

**FORM OF
ASSET PURCHASE AGREEMENT**

dated [_____], 201_

By and Between

Oklahoma Gas and Electric Company

and

[_____]

**APPROXIMATELY [__] MW NAMEPLATE RATED [_____]
POWERED GENERATION FACILITY
[_____] , [_____]**

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) made and entered into this [] day of [], 201_ (the “Effective Date”) by and between Oklahoma Gas and Electric Company, an Oklahoma corporation (“Purchaser”), and [], a [] (“Seller”). Each of Seller and Purchaser may be referred to herein as a “Party” and collectively as the “Parties.”

Recitals:

A. Seller owns or otherwise has rights to use that approximately [] MW nameplate rated [] powered generation facility and equipment located near [], [], in [] County (collectively, the “Facility”).

B. Seller desires to sell the Facility and the assets and properties relating to the Facility hereinafter described as Purchased Assets and Purchaser desires to acquire the Purchased Assets, on the terms and subject to the conditions hereinafter set forth.

Now, therefore, in consideration of the covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

ARTICLE I

Definitions

1.01 Definitions. The following terms shall have the meanings set forth below unless otherwise expressly provided or unless the context clearly requires otherwise:

“Adjustment Estimate” means that amount, which may be a positive or a negative number, determined by subtracting the Target Net Working Capital from the Estimated Closing Date Net Working Capital.

“Affiliate” means with respect to any Person, any entity which directly or indirectly (a) controls such Person, (b) is controlled by such Person, or (c) is under common control with such Person. For purposes of this definition, “control” means the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the first paragraph hereof.

“Antitrust Law” means the HSR Act, the Sherman Act, the Clayton Act, the Federal Trade Commission Act, and any other Law that has the purpose or effect of restricting actions that could lead to monopolization, market power, restraint of trade, or unfair competition.

“Assumed Liabilities” has the meaning set forth in Section 2.03(b).

“Assumed Permits” has the meaning set forth in clause (ix) of the definition of “Purchased Assets.”

“Assumption Agreement and Bill of Sale” has the meaning set forth in Section 3.03(d) hereof.

“Benefit Plan” has the meaning set forth in Section 7.13(b).

“Books and Records” means all books, files, papers, agreements, contracts (including the Purchased Contracts), correspondence, databases, information systems, programs, software, documents, records, customer and supplier lists, price lists and documentation thereof related to the Facility or the Purchased Assets, in each case, in all formats in which they are reasonably and practically available, including original and electronic versions, where applicable, in each case, in the possession or control of Seller or any of its Affiliates to the extent relating to the Facility or the Purchased Assets.

“Burdensome Condition” means any requirement, term, obligation, condition or other measure imposed on Purchaser, its Affiliates, the Facility or any of the Purchased Assets by a Governmental Authority in connection with the Purchaser Governmental Approvals that, individually or in the aggregate with all other such requirements, terms, obligations, conditions or other measures, (a) requires Purchaser to sell or divest any of the Purchased Assets or other assets or businesses of Purchaser or any of its Affiliates, (b) would reasonably be expected to be materially adverse to Purchaser’s ability to own, use, operate or maintain the Facility or other assets or businesses of Purchaser or any of its Affiliates, including with respect to cost, (c) would prohibit or limit the ownership, use, operation, or maintenance of any portion of the Facility or other assets or businesses of Purchaser or its Affiliates or (d) is unacceptable to Purchaser in its sole discretion.

“Business Day” means any day, other than Saturday, Sunday or any other day on which commercial banks located in the State of Oklahoma are required by applicable Law to be closed.

“Casualty Loss” has the meaning set forth in Section 5.04(a).

“Closing” has the meaning set forth in Section 3.01.

“Closing Date” has the meaning set forth in Section 3.01.

“Closing Date Net Working Capital” means the Net Working Capital as of the Closing Date.

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Condemnation” has the meaning set forth in Section 5.04(b).

“Condemnation Value” has the meaning set forth in Section 5.04(b).

“Cure Period” has the meaning set forth in Section 6.01(c).

“Date of the Notice of Claim” has the meaning set forth in Section 12.05(c).

“Disclosure Schedules” means the disclosure schedules attached to this Agreement.

“DOJ” means the United States Department of Justice.

“Due Diligence Materials” means those due diligence materials relating to the Facility and made available to Purchaser in the virtual data room for the Facility.

“Effective Date” means the date first set forth in the Preamble.

“Effective Time” means 9:00 a.m. local time at the Facility on the Closing Date.

“Environmental Laws” means any federal, state, local, or foreign law, statute, common law, ordinance, rule, regulation, code, treaty or international agreement having the force of law, license, Permits, authorization, approval, consent, judicial or administrative order, judgment, decree, directive, injunction, requirement, or agreement with any Governmental Authority relating to (a) the pollution, protection, preservation, or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, structures, plant and animal life, or any other natural resource), (b) human health or safety, or (c) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, distribution, disposal, release, or threatened release, of Hazardous Substances (including releases to ambient air, surface water, groundwater, land, surface and subsurface strata), including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 2629; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; and any similar state or federal law.

“ERISA” has the meaning set forth in Section 7.13(b).

“Estimated Closing Date Net Working Capital” has the meaning set forth in Section 2.06(a).

“Facility” has the meaning set forth in the Recitals hereto.

“Facility Employees” has the meaning set forth in Section 7.13(c).

“FERC” means the Federal Energy Regulatory Commission.

“FERC Regulatory Filing” has the meaning set forth in Section 4.04(a).

“Final Adjustment” has the meaning set forth in Section 2.06(d).

“FIRPTA Affidavit” has the meaning set forth in Section 3.02(e).

“FTC” means the Federal Trade Commission.

“GAAP” means accounting principles generally accepted as in effect from time to time in the United States of America consistently applied.

“Governmental Approval” means a Seller Governmental Approval or a Purchaser Governmental Approval, as the case may be.

“Governmental Authority” means the government of the United States or any foreign country or any state or political subdivision thereof, any tribal authority and any department, commission, agency, bureau, entity, body or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any quasi-governmental entities established to perform such functions.

“Hazardous Substances” means any substance presently listed, defined, designated, or classified as a contaminant, hazardous substance, toxic substance, hazardous waste or special waste, or that is otherwise regulated under any Environmental Law, including petroleum products, asbestos, urea formaldehyde foam insulation, and lead-containing paints or coatings.

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

“Indemnified Party” has the meaning set forth in Section 12.04.

“Indemnifying Party” has the meaning set forth in Section 12.04.

“Independent Accountant” has the meaning set forth in Section 2.06(c).

“Information” has the meaning set forth in Section 13.01.

“Interim Period” means the period commencing on the Effective Date and ending on the Closing Date.

“Inventory” has the meaning set forth in clause (ii) of the definition of Purchased Assets.

“IRS” means the Internal Revenue Service.

“Law” means any statute, law, ordinance, executive order, rule, or regulation (including a regulation that has been formally promulgated in a rule making proceeding but,

pending final adoption, is in proposed or temporary form having force of law); notice having force of law; or judgment, order, decree, injunction, or writ of any Governmental Authority, as in effect from time to time.

“Liability” means, with respect to any Person, any liability, indebtedness or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, due or to become due.

“Lien” means any mortgage, lien (except for any lien for Taxes not yet due and payable), charge, restriction, pledge, security interest, option, lease or sublease, collateral assignment, mineral interest, easement, encroachment or other encumbrance.

“Material Adverse Effect” means any change in, or effect on, the Purchased Assets related to the Facility or on the ownership or operation of such that is materially adverse to the Purchased Assets, taken as a whole, as currently conducted by Seller, other than changes or effects caused by or resulting from (a) conditions affecting the electric generation, transmission or distribution industries, whether national, regional or local, (b) United States or global economic conditions or financial markets generally, (c) any change in GAAP or change of Law, including changes in regulatory policy, including, without limitation, relating to climate change, renewables or the environment, and (d) the announcement of the transactions contemplated by this Agreement or the consummation of the transactions contemplated hereby or the announcement of any of the aforementioned, including but not limited to any decrease in customer demand, any reduction in revenues, any disruption in supplier or similar relationships, or any loss of employees.

“Net Working Capital” means (without duplication), with respect to Seller, the amount (expressed as a positive or negative number) calculated as of the Closing Date equal to the difference of: (a) the sum of (1) deposits and advances, prepaid expenses and other prepaid items, in each case that are Purchased Assets and (2) the value of the fuel inventory, including back-up fuels used by the Facility (determined in the same manner such fuel inventory is accounted for by Seller), and (b) the sum of (1) third-party accounts payable and (2) current accrued expenses, in each case of (a) and (b), in accordance with GAAP and Schedule 1.1A.

“Notice of Claim” has the meaning set forth in Section 12.04.

“Objection Notice” has the meaning set forth in Section 6.01(c).

“Order” means any order, writ, injunction, judgment, decree, ruling, assessment, settlement, stipulation, determination or arbitration award of any Governmental Authority or arbitrator.

“Outside Date” has the meaning set forth in Section 11.01(b).

“Parent Guaranty” means that certain Guaranty to be dated as of the Effective Date executed by [_____] in favor of Purchaser, attached hereto as Exhibit B.

“Permits” means permits, consents, licenses, franchises, certificates, authorizations, registrations, or waivers, extensions, renewals, or variances relating thereto, in each case issued by any Governmental Authority.

“Permitted Exceptions” means, with respect to the Purchased Assets, the following:

(a) all liens for Taxes, assessments, both general and special, and other governmental charges which are not due and payable as of the Closing Date or which are being contested in good faith;

(b) mechanic’s, materialmen’s, workmen’s, repairmen’s and other liens arising in the ordinary course with respect to any amounts not yet due and payable or which are being contested in good faith;

(c) purchase money liens and liens securing rental payments under capital lease arrangements;

(d) such imperfections of title, easements, encumbrances, restrictions or other liens in respect of real property or other assets that would not reasonably be expected to impair the current use of such real property or the Purchased Assets; and

(e) liens and other encumbrances disclosed on Schedule 1.01D.

“Permitted Real Estate Exceptions” has the meaning set forth in Section 6.01(a).

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, trust, association or unincorporated entity of any kind and any Governmental Authority or instrumentality.

“Phase I Environmental Site Assessment” has the meaning set forth in Section 5.05.

“Properties” has the meaning set forth in clause (iii) of definition of Purchased Assets.

“Proration Period” has the meaning set forth in Section 2.06(e).

“PSC” means the Oklahoma Corporation Commission and the Arkansas Public Service Commission, or any successor agency to either.

“PSC Approval” means a final, non-appealable order from each PSC approving the transactions contemplated by this Agreement.

“PSC Regulatory Filing” has the meaning set forth in Section 4.05(a).

“Purchase Price” has the meaning set forth in Section 2.02.

“Purchased Assets” means Seller’s rights, title and interest in and to (or the rights to use) the Facility and the following described assets, rights and properties owned by Seller or in which Seller has an interest as of the date hereof or may prior to the Closing Date acquire an interest, and used principally in connection with, or necessary for the use, ownership, operation, maintenance, leasing or licensing of the Facility, except for the Retained Assets, in each case, subject to any Permitted Exceptions:

(i) the deposits and advances, prepaid expenses and other prepaid items of Seller under any of the Purchased Contracts;

(ii) except as otherwise set forth on Schedule I, (A) Seller’s rights, title and interest in and to (1) all inventories (including inventories of raw materials, work-in-progress and finished goods), (2) the tangible assets, machinery and equipment (including the metering equipment located on that portion designated as property of “_____” on the single-line diagram attached hereto as Exhibit A, turbine generator units, [] fuel conditioning facility, transformers and other electrical switchgear, pumps, piping and fittings), tools, dies, molds and spare parts as set forth on Schedule IA, and (3) vehicles, transportation equipment, furniture and office equipment, construction-in-progress, computer hardware and computer software, in each case of (1) through (3) located at the Facility or otherwise held or used exclusively in the ownership, operation, maintenance or repair of the Properties, the Facility or the items set forth herein or in the pursuit of transactions under the Purchased Contracts, (B) lubricants, chemicals, fluids, and oils owned by Seller located on the Properties or otherwise held or used exclusively in the ownership, operation, maintenance or repair of the Properties, the Facility or the items set forth in (A) above or in the pursuit of transactions under the Purchased Contracts (“Inventory”);¹

(iii) (A) Seller’s rights, title and interest in and to the real properties (including easements, rights-of-way and water rights) described in Schedule II (“Real Property”) together with all buildings, other improvements, fixtures and appurtenances, and all other rights, privileges and entitlements thereunto belonging or appertaining, including those that may be discovered by a title search prior to Closing, and (B) Seller’s right, title, and interest in and to the real property, buildings, improvements, fixtures, appurtenances, personal property, and all other rights, privileges and entitlements under those leases described in Schedule III (together with the Real Property, the “Properties”);

