, agreements, leases, licenses, or commitments pertaining to Seller's obligations relating to the Transmission System, the Substation or the supply of power or (D) entered into by Seller between the date of this Agreement and Closing in accordance with Section 6.01, in each case, to the extent they have not expired prior to Closing (the "Contracts");

(v) the Permits, Environmental Permits and NRC Permits that are transferred or transferable by Seller to Buyer by assignment or otherwise or which will pass to Buyer as successor in title to the Generating Plants or Gas Turbines (collectively, the "Transferable Permits"), including the Transferable Permits set forth in Schedule 2.02(a)(v);

(vi) (A) data, information, books, operating records, operating, safety, quality assurance and maintenance manuals, engineering design information and plans, blueprints and as-built plans, specifications, procedures, facility compliance plans, environmental procedures and other records of Seller relating primarily to the design, construction, licensing, regulation, operation or Decommissioning of the Auctioned Assets, whether existing in paper, magnetic or electronic form, including third party designs, drawings and specifications used in, or necessary for, the licensing, operation or Decommissioning of the Auctioned Assets (collectively, "Operating Records"), (B) to the extent permitted or required by Law, all personnel files relating to Continued Employees, including files that pertain to (1) skill and development training and resumes, (2) seniority histories, (3) salary and benefit information, (4) active medical restriction forms, (5) records that



are required to be retained by Buyer pursuant to 10 C.F.R. Section 26 and (6) any other matters, but not including any performance evaluations, disciplinary records, fitness for duty reports or Occupational Safety and Health Act medical reports (other than such evaluations, records or reports necessary for Buyer to satisfy the requirements of NRC Law or any NRC permit) (collectively, the "Continued Employee Records") and (C) all accounting and other records related to the Decommissioning Funds (other than general ledger accounting records) (collectively, the "Decommissioning Accounting Records"); provided, however, that Seller shall be permitted to retain copies to the extent it provides Buyer with copies or originals of same, of all Operating Records, Continued Employee Records and Decommissioning Accounting Records;

(vii) subject to Sections 2.04 and 7.02(d), the Patents, all rights of Seller in and to the name "Indian Point 2 Nuclear Power Station" and any related or similar names and the right to use at, or in connection with, the Generating Plants or the Gas Turbines all other Intellectual Property relating primarily to, or used primarily in the operation of, the Generating Plants or the Gas Turbines;

(viii) the assets of the Decommissioning Funds contemplated by Sections 6.07(a) and (b) to be transferred to Buyer;

(ix) any credit or credits associated with assessments for the disposal of Low-level Radioactive Waste accumulated by Seller prior to Closing pursuant to the New York Public Authorities Law Section 1854-d.2, as amended, to the extent assignable to Buyer;

(x) the Nitrogen Oxide Allowances set forth in Schedule 2.02(a) (x) that are allocated by NYSDEC to the Gas Turbines for the control periods in 2001 and 2002, but less any such Nitrogen Oxide Allowances (or portions thereof) that are used by Seller in connection with operating the Gas Turbines prior to Closing consistent with past practices and system reliability requirements of Seller (it being understood that, for purposes of this Agreement, one Nitrogen Oxide Allowance shall be deemed "used" for each ton of nitrogen oxide emitted from the Gas Turbines between May 1 of any year and September 30 of such year, inclusive);

(xi) all claims or causes of action for the refund or return of any payments made or to be made (including any Spent Nuclear Fuel Fees paid or payable) pursuant to the DOE Standard Contract with regard to electricity generated at the Generating Plants and sold on or prior to Closing, but specifically excluding any claims or causes of action in respect of damages to property or economic loss related or pertaining to the Department of Energy's breach or default under the DOE Standard Contract accrued prior to Closing;

(xii) to the extent transferable to Buyer, Seller's ANI primary nuclear liability policy (facility policy), secondary financial protection and master nuclear worker liability policy (master worker policy), and all rights to premium refunds or premium returns (including shutdown credits and premium returns under the Industry Credit Rating Program) that relate to premiums paid by Buyer (including premiums which are Prorated Items, to the extent paid by Buyer) for periods after Closing pursuant to such policies; and

(xiii) Seller's claims and rights against any third party arising out of or relating to any of the Assumed Obligations.

(b) Retained Assets. The term "Retained Assets" means:

(i) except (A) as set forth in Schedule 2.02(a)(iii) or (B) as located on Buyer Real Estate and not set forth in Schedule 2.02(b)(i), all Interconnection Facilities and transmission and distribution assets owned, controlled or operated by Seller for purposes of providing transmission service (including point-to-point transmission service), network integration service and distribution service and other related purposes, including the real property and substation machinery, equipment and facilities located at the Buchanan Substation (the "Substation") used in controlling continuity between the Generating Plants and Gas Turbines and the transmission and distribution facilities and for other purposes (the "Transmission System");

(ii) (A) all Revenue Meters installed by Seller; (B) all Communications Equipment and related support equipment (1) located on Buyer Real Estate or temporarily removed from Buyer Real Estate for repairs, servicing or maintenance and listed in Schedule 2.02(b)(ii)(B) or acquired by Seller after the date of

this Agreement and designated by Seller as a Retained Asset or (2) located on Seller Real Estate or temporarily removed from Seller Real Estate for repairs, servicing or maintenance; and (C) all Protective Relaying Systems not located on Buyer Real Estate;

(iii) except as set forth in Section 2.02(a)(viii), all cash, cash equivalents, bank deposits and accounts receivable held or owned by Seller (including Seller's account balances with NEIL);

(iv) (A) all mainframe computers of Seller and (B) all Intellectual Property relating primarily to any other Retained Assets or any Retained Liabilities;

(v) the names "Consolidated Edison", "Con Edison", "Con Ed", "Consolidated Edison Company", "Consolidated Edison Company of New York, Inc.", "Consolidated Edison, Inc.", "New York Edison", "Brooklyn Edison", "Staten Island Edison" and "Edison" and any related or similar trade names, trademarks, service marks or logos (and any rights to and in the same, including any right to use the same);

(vi) subject to Section 6.06(c), any refund or credit related to Taxes or sewer rents or water charges or any other liabilities or obligations in respect of the Auctioned Assets, in each case, attributable to periods (or portions thereof) prior to Closing;

(vii) except as set forth in Section 2.02(a)(xii), (A) all insurance policies of Seller related to the Auctioned Assets, including all Nuclear Insurance Policies, and (B) all rights to distributions, credits (including shutdown credits), premium refunds or premium returns (including shutdown credits and premium returns under the Industry Credit Rating Program) under all insurance policies, including all such rights to (i) Seller's member insurance accounts, policyholder insurance records and policyholder percentages under its Nuclear Insurance Policies and (ii) Seller's future distributions, credits, premium refunds or premium returns from its Nuclear Insurance Policies;

(viii) all claims or causes of action for refunds of Department of Energy Decontamination and Decommissioning Fees, in each case, paid by Seller as contemplated by Section 2.03(b)(iv);

(ix) all personnel records (other than Continued Employee Records) and all other records (other than Operating Records and Decommissioning Accounting Records);

(x) all claims or causes of action in respect of damages to property or economic loss related or pertaining to the Department of Energy's breach or default under the DOE Standard Contract accrued prior to Closing, but specifically excluding any claims or causes of action for the refund or return of any payments made or to be made (including any Spent Nuclear Fuel Fees paid or payable) pursuant to the DOE Standard Contract with regard to electricity generated at the Generating Plants and sold on or prior to Closing;

(xi) all emission reduction credits, sulfur dioxide allowances and Nitrogen Oxide Allowances that relate to the Retained Assets or any other of Seller's assets that are not Auctioned Assets (excluding, for clarification, any Nitrogen Oxide Allowances allocated by NYSDEC to the Gas Turbines for periods after Closing), and, except as set forth in Schedule 2.02(a)(x) and except as set forth in Section 2.02(a)(ix), all other environmental related allowances and credits of any nature held or possessed by Seller; and

(xii) any other asset that is not described in this Agreement as an Auctioned Asset.

SECTION 2.03. Assumed Obligations and Retained Liabilities. (a) Assumed Obligations. At Closing, Buyer shall assume, and after Closing, shall discharge, all of the following liabilities and obligations, direct or indirect, known or unknown, absolute or contingent, which relate to the Auctioned Assets or are otherwise specified below (collectively, the "Assumed Obligations"):

(i) except as set forth in Section 2.03(b)(ii), any liabilities and obligations under the Contracts, except, in each case, to the extent such liabilities and obligations, but for a breach or default by Seller prior to Closing, would have been paid, performed or otherwise discharged on or prior to Closing, or to the extent the same arise out of any such breach or default;

(ii) any liabilities and obligations for goods delivered or services rendered, in the ordinary course

of business, after Closing to, or for the benefit of, Buyer or the Auctioned Assets; provided, however, that Buyer shall not be obligated to assume any liabilities and obligations for any such goods and services to the extent the same are included in the determination of the adjustment of the Purchase Price pursuant to Sections 3.02(c) (i), (ii) and (v);

(iii) except as set forth in Sections 2.03(b) (iii), 2.03(b) (v) and 2.03(b) (vi), any Environmental Liability, whether arising, accruing or occurring prior to, on, or after Closing;

(iv) any liabilities and obligations in respect of amounts owing under the DOE Standard Contract, including any Spent Nuclear Fuel Fees, and any other fees and expenses, in each case, associated with electricity generated at the Generating Facilities and sold after the Closing Date;

(v) any liabilities and obligations (including any Environmental Liabilities) in respect of (A) Decommissioning following permanent cessation of operations or otherwise, (B) the management, storage, removal, transportation and disposal of Spent Nuclear Fuel located in, on or at the Generating Facilities after Closing, and (C) any other disposition of the Auctioned Assets after Closing;

(vi) (A) any liabilities and obligations for any ANI or Price-Anderson Act secondary financial protection retrospective premium obligations in connection with the ANI or Price-Anderson Act policies and financial assurance or protection applicable to any of the Generating Facilities for (i) any nuclear worker liability attributable to employment by Seller on or prior to Closing or (ii) for any third party nuclear liability arising out of any incident or occurrence on or prior to Closing (it being agreed that if Seller is unable to cause the assignment of all or any part of such retrospective premium obligations, Seller shall remain primarily liable for such obligations and Buyer shall indemnify Seller therefor pursuant to Section 9.01(b)) and (B) any liabilities and obligations of Seller for retrospective premium obligations arising on or after Closing under Seller's NEIL insurance policies applicable to any of the Generating Facilities;

(vii) except as set forth in Section 2.03(b) (v), any liabilities and obligations with respect to the Permits

and the NRC Permits to the extent arising from events occurring after Closing;

(viii) (A) all wages, overtime, employment Taxes, severance pay, transition payments, workers compensation benefits, sick pay, health care continuation coverage obligations under COBRA, occupational safety and health liabilities or other similar liabilities and obligations in respect of Continued Employees to the extent arising from events occurring after Closing, and (B) all other liabilities and obligations with respect to the Continued Employees for which Buyer is responsible pursuant to Article VIII;

(ix) except for Environmental Liabilities the allocation of which is governed by other provisions of Section 2.03(a) and by Section 2.03(b), any liabilities and obligations in respect of (A) any claims or causes of action by any person in respect of damages to property, personal injury, death or economic loss relating to, resulting from or arising out of the Auctioned Assets, or (B) any claims or causes of action by any Continued Employees in respect of discrimination, retaliation, wrongful discharge, unfair labor practice or other employment-related matter, in the case of each of the foregoing clauses (A) and (B), to the extent arising from events occurring after Closing;

(x) any liabilities and obligations, with respect to the periods that include the Closing Date, with respect to real or personal property rent, Taxes based on the ownership or use of property, utilities charges and similar charges, in each case, relating primarily to the operations of the Generating Plants or the Gas Turbines or the Toddville Training Center, and salaries, wages and other costs and expenses in respect of Continued Employees (collectively, the "Prorated Items"), to the extent such Prorated Items relate to the period after Closing, including (A) personal property Taxes, real estate and occupancy Taxes, assessments and other charges, (B) rent and all other items payable by Seller under any Contract, (C) any fees with respect to any Transferable Permit, (D) sewer rents and charges for water, telephone, electricity and other utilities and (E) insurance premiums for the insurance described in Section 2.02(a)(xii), in each case, calculated by multiplying the amount of any such Prorated Item by a fraction the numerator of which is the number of days (or portions thereof) in such period

after Closing and the denominator of which is the number of days in such period;

(xi) any liabilities and obligations in respect of Taxes (other than Prorated Items) attributable to the Auctioned Assets related to Taxable periods (or portions thereof) beginning after Closing;

(xii) except for Environmental Liabilities the allocation of which is governed by other provisions of Section 2.03(a) and by Section 2.03(b), any liabilities and obligations arising after Closing in respect of damage to property, personal injury, death or economic loss relating to, resulting from or arising out of any Protective Relaying System or Substation Interface Cables owned, maintained or controlled by Seller, regardless of whether such liabilities or obligations are caused by a Seller Indemnitee or a Buyer Indemnitee (except where caused by the gross negligence or wilful misconduct of a Seller Indemnitee);

(xiii) any other liabilities and obligations expressly allocated to Buyer or ENO in this Agreement or in any Ancillary Agreement; and

(xiv) except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, any other liabilities and obligations to the extent arising from or relating primarily to the use, ownership, lease, operation, maintenance or control of the Auctioned Assets after Closing.

(b) Retained Liabilities. The term "Retained Liabilities" means the following liabilities and obligations, direct or indirect, known or unknown, absolute or contingent, which relate to the Retained Assets or are otherwise specified below:

(i) any liabilities and obligations of Seller to the extent arising from any Retained Assets (other than as contemplated by Section 2.03(a)(xii));

(ii) any liabilities and obligations of Seller, including under Contracts, for goods delivered or services rendered prior to Closing;

(iii) (A) any liabilities and obligations of Seller under or related to any Environmental Law to the extent arising as a result of or in connection with the Off-Site remediation, transportation, storage, Release, handling or recycling of, or arrangement for such

activities with respect to, Hazardous Substances prior to Closing, in connection with the ownership or operation of the Auctioned Assets or (B) any liabilities and obligations of Seller for any loss of life or injury to persons or property to the extent arising from any Release of Hazardous Substances to the environment from the leak that occurred on February 15, 2000 on No. 24 steam generator at Indian Point Unit 2, but only to the extent that any such liabilities or obligations are in excess of the proceeds or benefits recovered or recoverable by or paid or available to Buyer under any insurance policies, including those transferred to Buyer pursuant to Section 2.02 (a) (xii), or pursuant to the Price-Anderson Act;

(iv) any liabilities and obligations of Seller in respect of (A) amounts owing under the DOE Standard Contract, including any Spent Nuclear Fuel Fees associated with electricity generated at the Generating Facilities and sold prior to Closing and (B) any Department of Energy Decontamination and Decommissioning Fees accrued for periods prior to Closing under 42 U.S.C.A. § 2297g-1;

(v) any monetary fines (excluding (A) natural resource damages, (B) cleanup or remediation costs and (C) other costs of a similar nature) imposed by a Governmental Authority to the extent resulting from an investigation, proceeding or inspection before or by a Governmental Authority relating to actions or omissions or alleged actions or omissions of Seller prior to Closing;

(vi) any liabilities and obligations of Seller for any loss of life or injury to persons or property to the extent arising from exposure to asbestos or asbestos-containing materials at the Auctioned Assets prior to Closing;

(vii) (A) all wages, overtime, employment Taxes, severance pay, transition payments, workers compensation benefits, sick pay, health care continuation coverage obligations under COBRA, occupational safety and health liabilities or other similar liabilities and obligations in respect of Affected Employees to the extent arising from events occurring prior to Closing and (B) all other liabilities and obligations with respect to the Affected Employees for which Seller is responsible pursuant to Article VIII;



(viii) except for Environmental Liabilities the allocation of which is governed by other provisions of Section 2.03(a) and by Section 2.03(b) and except for any liabilities and obligations to which Section 2.03(a)(xii) applies, any liabilities and obligations in respect of (A) any claims or causes of action by any person in respect of damages to property, personal injury, death or economic loss relating to, resulting from or arising out of the Auctioned Assets, or (B) any claims or causes of action by any Affected Employees in respect of discrimination, retaliation, wrongful discharge, unfair labor practice or other employment-related matter, in the case of each of the foregoing clauses (A) and (B), to the extent arising from acts or omissions of Seller prior to Closing;

(ix) any liabilities and obligations, with respect to the period prior to Closing, for the Prorated Items, calculated as set forth in Section 2.03(a)(x);

(x) any liabilities and obligations in respect of Taxes (other than Prorated Items) attributable to the Auctioned Assets related to Taxable periods (or portions thereof) ending before Closing, including Income Taxes attributable to income realized by Seller pursuant to the transactions contemplated by this Agreement;

(xi) any liabilities and obligations arising after the date of this Agreement in respect of which Seller has provided pursuant to Section 6.01(d)(ii) that such liabilities and obligations shall not be assumed or retained by Buyer;

(xii) any other liabilities and obligations expressly allocated to Seller in this Agreement or in any Ancillary Agreement;

(xiii) any mortgages, pledges, liens, security interests and conditional and installment sale agreements, in each case to the extent in existence prior to Closing and other than any Permitted Exceptions; and

(xiv) except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, any other liabilities and obligations to the extent arising from or relating primarily to the use, ownership, lease, operation, maintenance or control of the Auctioned Assets prior to Closing.

SECTION 2.04. Third Party Consents. Seller and Buyer agree that if any consent to an assignment of any Contract, warranty or Patent shall not be obtained or if any attempted assignment would in Seller's reasonable opinion be ineffective or would impair any material rights and obligations of Buyer under such Contract, warranty or Patent, as applicable, so that Buyer would not acquire the benefit of all such rights and obligations, Seller, to the maximum extent permitted by Law and such Contract, warranty or Patent, as applicable, shall after Closing appoint Buyer to be Seller's representative and agent with respect to such Contract, warranty or Patent, as applicable, and Seller shall, to the maximum extent permitted by Law and such Contract, warranty or Patent, as applicable, enter into such reasonable arrangements with Buyer as are necessary to provide Buyer with the benefits and obligations of such Contract, warranty or Patent, as applicable; provided, however, that Seller shall have the option to terminate any such Contract in accordance with Section 6.04(g) or any Patent that constitutes a license authorizing Seller's use of patented items or processes owned by third parties. Seller shall use its reasonable best efforts after Closing to obtain an assignment of each such Contract, warranty or Patent, as applicable, to Buyer and Buyer shall cooperate in good faith in connection with Seller's efforts. The exercise by Buyer and Seller of the terms of this Section 2.04 prior to Closing shall in no event constitute a waiver of the conditions to Closing set forth in Section 7.02(d).

SECTION 2.05. Franchise Property. (a) Notwithstanding Section 2.02(a)(i), (ii) and (iii), to the extent it would be unlawful for Buyer to operate, use or maintain any of the property listed in Schedule 2.05(a) (collectively, the "Franchise Property") without Buyer obtaining from the appropriate Governmental Authority a revocable consent, franchise agreement or other arrangement permitting Buyer to hold title to the Franchise Property (a "Revocable Consent"), (i) Buyer shall use its reasonable best efforts to cause a Revocable Consent to be entered into prior to Closing, including filing a petition or petitions with the appropriate Governmental Authority in respect of such Revocable Consent, and Seller shall cooperate in good faith in connection therewith, (ii) if such Revocable Consent has not been obtained by Buyer prior to Closing (A) title to the Franchise Property shall be deemed not to be transferred at Closing, (B) Seller shall, after Closing, appoint Buyer to be Seller's representative with respect to the Franchise Property, (C) Seller shall operate, use and maintain the Franchise Property at Buyer's expense and Buyer shall pay all real and personal property taxes applicable

thereto and (D) Buyer shall use its reasonable best efforts after Closing to cause such Revocable Consent to be entered into, at which time title to the Franchise Property shall be deemed transferred from Seller to Buyer pursuant to this Agreement, and Seller shall cooperate in good faith in connection therewith and (iii) Buyer shall pay all fees, charges and other expenses in connection with such Revocable Consent.

(b) For purposes of (i) the Ancillary Agreements and Sections 2.03, 9.01 and 9.02 of this Agreement, the terms "Auctioned Assets" and "Buyer Facilities" shall in any event each be deemed to include the Franchise Property and (ii) the Franchise Property shall in any event be deemed to be owned by Buyer.

### ARTICLE III

#### Closing

SECTION 3.01. Time and Place of Closing. Upon the terms and subject to the satisfaction of the conditions contained in Article VII, the closing of the sale of the Auctioned Assets contemplated by this Agreement (the "Closing") will take place on such date as the Parties may agree, which date shall be as soon as practicable, but no later than ten Business Days, following the date on which all of the conditions set forth in Article VII have been satisfied or waived by the Party or Parties for whose benefit such conditions exist, at the offices of Cravath, Swaine & Moore in New York City or at such other place or time as the Parties may agree. The date at which Closing actually occurs is hereinafter referred to as the "Closing Date" and Closing shall be effective for all purposes herein as of 12:00 noon New York City time (or such other time as the parties may agree) on such date.

SECTION 3.02. Purchase Price. (a) The purchase price for the Auctioned Assets shall be \$502,000,000, as adjusted pursuant to Sections 3.02(c) below (as adjusted, the "Purchase Price").

(b) At Closing, Buyer will pay or cause to be paid to Seller by wire transfer of immediately available funds to an account previously designated in writing by Seller an amount in United States dollars equal to the Purchase Price, adjusted in accordance with and as contemplated by Section 3.02(d) for amounts not in dispute (as adjusted, the "Non-Disputed Amount").

(c) The Purchase Price shall be adjusted as follows:

(i) the Purchase Price shall be increased by the book value, as reflected on the books of Seller as of Closing, of all fuel (including Nuclear Fuel) inventory included in the Auctioned Assets;

(ii) the Purchase Price shall be adjusted by the amount of the Prorated Items, to the extent such Prorated Items can be reasonably determined at such time;

(iii) the Purchase Price shall be increased by the amount, if any, by which the Fair Market Value of the assets of the Qualified Decommissioning Fund transferred to Buyer pursuant to Section 6.07(a) is greater than \$430,000,000;

(iv) if Seller fails to spend the Required Capital Expenditures Amount in connection with the capital projects set forth on Schedule 3.02(c)(iv), then the Purchase Price shall be decreased by an amount equal to the difference between (A) the Required Capital Expenditures Amount and (B) the aggregate amount of capital expenditures made by Seller on or after January 1, 2001 through the earlier of December 31, 2001 and the Closing Date in connection with the capital projects set forth on Schedule 3.02(c)(iv);

(v) the Purchase Price shall be (A) increased by the amount that the book value of all Inventories (determined in accordance with GAAP) as of Closing is greater than \$37,590,000, and (B) decreased by the amount that the book value of such Inventories (determined in accordance with GAAP) as of Closing is less than \$34,010,000;

(vi) if the work specified in Schedule 3.02(c)(vi) has not been completed and paid for by Seller prior to Closing, then the Purchase Price shall be decreased by an amount equal to (A) \$207,000 minus (B) the aggregate amount paid by Seller as of Closing in connection with the work specified in Schedule 3.02(c)(vi);

(vii) if the reasonably estimated cost as of Closing to dispose of Low-level Radioactive Waste (other than as provided on Schedule 3.02(c)(vii)) that is stored on-site at the Buyer Real Estate as of Closing for the purpose of off-site disposal exceeds \$310,000, then the Purchase Price shall be decreased by \$1.00 for every

dollar that such reasonably estimated cost of such disposal exceeds \$310,000; provided, however, that the calculation of such reasonably estimated costs of such disposal shall be determined by reference to applicable industry practices and prices prevailing as of Closing; and

(viii) if Buyer elects prior to Closing to purchase insurance to cover, among other things, the off-site migration or Release of Hazardous Substances from the Auctioned Assets, then the Purchase Price shall be decreased by the lesser of the cost of the premium for such insurance or \$200,000; provided, that nothing in this Section 3.02(c)(viii) is intended to modify or alter the Parties' retention or assumption of liabilities and obligations, as the case may be, under Section 2.03.

(d) At least 20 Business Days prior to the Closing Date, Seller shall prepare and deliver to Buyer an estimated closing statement (the "Estimated Closing Statement") that shall set forth Seller's good faith estimate of the adjustments required by Section 3.02(c) (the "Estimated Adjustment Amount") as of Closing. Within 10 Business Days following the delivery of the Estimated Closing Statement by Seller to Buyer, Buyer may object in good faith to the Estimated Adjustment Amount in writing. If Buyer so objects to the Estimated Adjustment Amount, the Parties shall attempt to resolve such dispute through good faith negotiation. If the Parties are unable to resolve such dispute before five Business Days prior to the Closing Date (or if Buyer fails to object to the Estimated Adjustment Amount by the date specified) the Purchase Price shall be adjusted for purposes of Closing by, as applicable, the amount of the Estimated Adjustment Amount not disputed in good faith by Buyer or by the Estimated Adjustment Amount (if the Buyer fails to object to the Estimated Adjustment Amount by the date specified), and the amount, if any, in good faith dispute shall be reserved for resolution in accordance with Section 3.03 below.

#### SECTION 3.03. Post-Closing Adjustment.

(a) Within 20 Business Days after Closing, Seller shall prepare and deliver to Buyer a statement (an "Adjustment Statement") which reflects the calculation of the Purchase Price taking into account the adjustments required by Section 3.02(c) as of Closing (the "Adjustment Amount"), and, upon request of Buyer, related accounting material used by Seller to prepare the Adjustment Statement. The Adjustment Statement shall be prepared using GAAP and the fuel adjustment set forth in Section 3.02(c)(i) with respect

to Nuclear Fuel shall be prepared using the same unit cost methodology that Seller has historically used to calculate the book value of its Nuclear Fuel as set forth in Schedule 3.03(a). Buyer agrees to cooperate with Seller in connection with the preparation of the Adjustment Statement and related information, and shall provide to Seller such access, books, records and information as may be reasonably requested from time to time.

(b) Buyer may in good faith dispute the Adjustment Statement, by notifying Seller in writing of the disputed amount, and the basis of such dispute, within 20 Business Days of Buyer's receipt of the Adjustment Statement. Buyer shall have no right to dispute the unit cost methodology (as set forth in Schedule 3.03(a)) used to calculate the book value of the Nuclear Fuel inventory or the appropriateness, under GAAP or otherwise, of using such methodology. In the event of a dispute, Buyer and Seller shall attempt to reconcile their differences and any resolution by them as to any disputed amounts shall be final, binding and conclusive on the Parties. If Buyer and Seller are unable to reach a resolution of such differences within 20 Business Days of receipt of Buyer's written notice of dispute to Seller, Buyer and Seller shall submit the amounts remaining in dispute for determination and resolution to an independent accounting firm of recognized national standing reasonably acceptable to Seller and Buyer (the "Accountants"), which shall be instructed to determine and report to the Parties, within 20 Business Days after such submission, upon such remaining disputed amounts, and such report shall be final, binding and conclusive on the Parties with respect to the amounts disputed in respect of the Adjustment Amount. The fees and disbursements of the Accountants in connection with the resolution of such disputed amounts shall be borne by the Party whose position generally did not prevail, or if the Accountants determine that neither Party could be fairly found to be the prevailing party, then such fees and disbursements shall be borne equally by Buyer and Seller.

(c) If the Adjustment Amount is greater or less than the Non-Disputed Amount, then on the Adjustment Date (as defined below), (A) to the extent that the Adjustment Amount exceeds the Non-Disputed Amount, Buyer shall pay to Seller the amount of such excess and (B) to the extent that the Adjustment Amount is less than the Non-Disputed Amount, Seller shall pay to Buyer the amount of such deficiency.

"Adjustment Date" means (1) to the extent that Buyer does not dispute the Adjustment Statement pursuant to Section 3.03(b), the twenty-third Business Day following

Buyer's receipt of the Adjustment Statement or (2) to the extent that Buyer disputes the Adjustment Statement pursuant to Section 3.03(b), the third Business Day following either the resolution of such dispute by the Parties or a final determination by the Accountants in accordance with Section 3.03(b). Any amount paid under this Section 3.03(c) shall be paid with interest for the period commencing on the Closing Date through the date of payment, calculated at the prime rate of the Chase Manhattan Bank in effect on the Closing Date, and in cash by wire transfer of immediately available funds.

SECTION 3.04. Allocation of Consideration. Buyer and Seller shall use their good faith efforts to agree on an allocation (the "Allocation") among the Auctioned Assets of the consideration paid for Nuclear Fuel, the Assumed Liabilities and such other consideration paid by Buyer pursuant to this Agreement consistent with Section 1060 of the Code and the treasury regulations thereunder and private letter rulings issued by the IRS within 120 days of the date of this Agreement (or such later date as the Parties may mutually agree) but in no event fewer than 30 days prior to Closing. Buyer and Seller may obtain the services of an independent engineer or appraiser ("Independent Appraiser") to assist in determining the fair market value of the Auctioned Assets and such other consideration paid by Buyer solely for purposes of the Allocation under this Section 3.04. If such an appraisal is made, Buyer and Seller shall accept such Independent Appraiser's determination of fair market value of the Auctioned Assets and such other consideration paid by Buyer. The cost of such appraisal shall be borne equally by Buyer and Seller. To the extent such filings are required, Buyer and Seller shall file IRS Form 8594 and all federal, state, local and foreign Tax Returns in accordance with such agreed Allocation. Except to the extent required to comply with audit determinations by any authority with jurisdiction over a Party, Buyer and Seller shall report the transactions contemplated by this Agreement and the Ancillary Agreements for all required federal Income Tax and all other Tax purposes in a manner consistent with the Allocation determined pursuant to this Section 3.04. Buyer and Seller shall provide the other promptly with any other information required to complete Form 8594. Buyer and Seller shall provide the other with reasonable assistance in the event of an examination, audit or other proceeding regarding the agreed Allocation.

## ARTICLE IV

Representations and Warranties of Seller

Seller represents and warrants to Buyer as follows:

SECTION 4.01. Organization; Qualification.

Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New York and has all requisite corporate power and authority to own, lease and operate the Auctioned Assets and to carry on the business of the Auctioned Assets as currently conducted.

SECTION 4.02. Authority Relative to This Agreement. Seller has all necessary corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and the Ancillary Agreements and the consummation by Seller of the transactions contemplated hereby and thereby have been duly and validly authorized by the Board of Trustees of Seller or by a committee thereof to whom such authority has been duly delegated and no other corporate proceedings on the part of Seller are necessary to authorize this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby. This Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Seller and, assuming that this Agreement and the Ancillary Agreements constitute valid and binding agreements of Buyer and each other party thereto (other than Seller), this Agreement and the Ancillary Agreements constitute valid and binding agreements of Seller, enforceable against Seller in accordance with their respective terms.

SECTION 4.03. Consents and Approvals; No Violation. (a) Subject to obtaining the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, neither the execution and delivery of this Agreement or the Ancillary Agreements by Seller nor the consummation of the transactions contemplated thereby, including the sale by Seller of the Auctioned Assets pursuant to this Agreement, will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-laws of Seller, (ii) except for Contracts requiring consent for assignment set forth in Schedule 4.03(a), result in a default (or give rise to any right of termination, cancelation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other



instrument or obligation to which Seller is a party or by which Seller, or any of the Auctioned Assets, may be bound or (iii) violate any Law applicable to Seller, or the Auctioned Assets, except in the case of clauses (ii) and (iii) for such failures to obtain a necessary consent, defaults (or rights) and violations which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(b) Except for (i) application by Seller to, and the approval of, the PSC, pursuant to Section 70 of the Public Service Law of the State of New York, of the transfer to Buyer of the Auctioned Assets, (ii) the filings by Seller and Buyer required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act, (iii) application by Seller to, and the approval of, FERC under (A) Section 203 of the Federal Power Act of 1935 (the "Federal Power Act") with respect to the transfer of Auctioned Assets constituting jurisdictional assets under the Federal Power Act and (B) Section 205 of the Federal Power Act with respect to the Continuing Site Agreement and the Power Purchase Agreement, (iv) application by Seller to, and the approval of, the NRC for the transfer of the NRC licenses for the Generating Plant under the Atomic Energy Act, (v) application by Seller to, and the approval of, the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 ("PUHCA"), of the transfer to Buyer of the Auctioned Assets, unless (A) FERC has determined that Buyer is an exempt wholesale generator or if Buyer's application for exempt wholesale generator status is deemed granted by operation of law pursuant to Section 32 of PUHCA or (B) Seller, in its sole discretion, elects to accept that Buyer is deemed to be such an exempt wholesale generator by virtue of Buyer applying in good faith to FERC for a determination that Buyer is such an exempt wholesale generator, (vi) application to, and determination by the PSC and such state Governmental Authorities as may be required under PUHCA that, for purposes of Section 32(c) of PUHCA, allowing the Auctioned Assets to be "an eligible facility" will benefit consumers, is in the public interest and does not violate state law, and (vii) other declarations, filings or registrations with, or notices to, or authorizations, consents or approvals of, any Governmental Authority which become applicable to Seller or the transactions contemplated hereby or by the Ancillary Agreements as a result of the specific regulatory status or jurisdiction of incorporation or organization of Buyer (or any of its Affiliates) or as a result of any other facts that specifically relate to the business or activities in which Buyer (or any of its Affiliates) is or proposes to be engaged (collectively, the "Seller Required Regulatory Approvals"), no declaration,

filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for the consummation by Seller of the transactions contemplated hereby or by the Ancillary Agreements, other than (A) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect, (B) any certificate of occupancy, consent or similar approval to authorize the change in occupancy of the Buyer Real Estate contemplated by this Agreement and required pursuant to the Code of the Village of Buchanan, including specifically Section 211.49 thereof and (C) any consent of the Commissioner of General Services of the State of New York required for the assignment from Seller to Buyer of the right to install and maintain a fish return pipeline in an area in the Hudson River approximately 30 feet wide and 330 feet long.

(c) To the knowledge of Seller, there is no reason that it should fail to obtain the Seller Required Regulatory Approvals.

SECTION 4.04. Personal Property. (a) Except for Permitted Exceptions, Seller has good and marketable title, free and clear of all Encumbrances, to all personal property included in the Auctioned Assets.

(b) Except as set forth in Schedule 4.04(b), to the knowledge of Seller, the Generating Plants conform in all material respects, to the extent required, to the (i) Technical Specifications included in the NRC Permits for Indian Point Unit 1 and Indian Point Unit 2 in accordance with the requirements of 10 C.F.R. Section 50.36 and (ii) the Updated Final Safety Analysis Report required to be maintained for Indian Point Unit 1 and Indian Point Unit 2 in accordance with the requirements of 10 C.F.R. Section 50.71(e).

SECTION 4.05. Real Estate. The Conveyance Plans indicate the location of the Buyer Real Estate. Copies of the Conveyance Plans and Certificates of Title Nos. 231-W-08707 and 231-W-10117 prepared by First American Title Insurance Company of New York, Inc., the most recent certificates of title in the possession of Seller with respect to the Buyer Real Estate or any portion thereof, have heretofore been delivered by Seller to Buyer or made available for inspection by Buyer, receipt of which is hereby acknowledged by Buyer.

SECTION 4.06. Leases. As of the date of this Agreement, Seller is neither a tenant nor a lessee under any real property leases which (a) are to be transferred and assigned to Buyer on the Closing Date and (b) (i) provide for annual payments of more than \$100,000 or (ii) are material to the Auctioned Assets, except, in each case, as set forth in Schedule 4.06.

SECTION 4.07. Contracts. (a) Except for (i) any Contract listed in Schedule 2.02(a)(iv), (ii) contracts which will expire prior to Closing or that are permitted to be entered into under this Agreement, (iii) contracts associated with emergency preparedness (including those relating to emergency sirens or radiation monitors), (iv) contracts with NYPA and (v) contracts listed in Schedule 4.07(a), Seller is not a party to any contract which is material to the business operations of the Auctioned Assets.

(b) Each Contract (i) constitutes a valid and binding obligation of Seller, and, to the knowledge of Seller, constitutes a valid and binding obligation of the other parties thereto, (ii) is in full force and effect and (iii) except for Contracts listed in Schedule 4.03(a), may be transferred to Buyer pursuant to this Agreement and will continue in full force and effect thereafter, in each case, without breaching the terms thereof or resulting in the forfeiture or impairment of any rights thereunder, except for such breaches, forfeitures or impairments which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(c) There is not, under any of the Contracts, any default or event which, with notice or lapse of time or both, would constitute a default by Seller, except for such events of default and other events as to which requisite waivers or consents have been obtained or which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(d) There are no suits or arbitration proceedings involving Seller pending or, to the knowledge of Seller, threatened relating to any Required Contract which would, individually or in the aggregate, be reasonably expected to have a material adverse effect on such Required Contract and which is not reasonably likely to be cured by Seller prior to Closing.

SECTION 4.08. Legal Proceedings. Except as set forth in Schedule 4.08, there are no claims, causes of action, proceedings or investigations pending or, to the

knowledge of Seller, threatened against or relating to Seller which would, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. With respect to the business or operations of the Auctioned Assets, Seller is not, as of the date of this Agreement, subject to any outstanding judgment, rule, order, writ, injunction or decree of any Governmental Authority which would, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. The representations and warranties of Seller set forth in this Section 4.08 shall not apply to, and do not cover, any environmental matters which, with respect to any representations and warranties of Seller, are exclusively governed by Section 4.10.

**SECTION 4.09. Permits; Compliance with Law.**

(a) Except as set forth in Schedule 4.09(a), Seller holds, and is in compliance with, all Permits necessary to conduct the business and operations of the Auctioned Assets as currently conducted, and, to the knowledge of Seller, Seller is otherwise in compliance with all Laws of any Governmental Authority applicable to the business and operations of the Auctioned Assets, except for such failures to hold or comply with such Permits, or such failures to be in compliance with such Laws, which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(b) Except as set forth in Schedule 4.09(b), Seller has not received any written notification that it is in violation of any of such Permits or Laws, except for notifications of violations which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. The representations and warranties of Seller set forth in this Section 4.09 shall not apply to, and do not cover, (i) any environmental matters which, with respect to any representations and warranties of Seller, are exclusively governed by Section 4.10, (ii) any ERISA matters which, with respect to any representations and warranties of Seller, are exclusively governed by Section 4.12, (iii) any tax matters which, with respect to any representations and warranties of Seller, are exclusively governed by Section 4.13 or (iv) any nuclear matters which, with respect to any representations and warranties of Seller, are exclusively governed by Section 4.17.

**SECTION 4.10. Environmental Matters.** (a) Except as set forth in Schedule 4.10, Seller holds, and is in compliance with, all Environmental Permits required under applicable Environmental Laws to conduct the business and operations of the Auctioned Assets as currently conducted,

and, to the knowledge of Seller, Seller is in compliance with Environmental Laws applicable to the business and operations of the Auctioned Assets, except for such failures to hold or comply with such Environmental Permits, or such failures to be in compliance with such Environmental Laws, which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(b) Except as set forth in Schedule 4.10, Seller has not received written notice from a Governmental Authority (i) that it is in violation of any Environmental Law with respect to the Auctioned Assets or (ii) that it is a potentially responsible party under the Federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar state law with respect to any real property included in the Buyer Real Estate or in any lease forming part of the Auctioned Assets, except for such matters under such Environmental Laws as would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(c) Except as set forth in Schedule 4.10, with respect to the business and operations of the Auctioned Assets, Seller has not entered into or agreed to any consent decree or order and is not subject to any outstanding judgment, decree or judicial order relating to compliance with any Environmental Law or to the remediation of Hazardous Substances under any Environmental Law, except for such consent decrees and orders, judgments, decrees or judicial orders that would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(d) Except as set forth in Schedule 4.10, there are no claims, causes of action, proceedings or investigations pending, or to the knowledge of Seller, threatened against or relating to Seller, under or relating to any Environmental Law, which would, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. The representations and warranties made in this Section 4.10 are Seller's exclusive representations and warranties relating to environmental matters.

**SECTION 4.11. Labor Matters.** Seller has previously made available to Buyer copies of all collective bargaining agreements to which Seller is a party or is subject and which relate to the business or operations of the Auctioned Assets. Except as set forth in Schedule 4.11, with respect to the business and operations of the Auctioned Assets, (a) there is no labor strike, slowdown or stoppage presently affecting the Auctioned Assets or, to the

knowledge of Seller, threatened that would affect the Auctioned Assets, (b) Seller has not received notice that any representation petition respecting the employees of Seller has been filed with the National Labor Relations Board, (c) Seller has not experienced any primary work stoppage since at least December 31, 1997, (d) Seller has not received written notice of any unfair labor practice complaint against Seller pending before the National Labor Relations Board and (e) no arbitration proceeding arising out of or under collective bargaining agreements is pending against Seller except, in the case of each of the foregoing clauses (a) through (e), for such matters as would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

#### SECTION 4.12. ERISA; Benefit Plans.

Schedule 4.12 sets forth a list, as of the date of this Agreement, of all material deferred compensation, profit-sharing, retirement and pension plans and all material bonus and other material employee benefit or fringe benefit plans maintained, or with respect to which contributions have been made, by Seller with respect to current employees employed in connection with the operations of the Generating Plants and the Gas Turbines (collectively, "Benefit Plans"). Copies of all such Benefit Plans have been made available to Buyer. Seller and each trade or business (whether or not incorporated) which are treated as a single employer with Seller under Section 414(b), (c), (m) or (o) of the Code (an "ERISA Affiliate") have fulfilled their respective obligations under the minimum funding requirements of Section 302 of ERISA, and Section 412 of the Code, with respect to each Benefit Plan which is an "employee pension benefit plan" as defined in Section 3(2) of ERISA. Each Benefit Plan is in compliance in all material respects with the presently applicable provisions of ERISA and the Code, except for such failures to fulfill such obligations or comply with such provisions which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. Neither Seller nor any ERISA Affiliate has incurred any liability under Section 4062(b) of ERISA, or any withdrawal liability under Section 4201 of ERISA, to the Pension Benefit Guaranty Corporation (the "PBGC") in connection with any Benefit Plan which is subject to Title IV of ERISA which liability remains outstanding. Neither Seller nor any ERISA Affiliate has engaged in any transaction within the meaning of Section 4069(b) or Section 4212(c) of ERISA. No Benefit Plan and no "employee pension benefit plan" (as defined in Section 3(2) of ERISA) maintained by Seller or any ERISA Affiliate or to which Seller or any ERISA Affiliate has contributed is a multiemployer plan. Seller has the right,

in accordance with and subject to the terms thereof, to terminate and modify each Benefit Plan.

SECTION 4.13. Taxes. With respect to the Auctioned Assets and businesses of Seller related to the Auctioned Assets, (a) all Tax Returns required to be filed have been filed and all such returns were correct and complete in all respects and (b) all Taxes shown to be due on such Tax Returns, and all Taxes otherwise owed for which a Tax Return is not required to be filed, have been paid in full, except to the extent that any failure to file or any failure of filed returns to be correct and complete or any failure to pay any Taxes would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. No written notice of deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of Seller in respect of the Auctioned Assets which has not been fully paid or finally settled or which is not being contested in good faith through appropriate proceedings, except for any such notices regarding Taxes which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. Except as set forth in Schedule 4.13, there are no outstanding agreements or waivers extending the applicable statutory periods of limitation for Taxes associated with the Auctioned Assets for any period, except for any such agreements or waivers which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. The representations and warranties of Seller set forth in this Section 4.13 shall not apply to, and do not cover, any Decommissioning matters which, with respect to the representations and warranties of the Seller, are exclusively governed by Sections 4.18 and 4.19.

SECTION 4.14. Undisclosed Liabilities. As of the date of this Agreement, there are no liabilities or obligations of any nature or kind (absolute, accrued, contingent or otherwise) with respect to the Auctioned Assets that, if they had existed as of December 31, 1999, would have been required to be set forth on Seller's December 31, 1999 balance sheet or in the notes thereto prepared in accordance with GAAP, as applied by Seller in connection with such balance sheet (the "Balance Sheet"), except for any such liabilities or obligations which (a) are disclosed, reflected or reserved against in the Balance Sheet, (b) are disclosed in or contemplated or permitted by this Agreement or the Ancillary Agreements (including the Assumed Obligations), (c) have been incurred in the ordinary course of business, (d) are Retained Liabilities, or (e) are set forth in Schedule 4.14.

SECTION 4.15. Brokers. No broker, finder or other person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by Seller, except Morgan Stanley & Co. Incorporated, which is acting for and at the expense of Seller.

SECTION 4.16. Insurance. Set forth in Schedule 4.16(a) is a description of the insurance program of Seller related to the ownership or operation of the Auctioned Assets. Except as set forth in Schedule 4.16(b), Seller carries policies of insurance covering fire, workers' compensation, property all-risk, comprehensive bodily injury, property damage liability, automobile liability, product liability, completed operations, explosion, collapse, contractual liability, personal injury liability and other forms of insurance relating to the Auctioned Assets, or otherwise self-insures in accordance with all statutory and regulatory criteria against any such liabilities, which insurance, in all material respects, is in such amounts, has such deductibles and retentions and is underwritten by such companies as would be obtained in accordance with Prudent Utility Practices. Such insurance policies and arrangements are in full force and effect, all premiums with respect thereto are currently paid, and Seller is in compliance in all material respects with the terms thereof.

SECTION 4.17. Nuclear Matters. (a) Except as set forth in Schedule 4.17, Seller holds, and is in compliance with, all NRC Permits required under the Atomic Energy Act and the Energy Reorganization Act for Seller to conduct the business and operations of the Auctioned Assets as currently conducted, and, to the knowledge of Seller, Seller is in compliance with the Atomic Energy Act and the Energy Reorganization Act and all orders or decisions of the NRC applicable to the business and operations of the Auctioned Assets, except for such failures to hold or comply with such NRC Permits, or such failures to be in compliance with the Atomic Energy Act or the Energy Reorganization Act, or any such orders or decisions of the NRC, which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(b) Except as set forth in Schedule 4.17, Seller has not received from any Governmental Authority any written notice that it is currently in violation of any order, rule, regulation or decision of the NRC applicable to the Auctioned Assets.



SECTION 4.18. Qualified Decommissioning Fund.

(a) Seller's Qualified Decommissioning Fund is a trust validly existing and in good standing under the laws of the State of New York. Seller's Qualified Decommissioning Fund satisfies the requirements necessary for such Fund to be treated as a "Nuclear Decommissioning Reserve Fund" within the meaning of Section 468A(a) of the Code and as a "nuclear decommissioning fund" and a "qualified nuclear decommissioning fund" within the meaning of Treas. Reg. Section 1.468A-1(b)(3). Seller's Qualified Decommissioning Fund is in compliance with all applicable rules and regulations of the NRC, FERC, PSC and IRS, except for any such noncompliance which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect. Seller's Qualified Decommissioning Fund has not engaged in any acts of "self-dealing" as defined in Treas. Reg. Section 1.468A-5(b)(2). No "excess contribution", as defined in Treas. Reg. Section 1.468A-5(c)(2)(ii), has been made to the Qualified Decommissioning Fund which has not been withdrawn within the period provided under Treas. Reg. Section 1.468A-5(c)(2)(i). Since 1988, Seller has made timely and valid elections to make annual contributions to the Qualified Decommissioning Fund.

(b) Seller has delivered to Buyer a copy of the schedule of ruling amounts most recently issued by the IRS for the Qualified Decommissioning Fund, a copy of the request that was filed to obtain such schedule of ruling amounts and a copy of any pending request for revised ruling amounts, in each case, together with all exhibits, amendments and supplements thereto. There are no interim rate orders that may be retroactively adjusted, or retroactive adjustments to interim rate orders, that may materially affect amounts that Buyer may contribute to the Qualified Decommissioning Fund or that may require material distributions to be made from the Qualified Decommissioning Fund.

(c) The December 31, 1999 balance sheet for the Qualified Decommissioning Fund, previously made available to Buyer, has been prepared in accordance with GAAP applied on a consistent basis (except as may be described in the notes thereto) and fairly presents the financial position of the Qualified Decommissioning Fund as of December 31, 1999.

(d) Seller's Qualified Decommissioning Fund has filed all Tax Returns required to be filed and all material Taxes shown to be due on such Tax Returns have been paid in full. No written notice of any material deficiency or assessment has been received from any taxing authority with respect to liabilities for Taxes of the Qualified Decommis-

sioning Fund which has not been fully paid or finally settled or which is not being contested in good faith through appropriate proceedings.

(e) To the extent Seller has, prior to the Closing Date, pooled the assets of the Qualified Decommissioning Fund with those of any other assets for investment purposes, such pooling arrangement is a partnership for U.S. federal income Tax purposes.

#### SECTION 4.19. Nonqualified Decommissioning Fund.

(a) Seller's Nonqualified Decommissioning Fund is a trust validly existing and in good standing under the laws of the State of New York. Seller's Nonqualified Decommissioning Fund is in compliance with all applicable rules and regulations of the NRC and FERC, except for any such noncompliance which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

(b) The December 31, 1999 balance sheet for the Nonqualified Decommissioning Fund, previously made available to Buyer, has been prepared in accordance with GAAP applied on a consistent basis (except as may be described in the notes thereto) and fairly presents the financial position of the Nonqualified Decommissioning Fund as of December 31, 1999.

#### SECTION 4.20. Sufficiency of Auctioned Assets.

Except (i) as set forth in Section 2.05, (ii) to the extent that any Permit, Environmental Permit, NRC Permit or Contract may not be transferable or assignable to Buyer, (iii) contracts or other agreements associated with emergency preparedness (including those relating to emergency sirens or radiation monitors), (iv) contracts or other agreements with NYPA and (v) as expressly set forth in Schedules 4.09 or 4.10, the Auctioned Assets constitute all of the assets necessary to operate the Generating Plants and the Gas Turbines in the manner currently operated by Seller, subject to Permitted Exceptions.

SECTION 4.21. Condemnation. Seller has not received any written notice from any Governmental Authority of any pending or threatened proceeding to condemn or take by power of eminent domain or otherwise all or any part of the Buyer Real Estate.

SECTION 4.22. No Change in Accounting Methods or Practices. Since December 31, 1999, Seller has not materially changed its accounting methods or practices with respect to the Auctioned Assets.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER EXPRESSLY SET FORTH IN THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR ANY CERTIFICATES, EXHIBITS OR SCHEDULES HERETO OR THERETO, THE AUCTIONED ASSETS ARE BEING SOLD, ASSIGNED, CONVEYED, TRANSFERRED AND DELIVERED "AS IS, WHERE IS", AND SELLER IS NOT MAKING ANY OTHER REPRESENTATIONS OR WARRANTIES WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, CONCERNING SUCH AUCTIONED ASSETS OR WITH RESPECT TO THIS AGREEMENT OR THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING, IN PARTICULAR WITH RESPECT TO THE AUCTIONED ASSETS, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXPRESSLY EXCLUDED AND DISCLAIMED BY SELLER AND WAIVED BY BUYER. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE INFORMATION SET FORTH IN, OR CONTEMPLATED BY, THE INFORMATION MEMORANDUM.

#### ARTICLE V

##### Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

SECTION 5.01. Organization. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted. At or prior to Closing, Buyer will be duly qualified and licensed to do business as a foreign limited liability company and will be in good standing in the State of New York.

SECTION 5.02. Authority Relative to This Agreement. Buyer has all necessary limited liability company power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and such Ancillary Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly and validly authorized by the Board of Directors of Buyer or by a committee thereof to whom such authority has been duly delegated and no other proceedings on the part of Buyer are necessary to authorize this Agreement or such Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby. This Agreement and such Ancillary Agreements have been duly and

validly executed and delivered by Buyer and, assuming that this Agreement and the Ancillary Agreements constitute valid and binding agreements of Seller and each other party thereto (other than Buyer), this Agreement and such Ancillary Agreements constitute valid and binding agreements of Buyer, enforceable against Buyer in accordance with their respective terms.

SECTION 5.03. Consents and Approvals; No Violation. (a) Subject to obtaining the Buyer Required Regulatory Approvals and the Seller Required Regulatory Approvals, neither the execution and delivery of this Agreement or the Ancillary Agreements to which it is party by Buyer nor the purchase by Buyer of the Auctioned Assets pursuant to this Agreement will (i) conflict with or result in any breach of any provision of the Certificate of Formation or Operating Agreement of Buyer, (ii) result in a default (or give rise to any right of termination, cancelation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, or (iii) violate any Law applicable to Buyer, or any of its assets, except in the case of clauses (ii) and (iii) for such failures to obtain a necessary consent, defaults (or rights) and violations which would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the ability of Buyer to consummate the transactions contemplated by, and discharge its obligations under, this Agreement and the Ancillary Agreements (a "Buyer Material Adverse Effect").

(b) Except for (i) approval of the PSC, pursuant to Section 70 of the Public Service Law of the State of New York, of the transfer to Buyer of the Auctioned Assets, (ii) a ruling or approval of the PSC granting Buyer lightened regulatory treatment that is comparable to regulatory treatment granted to other providers of wholesale electric services in New York State and that would not prevent Buyer from competing on a comparable basis with such other providers, (iii) the filings by Buyer and Seller required by the HSR Act and the expiration or earlier termination of all waiting periods under the HSR Act, (iv) application by Buyer to, and the approval of, FERC under (A) Section 203 of the Federal Power Act with respect to the transfer of Auctioned Assets constituting jurisdictional assets under the Federal Power Act and (B) Section 205 of the Federal Power Act with respect to (1) the Continuing Site Agreement and the Power Purchase Agreement, and (2) authorization to sell energy from the

Generating Plants and Gas Turbines at market-based rates, (v) application by Buyer to, and the approval of, the NRC for the transfer of the NRC licenses for the Generating Plants under the Atomic Energy Act, (vi) application to, and determination by the PSC and such state Governmental Authorities as may be required under PUHCA that, for purposes of Section 32(c) of PUHCA, allowing the Auctioned Assets to be "an eligible facility" will benefit consumers, is in the public interest and does not violate state law, (vii) qualification of Buyer, with respect to the Auctioned Assets, as an exempt wholesale generator under the Energy Policy Act of 1992, (viii) an application for a certificate of occupancy, consent or similar approval to authorize the change in occupancy of the Buyer Real Estate contemplated by this Agreement required pursuant to the Code of the Village of Buchanan, including specifically Section 211.49 thereof and (ix) an application for the consent of the Commissioner of General Services of the State of New York required for the assignment from Seller to Buyer of the right to install and maintain a fish return pipeline in an area in the Hudson River approximately 30 feet wide and 330 feet long (collectively, the "Buyer Required Regulatory Approvals"), no declaration, filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for the consummation by Buyer of the transactions contemplated hereby or by the Ancillary Agreements, other than such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate, be reasonably expected to have a Buyer Material Adverse Effect.

(c) To the knowledge of Buyer, there is no reason that it should fail to obtain the Buyer Required Regulatory Approvals.

SECTION 5.04. Availability of Funds. Buyer has sufficient funds available to it to provide sufficient funds prior to Closing to pay the Purchase Price (as adjusted).

SECTION 5.05. Brokers. No broker, finder or other person is entitled to any brokerage fees, commissions or finder's fees in connection with the transaction contemplated hereby by reason of any action taken by Buyer.

## ARTICLE VI

### Covenants of the Parties

SECTION 6.01. Conduct of Business Relating to the Auctioned Assets. (a) Except with the prior written consent of Buyer (such consent not to be unreasonably withheld or delayed) or as may be required to effect the purchase and sale of the Auctioned Assets and related transactions contemplated by this Agreement or the Ancillary Agreements or as necessary to comply with applicable Law, during the period from the date of this Agreement to the Closing Date, Seller will operate and maintain the Auctioned Assets in the usual, regular and ordinary course consistent with Prudent Utility Practices.

(b) Without limiting the generality of the foregoing, except as may be required by this Agreement or the Ancillary Agreements or as necessary to comply with applicable Law, during the period from the date of this Agreement to Closing, without the prior written consent of Buyer (such consent not to be unreasonably withheld or delayed), Seller will not:

(i) except for Permitted Exceptions, grant any Encumbrance on the Auctioned Assets;

(ii) make any material change in the levels of Inventory customarily maintained by Seller with respect to the Auctioned Assets, other than consistent with Prudent Utility Practices;

(iii) sell, lease (as lessor), transfer or otherwise dispose of, any of the Auctioned Assets, other than assets used, consumed or replaced in the ordinary course of business consistent with Prudent Utility Practices;

(iv) terminate, materially extend or otherwise materially amend any of the Contracts or waive any default by, or release, settle or compromise any material claim against, any other party thereto; provided, however, that Seller, at its option, may (A) terminate any Contract that is not a Required Contract and (B) amend the Indian Point Facilities Agreement between Seller and NYPA dated January 1, 1993 together with attached Memoranda of Understanding Nos. 1, 3-17, 20, 28, 30, 32 and 33 to effect the deletion therefrom of any obligations of Seller relating to the Substation, the Transmission System or the supply of power;

(v) terminate, extend or amend any of the Transferable Permits, other than (A) Transferable Permits not material to the operations of the Auctioned

Assets as currently conducted, (B) routine renewals and (C) transfers contemplated by Section 6.03(b);

(vi) establish, adopt, enter into or amend the Collective Bargaining Agreement, Benefits Plans or other employment plans, arrangements or practices, or grant to any Affected Employee any material increase in compensation, except (A) to the extent required by the terms of the Collective Bargaining Agreement, any employment agreement in effect as of the date of this Agreement, or applicable Law, (B) in the ordinary course of business consistent with past practice or (C) as set forth in Schedule 6.01(b)(vi);

(vii) enter into, amend or otherwise modify any real or personal property Tax agreement, treaty or settlement relating to the Auctioned Assets; or

(viii) materially change its accounting methods or practices with respect to the Auctioned Assets.

(c) Except for contracts or agreements related to matters set forth in Schedule 6.01(c)(i) not to exceed the respective dollar amounts specified for each such contract or agreement set forth in such schedule, Buyer shall not be required to assume the liabilities and obligations under any contracts or agreements entered into, without the prior written consent of Buyer, by Seller during the period from the date of this Agreement to Closing, if such contracts or agreements (i) are for the purchase, sale or storage of Nuclear Fuel, (ii) at Closing, have individual future liability outstanding in excess of \$500,000 or aggregate future liability outstanding in excess of \$5,000,000 or (iii) at Closing, have individual future liability outstanding of less than or equal to \$500,000 or aggregate future liability outstanding of less than or equal to \$5,000,000 and with respect to which Seller has not used its reasonable best efforts to provide that such contract or agreement may be terminated by Buyer at its option at any time after Closing without penalty or cost (other than de minimis administrative costs); provided, that, notwithstanding anything in this Section 6.01(c) to the contrary, Buyer shall assume the liabilities and obligations of Seller under any contract or agreement entered into by Seller in accordance with Prudent Utility Practices in connection with the capital projects listed in Schedule 6.01(c)(ii) and the work specified in Schedule 6.01(c)(iii) not to exceed the respective dollar amounts specified for such capital projects and work set forth in such schedules.

(d) Notwithstanding anything in this Section 6.01 to the contrary, Seller may take any action, incur any expense or enter into any obligation with respect to the Auctioned Assets to the extent that (i) all obligations and liabilities arising with respect thereto do not constitute Assumed Obligations or (ii) Seller otherwise provides that such obligations and liabilities shall not be assumed or retained by Buyer.

(e) Promptly after the date of this Agreement, Seller shall deliver to Buyer a copy of the contract dated April 11, 1996 between Seller and Westinghouse Electric Corporation and relating to nuclear fuel fabrication (the "Westinghouse Contract"). Within 30 days of such delivery, Buyer may elect, by written notice to Seller, to assume the Westinghouse Contract at Closing and upon such election the Westinghouse Contract shall be deemed to be a "Required Contract" for purposes of this Agreement; provided, however, that Seller shall retain all rights to credits or discounts to which it is entitled under any settlement between Westinghouse Electric Corporation and Seller.

SECTION 6.02. Access to Information. (a) As part of the transition process, Buyer and Seller shall, or shall cause any committees established in connection therewith to, negotiate in good faith to establish rules for access to the information addressed in this Section 6.02. Pursuant to such rules for access, between the date of this Agreement and the Closing Date, Seller will, subject to the Confidentiality Agreement, during ordinary business hours and upon reasonable notice and subject to compliance with applicable Law: (i) give Buyer or its Affiliates and their representatives reasonable access to (A) all books, records, plants, offices and other facilities and properties constituting the Auctioned Assets, including for the purposes of observing the operation by Seller of the Auctioned Assets and (B) the Generating Plants or Gas Turbines and to applicable employees of Seller, (ii) permit Buyer or its Affiliates to make such reasonable inspections thereof as Buyer or its Affiliates may reasonably request, (iii) furnish Buyer or its Affiliates with such financial and operating data and other information with respect to the Auctioned Assets as Buyer or its Affiliates may from time to time reasonably request, and (iv) furnish Buyer or its Affiliates, upon request, a copy of each material report, schedule or other document with respect to the Auctioned Assets filed by Seller with, or received by Seller from, the PSC, NRC, IRS or FERC; provided, however, that (A) any such activities shall be conducted in such a manner as not to interfere with the operation of the Auctioned Assets, (B) Seller shall not be required to take any action which would



constitute a waiver of the attorney-client privilege and (C) Seller need not supply Buyer with (1) any information or access which Seller is under a legal obligation not to supply (provided that upon the prior written request of Buyer, Seller will use its reasonable best efforts to obtain the necessary consents) or (2) any documents attached as Item 4(c) studies, surveys, analyses or reports to Seller's application pursuant to the HSR Act. Notwithstanding anything in this Section 6.02 to the contrary, (I) Seller will not be required to provide such information or access to any employee records other than Continued Employee Records, (II) Buyer shall not have the right to perform or conduct any environmental or radiological sampling or testing at, in, on, around or underneath the Auctioned Assets and (III) Seller shall not be required to provide such access or information with respect to any Retained Asset or Retained Liabilities (unless reasonably necessary in connection with Buyer's observations or investigations relating to the Auctioned Assets). Seller shall promptly provide Buyer with copies of all binding and non-binding notices delivered by Seller relating to the ordering of, or scheduling of future delivery of, Nuclear Fuel under any Contract.

(b) Unless otherwise agreed to in writing by Buyer, Seller shall, for a period commencing on the Closing Date and terminating three years after the Closing Date, keep confidential and shall cause its representatives to keep confidential all Confidential Information (as defined in the Confidentiality Agreement) on the terms set forth in the Confidentiality Agreement. Except as contemplated by the following sentence, Seller shall not release any person from any confidentiality agreement now existing with respect solely to the Auctioned Assets or waive or amend any provision thereof. After the Closing Date, upon reasonable request of Buyer, Seller shall, to the maximum extent permitted by Law and the applicable Bidder Confidentiality Agreement (as defined below), appoint Buyer to be Seller's representative and agent in respect of confidential information relating to the Auctioned Assets under the confidentiality agreements ("Bidder Confidentiality Agreements") between Seller and prospective purchasers of the Auctioned Assets.

(c) After Closing, Buyer shall retain all Operating Records, Decommissioning Accounting Records and Continued Employee Records (whether in electronic form or otherwise) delivered by Seller on the Closing Date relating to the Auctioned Assets prior to Closing. Buyer agrees that, after Closing Date, Seller shall have the right, upon reasonable request to Buyer, to receive from Buyer copies of

SCHEDULE A

Description of Land

[From Schedule 2.02 (a) (i) (B)]

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GT SITE GROUND LEASE

By and between

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

ENTERGY NUCLEAR INDIAN POINT 2, LLC

Dated as of •, 2001

Premises: INDIAN POINT  
GAS TURBINE SITE

Address: •  
Buchanan, New York

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any Operating Records, Decommissioning Accounting Records, Continued Employee Records or other information in Buyer's possession relating to the Auctioned Assets, the Decommissioning Funds or the Continued Employees, as the case may be, for periods prior to Closing and required by Seller in order to comply with applicable Law or to the extent that such records or information may reasonably be required by Seller in connection with any claim, cause of action, proceeding or investigation in which Seller may be involved, provided that there is no conflict between Buyer and Seller in such claim, cause of action, proceeding or investigation. Seller shall reimburse Buyer for its reasonable costs and expenses incurred in connection with the foregoing sentence.

**SECTION 6.03. Consents and Approvals; Transferable Permits.** (a) Seller and Buyer shall cooperate with each other and (i) prepare and file (or otherwise effect) as soon as practicable following the date of this Agreement, all applications, notices, petitions and filings and execute all agreements and documents with respect to and (ii) use their reasonable best efforts to (A) obtain (x) the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, (y) any other consents, approvals or authorizations of any other Governmental Authorities or third parties that are necessary to consummate the transactions contemplated by this Agreement or the Ancillary Agreements and (z) the transfer, issuance or reissuance to Buyer of all Transferable Permits and (B) as appropriate, facilitate the substitution of Buyer for Seller in connection with pending Transferable Permits. Without limiting the generality of the foregoing, (1) each Party agrees to, upon the other Party's request, support such other Party's applications for regulatory approvals of the purchase and sale of the Auctioned Assets contemplated by this Agreement and (2) Buyer and Seller agree to defend any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the Ancillary Agreements, or the consummation of the transactions contemplated hereby or thereby, including seeking to have any stay or temporary restraining order entered by any Governmental Authority vacated or reversed.

(b) Following the date of this Agreement, Seller shall commence the process of transferring to Buyer the Transferable Permits, including completing and filing applications and related documents with the appropriate Governmental Authorities. The Parties shall have the right to review and comment on in advance all filings relating to the transactions contemplated by this Agreement or the Ancillary Agreements proposed to be made by the other Party

and such other Party shall have the right to appear in (i) any proceeding relating to such filings with Governmental Authorities and (ii) any in-person meeting relating to such filings or any announced or scheduled meeting attended by the Chief Nuclear Officer of Seller, in each case, with the NRC or NYSDEC. The Parties shall in good faith consider such comments before making any such filings to the extent permitted by Law. Notwithstanding the foregoing, neither Party shall be obligated to submit to the other Party any documents attached as Item 4(c) studies, surveys, analyses and reports to its application pursuant to the HSR Act.

(c) The filing fees in connection with the filings by Seller and Buyer under the HSR Act that are part of the Seller Required Regulatory Approvals and Buyer Required Regulatory Approvals shall be borne entirely by Buyer.

(d) Seller shall bear the costs and expenses in connection with the satisfaction of the Closing condition set forth in Section 7.02(d) with respect to Required Software and Patents; provided, that Buyer shall bear all costs and expenses associated with any maintenance or similar agreements associated with the Required Software and the Patents relating to periods after Closing; provided, that such costs and expenses are comparable to the costs and expenses paid by Seller prior to Closing or are in accordance with applicable industry pricing at the relevant time.

SECTION 6.04. Further Assurances. (a) Subject to the terms and conditions of this Agreement, each of the Parties will use its reasonable best efforts to take, or cause to be taken, as soon as possible, all action, and to do, or cause to be done, as soon as possible, all things necessary, proper or advisable under applicable Laws to consummate the sale of the Auctioned Assets pursuant to this Agreement as soon as possible, including using its reasonable best efforts to ensure satisfaction of the conditions precedent to each Party's obligations hereunder. Neither of the Parties will, without prior written consent of the other Party, take or fail to take, or permit their respective Affiliates to take or fail to take, any action, which would reasonably be expected to prevent or materially impede, interfere with or delay the consummation, as soon as possible, of the transactions contemplated by this Agreement or the Ancillary Agreements.

(b) From time to time after the date of this Agreement, without further consideration and at its own

expense, (i) Seller will execute and deliver such instruments of assignment or conveyance as Buyer may reasonably request to more effectively vest in Buyer Seller's title to the Auctioned Assets (subject to Permitted Exceptions and the other terms of this Agreement) and (ii) Buyer will execute and deliver such instruments of assumption as Seller may reasonably request in order to more effectively consummate the sale of the Auctioned Assets and the assumption of the Assumed Obligations pursuant to this Agreement.

(c) Seller and Buyer shall cooperate in good faith to establish a transition committee to consider operational and business issues related to the purchase and sale of the Auctioned Assets.

(d) Prior to the Closing Date, Seller shall cooperate in good faith with Buyer to enable Buyer to obtain insurance, including insurance required under the Price-Anderson Act, in respect of the Auctioned Assets comparable to that maintained by Seller as of the date of this Agreement.

(e) Not later than five days prior to Closing, Seller shall deliver to Buyer a schedule setting forth in reasonable detail the liabilities and obligations which can be reasonably determined at such time that Buyer will assume at Closing pursuant to Section 2.03(a)(ii).

(f) Buyer may, at its own cost and expense, seek authorizations for the use of software, other than the Required Software, and patented items and processes, other than the Patents, and Seller shall cooperate in good faith in connection with such efforts.

(g)(i) Not later than 60 days prior to Closing, Seller shall deliver to Buyer a schedule setting forth the Contracts that, in accordance with Section 2.04, will not be assigned to Buyer at Closing and (ii) not later than 30 days prior to closing, Buyer shall deliver to Seller a schedule setting forth the software, other than the Required Software, and the patented items and processes, other than the Patents, with respect to which Buyer has received or will receive prior to Closing authorizations for the use thereof.

(h) To the extent that Westinghouse Electric Corporation is the manufacturer or vendor of, or provider of service with respect to, machinery, equipment, facilities, furniture or other personal property that constitute Auctioned Assets, Buyer agrees to be bound by and comply with any contractually-imposed waiver and/or limitation of

liability that has been contractually imposed on Seller by Westinghouse Electric Corporation to the same extent as Seller.

SECTION 6.05. Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby, including any statement appearing in any filing contemplated hereby or thereby, and shall not issue any such public announcement, statement or other disclosure prior to such consultation, except as may be required by Law; provided that no Party shall issue its initial public announcement, statement or other disclosure with respect to the transactions contemplated hereby without the prior consent of such other Party (which consent shall not be unreasonably withheld or delayed).

SECTION 6.06. Tax Matters. (a) All transfer and sales Taxes (including any petroleum business Taxes and similar excise Taxes on sales of petroleum based products) incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Buyer. Buyer shall prepare and file in a timely manner any Tax Returns or other documentation relating to such Taxes; provided, however, that, to the extent required by applicable Law, Seller will join in the execution of any such Tax Returns or other documentation relating to any such Taxes. Buyer shall provide to Seller copies of each Tax Return described in the proviso in the preceding sentence at least 30 days prior to the date such Tax Return is required to be filed.

(b) Each Party shall provide the other Party with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative proceedings relating to liability for Taxes, and each Party shall retain and provide the other Party with any records or information which may be relevant to such Tax Return, audit, examination or proceedings. Any information obtained pursuant to this Section 6.06(b) or pursuant to any other Section hereof providing for the sharing of information or review of any Tax Return or other instrument relating to Taxes shall be kept confidential by the parties hereto.

(c) If either Buyer or Seller receives a refund with respect to Taxes to be prorated in accordance with Sections 2.03(a)(x) and 2.03(b)(ix) for a taxable period including the Closing Date, Buyer shall pay to Seller the portion of any such refund attributable to the portion of

such taxable period prior to the Closing Date, and Seller shall pay to Buyer the portion of any such refund attributable to the portion of such taxable period on and after the Closing Date.

(d) With respect to Taxes to be prorated in accordance with Sections 2.03(a)(x) and 2.03(b)(ix), Buyer shall prepare and timely file all Tax Returns, if any, required to be filed after the Closing Date with respect to the Auctioned Assets and shall duly and timely pay all such Taxes shown to be due on such Tax Returns. Buyer's preparation of such Tax Returns for the taxable period in which Closing occurs shall be subject to Seller's approval, which approval shall not be unreasonably withheld or delayed. Buyer shall make each such Tax Return available for Seller's review and approval no later than 30 days prior to the date such Tax Return is required to be filed, it being understood that Seller's failure to approve any such Tax Return shall not limit Buyer's obligation to timely file such Tax Return and duly and timely pay all Taxes shown to be due thereon. Seller shall, to the extent required by applicable Law, join in the execution of any such Tax Returns.

(e) Seller and Buyer shall cooperate and provide each other with such assistance as may be reasonably requested by the other Party in connection with obtaining the rulings set forth in Section 6.07(c). Seller and Buyer shall jointly control all proceedings in connection with obtaining the rulings set forth in Section 6.07(c)(i) (the "joint rulings"); provided, however, that neither Party shall take any action except in connection with any ruling set forth in Section 6.07(c)(i) directed solely at such Party without the consent of the other Party, which consent shall not be unreasonably withheld; and provided further that Buyer and Seller shall share equally all expenses (other than their own legal fees) incurred in seeking and obtaining the joint rulings.

**SECTION 6.07. Decommissioning Funds.** (a) At Closing, Seller shall cause all of the assets of the Qualified Decommissioning Fund to be transferred to Buyer (or, if directed in writing to do so by Buyer, to the trustee of any trust specified in such written direction). Such assets shall consist of equity securities, fixed income securities and de minimis amounts of cash. To the extent that the Fair Market Value of the assets of the Qualified Decommissioning Fund is greater than \$430,000,000, the Purchase Price shall be adjusted pursuant to Section 3.02(c)(iii).



(b) To the extent that the Fair Market Value of the assets of the Qualified Decommissioning Fund is less than \$430,000,000, Seller shall transfer to Buyer assets of the Nonqualified Decommissioning Fund such that the aggregate Fair Market Value of the assets of the Decommissioning Funds transferred to Buyer is equal to \$430,000,000. If such a transfer is required, such assets shall consist of equity securities, fixed income securities and de minimis amounts of cash.

(c) As soon as practicable, after the date of this Agreement, (i) the Parties shall jointly request and use their reasonable best efforts to obtain prior to the Closing Date rulings issued by the IRS to the effect that (A) the Parties and the Qualified Decommissioning Fund shall not recognize any gain or otherwise take into account any income for U.S. federal income Tax purposes by reason of the transfer of the assets of the Qualified Decommissioning Fund to Buyer and that the trust established by Buyer into which the assets of the Qualified Decommissioning Fund are to be transferred at Closing will be treated as a "Nuclear Decommissioning Reserve Fund" within the meaning of Section 468A of the Code and as a "nuclear decommissioning fund" and a "qualified nuclear decommissioning fund" within the meaning of Treas. Reg. Section 1.468A-1(b)(3), (B) Buyer will not recognize any gain or otherwise take into account any income for U.S. federal income Tax purposes by reason of any transfer of the assets of the Nonqualified Decommissioning Fund to Buyer, except to the extent that the amount of cash and other Class I assets (as such term is defined in Treas. Reg. Section 1.338-6T) received by Buyer exceeds the amount of consideration (as determined under Section 1060 of the Code) provided by Buyer for the Auctioned Assets and (C) Seller will be allowed current ordinary deductions for U.S. federal income Tax purposes for any amounts treated as realized by Seller, or otherwise recognized as income to Seller, as a result of Buyer's assumption of Decommissioning liabilities with respect to the Auctioned Assets pursuant to Section 2.03(a) and (ii) Seller shall request and use its reasonable best efforts to obtain prior to the Closing Date an advisory opinion from the New York State Tax Department that the transfer to Buyer of the assets of the Qualified Decommissioning Fund and the Nonqualified Decommissioning Fund, if any, is not a taxable transaction subject to New York State Gross Receipts Tax.

SECTION 6.08. Decommissioning. If Buyer has determined as of the expiration date of the NRC operating license for Indian Point Unit 2, including any extension thereof granted by the NRC (the "Expiration Date"), that

Decommissioning shall occur by a method other than Decon, Buyer shall cause to be paid to Seller from the Buyer Decommissioning Funds an amount equal to fifty percent of the Excess Decommissioning Funds (the "Payment Amount") on the Expiration Date, provided that such payment is permitted under NRC Law and the trust indentures relating to the Buyer Decommissioning Funds (the "Buyer Trust Indentures"). If such payment is not permitted under NRC Law or the Buyer Trust Indentures, then at the completion of Decommissioning, the Payment Amount, and any income with respect thereto accrued from the Expiration Date, shall be paid to Seller.

SECTION 6.09. Bulk Sales or Transfer Laws. Buyer acknowledges that Seller will not comply with the provisions of any bulk sales or transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement. Buyer hereby waives compliance by Seller with the provisions of the bulk sales or transfer laws of all applicable jurisdictions.

SECTION 6.10. Storage And Risk of Loss Concerning Certain Auctioned Assets. Seller shall store or cause to be stored for Buyer any Auctioned Assets not located at the Generating Plants, the Gas Turbines or the Toddville Training Center (including supplies, materials, and spare parts inventory) at Seller's warehouse facilities located in Astoria, Queens County, New York or at such other facilities as the Parties mutually agree in writing until the date that is six months after the Closing Date or, in respect of all or a portion of such Auctioned Assets, until one or more earlier dates proposed by Buyer with reasonable advance notice, which schedule shall be reasonably acceptable to Seller. Buyer agrees to reimburse Seller for its reasonable costs and expenses in connection with such storage. Buyer agrees that Seller shall have no responsibility or liability for the removal of such Auctioned Assets from the storage location, and that Buyer shall have sole responsibility and liability therefor. Seller shall cooperate and allow Buyer to remove the same. Notwithstanding the provisions of Section 9.01, Buyer agrees that Seller shall have no liability or obligation whatsoever for loss or damage with respect to the matters contemplated by this Section 6.10 or such Auctioned Assets, and Buyer agrees to hold each Seller Indemnatee harmless from and against all loss or damage or Indemnifiable Losses, and to indemnify each Seller Indemnatee from and against all loss or damage or Indemnifiable Losses incurred, asserted against or suffered as a result of any storage or other services provided by Seller pursuant to this Section 6.10, in each case, except to the extent any such loss or damage or Indemnifiable Loss results in whole or in part from the gross negligence or

wilful or wanton acts or omissions to act of any Seller Indemnatee (or any contractor or subcontractor of Seller).

SECTION 6.11. Information Resources. From the Closing Date until the date that is 180 days thereafter, Seller shall, at no cost to Buyer, provide Buyer with access to Seller's mainframe computer only to the extent reasonably necessary to enable Buyer to use the PPMIS, MMS (in read only mode), NPMEL, TNMS and Metaphase systems and applications solely in connection with the Auctioned Assets. Buyer shall pay Seller a fee of \$25,000 for each 30-day period (prorated for partial periods) beyond such 180-day period during which Buyer uses any or all of such systems or applications; provided that upon the expiration of such 180-day period, Seller shall have the right to terminate such use at any time upon 60 Business Days' prior written notice to Buyer. Such payment by Buyer shall be due and payable to Seller not later than 10 Business Days after the end of each 30-day period during which Buyer used any such system or application. Any amount to be paid under this Section 6.11 shall be paid with interest for the period commencing on the due date for such payment through the payment date, calculated at the prime rate of The Chase Manhattan Bank in effect on such due date, and in cash by wire transfer of immediately available funds. Buyer agrees that it will not use any such access for any purpose other than for the use of the PPMIS, MMS, NPMEL, TNMS and Metaphase systems and applications solely in connection with the Auctioned Assets. Buyer acknowledges that, as long as it retains access to Seller's mainframe computer, Seller, its employees and third parties shall have access to Buyer's information resources systems and applications (including the PPMIS, MMS, NPMEL, TNMS and Metaphase systems and applications that Buyer is permitted to use hereunder) in order to operate, maintain, modify, or secure Seller's information resources systems and applications (including PPMIS, MMS, NPMEL, TNMS and Metaphase systems) and Seller's mainframe computers. Notwithstanding the provisions of Section 9.01, Buyer agrees that Seller shall have no liability or obligation whatsoever for loss or damage with respect to the matters contemplated by this Section 6.11, and Buyer agrees to hold each Seller Indemnatee harmless from and against all loss or damage or Indemnifiable Losses, and to indemnify each Seller Indemnatee from and against all loss or damage or Indemnifiable Losses incurred, asserted against or suffered as a result of Buyer's access to Seller's mainframe computer pursuant to this Section 6.11, in each case, except to the extent any such loss or damage or Indemnifiable Loss results in whole or in part from the gross negligence or wilful or wanton acts or omissions to act of any Seller Indemnatee (or any contractor or subcontractor of Seller).

SECTION 6.12. Witness Services. At all times from and after the Closing Date, each Party shall use reasonable best efforts to make available to the other Party, upon reasonable written request, its and its subsidiaries' then current or former officers, directors, employees and agents as witnesses to the extent that (i) such persons may reasonably be required by such requesting Party in connection with any claim, cause of action, proceeding or investigation in which such requesting Party may be involved and (ii) there is no conflict between Buyer and Seller in such claim, cause of action, proceeding or investigation. Such other Party shall be entitled to receive from such requesting Party, upon the presentation of invoices for such witness services, payments for such amounts, relating to supplies, disbursements and other out-of-pocket expenses and direct and indirect costs of employees who are witnesses, as may be reasonably incurred in providing such witness services.

SECTION 6.13. Trade Names. In furtherance of the transfer of the Auctioned Assets described in Section 2.02(a)(vii), Seller shall not object to the use by Buyer of any trade names, trademarks, service marks or logos (and any rights to and in the same, including any right to use the same) primarily relating to the Generating Plants and Gas Turbines that contain the words "Indian Point".

SECTION 6.14. Steam Generator Storage Facility. Seller shall cause a suitable storage facility for the long-term on-site storage of the replaced steam generators at Indian Point Unit 2 to be constructed and the replaced steam generators shall be stored therein in compliance with applicable Law prior to the Closing Date.

SECTION 6.15. Availability of Cooling Water Usage Credits. (a) At Buyer's option, which shall be exercised by written notice to Seller prior to Closing, Seller shall transfer at Closing any environmental credit points that are held by Indian Point Unit 2 pursuant to the Fourth Amended Stipulation of Settlement and Judicial Consent Order in Natural Resources Defense Council, Inc. v. New York State Department of Environmental Conservation among the Natural Resources Defense Council, Inc., Hudson River Fishermen's Association, d/b/a Hudson Riverkeeper Fund, Inc., Scenic Hudson, Inc., NYSDEC, John P. Cahill as acting commissioner of NYSDEC, Seller, NYPA, Orange & Rockland Utilities, Inc., and Central Hudson Gas & Electric Corporation, executed by the Honorable Joseph C. Teresi on October 23, 1997 (the "Consent Order"), which Consent Order, by its terms, has expired.

(b) If Buyer exercises its option under Section 6.15(a) and, notwithstanding the expiration of the Consent Order, for so long as the July outage requirement at the Bowline Point electric generating station ("Bowline"), as specified in paragraph 3 of the Consent Order, continues in effect upon the owner(s) of Bowline and may be met by drawing 2.8 unit-days of outage from Indian Point Unit 2's existing balance of unit-days of outage that were accrued in excess of those required by Indian Point Unit 2 under the Settlement Agreement, as provided for under paragraph 3 of the Consent Order, Buyer shall provide the owner(s) of Bowline with such 2.8 unit-days of outage for use at Bowline at no cost.

**SECTION 6.16. Nuclear Insurance.** Buyer shall maintain any Nuclear Insurance Policies transferred to Buyer as contemplated by Section 2.02(a)(xii) and shall obtain and maintain any other policies of liability and property insurance with respect to the ownership, operation, and maintenance of the Generating Plants which shall afford protection against insurable hazards and risks which meet the requirements of 10 C.F.R. Section 50.54(w) and 10 C.F.R. Part 140 and are consistent with Prudent Utility Practices. Such coverage shall include (a) nuclear liability insurance in such form and in such amount as (i) will provide at least the same degree of protection to Seller that is provided to Seller under the Nuclear Insurance Policies that are contemplated to be transferred to Buyer pursuant to Section 2.02(a)(xii) and (ii) will meet the financial protection requirements of the Atomic Energy Act, and (b) an indemnification agreement as contemplated by Section 170 of the Atomic Energy Act. In the event that the nuclear liability protection system contemplated by Section 170 of the Atomic Energy Act is repealed or changed, Buyer shall obtain and maintain alternate protection against nuclear liability for such period as may be necessary to cover liability arising out of or resulting from the Auctioned Assets, to the extent available and consistent with Prudent Utility Practices, providing substantially equivalent protection to Seller that is provided to Seller under the Nuclear Insurance Policies that are contemplated to be transferred to Buyer pursuant to Section 2.02(a)(xii).

**SECTION 6.17. Update of Schedules.** Seller shall promptly supplement or otherwise amend the Schedules 4.03(a), 4.04(b), 4.07(a), 4.08, 4.09(a), 4.09(b), 4.10, 4.11, 4.13, 4.16(a), 4.16(b) and 4.17 (together, as supplemented or amended, the "Updated Schedules") with respect to matters arising after the date of this Agreement which, if existing at the date of this Agreement, would have been set forth in the Schedules. Upon delivery to Buyer,

the Updated Schedules shall become part of this Agreement in lieu of the relevant predecessor Schedules. In the event that Seller delivers Updated Schedules within five Business Days of the Closing Date, Buyer shall be entitled to extend, by written notice to Seller, the Closing Date to the fifth Business Day after Buyer has received such Updated Schedules. Notwithstanding the foregoing, (i) any such Updated Schedules shall not, except as Buyer may otherwise agree in writing, be deemed to have cured any breach of any representation or warranty made by Seller as of the date of this Agreement and (ii) to the extent that any Updated Schedule or Schedules shall contain a Material Adverse Effect that is not cured or waived, the Closing condition set forth in Section 7.02(p) shall not be satisfied.

## ARTICLE VII

### Conditions

SECTION 7.01. Conditions Precedent to Each Party's Obligations. The respective obligations of each Party to effect the purchase, sale and transfer of the Auctioned Assets contemplated by this Agreement shall be subject to the satisfaction or waiver by such Party on or prior to Closing of the following conditions:

(a) each of the Seller Required Regulatory Approvals and each of the Buyer Required Regulatory Approvals shall have become a Final Order (a "Final Order" means any action by the relevant regulatory authority which has not been reversed, stayed, enjoined, set aside, annulled or suspended, as to which any waiting period prescribed by law for the consummation of the transactions contemplated hereby has expired and as to which all conditions to the consummation of such transactions prescribed by Law have been satisfied), and such Final Order shall be in form and substance reasonably acceptable to the Party that sought the consent or approval granted by such Final Order (for purposes of the immediately preceding clause, (i) if Seller is the Party that sought the consent or approval granted by a Final Order, such Final Order shall be deemed to be reasonably acceptable to Seller if it (A) complies in all material respects with the terms and conditions of Seller's application therefor and (B) would not reasonably be expected to have a Seller Material Adverse Effect, (ii) if Buyer is the Party that sought the consent or approval granted by a Final Order, such Final Order shall be deemed to be reasonably acceptable to Buyer if it (A) complies in all material respects with the terms and conditions of Buyer's application therefor and (B) would not reasonably be

expected to have a Buyer Material Adverse Effect, and (iii) if Seller and Buyer jointly sought, in the same application, the consent or approval granted by a Final Order, such Final Order shall be deemed to be reasonably acceptable to Seller if (A) it complies in all material respects with the terms and conditions of the joint application therefor and (B) it would not reasonably be expected to have a Seller Material Adverse Effect, and such Final Order shall be deemed to be reasonably acceptable to Buyer if it (A) complies in all material respects with the terms and conditions of the joint application therefor and (B) would not reasonably be expected to have a Buyer Material Adverse Effect); provided, however, that if there shall be pending or threatened any appeal or challenge to a Final Order, which, if adversely determined, would cause such Final Order not to be reasonably acceptable (within the meaning of the immediately preceding parenthetical) to the Party that sought such Final Order, then if such Party notifies the other Party that such pending or threatened appeal or challenge exists (such notification to be made as soon as reasonably practicable following knowledge of such pending or threatened appeal or challenge), then such determination of whether a Final Order is reasonably acceptable to the Party who sought it shall be made only after all opportunities for rehearing or judicial review are exhausted and provided, further, that if the determination of whether a Final Order is reasonably acceptable to the Party who sought it shall be delayed pursuant to the foregoing proviso, the Termination Date shall be automatically extended for a period of time equal to the period of time for which such determination shall have been delayed;

(b) no (A) suit, action or other proceeding that has a reasonable likelihood of success against any Party or its Affiliates or any of the Auctioned Assets shall be pending before any Governmental Authority which seeks to restrain or prohibit any of the transactions contemplated hereby or by the Ancillary Agreements, or (B) preliminary or permanent injunction, judgment, order or decree by any federal or state court of competent jurisdiction and no statute, rule or regulation enacted by any Governmental Authority preventing the consummation of any of the transactions contemplated hereby or by the Ancillary Agreements (collectively, "Restraints") shall be in effect; and

(c) delivery of each of the Deeds, the Continuing Site Agreement, the Declaration of Easements Agreement and a Memorandum of the GT Site Ground Lease to the Title Company for recording.

SECTION 7.02. Conditions Precedent to Obligation of Buyer. The obligation of Buyer to effect the purchase, sale and transfer of the Auctioned Assets contemplated by this Agreement shall be subject to the satisfaction or waiver by Buyer on or prior to Closing of the following additional conditions:

(a) Seller shall have performed in all material respects its covenants, agreements and obligations contained in this Agreement which are required to be performed on or prior to Closing;

(b) the representations and warranties of Seller which are set forth in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of the date of this Agreement, in which case as of such date);

(c) Buyer shall have received a certificate from an authorized officer of Seller, dated the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Sections 7.02(a) and (b) have been satisfied;

(d) all consents, waivers and approvals required to transfer the Required Contracts, Required Software, Patents (to the extent necessary to operate the Generating Plants and the Gas Turbines in the manner currently operated by Seller) and Transferable Permits to Buyer shall have been obtained on or prior to Closing and all Required Contracts, Required Software, Patents (to the extent necessary to operate the Generating Plants and the Gas Turbines in the manner currently operated by Seller) and Transferable Permits shall have been transferred to Buyer at or prior to Closing;

(e) Buyer shall have received (i) deeds of conveyance substantially in the form of Exhibits A-1 and A-2 (the "Deeds"), (ii) a Foreign Investment in Real Property Tax Act Certification and Affidavit substantially in the form of Exhibit B and (iii) an opinion from John D. McMahon, Esq., General Counsel of Seller and/or other counsel reasonably acceptable to Buyer, dated the Closing Date, substantially in the form set forth in Exhibit C;

(f) unless Seller shall have made the election described in Section 9.01(a) (v), Buyer shall have



received the IRS rulings contemplated to be received by Buyer pursuant to Section 6.07(c);

(g) in accordance with Section 6.07(a), Seller shall have transferred all of the assets of the Qualified Decommissioning Fund to Buyer and the aggregate Fair Market Value of the assets of the Decommissioning Funds transferred to Buyer pursuant to Sections 6.07(a) and (b) shall not be less than \$430,000,000;

(h) the Title Company shall have agreed to issue (as evidenced by binding commitments of the Title Company which shall have been delivered to Buyer) immediately after Closing to Buyer, at Buyer's expense and at standard rates, a current ALTA (1992) Owner's Title Insurance Policy (as filed in New York with the standard New York endorsement) insuring title to the fee and leasehold interests in the Buyer Real Estate to be conveyed/granted to Buyer pursuant to this Agreement in an amount equal to that portion of the Purchase Price properly allocable to such interests, subject only to Permitted Exceptions, and Seller shall have delivered affidavits to the Title Company in substantially the form attached as Exhibit D;

(i) (A) Seller shall have replaced the steam generators at Indian Point Unit 2 with the spare steam generators being stored by Seller, (B) Indian Point Unit 2 shall have been restarted and during any single 24-hour period subsequent to such restart Indian Point Unit 2 shall have, as applicable, demonstrated net electrical capacity of (i) 941 megawatts (during the summer period) or (ii) 976 megawatts (during the winter period) and, (C) at Closing, no forced reduction of greater than 5% of such electrical capacity or no outage shall be ongoing at Indian Point Unit 2;

(j) Seller shall have obtained a waiver that permits Seller, without first offering such undivided interests to NYPA, to transfer to Buyer the undivided interests of Seller as a tenant in common with NYPA to the following described personal property, fixtures, structures, improvements, or other interests, excepting the fee to the land on which, over which, or under which such interests are erected or located, in each case as more specifically described in the deed dated December 30, 1975, executed by Seller and NYPA, and recorded in the County Clerk's Office of Westchester County, New York, on December 31, 1975 in Liber 7306, page 736 (the "1975 Deed"): (1) that portion of the

circulating water Discharge Canal lying south of a line parallel to and 135 feet south of the northerly boundary of "PARCEL A" (such term being as defined in the 1975 Deed), delineated on "Map No. 1" (such term being as defined in the 1975 Deed) and designated thereon as "PAC-3"; (2) the outfall gates Control House and power and control conduits serving the Control House and the outfall gates (but omitting such portion of such power and control conduits as are found on the outfall gates and associated structures westerly of the westerly boundary of PARCEL A within lands now or formerly of the New York State Atomic and Space Development Authority or its successor, the New York State Energy Research and Development Authority), and appurtenances thereto, delineated on Map No. 1 and designated thereon as "PAC-4"; (3) the Meteorological Tower, the Meteorological Trailer, forward scatter meter, associated foundations, structures, supports, anchors, and other associated facilities and appurtenances, delineated on Map No. 1 and designated thereon as "PAC-8"; and (4) the outfall gates power cables running from PARCEL A underground through "EASEMENT PARCEL 1" (such term being defined in the 1975 Deed) to MCC 10Z in the Screenwell Structure No. 1 on EASEMENT PARCEL 1 (as delineated and designated on Map No. 1) and associated control wires from PARCEL A underground through EASEMENT PARCEL 1 to Control Building No. 1, such facilities being designated as "CEC-3" on Map No. 1, together with appurtenances;

(k) Seller shall have executed and delivered the GT Site Ground Lease;

(l) Seller shall have executed and delivered the Continuing Site Agreement;

(m) Seller shall have executed and delivered the Declaration of Easements Agreement;

(n) Seller shall have executed and delivered the Power Purchase Agreement;

(o) Seller shall have entered into an Electric Service Contract regarding the provision and/or delivery of Station-Use Energy as defined in the Continuing Site Agreement;

(p) since the date of this Agreement, there shall not have occurred and be continuing a Material Adverse Effect; and

(q) Seller shall have executed and delivered each of the following:

(i) a bill of sale by which title to Auctioned Assets constituting personal property shall be conveyed to Buyer, substantially in the form of Exhibit H (the "Bill of Sale");

(ii) a copy, certified by the Secretary of Seller, of resolutions authorizing the execution and delivery of this Agreement and the Ancillary Agreements and instruments attached as exhibits hereto and thereto, and the consummation of the transactions contemplated hereby;

(iii) a certificate of the Secretary of Seller certifying the certificate of incorporation and bylaws of Seller and the authority of the officers of Seller executing this Agreement and the Ancillary Agreements;

(iv) certificates of title for the vehicles set forth in Schedule 2.02(a)(iii), to the extent such certificates of title are necessary for the transfers of such vehicles; and

(v) such other agreements, consents, documents, instruments and writings as are reasonably requested to be delivered by Seller at or prior to Closing pursuant to this Agreement or the Ancillary Agreements, including all such other instruments of sale, transfer, conveyance, assignment or assumption as Buyer may reasonably request in connection with the transactions contemplated hereby.

SECTION 7.03. Conditions Precedent to Obligation of Seller. The obligation of Seller to effect the purchase, sale and transfer of the Auctioned Assets contemplated by this Agreement shall be subject to the satisfaction or waiver by Seller on or prior to Closing of the following additional conditions:

(a) Buyer shall have performed in all material respects its covenants, agreements and obligations contained in this Agreement which are required to be performed on or prior to Closing;

(b) the representations and warranties of Buyer which are set forth in this Agreement shall be true and correct in all material respects as of the date of this

Agreement and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of the date of this Agreement, in which case as of such date);

(c) Seller shall have received a certificate from an authorized officer of Buyer, dated the Closing Date, to the effect that, to the best of such officer's knowledge, the conditions set forth in Sections 7.03(a) and (b) have been satisfied;

(d) Seller shall have received an opinion from Joseph L. Blount, Esq., General Counsel of Buyer and Entergy Nuclear, Inc. and/or other counsel reasonably acceptable to Seller, dated the Closing Date, substantially in the form set forth in Exhibit E;

(e) unless Buyer shall have made the election described in Section 9.01(b)(iv), Seller shall have received the IRS rulings and the New York State Department of Taxation advisory opinion contemplated to be received by Seller pursuant to Section 6.07(c);

(f) Buyer shall have entered into an Electric Service Contract regarding the provision and/or delivery of Station-Use Energy as defined in the Continuing Site Agreement;

(g) Guarantor shall have executed and delivered the Guarantee Agreement and Seller shall have received an opinion substantially in the form of Exhibit G dated the Closing Date and from counsel reasonably acceptable to Seller;

(h) Buyer shall have executed and delivered the GT Site Ground Lease;

(i) Buyer shall have executed and delivered the Continuing Site Agreement;

(j) Buyer shall have executed and delivered the Declaration of Easements Agreement;

(k) Buyer shall have executed and delivered the Power Purchase Agreement; and

(l) Buyer shall have executed and delivered each of the following:

(i) a copy, certified by the Secretary of Buyer, of resolutions authorizing the execution

and delivery of this Agreement and the Ancillary Agreements and instruments attached as exhibits hereto and thereto, and the consummation of the transactions contemplated hereby;

(ii) a certificate of the Secretary of Buyer certifying the certificate of incorporation and bylaws of Buyer and the authority of the officers of Buyer executing this Agreement and the Ancillary Agreements; and

(iii) such other agreements, consents, documents, instruments and writings as are reasonably requested to be delivered by Buyer at or prior to Closing pursuant to this Agreement or the Ancillary Agreements, including all such other instruments of sale, transfer, conveyance, assignment or assumption as Seller may reasonably request in connection with the transactions contemplated hereby.

## ARTICLE VIII

### Employee Matters

SECTION 8.01. Employee Matters. (a) ENO shall offer equivalent employment at the Auctioned Assets to those employees of Seller, regularly assigned by Seller to work at the Auctioned Assets as of Closing in the job titles listed in Schedule 8.01(a) or in the Collective Bargaining Agreement (all such employees described above and those individuals described in the following sentence being hereinafter referred to as "Affected Employees"). Notwithstanding the foregoing, the offer of employment to Affected Employees who are officers as of Closing need not be equivalent. Affected Employees shall include each such employee of Seller who is not actively at work due solely to a temporary absence, whether paid or unpaid, in accordance with applicable policies of Seller, including as a result of vacation, holiday, personal time, leave of absence, union leave, sick allowance, military leave, Family or Medical Leave Act leave or jury duty. Affected Employees also include each such former employee of Seller who is reinstated as a result of a legal proceeding arising out of employment with Seller (including any arbitration proceeding) during (i) the Union Transition Period, in the case of an Affected Union Employee and (ii) the Non-Union Transition Period, in the case of an Affected Employee who is not an Affected Union Employee, provided that Seller shall be responsible for any monetary obligations or expense

involved with respect to each such reinstatement, including, without limitation, backpay, damage awards and attorneys' fees. Each Affected Employee who accepts an offer of employment from ENO shall be referred to herein as a "Continued Employee." Continued Employees shall cease to be employees of Seller as of Closing and the period of employment by ENO of the Continued Employees shall begin at Closing. Notwithstanding the immediately preceding sentence, any Affected Employee who, on Closing, is not actively at work and has been absent for a continuous six-month period immediately prior to Closing on account of an illness or injury (a "Special Affected Employee") shall not become a Continued Employee until he or she is able to report to work for ENO. A Special Affected Employee shall remain on Seller's payroll until the earlier of (i) the expiration of his or her Seller's sick allowance and termination from employment by Seller, or (ii) he or she is able to report to work for ENO. Seller shall reimburse Buyer for all wages, compensation, or other benefits paid by ENO to any Continued Employee who was not actively at work on account of an illness or injury as of Closing, and who, on account of such illness or injury does not report to work for ENO before his or her sick allowance benefits expire. As to each such Continued Employee, his or her employment shall terminate on the date immediately after his or her sick allowance benefits expire. Seller's reimbursement shall in no event exceed the compensation and benefits to which each such Continued Employee would have been entitled had he or she continued to be employed by Seller until his or her sick allowance benefits expired. Seller shall be responsible for any obligation to provide employee benefits to Affected Employees prior to Closing.

All such offers of employment to Affected Employees will be made (i) in accordance with all applicable Laws and (ii) for employees represented by Utility Workers' Union of America AFL-CIO and its Local Union 1-2 ("Local 1-2"), in accordance with the Local 1-2 Collective Bargaining Agreement (as defined in Section 8.01(b)). ENO may extend offers for employment to Affected Employees beginning four weeks prior to Closing. To the extent ENO continues to employ Continued Non-Union Employees, ENO shall maintain equivalent employment of such employees for a period of not less than twelve months after Closing. At least four weeks prior to Closing and at Closing, Seller shall confirm to ENO that each Affected Employee (prior to Closing) or Continued Employee (at Closing), as applicable, (A) is qualified, licensed, certified or trained in accordance with applicable government requirements or standards to perform the duties and responsibilities of his or her current job assignment and (B) has the appropriate nuclear power plant

authorization. Subject to the provisions of this Article VIII, ENO retains the right to assign and direct the work of the Continued Non-Union Employees and to conduct its business and operations consistent with its business needs.

(b) Schedule 8.01(b) sets forth the 2000-2004 collective bargaining agreement, and amendments thereto, to which Seller is a party in connection with the Auctioned Assets (the "Collective Bargaining Agreement"). Affected Employees who are included in the collective bargaining unit covered by the Collective Bargaining Agreement are referred to herein as "Affected Union Employees". Each Continued Employee who is an Affected Union Employee shall be referred to herein as a "Continued Union Employee". At Closing, ENO will assume the terms and conditions of the Collective Bargaining Agreement, except as set forth in Section 8.02(b) below and negotiated in good faith with Local 1-2, as they relate to Continued Union Employees until the expiration date of the Collective Bargaining Agreement (the "Union Transition Period"). ENO will comply with its legal obligations with respect to collective bargaining under federal labor law for the employees at the Auctioned Assets in the job titles or related work responsibilities of the Affected Union Employees, and ENO will comply with all applicable obligations thereunder. ENO shall recognize Local 1-2 as the exclusive collective bargaining representative of the employees at the Auctioned Assets in the job titles or related work responsibilities of the Affected Union Employees and Buyer and ENO agree that, should any other business entity (regardless of its relationship to Buyer or ENO) acquire all or a portion of the Auctioned Assets from Buyer prior to the expiration date of the Collective Bargaining Agreement, Buyer and ENO will require such business entity to (i) offer employment to Affected Union Employees employed by ENO at the Auctioned Assets immediately prior to the change in ownership, (ii) recognize Local 1-2 as the exclusive collective bargaining representative of ENO's employees at the Auctioned Assets in the job titles or related work responsibilities of the Affected Union Employees, and (iii) assume the terms and conditions of the Collective Bargaining Agreement as they relate to Affected Union Employees from the date of such acquisition through the expiration date of the Collective Bargaining Agreement.