(iv) Seller’s rights, title and interest in and under the Purchased Contracts and any claims thereunder;

(v) Seller’s right, title and interest in and to the following intellectual property to the extent related to the Purchased Assets and to the extent transferable: copyrights, copyright registrations, copyright applications; patent rights (including issued patents, applications, divisions, continuations and continuations-in-part, reissues, patents of addition, utility models and inventors’ certificates); trade secrets, proprietary manufacturing information and inventions, drawings and designs; customer and vendor

¹ **Note to Draft:** List of Inventory to be refined based on Facility type.

lists, the goodwill associated with any of the foregoing and the rights of Seller as licensee under licenses with respect to any of the foregoing;

(vi) all claims and rights of action, including warranties, indemnification and other rights, if any, as of the Effective Time from third Persons (and claims thereunder) which relate specifically to any of the Purchased Assets and which are transferable to Purchaser (less, if applicable, any costs incurred by Seller or any of its Affiliates before the Effective Time in reasonable expectation of reimbursement or other coverage under any such rights, claims or warranties);

(vii) the right of Seller to receive, to the extent transferable, Tax exemptions, Tax credits, Tax reductions, Tax rebates, or other amounts from a Governmental Authority with respect to the Purchased Assets, and all pending applications therefor, that, in each case, are attributable to the ownership or operation of the Purchased Assets after Closing;

(viii) rights to insurance proceeds not received before the Effective Time relating to any insured loss of the Purchased Assets incurred before the Effective Time, less any costs incurred by Seller or any of its Affiliates before the Effective Time in the investigation or repair of damage from any such loss;

(ix) any Permits of Seller relating to the Purchased Assets, and all pending applications for the issuance or renewal of any of the same, to the extent any of the same are transferable or assignable to Purchaser (collectively, the “Assumed Permits”);

(x) all existing allowances for oxides of nitrogen (NOx) and sulfur (SOx), and all pending applications therefor, relating to the Facility to the extent any of the same are transferable or assignable to Purchaser;

(xi) all Books and Records; and

(xii) at least one copy (in its existing hard copy or electronic form) of each of the following: the operating and maintenance records; maintenance plans and schedules; operating, safety and maintenance manuals; engineering design plans and specifications; construction records as to what was built and where it was built; blueprints and as-built drawings; procedures; environmental data and reports; governmental filings; and inspection and test reports, all as related to the Facility or concerning the Purchased Assets, whether or not exclusively related, that are in Seller’s possession (subject to the right of Seller to redact information in such records that is not related to the Facility and the Purchased Assets and to retain archival copies). This is not to include third party proprietary items for which consent to transfer cannot be obtained as listed on Schedule IV and accounting records of Seller.

“Purchased Contracts” means those contracts described on Schedule 7.06(a) hereto.

“Purchaser” has the meaning set forth in the first paragraph hereof.

“Purchaser Governmental Approval” means (a) the expiration or early termination of the waiting period required by the HSR Act, (b) the approval of FERC under Section 203 of the Federal Power Act, (c) the PSC Approval, and (d) such other consents, approvals, filings, notices, authorizations and other actions disclosed in Schedule 8.03.

“Purchaser’s Determination” has the meaning set forth in Section 2.06(b)

“Real Property” has the meaning set forth in clause (iii) of the definition of “Purchased Assets.”

“Restoration Cost” has the meaning set forth in Section 5.04(a).

“Retained Assets” means the following described assets, rights and properties of Seller:

(i) all deposits (other than those that are Purchased Assets), cash and cash equivalents, including bank overdrafts and marketable securities;

(ii) any accounts receivable or intercompany obligations owed to Seller by any Affiliate of Seller other than those under any Purchased Contract;

(iii) all insurance policies of Seller or acquired or assumed by Seller prior to the Closing Date pertaining to the Facility and (except for claims described in and subject to clause (viii) of the definition of Purchased Assets) all rights of Seller of every nature and description under or arising out of such insurance policies;

(iv) all rights to use the name “[]”, “[]”, “[]” and all derivatives thereof;

(v) claims for refunds of Taxes paid by Seller (except for items described in clause (vii) of the definition of Purchased Assets);

(vi) all past, present and future claims, causes of action, choses in action, rights of recovery and rights of set-off of any kind, except to the extent (A) related to or arising under the Purchased Contracts after the Closing or (B) otherwise exclusively related to the Facility arising from and after Closing or (C) otherwise included in the definition of Purchased Assets or (D) (without duplication) but only to the extent, such claims or causes of action offset the liabilities assumed by Purchaser pursuant to this Agreement for the period after the Closing;

(vii) any rights, interest or assets not included in the Purchased Assets;

(viii) all rights of Seller under this Agreement and the agreements and instruments delivered to Seller by Purchaser pursuant to this Agreement;

(ix) Seller’s corporate seal, minute books and stock record books, the general ledgers and books of original entry and, except with respect to ad valorem taxes, all Tax returns and other Tax records, reports, data, files and documents;

- (x) the Retained Contracts; and
- (xi) the other assets listed on Schedule V.

“Retained Contracts” means those contracts described on Schedule 7.06(a)(ii) or otherwise contracts that are not Purchased Contracts.

“Retained Liabilities” has the meaning set forth in Section 2.03(b).

“Sales Tax” means any sales, use, value added, excise, and other similar Tax, if any, together with all recording or filing fees, notarial fees, and other similar costs that may be imposed upon, or payable, collectible, or incurred in connection with or as a result of the transfer of the Purchased Assets to Purchaser.

“Seller” has the meaning set forth in the first paragraph hereof.

“Seller Governmental Approval” means (a) the expiration or early termination of the waiting period required by the HSR Act and (b) the approval of FERC under Section 203 of the Federal Power Act.

“Seller Marks” has the meaning set forth in Section 14.04.

“Seller’s Federal Tax Owner” means [_____], a [_____].

“Standard Real Estate Documents” means the following as applicable to either Seller or Purchaser and any other documents reasonably required by the Title Company: (a) a transfer valuation affidavit;(b) an Owner’s Affidavit in the form required by the Title Company in order to issue the Title Policy; (c) a closing settlement statement prepared by Purchaser; and (d) a real estate transfer affidavit.

“Substation” means that electric power substation connected to the Facility, owned by Purchaser and located at or near the Facility.

“Supplemental Disclosure Schedule” has the meaning set forth in Section 14.05.

“Survey” shall have the meaning set forth in Section 6.01(b).

“Target Net Working Capital” means zero dollars (\$0).

“Tax” or “Taxes” means all federal, state, local, or foreign taxes, charges, fees, duties (including custom duties), levies or other assessments, including income, alternative or add-on, gross receipts, net proceeds, capital gains, real or personal ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, title, documentary, registration, fuel, excess profits, occupational, interest equalization, windfall profits, license, payroll, environmental (including Taxes under Code section 59A), capital stock, disability, severance, employee’s income withholding, other withholding unemployment and Social Security taxes, which are imposed by any Governmental Authority. “Taxes” shall include (a) any liability for the payment of any amounts described in

the preceding sentence as a result of being a member of an affiliated, consolidated, combined, or unitary group for any taxable period, provided such liability relates to the Purchased Assets or Seller's trade or business and (b) any and all interest, penalties, additions to tax, or additional amounts imposed in connection with or with respect to any amount described in this definition.

“Taxing Authority” means with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision, or any agency that grants or administers any exemption, abatement, rebate, or reduction of any Tax or any credit with respect thereto.

“Tax Proceeding” or “Tax Proceedings” has the meaning set forth in Section 5.08(e).

“Threshold” has the meaning set forth in Section 12.03(b).

“Title Company” means [_____].

“Title Policy” shall have the meaning set forth in Section 6.01(a).

“Title Policy Form” means a Title Policy issued by the Title Company in accordance with the Title Commitment, with the following features, endorsements, and coverages: (a) deletion of all so-called standard and/or general exceptions, including, without limitation, all mechanic's and construction lien exceptions, provided, however, taxes not yet due and payable and use of roads by the public may remain as standard and/or general exceptions; (b) containing all the endorsements listed on Exhibit D in the forms attached thereunder; and (c) providing title coverage over all other objections made by Purchaser in the Objection Notice to the extent required under Section 6.01(c).

“Transfer Taxes” means any transfer, real property transfer, goods and services, recordation, documentary, stamp duty, and conveyance Tax and other similar Tax, duty, fee or charge (other than Sales Taxes), together with all recording or filing fees, notarial fees, and other similar costs, as levied by any Taxing Authority in connection with or as a result of the transfer of the Purchased Assets to Purchaser.

1.02 Interpretation. Unless the context of this Agreement otherwise requires, (a) words of any gender shall be deemed to include each other gender, (b) words using the singular or plural number shall also include the plural or singular number, respectively, (c) references to “hereof”, “herein”, “hereby” and similar terms shall refer to this entire Agreement; (d) the words “include” and “including” mean “including without limitation”, (e) all references in this Agreement to Articles, Sections, Schedules and Exhibits shall mean and refer to Articles, Sections, Schedules and Exhibits of this Agreement, (f) all references to statutes and related regulations shall include all amendments of the same and any successor or replacement statutes and regulations prior to the date hereof, (g) references to any Person shall be deemed to mean and include the successors and permitted assigns of such Person (or, in the case of a Governmental Authority, Persons succeeding to the relevant functions of such Person), and (h) references to any agreement shall include a reference to all schedules, exhibits and other attachments thereto as such agreement and schedules, exhibits, and other attachments may be amended or supplemented from time to time.

1.03 Knowledge. As used herein the terms “knowledge” or “best knowledge” shall have the same meaning and shall mean the actual knowledge of [LIST SELLER KNOWLEDGE PARTIES] as it relates to Seller and [LIST PURCHASER KNOWLEDGE PARTIES] as it relates to Purchaser, in either case after due inquiry which shall include the inquiry of such Party’s employees and consultants who have material knowledge of the transactions contemplated by this Agreement.

ARTICLE II

Purchase and Sale, Purchase Price, Allocation and Other Related Matters

2.01 Purchase and Sale. Upon the terms and subject to the conditions of this Agreement, at the Closing Seller shall sell, assign, convey, transfer and deliver to Purchaser or its designees and Purchaser or such designees shall acquire from Seller the Purchased Assets.

2.02 Purchase Price. The aggregate purchase price (the “Purchase Price”) payable by Purchaser for the Purchased Assets shall be [_____] U.S. dollars (\$[_____]) *plus* or *minus*, as applicable, the Adjustment Estimate.

2.03 Assumed Liabilities; Retained Liabilities.

(a) Purchaser hereby agrees to assume on the Closing Date as of the Effective Time and discharge in accordance with their terms or as otherwise provided by this Agreement only those Liabilities of Seller related to the Purchased Assets (including the Purchased Contracts) arising and attributable to the period after the Effective Time, other than those Liabilities arising out of or attributable to any breach or other violation in connection therewith by Seller or incurred as a result of an act or omission of Seller in contravention of the provisions of this Agreement. Assumed Liabilities are limited to the items expressly described in this Section 2.03. The foregoing provisions of this Section 2.03 notwithstanding, Purchaser shall not be obligated to assume any Liability as to which Seller, its Affiliate, or the counterparty is in default on the Closing Date. The Liabilities to be assumed by Purchaser under this Agreement are referred to as the “Assumed Liabilities.”

(b) Purchaser shall not assume or be liable hereunder for any Liabilities of Seller or any other Person other than the Assumed Liabilities (such Liabilities, the “Retained Liabilities”). For the avoidance of doubt, Retained Liabilities shall include:

(i) all Liabilities of Seller that do not relate to the Purchased Assets;

(ii) all Liabilities arising out of or relating to the execution and delivery by Seller or any of its Affiliates of this Agreement and the consummation by Seller and such Affiliates of the transactions contemplated hereby, including any Liabilities of Seller for payments of fees and/or expenses to a broker or finder;

(iii) all Liabilities under Environmental Laws arising from or relating to the development, construction, use, ownership, operation, maintenance, leasing, or licensing of the Purchased Assets prior to the Closing, or caused by Seller or any of its Affiliates prior to the Closing;

- (iv) all Liabilities relating to any Retained Asset;
 - (v) all Liabilities (including any compromise or settlement of Claims) that relate to, or arise out of, Seller's or its Affiliates' ownership, leasing, licensing, operation, or maintenance of the Purchased Assets prior to the Closing;
 - (vi) all Liabilities related to any current or former employee of Seller or its Affiliates;
 - (vii) all Liabilities related to or arising under any Benefit Plan of Seller or its Affiliates;
 - (viii) all Taxes relating to the ownership of any of the Purchased Assets prior to the Closing; and
 - (ix) all Liabilities that relate to, or arise out of, directly or indirectly any breach prior to Closing by Seller of any Purchased Contract or Assumed Permit.
- (c) This Section 2.03 is not intended to and shall not benefit any Person other than Seller and Purchaser.
- (d) All of the Retained Liabilities shall remain and be the Liabilities of Seller, and Purchaser shall have no liability or responsibility for the Retained Liabilities. Seller covenants and agrees with Purchaser that it shall perform and discharge the Retained Liabilities. All of the Assumed Liabilities shall become, remain and be the debts, obligations and liabilities of Purchaser, and Seller shall have no liability or responsibility for the Assumed Liabilities.

2.04 Transfer Taxes. Purchaser and Seller shall share equally the cost of any Transfer Taxes. Accordingly, if a Party is required at Law to pay any such Transfer Taxes, the non-paying Party shall promptly, and within no more than five (5) Business Days, reimburse such paying Party for its portion of such amounts. Seller and Purchaser shall timely file their own Tax returns for any Transfer Tax as required by Law and shall notify the other Party when such filings have been made. Seller and Purchaser shall cooperate and consult with each other prior to filing returns for any Transfer Tax to ensure that all such returns are filed in a consistent manner. Seller and Purchaser shall reasonably cooperate in reducing or obtaining exemptions from the assessment of any Transfer Taxes.

2.05 Allocation of Purchase Price. The Parties agree that the Purchase Price, as adjusted pursuant to Section 2.06 shall be allocated among the Purchased Assets in accordance with Schedule 2.05. After the Closing, the Parties will make consistent use of the allocation specified in Schedule 2.05 for all Tax purposes and in all Tax returns, including those required by section 1060 of the Code. Purchaser agrees (A) to complete IRS Form 8594 consistently with such allocation within the later of (i) 45 days after the Closing Date and (ii) the completion of the proration for the Proration Periods referenced in last sentence of Section 2.06(e) below and (B) to furnish Seller with a copy of such form prepared in draft form, within a reasonable period before the filing due date of such form. The Form 8594 will be amended from time to time in accordance with Schedule 2.05. Except to the extent required by applicable Law, neither Seller

nor Purchaser shall file any Tax return or take a position with a Tax authority that is inconsistent with such allocation.

2.06 Prorations.

(a) At least five (5) Business Days prior to the Closing Date, Seller shall provide to Purchaser Seller's estimate of Closing Date Net Working Capital (the "Estimated Closing Date Net Working Capital"), including the calculation thereof. Such estimate shall be made by Seller in good faith and in accordance with GAAP and shall be based on information which shall be disclosed to Purchaser when the Adjustment Estimate is delivered.

(b) After the Closing Date, Seller and Purchaser shall cooperate and provide each other access to their respective books, records and employees as are reasonably requested in connection with the matters addressed in this Section 2.06. Within 60 days after the Closing Date, Purchaser shall determine the Closing Date Net Working Capital and shall provide Seller with written notice of such determination, along with reasonable supporting information and calculations (the "Purchaser's Determination").

(c) If Seller objects to Purchaser's Determination, then it shall provide Purchaser written notice thereof within thirty (30) days after receiving Purchaser's Determination; provided, that Seller and Purchaser shall be deemed to have agreed upon all items and amounts that are not disputed by Seller in such written notice. If the Parties are unable to agree on the Closing Date Net Working Capital within one hundred twenty (120) days after the Closing Date, the Parties shall refer such dispute to a firm of nationally recognized independent public accountants mutually acceptable to Purchaser and Seller (the "Independent Accountant"), which firm shall make a final and binding determination as to only those matters in dispute with respect to this Section 2.06(c) on a timely basis and promptly shall notify the Parties in writing of its resolution. The Independent Accountant shall not have the power to modify or amend any term or provision of this Agreement and the determination of the Independent Accountant, if not in accordance with the position of either Seller or Purchaser, shall not be in excess of the higher, nor less than the lower, of the amounts presented in Purchaser's Determination or in Seller's written disagreement of such calculation. The fees, expenses and costs of the Independent Accountant in connection with such determination shall be borne by Seller, on the one hand, and by Purchaser, on the other hand, based upon the percentage that the amount not awarded to such Party bears to the amount actually contested by such Party. If Seller does not object to Purchaser's Determination within the time period and in the manner set forth in the first sentence of this Section 2.06(c) or if Seller accepts Purchaser's Determination, the Closing Date Net Working Capital set forth in Purchaser's Determination shall become final and binding upon the Parties hereto for all purposes hereunder.

(d) If (i) the Closing Date Net Working Capital (as finally agreed upon between Purchaser and Seller or as finally determined by the Independent Accountants) minus (ii) the Estimated Closing Date Net Working Capital (such amount, which may be expressed as a positive or negative number, the "Final Adjustment") is greater than the Adjustment Estimate, then Purchaser shall pay Seller, within five (5) Business Days after such amounts are agreed or determined pursuant to Section 2.06(c), by wire transfer of immediately available funds to an account designated by Seller, the difference between the Final Adjustment and the amounts

related to such adjustments in the Adjustment Estimate and if the Final Adjustment is less than the Adjustment Estimate, then Seller shall pay Purchaser, within 5 Business Days after such amounts are agreed or determined pursuant to Section 2.06(c), by wire transfer of immediately available funds to an account designated by Purchaser, the difference between the Final Adjustment and the Adjustment Estimate.

(e) Seller shall promptly remit to Purchaser any payments earned during the period following the Closing and received by it after the Closing Date in connection with any of the Purchased Assets, and Purchaser shall promptly remit to Seller any payments received by it after the Closing Date in connection with any of the Retained Assets or earned during the period prior to the Closing in connection with the Purchased Assets (each such period a “Proration Period”).

ARTICLE III

Closing and Closing Date Deliveries

3.01 Closing. The term “Closing” as used herein shall refer to the actual conveyance, transfer, assignment and delivery of the Purchased Assets to Purchaser in exchange for the Purchase Price to Seller pursuant to Section 2.02 of this Agreement. The Closing shall take place at the offices of Jones Day, 51 Louisiana Ave., N.W., Washington, D.C. 20001, at 9:00 a.m. local time on the fifth business day following the date upon which all of the conditions precedent set forth in Articles IX and X of this Agreement (other than those that are to be satisfied at Closing) are satisfied or waived by the appropriate Party hereto, subject to Article XI of this Agreement, or at such other place and time or on such other date as is mutually agreed to in writing by Seller and Purchaser (“Closing Date”). The Closing shall be effective as of the Effective Time.

3.02 Closing Deliveries by Seller. At the Closing, Seller shall deliver to Purchaser:

(a) with respect to the Purchased Assets comprising of Real Property, a deed substantially in the form set forth as Exhibit D attached hereto for all Real Property (the “Deed”);

(b) with respect to the Purchased Assets related to the Facility other than Real Property, the Assumption Agreement and Bill of Sale substantially in the form attached hereto as Exhibit C;

(c) certified copies of minutes or unanimous written consents of the members and/or managers of Seller required to approve the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement;

(d) a certificate, dated the Closing Date, executed by the appropriate officers of Seller, required by Section 9.02 of this Agreement;

(e) a non-foreign affidavit dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Code §1445 stating that Seller (or the entity that is treated as the owner of its assets for federal

income tax purposes) is not a “foreign person” as defined in Code §1445 (the “FIRPTA Affidavit”);

(f) a certificate from the Secretary of State of Seller’s state of formation certifying as to Seller’s existence and good standing certificates of Seller to the extent provided under the laws of its state of formation and the states in which the Facility is located;

(g) the Books and Records; and

(h) a copy of the data room contents on CD.

The Books and Records shall be delivered to Purchaser’s offices in Oklahoma City, Oklahoma or to the Facility and shall include a general directory of contents and their location as reasonably requested by Purchaser.

3.03 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to Seller:

(a) a wire transfer of immediately available funds to such account or accounts as Seller shall designate prior to the Closing in an amount equal to the Purchase Price;

(b) the certificate, dated the Closing Date, executed by the appropriate officer of Purchaser, required by Section 10.02 of this Agreement;

(c) an assumption agreement executed by Purchaser or Purchaser’s designee reflecting the assumption of the liabilities set forth in Section 2.03(a) of this Agreement, in the form attached hereto as Exhibit C (the “Assumption Agreement and Bill of Sale”); and

(d) a certificate, from the Secretary of State of Purchaser’s state of formation and that of each of Purchaser’s designees certifying as to such entity’s existence and good standing of such entity to the extent provided under the laws of its state of formation and the states in which the Facility is located.

3.04 Cooperation. Subject to the provisions of Section 4.07, Seller and Purchaser shall, on request, on and after the Closing Date, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and/or instruments and doing any and all such other things as may be reasonably required by the parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement.

ARTICLE IV

Pre-Closing Filings

4.01 Government Approvals; Consents. Subject to the terms and conditions of this Agreement and applicable Law, prior to the Closing each Party shall, at its own expense, use its commercially reasonable efforts to take or cause to be taken all actions necessary, proper, or

advisable, and assist and cooperate with the other Party, to obtain all Governmental Approvals in the most expeditious manner practicable.

4.02 HSR and Other Filings. Without limitation of the foregoing, each Party undertakes and agrees to (i) file (and each Party agrees to cause any Person that may be deemed to be the ultimate parent entity or otherwise to control such Party to file, if such filing is required by applicable Law) within ten (10) business days following the date hereof, or a later date if agreed to by the Parties, a Notification and Report Form under the HSR Act with the FTC and the Antitrust Division of the DOJ (the filing fees payable in connection therewith to be paid by Purchaser); (ii) subject to the allocation of responsibility set forth in Section 4.04, file as soon as practicable, but in no event later than ten (10) business days, after the date hereof, any forms or reports required by FERC Regulatory Filing; (iii) prepare, as soon as practicable (but in no event more than ten (10) business days), all filings and other presentations or submissions in connection with obtaining all other consents, approvals, authorizations of any Governmental Authority, including those listed on Schedule 7.03(b) and Schedule 8.03; (iv) respond as promptly as practicable to any inquiries or requests received from any Governmental Authority for additional information or documentation; and (v) not extend any waiting period under the HSR Act or enter into any agreement with any Governmental Authority not to consummate the transactions contemplated hereby, except with the prior consent of the other Party.

4.03 Governmental Approvals Cooperation. Purchaser and Seller will each advise the other Party promptly of any material communication received by such Party from any Governmental Authority in connection with the transactions contemplated hereby, and of any understandings, undertakings or agreements (oral or written) such Party proposes to make or enter into with any Governmental Authority in connection with such transactions. Except for meetings between Purchaser and the PSC (in respect of which Purchaser may consult or include Seller in Purchaser's sole discretion), Purchaser and Seller will each consult with the other in advance of any material meetings with any Governmental Authority in connection with the transactions contemplated hereby and to the extent allowed by such Governmental Authority, not participate independently in any such meeting without first giving the other Party an opportunity to attend and participate in such meeting. Purchaser and Seller shall provide each other with advance opportunity to review and comment upon and consider in good faith the views of the other in connection with all written communications to or from any Governmental Authority, and promptly provide each other with copies of all written communications to or from any Governmental Authority in connection with the transactions contemplated hereby. Written communications may be redacted and provided solely to the other Party's outside counsel to comply with contracts, to preserve legal privileges, or to comply with Antitrust Law. If either Party receives a communication from a private person concerning efforts to delay or oppose approval by a Governmental Authority, such Party shall promptly notify the other Party thereof. Purchaser shall have principal responsibility for devising and implementing the strategy for obtaining any necessary approval, for responding to any request, inquiry, or investigation, and for leading any meetings and communications with any Governmental Authority that has authority to enforce Antitrust Law.

4.04 FERC.

(a) Seller shall have primary responsibility for the preparation and filing of the regulatory filing(s) to be made to FERC requesting approval under Section 203 of the Federal Power Act (the “FERC Regulatory Filing”). Upon the request of Seller, Purchaser shall use its commercially reasonable efforts to cooperate with Seller to prepare and file the FERC Regulatory Filing.

(b) Purchaser and Seller shall use commercially reasonable efforts to file as soon as practicable after the date hereof (but in accordance with Section 4.02) the FERC Regulatory Filing, and execute all agreements and documents, in each case, to obtain as promptly as practicable approval under Section 203 of the Federal Power Act. Purchaser and Seller shall act diligently, and shall coordinate in completing and submitting the FERC Regulatory Filing. Purchaser and Seller shall each have the right to review and approve (which such approval shall not be unreasonably delayed or withheld) in advance all of the information relating to the transactions contemplated by this Agreement which appears in the FERC Regulatory Filing. Purchaser and Seller agree that all telephonic calls and meetings with the FERC regarding the transactions contemplated by this Agreement shall be conducted by Purchaser and Seller jointly.

4.05 PSC.

(a) Purchaser shall have primary responsibility for the preparation and filing of the regulatory filing to be made to the PSC requesting the PSC Approval (“PSC Regulatory Filing”). Upon the request of Purchaser, Seller shall use its commercially reasonable efforts to cooperate with Purchaser to prepare and file the PSC Regulatory Filing.