**SECTION 8.02. Continuation of Equivalent Benefit Plans/Credited Service.** (a) For not less than three years following Closing (the "Non-Union Transition Period"), ENO shall maintain compensation (including base pay and bonus compensation) and employee benefits and employee benefit plans, nonqualified plans and arrangements for each

Continued Employee who is not a Continued Union Employee (a "Continued Non-Union Employee") which are at least equivalent to those provided to such Continued Non-Union Employee pursuant to Seller's compensation, employee benefits and employee benefit plans, nonqualified plans and arrangements described in Section 8.02 through 8.09, that are in effect as of Closing. Seller's benefits, plans and arrangements listed on Schedule 4.12, but not specifically enumerated in Section 8.02 through 8.09, are referred to as "Seller's 4.12 Benefits". In addition to those benefit plans listed in Section 8.02 through 8.09, ENO shall maintain benefits which, in the aggregate, are equivalent in value to Seller's 4.12 Benefits. ENO may substitute for the Seller's employee stock purchase plan an enhancement to ENO's 401(k) Plans described in Section 8.04 below or an alternative plan or arrangement that is at least of equivalent value to the Seller's stock purchase plan. Such compensation shall be based upon (x) such employee's existing individual base pay, (y) such employee's authorized overtime, if applicable, and (z) the average bonus and benefit component for such employee's salary plan level, as consistently applied by Seller, apportioned according to such employee's base pay.

(b) During the Union Transition Period, ENO shall provide to each Continued Union Employee benefits and employee benefit plans and arrangements which are equivalent to those provided under such Collective Bargaining Agreement. Such benefits, plans and arrangements include the following: (i) hospital, medical, dental, vision care and prescription drug benefits (including employee contributions to be made on a pre-tax basis), (ii) health care and dependent care flexible spending accounts; (iii) employer-provided basic group term life and accidental death and dismemberment insurance; (iv) employee-paid group universal life and spousal and dependent child life insurance; (v) sick allowance (short term disability) and long term disability benefits; (vi) business travel accident insurance and crime protection insurance; (vii) occupational accidental death insurance; (viii) adoption benefits and child care and elder care referral benefits; (ix) tuition aid benefits; (x) vacation and holidays; (xi) employee stock purchase plan (including employer matching contributions) or such alternative plan or arrangement negotiated in good faith with Local 1-2; and (xii) defined benefit pension and 401(k) plan benefits. In providing such benefits, ENO shall have the right, subject to any applicable Laws and the Collective Bargaining Agreement, to use different providers from those used by Seller and to establish ENO's own benefit plans or use ENO's existing benefit plans. For purposes hereof, except as provided in Section 8.04(b), ENO shall not



have any obligation to maintain a fund holding or measured by common stock of Seller's parent under any of ENO's plans or arrangements, notwithstanding any such fund maintained by Seller under its plans and arrangements.

(c) Continued Employees shall be given credit by ENO for all service with Seller and its Affiliates under all existing or future employee benefit and fringe benefit plans, programs and arrangements of ENO ("Buyer Benefit Plans") in which they become participants and in which prior service is recognized for crediting the amount or value of the benefit. The service credit given by ENO shall be for purposes of eligibility, vesting, eligibility for early retirement and early retirement subsidies, benefit accrual, pre-existing condition limitation, employer contributions, matching contributions, severance allowance and service-related level of benefits. ENO shall assume and honor all vacation, sick and personal days accrued and unused by Continued Employees as of Closing in accordance with Seller's applicable policies and arrangements.

SECTION 8.03. Pension Plan. (a) Effective as of Closing, ENO shall have in effect defined benefit pension plans ("Buyer's Pension Plans") intended to be (i) qualified pursuant to Section 401(a) of the Code and (ii) nonqualified, in order to provide for benefits which would otherwise be payable under the applicable qualified plan but for the application of Sections 401(a)(17) and 415 of the Code, providing benefits as of Closing identical in all material respects (except for such changes as may be required by Law) to the benefits provided to them under Seller's Pension Plans (as defined below), in particular (x) for Continued Non-Union Employees, such Buyer's Pension Plans to provide benefits identical in all material respects to those benefits provided under Seller's Retirement Plan for Management Employees, or its successor plan, and Seller's Supplemental Retirement Income Plan, and (y) for Continued Union Employees, such Buyer's Pension Plans to provide benefits identical in all material respects to those provided under Seller's Pension and Benefits Plan, or its successor plan (collectively, "Seller's Pension Plans"), in each case, as of Closing. ENO acknowledges and agrees that one such material respect is to count age after termination of employment with ENO for purposes of satisfying requirements in Buyer's Pension Plans for early retirement eligibility and early retirement subsidies.

(b) Continued Employees participating in Seller's Pension Plans immediately prior to Closing shall become participants in Buyer's Pension Plans as of Closing. Without limiting the generality of Section 8.02(c),

Continued Employees shall receive credit for all compensation and service with Seller (subject to the terms of Seller's Pension Plans as then in effect) for purposes of eligibility for participation, vesting, eligibility for early retirement and early retirement subsidies and benefit accrual under Buyer's Pension Plans. Seller shall be responsible and shall retain the assets for the Continued Employees' pension benefits accrued up to Closing, and ENO shall be responsible for pension benefits accrued by such Continued Employees after Closing as provided herein. ENO may offset against the accrued benefits determined under Buyer's Pension Plans the accrued benefits determined under Seller's Pension Plans. For the purpose of this Section 8.03(b), "accrued benefit" means the amount that would be paid as a life annuity at normal retirement age irrespective of the date of actual distribution from either Seller's or Buyer's Pension Plans. Seller shall make pension distributions to Continued Employees of the vested portion of their accrued benefits in accordance with the terms of Seller's Pension Plans as in effect from time to time. As soon as reasonably practicable following Closing, Seller shall provide ENO a list showing, as of Closing, the accrued benefit of each Continued Employee under Seller's Pension Plans.

(c) In the event that any other business entity (regardless of its relationship to Buyer or ENO) acquires all or a portion of the Auctioned Assets from Buyer at any time during the Non-Union Transition Period in the case of Continued Non-Union Employees and during the Union Transition Period in the case of Continued Union Employees, Buyer and ENO will require such entity to maintain ENO's defined benefit plans, provide the benefits and recognize compensation and service with Seller and ENO to the same extent as ENO is required under Sections 8.03(a) and (b) above.

SECTION 8.04. 401(k) Plan. (a) Effective as of Closing, ENO shall have in effect tax-qualified defined contribution plans and trust arrangements thereunder that include a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code ("Buyer's 401(k) Plans") that will provide benefits that are identical in all material respects (except for such changes as may be required by Law) to those provided by (i) Seller's Thrift Savings Plan for Management Employees, in the case of Continued Non-Union Employees, and (ii) Seller's Retirement Income Savings Plan for Weekly Employees, in the case of Continued Union Employees (such Seller plans herein referred to collectively as "Seller's 401(k) Plans"), in each case, as of Closing. Each Continued Employee participating in

Seller's 401(k) Plans immediately prior to Closing shall become a participant in Buyer's 401(k) Plans as of Closing. Continued Employees shall receive credit for all service with Seller for purposes of eligibility, vesting and employer matching and, if applicable, profit sharing contributions under Buyer's 401(k) Plans.

(b) At such time after Closing as Seller is reasonably satisfied that Buyer's 401(k) Plans meet the requirements for qualification under Section 401(a) of the Code, Seller shall cause to be transferred to Buyer's 401(k) Plans in a trust-to-trust transfer in common stock of Seller's parent (as provided in the following sentence) and cash (or other property reasonably acceptable to ENO) an amount equal to the value of the assets held in the accounts of all Continued Employees (including any outstanding loan balances of Continued Employees in Seller's 401(k) Plans), subject to any qualified domestic relations orders. Prior to such transfer, Seller shall make all employer contributions that accrued prior to Closing with respect to the accounts of Continued Employees under Seller's 401(k) Plans. In connection therewith, ENO shall establish an investment fund under Buyer's 401(k) Plans to which shall be transferred the shares of common stock of Seller's parent (or any successor thereto) which, as of the date of transfer, are credited to the accounts of the Continued Employees under Seller's 401(k) Plans. The investment fund(s) available under the Buyer's 401(k) Plans shall offer a broad range of investment alternatives, including at least three diversified investment alternatives, each of the three having materially different risk and return characteristics and containing diversified assets. After Closing and prior to any such transfer, ENO shall cooperate with Seller in the administration of distributions to and loan repayments by Continued Employees. Prior to such transfer of assets, Seller shall vest any unvested benefits of Continued Employees under Seller's 401(k) Plans. Following any such transfer of assets, ENO shall assume all obligations and liabilities of Seller under Seller's 401(k) Plans with respect to such Continued Employees, and Seller shall have no further liability to ENO or any Continued Employee with respect thereto.

**SECTION 8.05. Welfare Plans.** (a) Continued Employees and their dependents who are eligible to participate in Seller's current welfare benefits plans, programs or arrangements shall be eligible to participate in equivalent welfare benefits plans, programs or arrangements maintained or established by ENO ("Buyer's Welfare Plans"), effective as of Closing. Effective as of Closing, any limitations as to pre-existing conditions and actively-at-

work exclusions and waiting periods under Buyer's Welfare Plans shall be waived by ENO with respect to Continued Employees and their eligible dependents to the extent satisfied under Seller's applicable Welfare Plans. In addition, effective as of Closing, ENO shall cause Buyer's Welfare Plans to recognize any out-of-pocket expenses incurred by Continued Employees and their eligible dependents prior to Closing and during the calendar year in which such Closing occurs for purposes of determining their deductibles and out-of-pocket maximums under Buyer's Welfare Plans. Seller shall retain responsibility under Seller's welfare plans for claims or causes of action relating to expenses incurred by Continued Employees and their eligible dependents prior to Closing. ENO shall have responsibility under Buyer's Welfare Plans for claims or causes of action relating to expenses incurred by Continued Employees and their eligible dependents on and after Closing. Seller expressly agrees to remain responsible for making COBRA continuation coverage available to Affected Employees and Special Affected Employees and their eligible dependents who do not become Continued Employees.

(b) Effective as of Closing, ENO shall have in effect health care and dependent care reimbursement account plans for the benefit of each Continued Employee, the terms of which shall (i) be identical in all material respects to the Flexible Reimbursement Account Plans for Management and Weekly Employees of Seller ("Seller's Reimbursement Account Plans") as in effect as of Closing and (ii) give full effect to, and continue in effect, salary reduction elections made under Seller's Reimbursement Account Plans. Prior to Closing, Seller shall cause the accounts of Continued Employees under Seller's Reimbursement Account Plans to be segregated into separate health care, dependent care and transportation reimbursement accounts (the "Segregated Reimbursement Accounts"), and such Segregated Reimbursement Accounts shall be transferred to and assumed by ENO as of Closing.

(c) ENO shall, subject to any applicable Laws, provide a retiree health program identical in all material respects to Seller's retiree health program as in effect as of Closing to each Continued Employee who terminates his employment with ENO during the Non-Union Transition Period, in the case of a Continued Non-Union Employee, and during the Union Transition Period, in the case of a Continued Union Employee, and, in each case, who at the time of such termination of employment satisfies the eligibility requirements for such retiree health program provided by ENO; provided, however, that Seller shall remain liable, pursuant to Seller's retiree health program, for all

Continued Employees who satisfy, as of Closing, the eligibility requirements then in effect for Seller's retiree health program.

SECTION 8.06. Short- and Long-Term Disability. Effective as of Closing, ENO shall have in effect short- and long-term disability plans for the benefit of Continued Employees, the cost of which to Continued Employees shall be the same as under, and the terms of which are identical in all material respects to, Seller's applicable plans as in effect as of Closing. Any waiting periods and pre-existing condition clauses shall be waived under ENO's short- and long-term disability plans with respect to Continued Employees to the extent satisfied under Seller's short- and long-term disability plans.

SECTION 8.07. Life Insurance and Accidental Death and Dismemberment Insurance. Effective as of Closing, ENO shall have in effect group term life insurance, group universal life insurance, accidental death and dismemberment insurance, occupational accidental death insurance, business travel accident insurance and crime protection insurance plans for the benefit of Continued Employees, the cost of which to Continued Employees shall be the same as under, and terms of which are identical in all material respects to, Seller's applicable plans that provide such benefits to Continued Employees immediately prior to Closing.

SECTION 8.08. Severance. (a) Effective as of Closing, ENO shall have in effect a severance plan ("Buyer's Severance Plan") covering Continued Non-Union Employees that contains terms identical in all material respects to Seller's Severance Pay Plan for Management Employees, as in effect as of Closing ("Seller's Severance Plan"). Continued Non-Union Employees who become officers of ENO, if any, shall participate in the officers' severance plans available to ENO officers. With respect to Affected Employees who are officers of Seller, ENO shall assume all liabilities and obligations, if any, under Seller's Severance Program for Officers of Consolidated Edison, Inc. and its Subsidiaries or any such officer's employment agreement set forth in Schedule 2.02(a)(iv), as applicable, arising from ENO's offers of employment to such officers.

(b) ENO shall, subject to any applicable Laws, provide a special separation allowance for any Continued Employee whose employment with ENO is terminated involuntarily by ENO other than for cause during the Non-Union Transition Period, in the case of Continued Non-Union Employees, and during the Union Transition Period, in the case of Continued Union Employees. Such allowance shall be

not less than the sum of four weeks pay plus one week pay for each completed year of service (as determined by aggregating each affected individual's respective service with Seller and ENO) and shall be payable by ENO in a lump sum within 30 days after termination of employment. In addition, in the case of each Continued Non-Union Employee described in the first sentence of this Section 8.08(b), ENO shall pay the Continued Non-Union Employee a lump sum equal to the excess of (i) the actuarial equivalent of the Continued Non-Union Employee's "potential benefit" under the applicable Buyer's Pension Plans, which such Continued Non-Union Employee would receive if such Continued Non-Union Employee's employment continued until three years after Closing and such Continued Non-Union Employee's base and incentive compensation for such deemed additional period was the same as in effect on the date of such Continued Non-Union Employee's termination of employment with ENO, over (ii) the actuarial equivalent of such Continued Non-Union Employee's "actual benefit" under the applicable Buyer's Pension Plans, as of the date of such Continued Non-Union Employee's termination of employment from ENO. For the purpose of the foregoing sentence, (i) the term "potential benefit" shall refer to the monthly pension that would have been payable to the applicable Continued Non-Union Employee commencing on the first day of the month following the latest of (A) the last day of the deemed additional period, (B) Continued Non-Union Employee's attainment of age 55, or (C) the earlier of (1) the first date as of which the sum of such Continued Non-Union Employee's age and years of service, as taken into account in determining the actuarial reduction for commencement prior to normal retirement age that is to be applied to such Continued Non-Union Employee's accrued benefit under the applicable Buyer's Pension Plans, equals 75 or (2) such Continued Non-Union Employee's attainment of age 65, (ii) the term "actual benefit" shall refer to the monthly pension payable to such Continued Non-Union Employee under the applicable Buyer's Pension Plans commencing as of the date determined in accordance with clause (i) of this sentence, and (iii) the actuarial equivalent of the "potential benefit" and the "actual benefit" shall each be a lump sum payable as of the date of such Continued Non-Union Employee's termination of employment from ENO, determined on the basis of the interest rate used to determine the amount of lump sum distributions and, to the extent applicable, other actuarial assumptions then in effect under the applicable Buyer's Pension Plans. ENO shall also provide outplacement services to such terminated Continued Non-Union Employee appropriate to the level of the Continued Non-Union Employee's position and job responsibilities. ENO shall also continue to provide or cause to be provided to any such terminated Continued

Employee health insurance coverage and group term and universal life insurance coverage at the same rates as for active Continued Employees for a period equal to the number of weeks of separation allowance which any such terminated Continued Employee is entitled to from ENO. ENO shall have the right to require a release in a form reasonably satisfactory to ENO as a condition for eligibility to receive such separation allowance. The allowance shall not apply to Continued Employees whose employment is terminated due to death or expiration of sick allowance or other authorized leave of absence or who terminate employment voluntarily. If at any time during the three-year period following Closing, ENO shall assign a Continued Non-Union Employee to work on a regular basis at a location that is more than fifty miles from the location to which such Employee is assigned as of Closing, ENO shall offer such Continued Non-Union Employee the option to terminate employment and receive the severance benefits set forth in this Section 8.08(b) in lieu of the reassignment.

SECTION 8.09. Workers Compensation. Effective as of Closing, ENO shall have in effect a workers compensation program for Continued Employees that shall provide coverage identical in all material respects to Seller's workers compensation program as of Closing.

## ARTICLE IX

### Indemnification and Dispute Resolution

SECTION 9.01. Indemnification. (a) Seller will indemnify and hold harmless Buyer and its Affiliates and their respective directors, officers, employees, agents and representatives (collectively with Buyer and its Affiliates, the "Buyer Indemnitees") from and against any claims or causes of action, demands, or suits by any person, and all losses, liabilities, damages, obligations, payments (including amounts paid in settlement in accordance with this Article IX), judgments, orders, decrees, rulings, liens, charges, costs and expenses (including reasonable legal fees and expenses and including costs and expenses incurred in connection with investigations and settlement proceedings) (each, an "Indemnifiable Loss"), as incurred, asserted against or suffered by any Buyer Indemnatee relating to, resulting from or arising out of:

- (i) any breach by Seller of (A) any covenant or agreement of Seller contained in this Agreement (other than covenants or agreements relating to the Power Purchase Agreement) or (B) prior to their expiration in

accordance with Section 11.03, the representations and warranties contained in Article IV;

(ii) the Retained Liabilities (other than Retained Liabilities arising under the Power Purchase Agreement);

(iii) noncompliance by Seller with any bulk sales or transfer laws referred to in Section 6.09;

(iv) any breach by Seller of any Ancillary Agreement (other than breaches of the Power Purchase Agreement); or

(v) if Buyer has failed to receive any of the IRS rulings contemplated to be received by Buyer pursuant to Section 6.07(c) and Seller has elected that the condition set forth in Section 7.02(f) shall not apply, all Taxes, including, for purposes of clause (A), estimated Taxes, (net of any refunds or credits) incurred solely as a result of (A) in the case of the failure to receive an IRS ruling contemplated to be received pursuant to Section 6.07(c)(i)(A), the failure to be entitled to take the positions requested in such ruling on any Tax Return of Buyer or (B) in the case of the failure to receive an IRS ruling contemplated to be received pursuant to Section 6.07(c)(i)(B) or 6.07(c)(i)(C), the failure of the positions requested in such ruling to be sustained following: any proceedings described in Section 9.03(a), the failure of Seller to request a Tax Refund Suit pursuant to Section 9.03(b) or, if Seller does so request, the failure of such Tax Refund Suit, as applicable.

(b) Buyer will indemnify and hold harmless Seller and its Affiliates and their respective directors, officers, trustees, employees, agents and representatives (collectively with Seller and its Affiliates, the "Seller Indemnitees") from and against any Indemnifiable Losses, as incurred, asserted against or suffered by any Seller Indemnatee relating to, resulting from or arising out of:

(i) any breach by Buyer of (A) any covenant or agreement of Buyer contained in this Agreement (other than covenants or agreements relating to the Power Purchase Agreement) or (B) prior to their expiration in accordance with Section 11.03, the representations and warranties contained in Sections 5.01, 5.02, 5.03 and 5.05;

(ii) the Assumed Obligations (other than Assumed



Obligations arising under the Power Purchase Agreement);

(iii) any breach by Buyer of any Ancillary Agreement (other than breaches of the Power Purchase Agreement); or

(iv) if Seller has failed to receive any of the IRS rulings or the New York State Department of Taxation advisory opinion contemplated to be received by Seller pursuant to Section 6.07(c) and Buyer has elected that the condition set forth in Section 7.03(e) shall not apply, all Taxes, including, for purposes of clause (A), estimated Taxes (net of any refunds or credits) incurred by the Decommissioning Funds and Seller solely as a result of (A) in the case of the failure to receive an IRS ruling contemplated to be received pursuant to Section 6.07(c) (i) (A), the failure to be entitled to take the positions requested in such ruling on any Tax Return of the Qualified Decommissioning Fund of Seller or (B) in the case of the failure to receive an IRS ruling or an advisory opinion contemplated to be received pursuant to Section 6.07(c) (i) (B), 6.07(c) (i) (C) or 6.07(c) (ii), the failure of the positions requested in such ruling to be sustained following: any proceedings described in Section 9.03(a), the failure of Buyer to request a Tax Refund Suit pursuant to Section 9.03(b) or, if Buyer does so request, the failure of such Tax Refund Suit, as applicable.

(c) The amount of any Indemnifiable Loss shall be reduced to the extent that the relevant Buyer Indemnitee or Seller Indemnitee (each, an "Indemnitee") receives any insurance proceeds with respect to an Indemnifiable Loss and shall be (i) increased to take account of any Tax Cost incurred by the Indemnitee arising from the receipt of indemnity payments hereunder (grossed up for such increase) and (ii) reduced to take account of any Tax Benefit realized by the Indemnitee arising from the incurrence or payment of any such Indemnifiable Loss. If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim or cause of action, recovery, settlement or payment by or against any other person, the amount of such reduction, less any costs, expenses or premiums incurred in connection therewith, will promptly be repaid by the Indemnitee to the Party required to provide indemnification hereunder (the "Indemnifying Party") with respect to such Indemnifiable Loss.

(d) No claim may be made against Seller for indemnification with respect to breaches of representations and warranties pursuant to Section 9.01(a)(i)(B) unless and until the aggregate amount of Indemnifiable Losses incurred by the Buyer Indemnitees thereunder exceeds \$1,000,000 at which point all claims (including those previously barred by such threshold) may be made against Seller. Notwithstanding the foregoing, the maximum amount recoverable for all claims under Section 9.01(a)(i)(B) shall be \$17,000,000 (other than claims based upon fraud). No claim may be made against Buyer for indemnification with respect to breaches of representations and warranties pursuant to Section 9.01(b)(i)(B) unless and until the aggregate amount of Indemnifiable Losses incurred by the Seller Indemnitees thereunder exceeds \$1,000,000 at which point all claims (including those previously barred by such threshold) may be made against Seller. Notwithstanding the foregoing, the maximum amount recoverable for all claims under Section 9.01(b)(i)(B) shall be \$17,000,000 (other than claims based upon fraud).

(e) No Indemnifying Party shall have any liability to any Indemnitee under Section 9.01(a)(i)(B) or 9.01(b)(i)(B), as applicable after Closing, for any breach of a representation or warranty to the extent that such claim for indemnification is based upon facts of which any such Indemnitee had Knowledge prior to Closing, unless such Indemnitee provided written notice to such Indemnifying Party of the existence of such facts promptly after receiving Knowledge thereof and such Indemnifying Party thereafter failed to cure such breach within a reasonable period of time prior to Closing.

(f) To the fullest extent permitted by Law, neither Party nor any Buyer Indemnitee or any Seller Indemnitee shall be liable to the other Party or any other Buyer Indemnitee or Seller Indemnitee for any claims or causes of action, demands or suits for consequential, incidental, special, exemplary, punitive, indirect or multiple damages connected with or resulting from any breach of this Agreement or the Ancillary Agreements (other than breach of this Article IX), or any actions undertaken in connection with or related hereto or thereto, including any such damages which are based upon breach of contract, tort (including negligence and misrepresentation), breach of warranty, strict liability, statute, operation of law or any other theory of recovery.

(g) The rights and remedies of Seller and Buyer under this Article IX are, solely as between Seller and Buyer, exclusive and in lieu of any other rights and

remedies which Seller and Buyer may have under this Agreement, the Ancillary Agreements (except as expressly provided in any such Ancillary Agreement) or otherwise for monetary relief with respect to (i) any breach of, or failure to perform, any covenant or agreement set forth in this Agreement or the Ancillary Agreements by Seller or Buyer, (ii) any breach of any representation or warranty by Seller or Buyer, (iii) the Assumed Obligations or the Retained Liabilities and (iv) noncompliance by Seller with any bulk sales or transfer laws. Each Party agrees that the previous sentence shall not limit or otherwise affect any non-monetary right or remedy which either Party may have under this Agreement or the Ancillary Agreements or otherwise limit or affect either Party's right to seek equitable relief, including the remedy of specific performance.

(h) Except with respect to breaches of representations and warranties pursuant to Sections 9.01(a)(i)(B) and 9.01(b)(i)(B) which are governed exclusively by Section 9.01(d), Buyer and Seller agree that, notwithstanding Section 9.01(g), each Party shall retain, subject to the other provisions of this Agreement, including Sections 9.01(f) and 11.03, all remedies at law or in equity with respect to (i) fraud or wilful or intentional breaches of this Agreement or the Ancillary Agreements and (ii) gross negligence or wilful or wanton acts or omissions to act of any Indemnitee (or any contractor or subcontractor thereof) on or after Closing.

#### SECTION 9.02. Third Party Claims Procedures.

(a) If any Indemnitee receives notice of the assertion of any claim or cause of action or of the commencement of any claim, cause of action, or proceeding made or brought by any person who is not a Party or an Affiliate of a Party (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 20 Business Days after the Indemnitee's receipt of notice of such Third Party Claim; provided, however, that a failure to give timely notice will not affect the rights or obligations of any Indemnitee except if, and only to the extent that, as a result of such failure, the Indemnifying Party was actually prejudiced. Such notice shall describe the nature of the Third Party Claim in reasonable detail and will indicate the estimated amount, if practicable, of the Indemnifiable Loss that has been or may be sustained by the Indemnitee.

(b) If a Third Party Claim is made against an Indemnitee, the Indemnifying Party will be entitled to

participate in the defense thereof and, if it so chooses, to assume the defense thereof with counsel selected by the Indemnifying Party; provided, however, that such counsel is not reasonably objected to by the Indemnatee; and provided further that the Indemnifying Party first admits in writing its liability to the Indemnatee with respect to all material elements of such claim. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party will not be liable to the Indemnatee for any legal expenses subsequently incurred by the Indemnatee in connection with the defense thereof. If the Indemnifying Party so elects to assume the defense of a Third Party Claim, the Indemnatee will (i) cooperate in all reasonable respects with the Indemnifying Party in connection with such defense, (ii) not admit any liability with respect to, or settle, compromise or discharge, any Third Party Claim without the Indemnifying Party's prior written consent and (iii) agree to any settlement, compromise or discharge of a Third Party Claim which the Indemnifying Party may recommend and which by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such Third Party Claim and releases the Indemnatee completely in connection with such Third Party Claim. In the event the Indemnifying Party shall so assume the defense of any Third Party Claim, the Indemnatee shall be entitled to participate in (but not control) such defense with its own counsel at its own expense. If the Indemnifying Party does not assume the defense of any such Third Party Claim, the Indemnatee may defend the same in such manner as it may deem appropriate, including settling such claim or litigation after giving notice to the Indemnifying Party of the terms of the proposed settlement and the Indemnifying Party will promptly reimburse the Indemnatee upon written request. Anything contained in this Agreement to the contrary notwithstanding, no Indemnifying Party shall be entitled to assume the defense of any Third Party Claim if such Third Party Claim seeks an order, injunction or other equitable relief or relief for other than monetary damages against the Indemnatee which, if successful, would materially adversely affect the business of the Indemnatee; provided, however, that such Indemnifying Party shall continue to be obligated to such Indemnatee pursuant to Section 9.01(a) or (b), as the case may be, for all Indemnifiable Losses relating to, resulting from or arising out of such Third Party Claim.

**SECTION 9.03. Procedures Relating to Tax Indemnity.** (a) If (i) Buyer (Seller) has failed to receive any of the IRS rulings (or the advisory opinion) contemplated to be received by Buyer (Seller) pursuant to Section 6.07(c) (other than the rulings contemplated to be received pursuant to Section 6.07(c)(i)(A)) and Seller

(Buyer) has elected that the condition set forth in Section 7.02(f) (Section 7.03(e)) shall not apply, (ii) Buyer (Seller) has filed its Tax Returns taking positions as though Buyer (Seller) actually received such IRS rulings (or the advisory opinion) and (iii) a claim shall be made by any taxing authority which, if successful, might result in an indemnity payment pursuant to Section 9.01(a) (v) (B) (Section 9.01(b) (iv) (B)), the Indemnitee shall promptly notify the Indemnifying Party in writing of such claim (a "Tax Claim") and shall keep the Indemnifying Party reasonably informed of all proceedings taken pursuant to this Section 9.03(a) in connection with such Tax Claim. At the reasonable request of the Indemnifying Party, the Indemnitee shall contest such Tax Claim; provided, however, that the Indemnitee shall control all proceedings taken in connection with contesting such Tax Claim; and provided further that the Indemnitee shall not settle such Tax Claim without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

(b) If (i) Buyer (Seller) has failed to receive any of the IRS rulings (or the advisory opinion) contemplated to be received by Buyer (Seller) pursuant to Section 6.07(c) (other than the rulings contemplated to be received pursuant to Section 6.07(c) (i) (A)) and Seller (Buyer) has elected that the condition set forth in Section 7.02(f) (Section 7.03(e)) shall not apply and (ii) Buyer (Seller) has filed its Tax Returns taking positions different from those Buyer (Seller) requested in such IRS rulings (or the advisory opinion), the Indemnitee shall, at the reasonable request of the Indemnifying Party, sue for a refund (a "Tax Refund Suit") of any Taxes incurred solely as a result of the positions taken by the Indemnitee on its Tax Returns being different from the positions requested in such IRS rulings; provided, however, that the Indemnitee shall control all proceedings taken in connection with such Tax Refund Suit; and provided, further, that the Indemnitee shall not settle such Tax Refund Suit without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

(c) If an indemnity payment has been made pursuant to Section 9.01(a) (v) (A) or 9.01(b) (iv) (A), the Indemnitee shall, at the request and sole expense of the Indemnifying Party, sue for a refund of the Taxes that gave rise to such indemnity payment (a "Tax Contest"). The Indemnifying Party shall control all proceedings taken in connection with such Tax Contest; provided, however, that the Indemnifying Party shall keep the Indemnitee reasonably informed of all proceedings taken in connection with such Tax Contest. The Indemnitee shall cooperate with the Indemnifying Party (at the Indemnifying Party's expense) in such Tax Contest, which

cooperation shall include, without limitation, the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information which are reasonably relevant to such Tax Contest, and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder or to testify at proceedings relating to such Tax Contest.

## ARTICLE X

### Termination

SECTION 10.01. Termination. (a) This Agreement may be terminated at any time prior to Closing by an instrument in writing signed on behalf of each of the Parties.

(b) This Agreement may be terminated by Seller or Buyer if Closing shall not have occurred on or before the date that is 15 months from the date of this Agreement (the "Termination Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 10.01(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of Closing to occur on or before such date.

(c) This Agreement may be terminated by either Seller or Buyer if any Restraint having any of the effects set forth in Section 7.01(b) shall be in effect and shall have become final and nonappealable; provided, however, that the Party seeking to terminate this Agreement pursuant to this Section 10.01(c) shall have used its reasonable best efforts to prevent the entry of and to remove such Restraint.

(d) This Agreement may be terminated by Buyer prior to Closing if there has been a material violation or breach by Seller of any covenant, representation or warranty of Seller contained in this Agreement which has rendered the satisfaction of any conditions to the obligations of Buyer under this Agreement impossible or has resulted in a Material Adverse Effect, and such violation or breach has not been cured by Seller within 30 days after receipt by Seller of written notice from Buyer specifying in reasonable detail such violation or breach; provided, however, that Buyer shall not have the right to terminate pursuant to this Section 10.01(d) if (i) such violation or breach is not reasonably capable of being cured by Seller within such 30-

day period but is reasonably capable of being cured by Seller within a reasonable additional period and Seller, within such 30-day period, shall have commenced good faith efforts to cure such violation or breach and shall have diligently continued such good faith efforts during such reasonable additional period, which additional period shall in no event extend beyond the Termination Date, or (ii) such violation or breach shall have been waived in writing by Buyer.

(e) This Agreement may be terminated by Seller prior to Closing if there has been a material violation or breach by Buyer of any covenant, representation or warranty of Buyer contained in this Agreement which has rendered the satisfaction of any conditions to the obligations of Seller under this Agreement impossible and such violation or breach has not been cured by Buyer within 30 days after receipt by Buyer of written notice from Seller specifying in reasonable detail such violation or breach; provided, however, that Seller shall not have the right to terminate pursuant to this Section 10.01(e) if (i) such violation or breach is not reasonably capable of being cured by Buyer within such 30-day period but is reasonably capable of being cured by Buyer within a reasonable additional period and Buyer, within such 30-day period, shall have commenced good faith efforts to cure such violation or breach and shall have diligently continued such good faith efforts during such reasonable additional period, which additional period shall in no event extend beyond the Termination Date, or (ii) such violation or breach shall have been waived by Seller.

(f) This Agreement may be terminated by Buyer by giving written notice to Seller any time prior to Closing if any Buyer Required Regulatory Approvals or Seller Required Regulatory Approvals, the receipt of which is a condition to the obligation of Buyer to consummate Closing as set forth in Section 7.01(a), shall have been finally denied (and a petition for rehearing or refiling of an application initially denied without prejudice shall also have been denied) or, in the case of Buyer Required Regulatory Approvals, a Final Order shall have been granted but such Final Order is not reasonably acceptable to Buyer in accordance with Section 7.01(a).

(g) This Agreement may be terminated by Seller by giving written notice to Buyer any time prior to Closing if any Seller Required Regulatory Approvals or Buyer Required Regulatory Approvals, the receipt of which is a condition to the obligation of Seller to consummate Closing as set forth in Section 7.01(a), shall have been finally denied (and a petition for rehearing or refiling of an application

initially denied without prejudice shall also have been denied) or, in the case of Seller Required Regulatory Approvals, a Final Order shall have been granted but such Final Order is not reasonably acceptable to Seller in accordance with Section 7.01(a).

## ARTICLE XI

### Miscellaneous Provisions

SECTION 11.01. Expenses. Except to the extent specifically provided herein, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses, whether or not the transactions contemplated hereby are consummated.

SECTION 11.02. Amendment and Modification; Extension; Waiver. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 11.03. Survival of Representations or Warranties. The representations and warranties contained in Article IV (other than the first sentence of Section 4.11) and Article V (other than Section 5.04) survive for 6 months from the Closing Date and each and every other representation and warranty contained in this Agreement shall expire with, and be terminated and extinguished by Closing and no such representation or warranty shall survive Closing. From and after Closing, none of Seller, Buyer or any officer, director, trustee or Affiliate of any of them shall have any liability whatsoever with respect to any such representation or warranty that does not survive Closing. The expiration of the representations and warranties contained in Article IV (other than the first sentence of Section 4.11) and Article V (other than Section 5.04) shall not affect the Parties' obligations under Article IX if the Indemnitee provided the Indemnifying Party with proper notice of the claim or event for which indemnification is sought prior to such expiration.

SECTION 11.04. Notices. All notices and other communications hereunder shall be in writing and shall be



deemed given (as of the time of delivery or, in the case of a telecopied communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

if to Seller, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-0601  
Attention: General Counsel

with a copy on or prior to the Closing Date to:

Cravath, Swaine & Moore  
825 Eighth Avenue  
New York, NY 10019  
Telecopy No.: (212) 474-3700  
Attention: George W. Bilicic, Jr., Esq.

if to Buyer, to:

Entergy Nuclear Indian Point 2, LLC  
440 Hamilton Avenue  
White Plains, NY 10601  
Telecopy No.: (914) 272-3406  
Attention: Chief Operating Officer

with a copy on or prior to the Closing Date to:

c/o Entergy Nuclear, Inc.  
P.O. Box 31995  
Jackson, MS 39286-1995  
Telecopy No.: (601) 368-5694  
Attention: Assistant Secretary

SECTION 11.05. Assignment; No Third Party Beneficiaries. (a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party, including by operation of law, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing but subject to all legal requirements, (i) Seller may assign or pledge its rights (A) to an Affiliate of Seller or a third party in connection with the transfer of

the Transmission System to such Affiliate or third party or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in all or any part of the Transmission System and/or this Agreement and (ii) Buyer may assign or pledge its rights (A) to an Affiliate of Buyer or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in the Auctioned Assets and/or this Agreement; provided, however, that (i) with respect to an assignment or transfer of rights or obligations by Seller, no such assignment or transfer shall relieve Seller from the full liabilities and the full financial responsibility, as provided for under this Agreement, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and Buyer has consented in writing to such assumption, and (ii) with respect to an assignment or transfer of rights or obligations by Buyer, no such assignment or transfer (A) may be consummated unless the assignee or transferee expressly agrees in writing and in a form satisfactory to Seller to be jointly and severally liable with Buyer for all of the liabilities and obligations of Buyer under this Agreement and (B) shall relieve Buyer from the full liabilities and the full financial responsibility as provided for under this Agreement; provided, that, in the event of a subsequent transfer pursuant to this clause (ii), if such subsequent transferee shall agree to be jointly and severally liable with Buyer for all of the liabilities and obligations of Buyer under this Agreement, then the prior transferee shall be relieved of its liability upon such transfer. Any assignment in contravention of this Section 11.05 shall be null and void and without legal effect.

(b) Nothing in this Agreement is intended to confer upon any other person except the Parties any rights or remedies hereunder or shall create any third party beneficiary rights in any person, including, with respect to continued or resumed employment, any employee or former employee of Seller (including any beneficiary or dependent thereof). No provision of this Agreement shall create any rights in any such persons in respect of any benefits that may be provided, directly or indirectly, under any employee benefit plan or arrangement.

(c) Buyer may request (i) upon not less than 30 days' prior written notice to Seller, that Seller transfer the Buyer Real Estate and personal property constituting the Toddville Training Center and (ii) upon not less than 90 days' prior written notice to Seller, that Seller assign the lease and personal property relating to 1 Park Place, Peekskill, New York set forth in Schedule 4.06 to an Affiliate of Buyer at Closing. Seller shall not

unreasonably deny such requests; provided, that (i) no such transfer shall be made unless the transferee expressly agrees in writing and in a form satisfactory to Seller to be jointly and severally liable with Buyer for all of the liabilities and obligations arising from or relating primarily to the use, ownership, lease, operation, maintenance or control of such Auctioned Assets and (ii) no such transfer shall relieve Buyer from any liabilities or obligations provided for under this Agreement.

SECTION 11.06. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

SECTION 11.07. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 11.08. Interpretation. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article or Section of, or Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" or equivalent words. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in the Ancillary Agreements and any certificate or other document made or delivered pursuant hereto or thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or Law defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Laws) by succession of comparable Laws and references to all attachments thereto and instruments incorporated therein. References to a person are also to

its permitted successors and assigns.

**SECTION 11.09. Jurisdiction and Enforcement.**

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 11.04 (or such other address specified by such Party from time to time pursuant to Section 11.04) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement or any Ancillary Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement or any Ancillary Agreement and to enforce specifically the terms and provisions of this Agreement or any Ancillary Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

**SECTION 11.10. Entire Agreement.** This Agreement, the Confidentiality Agreement and the Ancillary Agreements including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein and other contracts, agreements and instruments contemplated hereby or

thereby, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement and the Ancillary Agreements supersede all prior agreements and understandings between the Parties with respect to the transactions contemplated by this Agreement other than the Confidentiality Agreement.

SECTION 11.11. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable Law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

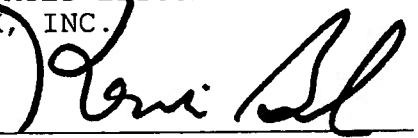
SECTION 11.12. Conflicts. Except as expressly otherwise provided herein or therein, in the event of any conflict or inconsistency between the terms of this Agreement and the terms of any Ancillary Agreement, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, Seller and Buyer have caused

this Agreement to be signed by their respective duly  
authorized officers as of the date first above written.

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.

by



Name: Kevin Burke  
Title: President

ENTERGY NUCLEAR INDIAN  
POINT 2, LLC,

by

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PROVISIONS OF ARTICLE VIII  
ACCEPTED AND AGREED TO BY  
COUNTERSIGNING BELOW:

ENTERGY NUCLEAR OPERATIONS,  
INC.,

by

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

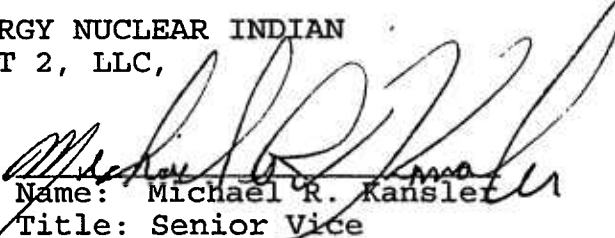
by

\_\_\_\_\_  
Name:

Title:

ENTERGY NUCLEAR INDIAN  
POINT 2, LLC,

by

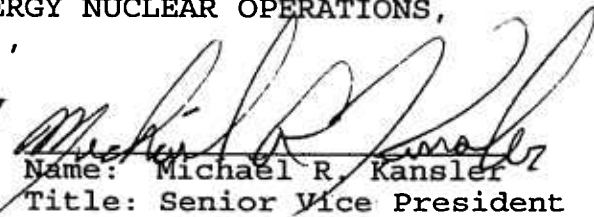
  
Name: Michael R. Kansler

Title: Senior Vice  
President and  
Chief Operating  
Officer

PROVISIONS OF ARTICLE VIII  
ACCEPTED AND AGREED TO BY  
COUNTERSIGNING BELOW:

ENTERGY NUCLEAR OPERATIONS,  
INC.,

by

  
Name: Michael R. Kansler

Title: Senior Vice President  
and Chief Operating Officer

**SCHEDULES OMITTED**



SCHEDULES  
TO  
GENERATING PLANT  
AND GAS TURBINE  
ASSET PURCHASE AND SALE AGREEMENT  
FOR  
INDIAN POINT GENERATING STATION UNITS 1 AND 2  
AND GAS TURBINE UNITS 1, 2 AND 3  
AND  
TODDVILLE TRAINING CENTER  
LOCATED AT VILLAGE OF BUCHANAN, WESTCHESTER COUNTY, NEW YORK

The Schedules are qualified in their entirety by reference to specific provisions of the Agreement and are not intended to constitute, and shall not be construed as constituting, representations or warranties of the Company. Inclusion of information herein shall not be construed as an admission that such information is material, or be used to infer what is material, to the business, operations or condition (financial or otherwise) of the Auctioned Assets, taken as a whole.

Matters reflected on these Schedules are not necessarily limited to matters required by the Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature.

Headings have been inserted in the Schedules for convenience of reference only and shall to no extent have the effect of amending or changing the express provisions of the Sections set forth in the Agreement. Any matter disclosed in any Schedule shall be deemed disclosed for all purposes in all Schedules to the extent that it is reasonably apparent from a reading of such disclosure item that it would qualify or apply to such other Schedules, and otherwise shall be deemed disclosed only for the purposes of the specific Schedule of the Agreement in which such matter is set forth.

EXHIBITS  
TO  
GENERATING PLANT  
AND GAS TURBINE  
ASSET PURCHASE AND SALE AGREEMENT  
FOR  
INDIAN POINT GENERATING STATION UNITS 1 AND 2  
AND GAS TURBINE UNITS 1, 2 AND 3  
AND  
TODDVILLE TRAINING CENTER  
LOCATED AT VILLAGE OF BUCHANAN, WESTCHESTER COUNTY, NEW YORK

FORM OF DEED OF CONVEYANCE FOR WESTCHESTER COUNTY  
[LAND AND IMPROVEMENTS]

THIS INDENTURE, made the • day of •, two thousand

BETWEEN

Consolidated Edison Company of New York, Inc., a New York corporation, having a principal place of business at No. 4 Irving Place, New York, NY 10003

party of the first part, and

•, a •, having a principal place of business at •

party of the second part,

WITNESSETH, that the party of the first part, in consideration of ten dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL those certain plots, pieces or parcels of land and land under water, with the buildings and improvements thereon erected, situate, lying and being in the Village of Buchanan and/or the Town of Cortlandt in the County of Westchester and State of New York and more particularly described on Schedule A attached hereto and made a part hereof ("said premises").

Said premises are subject to all covenants, conditions, easements, agreements and restrictions of record including, but not limited to, provisions of letters patent and water grants, zoning and building regulations, and any state of facts that an accurate survey and personal inspection may reveal.

TOGETHER with, and SUBJECT to, all covenants, conditions, easements, agreements, restrictions and other interests granted, reserved and/or imposed in that certain Indenture made as of the 30th day of December, 1975 by Consolidated Edison Company of New York Inc. to Power Authority of the State of New York (the "PASNY Deed") recorded in Liber 7306, Page 736 in the Westchester County Clerk's Office (the "Clerk's Office") on December 31, 1975

and/or shown on Map Numbers 18702 and 18703 on file in the Clerk's Office (the "PASNY Maps"), including without limitation, the pre-emptive rights to purchase certain undivided or tenancy in common interests and the waiver of partition or sale for division with respect to such undivided interests set forth on pages 28 and 29 of the PASNY Deed, but EXCLUDING the 345KV transmission line easement described in paragraph 1 on page 7 of the PASNY Deed and delineated and designated "CE-4" on the PASNY Maps,

TOGETHER with, and SUBJECT to, all of the grants, rights, reservations and obligations more particularly described in the Declaration of Easements Agreement dated of even date herewith between the party of the first part and the party of the second part, which shall be recorded herewith and being and intended to be part of this conveyance of said premises, and in particular to the retention by the party of the first part of title to the "Seller Facilities", as such term is defined therein,

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

This conveyance is made in the ordinary course of business and does not constitute all of the assets of the party of the first part.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements and will apply the same first to the payment of the cost of the improvements before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

(Corporate Seal)

ATTEST: \_\_\_\_\_  
Secretary

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.

\_\_\_\_\_

(Corporate Seal)

ATTEST: \_\_\_\_\_  
Secretary

\_\_\_\_\_

SCHEDULE A

Description of Land

[From Schedule 2.02 (a) (i) (A) and  
Schedule 2.02 (a) (i) (C)]

FORM OF DEED OF CONVEYANCE FOR WESTCHESTER COUNTY  
[IMPROVEMENTS ON GT SITE]

THIS INDENTURE, made the    •  day of    •  , two thousand  
BETWEEN

Consolidated Edison Company of New York, Inc., a New  
York corporation, having a principal place of business at  
No. 4 Irving Place, New York, NY 10003

party of the first part, and

•  , a    •  , having a principal place of business at    •  

party of the second part,

WITNESSETH, that the party of the first part, in  
consideration of ten dollars and other valuable  
consideration paid by the party of the second part, does  
hereby grant and release unto the party of the second part,  
the heirs or successors and assigns of the party of the  
second part forever,

ALL buildings and improvements ("said improvements") erected  
on those certain plots, pieces or parcels of land situate,  
lying and being in the Village of Buchanan, Town of  
Cortlandt, County of Westchester and State of New York and  
more particularly described on Schedule A attached hereto  
and made a part hereof, EXCEPTING THEREFROM the land on  
which said improvements stand.

Said improvements are subject to all covenants,  
conditions, easements, agreements and restrictions of record  
including, but not limited to, provisions of letters patent  
and water grants, zoning and building regulations, and any  
state of facts that an accurate survey and personal  
inspection may reveal.

TOGETHER with, and SUBJECT to, all of the grants,  
rights, reservations and obligations more particularly  
described in the Declarations of Easements Agreement and the  
GT Site Ground Lease, both dated of even date herewith,  
between the party of the first part and the party of the  
second part, both of which shall be recorded herewith, and  
in particular to the retention by the party of the first  
part of title to the "Seller Facilities", as such term is  
defined in the Declaration of Easements Agreement

TOGETHER with all the estate and rights of the party of the first part in and to said improvements; TO HAVE AND TO HOLD the improvements herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

This conveyance is made in the ordinary course of business and does not constitute all of the assets of the party of the first part.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements and will apply the same first to the payment of the cost of the improvements before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

(Corporate Seal)

ATTEST: \_\_\_\_\_  
Secretary

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.

(Corporate Seal)

ATTEST: \_\_\_\_\_  
Secretary



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GROUND LEASE (this "Lease") dated as of •, 2001, by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation ("Landlord") and ENTERGY NUCLEAR INDIAN POINT 2, LLC, a Delaware limited liability company, ("Tenant", together with Landlord, the "Parties").

WHEREAS, the Parties entered into a Generating Plant and Gas Turbine Asset Purchase and Sale Agreement dated as of November 9, 2000 (the "Sale Agreement") for the sale of certain of Seller's generating assets;

WHEREAS, Landlord intends to continue to conduct its transmission and distribution operations from their present locations;

WHEREAS, pursuant to the Sale Agreement, Landlord has agreed to transfer to Tenant certain designated properties and assets, including a leasehold interest in the land described on Exhibit A to this Lease (the "Land");

WHEREAS, concurrently with the execution and delivery of this Lease, the Parties are entering into (a) a Declaration of Easements Agreement (the "Declaration of Easements Agreement") in order to grant to one another certain easements in order to allow each party to retain and to have access to certain facilities that, following consummation of the transactions contemplated by the Sale Agreement, will be located on land owned by or leased to the other Party and (b) a Continuing Site Agreement (the "Continuing Site Agreement") in order to define the continuing responsibilities and obligations of the Parties (i) to provide certain services to one another and (ii) with respect to their respective properties, assets and facilities; and

WHEREAS this Lease is intended to be subordinate to the Declaration of Easements Agreement;

NOW, THEREFORE, in order to carry out the transactions contemplated by the Sale Agreement, the Continuing Site Agreement and the Declaration of Easements Agreement and in consideration of the mutual covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I

Definitions

SECTION 1.01. Definitions. As used in this Lease, all capitalized terms shall have the meanings ascribed to them in the Sale Agreement (or if not defined therein, in the Continuing Site Agreement or the Declaration of Easements Agreement) unless otherwise defined in this Lease and the following terms shall have the following meanings:

"Additional Rent" shall have the meaning set forth in Section 3.02.

"Alterations" shall have the meaning set forth in Section 5.03.

"Ancillary Agreements" shall have the meaning set forth in the Sale Agreement.

"Applicable Legal Requirements" has the meaning set forth in the Continuing Site Agreement.

"Assumed Obligations" shall have the meaning set forth in Section 7.01.

"Commencement Date" shall have the meaning set forth in Section 2.02.

"Continuing Site Agreement" shall have the meaning set forth in the fourth Whereas clause in this Agreement.

"Declaration of Easements Agreement" shall have the meaning set forth in the fourth Whereas clause in this Agreement.

"Equipment" shall mean and include all Auctioned Assets and Buyer Assets in the nature of personal property or fixtures and all other personal property or fixtures of any kind now or hereafter located on the Land.