(b) The Parties shall use commercially reasonable efforts to file as soon as practicable after the date hereof (but in accordance with Section 4.02) the PSC Regulatory Filing, and execute all agreements and documents, in each case, to obtain as promptly as practicable the PSC Approval. The Parties shall act diligently, and shall coordinate in completing and submitting the PSC Regulatory Filing. Each Party shall have the right to review and approve (which such approval shall not be unreasonably conditioned, delayed or withheld) in advance all information relating to the transactions contemplated by this Agreement which appears in the PSC Regulatory Filing.

4.06 Cooperation.

(a) Each Party shall consult and cooperate in obtaining Governmental Approvals. Notwithstanding anything in this Agreement to the contrary, each Party agrees not to oppose, obstruct, or otherwise interfere with, in any manner whatsoever, the efforts of the other Party to obtain such Party’s Governmental Approvals and all other clearance or approval required by any Governmental Authority or applicable Law with respect to the transactions contemplated hereby. Each Party shall act with diligence in efforts to obtain all Governmental Approvals.

(b) Subject to Section 4.07, the Parties covenant and agree, with respect to any threatened or pending preliminary or permanent injunction or other Order that would

adversely affect the ability of the Parties to consummate the transactions contemplated by this Agreement, to use commercially reasonable efforts to prevent the entry, enactment or promulgation thereof.

4.07 Conditions or Limitations. Nothing in this Agreement will require Purchaser or Seller (a) to enter into any consent decree, to make any divestiture, to accept any operational restriction, or take any other action that, in the judgment of the affected Party, would be reasonably expected to limit the right of the affected Party to own or operate all or any portion of the Facility and the assets and properties relating to the Facility or any other material asset owned by Purchaser or Seller, respectively, or (b) to litigate or contest any court proceeding or administrative litigation brought under any applicable Law, including any Antitrust Law. The Parties acknowledge and agree that if, as determined in Purchaser's sole discretion, the FERC or the PSC imposes any Burdensome Condition in respect of its approval of the FERC Regulatory Filing or the granting of the PSC Approval, as the case may be, that Purchaser may terminate this Agreement pursuant to Section 11.01(d).

ARTICLE V

Covenants

5.01 Access. During the Interim Period, Seller shall, upon reasonable prior notice, make the Facility, properties, assets, books and records, and involved personnel pertaining to the Purchased Assets available for examination, inspection and review by Purchaser and its lenders, agents and representatives; provided, however, Purchaser's inspections and examinations shall not unreasonably disrupt the normal operations of the Facility and any interview by Purchaser of such involved personnel shall require the prior written approval of Seller, not to be unreasonably withheld or delayed.

5.02 Conduct of the Business. During the Interim Period, Seller shall conduct and carry out operations at the Facility in the ordinary course of business consistent with past practice and maintain the Facility in the same condition, normal wear and tear excepted, as existed on the Effective Date. In furtherance of the foregoing, unless otherwise consented to by Purchaser in writing or as set forth on Schedule 5.02(b), or for which Purchaser will not be assuming any Liability from and after Closing, Seller shall not:

(a) sell, lease, mortgage, pledge or otherwise dispose of any of the Purchased Assets, except for tangible personal property purchased, sold, or otherwise used or disposed of in the ordinary course of business consistent with past practice or the disposal of which does not impair the value or the utility of the Purchased Assets;

(b) except as set forth on Schedule 5.02(b), enter into, or become obligated under, any lease, contract, agreement, commitment or Liability with respect to the Facility, Properties or Inventory that (i) is outside of the ordinary course of business, (ii) will be retained by Seller following the Closing, (iii) will adversely impact Purchaser, and (iv) cannot be terminated by Seller without penalty to Purchaser at or before Closing;

(c) change, amend, or otherwise modify or terminate any Purchased Contract;

(d) discontinue or fail to maintain in full force and effect with respect to the Facility, Properties and Inventory, policies of insurance of the same type, character and coverage as the policies currently carried and described in Schedule 7.07, or fail to diligently pursue any claim or cause of action under any policy of insurance with respect to the Facility;

(e) fail to replace any spare part set forth on Schedule IA used or removed from the inventory of spare parts with its functional equivalent prior to the Closing or adjust the Purchase Price by the aggregate book value of such missing spare parts set forth on Schedule IA;

(f) use Inventory and spare parts comprising part of the Purchased Assets other than connection with the Facility, in the ordinary course of business, and consistent with past practice;

(g) enter into, modify, or renew any contract with respect to the sale of electric power, energy, capacity, green benefits (including renewable energy credits), ancillary services or other energy products from the Facility;

(h) change any express or deemed election relating to material Taxes, settle any material claim or controversy relating to Taxes, agree to any material adjustment of any Tax attribute, surrender any right or claim to a refund of material Taxes, consent to any extension or waiver of the statute of limitations period applicable to any material Taxes, Tax return or claim for Taxes, amend any material Tax return, enter into any agreement with respect to any material Taxes, fail to file any material Tax return when due or make any material change to any of its policies, procedures, principles or methods of Tax or financial accounting other than as required by GAAP;

(i) waive, cancel or compromise any material right or claim of Seller or any of its Affiliates in respect of the Purchased Assets;

(j) waive, abandon or otherwise dispose of or grant any rights in or to the Intellectual Property contained in the Purchased Assets;

(k) hire any employees or enter into any Benefit Plan; or

(l) commit or agree to do any of foregoing.

5.03 Consents. During the Interim Period, the Parties shall proceed with all reasonable diligence and use commercially reasonable efforts to obtain the written consents, authorizations or approvals required for the consummation of transactions contemplated by this Agreement (including the assignment and assumption of the Purchased Contracts and the Assumed Permits); provided, however, neither Party shall have any obligation to pay any third Person a fee to obtain any such consent, authorization or approval not already provided for by the applicable agreement or Law.

5.04 Casualty Loss; Condemnation.

(a) If, during the Interim Period, the Facility, or any portion thereof, is damaged or destroyed by casualty loss (a "Casualty Loss"), Seller shall promptly, but in no more than five (5) Business Days, provide written notice of the Casualty Loss to Purchaser. If the cost of restoring such damaged or destroyed Facility or Real Property to a condition reasonably comparable to its condition immediately prior to such Casualty Loss (net of and after giving effect to any insurance proceeds available to Seller for such restoration) (such cost as estimated by a qualified firm reasonably acceptable to Seller and selected by Purchaser in good faith and promptly after the date of the event giving rise to the Casualty Loss, the "Restoration Cost") is greater than [_____] U.S. dollars (\$[_____]) after taking into account the amount of any Condemnation Loss, if any, but does not exceed five percent (10%) of the Purchase Price, then Seller shall, within thirty (30) days following the date the Restoration Cost is known, elect to either (y) repair such Casualty Loss to a condition reasonably comparable to its condition immediately prior to such Casualty Loss or (z) reduce the amount of the Purchase Price by the amount of the Restoration Cost, and in either case such Casualty Loss shall not affect the Closing. If the Restoration Cost, including the amount of any Condemnation Value, if any, is in excess of five percent (5%) of the Purchase Price, Purchaser may, by notice to Seller no more than thirty (30) days after the date such Restoration Cost is known, terminate this Agreement. If Purchaser does not elect to terminate this Agreement pursuant to the immediately preceding sentence, the Purchase Price shall be reduced by the amount of the Restoration Cost and the Casualty Loss shall not otherwise affect the Closing. To the extent the Purchase Price is reduced by the amount of the Restoration Cost pursuant to this Section 5.04, Purchaser will, at Seller's election: (a) assign to Seller any rights to any contribution or other rights available under insurance claims or recoveries available under insurance policies covering such Facility or Real Property; and (b) at Seller's sole cost and expense, use commercially reasonable efforts to pursue any available contribution, claims or recoveries on Seller's behalf for the benefit of Seller. Subject to this Section 5.04, during the period following the Casualty Loss and prior to the Closing, Seller shall consult with Purchaser in respect of remediating the Casualty Loss, including promptly commencing the restoration work with respect to such Casualty Loss and promptly filing claims with insurance companies under applicable insurance policies in respect of such Casualty Loss. To the extent Seller has made any repairs in respect of the Restoration Cost, the amounts paid for and the value of the parts used in such repairs, up to the amount equal to the Restoration Cost by which the Purchase Price (as adjusted pursuant to Section 2.06) was reduced in accordance with this Section 5.04, shall be added to the Purchase Price (as adjusted pursuant to Section 2.06. If the Restoration Cost, including the amount of any Condemnation Value, if any, is [_____] U.S. dollars (\$[_____]) or less (x) Purchaser shall not have the right to terminate this Agreement and (y) there shall be no reduction in the amount of the Purchase Price. In no event shall a Casualty Loss cause any of the closing conditions in Article IX (other than Section 9.03) to be unsatisfied or give rise to an indemnity claim by Purchaser, and this Section 5.04 shall govern all matters with respect to a Casualty Loss.

(b) If, during the Interim Period, the Real Property or any portion thereof, is condemned (a "Condemnation"), Seller shall promptly, but in no more than five (5) Business Days, provide written notice of the Condemnation to Purchaser. If the value of such Condemnation (net of and after giving effect to any condemnation award available to Seller for such Condemnation) (such value as estimated by a qualified firm reasonably acceptable to Seller

and selected by Purchaser in good faith and promptly after the date of the event giving rise to the Condemnation, the “Condemnation Value”) is greater than [_____] U.S. dollars (\$[_____]), after taking into account the amount of any Casualty Loss, if any, but does not exceed five percent (5%) of the Purchase Price, then within thirty (30) days following the date the Condemnation Value is known, Seller shall reduce the amount of the Purchase Price by the amount of the Condemnation Value, and the Condemnation shall not affect the Closing. If the Condemnation Value, including the amount of any Restoration Cost, if any, is in excess of five percent (5%) of the Purchase Price, Purchaser may, by notice to Seller no more than thirty (30) days after the date such Condemnation Value is known, terminate this Agreement. If Purchaser does not elect to terminate this Agreement pursuant to the immediately preceding sentence, the Purchase Price shall be reduced by the amount of the Condemnation Value and the Condemnation shall not otherwise affect the Closing. To the extent the Purchase Price is reduced by the amount of the Condemnation Value pursuant to this Section 5.04, Purchaser will, at Seller’s election: (a) assign to Seller any rights to (A) any condemnation award and (B) any contribution or other rights available under insurance claims or recoveries available under insurance policies covering such Real Property; and (b) at Seller’s sole cost and expense, use commercially reasonable efforts to pursue (A) any condemnation award and (B) any available contribution, claims or recoveries on Seller’s behalf for the benefit of Seller. If the Condemnation Value, including the amount of any Restoration Cost, if any, is [_____] U.S. dollars (\$[_____]) or less (x) Purchaser shall not have the right to terminate this Agreement and (y) there shall be no reduction in the amount of the Purchase Price. In no event shall a Condemnation cause any of the closing conditions in Article IX (other than Section 9.03) to be unsatisfied or give rise to an indemnity claim by Purchaser, and this Section 5.04 shall govern all matters with respect to a Condemnation.

5.05 Environmental Assessments. Purchaser shall have the right to obtain, at Purchaser’s expense and from environmental consultants selected by Purchaser, environmental assessments of any of the Properties and all structures thereon for the purpose of determining whether there exists any Hazardous Substance on, about or underneath the Properties or any structure thereon or thereunder, or migrating or threatening to migrate from any of the Properties or any structure thereon or thereunder, or any condition, circumstance, or activity which constitutes a violation of or noncompliance with any Environmental Laws (“Phase I Environmental Site Assessment”); provided, however, that under no circumstance shall Purchaser or its environmental consultants, or their respective agents, perform any invasive testing (as used herein, “invasive testing” shall include drilling, soil borings, installation of monitoring wells, laboratory testing and subsurface investigations) of the Facility or the Facility site; and, provided further, that if in Purchaser’s reasonable discretion, its Phase I Environmental Site Assessment indicates that in order prudently to ascertain whether any condition, circumstance, or activity exists which would cause a violation of or noncompliance with any Environmental Law invasive testing would be required, Purchaser may terminate this Agreement pursuant to Section 11.01(c).

5.06 Notice of Certain Matters. During the Interim Period, each Party shall promptly (but in any event within five (5) Business Days after obtaining knowledge thereof) notify the other Party of: (a) any breach of such Party’s representations, warranties or covenants contained in this Agreement, or (b) any claim from any Person (including any Governmental Authority) against such Party or affecting any of its assets, in each case, that has resulted or

would reasonably be expected to result in the failure or delay of any conditions set forth in Article IX or X, as applicable, to be satisfied.