"Expiration Date" shall have the meaning set forth in Section 2.02.

"Fair Market Value" shall mean the amount that a willing purchaser (under no compulsion to buy) would agree to pay, and a willing seller (under no compulsion to sell) would agree to accept, for a particular interest in real property, in each case within a reasonable period of time.

"Fixed Rent" shall have the meaning set forth in Section 3.01.

"Force Majeure Event" shall have the meaning set forth in the Continuing Site Agreement.

"Impositions" shall mean all taxes, assessments, utility taxes, use and occupancy taxes, water and sewer charges, rates and rents, excises, levies, license and permit fees and other charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever, which shall or may during the Term be assessed, levied, charged, confirmed or imposed upon or accrue or become due or payable out of or on account of or become a lien on the Premises or the appurtenances thereto or the sidewalks, streets or vaults adjacent thereto or the tax lot or lots of which the Premises comprises a part, or the rent and income received by or for the account of Tenant from any subtenants or for any use or occupation of the Premises, and such franchises, licenses and permits as may be appurtenant to the use of the Premises, including, but not limited to, the following: real and personal property taxes and surcharges or excess levies; special assessments (for example, local improvement district, local utility improvement district or other special district assessments for fire protection, schools, water, sewer, library or street improvements or parking facilities); license and permit fees (including underground vault rentals or fees); excise taxes, including retail sales and business and occupation taxes. The term "Impositions" shall not include any income tax, capital levy, estate, succession, inheritance or transfer tax or similar obligation assessed against or imposed on either Party.

"Improvements" shall mean and include (a) all Auctioned Assets and Buyer Assets in the nature of buildings, improvements or other structures and all other buildings, improvements or other structures now or hereafter located on the Land and (b) the Equipment.

"Indemnifiable Losses" shall have the meaning set forth in the Sale Agreement.

"Interest Rate" shall have the meaning set forth in Section 9.04.

"Land" shall mean the land described on Exhibit A annexed hereto and all appurtenances thereto.

"Landlord Alterations" shall have the meaning set forth in Section 5.03(d).

"Landlord Improvements" shall mean the improvements located from time to time on Landlord's Land.

"Landlord's Land" shall have the meaning set forth in Section 11.01.

"Option" shall have the meaning set forth in Section 11.02.

"Permitted Exceptions" shall have the meaning set forth in the Sale Agreement.

"Premises" shall mean the Land and the Improvements.

"Put" shall have the meaning set forth in Section 11.03.

"Reimbursement Rights" shall have the meaning set forth in the Declaration of Easements Agreement.

"Rent" shall have the meaning set forth in Section 3.02.

"Sale Agreement" shall have the meaning set forth in the first Whereas clause of this Agreement.

"Section 227" shall have the meaning set forth in Section 6.05.

"Self-Help Rights" shall have the meaning set forth in the Declaration of Easements Agreement.

"Seller Facilities" shall have the meaning set forth in the Declaration of Easements Agreement.

"Seller Indemnities" shall have the meaning set forth in the Sale Agreement.

"Substation" shall mean the land described on Exhibit B, all appurtenances thereto and all buildings, structures, improvements, fixtures, equipment and personal property now or hereafter located thereon.

"Subdivision Approval" shall have the meaning set forth in Section 11.01.

"Taking" shall have the meaning set forth in the Declaration of Easements Agreement.



"Term" shall have the meaning set forth in Section 2.02.

"Zoning Code" shall have the meaning set forth in Section 5.03(a).

## ARTICLE II

### Demise, Term and Use

SECTION 2.01. Demise. Landlord does hereby lease and demise to Tenant, and Tenant does hereby hire and take from Landlord, the Land, subject to the Permitted Exceptions. Landlord acknowledges that Landlord has conveyed the Auctioned Assets located on the Land to Tenant and that they are and shall remain the property of Tenant, subject to Article X hereof.

SECTION 2.02. Term. The term of this Lease (the "Term") shall commence on the date hereof (the "Commencement Date") hereof and end at 11:59 pm on the five hundredth (500th) anniversary of the Commencement Date (the "Expiration Date") unless sooner terminated in accordance with applicable law or the terms of this Lease.<sup>1</sup>

SECTION 2.03. Use. Unless and until the Continuing Site Agreement has terminated or expired in accordance with its terms, Tenant shall not use the Premises for any purpose which is incompatible with the continued use and operation of the Substation. From and after the date upon which the Continuing Site Agreement has terminated or expired in accordance with its terms, Tenant may use the Premises for any lawful use.

## ARTICLE III

### Rent, Impositions

SECTION 3.01. Rent. Tenant shall pay a fixed rent (the "Fixed Rent") of One Hundred Dollars (\$100.00) for the entire Term, payable in advance. Landlord, by signing this Lease, acknowledges receipt of the Fixed Rent for the entire Term from Tenant.

---

<sup>1</sup> This Lease and the memorandum described in Section 12.15 are to be executed on the Closing Date under the Sale Agreement. The memorandum shall be recorded with the Deeds.

SECTION 3.02. Additional Rent. All amounts other than Fixed Rent payable by Tenant to Landlord pursuant to the provisions of this Lease shall constitute additional rent (the "Additional Rent"). The Fixed Rent and the Additional Rent are collectively referred to as "Rent".

SECTION 3.03. Net Lease. Landlord shall not be required to make any expenditures of any kind whatsoever in connection with this Lease or the Premises, or to make any repairs to or to maintain the Premises or any Improvements comprising any part thereof. The Fixed Rent shall be absolutely net to Landlord without any abatement, deduction, counter-claim, set off or offset whatsoever, so that this Lease shall yield, net to Landlord, the Fixed Rent payable for the Term, and Tenant shall pay all costs, expenses and charges of every kind and nature relating to the Premises, and Landlord shall be indemnified by Tenant against, and held harmless by Tenant from, the same.

#### ARTICLE IV

##### Impositions

SECTION 4.01. Separate Tax Parcel, Payment of Impositions. (a) Landlord and Tenant shall use commercially reasonable efforts to have the Premises assessed by the applicable authorities as one or more separate lots or parcels for purposes of the payment of Impositions.

(b) Tenant shall pay all Impositions on all separate tax lots or parcels located entirely within the Premises directly to the applicable taxing authorities before they become delinquent and shall provide evidence of payment to Landlord within 20 days thereafter.

(c) If, for any reason, the Premises is assessed as part of one or more tax lots or parcels which include all or a portion of the Substation or any other real property owned by Landlord during any period which falls during the Term, Tenant shall pay to Landlord its equitable share of all Impositions which are not separately assessed or metered to, or based on usage at, the Premises on or before the date which is the later of (i) 20 days after notice from Landlord of the amount due and (ii) 20 days prior to the date upon which such Impositions would become delinquent.

(d) For purposes of Section 4.01(c), (i) Tenant's equitable share of the Impositions assessed against the Land shall be equal to a fraction, the numerator of which is the square footage of the Land and the denominator of which is

the total square footage of the land in the tax lot(s) or parcel(s) of which the Land comprises a part, (ii) Tenant's equitable share of Impositions assessed against the Improvements shall be the amount of such Impositions which would be imposed upon such Improvements if they were separately assessed for purposes of the assessment and collection of Impositions and (iii) Tenant's equitable share of Impositions based on usage shall be a fraction, the numerator of which shall be Tenant's usage and the denominator of which shall be total usage. Pending resolution of any dispute as to Tenant's equitable share of such Impositions in accordance with the procedure set forth in this Section 4.01, Tenant shall pay to Landlord the amount determined by Landlord to be Tenant's equitable share of such Impositions.

(e) Tenant shall have the right to review Landlord's determination of Tenant's equitable share of any Impositions within 90 days after Tenant's receipt of notice from Landlord that such Impositions are due. At Tenant's request made within such 90-day period, Landlord shall provide Tenant with copies of the tax bills or other invoices together with calculations which are sufficiently detailed to show the basis for Landlord's determination. If Tenant fails to deliver a notice to Landlord setting forth with reasonable specificity any errors which Tenant believes exist in Landlord's calculation of Tenant's equitable share or any respects in which Tenant disagrees with such calculations within 90 days after Tenant's receipt of the tax bills or other invoices and calculations described above, Tenant shall have no further right to review or dispute Landlord's determination of Tenant's equitable share of such Impositions and such determination shall be final and binding upon the Parties, provided, however, that this Section 4.01(e) shall not limit or affect the rights of Tenant to review or contest Landlord's determination of Tenant's equitable share of any refund or abatement of any such Impositions pursuant to Section 4.03(c) hereof.

(f) If the Parties are unable to agree on Tenant's equitable share of any Impositions within 30 days after delivery by Tenant of the notice specifying the errors it believes exist in Landlord's calculation or any respects in which Tenant disagrees with such calculation described above, either party may require Tenant's equitable share to be determined by arbitration in accordance with the rules and regulations of the American Arbitration Association or any successor thereto (the "AAA"), as modified by this Section 4.01(f). The Parties shall attempt to agree on a single arbitrator (the "Referee"). The Referee must be either a Senior Commercial Appraiser of the Society of Real

Estate Appraisers or a member of the American Institute of Real Estate Appraisers, and in any event must have at least 10 years of experience in the valuation of utility property and/or industrial land and buildings for real property tax purposes in the State of New York. If the Parties cannot agree on the appointment of the Referee within 15 days after either party delivers a notice requiring arbitration, either Party, upon notice to the other, may request the AAA to appoint a Referee meeting the foregoing requirements. If the AAA shall refuse to appoint such Referee or fail to do so within 15 days of the request, or if the AAA shall then no longer be in existence, either party may apply to a court of competent jurisdiction for the appointment of such Referee. Within 15 days after the appointment of the Referee, the parties shall submit to the Referee their respective last estimates of Tenant's equitable share of the Impositions in question. During the 30 days following the appointment of the Referee, the parties may submit to the Referee such evidence as they may deem relevant to the determination of Tenant's equitable share. Within 20 days following such 30-day period, the Referee shall select one of the estimates to be Tenant's equitable share of the Impositions in question and give notice thereof to the Parties. In the event that the amount determined by Landlord as Tenant's equitable share of such Impositions exceeds the amount determined by arbitration, Landlord shall refund any such excess paid by Tenant to Tenant with interest at the Interest Rate from the date paid by Tenant to the date refunded by Landlord within 30 days after the arbitration is completed. In the event that the amount determined by Landlord as Tenants equitable share of such Impositions is less than the amount determined by arbitration, Tenant shall pay the shortfall to Landlord with interest at the Interest Rate from the date it would have been due to the date paid by Tenant within 30 days after the arbitration is completed. Under no circumstances may the Referee modify or disregard any provision of this Lease and the jurisdiction of the Referee is restricted accordingly. The Referee's decision shall be final, conclusive on the Parties and enforceable by any court of competent jurisdiction. Each Party shall pay its own fees and expenses and the fees and expenses of the Referee and all other expenses of the arbitration shall be borne by the Parties equally.

SECTION 4.02. Proration, Payment in Installments.  
Notwithstanding anything else contained in this Article IV:

- (a) all Impositions that are payable by Tenant pursuant hereto for the tax year or other fiscal period in which the Commencement Date occurs as well as for

the tax year or other fiscal period in which the Term ends shall be prorated so that each of Tenant and Landlord shall pay its respective proportionate share of the Impositions that are payable with respect to (as distinguished from being assessed during) the year in which the Term begins and the year in which the Term ends so that Tenant pays only that portion of the Impositions allocable to those days falling within the Term; and

(b) where any Imposition that Tenant is obligated to pay in whole or in part is permitted by law to be paid in installments without payment of any interest or penalty, Tenant may pay such Imposition (or its proportionate part thereof) in installments as and when such installments become due.

SECTION 4.03. Contests. (a) If and only if the Premises or a portion thereof is assessed as a separate lot or parcel for purposes of a particular Imposition or Impositions, Tenant may, at its option, contest by appropriate proceedings the validity or amount (including the assessed valuation placed upon the Premises) of any such Imposition which Tenant believes in good faith is excessive, improper or invalid. Landlord agrees to join in any such contest at Tenant's request and at Tenant's sole expense to the extent such joinder is a prerequisite to such contest under any statute, regulation or administrative practice. Tenant shall pay any Imposition so contested during the pendency of any such contest and shall promptly furnish Landlord with copies of all proceedings respecting any such contest.

(b) Tenant shall not have the right to contest or to require Landlord to contest any Imposition which is assessed against a tax lot or parcel comprised of the Premises and other land and/or improvements owned by Landlord, provided that Landlord shall not unreasonably refuse to contest any such Imposition upon request made by Tenant. Tenant shall pay its equitable share of the costs incurred by Landlord in contesting any such Impositions within 20 days after notice from Landlord of the amount due.

(c) In the event that Landlord receives a refund or an abatement of any Impositions, then to the extent that Tenant has paid its equitable share of such Impositions for the fiscal period to which such refund or abatement relates to Landlord pursuant to Section 4.01(c) hereof, Tenant shall be entitled to receive its equitable share of such refund or abatement. Landlord shall pay Tenant's equitable share of such refund or abatement to Tenant promptly after it is

received. Tenant shall have the same right to review and contest Landlord's determination of Tenant's equitable share of any such refund or abatement that it has to review and contest Landlord's determination of Tenant's equitable share of Impositions pursuant to Sections 4.01(e) and 4.01 (f) hereof.

**SECTION 4.04. Preparation of Assessment Affidavits.** Tenant shall prepare and file when due all declarations, returns, affidavits or similar forms required by the taxing authorities with respect to Impositions assessed against Tenant directly and/or the Premises as a separate tax lot or parcel. Landlord shall prepare and, following approval by Tenant, which approval shall not be unreasonably withheld or delayed, file all other such declarations, returns, affidavits or similar forms affecting the Premises. If any such form requires participation or approval by Landlord or Tenant, Landlord or Tenant, as applicable, shall upon request made by the other party, cooperate in complying with such requirement.

**SECTION 4.05. Landlord's Obligation To Pay Impositions.** During any period when Landlord owns the fee interests in both the Land and other real property which comprises part of one or more tax lots or parcels that include the Land, and the Land and such other real property are not assessed as separate lots or parcels for the purpose of the payment of Impositions, Landlord will pay or cause to be paid, from time to time during the Term before they become delinquent, all Impositions which are assessed against the tax lots or parcels which include both the Land and such other real property provided that Landlord shall have no obligation to Tenant to pay (i) any Imposition unless the failure to pay such Imposition could result in the commencement of tax foreclosure proceedings against the Premises or any part thereof or (ii) any Imposition or portion thereof which Tenant is obligated to pay pursuant to the terms of this Lease but has not paid.

## ARTICLE V

### Covenants

**SECTION 5.01. Maintenance.** Tenant shall, at its sole cost and expense, maintain the Premises in accordance with Prudent Utility Practices until the Continuing Site Agreement has terminated or expired in accordance with its terms and thereafter in accordance with the standards observed by prudent owners of comparable properties.

SECTION 5.02. Insurance. (a) Throughout the Term, Tenant shall secure and keep in force, at its cost and expense, in such amounts, with such deductibles and retentions and underwritten by such companies as would be obtained by a reasonably prudent electric power business, but in no event less than the amounts set forth below:

(i) general comprehensive liability insurance including contractual liability with limits of at least \$5 million per occurrence for bodily injury and at least \$1 million per occurrence for property damage or a combined single limit of \$5 million per occurrence;

(ii) workers' compensation insurance; and

(iii) fire/property all risk insurance on the Improvements.

(b) Such insurance shall be primary and noncontributory with any insurance carried by Landlord and shall not require that Landlord pay any premium thereunder. Landlord and such other parties as Landlord shall reasonably designate will be named as an additional insured under the general comprehensive liability insurance policy. Tenant may self-insure with respect to the worker's compensation insurance and fire/property all risk insurance specified in paragraph (a), above if Tenant satisfies all applicable statutory and regulatory criteria with respect to such self-insurance and provided that any such self-insurance shall not reduce or vitiate any waiver of subrogation (or release) that Tenant may be obligated to furnish in favor of Landlord. The minimum limits for the comprehensive general liability insurance shall be increased every five years during the Term to reflect the increase in the Consumer Price Index (All Urban Consumers/U.S. City Average) published by the Bureau of Labor Statistics of the United States Department of Labor or, if it is no longer published, a comparable index selected by Landlord which is reasonably satisfactory to Tenant.

(c) Tenant agrees to furnish Landlord with certificates of insurance evidencing the insurance coverage set forth in this Section 5.02 and, upon reasonable request, a copy of any insurance policy referred to therein. Upon receipt of any notice of cancellation or expiration of any such insurance policy, Tenant shall immediately give notice to Landlord.

(d) Tenant on behalf of itself and its Affiliates shall exclude any right of subrogation under its insurance policies for any liability it has agreed to assume under the

Sale Agreement, this Agreement or any other Ancillary Agreement. Evidence of this requirement shall be noted on all certificates of insurance

(e) Throughout the Term, Tenant shall not violate, or permit the violation of, any commercially reasonable condition imposed by any insurance policy then in effect for the Seller Real Estate, or any portion thereof, including the Substation, of which Tenant shall have received written notice. Throughout the Term, Landlord shall not violate, or permit the violation of, any commercially reasonable condition imposed by any insurance policy then in effect for the Buyer Real Estate, or any portion thereof, including the Premises, of which Landlord shall have received written notice.

(f) Each of Landlord and Tenant agrees to maintain all of the insurance it is required to maintain under the Sale Agreement and the other Ancillary Agreements. This Section 5.02 is not intended to require either Party to carry insurance which is duplicative or any of the insurance required by the Sale Agreement of any other Ancillary Agreement.

SECTION 5.03. Alterations, Improvements. (a) Tenant shall have the right to alter, demolish, remove, or replace the Improvements or construct new improvements in place thereof (collectively, "Alterations") without the consent of Landlord, provided that (i) no Alterations shall at any time cause the Improvements to exceed the limitations on height, bulk, floor area, use and all other limitations or restrictions which would be applicable to the Improvements located on the Land under Chapter 211 (Zoning) of the Code of the Village of Buchanan and any other law of like import now or hereafter in effect (the "Zoning Code") if the Land were a separate, subdivided lot under the Zoning Code, (ii) no Alterations shall cause the Improvements to rely for zoning, floor area, use, satisfaction of front, rear or side yard requirements, lot coverage, mitigation of environmental impact or other similar purposes on other, adjacent parcels of land owned by Landlord, Tenant or others and (iii) no Alterations shall have a material adverse effect on Landlord's Land or the Landlord Improvements existing on the date hereof or cause them to fail to comply with the Zoning Code.

(b) If so requested by Tenant, and at Tenant's expense, Landlord agrees to initiate or join in any request or application to applicable governmental authorities for building, construction or other permits reasonably required



in connection with Alterations permitted by Section 5.03(a) or any use of the Premises permitted by Section 2.03.

(c) Notwithstanding anything else contained in this Agreement, all Alterations to be performed under this Lease by Tenant shall be performed in accordance with Applicable Legal Requirements, Prudent Utility Practices and all requirements and/or conditions imposed on Alterations or other work performed on the Buyer Real Estate in the Sale Agreement and the Ancillary Agreements. Tenant shall pay when due all claims for labor performed or material furnished and not permit any mechanics' or materialmen's lien to attach, and if any such liens do attach to the Premises, Tenant shall immediately notify Landlord and bond such liens in accordance with any applicable statutory provision.

(d) Landlord shall have the right to alter, demolish, remove or replace the Landlord Improvements or construct new improvements in place thereof (collectively, "Landlord Alterations") without the consent of Tenant, provided that (i) no Landlord Alterations shall at any time cause the Landlord Improvements to exceed the limitations on height, bulk, floor area, use and all other limitations or restrictions which would be applicable to the Landlord Improvements located on the Landlord's Land under the Zoning Code if the Landlord's Land were a separate, subdivided lot under the Zoning Code, (ii) no Landlord Alterations shall cause the Landlord Improvements to rely for zoning, floor area, use, satisfaction of front, rear or side yard requirements, lot coverage, mitigation of environmental impact or other similar purposes on other, adjacent parcels of land not owned by Landlord, whether such adjacent parcels of land are owned by Tenant or others and (iii) no Landlord Alterations shall have a material adverse effect on the Land or the Improvements existing on the date hereof or cause them to fail to comply with the Zoning Code.

SECTION 5.04. Compliance with Law. Tenant shall comply in all material respects with Applicable Legal Requirements relating to the Premises. Tenant shall comply with any Applicable Legal Requirement if failure to do so would reasonably be expected to subject Landlord to civil or criminal liability.

SECTION 5.05. Quiet Enjoyment. Landlord covenants that Tenant, on paying the Rent and performing and observing all of its other obligations under this Lease, may peaceably and quietly have, hold, occupy, use, and enjoy the Land during the Term free from hindrance or molestation by Landlord or anyone claiming by, through or under Landlord,

subject only to the Permitted Exceptions and Applicable Legal Requirements.

SECTION 5.06. Utilities and Services. Tenant shall arrange for the providing of all utilities and services required, used, rendered or supplied in or to the Premises during the Term and shall promptly pay the charges therefor as and when they become due. Except as expressly provided in the Continuing Site Agreement or the Declaration of Easements, Landlord shall have no obligation to furnish services or utilities of any kind to the Premises.

## ARTICLE VI

### Condemnation and Casualty

SECTION 6.01. Notice. Each of Landlord and Tenant shall notify the other if it becomes aware of any pending or threatened Taking of all or any portion of the Land.

SECTION 6.02. Total Taking. In the event of the Taking of all, or substantially all, of the Land, this Lease shall terminate as of the date of such Taking.

SECTION 6.03. Partial Taking. In the event of a Taking of a portion of the Land, this Lease shall remain in full force and effect, provided that the Premises shall no longer include the Land so taken.

SECTION 6.04. Condemnation Award. (a) The award resulting from any Taking of the Premises shall be the property of Tenant, subject to the rights of Landlord under the Declaration of Easements with respect to any Seller Facilities located on the Land.

(b) In the event that there is a Taking with respect to both the Premises and the Substation or any other property owned by Landlord and separate awards are not made for the Premises and the Substation and/or such other property, the award shall be distributed pro rata to Landlord and Tenant based on the Fair Market Value of their respective interests in all of the property for which the award is intended as compensation, assuming, for such purposes, that the Land was then owned by Tenant free of this Lease. If Landlord and Tenant are unable to agree on the division of any such award within 30 days after it becomes final and is no longer subject to appeal, either Party may require the division of the award to be determined by arbitration in the same manner as Tenant's equitable

share of Impositions in accordance with Section 4.01(f) hereof, provided that the Referee need not have experience in the valuation of land or buildings for real property tax purposes.

SECTION 6.05. Casualty. If Improvements are damaged or destroyed by fire or any other casualty, such damage or destruction shall not operate to terminate this Lease, but this Lease shall continue in full force and effect. Notwithstanding any other provision contained in this Lease, Tenant shall not be required or obligated to repair all or any portion of the Improvements or to restore them to the condition existing prior to such damage or destruction, provided that if Tenant elects not to repair or restore the Improvements, Tenant shall restore the Premises to a safe condition in accordance with Prudent Utility Practices and Applicable Legal Requirements. Landlord shall have no restoration obligations in respect of the Premises or the Improvements due to any such damage or destruction. This Section 6.05 shall operate as an "express agreement to the contrary" under Section 227 of the Real Property Law and any other law of like import now or hereafter in effect (collectively, "Section 227") and Tenant agrees that it shall have no right to quit or surrender possession of the Premises or to cease payment of Rent or recover any pre-paid Rent under this Lease pursuant to Section 227 as the result of any damage or destruction to the Improvements.

## ARTICLE VII

### Indemnification

SECTION 7.01. Indemnification. (a) For purposes of this Lease, the other Ancillary Agreements and Sections 2.03, 9.01 and 9.02 of the Sale Agreement, the terms "Auctioned Assets", "Buyer Real Estate" and "Buyer Assets" shall be deemed to include the Land, and the Land shall in any event be deemed to be owned by Buyer. Tenant hereby assumes the same obligations and liabilities with respect to the Land that it assumes with respect to the other Auctioned Assets (together with the liabilities and obligations with respect to the Land, the "Assumed Obligations") under the Sale Agreement and agrees to indemnify and hold the Seller Indemnitees (including Landlord) harmless from and against any Indemnifiable Losses, as incurred, asserted against or suffered by any Seller Indemnitee relating to, resulting from or arising out of the Assumed Obligations in accordance with Sections 9.01 and 9.02 of the Sale Agreement. Tenant's obligations under

this Article VII shall survive any termination or expiration of this Lease.

(b) Nothing in this Lease is intended to impair Landlord's obligations to the Buyer Indemnitees (including Tenant) under Sections 2.03, 9.01 and 9.02 of the Sale Agreement.

## ARTICLE VIII

### Assignment

SECTION 8.01. Assignment. This Lease and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Lease nor any of the rights, interests or obligations hereunder shall be assigned by any Party, including by operation of law, without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing but subject to all legal requirements, (i) Landlord may assign or pledge its rights, (A) to an Affiliate of Landlord or a third party in connection with the transfer of the Transmission System and the conveyance of the Substation to such Affiliate or third party or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in all or any part of the Transmission System, including the Substation and this Lease and (ii) Tenant may assign or pledge its rights, (A) to an Affiliate of Tenant in connection with the transfer of the Auctioned Assets and the assignment of this Lease and the conveyance of the Improvements to such Affiliate or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in the Auctioned Assets, including the Improvements and/or this Lease; provided, however, that (i) with respect to an assignment or transfer of rights or obligations by Landlord, no such assignment or transfer shall relieve Landlord from the full liabilities and the full financial responsibility, as provided for under this Lease, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and Tenant has consented in writing to such assumption, and (ii) with respect to an assignment or transfer of rights or obligations by Tenant, no such assignment or transfer (A) may be consummated unless the assignee or transferee expressly agrees in writing and in a form satisfactory to Landlord to be jointly and severally liable with Tenant for all of the liabilities and obligations of Tenant under this Lease and (B) shall relieve Tenant from the full liabilities and the full financial responsibility as provided for under

this Lease; provided, that, in the event of a subsequent transfer pursuant to this clause (ii), if such subsequent transferee shall agree to be jointly and severally liable with Tenant for all of the liabilities and obligations of Tenant under this Lease, then the prior transferee shall be relieved of its liability upon such transfer. Any assignment in contravention of this Section 8.01 shall be null and void and without legal effect.

## ARTICLE IX

### Default

SECTION 9.01. Events of Default. Any failure of Tenant to pay any Rent when due which continues for 30 days after notice to Tenant of such failure shall constitute an Event of Default under this Lease.

SECTION 9.02. Remedies. (a) If an Event of Default shall have occurred and be continuing, Landlord shall have the right to give Tenant a first notice of Landlord's termination of this Lease. If Tenant shall not have cured the Event of Default within thirty days after the giving of such first notice, Landlord shall have the right to give Tenant a second notice of Landlord's termination of this Lease. If Tenant shall not have cured the Event of Default within thirty days after the giving of such second notice, the Term and the estate hereby granted shall expire and terminate on the thirtieth day after delivery of such second notice as fully and completely and with the same effect as if such date were the date herein fixed for the expiration of the Term, and all rights of Tenant hereunder shall expire and terminate.

(b) Upon the occurrence of any Event of Default, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession under paragraph (a), above. Landlord may enforce all of its rights and remedies under this Lease in the event of any default or Event of Default by Tenant, including the right to recover Rent as it becomes due, the right to recover damages resulting from any such default and the right to secure injunctive or other, similar equitable relief, in each case without terminating this Lease. Notwithstanding the foregoing, Landlord shall not seek damages from Tenant for any default other than non-payment of Rent unless Tenant fails to cure such default within 30 days after receipt of notice thereof from Landlord, or, if such default is not reasonably capable of being cured within 30 days and Tenant

commences to cure such default within 30 days after receipt of notice thereof from Landlord, unless Tenant thereafter fails to diligently prosecute such cure to completion within a reasonable period of time. Landlord may seek to recover Rent from Tenant at any time that an Event of Default has occurred and is continuing, but may not terminate this Lease for non-payment of Rent except as set forth in Section 9.02 (a).

(c) The rights and remedies of Landlord set forth in this Lease shall be the sole and exclusive remedies of Landlord for any Event of Default or other breach by Tenant of the terms and conditions of this Lease. Failure to insist upon the strict performance of any provision hereof or to exercise any option, right, power or remedy contained herein shall not constitute a waiver or relinquishment thereof for the future. Receipt by Landlord of any Rent payable hereunder with knowledge of the breach of any provision hereof shall not constitute waiver of such breach, and no waiver by either party of any provision hereof shall be deemed to have been made unless made in writing or to apply to any subsequent breach.

(d) Tenant hereby waives and surrenders for itself and all those claiming under it, including creditors of all kinds, (i) any right and privilege which it or any of them may have to redeem the Premises or to have a continuance of this Lease after termination of Tenant's right of occupancy by order or judgment of any court or by any legal process or writ, or under the terms of this Lease, or after the termination of the Term as herein provided, and (ii) the benefits of any law which exempts property from liability for debt or for distress for rent.

SECTION 9.03. Self-Help. In the event that either Party defaults, breaches or otherwise fails to perform any obligation of such Party under this Lease, the other Party shall have the right to exercise Self-Help Rights under this Lease in substantially the same manner that Self-Help Rights may be exercised under the Declaration of Easements Agreement (and shall be entitled to correlative Reimbursement Rights in connection therewith) without any requirement to pursue or exhaust any other remedies available to such Party under this Lease or the Sale Agreement. Either Party shall have the right, following notice to the other Party, to take such action as it may deem necessary or advisable, including payment of any delinquent Impositions, to prevent a foreclosure for nonpayment of Impositions or other action by a Governmental Authority that might affect, in the case of Tenant, the Premises or, in the case of Landlord, the Land or Landlord's

Land, and any such action shall be deemed an exercise of Self-Help Rights (and, accordingly, give rise to correlative Reimbursement Rights).

SECTION 9.04. Interest. Interest shall be payable with respect to Rent not paid on its due date from the period commencing on the date due until the date paid at the prime rate of The Chase Manhattan Bank in effect from time to time (the "Interest Rate").

SECTION 9.05. Attorneys' Fees. In connection with any litigation, including appellate proceedings, initiated by a Party hereto against the other Party hereto and arising out of this Lease, the Party adjudicated to be the substantially prevailing party shall be entitled to recover reasonable attorneys' fees and disbursements from the other Party.

SECTION 9.06. Waiver of Trial by Jury. Landlord and Tenant waive trial by jury in any action, proceeding or counter-claim or other claim brought by either of the parties hereto against the other on any matters not relating to negligently caused personal injury or property damage, but otherwise arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and any statutory remedy. Tenant agrees that unless the failure to do so would constitute a waiver of its right to institute a separate action or proceeding against Landlord, it shall not interpose any counter-claim or cross-claim in a summary dispossess proceeding, unlawful detainer proceeding or in any action or proceeding based on non-payment of Rent, provided Tenant shall not be precluded from disputing the amounts due Landlord.

## ARTICLE X

### Ownership of Improvements Surrender at End of Term

SECTION 10.01. Ownership of Improvements. Concurrently with the execution and delivery of this Lease, Landlord conveyed and transferred the Auctioned Assets located on the Land to Tenant.

SECTION 10.02. Surrender at End of Term. Tenant agrees to surrender possession of the Land and the Improvements to Landlord upon expiration or termination of this Lease in good order and condition, ordinary wear and tear excepted, and free of all leases and tenancies or, at

Landlord's option, Tenant shall disconnect and cap all utility services, remove all Equipment and demolish all Improvements on the Land to grade, remove and dispose of all debris and backfill and grade the Land to prevent any ponding, all in accordance with Prudent Utility Practices and Applicable Legal Requirements, and deliver the Land to Landlord upon expiration or termination of the Lease free of all leases and tenancies.

## ARTICLE XI

### Subdivision Approval, Tenant's Option to Purchase, Landlord's Put

SECTION 11.01. Subdivision Approval. (a) From and after the Commencement Date, Tenant shall, at its sole cost and expense, have the right at any time and from time to time to seek an amendment or modification to or variance from the Zoning Code and any other governmental consent or approval required in order to permit Landlord to sell the Land to Tenant while retaining ownership of the Substation and any other land adjacent or contiguous to the Substation owned by Landlord (collectively, "Landlord's Land"), provided that no such amendment, modification, variance, consent or approval has a material adverse effect on Landlord's Land or the Landlord Improvements (the foregoing, when final and not subject to appeal, is hereinafter referred to as "Subdivision Approval"). Landlord will cooperate with Tenant in Tenant's efforts to secure Subdivision Approval. Tenant shall keep Landlord apprised of its efforts to secure Subdivision Approval and shall deliver copies of all written applications and other materials prepared by Tenant or its consultants in connection with such efforts to Landlord at least thirty days before filing them with any public authority or disclosing them to any third party.

(b) Landlord shall, at its sole cost and expense, have the right to seek Subdivision Approval at any time and from time to time. Tenant will cooperate with Landlord in any efforts Landlord makes to secure Subdivision Approval. Landlord shall keep Tenant apprised of its efforts to secure Subdivision Approval and shall deliver copies of all written applications and other materials prepared by Landlord or its consultants in connection with such efforts to Tenant at least thirty days before filing them with any public authority or disclosing them to any third party.

SECTION 11.02. Tenant's Option To Purchase. Landlord hereby grants to Tenant an option (the "Option") to



purchase the Land as provided in this Section 11.02. Notwithstanding anything to the contrary contained in this Lease, Tenant may not exercise the Option unless Subdivision Approval has been secured.

(a) In order to exercise the Option, Tenant must deliver a notice to Landlord after Subdivision Approval has been secured.

(b) If Tenant exercises the Option, the purchase price for the Land shall be One hundred Dollars (\$100.00).

(c) The closing of the sale of the Land by Landlord to Tenant shall occur within 90 days after delivery of the notice described in Section 11.02(a) to Landlord.

SECTION 11.03. Landlord's Put. Tenant hereby grants to Landlord an option (the "Put") to require Tenant to purchase the Land as provided in this Section 11.03. Notwithstanding anything to the contrary contained in this Lease, Landlord may not exercise the Put unless Subdivision Approval has been secured.

(a) In order to exercise the Put, Landlord must deliver a notice to Tenant after Subdivision Approval has been secured.

(b) If Landlord exercises the Put, the purchase price for the Land shall be One hundred Dollars (\$100.00).

(c) The closing of the sale of the Land by Landlord to Tenant shall occur within 90 days after delivery of the notice described in Section 11.03(a) to Tenant.

SECTION 11.04. Deed, Apportionments. At any closing which occurs pursuant to the exercise of either the Option or the Put:

(a) Landlord shall deliver fee title to the Land to Tenant by delivery of a bargain and sale deed without covenants, subject only to the Permitted Exceptions and any other matters affecting title created by or at the request of or with the consent or approval of Tenant.

(b) There shall be no apportionments except for any Additional Rent which may be payable to Landlord in respect of the period prior to midnight on the day preceding the closing. Any amounts paid by Tenant to Landlord in respect of Impositions and not applied to such Impositions prior to closing shall be applied to

such Impositions at or after closing. The obligations of the Parties with respect to apportionments shall survive the closing. Any applicable transfer and/or recording taxes and charges and other closing costs shall be paid by the party exercising the Option or the Put right. Each party shall execute and deliver such affidavits, instruments, tax forms and/or other documents as shall be reasonably requested by either party or Tenant's title insurer in connection with the conveyance of the Land to Tenant as provided herein.

## ARTICLE XII

### Miscellaneous

#### SECTION 12.01. Force Majeure.

(a) Notwithstanding anything in this Lease to the contrary, neither Party shall have any liability or be otherwise responsible to the other for its failure to carry out its obligations, with the exception of any obligation to pay money, under this Lease if and only to the extent that it becomes impossible for either Party to so perform as a result of any Force Majeure Event.

(b) If a Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from performance of its obligations under this Lease, then the Party relying on such occurrence shall (i) provide prompt written notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) exercise its reasonable best efforts to continue to perform its obligations under this Lease, (iii) reasonably and expeditiously take action to correct or cure the Force Majeure Event (provided, however, that settlement of strikes or any other labor disturbance will be completely within the sole discretion of the Party affected by such strike or labor dispute), (iv) exercise its reasonable best efforts to mitigate or limit damages to the other Party and (v) provide prompt written notice to the other Party of the cessation of the Force Majeure Event.

SECTION 12.02. Mortgagees' Status. This Lease shall be superior to any mortgages or other instruments evidencing security for indebtedness granted by either Party from time to time with respect to its Parcel. Accordingly, each Party agrees to obtain and deliver to the other Party such documents and instruments, in recordable form, as may be reasonably necessary or requested by the other Party from time to time to evidence and confirm the subordination of

any such mortgages or other security instruments to the provisions of this Lease.

SECTION 12.03. Estoppel Certificate. Each Party agrees, within 10 days after written request by the other, to execute, acknowledge and deliver to and in favor of any present or proposed lender, Mortgagee, ground lessor, purchaser, tenant or the like of all or any part of the Premises or all or any portion of the other Party's Parcel, an estoppel certificate, in a form reasonably satisfactory to such lender, Mortgagee, ground lessor, purchaser, tenant or the like, stating, among other things: (a) whether this Lease is in full force and effect; (b) whether this Lease has been modified or amended and, if so, identifying and describing any such modification or amendment; (c) whether there are any sums then due and owing under this Lease from either Party to the other, and if so, specifying the amount thereof and reason therefor; and (d) whether the Party giving such certificate knows of any default (or event which, with the passage of time, the giving of notice, or both, would constitute a default) on the part of the other Party, or has any outstanding claim against the other Party arising under this Lease and, if so, specifying the nature of such default or claim.

SECTION 12.04. No Merger. The acquisition by Landlord of Tenant's interest in this Lease or any interest in and to the Improvements, or the acquisition by Tenant of the Land shall not result in an impairment or extinguishment by merger of this Lease or any right or obligation granted or created hereby. No merger shall result unless and until (a) one person or entity owns both (i) fee title to the Land and the Improvements and (ii) Tenant's interest under this Lease in its entirety and (b) written consents to such merger and termination of this Lease shall have been obtained (and recorded with the Office of the Clerk of the County of Westchester, Division of Land Records) from all holders of mortgages then of record with respect to any portion of the Land or the Improvements.

SECTION 12.05. No Third Party Beneficiaries. Nothing in this Lease is intended to confer upon any other person except the Parties and their respective permitted successors and assigns any rights or remedies hereunder or shall create any third party beneficiary rights in any person.

SECTION 12.06. Notices. Unless otherwise specified herein, all notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a telecopied

communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

if to Landlord, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-0601  
Attention: General Counsel

if to Tenant, to:

Entergy Nuclear Indian Point 2, LLC  
440 Hamilton Avenue  
White Plains, NY 10601  
Telecopy No.: (914) 272-3406  
Attention: Chief Operating Officer

SECTION 12.07. Extension; Waiver. Either Party may (a) extend the time for the performance of any of the obligations or other acts of the other Party or (b) waive compliance by the other Party with any of the agreements or conditions contained in this Lease. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Lease to assert any of its rights under this Lease or otherwise shall not constitute a waiver of such rights.

SECTION 12.08. Amendment and Modification. This Lease may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties.

SECTION 12.09. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

SECTION 12.10. Counterparts. This Lease may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 12.11. Interpretation. When a reference is made in this Lease to an Article, Section or Exhibit,

such reference shall be to an Article or Section of or Exhibit to this Lease unless otherwise indicated. The table of contents and headings contained in this Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Lease. Whenever the words "include", "includes" or "including" are used in this Lease, they shall be deemed to be followed by the words "without limitation" or equivalent words. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Lease shall refer to this Lease as a whole and not to any particular provision of this Lease. All terms defined in this Lease shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Lease are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any agreement, instrument, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns.

#### SECTION 12.12. Jurisdiction and Enforcement.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Lease or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 12.06 (or such other address specified by such Party from time to time pursuant to Section 12.06, shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the

laying of venue of any action, suit or proceeding arising out of this Lease or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceedings brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Lease were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Lease and to enforce specifically the terms and provisions of this Lease, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 12.13. Entire Agreement. This Lease, the Sale Agreement, the Confidentiality Agreement and the other Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein and other contracts, agreements and instruments contemplated hereby or thereby embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Lease. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Lease, the Sale Agreement and the other Ancillary Agreements supersede all prior agreements and understandings between the Parties with respect to the transaction contemplated by this Lease other than the Confidentiality Agreement.

SECTION 12.14. Severability. If any term or other provision of this Lease is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Lease shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Lease so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 12.15. Memorandum of Lease. Tenant agrees not to record this Lease. Either party shall, at the

request of the other, execute, acknowledge and deliver, at any time after the date of this Lease, a memorandum of lease prepared by the requesting party and containing only the information required by Section 291-c of the Real Property Law and notice of the Option and the Put, but the provisions of this Lease shall control the rights and obligations of the Parties.

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

CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC.,

by \_\_\_\_\_

Name:  
Title:

ENTERGY NUCLEAR INDIAN POINT 2,  
LLC,

by \_\_\_\_\_

Name:  
Title:

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DECLARATION OF EASEMENTS AGREEMENT

By and Between

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

ENTERGY NUCLEAR INDIAN POINT 2, LLC

Dated as of •, 2001

Premises: INDIAN POINT

The land affected by the within instrument lies in Block •,  
Lots • on the Tax Map of the Village of Buchanan,  
Westchester County.

Address: •

Record and return to:

Consolidated Edison Company of New York  
Four Irving Place  
New York, New York 10003  
Attn: Brian E. Cray, Esq.

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DECLARATION OF EASEMENTS AGREEMENT  
(including the Schedules, this "Agreement")  
dated as of •, 2001, by and between  
CONSOLIDATED EDISON COMPANY OF NEW YORK,  
INC., a New York corporation ("Seller") and  
ENTERGY NUCLEAR INDIAN POINT 2, LLC, a  
Delaware limited liability company ("Buyer",  
and collectively with Seller, the "Parties").

WHEREAS Seller and Buyer are entering into a  
Generating Plant and Gas Turbine Asset Purchase and Sale  
Agreement dated as of even date herewith (the "Sale  
Agreement") for the sale of certain of Seller's generating  
assets;

WHEREAS Seller intends to continue to conduct its  
transmission and distribution operations from their present  
locations;

WHEREAS pursuant to the Sale Agreement, Seller has  
agreed to transfer to Buyer certain designated properties  
and assets located at the Parcels (as defined below)  
pertaining to Seller's generating operations and to retain  
certain designated properties and assets;

WHEREAS following the consummation of the  
transactions contemplated by the Sale Agreement, Seller will  
retain ownership of certain premises, together with certain  
improvements thereon, located in the Village of Buchanan,  
Westchester County, New York and more particularly described  
on Exhibit A (the "Seller Parcel");

WHEREAS Seller will convey and/or ground lease to  
Buyer, Seller's title, or other interest in, certain other  
premises, together with certain improvements thereon,  
located in the Village of Buchanan, Westchester County, New  
York, adjacent to and/or contiguous with the Seller Parcel,  
which adjoining premises are more particularly described on  
Exhibit B (the "Buyer Parcel", and collectively with the  
Seller Parcel, the "Parcels");

WHEREAS as the former owner of both Parcels,  
Seller had developed, owned, operated and maintained certain  
electric generation, transmission and distribution  
facilities thereon, as part of Seller's electric utility  
business;

WHEREAS the Parties have entered into the  
Continuing Site Agreement dated as of even date herewith  
(the "Continuing Site Agreement") in order to define the  
continuing responsibilities and obligations of the Parties

to provide certain services to one another and with respect to their respective properties, assets and facilities; and

WHEREAS Seller and Buyer wish to define and grant to one another certain easements in order to allow each Party to retain and access certain assets and facilities that, following consummation of the transactions contemplated by the Sale Agreement, will be located on the other Party's Parcel.

NOW, THEREFORE, in order to carry out the transactions contemplated by the Sale Agreement, the Continuing Site Agreement and this Agreement, and in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01. Definitions. As used in this Agreement, all capitalized terms shall have the meanings ascribed to them in the Sale Agreement (or if not defined therein in the Continuing Site Agreement) unless otherwise defined in this Agreement and the following terms shall have the following meanings:

"Agreement" shall have the meaning set forth in the Preamble.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Facilities" means (i) those facilities located on an Easement Area and described on Schedule 2.02(a) and (ii) those facilities located on a License Area and described on Schedule 2.02(b).

"Buyer Parcel" shall have the meaning set forth in the Recitals and shall include the GT Site during the term of the GT Site Ground Lease and after any acquisition of the GT Site by Buyer pursuant to the terms of the GT Site Ground Lease.

"Casualty" shall have the meaning set forth in Section 5.01.

"Continuing Site Agreement" shall have the meaning set forth in the Recitals.

"Curing Party" shall have the meaning set forth in Section 4.02.

"Defaulting Party" shall have the meaning set forth in Section 4.02.

"Easement" means, as applicable, any easement granted to Buyer with respect to the Seller Parcel under this Agreement and any easement granted to Seller with respect to the Buyer Parcel under this Agreement.

"Easement Area" means an area on, above or below the ground within which are located Facilities belonging to the Party for whose benefit an Easement is granted hereunder and any area over which an easement for ingress and egress or a right to transport equipment is granted hereunder. For those Easement Areas specifically described on the Plan, the Easement Area shall consist of the space described on the Plan; provided, however, that except as set forth below, any conflict between the description on the Plan and the actual location of the Easement Area shall be resolved in favor of the actual location of the Easement Area; provided further, however, that for those Easement Areas not described on the Plan or described schematically on the Plan, the Easement Area shall consist of (i) the space actually occupied by the relevant Facility and (ii) the additional space immediately adjacent to such Facility that is reasonably necessary for access to the Facility for purposes of exercising the Easements granted hereby in a manner consistent with the provisions of this Agreement and the Continuing Site Agreement. Notwithstanding the foregoing, in no event shall any Easement Area (i) be different the Easement Area shown on the Plan in any material respect, except with the prior written consent of the burdened property owner, such consent not to be unreasonably withheld or delayed, (ii) if it is not in the location shown on the Plan, place a materially greater burden on the Parcel it affects than would the Easement Area shown on the Plan or (iii) if it is not shown on the Plan, materially and adversely affect the burdened property owner's use, operation and enjoyment of its Parcel.

"Easements for Ingress and Egress" shall have the meaning set forth in Section 2.04.

"Entering Party" shall have the meaning set forth in Section 4.07. The term "Entering Party" shall include a Party exercising Self-Help Rights as a Curing Party.

"Entry Rights" means rights of any Party as appurtenant to its Parcel, or necessary or desirable to satisfy its obligations under this Agreement, or to exercise its rights (including Self-Help Rights) under this Agreement, to maintain improvements owned by it on its or the other Party's Parcel which may be located adjacent to, above or within an Easement Area; provided, however, that such rights shall be exercised only in accordance with this Agreement, including Section 4.07 hereof.

"Facility" means, as applicable, the Buyer Facilities or the Seller Facilities, and "Facilities" means the Buyer Facilities and the Seller Facilities.

"GT Site" means the land described on Part II of Exhibit B.

"GT Site Ground Lease" shall mean the GT Site Ground Lease dated as of the Closing Date between Seller, as landlord, and Buyer, as tenant.

"License" means, as applicable, any license granted to Buyer with respect to the Seller Parcel under this Agreement and any license granted to Seller with respect to the Buyer Parcel under this Agreement.

"License Area" means an area subject to a License upon which are located Facilities belonging to a Party for whose benefit a License is granted hereunder. For those License Areas specifically described on the Plan, the License Area shall consist of the space described on the Plan; provided, however, that except as set forth below, any conflict between the description on the Plan and the actual location of the License Area shall be resolved in favor of the actual location of the License Area; provided further, however, that for those License Areas not described on the Plan or described schematically on the Plan, the License Area shall consist of (i) the space actually occupied by the relevant Facility and (ii) the additional space immediately adjacent to such Facility that is reasonably necessary for access to the Facility for purposes of exercising the License granted hereby in a manner consistent with the provisions of this Agreement and the Continuing Site Agreement. Notwithstanding the foregoing, in no event shall any License Area (i) be different from the License Area shown on the Plan in any material respect, except with the prior written consent of the burdened property owner, such consent not to be unreasonably withheld or delayed, (ii) if it is not in the location shown on the Plan, place a materially greater burden on the Parcel it affects than would the License Area shown on the Plan or (iii) if it is

not shown on the Plan, materially and adversely affect the burdened property owner's use, operation and enjoyment of its Parcel.

"Mortgagee" means the holder, from time to time, of a mortgage on all or any portion of the Buyer Parcel or the Seller Parcel, which holder has notified the owner of the other Parcel of its interest as mortgagee and has provided such owner with a notice address.

"Parcels" shall have the meaning set forth in the Recitals.

"Party" shall have the meaning set forth in the Preamble.

"Permittee" means the Parties and those claiming by, through or under each of them and their respective officers, directors, trustees, employees, agents, contractors, subcontractors, customers, visitors, invitees and licensees.

"Plan" means the ["Easement Map - Indian Point Nuclear Power Plant" dated August 24, 2000 and prepared by Badey & Watson Surveying & Engineering, P.C.] intended to be recorded in the Office of the Westchester County Clerk immediately after the Closing.

"Reimbursement Rights" means the rights of a Curing Party which has exercised its Self-Help Rights to collect from the Defaulting Party the reasonable costs and expenses actually expended by the Curing Party in exercising its Self-Help Rights, including reasonable attorneys' fees.

"Sale Agreement" shall have the meaning set forth in the Recitals.

"Self-Help Rights" shall have the meaning set forth in Section 4.02.

"Seller" shall have the meaning set forth in the Preamble.

"Seller Facilities" means (i) those facilities located on an Easement Area and described on Schedule 2.01(a) and (ii) those facilities located on a License Area and described on Schedule 2.01(b).

"Seller Parcel" shall have the meaning set forth in the Recitals.

"Taking" shall have the meanings set forth in Section 5.03.

## ARTICLE II

### Grant of Easements

SECTION 2.01. Grant of Easements and Licenses from Buyer to Seller. Except as otherwise provided in the Continuing Site Agreement, Buyer, as owner of the Buyer Parcel and/or tenant under the GT Site Ground Lease, hereby grants to Seller, as appurtenant to the Seller Parcel, the following rights and Easements, subject, in each case, to rights of others existing on the Closing Date:

(a) Easement for Seller Facilities. Subject to the terms and conditions of this Agreement, including Section 4.07 hereof, the exclusive right and Easement over Buyer Parcel solely for the purposes described in Schedule 2.01(a). The Easement granted herein shall include the right to take such other actions as may be reasonably necessary for the full exercise of the Easement rights specified in Schedule 2.01(a).

(b) License for Seller Facilities. Subject to the terms and conditions of this Agreement, including Section 4.07 hereof, the exclusive right and license over Buyer Parcel solely for the purposes described in Schedule 2.01(b). The License granted herein shall include the right to take such other actions as may be reasonably necessary for the full exercise of the License rights specified in Schedule 2.01(b).

(c) Easement for Access. The right and Easement to use, and to permit its Permittees to use, in common with Buyer and its Permittees, all walkways, parking areas, driveways and accessways now or hereafter located on the Buyer Parcel, in accordance with the terms hereof and in accordance with the terms of the Continuing Site Agreement (including any requirements set forth therein requiring Seller to obtain a Buyer escort prior to gaining access to Buyer Parcel), but only for pedestrian and vehicular access, ingress and egress to and from the Easement Areas, the License Areas and the Seller Facilities, including the passage of motor vehicles of every kind and nature into, out of, on, over and across such portions of the Buyer Parcel for access to and from the Easement Areas, the License Areas and the Seller Facilities, to the extent reasonably necessary for the exercise of the Easement and License rights granted to Seller under Sections 2.01(a) and 2.01(b).



(d) Reservation of Rights. Without in any way limiting the rights of Buyer as the fee owner of the Buyer Parcel or the tenant under the GT Site Ground Lease, there are hereby reserved to Buyer all rights in and to the Easement Areas and the License Areas located on the Buyer Parcel, to the extent such rights are not inconsistent with and do not materially interfere with the use of the Easement Areas or the License Areas by Seller and the exercise by Seller of the Easement rights and the License rights granted hereunder, as herein set forth. Buyer shall have the right to change the location of Easement Areas and License Areas granted to Seller upon reasonable prior notice and at Buyer's cost and expense; provided, however, that any such relocation of an Easement Area or License Area shall not prevent Seller from realizing the purposes of the original Easement Area or License Area.

(e) Excluded Rights. No right is hereby given to Seller to install, modify or construct any new facilities, equipment or systems not in existence on the Closing Date, or physically to expand, enlarge or relocate the Seller Facilities, or otherwise to modify the Seller Facilities, other than in accordance with the Continuing Site Agreement or as expressly set forth in Schedule 2.01(a) or Schedule 2.01(b).

(f) Exercise of Rights. Notwithstanding anything else contained in this Agreement, Seller shall exercise the rights under the Easements and Licenses granted hereby only in accordance with the terms of this Agreement and the Continuing Site Agreement, including the security requirements set forth in Section 2.02(b) of the Continuing Site Agreement.

SECTION 2.02. Grant of Easements and Licenses from Seller to Buyer. Except as otherwise provided in the Continuing Site Agreement, Seller, as owner of the Seller Parcel, hereby grants to Buyer, as appurtenant to the Buyer Parcel, the following rights and Easements, subject, in each case, to the rights of others existing on the Closing Date:

(a) Easements for Buyer Facilities. Subject to the terms and conditions of this Agreement, including Section 4.07 hereof, the exclusive right and Easement over Seller Parcel solely for the purposes described in Schedule 2.02(a). The Easement granted herein shall include the right to take such other actions as may be reasonably necessary for the full exercise of the Easement rights specified in Schedule 2.02(a).

(b) License for Buyer Facilities. Subject to the terms and conditions of this Agreement, including Section 4.07 hereof, the exclusive right and license over Seller Parcel solely for the purposes described in Schedule 2.02(b). The License granted herein shall include the right to take such other actions as may be reasonably necessary for the full exercise of the License rights specified in Schedule 2.02(b).

(c) Easement for Access. The right and Easement to use, and to permit its Permittees to use, in common with Seller and its Permittees, all walkways, parking areas, driveways and accessways now or hereafter located on the Seller Parcel, in accordance with the terms hereof and the terms of the Continuing Site Agreement (including any requirements set forth therein requiring Buyer to obtain a Seller escort prior to gaining access to Seller Parcel), but only for pedestrian and vehicular access, ingress and egress to and from the Easement Areas, the License Areas and the Buyer Facilities, including the passage of motor vehicles of every kind and nature into, out of, on, over and across such portions of the Seller Parcel for access to and from the Easement Areas, the License Areas and the Buyer Facilities, to the extent reasonably necessary for the exercise of the Easement and License rights granted to Buyer under Sections 2.02(a) and 2.02(b).

(d) Reservation of Rights. Without in any way limiting the rights of Seller as the fee owner of the Seller Parcel, there are hereby reserved to Seller all rights in and to the Easement Areas and the License Areas located on the Seller Parcel, to the extent such rights are not inconsistent with and do not materially interfere with the use of the Easement Areas or the License Areas by Buyer and the exercise by Buyer of the Easement rights and the License rights granted hereunder, as herein set forth. Seller shall have the right to change the location of Easement Areas and License Areas granted to Buyer upon reasonable prior notice and at Seller's cost and expense; provided, however, that any such relocation of an Easement Area or License Area shall not prevent Buyer from realizing the purposes of the original Easement Area or License Area.

(e) Excluded Rights. No right is hereby given to Buyer to install, modify or construct any new facilities, equipment or systems not in existence on the Closing Date, or physically to expand, enlarge or relocate the Buyer Facilities, or otherwise to modify the Buyer Facilities, other than in accordance with the Continuing Site Agreement.

(f) Exercise of Rights. Notwithstanding anything else contained in this Agreement, Buyer shall exercise the rights under the Easements and Licenses granted hereby only in accordance with the terms of this Agreement and the Continuing Site Agreement, including the security requirements set forth in Section 2.02(b) of the Continuing Site Agreement.

SECTION 2.03. Drainage Easement. In addition to the other Easements granted herein, each Party hereby grants to the other the right and Easement to flow surface water runoff over the Parcel of the other, through such storm drains, catchments, basins, culverts, ditches, conduits and other facilities constructed and used for such purposes as may exist on either Parcel from time to time; provided, however, that after the Closing Date neither Party shall divert additional surface water runoff from its Parcel onto the other Party's Parcel except through drainage facilities existing or, with the consent of the owner thereof, constructed on such other Party's Parcel; provided further, however, that in the event such additional diversion shall require facilities of greater capacity than those existing on the servient Parcel (i.e., the Parcel onto which additional surface water runoff is to be diverted), the owner of the dominant Parcel (i.e., the Parcel from which additional surface water runoff is to be diverted) shall pay the increased cost of such facilities.

SECTION 2.04. Easement for Ingress and Egress. A portion of each Parcel, identified on the Plan as the "Easement for Ingress and Egress", is hereby designated as the principal access route on such Parcel for trucks and other heavy vehicles in connection with the performance of any work by or on behalf of the holder of such Easement for Ingress and Egress in connection with the Facilities located on such Parcel. To the extent that an Easement for Ingress and Egress is provided, such Easement shall be the exclusive Easement for access with respect to the types of vehicles covered, notwithstanding the broader rights of access provided in other provisions of this Agreement.

SECTION 2.05. Condition of License Areas and Easement Areas. The rights, Licenses and Easements granted hereby are subject to any existing state of facts affecting the respective License Areas and Easement Areas, and the Parties make no representation, covenant or warranty as to the condition of any such License Area or Easement Area.

SECTION 2.06. GT Site. Seller, in its capacity as owner of the GT Site, declares and reserves for its benefit and the benefit of its permitted successors and

assigns all of the rights and Easements that are  
(i) described in Section 2.01, Section 2.03 and 2.04 and  
(ii) affect the GT Site.

### ARTICLE III

#### Term of Easements; Abandonment

SECTION 3.01. Term. Unless expressly set forth herein, all Easements and Licenses granted herein shall be perpetual; provided, however, that all rights with respect to a particular Easement Area or License Area shall expire and terminate upon the expiration of 30 days following the total, or substantially total, removal, demolition or destruction of the Facility with respect to which such Easement Area or License Area was established, unless (a) prior to the expiration of such 30-day period, the holder of the Easement or License notifies the owner of the servient estate that the holder intends to restore or reconstruct such Facility, substantially in the form in existence prior to such removal, demolition or destruction or otherwise in accordance with the Continuing Site Agreement, and (b) such restoration and reconstruction is expeditiously commenced and prosecuted to completion. In the event of such restoration or reconstruction, the Parties agree to record with the Office of the Westchester County Clerk a continuance or extension of this Agreement with respect to any Easement or License which would otherwise have been subject to termination pursuant to this Section 3.01, in order to confirm of record the continuance of such Easement or License rights.

SECTION 3.02. Abandonment. The cessation of use or operation of a Facility shall not be deemed an abandonment thereof resulting in a termination of such Easement or License granted herein, unless the holder of the Easement or License, upon receipt of a notice from the owner of the servient estate, fails, within a period of 30 days following the receipt of such notice, to affirm, by notice to the owner of the servient estate, its intention to continue use and operation of the Facility. Neither Party shall be required to provide such notice of affirmation more often than once in any 6-month period with respect to any single Facility.

## ARTICLE IV

Use, Repair and Maintenance of Easements

SECTION 4.01. Maintenance Obligation. Each Party shall, at its sole cost and expense, with respect to each Easement Area and License Area located on or within such Party's Parcel (a) maintain the surface and subsurface of the improved portions of the Easement Area or License Area in good repair and condition, ordinary wear and tear and damage by casualty and/or condemnation excepted, subject to Article V hereof, (b) keep the Easement Area or License Area reasonably free of obstructions (including snow and ice) and adequately illuminated and (c) maintain the security of the Easement Area or License Area at an appropriate level. Neither Party shall be obligated to repair damage caused by the other Party.

SECTION 4.02. Failure to Maintain. If a Party (the "Defaulting Party") fails to perform any obligation set forth in Section 4.01 of this Agreement, the other Party (the "Curing Party") shall have the right to perform the actions which the Defaulting Party failed to perform in accordance with this Agreement (the "Self-Help Rights") and shall be entitled to Entry Rights and Reimbursement Rights with respect thereto. Notwithstanding the foregoing, Self-Help Rights may only be exercised after failure of the Defaulting Party to perform any actions required to be performed pursuant to this Agreement (a) if no emergency exists, within 30 days after notice from the Curing Party, or if such failure is not curable within said period, within such longer period as is reasonably necessary to cure such failure, provided the Defaulting Party begins to cure such failure within such 30-day period and thereafter diligently prosecutes the same to completion; and (b) in any emergency situation, immediately upon written or (notwithstanding any other provisions of this Agreement) verbal notice, if prior notice is practicable, or, if such notice is not practicable, then without giving prior notice to the Defaulting Party; provided, however, that the Curing Party shall, in such circumstances, give the Defaulting Party notice thereof as soon thereafter as practicable. All work to be performed by the Curing Party so acting under the provisions of this Agreement shall be performed in accordance with Section 4.07.

SECTION 4.03. Use of Easement Area During Maintenance. During the performance of any maintenance work required or permitted by the Continuing Site Agreement, each Party shall have the right, at its own risk, to use the affected Easement Area or License Area for the purposes

contemplated herein; provided, however, that each Party shall keep such Easement Area or License Area reasonably free of obstructions, and shall implement such other safety and similar measures as may be required by Applicable Legal Requirements and Prudent Utility Practices or reasonably necessary for the performance of such work. Neither Party shall take any action which would materially and adversely affect or substantially interfere with the other Party's use of any such Easement Area or License Area.

SECTION 4.04. General Use Conditions. No Party shall use an Easement Area or License Area in such a manner so as to reduce, injure, overload, deface, harm or impair the applicable Easement Area or License Area, so as to allow or suffer any waste thereof, or so as to commit any nuisance by its use thereof. Any damage caused by a Party or its Permittees in violation of this provision shall be promptly repaired by the Party that caused, or whose Permittees caused, such damage. No Party shall materially and adversely affect, deprive of a material benefit associated with, impose a material burden on, or substantially interfere with, the other Party's use of the Easement Areas and the License Areas that are the subject of this Agreement.

SECTION 4.05. Compliance with Law. All Parties shall use the Easement Areas and License Areas in accordance with Applicable Legal Requirements and Prudent Utility Practices.

SECTION 4.06. Notification of Proposed Activity. Whenever a proposed activity of a Party is reasonably expected to have an adverse impact on the use of an Easement Area or License Area on such Party's Parcel by the other Party, the Party proposing such activity shall notify the other Party of such proposed activity and the reasonable measures such Party intends to take to mitigate the impact of such activity reasonably in advance, so that the other Party may also implement reasonable measures designed to mitigate the impact thereof. This notification requirement shall apply in all cases, including emergencies; provided, however, that in the case of an emergency, the notice given shall be such notice as is reasonably practicable under the circumstances and shall be given to the persons designated for such purpose by Section 3.13 of the Continuing Site Agreement.

SECTION 4.07. Performance of Work. All work to be performed under this Agreement by a Party (the "Entering Party") in or affecting the Easement Areas or License Areas on its Parcel or the Parcel of the other Party (a) shall not

impair the structural integrity of any improvement situated on either Parcel; (b) shall not be undertaken until the Entering Party shall have procured and paid for all required Permits; (c) except for routine maintenance activity, shall not be undertaken until the Entering Party shall have submitted to the other Party all applicable drawings, plans, specifications, engineering plans and related information and, except in connection with the exercise of Self-Help Rights, obtained the consent of the other Party to the work to be performed, which consent shall not be unreasonably withheld or delayed; (d) shall be performed in accordance with Applicable Legal Requirements and Prudent Utility Practices; (e) shall be performed by contractors fully insured, licensed (to the extent required by Applicable Legal Requirements) and competent to do the work being undertaken; (f) shall be performed in a manner that does not materially adversely affect or substantially interfere with the use and enjoyment by the other Party of the affected Easement Area or License Area or Parcel; and (g) shall be diligently prosecuted to completion. During any construction or reconstruction work, the construction site shall be kept in an orderly, clean and safe condition. The Entering Party shall pay when due all claims for labor performed or material furnished and not permit any mechanics' or materialmen's lien to attach, and if any such liens do attach, the Entering Party shall immediately notify the other Party and bond such liens in accordance with any applicable statutory provision. Except in connection with the exercise of Self-Help Rights, the Entering Party shall also be responsible for the professional fees incurred by the other Party in reviewing the Entering Party's plans and drawings, whether or not consent thereto shall be given. The review of, comments on, or consent to any documents, drawings, plans, specifications or other documentation provided by the Entering Party shall not relieve the Entering Party of, or affect in any way, its responsibility for the correctness and adequacy of the work to be performed. The other Party shall have no liability whatsoever with respect to any review or non-review of or consent to any documentation submitted to it by the Entering Party.

SECTION 4.08. Notice of Entry. Whenever the Entering Party shall intend to enter upon an Easement Area or License Area located upon the Parcel of the other Party to perform any work, the Entering Party shall give reasonable advance written notice thereof to the other Party. Notwithstanding the foregoing, in the case of an emergency, the Entering Party may enter upon an Easement or License Area located upon the Parcel of the other Party upon

immediate verbal notice; provided, however, that such notice shall promptly be followed by written notice.

SECTION 4.09. Relocation of Easement Areas and License Areas. The owner of any Easement Area or License Area may, upon not less than 90 days' notice to the owner of the Parcel benefitted by the applicable Easement or License, elect to change the location of all or any portion of the Easement Area or License Area; provided, however, that any such relocation shall not deprive the Party benefitted of the practical realization of the benefits of such Easement or License. The aforesaid notice shall specify the effective date of such relocation. Any such relocation shall occur at the sole cost and expense of the owner of the Easement Area or License Area. Any relocated Easement or License shall be subject to all of the terms, covenants and conditions of this Agreement. Upon the relocation of any Easement Area or License Area pursuant to the terms of this Section 4.09, the owner of the Parcel benefitted shall execute and deliver to the owner of the Parcel formerly burdened such documents in recordable form as the owner of the former Easement shall require to evidence the release and or relocation thereof.

## ARTICLE V

### Casualty; Condemnation

SECTION 5.01. Restoration Work. A Party electing to repair or restore Facilities damaged or destroyed by fire or other casualty ("Casualty") shall commence the repair or restoration as expeditiously as is practicable in the circumstances and not later than 60 Business Days after receipt of insurance proceeds; provided, however, that the failure to receive such insurance proceeds shall in no event excuse a Party electing to restore Facilities from its obligation expeditiously to commence the repair or replacement of such Facilities. All repair or restoration shall be diligently prosecuted to completion in accordance with the standards of work and other requirements set forth in Section 4.07.

SECTION 5.02. Failure to Restore. If a Party elects not to repair or restore a Facility following a Casualty, such Party shall notify the other Party of such election, whereupon, if the damage to the Facility is total or substantially total, the Easement or License with respect to such Facility shall cease and terminate. The owner of the Facility damaged or destroyed by Casualty shall be obligated to remove any remains of the Facility, including



all surface and below-ground installations relating solely to such Facility, and to restore the Easement Area or License Area to a condition substantially comparable to the immediately surrounding area of the Parcel, within a reasonable time following its election not to repair or restore the Facility and in accordance with the standards set forth in Section 4.07. Failure of the owner of the Facility to comply with such obligation shall give rise to Self-Help Rights (and correlative Reimbursement Rights) and other remedies in favor of the owner of the affected Parcel.

SECTION 5.03. Condemnation. In the event that a Parcel or a portion thereof containing an Easement Area shall be taken by any Governmental Authority in the exercise of the power of eminent domain (each, a "Taking", with the term "Taken" construed accordingly), each affected Easement or License granted hereunder shall terminate, to the extent affected by such Taking, as of the date the owner of the Parcel is divested of title, unless the instrument of Taking expressly provides otherwise, and the award attributable to such Taking shall, if not separately awarded to the Parties with respect to their separate interests in the Parcel by the condemning authority, be equitably allocated between the Parties, as their respective interests may appear. The control of the condemnation proceeding shall always be vested in the Party who is the fee owner of the Parcel being Taken. Nothing herein shall preclude the Party affected from pursuing any claims against the condemning authority with respect to any Facilities Taken or the costs of relocation, and all awards with respect to such Facilities or costs shall be the exclusive property of such Party.

SECTION 5.04. Relocation of an Easement or License After Casualty or Condemnation. Notwithstanding any other provision in this Article V, in the event of a Casualty or condemnation which results in the complete or substantial destruction or relocation of the improvements which are benefitted by an Easement, License or other right granted hereunder, the beneficiary of the affected Easement, License or other right shall, to the extent commercially practical, rebuild such improvements in such a manner that the Easement, License or other right is no longer required.

## ARTICLE VI

### Miscellaneous Provisions

SECTION 6.01. Effectiveness. This Agreement shall only become effective upon the consummation of the Closing and, prior to such time, shall have no force or

effect. If the Sale Agreement is terminated for any reason prior to the Closing, then this Agreement shall also automatically terminate and be of no further force or effect.

SECTION 6.02. Force Majeure.

(a) Notwithstanding anything in this Agreement to the contrary, neither Party shall have any liability or be otherwise responsible to the other for its failure to carry out its obligations, with the exception of any obligation to pay money, under this Agreement if and only to the extent that it becomes impossible or impracticable for either Party to so perform as a result of any Force Majeure Event.

(b) If a Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from performance of its obligations under this Agreement, then the Party relying on such occurrence shall (i) provide prompt written notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) use commercially reasonable efforts to continue to perform its obligations under this Agreement, (iii) reasonably and expeditiously take action to correct or cure the Force Majeure Event (provided, however, that settlement of strikes or any other labor disturbance will be completely within the sole discretion of the Party affected by such strike or labor dispute), (iv) use commercially reasonable efforts to mitigate or limit damages to the other Party and (v) provide prompt written notice to the other Party of the cessation of the Force Majeure Event.

SECTION 6.03. Default and Remedies. In the event that a Party defaults, breaches or otherwise fails to perform any obligation of such Party under this Agreement, the other Party shall have the right to exercise its Self-Help Rights (and shall be entitled to correlative Reimbursement Rights in connection therewith) without any requirement to pursue or exhaust any other remedies available to such Party under the Sale Agreement. The holder of an Easement shall have the right, following notice to the other Party, to take such action as it may deem necessary or advisable, including payment of any delinquent Taxes, to prevent a foreclosure for nonpayment of Taxes or other action by a Governmental Authority that might affect its Easement or License rights hereunder and any such action shall be deemed an exercise of Self-Help Rights (and, accordingly, give rise to correlative Reimbursement Rights).

SECTION 6.04. Mortgagees' Status. This Agreement shall be superior to any mortgages or other instruments

evidencing security for indebtedness granted by either Party from time to time with respect to its Parcel. Accordingly, each Party agrees to obtain and deliver to the other Party such documents and instruments, in recordable form, as may be reasonably necessary or requested by the other Party from time to time to evidence and confirm the subordination of any such mortgages or other security instruments to the provisions of this Agreement.

SECTION 6.05. Estoppel Certificate. Each Party agrees, within 10 days after written request by the other, to execute, acknowledge and deliver to and in favor of any present or proposed lender, Mortgagee, ground lessor, purchaser, tenant or the like of all or any part of the other Party's Parcel, an estoppel certificate, in a form reasonably satisfactory to both Parties and such lender, Mortgagee, ground lessor, purchaser, tenant or the like, stating, among other things: (a) whether this Agreement is in full force and effect; (b) whether this Agreement has been modified or amended and, if so, identifying and describing any such modification or amendment; (c) whether there are any sums then due and owing under this Agreement from either Party to the other, and if so, specifying the amount thereof and reason therefor; and (d) whether the Party giving such certificate knows of any default (or event which, with the passage of time, the giving of notice, or both, would constitute a default) on the part of the other Party, or has any outstanding claim against the other Party arising under this Agreement and, if so, specifying the nature of such default or claim.

SECTION 6.06. No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of either Parcel to the general public or for any public use or purpose whatsoever, or be deemed to create any rights or benefits in favor of any municipality, public authority or official thereof, it being the intention of the Parties that this Agreement be for the exclusive benefit of the owner or owners, from time to time, of the Parcels, or any part thereof, and those claiming under them.

SECTION 6.07. Covenants Running With Land. The benefits and burdens, rights and obligations, Licenses, Easements and restrictions created by this Agreement shall be appurtenant to and run with and burden and be binding upon the Seller Parcel and the Buyer Parcel, and shall inure to the benefit of and be binding upon Seller and Buyer and their respective Permittees and others claiming by, through or under them. The covenants, agreements, terms, provisions and conditions of this Agreement shall bind and benefit the successors in interest (as owners of the Seller Parcel and

the Buyer Parcel, respectively, whether by sale, foreclosure or otherwise) of the Parties with the same effect as if mentioned in each instance when a Party is named or referred to, it being understood and agreed that upon any transfer of ownership (whether by sale, foreclosure or otherwise) of all or any part of the Seller Parcel and the Buyer Parcel, as the case may be, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all of the obligations of its predecessors in interest under this Agreement. Notwithstanding the foregoing, (a) each Party shall use commercially reasonable efforts to cause any such successor in interest to execute an agreement in recordable form pursuant to which such successor in interest shall assume any and all obligations of its predecessors in interest under this Agreement (provided, however, that the failure to obtain any such agreement shall not detract from the provisions of the previous sentence), and (b) no such predecessor in interest shall be released from its liabilities and obligations under this Agreement (whether arising before or after any such transfer of ownership) without the prior written consent of all of the other Parties.

SECTION 6.08. No Merger. The acquisition by any owner of the Seller Parcel of any interest in and to the Buyer Parcel, or the acquisition by any owner of the Buyer Parcel of any interest in and to the Seller Parcel shall not result in an impairment or extinguishment by merger of any right, Easement, License or obligation granted or created hereby. No merger shall result unless and until (a) one person or entity owns the fee title to both the Seller Parcel and the Buyer Parcel in their entirety and (b) written consents to such merger and termination of this Agreement shall have been obtained (and recorded with the Office of the Westchester County Clerk) from all holders of mortgages then of record with respect to any portion of the Seller Parcel or the Buyer Parcel.

SECTION 6.09. Assignment; No Third Party Beneficiaries. (a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either Party, including by operation of law, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing but subject to all legal requirements, (i) Seller may assign or pledge its rights, (A) to an Affiliate of Seller or a third party in connection with the transfer of the Transmission System and conveyance of the Seller Parcel

to such Affiliate or third party or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in all or any part of the Transmission System, including the Seller Parcel, and this Agreement and (ii) Buyer may assign or pledge its rights, (A) to an Affiliate of Buyer or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in the Auctioned Assets, including the Buyer Parcel, and/or this Agreement; provided, however, that (i) with respect to an assignment or transfer of rights or obligations by Seller, no such assignment or transfer shall relieve Seller from the full liabilities and the full financial responsibility, as provided for under this Agreement, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and Buyer has consented in writing to such assumption, and (ii) with respect to an assignment or transfer of rights or obligations by Buyer, no such assignment or transfer (A) may be consummated unless the assignee or transferee expressly agrees in writing and in a form satisfactory to Seller to be jointly and severally liable with Buyer for all of the liabilities and obligations of Buyer under this Agreement and (B) shall relieve Buyer from the full liabilities and the full financial responsibility as provided for under this Agreement; provided, that, in the event of a subsequent transfer pursuant to this clause (ii), if such subsequent transferee shall agree to be jointly and severally liable with Buyer for all of the liabilities and obligations of Buyer under this Agreement, then the prior transferee shall be relieved of its liability upon such transfer. Any assignment in contravention of this Section 6.09 shall be null and void and without legal effect.

(b) Nothing in this Agreement is intended to confer upon any other person except the Parties any rights or remedies hereunder or shall create any third party beneficiary rights in any person.

SECTION 6.10. Notices. Unless otherwise specified herein, all notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a telecopied communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier

(providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

if to Seller, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-0601  
Attention: General Counsel

if to Buyer, to:

Entergy Nuclear Indian Point 2, LLC  
440 Hamilton Avenue  
White Plains, NY 10601  
Telecopy No.: (914) 272-3406  
Attention: Chief Operating Officer

SECTION 6.11. Extension; Waiver. Either Party may (a) extend the time for the performance of any of the obligations or other acts of the other Party or (b) waive compliance by the other Party with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 6.12. Amendment and Modification. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties.

SECTION 6.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

SECTION 6.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 6.15. Interpretation. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article or Section of, or Schedule or Exhibit to, this Agreement unless

otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" or equivalent words. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any agreement, instrument, statute, regulation, rule or order defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument, statute, regulation, rule or order as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes, regulations, rules or orders) by succession of comparable successor statutes, regulations, rules or orders and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns.

#### SECTION 6.16. Jurisdiction and Enforcement.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 6.10 (or such other address specified by such Party from time to time pursuant to Section 6.10) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising

out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceedings brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 6.17. Entire Agreement. This Agreement, the Sale Agreement, the Confidentiality Agreement and the other Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein and other contracts, agreements and instruments contemplated hereby or thereby embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement, the Sale Agreement and the other Ancillary Agreements supersede all prior agreements and understandings between the Parties with respect to the transaction contemplated by this Agreement other than the Confidentiality Agreement.

SECTION 6.18. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 6.19. Conflicts. Except as otherwise provided in the Sale Agreement or the Continuing Site Agreement, as applicable, in the event of any conflict or



inconsistency between the terms of this Agreement and the terms of the Sale Agreement or the Continuing Site Agreement, the terms of the Sale Agreement or the Continuing Site Agreement, as applicable, shall prevail. In the event of any conflict or inconsistency between the terms of this Agreement and the terms of any other Ancillary Agreement (other than the Continuing Site Agreement), the terms of this Agreement shall prevail.

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

CONSOLIDATED EDISON COMPANY OF NEW  
YORK, INC.,

by

\_\_\_\_\_  
Name:  
Title:

ENTERGY NUCLEAR INDIAN POINT 2,  
LLC,

by

\_\_\_\_\_  
Name:  
Title:

Seller Parcel

File No. 00-101  
W.O. No. 13260  
Doc. No.  
Created: September 8, 2000  
Revised: September 8, 2000  
Printed: September 8, 2000  
Figure No(s.) 2120  
Author: GJW

PRELIMINARY  
DESCRIPTION OF PROPERTY  
prepared for  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.  
(Seller's Parcel - Buchanan Substation)

All that certain plot, piece or parcel of land situate in the Village of Buchanan, Town of Cortlandt, County of Westchester and State of New York that is bounded and described as follows:

BEGINNING at the point on the southeasterly line of Broadway in said Village where it is met by the southwesterly end of the curved line with a radius of 25.00 feet and a length of 42.21 feet that connects the said southeasterly line of Broadway to the southwesterly line of the proposed extension of First Street, so called, which point occupies coordinate position

N 461,395.332 (y)  
E 606,124.861 (x)

of the New York State Coordinate System, East Zone.

THENCE FROM THE SAID POINT OF BEGINNING, easterly along the said curve to the right, the center of which bears S53-27-20E, the central angle of which is 96-44-20, the radius of which is 25.00 feet for 42.21 feet to the said southwesterly line of the proposed extension of First Street, so called. Thence southeasterly along the said southwesterly line of the proposed extension of First Street, so called, the following, first

S 46-43-00 E 222.83 feet

then on a tangent curve to the right, the central angle of which is 24-54-30, the radius of which is 300.00 feet for 130.42 feet, then

S 21-48-30 E 449.21 feet

then on a tangent curve to the left, the central angle of which is 29-10-40, the radius of which is 300.00 feet for 152.77 feet, then

S 50-59-10 E 185.45 feet

and then on a tangent curve to the right, the central angle of which is 14-49-30, the radius of which is 140.00 feet for 36.22 feet to a point at the line of lands now or formerly of the Village of Buchanan. Thence along the said Village of Buchanan lands

S 53-50-20 W 898.07 feet

to a point at the line of lands formerly of Migliore and now or formerly of Central School District No. 3 of the Town of Cortlandt. Thence along the said School District lands

N 89-49-20 W 568.96 feet

to a point at the line of other lands of Consolidated Edison Company of New York, Inc. which have been designated "Buyer's Parcel GT Site." Thence through the lands of Consolidated Edison Company of New York, Inc. and along the lines of the said "Buyer's Parcel GT Site, the following courses:

S 89-49-20 E 53.94 feet  
N 35-13-00 E 437.78 feet  
N 36-09-40 W 178.40 feet and  
N 47-12-34 W 258.54 feet

to another point on the southeasterly line of Broadway. Thence northeasterly along the said southeasterly line of Broadway

N 36-32-40 E 982.10 feet

to the point or place of beginning, containing 23.679 acres, more or less.

Prepared by  
BADEY & WATSON  
Surveying & Engineering, P.C.  
U.S. Route 9  
Cold Spring, New York 10516  
(914) 265-9217 (V)  
(914) 265-4428 (F)

Buyer ParcelPart I - Indian Point

File No. 00-101  
 W.O. No. 13260  
 Doc. No.  
 Created: November 9, 2000  
 Revised: November 9, 2000  
 Printed: November 9, 2000  
 Figure No(s.) 1400  
 Author: G.J.W.

**DESCRIPTION OF PROPERTY**  
**prepared for**  
**Consolidated Edison Company of New York, Inc.**  
**(Buyer's Parcel - Indian Point)**

All that certain parcel of land situate in the Village of Buchanan, Town of Cortlandt, County of Westchester and State of New York that is bounded and described as follows:

**BEGINNING** at the point on the northwesterly line of Broadway in said Village where it is met by the line dividing the lands herein described, on the northeast, from lands of the Power Authority of the State of New York, on the southwest, which point occupies coordinate position

N 460,582.572 (y)  
 E 605,385.556 (x)

of the New York State Coordinate System, East Zone.

**THENCE FROM THE SAID POINT OF BEGINNING** northwesterly, northeasterly and again northwesterly along the said division line, first the following courses:

N 63°43'41" W 310.02 feet  
 N 63°30'45" W 229.13 feet  
 N 77°36'34" W 168.54 feet  
 N 63°41'22" W 215.25 feet  
 N 57°11'26" W 355.78 feet  
 N 38°17'00" E 1,229.13 feet  
 N 29°14'02" W 227.28 feet  
 N 51°43'00" W 433.65 feet and  
 N 38°17'00" E 19.47 feet

then on a non-tangent curve to the left, the center of which bears N11°17'55"W, the central angle of which is 236°51'06", the radius of which is 47.50 feet for 196.36 feet, and then

N 51°43'00" W 558.88 feet

to a point in the Hudson River. Thence through the waters of the Hudson River

N 38°17'00" E 632.86 feet and  
S 51°43'00" E 114.00 feet

to a point at the Mean High Water Mark of the easterly shore thereof. Thence northeasterly and easterly along the Mean High Water Mark of the easterly shore of the Hudson River, as it winds and turns along a line that is generally defined by the following courses:

N 50°40'00" E 83.00 feet  
N 58°20'00" E 35.00 feet  
S 81°10'00" E 14.00 feet  
N 37°40'00" E 70.00 feet  
N 03°50'00" E 66.00 feet  
N 23°40'00" E 29.00 feet  
N 06°00'00" W 58.00 feet  
N 19°20'00" E 28.00 feet  
N 34°30'00" E 127.00 feet  
N 46°20'00" E 32.00 feet  
N 75°20'00" E 127.00 feet  
N 49°56'00" E 191.00 feet  
N 35°50'00" E 46.00 feet  
N 58°20'00" E 59.00 feet  
N 35°30'00" E 30.00 feet  
N 65°00'00" E 39.00 feet  
N 86°20'00" E 47.00 feet  
S 50°40'00" E 32.00 feet  
N 84°20'00" E 57.00 feet  
N 62°50'00" E 76.00 feet  
N 28°40'00" E 41.00 feet  
N 02°20'00" W 89.00 feet  
N 26°10'00" E 91.00 feet  
N 48°50'00" E 32.00 feet  
N 07°40'00" E 25.00 feet  
N 55°30'00" E 51.00 feet  
S 85°50'00" E 30.00 feet  
S 38°30'00" E 11.00 feet  
N 74°00'00" E 8.00 feet  
N 29°00'00" E 26.00 feet  
S 71°20'00" E 12.00 feet  
S 51°00'00" E 27.00 feet  
N 74°00'00" E 50.00 feet  
N 49°00'00" E 35.00 feet  
N 68°20'00" E 156.00 feet  
S 80°20'00" E 51.00 feet  
N 77°00'00" E 58.00 feet  
N 53°10'00" E 41.00 feet  
N 41°10'00" E 49.00 feet  
N 05°20'00" E 14.00 feet  
N 40°10'00" E 53.00 feet  
N 64°30'00" E 35.00 feet

S 74°20'00" E 38.00 feet  
S 34°30'00" E 16.00 feet  
N 85°20'00" E 63.00 feet  
S 45°50'00" E 25.00 feet  
S 12°20'00" E 19.00 feet  
S 44°10'00" E 113.00 feet  
N 80°30'00" E 109.00 feet  
S 82°50'00" E 91.00 feet  
S 54°10'00" E 87.00 feet  
S 31°10'00" E 71.00 feet and  
S 53°20'00" E 25.87 feet

to a point at the line of lands now or formerly of the Village of Buchanan. Thence along the said Village of Buchanan lands, the following courses:

S 08°15'50" E 824.18 feet  
S 53°16'20" E 106.06 feet  
N 71°04'20" E 195.50 feet  
S 13°43'00" E 402.00 feet and  
S 51°43'00" E 166.00 feet

to another point on the northwesterly line of Broadway. Thence southwesterly along the said northwesterly line of Broadway

S 36°32'40" W 3,114.17 feet

to the point or place of beginning, containing 160.033 acres, more or less.

Prepared by  
**BADEY & WATSON**  
*Surveying & Engineering, P.C.*  
U.S. Route 9  
Cold Spring, New York 10516  
(914)265-9217(V)  
(914)265-4428(F)

Part II - GT Site

File No. 00-101  
W.O. No. 13260  
Doc. No.  
Created: November 9, 2000  
Revised: September 6, 2000  
Printed: November 9, 2000  
Figure No(s.) 2110  
Author: GJW

**DESCRIPTION OF PROPERTY**  
prepared for  
**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**  
**(Buyer's Parcel - GT Site)**

All that certain plot, piece or parcel of land situate in the Village of Buchanan, Town of Cortlandt, County of Westchester and State of New York that is bounded and described as follows:

**BEGINNING** at the point on the southeasterly line of Broadway in said Village where it is met by the line dividing the lands herein described, on the northeast, from lands formerly of John McClosky and now occupied by the Roman Catholic Cemetery, on the southwest, which point occupies coordinate position

N 459,780.576 (y)  
E 604,928.065 (x)

of the New York State Coordinate System, East Zone.

**THENCE FROM THE SAID POINT OF BEGINNING**, northeasterly along the said southeasterly line of Broadway

N 36°32'40" E 1,027.82 feet

to a point. Thence through the lands of Consolidated Edison Company of New York, Inc., the following courses:

S 47°12'34" E 258.54 feet  
S 36°15'26" E 178.30 feet and  
S 35°13'00" W 437.90 feet

to a point on the line of lands formerly of Migliore and now or formerly of Central School District No. 3 of the Town of Cortlandt. Thence along the said School District lands

N 89°49'20" W 53.94 feet

to a point in the center of a stone wall marking the westerly line of lands formerly of Bleakley and now or formerly of the said Central School District No. 3 of the Town of Cortlandt. Thence along the last mentioned School District lands and along lands formerly of Bleakley and now or formerly of Young and mostly along the center of the said stone wall, the following courses:

S 25°03'00" W 140.14 feet,  
 S 15°58'00" W 83.45 feet,  
 S 18°43'00" W 160.00 feet,  
 S 16°44'00" W 29.55 feet,  
 S 12°55'20" W 171.89 feet,  
 S 10°37'00" W 214.29 feet,  
 S 09°17'20" W 66.66 feet,  
 S 04°05'00" W 167.90 feet,  
 S 05°05'20" W 91.90 feet,  
 S 02°29'40" E 52.10 feet,  
 S 06°13'00" E 39.20 feet,  
 S 09°37'30" E 33.30 feet, and  
 S 21°12'52" E 35.62 feet

to a point at the line of lands formerly of McGlynn and now shown on that certain "Subdivision Plat of Pheasants Run ...," which was filed in the Westchester County Clerk's office on March 22, 1990 as Map No. 24110. Thence along the lands shown on said Filed Map No. 24110, along lands formerly of McGlynn and now shown on that certain map entitled "Subdivision of Property for Seamus and Eileen Coughlan ...," which was filed in the Westchester County Clerk's office On August 6, 1993 as Map No. 24934 and along lands formerly of McGlynn and now or formerly of Keesler and in part along the center of a stone wall, the following courses:

S 18°20'35" E 44.90 feet,  
 N 61°38'20" W 245.07 feet,  
 N 61°13'20" W 195.40 feet, and  
 N 61°02'20" W 122.67 feet



to a point at the line of the first mentioned lands formerly of John McClosky and now occupied by the Roman Catholic Cemetery. Thence along the said cemetery lands

N 29°35'00" E 816.82 feet and  
N 61°37'20" W 338.46 feet

to the southeasterly line of Broadway and the point or place of beginning, containing 15.944 acres, more or less.

Prepared by  
**BADEY & WATSON**  
*Surveying & Engineering, P.C.*  
U.S. Route 9  
Cold Spring, New York 10516  
(914)265-9217(V)  
(914)265-4428(F)

Easements Granted to Seller

1. Wharf. An easement to use the wharf and related equipment located in the area on the Buyer Parcel designated as Item Nos. 2 and 3 - "Wharf" on the Plan for the purpose of transporting transformers and other equipment to and from this area by barge or other vessel, over this area to and from the Easement for Ingress and Egress and over the Easement for Ingress and Egress to and from Broadway.
2. Communications Cables. A 20 foot wide easement over the Buyer Parcel solely to install, maintain, repair, operate, inspect, reconstruct, replace, upgrade, add to and expand communications cables, conduits and related equipment in the area designated on the Plan as Item No. 5 - "Fiber Optic Link".
3. 345 KV Feeder Cables. A 200 foot wide easement solely for (a) the maintenance, repair, operation, inspection, reconstruction, replacement and upgrading of those portions of the 345 KV electric feeder cables located on the Buyer Parcel and designated on the Plan as Item No. 10 - "Feeder Y88" and "Feeder Y94" and the support towers and other equipment appurtenant thereto and (b) the construction, installation, addition, maintenance, repair, operation, inspection, reconstruction, replacement and upgrading of additional feeder cables running parallel to Feeders Y88 and Y94 and any support towers and other equipment appurtenant thereto within the 200 foot wide easement described above. Seller's right to maintain said feeders shall include the right to trim and remove vegetation located within the Easement Area created hereby and to apply herbicides from time to time within said Easement Area as Seller deems appropriate, provided that any such application shall comply with Environmental Laws.
4. 138 KV Feeder Cables. A 125 foot wide easement solely for the maintenance, repair, operation, inspection, reconstruction, replacement, expansion/addition to and upgrading of those portions of the 138 KV electric feeder cables located on the Buyer Parcel and designated on the Plan as Item No. 1 "Feeder 95093" (above-ground, from the northeast portion of the Buyer Parcel - Indian Point, parallel to Broadway to the transition station referenced below) and "Feeder 95951" (underground, from the transition station referenced below to the Seller Parcel), and the transition station connecting them and the transmission poles and other equipment appurtenant thereto. Seller's right to maintain the above-ground portions of said feeders shall include the right to trim and remove vegetation located within the Easement Area created hereby and to apply herbicides from time to time within said Easement Area as Seller deems appropriate, provided that any such application shall comply with Environmental Laws.
5. 13.8 KV Feeder Cables. Easements solely for the maintenance, repair, operation, inspection, reconstruction, replacement, expansion/addition to and upgrading of those portions of the 13.8 KV electric feeder cables located on the Buyer Parcel and designated on the Plan as Item No. 6 - "Feeder 13W82" and "Feeder 13W84" (in each case up to the splice connections in customer manhole CM12306 located adjacent to the Energy Education Center) and "Feeder 13W88" (up to burial splice 8649) and the equipment appurtenant thereto. Seller's right to maintain said feeders shall include the right to trim and remove vegetation located within the Easement Area created hereby and to apply herbicides from time to time within said Easement Area as Seller deems appropriate, provided that any such application shall comply with Environmental Laws.

6. 4 KV Feeder Cables. Easements solely for the maintenance, repair, operation, inspection, reconstruction, replacement, expansion/addition to and upgrading of those portions of the 4 KV feeder cables located on the Buyer Parcel and designated on the Plan as Item No. 7 - "Feeder 59U1", including the following three feeder spurs off of Feeder 59U1 and the equipment appurtenant thereto: (a) the first feeder spur up to the pole that is one pole north of pole #4 located off the access road to Indian Point Nuclear Generating Unit 3; (b) the second feeder spur up to the first burial splice off Broadway, which burial splice is located east of the Buchanan Service Center; and (c) the third feeder spur up to the load side of the fuse cutout at WIA, which is located on the first pole off Broadway on the access road to Indian Point Nuclear Generating Unit 2.<sup>1</sup>/ Seller's right to maintain said feeders shall include the right to trim and remove vegetation located within the Easement Area created hereby and to apply herbicides from time to time within said Easement Area as Seller deems appropriate, provided that any such application shall comply with Environmental Laws.

7. Pole Access: An easement solely to use the existing roadways located on the GT Site and shown on the Plan as part of Item No. 9 (Seller's "General Access Easement" over the Buyer Parcel), for access to and egress from the poles and other equipment located at the back of the Seller Parcel in connection with the maintenance, repair, operation, inspection, reconstruction, replacement, expansion/addition to and upgrading of such poles and equipment.

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<sup>1</sup> If the same owns Indian Point Nuclear Generating Units 1, 2 and 3, the feeder spur described in clause (a) will be conveyed to the Buyer.

Licenses Granted to Seller

1. Distribution Transformers. A license solely to maintain, repair, inspect, reconstruct, replace, add to, upgrade and expand all distribution transformers owned by Seller, located on the Buyer Parcel, serving the Buyer Parcel and/or Indian Point Nuclear Generating Unit No. 3 and designated on the Plan as Item No. 8 - Transformers V8649, V7803, V9515, V2170, V7718, V3560, V9808, V6448, V6910, FR, 17230, 17236, 9, 6A and 6B and associated network protectors and other equipment.
2. Communications Equipment. A license solely to maintain, repair, operate, inspect, reconstruct, replace, add to, upgrade and expand the communications equipment located on the Buyer Parcel in two rooms in the southwest corner of the building designated on the Plan as the Buchanan Service Center Building and the communications tower, emergency generator, propane tanks, fiberglass building/"hut" and other equipment appurtenant thereto located outside the Buchanan Service Center Building, all within the area designated on the Plan as Item No. 4 - "Communications Equipment License Area". This equipment is more particularly described in Schedule 2.02(b)(ii)(C) to the Sale Agreement.
3. Revenue Meter Systems. A license solely to install, maintain, repair, operate, inspect, reconstruct, replace, add to, upgrade and expand all existing revenue meter systems and equipment located on the Buyer Parcel and serving the Buyer Parcel and/or Indian Point Nuclear Generating Unit No. 3 and any revenue meter systems and equipment which Seller determines should be installed on the Buyer Parcel in the future in connection with the operation of the Buyer Parcel, the Seller Parcel and/or Indian Point Nuclear Generating Unit No. 3.
4. Transition Station. A license solely to maintain, repair, operate, inspect, reconstruct, replace, add to, upgrade and expand all equipment located in and the fence around the transition station connecting overhead Feeder 95093 and underground Feeder 95951 and designated on the Plan as Item No. 1 - "Transition Station" within the area shown for the Transition Station on the Plan.

Easements Granted to Buyer

1. 345 KV Feeder Cable. An easement solely for the maintenance, repair, operation, inspection and replacement of that portion of the 345 KV electric feeder cable located on the Seller Parcel and designated on the Plan as Item D - "Feeder W95" up to and including Motor Operated Disconnect Switch F7-9 and the support tower and other equipment appurtenant thereto.
2. 138 KV Feeder Cables. An easement solely for the maintenance, repair, operation, inspection and replacement of that portion of the 138 KV electric feeder cable located on the Seller Parcel and designated on the Plan as Item E - "Feeder 95332" up to and including Motor Operated Disconnect Switch F3A and the support tower and other equipment appurtenant thereto, including, without limitation, the spare 138 KV cable for Feeder 95332 located between the 345 KV and 138 KV yards on the Seller Parcel.
3. 13.8 KV Feeder Cables. Easements solely for the maintenance, repair, operation, inspection and replacement of those portions of the 13.8 KV electric feeder cables owned by Buyer and located on the Seller Parcel and designated on the Plan as Item F - "Feeder 13W92" (up to 13.8 KV Breaker F2-3), "Feeder 13W93" (up to 13.8 KV Breaker F3-1), "Feeder 13W94L" and "Feeder 13W94M" (up to and including the removable links located on the Seller Parcel) and the equipment appurtenant thereto.

Licenses Granted to Buyer

1. Disconnect Switches. A license solely to maintain, repair, remotely operate, inspect and replace certain motor-operated disconnect switches located on the Seller Parcel and designated on the Plan as Item A - "Disconnect Switch F7-9" (Feeder W95) and "Disconnect Switch F3A" (Feeder 95332).
2. Ground Switches. A license solely to maintain, repair, remotely operate, inspect and replace the ground switches designated on the Plan as Item B - "Ground Switches 14, 27 and 43" and the structural supports for such ground switches.
3. Circuit Breakers. A license solely to maintain, repair, remotely operate, inspect and replace the 13.8 KV circuit breakers located on the Seller Parcel and designated on the Plan as Item C - "Circuit Breaker F2-3" and "Circuit Breaker F3-1" and the current transformers associated with these circuit breakers.
4. Lightning Arrestor. A license solely to maintain, repair, remotely operate, inspect and replace the lightning arrestor for 345 KV Feeder W95 located on the Seller Parcel and designated on the Plan as Item G - "Arrestor".

liability company power and authority to execute and deliver the Guarantee and to consummate the transactions contemplated thereby; and the execution and delivery by Guarantor of the Guarantee and the performance by Guarantor of its obligations thereunder have been duly and validly authorized by all necessary limited liability company action on the part of Guarantor.

2. The Guarantee has been duly executed and delivered by Guarantor, and assuming that the Guarantee constitutes a valid and binding obligation of Seller, the Guarantee constitutes a valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, regardless of whether considered in a proceeding in equity or at law). With respect to the foregoing opinion, the availability of a decree for specific performance or an injunction is subject to the discretion of the court requested to issue any such decree or injunction.

3. Subject to obtaining Guarantor Required Regulatory Approvals, neither the execution and delivery of the Guarantee nor the performance by Guarantor of its obligations thereunder will (i) conflict with or result in any breach of any provision of the Certificate of Formation or Operating Agreement (or other similar governing documents) of Guarantor, (ii) result in a default (or give rise to any right of termination, cancelation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Guarantor or any of its subsidiaries is a party or by which any of their respective assets may be bound or (iii) violate any Law applicable to Guarantor, or any of its assets, except in the case of clauses (ii) and (iii) for such failures to obtain a necessary consent, defaults and violations which would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the ability of Guarantor to discharge its obligations under the Guarantee.

4. No declaration, filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for performance by Guarantor of its obligations under the Guarantee.

We express no opinion herein as to (i) the provisions of the Guarantee insofar as such provisions relate to the subject matter jurisdiction of the United States District Court for the Southern District of New York to adjudicate any controversy related thereto and (ii) the waiver of an inconvenient forum set forth in the provisions of the Guarantee.

We are furnishing this opinion to you pursuant to Section 7.03(g) of the Sale Agreement, solely for your benefit in connection with the transactions contemplated by the Guarantee and the Sale Agreement. This opinion may not be relied upon by any other person or for any other purpose or used, circulated, quoted or otherwise referred to for any other purpose.

Very truly yours,



CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a transferee of a U.S. real property interest must withhold Tax if the transferor is a foreign person. To inform Entergy Nuclear Indian Point 2, LLC ("Buyer"), that a withholding of Tax is not required upon the disposition of a U.S. real property interest by Consolidated Edison Company of New York, Inc., a New York corporation ("Seller"), the undersigned hereby certifies the following on behalf of Seller:

1. Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations);
2. Seller's employer identification number is 13-5009340;
3. Seller's office address is 4 Irving Place, New York, NY 10003.

Seller and the undersigned understand that this certificate may be disclosed to the Internal Revenue Service by Buyer and that any false statement contained herein could be punished by fine, imprisonment or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Seller.

Date: [            ], 2001

By: \_\_\_\_\_

Name:

Title:

FORM OF OPINION OF GENERAL COUNSEL OF SELLER

[ ], 2001

Entergy Nuclear Indian Point 2, LLC  
440 Hamilton Avenue  
White Plains, NY 10601

Consolidated Edison Company of New York, Inc.  
Generating Plant and Gas Turbine  
Asset Purchase and Sale Agreement

Ladies and Gentlemen:

I am General Counsel of Consolidated Edison Company of New York, Inc., a New York corporation ("Seller"), and have acted for Seller in connection with the Generating Plant and Gas Turbine Asset Purchase and Sale Agreement (the "Asset Purchase and Sale Agreement") dated as of November 9, 2000, between Seller and Entergy Nuclear Indian Point 2, LLC, a Delaware limited liability company ("Buyer") and the Ancillary Agreements (collectively, the "Agreements") and the transactions contemplated thereby. Capitalized terms used but not defined herein have the meanings assigned to them in the Asset Purchase and Sale Agreement.

In that connection, I have examined originals, or copies certified or otherwise identified to my satisfaction, of such documents, corporate records and other instruments as I have deemed necessary or appropriate for the purposes of this opinion, including: (a) the Agreements, (b) the Certificate of Incorporation of Seller, (c) the By-laws of Seller and (d) resolutions of the Board of Trustees of Seller.