5.07 Cooperation.

(a) Each Party agrees that after the Closing Date it will use its commercially reasonable efforts to cooperate with and make available to the other Party, upon reasonable notice and during normal business hours, books and records and information of or relating to the Purchased Assets and other matters relevant to this Agreement which are necessary or useful in connection with Purchaser's operation or maintenance of the Purchased Assets, any proceeding by a Governmental Authority, preparation of Tax returns, or any claim by or against a third Party involving the Purchased Assets (other than in connection with disputes between the parties). The Party requesting any such books and records, information, or cooperation shall bear all of the out-of-pocket costs and expenses of the other Party reasonably incurred in connection therewith (including out-of-pocket expenses to third parties incurred by any Party).

(b) Purchaser and Seller shall cooperate in good faith pending the Closing Date to insure that there is no interruption in phone or electrical service to the Facility.

5.08 Tax Matters.

(a) Except as provided in Section 2.04, in clause (b) of this Section 5.08 or with respect to items included in Purchased Assets as described in clause (vii) of the definition of Purchased Assets, in respect of Taxes on or with respect to the Purchased Assets, (i) with respect to a taxable period, or portion thereof, that ends before the Closing Date, Seller shall be liable and indemnify Purchaser for all Taxes arising out of or related to a breach of any of the representations and warranties set forth in Section 7.14 of this Agreement or the Covenants of Seller in this Section 5.08, and (ii) Purchaser shall be liable and indemnify Seller for all such Taxes with respect to a taxable period, or portion thereof, that begins on or after the Closing Date.

(b) Ad valorem property Taxes imposed on or with respect to the Purchased Assets for the Taxable Period that contains the Effective Time shall be prorated between Seller and Purchaser based on their relative number of days of ownership during the Taxable Period, with Seller being responsible for such prorated ad valorem property Taxes for the period ending as of the end of the Closing Date and Purchaser being responsible for such prorated ad valorem property Taxes for the period after the Closing Date. All amounts receivable or payable between the Parties under this Section 5.08(b) will be an adjustment to the Purchase Price.

(c) Any Tax return to be prepared pursuant to the provisions of this Section 5.08 shall be prepared in a manner consistent with practices followed in prior years with respect to similar Tax returns and in compliance with the applicable Law of each respective jurisdiction, except for changes required by changes in applicable Law. Purchaser shall not file an amended Tax Return relating to the Purchased Assets for any period ending on or prior to the Closing Date without the consent of Seller, which may be withheld in Seller's reasonable discretion, and Seller shall not file any Tax Return relating to the Purchased Assets for any period ending after the

Closing Date without the prior consent of Purchaser, which may be withheld in Purchaser's reasonable discretion.

(d) Purchaser and Seller shall cooperate fully, and shall cause their respective Affiliates to cooperate fully, as and to the extent reasonably requested by either Party, in connection with the filing of Tax returns and any audit, litigation, examination, or other proceeding ("Tax Proceeding") with respect to Taxes of or relating to the Purchased Assets and in connection with the filing of any application with any Taxing authority for approval of the transfer or assignment of any item described in clause (vii) of the definition of Purchased Assets. Such cooperation shall include the retention and (upon a Party's request) the provision of records and information which are reasonably relevant to any such Tax return, Tax Proceeding, or application and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(e) Seller shall notify Purchaser within thirty (30) days of Seller's receipt of notice of a Tax Proceeding related to the Purchased Assets but only if the Tax Proceeding could reasonably be expected to affect Purchaser's ownership or operation of the Purchased Assets after the Closing or result in the imposition of any Tax for which Purchaser is responsible. Purchaser, at its expense, shall have the right to control the defense and settlement of any such Tax proceeding. Purchaser shall notify Seller within thirty (30) days of Purchaser's receipt of notice of a Tax Proceeding related to the Purchased Assets but only if the Tax Proceeding could reasonably be expected to result in the imposition of any Tax for which Seller is responsible. Seller, at its expense, shall have the right to control the defense and settlement of any such Tax proceeding.

(f) Except with respect to items included in Purchased Assets as described in clause (vii) of the definition thereof, Seller shall be entitled to any refunds or credits for any Taxes relating to the Purchased Assets for periods ending prior to or as of the Closing Date (and with respect to ad valorem property Taxes, for periods (or portion thereof) ending at the end of the Closing Date), and Purchaser shall be entitled to any refunds or credits for any Taxes relating to the Purchased Assets for periods on and after the Closing Date (and with respect to ad valorem property Taxes, for periods (or portion thereof) beginning after the Closing Date). Any Party receiving a refund or the right to a credit to which the other Party is entitled shall immediately notify the Party so entitled and remit the refund or the value of the credit, as the case may be, within thirty (30) days of receipt of such refund or entitlement to the credit.

ARTICLE VI

Title and Survey

6.01 Pre-Closing Title Policy and Survey Delivery. No more than thirty (30) days after the date hereof, Seller, at its sole costs and expense, shall obtain and deliver to Purchaser:

(a) With respect to the Properties described on Schedule II and Schedule III an owner's title commitment (the "Title Commitment") covering a date subsequent to the date hereof, issued by the Title Company, which Title Commitment shall contain a commitment of

the Title Company to (i) issue an owner's title insurance policy in the amount of not less than [] U.S. dollars (\$[]) (the "Title Policy") on an ALTA Owner's 2006 Policy of Title Insurance in the Title Policy Form insuring Purchaser as to the fee simple title or other applicable estate in each parcel comprising the Properties and subject only to, (A) Permitted Exceptions, and (B) such other matters as are consented to in writing by Purchaser (clauses (A), and (B) are collectively referred to as "Permitted Real Estate Exceptions"), together with a true, correct, and legible copy of each document referred to in the Title Commitment; and (ii) guarantee that each such parcel of real estate adjoins a public road or highway and that entrance to and exit from such premises may be had via such public road or highway; and

(b) A current as-built survey and metes and bounds description of the Properties prepared by a registered land surveyor or engineer, duly licensed in the applicable state and approved by Purchaser (i) certified to Purchaser, its successors and assigns, the Title Company, and such other interested parties as Purchaser may identify; (ii) conforming to the 2011 ALTA/ACSM minimum standards and containing the following "Table A" options: 1, 2, 3, 4, 6(b), 7(b)(1)-(2), 7(c), 8, 9, 11(b), 13, 15, 16, 17, 18, 19, and 20(a); (iii) showing the location and recording information (if applicable) of all observable improvements, location of all observable roads, easements, means of access to public streets, encroachments, driveways, and the observable physical conditions affecting the title and use of the Properties including access thereto; (iv) containing a note confirming that all constituent parcels are contiguous and contain no gaps, gores, or overlaps; (v) containing a note confirming that all locatable easements, servitudes, and similar instruments identified as exceptions in the Title Commitment have been located on the Survey identifying any easements, servitudes, and similar instruments that are not locatable; and (vi) containing a note which specifically identifies all inconsistencies and variances between the legal descriptions to be insured pursuant to the Title Commitment and the legal description of the Project Site contained in the Survey (the "Survey").

(c) No later than thirty (30) days after Purchaser has received the last of the Title Commitment (and copies of referenced documents) and the Survey, Purchaser shall provide a written notice ("Objection Notice") to Seller of any matters objectionable to Purchaser, as determined in its sole and absolute discretion, including any objections based on Purchaser's review of any secured transaction search undertaken by Purchaser. Purchaser shall be deemed to have accepted all defects and exceptions disclosed by the Title Commitment, any secured transaction search undertaken by Purchaser, and Survey to which Purchaser does not object in a timely Objection Notice, and such accepted defects and exceptions shall be deemed to be Permitted Real Estate Exceptions hereunder. Seller shall have thirty (30) days (the "Cure Period") from receipt of the Objection Notice to cure any defect or exception which is the subject of an Objection Notice, failing which Purchaser shall have the option to either (i) terminate this Agreement as provided in Section 11.01 by giving written notice to Seller no later than fifteen (15) days following the expiration of the Cure Period or (ii) be deemed to have accepted the Properties subject to all such uncured defects and exceptions disclosed by the Title Commitment, any secured transaction search undertaken by Purchaser, or Survey, all of which shall be Permitted Real Estate Exceptions hereunder.

(d) The costs and expenses of the Title Commitment, the Title Policy and the Survey shall be borne by Seller and all costs and expenses for all endorsements shall be borne by Purchaser, whether or not the transactions contemplated under this Agreement are consummated.

All costs and expenses incurred by Seller in response to any Objection Notice shall be borne by Seller.

ARTICLE VII

Warranties and Representations of Seller

Seller warrants and represents to Purchaser as of the date hereof as follows:

7.01 Organization and Good Standing. Seller is a [_____] duly formed, validly existing and in good standing under the laws of the State of [____]. Seller is duly qualified to transact business and is in good standing in each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect or impair Seller's ability to perform its obligations hereunder in any material respect.

7.02 Authority. Seller has the right and power to enter into, and perform its obligations under this Agreement; and has taken all requisite action to authorize its execution and delivery of this Agreement and the performance of its obligations under this Agreement; and this Agreement has been duly authorized, executed and delivered by Seller and is binding upon, and enforceable against, Seller in accordance with its terms; except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity).

7.03 No Violations and Consents. (a) The execution, delivery and performance of this Agreement by Seller does not and will not, after the giving of notice, or the lapse of time, or otherwise, (i) conflict with, result in a breach of, or constitute a default under, the Certificate of Formation or Operating Agreement of Seller or any of its Affiliates or any Law or any Purchased Contract; (ii) result in the creation of any Lien upon any of the Purchased Assets (other than any Lien that may be created by the execution and delivery of this Agreement); (iii) terminate, amend or modify, or give any party the right to terminate, amend, modify, abandon, or refuse to perform, any Purchased Contract; (iv) accelerate or modify, or give any party the right to accelerate or modify, the time within which, or the terms under which, any duties or obligations are to be performed by Seller or any of its Affiliates, or any rights or benefits are to be received by any Person, under any Purchased Contract; or (v) violate or result in a default (or give rise to any right of termination, suspension, modification, cancellation, or acceleration) in any material respect under any other indebtedness or obligation, lease, contract, other agreement, commitment, indenture, mortgage, deed of trust, or other instrument, document, or arrangement to which Seller or any of its Affiliates is a party or by which any of the Purchased Assets is bound.

(b) The execution and delivery by Seller of this Agreement does not, and the performance by Seller or any of its Affiliates of its obligations hereunder will not, require Seller or any of its Affiliates to obtain any consent, approval, authorization or other action of, or make any filing with or give any notice to, any Governmental Authority, except (i) as disclosed in Schedule 7.03 (b), (ii) pursuant to the applicable requirements of the HSR Act, (iii) where failure

to obtain such consents, approvals, authorizations or actions, make such filings or give such notices would not have a Material Adverse Effect or impair Seller's ability to perform its obligations hereunder in any material respect or (iv) as may be necessary as a result of any facts or circumstances relating solely to Purchaser.

7.04 Brokers. Except as otherwise set forth in Schedule 7.04, neither this Agreement nor the sale of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person acting on behalf of, or representing, Seller or any of its Affiliates as broker, finder, investment banker, financial advisor or in any similar capacity.

7.05 Required Assets. All of the material rights, properties and assets required for the ownership, operation, use, maintenance, and repair of the Facility, the delivery of fuel thereto and the delivery of power and ancillary services therefrom to the [Substation], each as of the date hereof, are (a) owned by Seller or licensed or leased to Seller under one of the Purchased Contracts (except as otherwise contemplated by Section 14.02 hereof); and (b) included in the Purchased Assets.