In rendering my opinion, I have assumed the due authorization, execution and delivery of each Agreement by each party thereto other than Seller.

Based upon the foregoing and subject to the qualifications hereinafter set forth, I am of the opinion as follows:

1. Based solely on a certificate from the Secretary of State of the State of New York, Seller is a corporation validly existing and in good standing under the laws of the State of New York. Seller has all necessary corporate power and authority to execute and deliver each Agreement and to consummate the transactions contemplated thereby; and the execution and delivery by Seller of each Agreement and the

consummation by Seller of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate action on the part of Seller.

2. Each of Seller's Qualified Decommissioning Fund and Nonqualified Decommissioning Fund is a trust validly existing and in good standing under the laws of the State of New York.

3. Each Agreement has been duly executed and delivered by Seller, and assuming that such Agreement constitutes a valid and binding obligation of each other party thereto, such Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, regardless of whether considered in a proceeding in equity or at law). With respect to the foregoing opinion, (i) insofar as provisions contained in the Agreements provide for indemnification, the enforceability thereof may be limited by public policy considerations and (ii) the availability of a decree for specific performance or an injunction is subject to the discretion of the court requested to issue any such decree or injunction.

4. Subject to obtaining the Seller Required Regulatory Approvals and the Buyer Required Regulatory Approvals, neither the execution and delivery of the Agreements by Seller nor the consummation of the transaction contemplated thereby, including the sale by Seller of the Auctioned Assets pursuant to the Asset Purchase and Sale Agreement will (i) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-laws of Seller, (ii) except as set forth in Schedule 4.03(a) to the Asset Purchase and Sale Agreement, result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Seller is a party or by which Seller, or any of the Auctioned Assets may be bound or (iii) violate any Law applicable to Seller, or the Auctioned Assets, except in the case of clauses (ii) and (iii) for such failures to obtain a necessary consent, defaults (or rights) and violations which would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

5. Except for the Seller Required Regulatory Approvals, no declaration, filing or registration with, or notice to, or authorization, consent or approval of any United States federal or New York State Governmental Authority is necessary for the consummation by Seller of the transactions contemplated by the Agreements, other than (A) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect, (B) any certificate of occupancy, consent or similar approval to authorize the change in occupancy of the Buyer Real Estate contemplated by the Asset Purchase and Sale Agreement and required pursuant to the Code of the Village of Buchanan, including specifically Section 211.49 thereof and (C) any consent of the Commissioner of General Services of the State of New York required for the assignment from Seller to Buyer of the right to install and maintain a fish return pipeline in an area in the Hudson River approximately 30 feet wide and 330 feet long.

The opinions expressed herein are subject to the qualification that I express no opinion regarding the applicability of, or compliance with, any bulk sales, bulk transfer or similar laws in connection with the transfer of the Auctioned Assets pursuant to the Asset Purchase and Sale Agreement. I express no opinion herein as to (i) the provisions of the Agreements insofar as such provisions relate to the subject matter jurisdiction of the United States District Court for the Southern District of New York to adjudicate any controversy related thereto and (ii) the waiver of an inconvenient forum set forth in the provisions of the Agreements.

I am admitted to practice in the State of New York, and I express no opinion as to matters governed by any laws other than the laws of the State of New York and the Federal laws of the United States of America.

I am furnishing this opinion to you pursuant to Section 7.02(e) of the Asset Purchase and Sale Agreement, solely for your benefit in connection with the transactions contemplated by the Asset Purchase and Sale Agreement. This opinion may not be relied upon by any other person or for any other purpose or used, circulated, quoted or otherwise referred to for any other purpose.

Very truly yours,



CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

by \_\_\_\_\_  
Name:  
Title:

Sworn to before me this  
\_\_\_\_ day of [        ].

\_\_\_\_\_  
Notary Public

SCHEDULE A

List of Tenants

FORM OF OPINION OF GENERAL COUNSEL  
OF BUYER AND ENTERGY NUCLEAR, INC.

[ ], 2001

Consolidated Edison Company  
of New York, Inc.  
4 Irving Place  
New York, NY 10003

Generating Plant and Gas Turbine  
Asset Purchase and Sale Agreement

Ladies and Gentlemen:

I am General Counsel of Entergy Nuclear Indian Point 2, LLC, a Delaware limited liability company ("Buyer") and Entergy Nuclear, Inc. and have acted for Buyer in connection with the Generating Plant and Gas Turbine Asset Purchase and Sale Agreement (the "Asset Purchase and Sale Agreement") dated as of November 9, 2000, between Buyer and Consolidated Edison Company of New York, Inc., a New York corporation ("Seller") and the Ancillary Agreements (collectively, the "Agreements") and the transactions contemplated thereby. Capitalized terms used but not defined herein have the meanings assigned to them in the Asset Purchase and Sale Agreement.

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion, including: (a) the Agreements, (b) the Certificate of Incorporation and By-laws (or other similar governing documents) of Buyer and (c) resolutions of the Board of Directors of Buyer.

In rendering our opinion, we have assumed the due authorization, execution and delivery of each Agreement by each party thereto other than Buyer.

Based upon the foregoing and subject to the qualifications hereinafter set forth, we are of the opinion as follows:

1. Buyer is a limited liability company validly existing and in good standing under the laws of the State of



Delaware. Buyer has all necessary limited liability company power and authority to execute and deliver each Agreement and to consummate the transactions contemplated thereby; and the execution and delivery by Buyer of each Agreement and the consummation by Buyer of the transactions contemplated thereby have been duly and validly authorized by all necessary limited liability company action on the part of Buyer.

2. Each Agreement has been duly executed and delivered by Buyer, and assuming that such Agreement constitutes a valid and binding obligation of each other party thereto, such Agreement constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms (subject to applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar laws affecting creditors' rights generally from time to time in effect and to general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, regardless of whether considered in a proceeding in equity or at law). With respect to the foregoing opinion, (i) insofar as provisions contained in the Agreements provide for indemnification, the enforceability thereof may be limited by public policy considerations and (ii) the availability of a decree for specific performance or an injunction is subject to the discretion of the court requested to issue any such decree or injunction.

3. Subject to obtaining the Buyer Required Regulatory Approvals and the Seller Required Regulatory Approvals, neither the execution and delivery of the Agreements nor the consummation of the transactions contemplated thereby, including the purchase by Buyer of the Auctioned Assets pursuant to the Asset Purchase and Sale Agreement will (i) conflict with or result in any breach of any provision of the Certificate of Formation or Operating Agreement (or other similar governing documents) of Buyer, (ii) result in a default (or give rise to any right of termination, cancelation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound or (iii) violate any Law applicable to Buyer, or any of its assets, except in the case of clauses (ii) and (iii) for such failures to obtain a necessary consent, defaults (or rights) and violations which would not, individually or in the aggregate, be reasonably expected to have a Buyer Material Adverse Effect.

4. Except for the Buyer Required Regulatory Approvals, no declaration, filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for the consummation by Buyer of the transactions contemplated by the Agreements, other than (A) such declarations, filings, registrations, notices, authorizations, consents or approvals which, if not obtained or made, would not, individually or in the aggregate, be reasonably expected to create a Material Adverse Effect.

We express no opinion herein as to (i) the provisions of the Agreements insofar as such provisions relate to the subject matter jurisdiction of the United States District Court for the Southern District of New York to adjudicate any controversy related thereto and (ii) the waiver of an inconvenient forum set forth in the provisions of the Agreements.

We are furnishing this opinion to you pursuant to Section 7.03(d) of the Asset Purchase and Sale Agreement, solely for your benefit in connection with the transactions contemplated by the Asset Purchase and Sale Agreement. This opinion may not be relied upon by any other person or for any other purpose or used, circulated, quoted or otherwise referred to for any other purpose.

Very truly yours,

GUARANTEE AGREEMENT dated as of [ ], 2001, between ENTERGY INTERNATIONAL HOLDINGS LTD LLC, a Delaware limited liability company ("Guarantor"), and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation (the "Seller" and, collectively with Guarantor, the "Parties").

WHEREAS Buyer (as defined below) and Seller have entered into a Generating Plant and Gas Turbine Asset Purchase and Sale Agreement dated as of November 9, 2000 (the "Sale Agreement"), pursuant to which Buyer has agreed to purchase and Seller has agreed to sell certain nuclear generating assets, as more particularly set forth therein, and each of Buyer and Seller undertook certain duties, responsibilities and obligations as set forth in the Sale Agreement and the Ancillary Agreements (as defined in the Sale Agreement);

WHEREAS Guarantor has agreed, as limited herein, to guarantee payment and performance of Buyer's covenants, agreements, obligations, liabilities, representations and warranties under the Sale Agreement and under each Ancillary Agreement; and

WHEREAS Guarantor will benefit from the transactions contemplated by the Sale Agreement.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. Definitions. Capitalized terms used herein shall have the meanings assigned to them herein or, if not defined herein, then such terms shall have the meanings assigned to them in the Sale Agreement. For the purpose of this Agreement, "Buyer" shall mean Entergy Nuclear Indian Point 2, LLC, a Delaware limited liability company, and any successors and assigns under the Sale Agreement or any Ancillary Agreement.

SECTION 2. Guarantee. Guarantor absolutely, irrevocably and unconditionally guarantees, as limited herein, as a primary obligor and not merely as a surety, (a) the due and punctual payment of (i) each payment required to be made by Buyer under the Sale Agreement or any Ancillary Agreement, when and as due, including payments in respect of reimbursement of disbursements and interest thereon and (ii) all other monetary obligations, including indemnities, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise (including

monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of Buyer under the Sale Agreement or any Ancillary Agreement (all such obligations referred to in the clause (a) being collectively referred to as the "Monetary Obligations") and (b) the due and punctual performance and observance of, and compliance with, all covenants, agreements, obligations, liabilities, representations and warranties of Buyer under or pursuant to the Sale Agreement or any Ancillary Agreement (all such obligations referred to in the preceding clauses (a) and (b) being collectively referred to as the "Obligations"). Guarantor further agrees that the Obligations may be amended or modified in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any amendment or modification of any Obligation. Notwithstanding anything to the contrary contained herein, Guarantor shall not be required to pay or otherwise make out-of-pocket expenditures in excess of \$10,000,000 in the aggregate hereunder in respect of the Obligations.

SECTION 3. Obligations Not Waived. To the fullest extent permitted by applicable Law, Guarantor waives presentment to, demand of payment from and protest to Buyer of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable Law, the obligations of Guarantor hereunder shall not be affected by (a) the failure of Seller to assert any claim or cause of action or demand or to enforce or exercise any right or remedy against Buyer in respect of the Obligations or otherwise under the provisions of the Sale Agreement and any Ancillary Agreement or otherwise or, in each case, any delay in connection therewith, or (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement, the Sale Agreement, any Ancillary Agreement or any other agreement or instrument.

SECTION 4. Continuing Guarantee of Payment and Performance. Guarantor further agrees that its guarantee constitutes a continuing guarantee of payment and performance when due and not of collection, and waives any right to require that any resort be had by Seller to any security.

SECTION 5. No Discharge or Diminishment of Guarantee. (a) Subject to the last sentence of Section 2, the obligations of Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination, or

be subject to any defense or setoff (except as provided in clause (c) below), counterclaim, recoupment or, subject to Section 10, termination whatsoever, or otherwise be affected, for any reason (other than (1) the performance in full of all Obligations, including the indefeasible payment in full of all Monetary Obligations, and the termination and satisfaction of all the Obligations or (2) the failure of Seller to perform an obligation of Seller under the Sale Agreement that affects Buyer's performance of its obligations under the Sale Agreement), including:

(i) any claim of waiver, release, surrender, alteration or compromise of any of the Obligations;

(ii) the invalidity, illegality or unenforceability of the Obligations;

(iii) the occurrence or continuance of any event of bankruptcy, reorganization, insolvency, receivership or other similar proceeding with respect to Buyer or any other person (for purposes hereof, "person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority), or the dissolution, liquidation or winding up of Buyer or any other person;

(iv) any permitted assignment or other transfer of this Agreement by Seller or any permitted assignment or other transfer of the Sale Agreement or any Ancillary Agreement or any other agreement or instrument in whole or in part;

(v) any sale, transfer or other disposition by Guarantor of any direct or indirect interest it may have in Buyer or any other change in ownership or control of Buyer; or

(vi) the absence of any notice to, or knowledge on behalf of, Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses.

(b) Without limiting the generality of the foregoing, the obligations of Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of Seller to assert any claim or cause of action or demand or to enforce any remedy under the Sale Agreement, any Ancillary Agreement or any other agreement or instrument, by any waiver or modification of any provision thereof, by any default, failure or delay, wilful or

otherwise, in the performance of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of Guarantor or that would otherwise operate as a discharge of Guarantor as a matter of law or equity (other than the performance in full of all Obligations, including the indefeasible payment in full in cash of all Monetary Obligations, and the termination and satisfaction of all the Obligations).

(c) Guarantor shall be entitled to set off claims that Buyer may have against Seller under the Sale Agreement or any Ancillary Agreement.

**SECTION 6. Defenses of Buyer Waived.** To the fullest extent permitted by applicable law, Guarantor waives any defense based on or arising out of any defense of Buyer or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Buyer (other than (1) the performance in full of all Obligations, including the indefeasible payment in full in cash of all Monetary Obligations, and the termination and satisfaction of all the Obligations or (2) the failure of Seller to perform an obligation of Seller under the Sale Agreement that affects Buyer's performance of its obligations under the Sale Agreement). Seller may compromise or adjust any part of the Obligations, make any other accommodation with Buyer or exercise any other right or remedy available to it against Buyer, without affecting or impairing in any way the liability of Guarantor hereunder except to the extent all the Obligations have been fully and finally performed, including the indefeasible payment in full in cash of all Monetary Obligations, and terminated. To the fullest extent permitted by applicable Law, Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Guarantor against Buyer or any security.

**SECTION 7. Representations and Warranties of Guarantor.** Guarantor represents and warrants to Seller as follows:

(a) **Organization.** Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as is now being conducted.

(b) Authority Relative to this Agreement.

Guarantor has all necessary limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by Guarantor of this Agreement and performance by Guarantor of its obligations hereunder have been duly and validly authorized by the Board of Directors (or equivalent governing body) of Guarantor and no other proceedings on the part of Guarantor are necessary to authorize this Agreement or performance by Guarantor of its obligations hereunder. This Agreement has been duly and validly executed and delivered by Guarantor and this Agreement constitutes a valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) Consents and Approvals; No Violation.

(i) Neither the execution and delivery of this Agreement by Guarantor nor performance by Guarantor of its obligations hereunder will (A) conflict with or result in any breach of any provision of the Certificate of Formation or Operating Agreement of Guarantor, (B) result in a default (or give rise to any right of termination, cancelation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Guarantor or any of its subsidiaries is a party or by which any of their respective assets may be bound or (C) violate any Law applicable to Guarantor, or any of its assets, except in the case of clauses (B) and (C) for such failures to obtain a necessary consent, defaults and violations which would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the ability of Guarantor to discharge its obligations under this Agreement.

(ii) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for performance by Guarantor of its obligations hereunder.

**SECTION 8. Agreement to Perform and Pay.** In furtherance of the foregoing and not in limitation of any other right that Seller has at law or in equity against Guarantor by virtue hereof, upon the failure of Buyer to perform or pay any Obligation when and as the same shall become due, Guarantor hereby promises to and will forthwith, as the case may be, (a) perform, or cause to be performed, such unperformed Obligations and (b) pay, or cause to be

paid, to Seller in cash the amount of such unpaid Obligations.

SECTION 9. Information. Guarantor assumes all responsibility for being and keeping itself informed of Buyer's financial condition and assets, and of all other circumstances bearing upon the risk of nonperformance of the Obligations (including the nonpayment of Monetary Obligations) and the nature, scope and extent of the risks that Guarantor assumes and incurs hereunder, and agrees that Seller will not have any duty to advise Guarantor of information known to it regarding such circumstances or risks.

SECTION 10. Termination and Reinstatement. The guarantee made hereunder (a) shall terminate when all the Obligations have been (i) performed in full, including the indefeasible payment in full of the Monetary Obligations and (ii) terminated and satisfied and (b) shall continue to be effective or be reinstated, as the case may be, if at any time any payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by Seller upon the bankruptcy or reorganization of Buyer or Guarantor or for any other reason.

SECTION 11. Assignment; No Third Party Beneficiaries. This Agreement and all of the provisions hereunder shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by Guarantor, including by operation of Law, without the prior written consent of Seller; provided, however, that Guarantor shall have the right to assign this Agreement and its rights, interests and obligations hereunder to Entergy Corporation or its successors.

SECTION 12. Amendment and Modification; Extension; Waiver. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might



otherwise govern under applicable principles of conflicts of law).

SECTION 14. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a telecopied communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice):

if to Guarantor, to:

Entergy International Holdings Ltd LLC  
639 Loyola Avenue  
New Orleans, LA 70161  
Telecopy No.: (504) 576-4009  
Attention: Chief Financial Officer

with a copy on or prior to the Closing Date to:

c/o Entergy Nuclear, Inc.  
P.O. Box 31995  
Jackson, MS 39286-1995  
Telecopy No.: (601) 368-5694  
Attention: Assistant Secretary

if to Seller, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-0601  
Attention: General Counsel

with a copy on or prior to the Closing Date to:

Cravath, Swaine & Moore  
825 Eighth Avenue  
New York, NY 10019  
Telecopy No.: (212) 474-3700  
Attention: George W. Bilicic, Jr., Esq.

SECTION 15. Jurisdiction and Enforcement.

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated

hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 14 (or such other address specified by such Party from time to time pursuant to Section 14) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

**SECTION 16. Survival of Agreement.** All covenants, agreements, representations and warranties made by Guarantor herein shall be considered to have been relied upon by Seller and shall survive the consummation of the transactions contemplated by the Sale Agreement regardless of any investigation made by Seller or on its behalf, and shall continue in full force and effect as long as any Obligations remain outstanding.

**SECTION 17. Effectiveness; Counterparts.** This Agreement shall become effective when executed by Guarantor and Seller. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**SECTION 18. Rules of Interpretation.** The rules

of interpretation specified in Section 11.08 of the Sale Agreement shall be applicable to this Agreement.

SECTION 19. Severability. (a) If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

(b) In the event that the provisions of this Agreement are claimed or held to be inconsistent with any other agreement or instrument evidencing the Obligations, the terms of this Agreement shall remain fully valid and effective.

SECTION 20. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties in respect of the matters contemplated hereby. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the matters contemplated hereby.

FORM OF OPINION OF COUNSEL TO GUARANTOR

[ ], 2001

Consolidated Edison Company  
of New York, Inc.  
4 Irving Place  
New York, NY 10003

Guarantee Agreement

Ladies and Gentlemen:

We have acted as counsel to Entergy International Holdings Ltd LLC, a Delaware limited liability company ("Guarantor"), in connection with the Guarantee Agreement (the "Guarantee") dated as of [ ], 2001, between Guarantor and Consolidated Edison Company of New York, Inc., a New York corporation ("Seller"). Capitalized terms used but not defined herein have the meanings assigned to them in the Guarantee.

In that connection, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion, including: (a) the Guarantee, (b) the Certificate of Incorporation and By-laws (or other similar governing documents) of Guarantor, (c) resolutions of the Board of Directors of Guarantor and (d) the Generating Plant and Gas Turbine Asset Purchase and Sale Agreement dated as of November 9, 2000, between Entergy Nuclear Indian Point 2, LLC, a Delaware limited liability company, and Seller (the "Sale Agreement") and the Ancillary Agreements (as defined in the Sale Agreement).

In rendering our opinion, we have assumed the due authorization, execution and delivery of the Guarantee by Seller.

Based upon the foregoing and subject to the qualifications hereinafter set forth, we are of the opinion as follows:

1. Guarantor is a limited liability company validly existing and in good standing under the laws of the State of Delaware. Guarantor has all necessary limited

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

ENTERGY INTERNATIONAL HOLDINGS  
LTD LLC,

by \_\_\_\_\_  
Name:  
Title:

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

by \_\_\_\_\_  
Name:  
Title:

## FORM OF BILL OF SALE

BILL OF SALE, made, executed and delivered on [ ], 2001, by CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation ("Seller") and ENTERGY NUCLEAR INDIAN POINT 2, LLC, a Delaware limited liability company ("Buyer").

## W I T N E S S E T H:

WHEREAS, Seller and Buyer are parties to a Generating Plant and Gas Turbine Asset Purchase and Sale Agreement dated as of November 9, 2000 (the "Agreement"); capitalized terms which are used in this Bill of Sale but are not defined herein shall have the meaning ascribed to such terms in the Agreement; and

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions of the Agreement, Seller does hereby sell, assign, convey, transfer and deliver to Buyer, subject to the terms of the Agreement, the Auctioned Assets that constitute personal property, including the items of personal property set forth in Schedule 2.02(a)(iii) to the Agreement.

This Bill of Sale and Assignment is subject to the terms and conditions of the Agreement, and the representations, agreements and obligations of Seller and Buyer contained in the Agreement are incorporated herein by reference and constitute an integral part of this Bill of Sale.

This instrument shall be binding upon and shall inure to the benefit of the respective successors and assigns of Seller and Buyer.

This Bill of Sale shall be construed and enforced in accordance with the laws (other than the conflict of law rules) of the State of New York.

This Bill of Sale may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, Seller has duly executed this Bill of Sale on the Date first above written.

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: \_\_\_\_\_  
Name:  
Title:

Agreed and accepted:

ENTERGY NUCLEAR INDIAN POINT 2, LLC

By: \_\_\_\_\_  
Name:  
Title:

**DIRECT RETAIL CUSTOMER  
OPERATING AND  
TRANSMISSION SERVICE AGREEMENT**

This Operating and Retail Transmission Service Agreement ("Agreement"), entered into by Consolidated Edison Company of New York, Inc., a New York corporation having an office for the transaction of business at 4 Irving Place, New York, New York 10003 ("Con Edison") and \_\_\_\_\_, a \_\_\_\_\_ corporation, having an office for the transaction of business at \_\_\_\_\_ ("Customer"),

**WITNESSES**

**WHEREAS**, Con Edison has established a retail access program (the "Retail Access Program"), as described in its Schedule for Retail Access, P.S.C. No. 2 – Retail Access ("Retail Access Schedule") and its Retail Access Implementation Plan and Operating Procedure (the "Operating Procedure"), both of which are on file with the New York State Public Service Commission ("PSCNY") together with Con Edison's Schedule for Electricity Service, PSC No. 9 - Electricity ("Full Service Schedule");

**WHEREAS**, Customer is an eligible consumer under the Retail Access Program and desires to purchase electric energy and capacity on an unbundled basis without an energy services company;

**WHEREAS**, the New York State Independent System Operator ("NYISO") has assumed control of and responsibility for transmission facilities in New York State in accordance with the NYISO Open Access Tariff ("NYISO OATT");

**WHEREAS**, Customer has qualified as an Eligible Customer under the NYISO OATT; and

**WHEREAS**, Con Edison has agreed to support the NYISO in providing Customer with transmission service in conjunction with Customer's participation in the Retail Access Program in accordance with the terms and conditions of (i) this Agreement, (ii) Con Edison's open access transmission tariff, FERC Electric Tariff, Original Volume No. 1 ("OATT"), and (iii) the NYISO OATT;

**NOW THEREFORE**, in consideration of the premises and mutual promises contained herein, Con Edison and Customer agree as follows:



## **ARTICLE I GENERAL TERMS AND CONDITIONS**

### **1.1 Incorporation By Reference**

The terms and conditions of the NYISO OATT and Con Edison's OATT are fully incorporated in this Agreement except as is otherwise expressly provided herein. In the event of any conflict, the terms of this Agreement shall govern with respect to matters provided herein.

### **1.2 Term**

This Agreement is effective as of \_\_\_\_\_, \_\_\_\_\_, provided that Customer has contracted for transmission and ancillary services under the NYISO OATT. It will remain in effect until terminated in accordance with its terms, the Operating Procedure, or an order of the FERC or the PSCNY; provided that Con Edison may terminate services under this Agreement in accordance with General Rule III(15) of the Full Service Schedule and re-establish it in accordance with General Rules III(19) and III(20) of the Full Service Schedule.

## **ARTICLE II CUSTOMER OBLIGATIONS**

### **2.1 Creditworthiness**

Customer shall not be obligated to provide a security deposit solely in connection with service under this Agreement, but shall comply with the requirements set forth in General Rule III(1) of Con Edison's Full Service Schedule for creditworthiness and security deposits in conjunction with distribution service...

### **2.2 Forecasting**

Customer shall forecast energy requirements and schedule transmission service in accordance with Section 36.2 of the NYISO OATT.

### **2.3 Payments**

In accordance with Part IV of the NYISO OATT, Customer shall pay to Con Edison all charges assessed to Customer under the Retail Access Schedule and this Service Agreement.

### **2.4 Representations and Warranties.**

Customer represents and warrants that the information in Appendix No. 1 (Customer Information Form) is correct. Customer will promptly inform Con Edison of any changes in such information.

## **ARTICLE III TRANSMISSION SERVICE**

### **3.1 Nature of Service**

Con Edison will support the NYISO in providing Customer with transmission service.

### **3.2 Transmission Service Charge**

In accordance with Part IV of the NYISO OATT, Customer shall pay Con Edison the transmission service charge and ancillary service charges set forth in Con Edison's OATT, Attachment K, Appendices 2 and 3. The charge for each account participating in the Retail Access Program will be the per unit rate for the service classification applicable to that account multiplied by the demand or amount of energy consumed by the account, as appropriate. Customer shall pay to the NYISO other transmission and ancillary service charges imposed by the NYISO OATT in connection with the transmission of Customer's energy.

### **3.3 Taxes**

Each party hereto will be liable to the appropriate tax authorities for sales, use, gross receipts or other similar or different taxes imposed upon the revenues derived or services rendered by such party.

### **3.4 Metering, Billing, and Payment**

- A. Retail transmission service will be metered at the point of service termination in accordance with General Rule III(8) of the Full Service Schedule and Sections 10.1 and 10.2 of the Operating Procedure. Con Edison will administer each Customer's account and render to each Customer a single combined bill for each account that includes the transmission service charge and charges for distribution service pursuant to Section 7 of the Operating Procedure.
- B. The provisions of General Rule III(11) of the Full Service Schedule are applicable with respect to payment matters such as backbills, estimated bills, plural-meter billing, tampered equipment, inability to gain access, deferred payment agreements, late payment charges, and interest on overpayments.
- C. Customer shall pay the full amount stated in any invoice from Con Edison to Customer, without deduction, set-off or counterclaim, within twenty (20) days from the date of such invoice. Claims that any invoice is not correct will be made no more than three (3) months after the invoice date.
- D. Upon failure of Customer to make any payment when due under this Agreement, Con Edison will assess a late payment charge on all overdue billed amounts, including arrears and unpaid late payment charges.
- E. If Con Edison determines that service to Customer is unmetered, in whole or in part, Con Edison will retroactively bill Customer for the unmetered transmission service at a rate equal to the applicable transmission service charge. Such charge will be in addition to any other retroactive charges imposed by the NYISO OATT and the Retail Access Schedule. If the unmetered condition is the result of tampering or other interference with the meter or the Company facilities necessary for the receipt of service, the Company will also charge Customer a late payment charge.

### **3.5 Customer Accounts**

Con Edison will provide Customer with Customer's billing determinants and such other information as is detailed in the Operating Procedure. Such information will be provided in accordance with the procedures set forth in the Operating Procedure.

## **ARTICLE IV MISCELLANEOUS**

### **4.1 Resolution of Disputes**

Any dispute arising with respect to matters under this Agreement will be resolved pursuant to the complaint procedures of the Federal Energy Regulatory Commission.

### **4.2 Notices**

Any notice to be given by Customer or Con Edison to each other hereunder will be deemed given, and any other document to be delivered hereunder will be deemed delivered, if in writing and (i) delivered by hand, (ii) deposited for next-business day delivery (fee prepaid) with a reputable overnight delivery service such as Federal Express, or (iii) mailed by certified mail (return receipt requested) postage prepaid, addressed to the recipient at the address set forth below for that party (or at such other address as that party may from time to time designate by giving notice thereof):

To Con Edison: Consolidated Edison Company of New York, Inc.  
Corporate Customer Group  
4 Irving Place, 9th Floor  
New York, New York 10003  
Attention: Section Manager  
Phone No. 212-460-2013

To Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Phone No.: \_\_\_\_\_

### **4.3 Amendments**

Notwithstanding any provision of this Agreement, Con Edison may at any time propose and file with the FERC and/or PSCNY changes to the rates, terms, and conditions of its OATT, Retail Access Schedule, and/or major changes to the Operating Procedure. Such amendment or modification will become effective with respect to service pursuant to this Agreement on the date specified by the FERC or PSCNY.

### **4.4 Prior Agreements Superseded.**

This Agreement constitutes the entire understanding between the parties hereto with respect to the subject matter hereof, supersedes any and all previous understandings between the parties with respect to the subject matter hereof, and binds and inures to the benefit of the parties, their successors and permitted assigns.

### **4.5 Waiver and Modification.**

No modification or waiver of all or any part of this Agreement will be valid unless in writing and signed by the parties hereto. Any waiver will be effective only for the

particular event for which it is issued and will not be deemed a waiver with respect to any subsequent performance, default or matter.

**4.6 Applicable Law and Forum.**

Interpretation and performance of this Agreement will be in accordance with, and will be controlled by, the laws of the State of New York except its conflict of laws provisions to the extent they would require the application of the laws of any other jurisdiction. Customer irrevocably consents that any legal action or proceeding arising under or relating to this Agreement will be brought in a court of the State of New York or a federal court of the United States of America located in the State of New York, County of New York. Customer irrevocably waives any objection that it may now or in the future have to the State of New York, County of New York as the proper and exclusive forum for any legal action or proceeding arising under or relating to this Agreement.

**4.7 Severability.**

If one or more provisions herein will be invalid, illegal or unenforceable in any respect it will be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability will not affect the validity of the other provisions of this Agreement.

**4.8 Agency.**

This Agreement is not intended, and will not be construed, to create any association, joint venture, agency relationship or partnership between Con Edison and Customer or to impose any such obligation or liability upon Con Edison.

**4.9 Not for the Benefit of Non-Parties**

This Agreement is for the benefit of Customer and Con Edison, and is not for the benefit of third parties.

IN WITNESS WHEREOF, Con Edison and Customer have executed this Agreement.

CONSOLIDATED EDISON COMPANY  
OF NEW YORK, INC.

By: \_\_\_\_\_  
Name:  
Title:

[Customer]

By: \_\_\_\_\_  
Name:  
Title:

**APPENDIX NO. 1**  
**CUSTOMER INFORMATION FORM**

1. Name: \_\_\_\_\_  
DBA Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Town/City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code + 4: \_\_\_\_\_ Room: \_\_\_\_\_
  
2. Mailing Address, if different from above:  
DBA Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
Town/City: \_\_\_\_\_  
State: \_\_\_\_\_ Zip Code + 4: \_\_\_\_\_ Room: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_ Fax No.: \_\_\_\_\_
  
3. Customer Contact Personnel (Name and Telephone Number)
  
4. Internet Address \_\_\_\_\_ @ \_\_\_\_\_
  
5. Provide Names and Titles of Officers or all Partners on a separate sheet include mailing address and telephone number if different from above.
  
6. Attach a copy of the executed NYISO service agreements.

**DIRECT CUSTOMER  
OPERATING AGREEMENT**

This agreement ("Agreement"), entered into by Consolidated Edison Company of New York, Inc., a New York corporation having an office for the transaction of business at 4 Irving Place, New York, New York 10003 ("Con Edison") and \_\_\_\_\_, a \_\_\_\_\_ corporation, having an office for the transaction of business at \_\_\_\_\_ ("Customer").

**WITNESSES**

**WHEREAS**, Con Edison has established a retail access program (the "Retail Access Program"), as described in its Schedule for Retail Access, P.S.C. No. 2 – Retail Access ("Retail Access Schedule") and its Retail Access Implementation Plan and Operating Procedure (the "Operating Procedure"), both of which are on file with the New York State Public Service Commission ("PSCNY") together with Con Edison's Schedule for Electricity Service, PSC No. 9 – Electricity ("Full Service Schedule");

**WHEREAS**, Customer is an eligible Direct Customer under the Retail Access Program and will purchase electric energy and capacity on an unbundled basis on its own behalf from a supplier other than Con Edison;

**WHEREAS**, Customer meets the eligibility requirements under the Retail Choice Program; and

**WHEREAS**, Con Edison has agreed to render delivery service in accordance with the terms and conditions of this agreement and the Retail Access schedule;

**NOW THEREFORE**, in consideration of the premises and mutual promises contained herein, Con Edison and Customer agree as follows:

**ARTICLE I**

**1.1 Incorporation By Reference**

The rights and obligations of Con Edison and Customer under this Agreement shall be governed by the provisions of Con Edison's Retail Access Schedule and the Operating Procedure, as the same may be amended, modified, or superseded from time to time. In the

event of any conflict, the terms of this Agreement shall govern with respect to services provided hereunder.

## **1.2 Term**

This Agreement is effective as of \_\_\_\_\_, \_\_\_\_\_. It will remain in effect until terminated in accordance with its terms, the Operating Procedure, or an order of the PSCNY; provided that Con Edison may terminate delivery services under this Agreement in accordance with General Rule III (15) of the Full Service Schedule and re-establish it in accordance with General Rules III (19) and III (20) of the Full Service Schedule.

# **ARTICLE II**

## **2.1 Creditworthiness**

Customer shall comply with the requirements set forth in General Rule III (1) of Con Edison's Full Service Schedule for creditworthiness and security deposits in conjunction with delivery services.

## **2.2 Payments**

Customer shall pay all charges assessed to it in accordance with the Retail Access Schedule and this Operating Agreement.

## **2.3 Representations and Warranties.**

Customer represents and warrants that the information in Appendix No. 1 (Customer Information Form) is correct. Customer will promptly inform Con Edison of any changes in such information.

## **2.4 Aggregation of Load.**

If Customer aggregates and schedules load for itself and other Direct Customers, each Direct Customer remains responsible for meeting all requirements placed on Direct Customers.

# **ARTICLE III**

## **3.1 Rates and Charges**

The charge for each account participating in the Retail Access Program will be the per unit rate for the service classification applicable to that account multiplied by the demand or amount of energy consumed by the account, as appropriate. Customer will





GUARANTEE AGREEMENT dated as of November 9, 2000, among ENTERGY CORPORATION, a Delaware corporation ("Entergy"), each subsidiary of Entergy listed on Schedule I hereto (each such subsidiary and Entergy, individually, a "Guarantor" and, collectively, the "Guarantors") and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation (the "Seller" and, collectively with the Guarantors, the "Parties").

WHEREAS Buyer (as defined below) and Seller have entered into a Generating Plant and Gas Turbine Asset Purchase and Sale Agreement dated as of even date herewith (the "Sale Agreement"), pursuant to which Buyer has agreed to purchase and Seller has agreed to sell certain nuclear generating assets, as more particularly set forth therein, and each of Buyer and Seller undertook certain duties, responsibilities and obligations as set forth in the Sale Agreement;

WHEREAS each Guarantor, jointly with the other Guarantors and severally, has agreed, as limited herein, to guarantee payment and performance of Buyer's covenants, agreements, obligations, liabilities, representations and warranties under the Sale Agreement; and

WHEREAS each Guarantor will benefit from the transactions contemplated by the Sale Agreement.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1. Definitions. Capitalized terms used herein shall have the meanings assigned to them herein or, if not defined herein, then such terms shall have the meanings assigned to them in the Sale Agreement. For the purpose of this Agreement, "Buyer" shall mean Entergy Nuclear Indian Point 2, LLC, a Delaware limited liability company, and any successors and assigns under the Sale Agreement.

SECTION 2. Guarantee. Each Guarantor, jointly with the other Guarantors and severally, absolutely, irrevocably and unconditionally guarantees, as limited herein, as a primary obligor and not merely as a surety, (a) the due and punctual payment of the Purchase Price at Closing by Buyer under Section 3.02 of the Sale Agreement (the "Monetary Obligations") and (b) the due and punctual performance and observance of, and compliance with, all

covenants, agreements, obligations, liabilities, representations and warranties of Buyer that are required to be performed, observed or complied with at or prior to Closing under or pursuant to the Sale Agreement (all such obligations referred to in the preceding clauses (a) and (b) being collectively referred to as the "Obligations"). Each Guarantor further agrees that the Obligations may be amended or modified, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any amendment or modification of any Obligation. Notwithstanding anything to the contrary contained herein, (1) the Guarantors shall not be required to pay more than \$700,000,000 in the aggregate hereunder in respect of the Obligations and (2) Entergy shall not be required to pay more than \$200,000,000 in the aggregate hereunder in respect of the Obligations plus, if the stockholders' equity of the Guarantors (other than Entergy) referred to in Section 8 is less than \$300 million at any time, the difference between \$300 million and such stockholders' equity at such time.

SECTION 3. Obligations Not Waived. To the fullest extent permitted by applicable Law, each Guarantor waives presentment to, demand of payment from and protest to Buyer of any of the Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable Law, the obligations of each Guarantor hereunder shall not be affected by (a) the failure of Seller to assert any claim or cause of action or demand or to enforce or exercise any right or remedy against Buyer in respect of the Obligations or otherwise under the provisions of the Sale Agreement or otherwise or, in each case, any delay in connection therewith, or (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of, this Agreement, the Sale Agreement or any other agreement or instrument.

SECTION 4. Continuing Guarantee of Payment and Performance. Each Guarantor further agrees that its guarantee constitutes a continuing guarantee of payment and performance when due and not of collection, and waives any right to require that any resort be had by Seller to any security.

SECTION 5. No Discharge or Diminishment of Guarantee. (a) Subject to the last sentence of Section 2, the obligations of each Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination, or be subject to any defense or setoff (except as provided in clause (c) below), counterclaim, recoupment

or, subject to Section 11, termination whatsoever, or otherwise be affected, for any reason (other than (1) the performance in full of all Obligations required to be performed by Buyer at or prior to Closing, (2) in the case of Obligations required to be performed by Buyer at Closing, the nonfulfillment of any of the closing conditions set forth in Sections 7.01 and 7.02 of the Sale Agreement, (3) the termination of the Sale Agreement pursuant to Section 10.01 thereof at a time when Buyer is not in breach of the Sale Agreement or (4) the failure of Seller to perform an obligation of Seller under the Sale Agreement that affects the Buyer's performance of its obligations under the Sale Agreement), including:

(i) any claim of waiver, release, surrender, alteration or compromise of any of the Obligations;

(ii) the invalidity, illegality or unenforceability of the Obligations;

(iii) the occurrence or continuance of any event of bankruptcy, reorganization, insolvency, receivership or other similar proceeding with respect to Buyer or any other person (for purposes hereof, "person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority), or the dissolution, liquidation or winding up of Buyer or any other person;

(iv) any permitted assignment or other transfer of this Agreement by Seller or any permitted assignment or other transfer of the Sale Agreement or any other agreement or instrument in whole or in part;

(v) any sale, transfer or other disposition by each Guarantor of any direct or indirect interest it may have in Buyer or any other change in ownership or control of Buyer; or

(vi) the absence of any notice to, or knowledge on behalf of, each Guarantor of the existence or occurrence of any of the matters or events set forth in the foregoing clauses.

(b) Without limiting the generality of the foregoing, the obligations of each Guarantor hereunder shall not be discharged or impaired or otherwise affected by the failure of Seller to assert any claim or cause of action or demand or to enforce any remedy under the Sale Agreement or any other agreement or instrument, by any waiver or

modification of any provision thereof, by any default, failure or delay, wilful or otherwise, in the performance of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Guarantor or that would otherwise operate as a discharge of each Guarantor as a matter of law or equity (other than the performance in full of all Obligations, including the indefeasible payment in full in cash of all Monetary Obligations, and the termination and satisfaction of all the Obligations).

(c) Guarantors shall be entitled to set off claims that Buyer may have against Seller under the Sale Agreement or any Ancillary Agreement.

SECTION 6. Defenses of Buyer Waived. To the fullest extent permitted by applicable Law, each Guarantor waives any defense based on or arising out of any defense of Buyer or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Buyer (other than (1) the performance in full of all Obligations required to be performed by Buyer at or prior to Closing, (2) in the case of Obligations required to be performed by Buyer at Closing, the nonfulfillment of any of the closing conditions set forth in Sections 7.01 and 7.02 of the Sale Agreement, (3) the termination of the Sale Agreement pursuant to Section 10.01 thereof at a time when Buyer is not in breach of the Sale Agreement or (4) the failure of Seller to perform an obligation of Seller under the Sale Agreement that affects the Buyer's performance of its obligations under the Sale Agreement). Seller may compromise or adjust any part of the Obligations, make any other accommodation with Buyer or exercise any other right or remedy available to it against Buyer, without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent all the Obligations have been fully and finally performed, including the indefeasible payment in full in cash of all Monetary Obligations, and terminated. To the fullest extent permitted by applicable Law, each Guarantor waives any defense arising out of any such election even though such election operates, pursuant to applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Guarantor against Buyer or any security.

SECTION 7. Representations and Warranties of Each Guarantor. Each Guarantor, as to itself, represents and warrants to Seller as follows:

(a) Organization. With respect to each Guarantor that is a corporation, Guarantor is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as is now being conducted; and with respect to each Guarantor that is a limited liability company, Guarantor is a limited liability company duly organized, validly existing and in good standing in the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted.

(b) Authority Relative to this Agreement. Guarantor has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery by Guarantor of this Agreement and performance by Guarantor of its obligations hereunder have been duly and validly authorized and no other proceedings on the part of Guarantor are necessary to authorize this Agreement or performance by Guarantor of its obligations hereunder. This Agreement has been duly and validly executed and delivered by Guarantor and this Agreement constitutes a valid and binding agreement of Guarantor, enforceable against Guarantor in accordance with its terms.

(c) Consents and Approvals; No Violation.  
(i) Neither the execution and delivery of this Agreement by Guarantor nor performance by Guarantor of its obligations hereunder will (A) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-laws (or similar governing documents) of Guarantor, (B) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Guarantor or any of its subsidiaries is a party or by which any of their respective assets may be bound or (C) violate any Law applicable to Guarantor, or any of its assets, except in the case of clauses (B) and (C) for such failures to obtain a necessary consent, defaults and violations which would not, individually or in the aggregate, be reasonably expected to have a material adverse effect

on the ability of Guarantor to discharge its obligations under this Agreement.

(ii) No declaration, filing or registration with, or notice to, or authorization, consent or approval of any Governmental Authority is necessary for performance by Guarantor of its obligations hereunder.

SECTION 8. Covenants of Guarantors. The stockholders' equity of the Guarantors (other than Entergy) and their consolidated subsidiaries, determined on a consolidated basis in accordance with generally accepted accounting principles, shall at all times be not less than \$300 million.

SECTION 9. Agreement to Perform and Pay. In furtherance of the foregoing and not in limitation of any other right that Seller has at law or in equity against any Guarantor by virtue hereof, upon the failure of Buyer to perform or pay any Obligation when and as the same shall become due, each Guarantor hereby promises to and will forthwith, as the case may be, (a) perform, or cause to be performed, such unperformed Obligations and (b) pay, or cause to be paid, to Seller in cash the amount of such unpaid Obligations.

SECTION 10. Information. Each Guarantor assumes all responsibility for being and keeping itself informed of Buyer's financial condition and assets, and of all other circumstances bearing upon the risk of nonperformance of the Obligations (including the nonpayment of Monetary Obligations) and the nature, scope and extent of the risks that such Guarantor assumes and incurs hereunder, and agrees that Seller will not have any duty to advise any of the Guarantors of information known to it regarding such circumstances or risks.

SECTION 11. Termination and Reinstatement. The Guarantees made hereunder (a) shall terminate upon the earlier to occur of (i) the Closing or (ii) the termination of the Sale Agreement pursuant to Section 10.01 thereof at a time when Buyer is not in breach of the Sale Agreement and (b) shall continue to be effective or be reinstated, as the case may be, if at any time any payment, or any part thereof, of any Obligation is rescinded or must otherwise be restored by Seller upon the bankruptcy or reorganization of Buyer or any Guarantor or for any other reason.

SECTION 12. Assignment; No Third Party Beneficiaries. This Agreement and all of the provisions hereunder shall be binding upon and inure to the benefit of the

Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests and obligations hereunder shall be assigned by any Guarantor, including by operation of Law, without the prior written consent of Seller.

SECTION 13. Amendment and Modification; Extension; Waiver. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such Party. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

SECTION 14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

SECTION 15. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a telecopied communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses or at the addresses specified in Schedule I with respect to such Guarantors (or at such other address for a Party as shall be specified by like notice):

if to any Guarantor, to:

Entergy Corporation  
639 Loyola Avenue  
New Orleans, Louisiana 70161  
Telecopy No.: (504) 576-4009  
Attention: Chief Financial Officer

with a copy to:

c/o Entergy Nuclear, Inc.  
P.O. Box 31995  
Jackson, Mississippi 39286-1995  
Telecopy No.: (601) 368-5694  
Attention: Assistant Secretary

if to Seller, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-0601  
Attention: General Counsel

with a copy to:

Cravath, Swaine & Moore  
825 Eighth Avenue  
New York, NY 10019  
Telecopy No.: (212) 474-3700  
Attention: George W. Bilicic, Jr., Esq.

**SECTION 16. Jurisdiction and Enforcement.**

(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 15 (or such other address specified by such Party from time to time pursuant to Section 15) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accor-



dingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 17. Survival of Agreement. All covenants, agreements, representations and warranties made by each Guarantor herein shall be considered to have been relied upon by Seller, regardless of any investigation made by Seller or on its behalf, and shall continue in full force and effect as long as any Obligations remain outstanding.

SECTION 18. Effectiveness; Counterparts. This Agreement shall become effective when executed by each Guarantor and Seller. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 19. Rules of Interpretation. The rules of interpretation specified in Section 11.08 of the Sale Agreement shall be applicable to this Agreement.

SECTION 20. Severability. (a) If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

(b) In the event that the provisions of this Agreement are claimed or held to be inconsistent with any other agreement or instrument evidencing the Obligations, the terms of this Agreement shall remain fully valid and effective.

SECTION 21. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties in respect of the matters contemplated hereby. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement supersedes all prior agreements and understandings

between the Parties with respect to the matters contemplated hereby.

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

ENTERGY CORPORATION,

by



Name:  
Title:

ENTERGY INTERNATIONAL HOLDINGS  
LTD LLC,

by



Name:  
Title:

ENTERGY INTERNATIONAL LTD LLC,

by



Name:  
Title:

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

by

\_\_\_\_\_  
Name:  
Title:

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

ENTERGY CORPORATION,

by

\_\_\_\_\_  
Name:  
Title:

ENTERGY INTERNATIONAL HOLDINGS  
LTD LLC,

by

\_\_\_\_\_  
Name:  
Title:

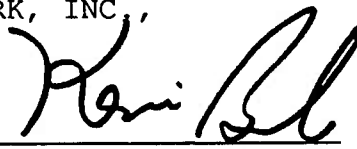
ENTERGY INTERNATIONAL LTD LLC,

by .

\_\_\_\_\_  
Name:  
Title:

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

by

  
\_\_\_\_\_  
Name: Kevin Burke  
Title: President

SCHEDULE I TO THE GUARANTEE AGREEMENT

Subsidiary Guarantor

Address

1. Entergy International Holdings Ltd LLC
2. Entergy International Ltd LLC

CSA

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INDIAN POINT CONTINUING SITE AGREEMENT

By and Between

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

and

ENTERGY NUCLEAR INDIAN POINT 2, LLC

Dated as of November 9, 2000

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## ARTICLE I

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INDIAN POINT CONTINUING SITE AGREEMENT (including the Schedules and Annexes hereto, this "Agreement") dated as of November 9, 2000, by and between CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation ("Seller"), and ENTERGY NUCLEAR INDIAN POINT 2, LLC, a Delaware limited liability company ("Buyer", and collectively with Seller, the "Parties").

WHEREAS Seller and Buyer are entering into a Generating Plant and Gas Turbine Asset Purchase and Sale Agreement dated as of even date herewith (the "Sale Agreement") for the sale of certain of Seller's generating assets;

WHEREAS Seller intends to continue to conduct its transmission and distribution operations from their present locations;

WHEREAS pursuant to the Sale Agreement, Seller has agreed to transfer to Buyer certain designated properties and assets located at the Parcels (as defined below) pertaining to Seller's generating operations and to retain certain designated properties and assets; and

WHEREAS Seller and Buyer wish to define the continuing responsibilities and obligations of the Parties to one another with respect to their respective properties and assets located at the Parcels and other matters.

NOW, THEREFORE, in order to carry out the transactions contemplated by the Sale Agreement and this Agreement, and in consideration of the mutual representations, covenants and agreements hereinafter set forth, and intending to be legally bound hereby, the Parties hereto agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01. Definitions. As used in this Agreement, all capitalized terms shall have the meanings ascribed to them in the Sale Agreement unless otherwise defined in this Agreement and the following terms shall have the following meanings:

"Agreement" shall have the meaning set forth in the Preamble.

"Applicable Legal Requirements" shall have the meaning set forth in Section 2.01.

"Buyer" shall have the meaning set forth in the Preamble.

"Buyer Operations Manager" shall have the meaning set forth in Section 3.13(a).

"Buyer Parcel" shall have the meaning set forth in the Indian Point Declaration of Easements.

"Code of Conduct" shall have the meaning set forth in Section 2.02(c).

"Confidential Information" shall have the meaning set forth in Section 5.03(a).

"Delivery Revenue Meter" means a Revenue Meter that comprises part of a Delivery Revenue Meter System.

"Delivery Revenue Meter Systems" means Revenue Meter Systems (including any Delivery Revenue Meters that are designated as bi-directional on Schedule 3.05(a)(iii)(A)) used to measure the transfer of energy from Seller to Buyer.

"Disclosing Party" shall have the meaning set forth in Section 5.03(a).

"Energy Control Center" means the headquarters of Seller's transmission and distribution operations.

"Entering Party" shall have the meaning set forth in Section 2.02(b).

"FCC License" shall have the meaning set forth in Section 3.09(d).

"Force Majeure Event" shall have the meaning set forth in Section 5.02(a).

"Good Industry Practice" shall have the meaning set forth in Section 2.01.

"Indian Point Declaration of Easements" means the Declaration of Easements Agreement by and between Seller and Buyer attached as Exhibit A-4 to the Sale Agreement.

"Indian Point Gas Turbine Unit 1" means the gas turbine unit designated as and known as Indian Point Gas

Turbine Unit 1 and located in the protected area of the Generating Plants.

"Indian Point Gas Turbine Unit 2" means the gas turbine unit designated as and known as Indian Point Gas Turbine Unit 2 and located at the GT Site.

"Indian Point Gas Turbine Unit 3" means the gas turbine unit designated as and known as Indian Point Gas Turbine Unit 3 and located at the GT Site.

"INPO" means the Institute for Nuclear Power Operations or any successor entity.

"ISO Rules" means the ISO automated billing system procedures, operating procedures and market rules, as well as any other rules, requirements and procedures adopted by the ISO pursuant to the ISO tariff or otherwise from time to time in effect and the related ISO agreements.