7.06 Contracts.

(a) Except for the Purchased Contracts set forth in Schedule 7.06(a)(i) (a complete copy of each of which has been made available to Purchaser) and the Retained Contracts set forth in Schedule 7.06(a)(ii), as of the date hereof, Seller is not a party to, and its properties are not subject to, any contract pertaining to the Purchased Assets that meets any of the following descriptions and has a term extending sixty (60) days beyond the date hereof: (i) contracts for the purchase, exchange, or sale of electric power, energy, capacity, green benefits or ancillary services; (ii) contracts for the transmission of electric power; (iii) with respect to the Facility, interconnection contracts, including generation imbalance agreements and similar agreements with the transmission grid operator; (iv) other than contracts of the nature addressed by clauses (i), (ii), and (iii) of this Section 7.06, contracts for the sale, lease, or use of any Purchased Asset or that grant a right or option to purchase, lease, or use any Purchased Asset, or otherwise involving a sharing of profits, losses, costs, or liabilities of the Purchased Assets with any other Person, other than in each case contracts entered into in the ordinary course of business consistent with past practices with an annual or aggregate cost or value of less than \$75,000 individually or \$250,000 in the aggregate; (v) other than contracts of the nature addressed by clauses (i), (ii), and (iii) of this Section 7.06, contracts for the future provision or receipt of goods or services relating to the Purchased Assets requiring annual or aggregate payments in excess of \$75,000 for each individual contract; (vi) outstanding futures, swap, collar, put, call, floor, cap, option, or other contracts that are intended to benefit from or reduce or eliminate the risk of fluctuations in the price of commodities (including electric power or gas) the value of securities, interest rates, or the cost or availability of transmission rights; (vii) contracts that purport to limit the Facility's freedom to be used to compete with, or be used in, any business or line of business in any geographic area; or (viii) any amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

(b) Except as set forth in Schedule 7.06(b)(i): (i) each Purchased Contract is in full force and effect and is valid and enforceable against Seller, and to its knowledge, the other

parties thereto in accordance with its terms; (ii) except as to Seller Governmental Approvals and the approvals and consents described in Schedule 7.06(b)(ii), each Purchased Contract is assignable by Seller without the consent of any other Person; (iii) (x) Seller and, to Seller's knowledge, each other Person that has or had any obligation or liability under any Purchased Contract is, and at all times since [_____], has been, in compliance with all applicable terms and requirements of each Purchased Contract in all material respects, and (y) Seller has not given to or received from any other Person, at any time since [_____], any written notice or other written communication regarding any actual, alleged, possible, or potential violation or breach of, or default under, any Purchased Contract; (iv) to Seller's knowledge, no event has occurred or circumstance exists that in any material respect (with or without notice or lapse of time) would reasonably be expected to conflict with or give Seller or another Person the right to cancel, modify, terminate, or accelerate the maturity or performance of or payment under any Purchased Contract; (v) there are no renegotiations of, attempts to renegotiate, or outstanding rights or obligations to renegotiate any amounts paid or payable to Seller or any of its Affiliates under any Purchased Contract; and (vi) no Affiliate of Seller is the counterparty to any Purchased Contract.

7.07 Insurance. All material properties and risks associated with the Properties and Facility are covered and shall remain covered through the Closing Date, by valid and currently effective insurance policies or binders of insurance or programs of self-insurance in such types and amounts as are consistent with customary practices and standards in Seller's industry. Schedule 7.07 contains a complete list of all material liability, property, accident, casualty, fire, flood, workers' compensation or other insurance policies and arrangements affecting or relating to the ownership, use or operations of the Purchased Assets or the Facility.

7.08 Real Property.

(a) Seller has good and indefeasible title to the Real Property, to Seller's knowledge valid and enforceable interests in the Easements, and a valid and subsisting leasehold estate to the Properties other than the Real Property, free and clear of all Liens, except for the Permitted Exceptions.

(b) Except as set forth on Schedule 7.08, to Seller's knowledge, (i) none of the Real Property consists of "wetlands" under applicable federal or state law; (ii) the Real Property is zoned for industrial or agricultural purposes; and (iii) no part of the Real Property is located in a flood prone area.

(c) Except as set forth on Schedule 7.08, (i) Seller has not received any written notice or request from any insurance company or board of fire underwriters identifying any defects in the Real Property that would materially and adversely affect the insurability of the Real Property; and (ii) all required material building permits, occupancy permits or other approvals or consents of governmental authorities or public or private utilities having jurisdiction have been obtained with respect to the Real Property.

7.09 Title to Purchased Assets. Seller has good and marketable title to all the Purchased Assets consisting of tangible personal property owned by Seller and valid and subsisting leases with respect to all of the Purchased Assets consisting of tangible personal

property leased by Seller. All such owned tangible personal property is owned free and clear of all Liens, except for Permitted Exceptions.

7.10 Intellectual Property.

(a) Except as set forth in Schedule 7.10, to Seller's knowledge there has never been, nor is there currently, any infringement or misappropriation arising out of the construction, operation, maintenance, repair, modification, or other activities at or relating to the Facility of any patents, trademarks, service marks, trade names, copyright, or trade secrets owned or controlled by a third-party.

(b) Except as set forth in Schedule 7.10, there has not been in the past six (6) years, nor is there currently, any claim or, to Seller's knowledge, any threatened claim, that the operation, maintenance, repair, modification, or other activities at or relating to the Facility infringe or misappropriate any patents, trademarks, service marks, trade names, copyright, or trade secrets owned or controlled by a third-party, nor has there been in the same period of time, any request or demand that a license of any patents, trademarks, service marks, trade names, copyright, or trade secrets owned or controlled by a third-party is necessary to continue operation, maintenance, repair, modification, or other activities at or relating to the Facility.

7.11 Litigation. Except as set forth in Schedule 7.11, (a) there are no actions, claims or proceedings pending against Seller relating to the Facility or any of the Purchased Assets at law or in equity, before or by any Governmental Authority, or by any other Person, which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect; and (b) there is no action, claim, proceeding, order, writ, judgment or decree that seeks to restrain or prohibit or restrains or prohibits the consummation of the transactions contemplated hereby or seeks to impose or imposes any material limitation or restriction on the operation or maintenance of the Purchased Assets or the sale or delivery of electric power, energy, capacity, green benefits or ancillary services therefrom.

7.12 Compliance With Laws. Seller is not in material violation (and has not received any written notice or allegation of material violation) of any Law applicable to the Purchased Assets or by which any of the Purchased Assets are bound or subject, except as set forth in Schedule 7.12. Notwithstanding the foregoing, compliance with Environmental Laws is exclusively and solely governed by Sections 7.15 and 7.16 hereof.

7.13 Labor Matters.

(a) Seller does not have and never has had any employees. Seller is, and at all times has been, in compliance with applicable Laws relating to employment, social security, employee classification, employee benefits and employee matters.

(b) Seller does not now, and did not in the past, maintain or contribute to (and never was required to maintain or contribute to) any "pension plan" or "welfare plan" within the meaning of Section 3(2) or 3(1), respectively, of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or other employee benefit plan, program agreement or arrangement or employment, compensation, bonus, incentive, retirement, deferred compensation, severance or fringe benefit plan, program, agreement or arrangement, including

any “employee benefit plan” as defined in Section 3(3) of ERISA (each, a “Benefit Plan”). With respect to any Benefit Plan maintained by any trade or business, whether or not incorporated, that together with Seller would be deemed a “single employer” within the meaning of Section 414 of the Code or Section 4001(b) of ERISA or covering individuals who perform services in respect of Seller, Purchaser will not be liable for any payments or benefits payable under such Benefit Plan, for any failure of such Benefit Plan to be operated and administered in all respects in accordance with applicable Law, including ERISA and the Code, or otherwise in respect of such Benefit Plan.

(c) Seller utilizes a third party operator and such operator is employer of the staff at the Facility (such employees, the “Facility Employees”). The Facility Employees may from time to time work at the Facility, in connection with their primary responsibilities, [and at the Substation] or elsewhere. No labor organization has representation rights with respect to the Facility Employees; and there are no collective bargaining agreements relating to the Facility Employees. To Seller’s knowledge, there are no material organizing efforts presently being made involving any of the Facility Employees.

7.14 Taxes. Except as set forth in Schedule 7.14, Seller has duly and timely filed all federal, state and local Tax reports and returns required to be filed by it in respect of the Purchased Assets and Seller’s trade or business with respect thereto and paid all Taxes shown thereon to be due. There are no pending or to Seller’s knowledge, threatened Tax audits or examinations of, or with respect to, the Purchased Assets, and there are no written notices of deficiency, proposed deficiency, or assessment from any Tax authority with respect to Taxes of, or relating to, the Purchased Assets. All deficiencies asserted or assessments made for Taxes due with respect to the Purchased Assets as a result of any completed and settled examinations or any concluded litigation have been fully paid. Seller is disregarded as an entity separate from its owner within the meaning of Treasury Regulation Section 301.7701-3 and [neither] Seller [nor Seller’s Federal Tax Owner, with respect to Seller,] has [not] made any elections to the contrary.

7.15 Licenses and Permits. Seller has, or has applied for, all material Permits (including Permits under Environmental Laws) necessary for the ownership, lease, use, operation, and maintenance of the Purchased Assets, and all such Permits are described in Schedule 7.15. Each such Permit is in full force and effect, and Seller is not in violation of any such Permit in any material respect. There are no pending or, to Seller’s knowledge, threatened proceedings challenging the validity of, or seeking to revoke, withdraw, suspend, cancel, terminate, or modify any such Permits.

7.16 Environmental Compliance. Except as set forth on Schedule 7.16, (a) the Facility, Purchased Assets and their operation and maintenance as presently conducted are in compliance with all applicable Environmental Laws in all material respects; (b) Seller has not received any written notice, demand, or request for information that remains unresolved from any Governmental Authority indicating that the Purchased Assets, the Facility or their operation and maintenance may be in violation of any Environmental Law; (c) Seller has not disposed of, released, or transported, or arranged for the disposal, release, or transportation of, any Hazardous Substance from the Purchased Assets or the Facility in violation of any Environmental Law, or in a manner giving rise to material liability under any Environmental Law; and (d) none of Seller, the Purchased Assets or the Facility has been subject to material liabilities or expenditures (fixed

or contingent) relating to any suit, settlement, court order, administrative order, regulatory requirement, judgment, or claim asserted or arising under any Environmental Law with respect to the Purchased Assets. Seller has made available to Purchaser copies of all environmental assessments in Seller's possession or available to Seller involving the Purchased Assets and the Facility that have been prepared by third parties.

7.17 Cybersecurity Compliance. Seller has implemented controls, policies, procedures, and technical safeguards to protect the security, integrity, operation, and redundancy of the Facility and Purchased Assets consistent with industry standards and practices, including the Critical Infrastructure Protection Reliability Standards set forth by the North American Electric Reliability Corporation. Seller is in compliance in all material respects with all applicable Laws, Orders, contractual obligations, and internal and published corporate policies and procedures concerning the security of the Facility and the Purchased Assets. There have been no material disruptions, security breaches, unauthorized access, unauthorized disclosure, or other compromise of information, the Facility, its operations or the Purchased Assets.

7.18 Absence of Material Adverse Effect. There has not been a Material Adverse Effect.

ARTICLE VIII

Warranties and Representations of Purchaser

Purchaser warrants and represents to Seller as of the date hereof as follows:

8.01 Due Incorporation. Purchaser is an Oklahoma corporation duly incorporated, validly existing and in good standing under the laws of the State of its incorporation. Purchaser is duly qualified to transact business and is in good standing in each jurisdiction where such qualification is necessary, except where the failure to be so qualified or in good standing could not reasonably be expected to have a Material Adverse Effect or impair Purchaser's ability to perform its obligations hereunder in any material respect.

8.02 Authority. Purchaser has the corporate right and power to enter into, and perform its obligations under this Agreement, and has taken all requisite corporate action to authorize its execution and delivery of this Agreement and the performance of its obligations under this Agreement; and this Agreement has been duly executed and delivered by Purchaser and each is binding upon, and enforceable against, Purchaser in accordance with its terms; except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity).

8.03 No Violations. (a) The execution, delivery or performance of this Agreement by Purchaser does not and will not, after the giving of notice, or the lapse of time, or otherwise: conflict with, result in a breach of, or constitute a default under, the Certificate of Incorporation or By-laws of Purchaser, any Law or any material contract, agreement, commitment or plan to which Purchaser is a party.

(a) The execution and delivery by Purchaser and its Affiliates of this Agreement does not, and the performance by Purchaser and its Affiliates of its obligations hereunder will not, require Purchaser to obtain any consent, approval, authorization or other action of, or make any filing with or give any notice to, any Governmental Authority, except (a) as disclosed in Schedule 8.03, (b) pursuant to the applicable requirements of the HSR Act, (c) where failure to obtain such consents, approvals, authorizations or actions, make such filings or give such notices would not impair Purchaser's ability to perform its obligations hereunder in any material respect and (d) as may be necessary as a result of any facts or circumstances relating solely to Seller.

8.04 Brokers. Neither this Agreement nor the purchase of the Purchased Assets or any other transaction contemplated by this Agreement was induced or procured through any Person, acting on behalf of, or representing, Purchaser or any of its Affiliates as broker, finder, investment banker, financial advisor or in any similar capacity.

8.05 Litigation. There are no actions, claims or proceedings pending against Purchaser or any of its assets or properties at law or in equity, before or by any Governmental Authority, or by any other Person, which, individually or in the aggregate, could reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby.

ARTICLE IX

Conditions to Closing Applicable to Purchaser

The obligations of Purchaser hereunder (including the obligation of Purchaser to close the transactions herein contemplated) are subject to the following conditions precedent:

9.01 No Termination. Neither Purchaser nor Seller shall have terminated this Agreement pursuant to Section 11.01 hereof.

9.02 Bring-Down of Seller Representations and Warranties. The representations and warranties made by Seller herein to Purchaser shall have been true and correct in all respects on the date hereof and shall be true and correct in all respects on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date, except with respect to representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct in all respects at and as of such date and Seller shall have performed and complied with, in all material respects, all agreements and covenants on its part required to be performed or complied with in all material respects on or prior to the Closing Date; and at the Closing, Purchaser shall have received a certificate executed by an authorized officer of Seller to the foregoing effect.