"NERC" means North American Electric Reliability Council or any successor entity.

"NPCC" means the Northeast Power Coordinating Council or any successor entity.

"NYSRC" means the New York State Reliability Council or any successor entity.

"Output Revenue Meter" means a Revenue Meter that comprises part of an Output Revenue Meter System.

"Output Revenue Meter Systems" means Revenue Meter Systems used to measure the transfer and delivery of energy output by the Generating Facilities to Points of Interconnection.

"Parcels" shall have the meaning set forth in the Indian Point Declaration of Easements.

"Party" shall have the meaning set forth in the Preamble.

"Points of Interconnection" means the points on the Transmission System, as listed on Schedule 3.04(a), where electrical power generated by Buyer will be delivered by Buyer to the Transmission System or, under certain circumstances, where electric power will be delivered from the Transmission System, including through any intermediate distribution facilities, to Buyer.

"Receiving Party" shall have the meaning set forth in Section 5.03(a).

"Remediate" means to engage in any or all of the following activities to the extent they relate to or arise from the presence or Release of Hazardous Substances at a Parcel: (i) monitoring, investigation, cleanup, containment, removal, mitigation, response or restoration work; (ii) obtaining any Permits necessary to conduct any such activity; (iii) preparing and implementing any plans or studies for any such activity; and (iv) obtaining a written notice from the Governmental Authority with jurisdiction over the Parcel under applicable Environmental Laws that no material additional work is required by such Governmental Authority.

"Representatives" shall have the meaning set forth in Section 5.03(a).

"Revenue Meter Systems" means Revenue Meters and associated current transformers and potential transformers and associated wiring.

"Sale Agreement" shall have the meaning set forth in the Recitals.

"Seller" shall have the meaning set forth in the Preamble.

"Seller Operations Manager" shall have the meaning set forth in Section 3.13(b).

"Seller Parcel" shall have the meaning set forth in the Indian Point Declaration of Easements.

"Station-Use Energy" shall mean all energy that Seller delivers at a Point of Interconnection for consumption in the Auctioned Assets. Station-Use Energy shall not include any energy which is generated by Indian Point Unit 3 and which is delivered to the Auctioned Assets from Indian Point Unit 3 over facilities not owned by Seller.

"Switching Rules" shall have the meaning set forth in Section 3.11.

"System Integrity" means the adequate and reliable state of operation of the Transmission System providing electric service to customers who purchase power and related services delivered through the Transmission System.

"Technical Specifications" means the technical specifications included in the NRC Permits for the Generating Facilities in accordance with the provisions of 10 C.F.R. 50.36, or any successor thereto or replacement thereof.

"Transmission System Operator" means the Seller's Energy Control Center staff operating all or any portion of the Transmission System, including the transmission facilities under the operational control of the ISO.

"Trip-Out" means the automatic opening of disconnecting devices located in the Substation or the Generating Facilities, such as circuit breakers, which is caused by the Protective Relaying System in order to isolate faulty facilities, equipment or systems.

## ARTICLE II

### General

SECTION 2.01. Compliance with Laws and Good Industry Practice. Notwithstanding any other provision in this Agreement, Seller shall conduct all its operations in connection with and maintain the Seller Assets, and Buyer shall conduct all its operations in connection with and maintain the Buyer Assets in accordance with (a) Applicable Legal Requirements and (b) Good Industry Practice. Each of Buyer and Seller shall make all modifications to facilities, equipment or systems that could reasonably be expected to impact the Generating Facilities or the Transmission System in accordance with Applicable Legal Requirements and Good Industry Practice. Except as otherwise provided herein or in the Sale Agreement, Seller shall not be responsible for the operation or maintenance of, or for providing, procuring or storing spare parts for, the Buyer Assets and Buyer shall not be responsible for the operation or maintenance of, or for providing, procuring or storing spare parts for, the Seller Assets, regardless of the location of such Buyer Assets or Seller Assets, as applicable. "Applicable Legal Requirements" means all Laws, including Environmental Laws, Environmental Permits, NRC Permits and Permits, from time to time in effect applicable to Seller or the Seller Assets or Buyer or the Buyer Assets, as applicable. "Good Industry Practice" means any of the applicable acts, practices or methods from time to time (i) (A) required by the NYSRC, NPCC, NERC or INPO or the ISO or any successor thereto, or any other organization with similar duties, including any local, state, regional, national or international reliability organization, or required by any rules issued

pursuant to the authority of any such organization, in each case, with jurisdiction or authority in respect of Seller or the Seller Assets or Buyer or the Buyer Assets and whether or not the Party whose conduct is at issue is a member thereof, or by any other person acting pursuant to the authority of any of the foregoing entities or organizations or (B) required by the provisions of the Sale Agreement, this Agreement or any other Ancillary Agreement or (ii) engaged in or approved by a significant portion of the electric utility industry in the United States at the relevant time, including reliability, operating, planning and engineering specifications, if in any case there are no acts, practices or methods required by clauses (i) (A) or (i) (B) applicable at such time; provided, however, that, in the event of any conflict among the requirements of the foregoing clauses (i) (A) and (i) (B), Good Industry Practice shall be determined by reference exclusively to the requirements and terms of clause (i) (A) and not by reference to clause (i) (B).

SECTION 2.02. Inspections, Maintenance, Access and Information. (a) Inspections and Maintenance. Except as otherwise provided herein, each Party shall have the right, from time to time upon reasonable advance notice and in accordance with Applicable Legal Requirements and Good Industry Practice, to perform routine inspections, measurements, meter readings and maintenance of any facilities, equipment or systems owned by such Party that are located on the premises of the other Party, and such inspecting Party, subject to Section 2.02(b), shall reimburse the other Party for its reasonable costs and expenses in connection therewith, including that of any escort designated by such other Party to observe such inspection; provided, however, that the Party performing such inspections, measurements, meter readings and maintenance shall use its reasonable best efforts to ensure that such activities do not interfere with the other Party's ordinary course operations.

(b) Access. Notwithstanding any provision to the contrary in the Indian Point Declaration of Easements and except as provided for herein or otherwise consented to in advance by the other Party, in no event shall any employee, contractor, agent or other representative of either Party (the "Entering Party") enter into or be present on the premises of such other Party for any purpose without being accompanied by an escort designated by such other Party. To the extent any such Entering Party enters or is present on the premises of such other Party pursuant to the foregoing sentence, it shall comply in all respects with, and perform any service or maintenance work in respect of any

facilities, equipment or systems located on the premises of such other Party in accordance with such other Party's work rules and procedures, including in respect of the issuance of and requirements for work permits, and other safety, security and operating protocols and procedures, from time to time in effect, and the Entering Party shall reimburse such other Party for its reasonable costs and expenses in connection therewith, including that of any escort designated by such other Party. Each Party agrees to be solely responsible, and assume all liability, for the safety and supervision of its employees, contractors, agents and other representatives. Notwithstanding the foregoing, Seller, its employees, contractors, agents and other representatives shall have unescorted access and shall not be required to reimburse Buyer for any cost or expense in connection with access to any property, facility, equipment or system (including, but not limited to, communications facilities, equipment and systems) to which Seller has a right of access under the Indian Point Declaration of Easements unless escorted access is required by Part 50 of Title 10 of the Code of Federal Regulations for the "protected area" as defined in such regulations, in which case such access by Seller shall be on an escorted basis, but Seller shall not be required to reimburse Buyer for any cost or expense in connection therewith.

(c) Information. (i) General. Each Party shall, upon the reasonable request of the other Party, provide such other Party with information that is reasonably necessary for such requesting Party to perform its obligations under this Agreement and that, when requested by a Party, is not otherwise obtainable by such Party from the ISO. The Transmission System Operator shall comply with the applicable requirements of Seller's code of conduct approved by FERC, (as the same may be amended from time to time, the "Code of Conduct") with regard to the information that Buyer provides pursuant to Section 2.02(c)(ii) or Section 3.06 and with regard to any other information that Buyer provides to the Transmission System Operator pursuant to this Agreement and that is subject to the Code of Conduct. The Transmission System Operator shall not disclose such information except as permitted by the Code of Conduct or in accordance with Applicable Legal Requirements.

(ii) Generating Facilities Output Reduction or Termination. Buyer shall give Seller reasonable advance notice of any maintenance activities (including scheduled outages of Generating Facilities), equipment tests, installation, construction or other modification that could reasonably be expected to result in a reduction or a termination of output from the Generating Facilities.



SECTION 2.03. No Interference. (a) Except as otherwise permitted in the Sale Agreement, this Agreement or any other Ancillary Agreement, neither Party shall service, repair or otherwise maintain any facilities, equipment or systems owned by the other Party. To the extent that pursuant to the terms of this Agreement or any Ancillary Agreement, a party services, repairs or otherwise maintains or has any other obligations in respect of any facilities, equipment or systems owned by the other Party, it shall perform such services, repairs and maintenance, and otherwise discharge such duties in accordance with Applicable Legal Requirements and Good Industry Practice and, subject to reasonable consultation with the other Party in accordance with procedures to be agreed upon by the Parties, in a manner consistent with that which it applies to facilities, equipment or systems it owns.

(b) Buyer shall not operate the Generating Facilities and Seller shall not operate the Seller Assets in any manner that has caused or could reasonably be expected to cause physical damage to the Seller Assets or the Buyer Assets, respectively, or otherwise results in or could reasonably be expected to result in personal injury or loss of life, physical damage or physical harm to property, the Generating Facilities, the Transmission System or any other transmission system to which it is interconnected, or damage or harm to System Integrity or public safety.

SECTION 2.04. Emergency Procedures. (a) If an emergency results in or could reasonably be expected to result in personal injury or loss of life or damage or harm to property, the Generating Facilities, the Transmission System or another transmission system to which it is interconnected, System Integrity or public safety, the Party recognizing such emergency shall provide immediate oral notification (to be confirmed in writing as soon as reasonably practicable) to the other Party, and the Parties agree to cooperate in good faith (including in respect of the sharing of information) in order to prevent, avoid or mitigate personal injury or loss of life or damage or harm to property, the Generating Facilities, the Transmission System or another transmission system to which it is interconnected, System Integrity or public safety.

(b) Without limiting the generality of Section 2.04(a) and to the extent permitted by Applicable Legal Requirements and Good Industry Practice, in the case of a Trip-Out, each Party shall provide the other Party with immediate oral notification, which oral notification (to be confirmed in writing as soon as reasonably practicable) shall include, to the extent possible, all information

necessary to determine the cause of the Trip-Out and the steps necessary for the restoration of service.

SECTION 2.05. Additional Agreements. The Parties agree to, from time to time upon the reasonable request of either Party, negotiate in good faith and execute and deliver such amendments, additional contracts, agreements, instruments and documents to implement the terms of this Agreement, including in order to establish any necessary operating procedures to implement the terms of this Agreement, and the Parties agree to cooperate in making such filings or submissions in connection with such amendments, contracts, agreements, instruments and documents with the appropriate Governmental Authority or other organization as are required. The Parties further agree to, from time to time upon the reasonable request of either Party, negotiate in good faith and execute and deliver amendments to this Agreement, including in response to regulatory, technological, operational or other changes, including in respect of the ISO, the ISO Rules or Applicable Legal Requirements, affecting the Generating Facilities or the Transmission System or the electric power industry generally.

### ARTICLE III.

#### Continuing Rights, Obligations and Responsibilities

##### SECTION 3.01. Testing and Maintenance.

(a) Buyer's Equipment. Buyer shall at appropriate intervals (at its own expense) or more frequently upon Seller's reasonable request (in which case Seller shall reimburse Buyer for its reasonable costs and expenses in connection therewith) (i) test, calibrate, adjust and maintain pursuant to Good Industry Practice the remote reading equipment, data acquisition, Protective Relaying Systems owned by Buyer and control equipment or other facilities, equipment or systems or software that Buyer owns and is connected or related to the Transmission System or has or could be reasonably expected to have a material adverse effect on the Transmission System or any other transmission system to which it is interconnected or on System Integrity, and (ii) promptly supply Seller with copies of inspection reports, installation and maintenance documents, test and calibration records, verifications and validations with respect thereto.

(b) Seller's Equipment. (i) General. Buyer shall, at its own expense, have the right to inspect or observe Seller's testing, calibration and maintenance and

similar activities in respect of, and installation, construction or other modifications to, Protective Relaying Systems, Revenue Meter Systems and Substation Interface Cables owned by Seller in order to verify the adequate protection and safe operation thereof. Seller shall give Buyer reasonable advance notice of any such activities that it is planning to undertake.

(ii) Protective Relaying Systems. Seller shall, at appropriate intervals, or more frequently upon Buyer's reasonable request, test, calibrate, adjust and maintain pursuant to Good Industry Practice all Protective Relaying Systems owned by Seller and all auxiliary and monitoring relays and alarms relating thereto which are owned by Seller and located in the Substation. Buyer shall have the right, upon the completion of such testing, calibration, adjustment and maintenance, to approve any necessary re-sealing of such Protective Relaying Systems and, upon written request to Seller, to receive copies of relevant settings, tests and work order data sheets. Seller reserves the right to take any such Protective Relaying System out of service as may be reasonably necessary and agrees to use its reasonable best efforts to provide Buyer with reasonable advance notice thereof. Except as provided herein or in the Sale Agreement, Buyer shall have the sole responsibility to provide, procure or store spare parts for such Protective Relaying Systems and Seller shall have no responsibility in respect thereof. The Parties shall endeavor in good faith to determine appropriate inventory levels for such spare parts. Buyer shall reimburse Seller for its reasonable costs and expenses incurred pursuant to this Section 3.01(b) (ii).

(iii) Substation Interface Cables. Seller shall maintain the Substation Interface Cables pursuant to Good Industry Practice, and Buyer shall reimburse Seller for its reasonable costs and expenses incurred in connection therewith.

(iv) Buyer shall have the sole responsibility for the maintenance, removal and installation of any distribution transformers owned by Seller and located on Buyer Real Estate and Seller shall have the sole responsibility to provide and procure any such replacement distribution transformers. Any such distribution transformers removed by Buyer shall be left at Buyer's property line nearest the public road for Seller to retrieve, and any such replacement transformers provided by Seller shall be left at such property line for Buyer to retrieve and install.

(v) Buyer shall reimburse Seller for 50% of Seller's reasonable costs and expenses in connection with maintaining 345 kV Breaker 7 and Breaker 9.

(c) Seller shall consult with Buyer regarding the timing of scheduled maintenance of the Seller Assets that could reasonably be expected to affect operation of the Generating Facilities. Each Party shall coordinate inspections and maintenance of the Generating Facilities on the one hand and the Transmission System on the other hand with the other so as to minimize the unavailability of transmission to and from the Generating Facilities and maximize the reliability and security of the Transmission System. Seller shall use all commercially reasonable efforts to schedule any testing, shutdown or withdrawal of the Transmission System to coincide with Buyer's scheduled outages for the Generating Facilities. In the event Seller is unable to schedule the outage of its facilities to coincide with Buyer's schedule, Seller shall notify Buyer as soon as practicable of the reasons for the facilities' outage, of the time scheduled for the outage, and of its expected duration.

SECTION 3.02. Operation of Equipment on Substation Property. Seller shall, in accordance with Applicable Legal Requirements, Good Industry Practice and Section 3.04 of this Agreement, operate all facilities, equipment or systems owned by Buyer that are located in the Substation, including circuit breakers, disconnect switches and ground switches, to the extent such facilities, equipment or systems are operated locally, and such operations shall be performed in accordance with the second sentence of Section 2.03(a). Buyer shall not operate any such facilities, equipment or systems, except to the extent operated remotely, and Seller shall be permitted to monitor such remote operation, in each case, in accordance with Section 3.04 of this Agreement. Buyer shall reimburse Seller for its reasonable costs and expenses incurred in connection with this Section 3.02.

SECTION 3.03. New Construction or Modifications.  
(a) Right to Modify or Construct Retained. Except as otherwise provided in this Agreement or in any other Ancillary Agreement, as between Seller and Buyer, Seller shall be permitted to add to or modify, or undertake new construction in respect of, the Transmission System in accordance with Applicable Legal Requirements and Good Industry Practice and Buyer shall be permitted to modify or add to the Generating Facilities in accordance with Applicable Legal Requirements and Good Industry Practice.

(b) Certain Installations, Modifications or Construction. Subject to the proviso in Section 3.04(a) and notwithstanding Section 3.03(a), no installation of, modifications to, or new construction of, facilities, equipment, systems or access thereto, including rights of way, fences and gates, shall be made by either Party which results in or could be reasonably expected to result in physical damage to the Seller Assets or the Buyer Assets, as the case may be, or otherwise results in or could be reasonably expected to result in personal injury or loss of life, physical damage or physical harm to property, the Generating Facilities, the Transmission System or any other transmission system to which it is interconnected, or damage or harm to System Integrity or public safety.

(c) Modifications Affecting the Transmission System or Generating Facilities. In respect of all construction work, modifications or circuit changes involving new or existing facilities, equipment, systems or circuits that could reasonably be expected to affect the operation of the Transmission System, Buyer shall provide Seller with drawings, plans, specifications and other relevant documentation for review during the design phase of such work and Buyer shall not undertake any such work without the Seller's consent to the proposed design (which consent shall not be unreasonably withheld or delayed). In respect of all construction work, modifications or circuit changes involving new or existing facilities, equipment, systems or circuits that could reasonably be expected to affect the operations of the Generating Facilities, Seller shall provide Buyer with drawings, plans, specifications and other relevant documentation for review during the design phase of such work. Each Party shall be responsible for its own construction work, modifications and circuit changes, and the other Party's review of, comments on, or consent to any documents, drawings, plans, specifications or other documentation provided by the initiating Party, shall not relieve the initiating Party of, or affect in any way, its responsibility for the work to be performed. The reviewing or consenting Party shall have no liability whatsoever with respect to any review or nonreview of, or consent to, any drawings or other documentation submitted to it by the other Party.

(d) Seller Facilities and Buyer Facilities. Without limiting the generality of Sections 3.03(a), (b) and (c), the applicable Party shall be permitted to upgrade, expand, enlarge, relocate or otherwise modify the Seller Facilities or Buyer Facilities, as applicable, (i) in any manner that could not reasonably be expected to impose a substantial additional, or substantially different, physical

burden on the Buyer Parcel or Seller Parcel, as applicable, beyond those in existence on the Closing Date, or otherwise interfere with any current or planned use thereof or (ii) otherwise as expressly permitted pursuant to Schedules 2.01(a) or 2.01(b) of the Indian Point Declaration of Easements.

SECTION 3.04. Interconnection of Transmission System and Generating Facilities. (a) Subject to Section 3.04(b) below, Seller shall permit the Generating Facilities to be interconnected with the Transmission System at the points listed on Schedule 3.04(a) in accordance with the terms of this Agreement; provided, however, that (i) any new Generating Facilities constructed after the Closing Date or any expansion of generating capacity of the Generating Facilities existing as of the Closing Date (including in respect of any repowering of any Generating Facilities) will require a separate agreement with Seller for interconnection and (ii) all costs associated with establishing such interconnection for any new Generating Facilities or other expansion of generating capacity, including any costs associated with any studies of, reinforcements to, or other expenditures with respect to, the Transmission System (or any studies regarding the same) shall be borne in all respects by Buyer.

(b) The interconnection of the Generating Facilities with the Transmission System shall be subject to interruption upon the activation of facilities, equipment and systems designed to protect any of the Generating Facilities or the Transmission System or System Integrity or public safety and may otherwise be subject to extended outages due to the failure of facilities, equipment or systems or for necessary maintenance, repair or testing; provided, however, that Seller shall use its reasonable best efforts in accordance with Applicable Legal Requirements and Good Industry Practice to prevent such interruption or limitation and shall restore such interconnection as promptly as possible. Seller shall give Buyer reasonable advance notice of any scheduled interruption of interconnection of the Generating Facilities with the Transmission System. Notwithstanding any other provision in the Sale Agreement, this Agreement or any other Ancillary Agreement to the contrary, except to the extent that any such outage or other interruption in interconnection results in whole or in part from the gross negligence or willful or wanton acts or omissions to act of Seller, Seller, to the fullest extent permitted by law, shall in no event have any liability whatsoever, whether direct or indirect, to Buyer therefor, including in respect of lost revenues or lost

power or capacity charges or in respect of deficiency charges.

(c) If Buyer fails to operate and maintain the Generating Facilities as provided in this Agreement, Seller may, subject to Applicable Legal Requirements and Good Industry Practice, discontinue, curtail, interrupt or reduce Buyer's interconnection with the Transmission System until such failure has been corrected, to the extent that such failure has or could be reasonably expected to have a material adverse effect on the Substation or the Transmission System, or otherwise result in personal injury or loss of life or physical damage or physical harm to property, the Generating Facilities, the Substation, the Transmission System or any other transmission system to which it is interconnected, or damage or harm to System Integrity, or public safety. In the absence of an emergency, Seller shall provide Buyer with reasonable advance notice of its intention to discontinue, curtail, interrupt or reduce interconnection service in response to the interfering condition and where practicable allow reasonable time for Buyer to remove the interfering condition before the discontinuation, curtailment, interruption or reduction commences. Seller's judgment with regard to the interruption of service under this section shall be made pursuant to Good Industry Practice.

(d) Notwithstanding any other provision of this Agreement, the operational procedures and operational jurisdiction governing the interconnection of the Generating Facilities, on the one hand, and the Substation and the Transmission System, on the other hand, including, but not limited to, operating and/or notice and/or approval to operate circuit breakers, disconnect switches and ground switches, shall be in accordance with the terms of Annex I and as set forth in, and contemplated by, Annexes II through V hereto.

(e) Switching, Tagging and Grounding. Subject to Section 2.01, each Party shall comply with Seller's General Instructions Governing Work on System Electrical Equipment, as from time to time in effect (the "Switching Rules"), promulgated pursuant to the requirements of 29 C.F.R. 1910.269, or any successor thereto or replacement thereof. Seller shall have no liability to Buyer in connection with the compliance or noncompliance by Buyer with the Switching Rules and Buyer agrees to hold Seller harmless from any liability as a result thereof.

SECTION 3.05. Revenue Metering. (a) (i) Seller shall own all Delivery Revenue Meter Systems and all Output

Revenue Meter Systems and shall read all Delivery Revenue Meters and all Output Revenue Meters. Buyer shall reimburse Seller for its reasonable costs and expenses in connection with reading Output Revenue Meters and processing data received thereby. Buyer shall provide reasonable access to Seller, at Buyer's sole cost and expense, for the purpose of reading Delivery Revenue Meters and Output Revenue Meters located on Buyer Real Estate.

(ii) With respect to any Delivery Revenue Meter Systems or any portion thereof installed in connection with the transactions contemplated by the Sale Agreement, Buyer shall reimburse Seller for its reasonable costs and expenses (including an amount not to exceed 17% of such costs and expenses in respect of Federal tax consequences and any New York State tax consequences (net in each case of applicable tax deductions) on Seller of such reimbursement by Buyer) in connection with the installation thereof (but not including the costs of providing any equipment) to the maximum extent permitted by Applicable Legal Requirements and any applicable tariff. With respect to any Output Revenue Meter System or any portion thereof installed in connection with the transactions contemplated by the Sale Agreement, Buyer shall reimburse Seller for its reasonable costs and expenses (including an amount not to exceed 17% of such costs and expenses in respect of Federal tax consequences and any New York State tax consequences (net in each case of applicable tax deductions) on Seller of such reimbursement by Buyer) in connection with providing such Output Revenue Meter Systems and the installation thereof (including the costs of providing any equipment), to the maximum extent permitted by Applicable Legal Requirements. Buyer's obligation to reimburse Seller pursuant to this Section 3.05(a)(ii) shall be without regard to whether such costs or expenses were incurred prior to or after the Closing Date.

(iii)(A) Seller shall provide and install the Delivery Revenue Meter Systems (including, at Seller's option, telephone service from each Delivery Revenue Meter with remote reading capability) and the Output Revenue Meter Systems, in each case, listed on Schedule 3.05(a)(iii)(A).

(B) Seller shall test, calibrate and maintain at appropriate intervals (at its expense), or more frequently upon Buyer's request (in which case Buyer shall reimburse Seller for its reasonable costs and expenses in connection therewith), the Delivery Revenue Meter Systems listed on Schedule 3.05(a)(iii)(B). Seller shall at appropriate intervals, or more frequently upon Buyer's reasonable request, test, calibrate and maintain the Output Revenue Meter Systems listed on Schedule 3.05(a)(iii)(B) and Buyer



shall reimburse Seller for its reasonable costs and expenses in connection therewith.

(iv) Seller shall arrange for the installation of telephone service from each Output Revenue Meter and from each Delivery Revenue Meter which is listed on Schedule 3.05(a)(iii)(A) as being bi-directional, and Buyer shall reimburse Seller for its reasonable costs and expenses in connection therewith. Buyer shall arrange for and be responsible for keeping such telephone service in place, including the payment of any telephone service provider charges in connection therewith. Buyer shall be permitted in accordance with Applicable Legal Requirements and any applicable tariff to arrange at its own expense for Seller to install and maintain appropriate equipment for Buyer to obtain access to pulse output from each Revenue Meter. Seller shall provide a demarcation terminal block which connects to the pulse output from the meters within the revenue metering cabinet. Buyer shall be permitted to install equipment for receiving the pulses and transmitting the associated data.

(b) The Parties agree that if any Revenue Meter and associated Point of Interconnection are not at the same location and if all facilities, equipment and systems between such Point of Interconnection and such Revenue Meter are the property of the Party receiving the service measured by such Revenue Meter, such Revenue Meter shall be appropriately adjusted to account for energy losses between such Revenue Meter and such Point of Interconnection.

(c) If, at any time, any Delivery Revenue Meter is found to be inaccurate by a margin greater than that allowed under Applicable Legal Requirements, Seller shall repair or replace such Delivery Revenue Meter and adjust the readings. Readings from a Delivery Revenue Meter for any period of inaccuracy shall be adjusted to eliminate the effect of such inaccuracy to the extent the duration of such period can be reasonably ascertained; provided, however, that unless such duration can be reasonably ascertained, readings made during the first half of the period between the last successful test of such Delivery Revenue Meter and its repair or replacement shall not be so adjusted. If, at any time, any Output Revenue Meter is found to be inaccurate by a margin greater than that allowed under Applicable Legal Requirements or ISO Rules then Seller shall repair or replace such Output Revenue Meter and Buyer shall reimburse Seller for its reasonable costs and expenses in connection therewith.

(d) Each Party shall, upon reasonable notice from the other Party, except in the case of an emergency, comply with any reasonable request of the other concerning the scheduling and performance of manual Revenue Meter readings, the sealing of Revenue Meters, the presence of a representative of the other Party when Revenue Meters are read, Revenue Meter seals are broken and tests are conducted, and other matters affecting the accuracy of the measurement of electricity delivered to or from the Generating Facilities. Without limiting the generality of the foregoing, Buyer shall have the right to witness all manual reading and testing, calibration, adjustment and maintenance of Revenue Meters and, upon completion thereof, to approve any necessary resealing of Revenue Meters. If either Party believes that there has been a failure or stoppage of any Revenue Meter or any associated data acquisition and transmission equipment, it shall immediately notify the other Party orally, such notice to be promptly confirmed in writing, and the Parties shall cooperate in taking all necessary steps to restore to operation all Revenue Meters and associated data acquisition and transmission equipment as soon as reasonably possible, and Buyer shall, subject to Section 3.05(a)(ii) above, reimburse Seller for its reasonable costs and expenses in connection therewith.

(e) In the event that any of the Revenue Meter Systems listed on Schedule 3.05(a)(iii)(A) is not installed prior to the Closing Date, Buyer and Seller shall utilize existing metering equipment as specified by Seller for measuring the transfer of energy to Buyer until such metering equipment is installed. In the event that no metering equipment exists on a line through which Buyer receives Station-Use Energy at the Auctioned Assets, Seller shall estimate such Station-Use Energy based upon the best available information and Buyer shall pay for such energy in accordance with Sections 3.15 and 3.17.

**SECTION 3.06. Information Reporting Systems and Obligations.** Without limiting the generality of Section 2.02(c), Buyer shall supply (using facilities, equipment and systems and software compatible with, and in a format comprehensible to, Seller's facilities, equipment and systems) accurate, complete and reliable information identified by Seller from time to time as necessary for operations, maintenance activities, equipment testing and calibration, compliance by Seller with Applicable Legal Requirements or analysis of the Transmission System and not available at such time from the ISO. Information pertaining to generation, transmission and distribution operating parameters shall be gathered for electronic transmittal to

Seller using supervisory control and data acquisition, remote terminal unit equipment or remote access pulse recorders or using such other facilities, equipment or systems reasonably acceptable to Seller from time to time. Seller shall not use or disclose to any other person such information received pursuant to this Section 3.06 other than in accordance with Applicable Legal Requirements and the Code of Conduct.

SECTION 3.07. Nondispatchability Notification.

If any unit of any of the Generating Facilities experiences a full or partial forced outage, Buyer shall immediately notify Seller's Energy Control Center orally, such notice to be promptly confirmed in writing, of such unit's outage and the expected duration thereof.

SECTION 3.08. Miscellaneous Services.

(a) Services Provided by Seller. (i) Subject to any suspension in accordance with Section 3.08(a)(ii), Seller shall provide to Buyer in respect of facilities, equipment and systems owned by Buyer located on Substation property low voltage AC and DC substation service power and Buyer agrees to reimburse Seller for any reasonable costs and expenses associated with providing such service.

(ii) Subject to Applicable Legal Requirements and Good Industry Practice, Seller may from time to time temporarily suspend the services set forth in Section 3.08(a)(i) for repairs, maintenance, or other reasonable purposes and shall provide Buyer reasonable advance notice of any scheduled temporary suspension of services to be provided pursuant to this Section 3.08(a)(ii) reasonably in advance of such suspension. Such notification shall include an estimated time duration for a return to normal conditions. In the event of any unplanned or forced suspension of the services set forth in this Section 3.08, Seller shall immediately notify Buyer orally, such notice to be promptly confirmed in writing. In the event of any suspension pursuant to this Section 3.08(a)(ii), Seller shall use its reasonable best efforts to promptly restore such services.

(b) Services Provided by Buyer. (i) Buyer acknowledges that any feeders owned by Buyer and associated electrical facilities, equipment, systems and transformers owned by Buyer and connected thereto and current transformers and potential transformers owned by Buyer and used in relay protection circuits that protect the Seller Assets are critical for the delivery of Buyer's electric energy over the Transmission System and to Seller's operations and System Integrity and shall take all measures

reasonably required for such breakers, feeders, facilities, equipment, systems and transformers to at all times remain in service. Notwithstanding Section 2.02(b), to the extent that any such feeder, current transformer or potential transformer fails to remain in service and Buyer fails to promptly take any necessary corrective measures, Seller reserves the right, but shall have no obligation, to take any such measures or perform servicing or repairs as may be reasonably required in order to cause such feeder or relay protection circuits to resume service. Buyer shall reimburse Seller for its reasonable costs and expenses incurred in connection with such corrective measures and servicing and repairs.

#### SECTION 3.09. Communications Equipment.

(a) General. Seller shall, after providing notice to Buyer, have the right but not the obligation to remove, replace, modify, add or upgrade, at no cost to Buyer, communications facilities, equipment and systems including poles, antennae, wave guides, cables and related equipment or facilities owned by Seller and located in or on Buyer's structures or in or on the Auctioned Assets; provided, however, that any modification or upgrade to such modification or upgrade shall be subject to Section 3.03.

(b) Access to Communications Rooms. Buyer and Seller shall cooperate in the implementation of procedures designed to control access to all communications rooms on Buyer's premises in which communications facilities, equipment or systems owned by Seller are located, including the designation and periodic review of a list of personnel authorized to enter into and repair, maintain, remove, replace, modify, add or upgrade communications facilities, equipment or systems located in such communications rooms. In no event shall Buyer (i) allow any person not previously approved by Seller to enter into any such communications room or to repair, maintain, remove, replace, modify, add or upgrade any such communications facilities, equipment or systems, or (ii) disallow any person (including Seller's employees, contractors, agents or other representatives previously approved by Seller) approved by Seller to enter into any such communications room or to repair, maintain, remove, replace, modify, add or upgrade any such communications facilities, equipment or systems.

(c) Services. (i) General. At no cost to Seller, Buyer shall provide Seller with, and operate and maintain, adequate heating, ventilation, air conditioning, light and power and other services for communications rooms on Buyer's premises as well as communications facilities, equipment or systems owned by Seller in such communications

rooms. Without limiting the generality of the foregoing, Buyer shall at all times operate and maintain air conditioning facilities and equipment adequate to maintain temperatures at the appropriate levels in accordance with the applicable manufacturer's specifications thereof. Notwithstanding Section 2.02(b), to the extent that any such heating, ventilation, air conditioning, light and power and other services fail to remain in service and Buyer fails to promptly take any necessary corrective measures, Seller reserves the right, but shall have no obligation, to take any such corrective measures or perform servicing or repairs as may be reasonably required in order to cause such heating, ventilation, air conditioning, light and power and other services to resume adequate service. Buyer shall reimburse Seller for its reasonable costs and expenses incurred in connection with such corrective measures and servicing and repairs.

(ii) Environmental System Alarms. Buyer shall at all times operate and maintain in accordance with applicable manufacturer's specifications all appropriate environmental system alarms (including, smoke, water, temperature and loss of power alarms) in all communications rooms on Buyer's premises in which communications facilities, equipment or systems owned by Seller are located. Buyer shall promptly respond to, and address the source and orally notify Seller, such notice to be promptly confirmed in writing, of, the activation of any such alarm and shall take all appropriate response measures to prevent or minimize any damage to Seller's communications facilities, equipment or systems. Oral and written notifications of alarms shall be given to Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003, Attention: Director, Electronic Communication Services, Telephone: (212) 460-4891.

(iii) DC Power Supply Sources. At no cost to Buyer, Seller shall provide DC power to any communications facilities, equipment or systems owned by Buyer that share a common DC power supply source with communications facilities, equipment or systems owned by Seller at the levels in existence immediately prior to Closing; provided, however, that Seller shall in no event have any liability whatsoever to Buyer for any failure of any such shared DC power supply source. Buyer may at any time, at its own expense, install separate DC power supply sources to supply power to its communications facilities, equipment and systems; provided further, however, that any modification or upgrade of such communication facilities, equipment and systems shall be subject to Section 3.03. Without the prior written consent of Seller, Buyer shall not add to or modify

any facilities, equipment or systems of Buyer that share a common DC power supply source with communications facilities, equipment or systems owned by Seller.

(d) Radios. To the extent permitted by Applicable Legal Requirements, subject to Seller retaining the respective underlying license from the Federal Communications Commission (each, an "FCC License") for each frequency listed in connection with each respective radio system listed on Schedule 3.09(d), and subject to the terms and conditions of each respective FCC License, Seller, at no cost to Buyer, shall provide to Buyer the use of radio systems nos. 1, 2 and 4 listed on Schedule 3.09(d) for a period of up to 18 months from the Closing Date and shall provide to Buyer the use of radio system no. 3 listed on Schedule 3.09(d) from and after the Closing Date, in each case pursuant to a written agreement or agreements between Seller and Buyer and solely in connection with the operation of the Generating Facilities. Seller shall continue to own all of the equipment and facilities relating to such systems. Upon the earlier of (A) the date when Buyer no longer wishes to use a system or (B) the expiration of the respective permitted period of use for a system (18 months from the Closing Date for radio systems nos. 1, 2 and 4 and perpetually from the Closing Date for radio system no. 3), Buyer shall return to Seller all of the equipment and facilities relating to such systems in the same condition as when they initially were made available for use by Buyer. At no cost to Seller, Buyer shall maintain and repair the equipment and facilities related to such systems pursuant to Applicable Legal Requirements and Good Industry Practice using a third party vendor or Buyer's employees, in each case as may be approved by Seller in its sole discretion. Notwithstanding any other provision in the Sale Agreement, this Agreement, or any other Ancillary Agreement to the contrary, Seller, to the fullest extent permitted by Law, shall in no event have any liability whatsoever to Buyer for any failure of any such systems.

SECTION 3.10. Existing Telecommunications Facilities of Seller. (a) To the extent permitted by Applicable Legal Requirements, subject to Seller retaining the underlying FCC License for any circuit utilizing a frequency subject to an FCC License, and subject to the terms and conditions of any such FCC License, Seller, at no cost to Buyer, shall provide to Buyer, for a period of up to 12 months from the Closing Date, access to the telecommunications circuits set forth in Schedule 3.10(a) solely in connection with the operation of the Generating Facilities pursuant to a written agreement or agreements between Seller or such Affiliate, as the case may be, and

Buyer; provided, however, that Seller or such Affiliate, as the case may be, may terminate such access at any time upon three months' notice. Buyer acknowledges that Seller or such Affiliate, as the case may be, may interrupt such access if so required under Applicable Legal Requirements or if providing such access is determined to be discriminatory or preferential pursuant to the ISO Rules. Seller shall not use or disclose any information regarding the Generation Facilities that Seller's Energy Control Center receives pursuant to this Section 3.10(a) other than in accordance with Applicable Legal Requirements. Seller shall continue to own all of the equipment and facilities relating to such circuits. At no cost to Seller, Buyer shall maintain and repair the equipment and facilities terminated at the end of each such circuit pursuant to Applicable Legal Requirements and Good Industry Practice with a third party vendor or Buyer's forces, in each case as may be approved by Seller in its sole discretion. Notwithstanding any other provision in the Sale Agreement, this Agreement, or any other Ancillary Agreement to the contrary, Seller, to the fullest extent permitted by law, shall in no event have any liability whatsoever to Buyer for any failure of any such circuits.

(b) Buyer shall at all times, at its sole cost and expense, maintain and keep available for its sole use two diverse and redundant, in respect of each other, telecommunications links between the Generating Facilities and Seller's Energy Control Center (one of which may be Seller's existing link between the Generating Facilities and Seller's Energy Control Center during the period of Buyer's permitted use of such link in accordance with Section 3.10(a)) for the purpose of providing Seller's Energy Control Center with information regarding the Generating Facilities.

#### SECTION 3.11. Environmental Matters.

(a) Cooperation. Seller and Buyer agree to cooperate with each other concerning (i) any site plans, surveys, permits and other similar matters that affect or concern the premises of both Parties, including any plans to prevent or respond to spills of oil or Hazardous Substances or to control and monitor storm water discharges associated with industrial or construction activities, required by any Governmental Authority and (ii) the selection of a response measure or remedial action and any follow-up or other reports required under applicable Environmental Laws in connection with any Release described in paragraphs (b) and (c).

(b) Notice. Each Party shall upon discovery immediately notify the other Party orally, such notice to be

promptly confirmed in writing, of any Release of Hazardous Substances (i) onto or under, or reasonably likely to migrate onto or under, the other Party's premises or (ii) originating from, or relating to, any facilities, equipment or systems owned by the other Party that are located on the premises of, and are operated by, the notifying Party. In the event of any such Release, such notifying Party shall make all initial notifications to Governmental Authorities required under Environmental Laws and shall take all required initial response measures to contain and isolate any such Release, and to the extent the other Party is ultimately responsible under this Agreement or the Sale Agreement, as applicable, for Remediation of such Release, the other Party shall reimburse the notifying Party for its reasonable costs and expenses incurred in connection with any such initial response measures. The Parties shall cooperate in good faith in order to reduce to the extent reasonably practicable any adverse operational and financial impact of such initial response measures.

(c) Remediation. Each Party shall Remediate in accordance with Environmental Laws any Release of Hazardous Substances that is the responsibility of such Party pursuant to the Sale Agreement or, if not governed by the Sale Agreement, in accordance with the responsibility of such Party pursuant to Applicable Legal Requirements.

SECTION 3.12. Voltage and Frequency Requirements. Unless otherwise agreed to in writing by the Parties or specified by the ISO, Buyer shall (a) operate its interconnected Generating Facilities (i) with automatic voltage regulators and minimum excitation limiters and shall maintain voltage at the Points of Interconnection in accordance with Good Industry Practice and (ii) at frequency settings from time to time specified by Seller with reasonable advance notice to Buyer and (b) operate within the underfrequency, overfrequency, undervoltage or overvoltage limits in respect of relays from time to time specified by Seller with reasonable advance notice to Buyer.

SECTION 3.13. Authorized Representation.  
 (a) Buyer Representatives. Buyer shall designate an individual or individuals who have authority to bind Buyer hereunder and Seller shall be entitled to rely upon such designation. Buyer shall also designate an individual or individuals who will be available at the Generating Facilities 365 days per year and 24 hours per day and shall be empowered by Buyer to make operational decisions hereunder on Buyer's behalf ("Buyer Operations Manager"). Seller shall also be entitled to rely on statements, actions and decisions of the Buyer Operations Manager as those of



Buyer, unless Buyer specifies otherwise in writing with respect to certain events.

(b) Seller Representatives. Seller shall designate an individual or individuals who have authority to bind Seller hereunder and Buyer shall be entitled to rely upon such designation. Seller shall also designate an individual or individuals who will be available at the Seller's Energy Control Center 365 days per year and 24 hours per day and shall be empowered by Seller to make operational decisions hereunder on Seller's behalf ("Seller Operations Manager"). Buyer shall also be entitled to rely on statements, actions and decisions of the Seller Operations Manager as those of Seller, unless Seller specifies otherwise in writing with respect to certain events.

SECTION 3.14. Insurance. (a) The Parties agree to carry, at their own cost and expense and throughout the term of this Agreement, policies of insurance covering fire, liability, worker's compensation, property all-risk, comprehensive bodily injury, property damage liability and automobile liability, products, completed operations, explosion and collapse, contractual and personal injury liability and other forms of insurance relating to, in the case of Buyer, the Buyer Assets and, in the case of Seller, the Seller Assets. Such insurance shall be in such amounts, have such deductibles and retentions and be underwritten by such companies as would be obtained by a reasonably prudent electric power business and shall be primary and noncontributory with any insurance carried by the other Party and it shall not require that such other Party pay any premium thereunder. Notwithstanding the foregoing, either Party may self-insure against any of the liabilities set forth in the first sentence of this Section 3.14 if such Party satisfies all applicable statutory and regulatory criteria with respect to the self-insurance of the relevant liability. Upon receipt of any notice of cancellation or expiration of any such insurance policy, the Party receiving such notice shall immediately give written notice to the other Party.

(b) The Parties agree to furnish each other with certificates of insurance evidencing the insurance coverage set forth in this Section 3.14 and, upon reasonable request, a copy of any insurance policy referred to therein.

(c) Except for worker's compensation insurance, each Party and its Affiliates shall be named as additional insureds under the general liability insurance policies maintained by each Party pursuant to Section 3.14(a).

(d) Each Party on behalf of itself and its Affiliates shall exclude any right of subrogation under its insurance policies for any liability it has agreed to assume under the Sale Agreement, this Agreement or any other Ancillary Agreement. Evidence of this requirement shall be noted on all certificates of insurance. In addition, Buyer hereby waives and will cause its nuclear liability and property insurer(s) to waive all rights of recovery against Seller, its employees, contractors, agents and other representatives who may access and/or perform any work on Buyer's property on account of any damage or loss arising out of a "nuclear incident", "extraordinary nuclear occurrence" or "precautionary evacuation", in each case, as defined in the Atomic Energy Act.

(e) Without limitation of the other insurance required to be maintained by Buyer, Buyer shall maintain the insurance required by Section 6.16 of the Sale Agreement.

**SECTION 3.15. Energy Received by Generating Facilities.** Seller shall, at Buyer's option, either (a) sell to Buyer Station-Use Energy on a bundled basis or (b) provide to Buyer unbundled delivery service for such Station-Use Energy if Buyer purchases or otherwise obtains the energy from a person or entity other than Seller. Buyer shall purchase either such bundled sales service or unbundled delivery service. Seller shall provide the bundled sales service under Seller's Schedule for Electricity Service, P.S.C. No. 9 - Electricity, or unbundled delivery service under Seller's Schedule for Retail Access, P.S.C. No. 2 - Retail Access, as the same may be revised or superseded from time to time. If Buyer purchases or otherwise becomes the owner of Indian Point Unit 3, then Seller shall offer coincident demand billing as allowed by applicable tariffs. The charges for Seller's services shall be based on the quantities metered at the Delivery Revenue Meters. For billing purposes, the quantities metered at the Output Revenue Meters shall not be netted against the quantities metered at the Delivery Revenue Meters. Station-Use Energy shall be supplied under the applicable service classification for each intended use. Buyer agrees that Station-Use Energy shall be used only to provide light and power to the Generating Facilities and, without the prior written consent of Seller, shall not be used in connection with any transmission or distribution service and that it shall not sell or otherwise supply such energy to any third party, except that Buyer may provide such energy to Indian Point Unit 3 in compliance with the Technical Specifications.

SECTION 3.16. Electrical Service to Buchanan Service Center. Buyer may take service to the Buchanan Service Center through the existing low voltage service connection that is supplied by the two Substation light and power transformers for a period not to exceed nine months following the Closing Date. Before the expiration of such period, Buyer and Seller shall arrange for the installation of related service facilities from Seller's distribution system. These facilities will be provided by Seller without charge to Buyer to the extent facilities would normally be provided to a non-residential applicant for service without charge. If Buyer requests and Seller agrees to provide facilities other than those normally provided for service to a non-residential customer, such incremental facilities will be provided under the terms for Excess Distribution Facilities set forth in Seller's Schedule for Electricity Service, including reimbursement for the cost of such incremental facilities and the annual maintenance charge for such incremental facilities described therein. Energy supplied to Buyer pursuant to this Section 3.16 shall be treated as Station-Use Energy in accordance with Section 3.15.

SECTION 3.17. Electrical Supply and Pole Attachments Connected with Radiation Monitors and Sirens.

(a) Buyer shall pay Seller for all unmetered electrical service provided in connection with the operation of any radiation monitors or sirens owned by Buyer that are in Seller's service territory in accordance with General Rule III - 11(G) of Seller's Schedule for Electricity Service, P.S.C. No. 9 - Electricity, and the provision of Service Classification No. 2 or the equivalent service classification in Seller's Schedule for Retail Access, P.S.C. No. 2 - Retail Access, as the same may be revised or superseded from time to time.

(b) With respect to sirens and radiation monitors mounted on utility poles owned by Seller in Seller's service territory, Buyer shall enter into a Pole Attachment Agreement with Seller in the form attached hereto as Annex VI and, for each such pole attachment, pay the pole attachment charge set forth in Rider K to Seller's Schedule for Electricity Service, P.S.C. No. 9 - Electricity, as the same may be revised or superseded from time to time.

## ARTICLE IV

Billing Procedures

SECTION 4.01. Billing Procedures. Except with respect to services rendered by Seller to Buyer pursuant to a filed and approved rate schedule, within five Business Days after the first day of each quarter, each Party shall prepare an invoice for those reimbursable costs incurred on behalf of the other Party under this Agreement during the preceding quarter. Each invoice shall delineate the month in which such costs or services were incurred or provided, shall fully describe the costs or services incurred or rendered and shall be itemized to reflect the incurrence of such costs and the provision of such services. The amount of Buyer's invoice and amount of Seller's invoice for such quarter shall be netted, and Buyer or Seller (as the case may be) shall pay the net amount, if any, to the other Party on or before the twentieth Business Day following receipt of the other Party's invoice. All payments shall be made in immediately available funds by wire transfer to a bank named by such Party. Payment of invoices by either Party shall not relieve the paying Party from any responsibilities or obligations it has under this Agreement, the Sale Agreement or the Indian Point Declaration of Easements nor shall it constitute a waiver of any claims arising hereunder nor shall it prejudice either Party's right to question the correctness of such billing. Except with respect to services rendered by Seller to Buyer pursuant to a filed and approved rate schedule, any overdue amounts shall bear interest from the due date through the date of payment at the prime rate of The Chase Manhattan Bank in effect on the due date. With respect to services rendered by Seller to Buyer pursuant to a filed and approved rate schedule, the provisions of such schedule shall govern billing procedures and the applicable rate of interest on overdue amounts.

SECTION 4.02. Billing Disputes. In the event of a billing dispute (other than disputes arising under a filed and approved electricity or delivery service rate schedule as to which the provisions of such schedule shall govern), the Parties shall continue to provide services to each other as long as the paying Party (i) continues to make all of the payments not in dispute and (ii) if requested by the billing Party, pays into an escrow account the disputed portion of the applicable invoice, pending resolution of such dispute.

## ARTICLE V

Miscellaneous Provisions

SECTION 5.01. Effectiveness and Term. (a) This Agreement shall only become effective upon the consummation of the Closing and, prior to such time, shall have no force or effect. If the Sale Agreement is terminated for any reason prior to the Closing, then this Agreement shall also automatically terminate and be of no further force or effect.

(b) If the Closing occurs, this Agreement shall continue in full force and effect until the earlier of (i) such time as the permanent cessation of power generation functions at the Generating Facilities, together with any associated Decommissioning, has been completed by Buyer or (ii) such time as the permanent cessation of interconnection functions in respect of the Transmission System, together with any associated demolition, removal or restoration of the site (to the extent required by Applicable Legal Requirements), has been completed by Seller. The applicable provisions of this Agreement shall continue in effect after any termination of this Agreement to the extent necessary to provide for final billings, billing adjustments and payments pertaining to liability and indemnification obligations arising from acts or events that occurred while this Agreement was in effect.

(c) Buyer and Seller agree that, notwithstanding any other provision of this Agreement, the Sale Agreement or any other Ancillary Agreement, this Agreement may not be terminated under any circumstances by either Party as a result of a breach, whether or not material, of the other Party or otherwise, except pursuant to an agreement in writing executed by each Party.

SECTION 5.02. Force Majeure.

(a) Notwithstanding anything in this Agreement to the contrary, neither Party shall have any liability or be otherwise responsible to the other for its failure to carry out its obligations, with the exception of any obligation to pay money, under this Agreement if and only to the extent that it becomes impossible for either Party to so perform as a result of any occurrence or event which is beyond the reasonable control, and does not result from any fault or negligence, of the Party affected (each, a "Force Majeure Event"), including any act of God, strike or any other labor disturbance, act of a public enemy, war, act of terrorism, riot, any other civil disturbance, fire, storm, lightning, flood, earthquake, any other natural disasters, explosion,

materials shortage, breakage or accident involving facilities, equipment or systems, any order or regulation or restriction imposed by any Governmental Authority, failure of a contractor or subcontractor caused by a Force Majeure Event and transportation delays or stoppages.

(b) If a Party shall rely on the occurrence of a Force Majeure Event as a basis for being excused from performance of its obligations under this Agreement, then the Party relying on such occurrence shall (i) provide prompt oral and written notice of such Force Majeure Event to the other Party giving an estimate of its expected duration and the probable impact on the performance of its obligations hereunder and submitting reasonably satisfactory evidence of the existence of a Force Majeure Event, (ii) exercise its reasonable best efforts to continue to perform its obligations under this Agreement, (iii) exercise its reasonable best efforts to reasonably and expeditiously take action to correct or cure the Force Majeure Event (provided, however, that settlement of strikes or any other labor disturbance will be completely within the sole discretion of the Party affected by such strike or labor dispute), (iv) exercise its reasonable best efforts to mitigate or limit damages to the other Party and (v) provide prompt oral and written notice to the other Party of the cessation of the Force Majeure Event.