9.03 No Material Adverse Effect. There shall have been no Material Adverse Effect which is continuing.

9.04 Pending Actions. No Order, investigation, action, suit or proceeding by any Governmental Authority and no action, suit or proceeding by any other Person, shall be pending or in effect on the Closing Date which challenges or limits the enforceability of this

Agreement or which seeks to modify, prohibit or enjoin the consummation of the transactions contemplated hereby.

9.05 Consents and Approvals. All Seller Governmental Approvals and Purchaser Governmental Approvals and other consents, approvals or authorizations of other Persons set forth in Schedule 9.05 shall have been obtained and, in the case of the Purchaser Governmental Approvals, such approvals do not contain any Burdensome Condition.

9.06 HSR Act. The waiting period applicable to the consummation of the transactions contemplated hereunder required pursuant to the provisions of the HSR Act shall have expired or been earlier terminated.

9.07 All Necessary Documents. Purchaser shall have received copies of the documents to be delivered pursuant to Section 3.02(a)-(h) hereof.

9.08 Title Policy. At the Closing, Seller shall have delivered to Purchaser the Title Policy and any and all documents reasonably requested by the Title Company in order to issue the Title Policy.

9.09 Estoppel Certificates. Seller shall have delivered to Purchaser an estoppel certificate executed by the lessor with respect to each Property that is not a Real Property certifying that the lease with respect to such Property is in full force and effect, that the lessee thereunder is not in default under such lease, and such other statements as Purchaser may reasonably request.

9.10 Completion of Required Maintenance. Seller shall have delivered to Purchaser written certification that those maintenance and other services set forth on Exhibit E have been completed.

Purchaser shall have the right to waive any of the foregoing conditions precedent, except for the condition set forth in Section 9.06 hereof.

ARTICLE X

Conditions to Closing Applicable to Seller

The obligations of Seller hereunder (including the obligation of Seller to close the transactions herein contemplated) are subject to the following conditions precedent:

10.01 No Termination. Neither Purchaser nor Seller shall have terminated this Agreement pursuant to Section 11.01 hereof.

10.02 Bring-Down of Purchaser Representations and Warranties. The representations and warranties made by Purchaser herein to Seller shall have been true and correct in all respects on the date hereof and shall be true and correct in all respects on and as of the Closing Date with the same effect as if such warranties and representations had been made on and as of the Closing Date, except with respect to representations and warranties which speak as to an earlier date, which representations and warranties shall be true and correct in all respects at

and as of such date and Purchaser shall have performed and complied with, in all material respects, all agreements and covenants on its part required to be performed or complied with in all material respects on or prior to the Closing Date; and at the Closing, Seller shall have received a certificate executed by an authorized officer of Purchaser to the foregoing effect..

10.03 Pending Actions. No Order, investigation, action, suit or proceeding by any Governmental Authority and no action, suit or proceeding by any other Person, shall be pending or in effect on the Closing Date which challenges or limits the enforceability of this Agreement or which seeks to modify, prohibit or enjoin the consummation of the transactions contemplated hereby.

10.04 Consents and Approvals. All Seller Governmental Approvals and Purchaser Governmental Approvals and other consents, approvals or authorizations of other Persons set forth in Schedule 10.04 shall have been obtained; provided, however, that if Seller's breach of its obligations hereunder caused the failure to obtain any such consent, approval, or authorization Seller shall be deemed to have waived this condition to the extent of such failure.

10.05 HSR Act. The waiting period applicable to the consummation of the transactions contemplated hereunder required pursuant to the HSR Act shall have expired or been earlier terminated.

10.06 All Necessary Documents. Seller shall have received the Purchase Price and copies of the documents to be delivered pursuant to Section 3.03(a)-(e) hereof.

Seller shall have the right to waive any of the foregoing conditions precedent, except for the condition set forth in Section 10.05 hereof.

ARTICLE XI

Termination

11.01 Termination. This Agreement may be terminated at any time prior to the Closing as follows, and in no other manner:

- (a) by mutual written consent of Purchaser and Seller;
- (b) by Purchaser or by Seller by written notice to the other Party if the Closing of the transactions contemplated by this Agreement shall not have occurred on or before [_____, 20__] (the "Outside Date"); provided, that the Party seeking to terminate is not in material breach of, or material default under, this Agreement;
- (c) by Purchaser as provided in or Section 4.07, Section 5.04(a), Section 5.04(b), Section 5.05 or Section 6.01(c);
- (d) by Purchaser or by Seller, as applicable, by written notice to the other Party if any of the conditions set forth in Article IX or X, as applicable, becomes incapable of fulfillment and is not waived by the Party entitled to waive such condition, unless the failure of

such condition to be fulfilled shall be due to the actions or inactions of the Party seeking to terminate pursuant to this Section 11.01(d); or

(e) by Purchaser or Seller, as applicable, by written notice to the other, if any representation or warranty made herein for the benefit of Purchaser or Seller, respectively, pursuant to this Agreement is untrue in any respect, or Purchaser or Seller, respectively, shall have defaulted in any material respect in the performance of obligation under this Agreement; provided, however, that such breach or default will only give rise to termination if it remains uncured for thirty (30) days following receipt of written notice thereof and if the Party seeking to terminate is not in material breach of, or material default under, this Agreement.

11.02 Effect of Termination. If a Party terminates this Agreement in accordance with Section 11.01, such termination will be without liability to such Party or to any Affiliate, member, shareholder, partner, director, manager, officer, employee, agent, consultant, attorney, or other representative of such Party. Upon a termination of this Agreement, the obligations of the Parties hereunder shall be of no further force or effect, provided that:

(a) the obligations of the Parties under Article XIII, Section 15.01, Section 15.02, Section 15.08, Section 15.13 Section 15.14, Section 15.15 and this Section 11.02 shall survive such termination; and

(b) such termination shall be without prejudice to the rights of the Parties to any remedies which either Party may have whether at law or in equity (including the remedy of specific performance) for a breach under this Agreement, and either Party's right to obtain specific performance pursuant to Section 13.02, of any obligations provided for in this Agreement which survive termination.

ARTICLE XII

Indemnification

12.01 Seller Indemnification. From and after the Closing, Seller agrees to indemnify, defend and hold Purchaser harmless against any loss, damage or expense (including reasonable attorneys' fees), which arises out of or is in respect of any breach of any of (a) the warranties and representations set forth in Article VII or any other certificate or document delivered by Seller or any of its Affiliates in connection with this Agreement, (b) the covenants or agreements made by Seller in this Agreement, (c) any and all Retained Liabilities, (d) any failure of Seller to notify Purchaser under Section 5.08(e) and (e) intentional fraud or willful misconduct on the part of Seller or any of its Affiliates in connection with this Agreement or the transactions contemplated hereby.

12.02 Purchaser Indemnification. From and after the Closing, Purchaser agrees to indemnify, defend and hold Seller harmless against any loss, damage or expense (including reasonable attorneys' fees), which arises out of or is in respect of a breach of (a) any of the warranties and representations set forth in Article VIII or any other certificate or document delivered by Purchaser or any of its Affiliates in connection with this Agreement, (b) the covenants or agreements made by Purchaser in this Agreement, (c) any and all Assumed

Liabilities, (d) any failure of Purchaser to notify Seller under Section 5.09(e) and (e) intentional fraud or willful misconduct on the part of Purchaser or any of its Affiliates in connection with this Agreement or the transactions contemplated hereby.

12.03 Limitation. The Parties' rights to indemnification pursuant to Article XII of this Agreement is subject to the following limitations:

(a) The Indemnified Party shall not be entitled to assert any right of indemnification pursuant to this Article XII for any loss, damage or expense suffered by such Party after the twenty four (24) month anniversary date of the Closing Date, except that (i) indemnification claims (A) arising from Section 7.14 may be asserted at any time before sixty (60) days after the expiration of the statute of limitations applicable to the underlying claim, charge, or cause of action, (B) arising from Section 7.16 may be asserted at any time before the forty eight (48) month anniversary of the Closing Date; (C) for breach of Seller's obligations with respect to Retained Liabilities may be asserted at any time, (D) for breach of Purchaser's obligations with respect to Assumed Liabilities and Section 12.01(b) may be asserted at any time before the expiration of the statute of limitations applicable to the underlying claim, charge, or cause of action, or (E) for intentional fraud or willful misconduct shall not be limited by this Agreement and (ii) if notice of any claim shall have been given before the end of the applicable period under this paragraph (a), the Indemnified Party shall continue to have the right to be indemnified with respect to such claim so long as it is actively pursuing such claim.

(b) No indemnification claim (other than a claim for breach of Seller's obligations with respect to Section 7.16, Retained Liabilities or intentional fraud or intentional misconduct or Purchaser's obligations with respect to Assumed Liabilities or intentional fraud or intentional misconduct) may be made against a Party for indemnification pursuant to this Article XII unless the aggregate of all indemnifiable losses, damages and expenses with respect to this Article XII shall exceed [_____] U.S. dollars (\$[_____]) ("Threshold"), and then the Indemnifying Party shall only be required to pay or be liable for the excess over the Threshold; provided, that any breach of this Agreement or any document or certificate relating hereto in connection with any single item or group of related items that results in losses of less than Ten Thousand U.S. dollars (\$10,000) (except for any losses for breaches of Section 7.16 in respect of which Ten Thousand U.S. dollars (\$10,000) shall be replaced by Five Thousand U.S. dollars (\$5,000)) shall be deemed, for all purposes of this Agreement, not to be a breach of this Agreement or any certificate relating hereto.

(c) The Indemnifying Party's maximum liability to the other Party pursuant to this Agreement other than indemnification claims based on intentional fraud or willful misconduct shall be twenty five percent (25%) of the Purchase Price.

(d) For the purposes of this Article XII, in computing such aggregate amounts of claims, the amount of each claim shall be deemed to be an amount net of any insurance proceeds and any indemnity, contribution or other similar payment recoverable by the Indemnified Party or any Affiliate from any third party with respect thereto.

(e) For purposes of this Article XII, in determining whether there exists a breach or inaccuracy of any representation, warranty, covenant or agreement in this Agreement,

and in calculating losses hereunder, any and all materiality, material adverse effect or similar qualifications in the representations, warranties, covenants or agreements shall be disregarded.

(f) Each Party hereby acknowledges and agrees that from and after Closing its sole and exclusive monetary remedy with respect to any and all claims relating to the subject matter of this Agreement, the Assumption Agreement and Bill of Sale, and any other certificate, document, instrument or affidavit furnished by Seller or Purchaser in accordance with the provisions of this Agreement shall be pursuant to the indemnification provisions set forth in this Article XII.

(g) Anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein or any other certificate, document, instrument or affidavit furnished by a Party in accordance with the provisions of this Agreement shall give rise to any right on the part of the other Party, after the consummation of the purchase and sale of the Facility and the Purchased Assets contemplated hereby, to rescind this Agreement or any of the transactions contemplated hereby.

(h) In no event shall either Party be liable to the other Party for consequential, exemplary, indirect, special or punitive damages, including damages for lost revenues, income or profits, in any action arising out of or relating to this Agreement or the transactions contemplated hereby.

12.04 Indemnification Notice. Promptly upon obtaining knowledge of any claim, event, facts or demand which gives rise to, or could reasonably be expected to give rise to, a claim for indemnification hereunder (including in the case of a claim pursuant to Section 12.01 or 12.02 any claim which is not payable due to the limitations set forth in Section 12.03(b) hereof), any Party seeking indemnification under this Article XII (an “Indemnified Party”) shall give written notice of such claim or demand (“Notice of Claim”) to the Party from which indemnification is sought (an “Indemnifying Party”), setting forth the amount of the claim. The Indemnified Party shall furnish to the Indemnifying Party, in reasonable detail, such information as it may have with respect to such indemnification claim (including copies of any summons, complaint or other pleading which may have been served on it and any written claim, demand, invoice, billing or other document evidencing or asserting the same). Subject to Section 12.03(a), no failure or delay by the Indemnified Party in the performance of the foregoing shall reduce or otherwise affect the obligation of any Indemnifying Party to indemnify, defend and hold the Indemnified Party harmless, except to the extent that such failure or delay shall have adversely affected the Indemnifying Party’s ability to defend against, settle or satisfy any loss, damage or expense for which the Indemnified Party is entitled to indemnification hereunder.