SECTION 5.03. Confidentiality. (a) Each Party (the "Receiving Party") shall, during the term of this Agreement and for two years after its termination, keep confidential and shall cause its directors, officers, affiliates, employees, contractors, agents and other representatives (including financial advisors, attorneys and accountants) (collectively, the "Representatives") to keep confidential (except as required by applicable Law, and then only after compliance with subsection (b) of this Section), any and all documents and information (i) relating to (x) in the case of the Seller, the Buyer Assets or (y) in the case of the Buyer, the Seller Assets, furnished or disclosed by the other Party (the "Disclosing Party") in connection with this Agreement or any other Ancillary Agreement or (ii) learned by the Receiving Party during the course of performance of this Agreement or any other Ancillary Agreement or in connection with any claim for indemnification pursuant to Article IX of the Sale Agreement (the "Confidential Information") provided, however, that the confidentiality obligation hereunder shall expire two years after any such Confidential Information is first furnished, disclosed or learned. The term "Confidential Information" shall not include any such documents or information that (i) is or becomes generally available to the public other

than as a result of a disclosure by the Disclosing Party or its Representatives, (ii) is developed by the Receiving Party or its Representatives independently and without use of, and does not contain or reflect, information furnished by the Disclosing Party or its Representatives, or (iii) is or becomes available to the Receiving Party on a nonconfidential basis from a source (other than the Disclosing Party or its Representatives) which, to the best of the Receiving Party's knowledge after due inquiry, is not prohibited from disclosing such information to the Receiving Party by a legal, contractual or fiduciary obligation to the Disclosing Party. The Receiving Party shall not release or disclose Confidential Information to any person, other than to its Representatives on a need to know basis and who have first been advised of the confidentiality provisions of this Section and have agreed to comply with such provisions.

(b) In the event that the Receiving Party or any of its Representatives is requested pursuant to, or required by, Applicable Legal Requirements, ISO Rules, or Law to disclose any of the Confidential Information, the Receiving Party shall notify the Disclosing Party promptly so that the Disclosing Party may seek a protective order or other appropriate remedy or, in the Disclosing Party's sole discretion, waive compliance with the terms of this Section. In the event that no such protective order or other remedy is obtained, or that the Disclosing Party does not waive compliance with the terms of this Section, the Receiving Party shall furnish only that portion of the Confidential Information which the Receiving Party is advised by counsel is legally required and shall exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information so furnished.

(c) In the event of litigation relating to the confidentiality provisions of this Section, if a court of competent jurisdiction determines in a final, nonappealable order that this Section 5.03 has been breached by a Party or its Representatives, then such breaching Party shall reimburse the other Party for its reasonable costs and expenses (including legal fees and expenses) incurred in connection with all such litigation.

(d) By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party, to enter into any further

agreements or to proceed with any other relationship or joint venture.

(e) Each Party shall use at least the same standard of care to protect Confidential Information as it uses to protect its own confidential information from unauthorized disclosure, publication or dissemination.

(f) Upon termination of this Agreement for any reason, each Party shall, promptly upon receipt of a written request from the other Party, destroy, erase or delete or return to the other Party, without retaining copies thereof, any and all written or tangible Confidential Information received from the other Party.

SECTION 5.04. Assignment; No Third Party Beneficiaries. (a) This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party, including by operation of law, without the prior written consent of the other Party which shall not be unreasonably withheld or delayed, except (i) in the case of Seller (A) to an Affiliate of Seller or a third party in connection with the transfer of the Transmission System to such Affiliate or third party or (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in all or any part of the Transmission System and this Agreement and (ii) in the case of Buyer (A) to an Affiliate of Buyer in connection with the transfer of the Auctioned Assets to such Affiliate and (B) to a lending institution or trustee in connection with a pledge or granting of a security interest in the Auctioned Assets and this Agreement; provided, however, that no assignment or transfer of rights or obligations by either Party shall relieve it from the full liabilities and the full financial responsibility, as provided for under this Agreement, unless and until the transferee or assignee shall agree in writing to assume such obligations and duties and the other Party has consented in writing to such assumption.

(b) Nothing in this Agreement is intended to confer upon any other person except the Parties any rights or remedies hereunder or shall create any third party beneficiary rights in any person.

SECTION 5.05. Independent Contractor Status. Nothing in this Agreement is intended to create an association, trust, partnership or joint venture between the Parties, or to impose a trust, partnership or fiduciary



duty, obligation or liability on or with respect to either Party and nothing in this Agreement shall be construed as creating any relationship between Seller and Buyer other than that of independent contractors.

SECTION 5.06. Notices. Unless otherwise specified herein, all notices and other communications hereunder shall be in writing and shall be deemed given (as of the time of delivery or, in the case of a telecopied communication, of confirmation) if delivered personally, telecopied (which is confirmed) or sent by overnight courier (providing proof of delivery) to the Parties at the following addresses (or at such other address for a Party as shall be specified by like notice)

if to Seller, to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-5850  
Attention: Senior Vice President,  
Central Operation

copy to:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, NY 10003  
Telecopy No.: (212) 677-5850  
Attention: Senior Vice President and  
General Counsel

if to Buyer, to:

Entergy Nuclear Indian Point 3, LLC  
440 Hamilton Avenue  
White Plains, NY 10601  
Telecopy No.: (914) 272-3406  
Attention: Chief Operating Officer

copy to:

Entergy Power Marketing Corp.  
10055 Grogan's Mill Road  
The Woodlands, TX 77380  
Telecopy No.: (281) 297-3241  
Attention: Legal

copy to:

Assistant Secretary  
c/o Entergy Nuclear Inc.  
P.O. Box 31995  
Jackson, Mississippi 39286-1995  
Telecopy No.: (601) 368-5694  
Attention: Legal

SECTION 5.07. Amendment and Modification; Extension; Waiver. This Agreement may be amended, modified or supplemented only by an instrument in writing signed on behalf of each of the Parties. Any agreement on the part of a Party to any extension or waiver in respect of this Agreement shall be valid only if set forth in an instrument in writing signed on behalf of such Party. If any Governmental Authority or the ISO implements a change in any Law or practice which impedes a Party's performance under this Agreement or may be reasonably expected to impede the Party's performance under this Agreement, the Parties shall negotiate in good faith such amendments to this Agreement as are reasonably necessary to cure such impediment, and Seller shall file such amendments with the FERC. If the Parties are unable to reach agreement on such amendments, either Party shall have the right to make a unilateral filing with the FERC to modify this Agreement pursuant to Sections 205 and 206 or any other applicable provisions of the Federal Power Act and the FERC rules and regulations thereunder; provided, that the non-filing Party shall have the right to oppose such filing and to participate fully in any proceeding established by the FERC to address any such amendments. The failure of a Party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. Notwithstanding anything herein to the contrary, to the extent that either Party fails, in any particular instance, to take affirmative steps to exercise its rights to witness, inspect, observe or approve the activities of the other Party as contemplated by this Agreement, such rights shall, solely with respect to such instance, be deemed waived in respect of such testing, calibration, adjustment and maintenance interval or such operation or maintenance activities, equipment tests, installation, construction or other modifications, respectively.

SECTION 5.08. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

SECTION 5.09. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 5.10. Interpretation. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article or Section of, or Schedule or Exhibit to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" or equivalent words. The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any agreement, instrument or Law defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or Law as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of Laws) by succession of comparable Laws and references to all attachments thereto and instruments incorporated therein. References to a person are also to its permitted successors and assigns.

SECTION 5.11. Dispute Resolution. If any dispute, disagreement, claim or controversy arises between the Parties arising out of or relating to this Agreement, such disputed matter shall be submitted to a committee comprised of one designated representative of each Party. Such committee shall be instructed to attempt to resolve the matter within thirty days after such dispute, disagreement, claim or controversy. If such designees do not agree upon a decision within thirty days after the submission of the matter to them, either Party may then pursue remedies available to it.

SECTION 5.12. Jurisdiction and Enforcement.  
(a) Each of the Parties irrevocably submits to the exclusive jurisdiction of (i) the Supreme Court of the State

of New York, New York County and (ii) the United States District Court for the Southern District of New York, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the Parties agrees to commence any action, suit or proceeding relating hereto either in the United States District Court for the Southern District of New York or, if such suit, action or proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each of the Parties further agrees that service of process, summons, notice or document by hand delivery or U.S. registered mail at the address specified for such Party in Section 5.06 (or such other address specified by such Party from time to time pursuant to Section 5.06) shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(b) The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which they are entitled at law or in equity.

SECTION 5.13. Entire Agreement. This Agreement, the Sale Agreement, the Confidentiality Agreement and the other Ancillary Agreements, including the Exhibits, Schedules, documents, certificates and instruments referred to herein or therein and other contracts, agreements and instruments contemplated hereby or thereby embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein or therein. This Agreement, the Sale Agreement and the other Ancillary Agreements supersede all prior agreements and understandings between the Parties

with respect to the transaction contemplated by this Agreement other than the Confidentiality Agreement.

SECTION 5.14. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the extent possible.

SECTION 5.15. Conflicts. Except as otherwise provided in the Sale Agreement, in the event of any conflict or inconsistency between the terms of this Agreement and the terms of the Sale Agreement, the terms of the Sale Agreement shall prevail. Except as otherwise provided herein, in the event of any conflict or inconsistency between the terms of this Agreement and the terms of any other Ancillary Agreement, the terms of this Agreement shall prevail.

SECTION 5.16. Auditing of Accounts and Records. Each Party shall have the right, upon reasonable notice and at its cost, to audit the other Party's accounts and records pertaining to maintenance and service transactions under this Agreement. Such right shall continue for a period of twelve (12) months after the date of the transaction(s) which are the subject of the requested audit.

SECTION 5.17. Regulatory Requirements. It shall be the responsibility of the Parties to take all necessary actions to satisfy any regulatory requirements which may be imposed by any Law concerning transactions contemplated by this Agreement. The Parties shall cooperate with each other and shall provide information or such other assistance as may be reasonably required by the other Party or the ISO in order to satisfy its obligations under this Section 5.17.

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

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

by \_\_\_\_\_

Name:

Title:

ENTERGY NUCLEAR INDIAN POINT 2,  
LLC,

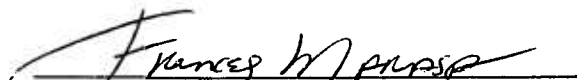
by  \_\_\_\_\_

Name: Michael R. Kansler

Title: Senior Vice President  
and Chief Operating  
Officer

STATE OF NEW YORK    )  
                                  ) ss.:  
COUNTY OF NEW YORK )

Sworn to before me this  
9th day of November, 2000

  
Notary Public

**FRANCES MARASA**  
Notary Public, State of New York  
No. 41-4982527  
Qualified in Queens County  
Commission Expires June 3, 2001

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

CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,

by 

Name: Kevin Burke  
Title: President

ENTERGY NUCLEAR INDIAN POINT 2,  
LLC,

by \_\_\_\_\_

Name: Michael R. Kansler  
Title: Chief Operating Officer

STATE OF NEW YORK     )  
                              )   SS.:  
COUNTY OF NEW YORK    )

On this 9th day of November 2000, before me personally appeared Kevin Burke, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that his signature on the instrument, the individual, or the corporation upon behalf of which the individual acted, executed the instrument.

  
NOTARY PUBLIC

GRACEANNE T. FAVARA  
NOTARY PUBLIC, State of New York  
No. 01FA5026646  
Qualified in Kings County  
Commission Expires April 25, 2002



## **Schedule 3.04(a)**

### **Indian Point 2 Generating Facilities**

#### **Points of Interconnection**

- A. **OUTPUT FACILITIES** - The output generator lead (Feeder W95) from the Generating Plant shall be connected to Con Edison's system at Disconnect Switch F7-9 on the 345 kV North Ring Bus at Con Edison's Buchanan Substation.
- B. **DELIVERY FACILITIES** - The following interconnections between the Generating Plant and Con Edison's system shall be maintained and used for the delivery of Station-use Energy to the Generating Plant:
- The bus-side terminal of Disconnect Switch F3A (for Feeder 95332) on the 138 kV Bus at Con Edison's Buchanan Substation;
  - At the property line splice connection BS8649 of 13W88 at Gas Turbines 2 and 3 Site;
  - The low voltage side of Transformers V-7718 and V-7803 in the vicinity of Substation A at the Indian Point 2 Generating Station;
  - The low voltage side of Transformers V-3560 and V-2170 for Indian Point New Simulator at the Indian Point 2 Generating Station;
  - At the splice connection in customer manhole CM12306 for Feeders 13W82 and 13W84. They connect to high voltage side of Transformers V-9515 and V-9808 in the vicinity of Visitor's Center (Old Simulator) at the Indian Point 2 Generating Station;
  - For three feeder spurs off of 4 kV Feeder 59U1; at load side of fuse cutout at W1A (first pole off Broadway on access roadway to Indian Point 2), at first buried splice off of Broadway (located east of Buchanan Service Center) and at one pole north of pole #4 (located off access road to Indian Point 3).
  - At first pole at 120/208V on IP2 property after Pole 116 on West side of Broadway for Buchanan Service Center Parking lot.
  - At first pole at 120/208V on IP2 property after Pole 115 on West side of Broadway for Buchanan Service Center parking lot.
  - At Pole W-8 at 120/208V on South Gate Road (access to IP3) overhead to Workout Building.
  - At Customer property manhole for Buchanan Service Center for 120/208V from isolated network at Buchanan Substation.
  - At pole W3 of 4 kV Feeder 89U1 located on Locust Avenue for 120/208V to Toddville Building.
- C. **OUTPUT/DELIVERY FACILITIES** - The following interconnections between the Generating Plant and Con Edison's system shall be maintained and used for the output of the Generating Plant and for the delivery of Station-Use Energy to the Generating Plant:
- At the bus side of Breaker F2-3 (for Feeder 13W92) at Buchanan Substation;
  - At the bus side of Breaker F3-1 (for Feeder 13W93) at Buchanan Substation; and
  - At the 13 kV bus side of removable links connected to Transformer 1 (for Feeders 13W94L and 13W94M) at Buchanan Substation.

Schedule 3.05(a)(iii)(A)

**Revenue Meters To Be Installed**

Delivery Revenue Meters To Be Installed (including Delivery Revenue Meters that are bi-directional)

- 138 KV Feeder 95332 , IP2 Station Auxiliary Power Supply\*
- 480V Power Supply to GT2 & GT3 Auxiliaries from 13W88
- 120/208V Supply to Nuclear & Environmental Building
- 13.8 KV Feeder 13W92; Output - GTs , Delivery-IP1 L&P Bus 2 and GT1 Auxiliaries (bi-directional)\*
- 13.8 KV Feeder 13W93; Output - GTs; Delivery – IP1 L&P Bus 3, IP3 GT Substation and GT2 Auxiliaries (bi-directional)\*
- 13.8 KV Feeder 13W94L, Output – GTs, Delivery- IP1 L&P Bus 4 (bi-directional)\*
- 13.8KV Feeder 13W94M, Output- GT3, Delivery-GT3 Auxiliaries (bi-directional)\*

Output Revenue Meters To Be Installed

- 345 KV Feeder W 95, IP 2 Output to Buchanan Substation\*

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\* A total of 2 dial up telephone line connections will be provided for the remote reading of these meters.

**Schedule 3.05(a)(iii)(B)**

**Revenue Meters**

**I. Delivery Revenue Meters**

**A. Existing Delivery Revenue Meters**

- 120/208V to Visitor's Center (Old Simulator) from 13W84
- 120/208V to Visitor's Center (Old Simulator) from 13W82
- 460V to New Simulator from 13W82 or 13W84
- 460V to Substation A from 13W82
- 460V to Substation A from 13W84
- 120/208V to Buchanan Service Center from Buchanan Substation
- 120/208V to North Side South Gate Rd, back of Workout Bldg
- 460V to Maintenance Training Building
- 120/208V to Demarc Building near Guard Shack at Main Gate
- 120/208V to South Side Buchanan Service Center Parking Lot
- 120/208V to East Side Buchanan Service Center Parking Lot
- 120/208V to Weather Station located at IP 3
- 120/208V to Transmission Line Maintenance Building
- 120/208V to Materials & Supply Bldg
- 120/208V to Visitor's Center Parking Lot
- 120V to Visitor's Center Bldg - Mechanical room
- 120/208V to Visitor's Center Bldg - Mechanical room
- 120/208V to Steam Generator Storage Building
- 120/208V to Steam Generator Mock Weld Bldg
- 460V to Steam Generator Mock Weld Bldg
- 120/208V to Old Parking Lot
- 120/208V to East Trailers near Visitor's Center
- 120/208V to West Trailers near Visitor's Center
- Toddville Training Center

**B. Delivery Revenue Meters To Be Installed (including Delivery Revenue Meters that are bi-directional)**

- 138 KV Feeder 95332, IP2 Station Auxiliary Power Supply
- 480V Power Supply to GT2 & GT3 Auxiliaries from 13W88
- 120/208V Supply to Nuclear & Environmental Building
- 13.8 KV Feeder 13W92; Output - GTs, Delivery-IP1  
L&P Bus 2 and GT1 Auxiliaries (bi-directional)
- 13.8 KV Feeder 13W93; Output - GTs; Delivery - IP1 L&P Bus 3,  
IP3 GT Substation and GT2 Auxiliaries (bi-directional)
- 13.8 KV Feeder 13W94L, Output - GTs, Delivery- IP1 L&P Bus 4  
(bi-directional)
- 13.8KV Feeder 13W94M, Output- GT3, Delivery-GT3 Auxiliaries  
(bi-directional)

**II. Output Revenue Meters**

**A. Existing Output Revenue Meters**

None

**B. Output Revenue Meters To Be Installed**

- 345 KV Feeder W 95, IP 2 Output to Buchanan Substation

Schedule 3.09(d)

**Radio Systems**

Radio System No. 1 – Security

| <u>Type</u>                | <u>Frequency (Tx/Rx)</u>  | <u>Location</u>                                      |
|----------------------------|---|--|
| (1) Base Station           | 456.575/451.575 MHz<br>456.575/451.575 MHz<br>451.575/451.575 MHz   | Secondary Alarm Station                              |
| (1) Base Station           | 456.575/451.575 MHz<br>456.575/451.575 MHz<br>451.575/451.575 MHz<br>456.0375/451.0375 MHz<br>456.100/451.100 MHz | Secondary Alarm Station                              |
| (1) Base Station (Back-up) | 456.575/451.575 MHz   | Microwave Hut adjacent to<br>Buchanan Service Center |
| (1) Repeater               | 451.075/456.075 MHz   | 135' Elevation of Indian Point<br>Unit 2             |
| (1) Repeater               | 451.0375/456.0375 MHz   | Microwave Hut adjacent to<br>Buchanan Service Center |
| (3) Consolettes            |   | Secondary Alarm Station                              |
| (178) Portable Radios      |   |  |

Radio System No. 2 – In-Plant

| <u>Type</u>            | <u>Frequency (Tx/Rx)</u>  | <u>Location</u>  |
|------------------------|---|--|
| (1) Repeater           | 451.075/456.075 MHz   | 135' Elevation of Indian Point<br>Unit 2                   |
| (1) Repeater           | 451.475/456.475 MHz   | 135' Elevation of Indian Point<br>Unit 2                   |
| (1) Repeater (Back-up) | 451.075/456.075 MHz   | 135' Elevation of Indian Point<br>Unit 2                   |
| (1) Repeater (Back-up) | 451.075/456.075 MHz<br>451.475/456.475 MHz<br>451.575/456.575 MHz | 135' Elevation of Indian Point<br>Unit 2                   |
| (1) Base Station       | 456.075/451.075 MHz<br>456.475/451.475 MHz<br>456.575/451.575 MHz | Construction Trailer                                       |
| (1) Base Station       | 456.075/451.075 MHz<br>456.475/451.475 MHz<br>456.100/451.100 MHz | Emergency Operating Facility at<br>Buchanan Service Center |

456.575/451.575 MHz

Radio System No. 3 -- Central ("Channel 6")

| <u>Type</u>                | <u>Frequency (Tx/Rx)</u> | <u>Location</u>  |
|----------------------------|--------------------------|--|
| 1) Base Station            | 456.050/451.050 MHz      | 135' Elevation of Indian Point<br>Unit 2                                 |
| (1) Base Station (Back-up) | 456.050/451.050 MHz      | 135' Elevation of Indian Point<br>Unit 2                                 |
| (1) Consolette             |                          | Terminal Board Room, 40'<br>Elevation of Indian Point<br>Unit 2          |
| (1) Consolette             |                          | Stairwell, Emergency Operating<br>Facility at Buchanan Service<br>Center |

Radio System No. 4 -- Area Radio

| <u>Type</u>                | <u>Frequency (Tx/Rx)</u>   | <u>Location</u>  |
|----------------------------|--|--|
| (1) Base Station           | 456.100/451.100 MHz  | 135' Elevation of Indian Point<br>Unit 2                                 |
| (1) Base Station (Back-up) | 456.100/451.100 MHz  | 135' Elevation of Indian Point<br>Unit 2                                 |
| (1) Repeater               | 451.100/456.100 MHz<br>451.075/456.075 MHz<br>451.475/456.475 MHz<br>451.575/456.575 MHz | Microwave Hut adjacent to<br>Buchanan Service Center                     |
| (1) Consolette             |  | Stairwell, Emergency Operating<br>Facility at Buchanan Service<br>Center |
| (1) Consolette             |  | Terminal Board Room, 40'<br>Elevation of Indian Point<br>Unit 2          |
| (4) Mobile Radios          |  |  |

Schedule 3.10(a)

Telecommunications Circuits

Corporate Communications Transmission Network (CCTN)

Indian Point Generating Station Circuits

| Circuit Identification Number     | Description                                     |
|-----------------------------------|---|
| BSCINP 122                        | INP MICROWAVE ALARM CKT ON ORDER WIRE GROUP     |
| INPWEA 921                        | 9.6 KB/S ANALOG DATA FOR DISPATCH & METERING    |
| INPWEA 922                        | 9.6 KB/S ANALOG DATA FOR DISPATCH & METERING    |
| INPWEA 113840                     | PLAR, CENTRAL CONTROL ROOM TO DO AT ECC         |
| INPWEA 113936                     | PLAR, CENTRAL CONTROL ROOM TO SO AT ECC         |
| INPWEA 117615                     | PLAR, CENTRAL CONTROL ROOM TO ECC               |
| EVCINP 412662                     | 9.6KB/S ANA DATA CKT TO EOF                     |
| EVCINP 412663                     | 9.6KB/S ANA DATA CKT TO EOF                     |
|                                   |   |
| T-1 Circuit Identification Number | Description                                     |
| MWDBSC T10022                     | T-1 FOR WAN CONNECTION                          |
| 4IPINP T10041                     | T-1 FOR WAN CONNECTION                          |
| INPBSC T10044                     | T-1 FOR VOICE MAIL                              |
| 4IPINP T10526                     | T-1 FOR HUB SW TO BSC PBX, AT BUCHANAN SER CNTR |
| 4IPINP T10538                     | T-1 FOR CLI VIDEO                               |

Buchanan Service Center Circuits

| Circuit Identification Number | Description                                      |
|-------------------------------|--|
| BSCINP 122                    | INP MICROWAVE ALARM CKT ON ORDER WIRE GROUP      |
| BSCCHZ 180                    | ODP RADIO CIRCUIT                                |
| BSCCHZ 182                    | BSC MICROWAVE ALARM CKT ON ORDER WIRE GROUP      |
| 4IPBSC 285                    | CNMS ALARM SONET RM AND BUC S/S ALARM RTU        |
| BSCESB 380                    | FX EXT 212-594-0148                              |
| BSCESB 382                    | FX EXT 212-594-0743                              |
| BSCESB 383                    | FX EXT 212-594-0749                              |
| BSCESB 384                    | FX EXT 212-564-3329                              |
| BSCESB 385                    | FX EXT 212-564-3345                              |
| BSCESB 386                    | FX EXT 212-564-3581                              |
| BSCESB 387                    | FX EXT 212-564-9120                              |
| BSCESB 388                    | FX EXT 212-564-9121                              |
| BSCESB 389                    | FX EXT 212-564-9122                              |
| BSCESB 390                    | FX EXT 212-564-9123                              |
| BSCESB 391                    | FX EXT 212-695-5839                              |
| BSCESB 392                    | FX EXT 212-695-6938                              |
| BSCESB 393                    | FX EXT 212-594-0356                              |
| BSCESB 394                    | FX EXT 212-594-0628                              |
| 4IPBSC 18097                  | 9.6 KB/S ANALOG DATA                             |
| 4IPBSC 35396                  | 9.6 KB/S ANALOG DATA                             |
| BSCWEA 411625                 | GAS OPERATING SUPERVISORY SYSTEM 9.6 KB/S ANALOG |
| BSCWEA 411626                 | GAS OPERATING SUPERVISORY SYSTEM 9.6 KB/S ANALOG |
| BSCWEA 411627                 | GAS OPERATING SUPERVISORY SYSTEM 9.6 KB/S ANALOG |
| 4IPBSC 481415                 | PLAR FROM EOF AT BSC TO CORP RESPONSE CENTER     |

# **Circuits with Buchanan Service Center as Intermediate Site**

| <b>Circuit Identification Number</b>     | <b>Description</b>                      |
|--|---|
| BSCINP 122                               | MICROWAVE ALARM CKT ON ORDER WIRE GROUP |
| CHZESB 381                               | FX EXT 212-695-2401                     |
|  |   |
| <b>T-1 Circuit Identification Number</b> | <b>Description</b>                      |
| MWDBSC T10022                            | T-1 FOR WAN CONNECTION                  |
| INPBSC T10044                            | T-1 FOR WAN CONNECTION                  |
| 4IPINP T10526                            | HUB SWITCH T-1 FOR BSC SWITCH           |

## **Legend**

4IP - 4 Irving Place, New York City

BSC - Buchanan Service Center

CLI - Compression Labs, Inc. (Manufacturer of video conference equipment)

CHZ - Cheesecote Mountain, Pomona, New York

DO - District Operator at the Energy Control Center

EOF - Emergency Operating Facility at the Buchanan Service Center

ESB - Empire State Building, New York City

EVC - Eastview Service Center, Valhalla, New York

EVS - Eastview Substation

EXT - Extension

FX - Foreign Exchange

INP - Indian Point

MWD - Millwood Substation

PLAR - Private Line Automatic Ringdown

SO - System Operator at the Energy Control Center

WAN - Wide Area Network

WEA - 128 West End Avenue, New York City

OPERATIONAL PROCEDURES BETWEEN  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. AND  
DIVESTED GENERATING STATION-INDIAN POINT 2

1.0 PURPOSE

- 1.1 This document describes the operating procedures between Consolidated Edison Company of New York, Inc.'s ("Con Edison") System Operation Department and the Indian Point 2 Generating Station (the "Plant").
- 1.2 In the event of any conflict or inconsistency between the terms of this document and the Sale Agreement, the terms of the Sale Agreement shall prevail. Additional operational procedures and policies govern the operating relationship between Con Edison and the Plant, including but not limited to those set forth in "General Instructions Governing Work On System Electrical Equipment" (the "Rulebook") and within Con Edison system operation procedures.

2.0 PROCEDURE

- 2.1 Operational diagrams numbered 694, 695, 696 and 19 set forth the operating interconnection that is under the operating jurisdiction of Con Edison's Energy Control Center (the "Interconnection").
- 2.2 The Con Edison District Operator or System Operator in accordance with the Rulebook shall direct all operations on the Interconnection. All operations in the Substation shall be under the jurisdictions outlined in the Rulebook.
- 2.3 The Plant shall respond to emergencies as directed by the Con Edison System Operator and/or District Operator.



### 3.0 SCHEDULING

- 3.1 The designated Plant person shall request outages on the Interconnection from Con Edison's Scheduling District Operator in accordance with Section 6 of the Rulebook. This does not include any notifications that should be made directly between the Plant and the ISO. The Con Edison Scheduling District Operator can be reached at 212-580-6767 or 212-580-6768.
- 3.2 If changes are proposed to the connections within the Plant as set forth in operational diagrams numbered 694, 695, 696 or 19, the designated Plant person shall submit 2 copies of before and after diagrams setting forth such changes to the Con Edison District Operator. New diagrams shall be prepared in accordance with Con Edison's System Operation Procedure SOP SO 9-14 Procedure for Updating Feeder Prints, Vault Prints and Operating Diagrams. If such changes affect the Interconnection, then the current and proposed diagrams will be submitted to the Con Edison Scheduling District Operator together with the requested changes.

### 4.0 SWITCHING

- 4.1 The Plant shall maintain an updated list of personnel authorized to perform switching within the Plant. Updated lists shall be transmitted to Con Edison's System Operation Department after each update or upon request by Con Edison and will be utilized when issuing operating orders.
- 4.2 All changes in the operating status of equipment affecting the Interconnection shall be under the sole authority of the Con Edison System Operator, as stated in Section 2 of the Rulebook. The Plant's operators may remove equipment from service within the Plant, if it is in imminent danger of failure or presents an imminent threat to human life as a Category 1 Emergency defined in the Rulebook. If possible, the Plant's operator shall provide advance warning to the Con Edison System Operator or District Operator.

- 4.3 The Con Edison District Operator, when directed by the Con Edison System Operator, shall issue all orders to the Plant's authorized personnel in accordance with Section 5 of the Rulebook.
- 4.4 In the event of an emergency involving the Interconnection, the Buchanan Operator and/or plant operator shall call the Westchester/Bronx District Operator on the emergency telephone 212-580-6669.
- 4.5 In the event of automatic operations, relays may operate at the Plant. The Plant shall be responsible, as directed by the Con Edison District Operator, for collecting and providing relay target information, damage reports and equipment operations as outlined in Con Edison's System Operation Procedure SOS-4, Transmission Feeder Reclosure Procedure. Similar information related to equipment in the Substation that directly affects the Plant will be provided by the Con Edison District Operator to the Plant's operator.
- 4.6 During emergencies, the Con Edison District Operator may as necessary, de-energize or otherwise operate any portion of the Interconnection as required, without notifying the Plant in advance.
- 4.7 If practical, the Con Edison District Operator shall notify the Plant of any potential system operations or conditions that may affect the Plant's equipment.

## 5.0 WORK PERMITS

- 5.1 The Con Edison District Operator shall authorize the issuance of any work permits for any work that affects equipment identified on the diagrams numbered 694, 695, 696 and 19 as part of the Interconnection.
- 5.2 All work permits shall be issued in accordance with Sections 5 and 10 of the Rulebook.

## 6.0 REFERENCES

- 6.1 System Operation Procedure Index.
- 6.2 General Instruction Governing Work On System Electrical Equipment ("Rulebook").
- 6.3 System Operation Procedure SO 9-14, Procedure for Updating Feeder Prints, Vault Prints and Operating Diagrams.
- 6.4 System Operation Procedure SO 5-4, Transmission Feeder Reclosure Procedure.
- 6.5 System Operation Procedure SO 3-7, IP#2 Operating Procedure for Load Following.
- 6.6 System Operation Procedure SO 11-3 Indian Pt. 2, & 3 Design Basis Emergency Priority For L/P Restoration.

POLE ATTACHMENT AGREEMENT

AGREEMENT, made as of \_\_\_\_\_ between  
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York  
corporation having its principal office at 4 Irving Place,  
New York, New York, (hereinafter "Edison"), and,  
\_\_\_\_\_  
(hereinafter "LICENSEE").

WHEREAS, LICENSEE proposes to attach certain  
cables, wires and appurtenances to utility poles throughout  
Edison's service territory ("the Franchise Area");

WHEREAS, Edison owns utility poles in the  
Franchise Area and has rights to poles owned by Bell  
Atlantic Corporation ("BAC"), both categories of poles being  
subject to the terms of a joint use agreement with BAC dated  
January 1, 1982; and

WHEREAS, Edison is willing to license attachments  
by LICENSEE to Edison owned poles upon the terms and  
conditions more particularly set forth herein;

NOW, THEREFORE, in consideration of the mutual  
terms and conditions contained herein, Edison and LICENSEE  
agree as follows:

## ARTICLE I

Extent of Permission

101. Area. The permission granted is limited to  
utility poles located in the Franchise Area.

102. Extent of License. The license is limited  
to the attachment of cables, wires and appurtenances solely  
for the purposes of the operation by LICENSEE of its  
service, as more particularly described and authorized in  
its franchise(s) or other appropriate governmental  
authorizations, copies of which have been supplied to  
Edison.

## ARTICLE II

Nature of Permission

201. Specific License Required. No general  
permission is granted hereunder. LICENSEE may not make an

attachment to any pole until Edison grants a license for that specific attachment.

202. No Ownership; Nonexclusivity. No property rights in poles are created hereunder, but LICENSEE's rights in any pole shall be a mere license. Any license granted hereunder shall be nonexclusive and shall be subject at all times to the rights of Edison and BAC and to any existing contracts, licenses, rights, permits, or privileges granted with respect to the attachments. Edison retains the right to grant attachment or other rights of any nature to others.

203. Discontinuance of Use of Pole. (a) Right to Discontinue. Edison shall not be obligated to maintain poles to which LICENSEE's facilities have been attached beyond the time necessary for Edison's own requirements.

(b) Replacement. Should Edison determine to replace a pole to which LICENSEE's facilities have been attached with a pole installed adjacent to the existing pole, it will give LICENSEE written notice of the proposed replacement. Edison may, at its option, offer to transfer LICENSEE's facilities at LICENSEE's expense, in which case Edison will include with its offer Edison's then current fees for relocation of the LICENSEE's installed facilities to the replacement pole by Edison's forces. (Edison's current fees are \$101 if the pole to be replaced is a line pole and \$202 if the pole to be replaced is a junction pole.) If Edison offers to relocate LICENSEE's facilities, LICENSEE shall, within thirty days after receipt of such notice, either authorize Edison in writing to relocate the facilities and pay to Edison the applicable relocation fee for Edison forces to do the work or notify Edison that LICENSEE will do the relocation work. If LICENSEE elects not to have Edison do the relocation work, or if Edison does not offer to do the work, LICENSEE shall within thirty days after the replacement pole becomes available to LICENSEE have the facilities relocated to the replacement pole. LICENSEE's license for use of the existing pole shall terminate: when its facilities are transferred if the transfer work is to be done by Edison; or when its facilities are transferred or thirty days after the replacement pole is made available to LICENSEE, whichever is earlier, if LICENSEE is to do the work itself or fails to respond within the time specified to Edison's offer to do the relocation work. Edison will issue a new license for use of the replacement pole when the facilities are transferred.

(c) No Pole Replacement. In the event Edison plans to discontinue a pole on which LICENSEE's facilities

are installed without installing a replacement pole, it will give LICENSEE notice of such intent. Within thirty days after receipt of such notice LICENSEE shall, at its option, remove its facilities from the pole to be discontinued or purchase the discontinued pole from Edison for its depreciated book cost. LICENSEE's license for use of the pole shall terminate upon removal of LICENSEE's facilities or thirty days after receipt of Edison's notice, whichever comes first.

(d) Inapplicable Provisions. Sections 301 to 306 of the Agreement shall not apply to discontinuance or replacement of poles.

204. Rights Limited. Some utility poles in the Franchise Area have been installed pursuant to easements obtained from private property owners rather than under Edison's franchise rights. The easements may or may not permit LICENSEE attachments.

205. Assignment of Rights. To the extent permitted by the easements, Edison hereby assigns to LICENSEE on a nonexclusive basis, whatever rights it has under the easements to erect and maintain communications facilities.

206. No Obligation or Warranty. The assignment under Section 205 and any license granted by Edison are and shall be without warranty. LICENSEE shall be responsible for determining the extent of the rights granted and for obtaining at its sole expense any additional consents, easements, franchises or other rights.

### ARTICLE III

#### Make Ready Work and Licensing

301. Written Application Required. No attachments of any nature shall be placed upon any pole by LICENSEE unless written application for a license shall have been made and granted. The application shall specify the location of the specific pole to which it is sought to make attachment. All plans or specifications describing the proposed attachments shall be in such detail as Edison may reasonably require for the purpose of determining the safety and propriety of the attachment and shall indicate compliance with the National Electric Safety Code ("NESC").

302. Feasibility Study and Joint Inspection. Upon receipt of the written application, Edison shall study the

feasibility of the proposed installation. Edison's study may include, among other things, surveys, physical inspections and technical and other engineering work. There shall also be a joint field inspection by Edison and LICENSEE. Whether or not the attachment is ultimately made, LICENSEE shall reimburse Edison for the cost of the study and the inspection.

303. (a) Make Ready Work. If Edison shall determine that the pole is available, it shall undertake to perform any work (hereinafter "Make Ready Work") required to make room for LICENSEE attachments. Make Ready Work shall include, but not be limited to, reinforcement, adjustment, reconstruction, anchoring, guying, protection, inspections during construction, and a subsequent inspection of LICENSEE construction work ("Post-Construction Survey"), but shall exclude the pro rata cost of any work required to bring Edison's facilities up to its own specifications.

(b) Payment in Advance. Charges for Make Ready Work shall be billed in advance, together with the cost of the study and inspection under Section 302, and shall be payable in 30 days. Payments must be made prior to the commencement of work. Unless otherwise directed by the Public Service Commission ("PSC"), charges for Make Ready Work shall be in accordance with a schedule of unit costs filed with and approved by the PSC and made part of this Agreement, except that the charges for feasibility studies and joint inspections shall be based upon costs actually incurred.

(c) Contracting of Make Ready Work. Edison has no present plans to employ any outside contractor to perform Make Ready Work. However, if Edison should do so, LICENSEE shall pay an amount equal to the contractor's fees plus a premium of 10% in lieu of Edison's unit costs. Any contract shall be awarded in accordance with Edison's usual practices and in consultation with LICENSEE. Edison shall make available copies of all written contracts and work orders pertinent to Make Ready Work performed by the contractor.

(d) Statement of Make Ready Work. Edison shall submit to LICENSEE a statement describing Make Ready Work, which shall specify the person to perform the Make Ready Work and the cost, valid for 60 days. The estimated cost of any pole replacement necessary to accommodate LICENSEE facilities shall include the cost of rearranging Edison's facilities, the installed cost of the new pole and any removal costs. The cost shall be reduced by the percentage depreciation applicable to the removed pole, less its salvage value.

(e) Billing Disputes. Edison shall review the statement of Make Ready Work with LICENSEE if requested. If the parties disagree about the reasonableness of any estimated cost, either party may request mediation by the Staff of the Department of Public Service, with the understanding that the Staff may refer the dispute to the PSC for resolution. The cost agreed on by the parties or ordered by the PSC shall be valid for thirty days after the date of the agreement or PSC order.

(f) Cost Changes. The cost of Make Ready Work shall reflect unit costs expected to be in effect at the time the work will be done. The cost may be adjusted, after the fact, to reflect any unforeseen overtime costs made necessary by LICENSEE's construction schedule. The provisions of Subdivision (e) of this Section 303 shall apply also to any such cost adjustments.

304. Decision to Attach; Payment. If LICENSEE decides not to proceed with a proposed attachment, it shall so notify Edison in writing and the application relating thereto shall be deemed canceled. If LICENSEE decides to proceed with a proposed attachment, it shall so notify Edison in writing within 30 days of the submission of the statement of Make Ready Work. Payments under Section 303(b) must accompany such written notices. Failure so to notify Edison shall be deemed equivalent to a notice not to proceed.

305. Performance of Make Ready Work. Edison shall then perform its portion of the Make Ready Work, provided that Edison's work will not be performed at any time or under any conditions that might interfere with the service requirements of Edison, BAC or prior licensees.

306. License; No Attachment Until After Make Ready Work. LICENSEE shall not attach until Edison notifies it that all Make Ready Work is complete and thereafter issues a license for the attachment. The license shall be in the form annexed to this agreement, but Edison may revise the form from time to time.

307. Costs. "Costs", as the term is used in this Agreement, shall include the costs of all materials, supplies, engineering, labor (including normal overtime), supervision, taxes, overhead (including appropriate loadings for such items as relief and pension accruals, social security taxes, vacations, holidays, sickness and workers' compensation) and any other items associated with the work that are chargeable to Edison's accounts under the uniform system of accounts prescribed by the PSC.



308. Multiple Licensees. If a licensee already on the pole incurs Make Ready Work costs in order to provide space for a subsequent licensee, the prior licensee shall also be reimbursed by the subsequent licensee for its costs, excluding the pro rata cost of any work required to bring the prior licensee's facilities up to specifications.

#### ARTICLE IV

##### Pole Attachment Rentals

401. Pole Attachment Rental Fee. LICENSEE shall pay to Edison, for each licensed attachment to an Edison owned pole, a rental at the rate currently applicable under the rules of the PSC. Any filing with the PSC, proposing rate changes, shall be on such notice to LICENSEE as is required by the PSC. The rental shall be payable in semiannual advance installments, January 1 and July 1 of each year this Agreement remains in effect, and billed the immediately preceding December 15 and June 15, respectively. Rentals shall be prorated whenever this is made necessary by the effective date of a change in rate.

402. First Payment. To the first payment of rental for any attachment there shall be added a pro rata amount for the portion of the half-year remaining after issuance of the license.

403. Rental Effective Date. Unless Edison receives reasonable notice to cancel a license, rentals shall accrue as provided in Sections 401 and 402 whether or not LICENSEE actually places its facilities on the pole or poles for which rental is charged.

404. Post-Construction Surveys. In addition to the initial Post-Construction Survey provided for in Section 303(a), Edison may perform subsequent Post-Construction Surveys, chargeable to LICENSEE at intervals consistent with PSC rulings. The charges for any additional Post-Construction Survey shall be at rates in accordance with the prescriptions of the PSC.

405. Charges for Unlicensed Attachments. For each unlicensed LICENSEE attachment discovered on an Edison owned pole, Edison shall charge LICENSEE an amount equal to the lesser of five (5) years rental or the rental for such period of time as may represent the lesser of (a) the time since the last Post-Construction Survey or (b) the then total of LICENSEE and its assignors' or predecessors', years of operation in the Franchise Area at the rate current at

the time of discovery. The discovery of unlicensed attachments at a ratio of one or more to every 70 authorized attachments shall justify an increase in the frequency of Post-Construction Surveys as provided in Section 404.

406. "Unlicensed Attachment" Defined. As used in this Agreement, the term "unlicensed attachment" means an attachment for which a license has not been obtained or for which the license has been cancelled, but does not include any licensed attachment mistakenly put on the wrong pole. A refund shall be paid to LICENSEE for any double billing due to the erroneous double licensing of an attachment.

407. Arrears. If rentals or other charges have not been paid within 30 days of bill mailing, late payment charges pursuant to Edison's electric rate schedule (PSC No. 8) may be assessed on the arrears. Edison may suspend work under this Agreement whenever arrears occur, resuming only after the arrears and late payment charges have been paid.

## ARTICLE V

### Compliance with Law; Maintenance of Facilities

501. (a) Warranty of Franchise. LICENSEE represents that, before making any attachments, it shall obtain all appropriate governmental authority to do business and to erect and maintain its facilities in public highways.

(b) Rights to Program Material. If LICENSEE is a cable television operator, LICENSEE represents that it shall secure, prior to making attachments, any consents, permissions or licenses that may be legally required by any television broadcasting company or others by reason of LICENSEE pickup, transmission and furnishing of program material to its customers, or by reason of other operations of LICENSEE hereunder.

502. Compliance with NESC Codes and Agency Orders. LICENSEE at its own cost, shall construct and maintain its attachments on the poles in accordance with the requirements of the latest edition of the NESC and any amendments or revisions of that code, and in compliance with any rules or orders now in effect or hereafter issued by the PSC, or other authority having jurisdiction.

503. Compliance with Edison Specifications. LICENSEE attachments shall be constructed in accordance with

Edison Specifications EO14060B and EO16286C, as they may be revised from time to time by Edison.

504. Construction Period: Reports and Correction of Substandard Work. During construction of its facilities, LICENSEE shall report periodically to Edison on the exact locations where its plant has been and is being installed. Upon notice from Edison, LICENSEE shall correct any of its substandard installations on a new line within 60 days.

505. Post-Construction Period: Maintenance. LICENSEE shall, at its own cost and expense, maintain all of its attachments in safe condition and in thorough repair and shall, upon notification by Edison, correct any substandard conditions within 60 days. All tree trimming necessitated by the facilities of LICENSEE shall be done by it at its sole cost.

506. Protection of Facilities. The parties shall exercise special precautions to avoid damage to each other's facilities or those of BAC or other licensees, and each hereby assumes full responsibility for any and all loss from such damage, caused by the acts, omissions or facilities of its agents. Each shall make an immediate report to the other of the occurrence of any damage and shall reimburse the appropriate owner of facilities for any expenses incurred in making repairs.

507. Changes in LICENSEE Attachments. LICENSEE shall not make additions to, or changes in the location of, its attachments without the prior written consent of Edison, except in the case of emergency or due to the requirement to continue service to the public. In such cases, work shall be performed in conformity with Sections 502 and 503, and Edison shall be notified immediately.

508. Inspections; No effect on Liability. Edison may inspect LICENSEE plant, as conditions may warrant, and as provided in Sections 404 and 405. The inspections shall not relieve LICENSEE of any obligation or liability under this Agreement.

509. No Liability for Interruption. Neither Edison nor BAC shall be liable to LICENSEE or to LICENSEE's customers (and LICENSEE hereby indemnifies, protects and saves harmless Edison and BAC against any such claim by LICENSEE's customers) for any interruption to LICENSEE's service or for interference with the operation of LICENSEE's facilities, from any cause, or for any other damage suffered by LICENSEE or its customers, whether or not the interruption, interference or damage is caused by the

negligence or misconduct of Edison, BAC or their agents. LICENSEE waives any claim for consequential damages or lost profits.

510. Existing Attachments. If LICENSEE maintains any existing attachments on the poles covered by this Agreement, it shall reconstruct, adjust or replace all such attachments in conformity with the technical standards and specifications set forth in this Article V and, as soon as practicable, shall ensure that all existing plant shall conform to such standards. LICENSEE further agrees that applications for permission to maintain any existing attachments, not previously licensed by Edison, shall be made forthwith in accordance with the terms and conditions of this Article and Article III.

#### ARTICLE VI

##### Term of Agreement, Cancellation, Relocation and Revocation

601. Ten Year Term. Unless previously terminated pursuant to its terms, this Agreement shall continue in effect for a term of ten years and shall remain in effect thereafter unless it shall have been terminated on 90 days' written notice.

602. Termination For Inactivity. If no license is applied for within one year of today or no license is issued within two years of today, then Edison shall have the option of terminating this Agreement, effective 30 days after mailing of notice.

603. Right to Give Up License. LICENSEE may give up any license by removing the attachment upon ten days' notice. Rental for the attachment shall be prorated for the half-year period in which the notice is given.

604. Termination for Unlawful Act. Notwithstanding the provisions of Section 601, this Agreement shall be subject to termination by Edison upon 90 days' written notice, upon any final regulatory or judicial determination that LICENSEE's facilities have been used in violation of any law or in aid of any unlawful act.

605. (a) Costs of Modifications to LICENSEE's Facilities. If Edison shall determine after the granting of any license (or, in the case of a hazardous condition, at any time after the granting of the license), that the service needs of Edison, BAC or any licensee or any hazardous or improper condition require the rearrangement or

transfer to a replacement pole of LICENSEE's plant, LICENSEE shall make such changes within 30 days after notice or within such shorter period as may be feasible in the case of any hazardous condition. LICENSEE shall not be required to bear any of the costs of rearranging or transferring its facilities if such rearrangement or transfer is required as a result of an additional attachment or the modification of an existing attachment(s) sought by Edison, BAC or any other licensee. Any rearrangement or transfer costs resulting from an additional attachment or the modification of an existing attachment(s) sought by Edison, BAC or any other licensee shall be the responsibility of the entity or entities requesting the rearrangement or transfer. LICENSEE shall be solely responsible for collecting any rearrangement/modification costs incurred pursuant to this paragraph. Edison's responsibility shall be limited to reimbursement of its pro rata share of such costs caused by its own additional attachment or modification to the pole. However, Edison shall, upon receipt of written request, provide LICENSEE with any information in Edison's possession that may facilitate LICENSEE's collection of such costs.

(b) Acts of God. LICENSEE is responsible for the timely repair, relocation or replacement of its own facilities when such work is required as the result of circumstances beyond anyone's control, including but not limited to storms, vehicular accidents, or public work projects.

606. Noncompliance. If LICENSEE fails strictly to comply with any lawful request made by Edison under this Article VI, Edison shall have the option, on 30 days' written demand for compliance (or, in the case of a hazardous situation, on such shorter notice as seems practical to Edison in the circumstances), to cancel LICENSEE's license for any attachment affected by LICENSEE's failure to comply.

607. Forbidden Installation. Upon a final regulatory or judicial determination that LICENSEE's use of any particular pole is forbidden, the license to attach to the pole shall immediately be cancelled, and LICENSEE shall remove its attachments immediately.

## ARTICLE VII

### Liability and Insurance

701. Indemnity. LICENSEE hereby indemnifies, protects and saves harmless Edison and BAC from and against

any and all loss, liability, damages and expense arising out of any demand, claim, suit or judgment for damages to property or injury to or death of persons, including the officers, agents, and employees of either party hereto and of BAC, including payment under the Workers' Compensation Law or under any plan for employees' disability and death benefits, which arises out of this agreement, LICENSEE'S use of the pole, the right of way, and related equipment or arises out of the erection, maintenance, transfer, presence, use or removal of LICENSEE's attachments or out of the proximity of the cables, wires, apparatus and appliances of LICENSEE to those of Edison or of BAC, or arises out of any act or omission of LICENSEE, Edison or BAC including any claims and demands of customers of LICENSEE or others, and irrespective of any fault, failure, negligence or alleged negligence on the part of Edison or of BAC.

702. (a) Insurance: Named Insureds. LICENSEE shall carry general liability insurance at its sole cost and expense to protect the parties hereto and BAC, by naming each as an additional insured, in respect of LICENSEE's liability for indemnification under Sections 506, 509 and 701 and to protect the parties hereto and BAC in respect to any other claim for bodily injury or property damage including injury to any of the parties' employees which arises out of this agreement, LICENSEE'S use of the pole, the right of way, and related equipment or arises out of the erection, maintenance, presence, use or removal of LICENSEE's attachments or out of the proximity of the cables, wires, apparatus and appliances of LICENSEE to those of Edison or of BAC, or arises out of any act or omission of LICENSEE, Edison or BAC including any claims and demands of customers of LICENSEE or others and irrespective of any fault, failure, negligence or alleged negligence on the part of Edison or of BAC.

(b) Insurance: Coverages. The amount of the insurance shall be, as to property damage, no less than \$5,000,000 per occurrence primary coverage or primary plus excess coverage, and as to personal injury or death, no less than \$5,000,000 per person injured or killed primary coverage or primary plus excess coverage.

(c) Insurance: Term. The insurance shall remain in force for the life of this Agreement and shall be with a company or companies satisfactory to Edison. Edison's approval shall not be unreasonably withheld. A copy of the policy will be provided at Edison's request.

(d) Insurance: Cancellation and Evidence. The insurance shall provide that policies may not be canceled or