12.05 Indemnification Procedure. (a) If the claim or demand set forth in the Notice of Claim given by the Indemnified Party pursuant to Section 12.04 of this Agreement is a claim or demand asserted by a third party, the Indemnifying Party shall have fifteen (15) days after the Date of the Notice of Claim to notify the Indemnified Party in writing of its election to defend such third party claim or demand on behalf of the Indemnified Party. If the Indemnifying Party elects to defend such third party claim or demand, the Indemnified Party shall at the expense of the Indemnifying Party make available to the Indemnifying Party and its agents and representatives all records and other materials which are reasonably required in the defense of

such third party claim or demand and shall otherwise cooperate with, and assist the Indemnifying Party in the defense of, such third party claim or demand, and so long as the Indemnifying Party is defending such third party claim or demand in good faith, the Indemnified Party shall not pay, settle or compromise such third party claim or demand. If the Indemnifying Party elects to defend such third party claim or demand, the Indemnified Party shall have the right to participate in the defense of such third party claim or demand, at its own expense. If the Indemnifying Party does not elect to defend such third party claim or demand, or does not defend such third party claim in good faith, the Indemnified Party shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to defend such third party claim or demand; provided, however, that (i) the Indemnified Party shall not have any obligation to participate in the defense of, or defend, any such third party claim or demand; and (ii) the Indemnified Party's defense of or its participation in the defense of any such third party claim or demand shall not in any way diminish or lessen the obligations of the Indemnifying Party under the agreements of indemnification set forth in this Article XII. Without the Indemnified Party's written consent, the Indemnifying Party shall not enter into any settlement of a third party claim unless (i) there is no finding or admission of any violation of legal requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party or its Affiliates; (ii) the settlement includes a complete and unconditional release of the Indemnified Party with respect to the third party claim; and (iii) the sole relief provided under the settlement is monetary damages that are paid in full by the Indemnifying Party.

(a) Except for disputed claims or third party claims being defended in good faith, the Indemnifying Party shall satisfy its obligations hereunder in cash within thirty (30) days after the Date of Notice of Claim.

(b) The term "Date of the Notice of Claim" as used in this Article XII shall mean the date the Notice of Claim is deemed delivered pursuant to Section 15.12(c) hereof.

12.06 Effect of Indemnity Payments. The Parties agree to treat all payments made under the indemnity provisions of Article XII of this Agreement as adjustments to the Purchase Price for Tax purposes and that such agreed treatment shall govern for purposes hereof.

ARTICLE XIII

Confidentiality

13.01 Confidentiality of Materials. The Parties hereto agree with respect to all technical, commercial and other information that is furnished or disclosed by the other Party, including information regarding such Party's (and its subsidiaries' and Affiliates') organization, personnel, business activities, customers, policies, assets, finances, costs, sales, revenues, technology, rights, obligations, liabilities and strategies ("Information"), that (a) such Information is confidential and/or proprietary to the furnishing/disclosing party and entitled to and shall receive treatment as such by the receiving party; (b) the receiving party will hold in confidence and not disclose nor use (except in respect of the transactions contemplated by this Agreement) any such Information, treating such Information with the same degree of care and confidentiality as it accords its own confidential and proprietary Information; provided, however,

that the receiving party shall not have any restrictive obligation with respect to any Information which (i) was prior to the date of its disclosure contained in a printed publication available to the general public, (ii) is or becomes publicly known through no wrongful act or omission of the receiving party, or (iii) is known by the receiving party without any proprietary restrictions by the furnishing/disclosing party at the time of receipt of such Information; and (c) all such Information furnished to either party by the other, unless otherwise specified in writing, shall remain the property of the furnishing/disclosing party and, in the event this Agreement is terminated, shall be returned to it, together with any and all copies made thereof, upon request for such return by it (except for documents submitted to a governmental agency with the consent of the furnishing/disclosing party or upon subpoena and which cannot be retrieved with reasonable effort) and in the case of (i) oral information furnished to any party by the other which shall have been reduced to writing by the receiving party and (ii) all internal documents of any party describing, analyzing or otherwise containing Information furnished by the other party, all such writings and documents shall be destroyed, upon request, in the event this Agreement is terminated, and each party shall confirm in writing to the other compliance with any such request. The recipient of confidential Information may disclose such confidential Information if required pursuant to a subpoena by a court of competent jurisdiction or by order of a governmental agency or other applicable Law, so long as the party required to disclose the confidential Information provides the other party prior notice (unless such notice is prohibited) of such requirement to permit such party time to seek appropriate relief against such disclosure. Notwithstanding the foregoing, Seller's confidential Information that relates exclusively to the Purchased Assets or is included in the Purchased Assets shall, after Closing, be treated as Purchaser's confidential Information to be protected as provided in this Section from use or disclosure by Seller. Notwithstanding anything in this Section 13.01 to the contrary, the Parties may disclose any confidential Information (i) to the PSC or its staff to the extent necessary to discuss the transactions contemplated hereby with the PSC or its staff in connection with the PSC Regulatory Filing and (ii) to FERC to the extent required in connection with the FERC Regulatory Filing.

13.02 Remedy. Each Party hereto acknowledges that the remedy at law for any breach by either Party of its obligations under Section 13.01 of this Agreement is inadequate and that the other Party shall be entitled to seek equitable remedies, including an injunction, in the event of breach by any other Party.

ARTICLE XIV

Certain Other Understandings

14.01 Post-Closing Access to Records and Records Retention. Purchaser agrees for a period extending five (5) years after the Closing Date not to destroy or otherwise dispose of any Books and Records relating to the period prior to its acquisition of the Purchased Assets.

14.02 Consents Not Obtained at Closing. Each of Seller and Purchaser agree to attempt diligently to obtain any necessary consents which may be required to effect the assignment to Purchaser of the contract obligations transferred under this Agreement and each Party will diligently cooperate with the other in obtaining the same, and will take such steps as reasonably requested by such Party with respect thereto. In such cases where such consents have

not been obtained by the Closing Date, this Agreement, to the extent permitted by Law and if elected by Purchaser, shall constitute an equitable assignment by Seller to Purchaser of all of Seller's rights, benefits, obligations, liabilities, title and interest in and to the assigned contracts and commitments, and Purchaser shall be deemed to be Seller's agent for the purpose of completing, fulfilling and discharging all of Seller's rights and liabilities arising after the Closing Date under such assigned contracts and commitments, and Seller shall, at Purchaser's sole cost and expense, take all commercially reasonable steps and actions requested by Purchaser to provide Purchaser with the benefits and liabilities of such contracts and commitments. [Notwithstanding anything to the contrary contained in this Agreement, to the extent consent is necessary under any of the Contracts listed in items [] to [] of Section 7.06(a)(i) of the Disclosure Schedules² and such consent is not obtained prior to the Closing or such Contract is otherwise not capable of assignment, such Contract shall not be considered a Purchased Asset and the failure to so assign any such Contract shall not affect the Closing.] The Parties shall continue to use commercially reasonable efforts to effect the assignment of any such Contract capable of assignment following the Closing.

14.03 Avoidance of Double Withholding Taxes. Purchaser and Seller hereby acknowledge that the standard procedure described in Section 4 of the Revenue Procedure 2004-53 as promulgated by the IRS with respect to wage reporting, and F.I.C.A. withholding and similar tax and other collections is applicable to Seller's employees who become employees of Purchaser or its Affiliates.

14.04 Use/Removal of Trademarks, Etc.. Purchaser acknowledges and agrees that it has and, upon consummation of the transactions contemplated hereby shall have, no right, title, interest, license, or any other right whatsoever to use the trade names and trademarks of Seller or its Affiliates, including references to "[]", "[]" and "[]" and derivatives thereof, including all logos ("Seller Marks"). Purchaser shall promptly after the Closing Date but in no event later than sixty (60) days after the Closing Date, return or destroy all Purchased Assets that are not necessary to the operation or maintenance of the Facility that contain any Seller Marks that are not removable and remove or permanently cover any Seller Marks from the Purchased Assets that are removable. Purchaser agrees never to challenge Seller's (or its Affiliates') ownership of Seller Marks or any application for registration thereof or any registration thereof or any rights of Seller or its Affiliates therein as a result, directly or indirectly, of its ownership of the Purchased Assets. Purchaser will not conduct any business or offer any goods or services under any Seller Marks. Purchaser will not send, or cause to be sent, any correspondence or other materials to any Person on any stationery that contains any Seller Marks or otherwise operate the Facility in any manner which would or might reasonably be expected to confuse any person into believing that Purchaser has any right, title, interest, or license to use any Seller Marks.

14.05 Notification of Certain Matters. Seller may supplement the Disclosure Schedules delivered pursuant hereto (as so supplemented, the "Supplemental Disclosure Schedules") from time to time on or prior to the Closing Date. Such Supplemental Disclosure Schedules shall not be considered in (i) determining whether the condition set forth in Section

² **Note to Draft:** These would relate to certain back to back contracts to the extent necessary. Parties to discuss context.

9.02 has been met or (ii) whether there is a breach of any representation, warranty, covenant or agreement of Seller contained in this Agreement for purposes of the indemnification to be provided by Seller pursuant to Section 12.01 hereof; provided, however, that any actions permitted pursuant to Section 5.02 hereof shall automatically be deemed to update all relevant schedules for all purposes hereunder so long as Seller provides Purchaser at least five (5) days' written notice of such action.

ARTICLE XV

Miscellaneous

15.01 Cost and Expenses. Purchaser will pay its own costs and expenses (including attorneys' fees, accountants' fees and other professional fees and expenses) in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the purchase of the Purchased Assets and the other transactions contemplated by this Agreement (except as otherwise specifically provided for herein); and Seller will pay its own costs and expenses (including attorneys' fees, accountants' fees and other professional fees and expenses) in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the sale of the Purchased Assets and the other transactions contemplated by this Agreement (except as otherwise specifically provided for herein).

15.02 Entire Agreement. The Disclosure Schedules and the Exhibits referenced in this Agreement are incorporated into this Agreement and together contain the entire agreement between the Parties hereto with respect to the transactions contemplated hereunder, and supersede all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof. No waiver and no modification or amendment of any provision of this Agreement shall be effective unless specifically made in writing and duly signed by the Party to be bound thereby.

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

15.04 Assignment, Successors and Assigns. The respective rights and obligations of the Parties hereto shall not be assignable without the prior written consent of the other Party; provided, however, that Purchaser may assign all or part of its rights under this Agreement and delegate all or part of its obligations under this Agreement to one or more of its Affiliates, in which event all the rights and powers of Purchaser and remedies available to it under this Agreement shall extend to and be enforceable by each such Affiliate. Any such assignment and delegation shall not release Purchaser from its obligations under this Agreement, and further Purchaser guarantees to Seller the performance by each such Affiliate of its obligations under this Agreement. In the event of any such assignment and delegation the term "Purchaser" as used in this Agreement shall be deemed to refer to each of Purchaser and any Affiliate of Purchaser taking assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns.

15.05 Savings Clause. If any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, such holding or action shall be strictly construed and shall not affect the validity or effect of any other provision hereof.

15.06 Headings. The captions of the various Articles and Sections of this Agreement have been inserted only for convenience of reference and shall not be deemed to modify, explain, enlarge or restrict any of the provisions of this Agreement.

15.07 Bulk Sales. Each Party hereby waives compliance by the other Party with the provision of any bulk sales or bulk transfer Laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

15.08 Governing Law. The validity, interpretation and effect of this Agreement shall be governed exclusively by the laws of the State of Oklahoma.

15.09 Press Releases. During the Interim Period, no public announcement (whether in the form of a press release or otherwise) shall be made by or on behalf of either Party or its representatives with respect to the subject matter of this Agreement unless: (a) the other Party has agreed in writing to permit such public announcement to be made, which permission shall not be unreasonably withheld, or (b) such public announcement is required by applicable Law and the Party required to make such announcement has given prior written notice to the other Party as promptly as practicable prior to such announcement. Any public announcement made as permitted under this Section 15.09 shall be made only in accordance with a text mutually agreed upon by the Parties, such agreement not to be unreasonably conditioned, withheld or delayed.

15.10 U.S. Dollars. All amounts expressed in this Agreement and all payments required by this Agreement are in United States dollars.

15.11 Survival. All representations and warranties made by any Party in this Agreement shall be deemed made for the purpose of inducing the other Party to enter into this Agreement and shall survive the Closing, subject to Section 12.03 hereof.

15.12 Notices. (a) All notices, requests, demand and other communications under this Agreement shall be in writing and delivered in person, or sent by facsimile or electronic mail or sent by certified mail, postage prepaid, and properly addressed as follows:

To Seller:

[_____]
[_____]
[_____]
[_____]

With Copy To:

[_____]]
[_____]]
[_____]]
[_____]]

To Purchaser:

[_____]]
[_____]]
[_____]]
[_____]]

With Copy To:

[_____]]
[_____]]
[_____]]
[_____]]

(b) Any Party may from time to time change its address for the purpose of notices to that Party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the Party sought to be charged with its contents.

(c) All notices and other communications required or permitted under this Agreement which are addressed as provided in this Section 15.12 if delivered personally or air courier, shall be effective upon delivery; if sent by facsimile, shall be delivered upon receipt of proof of transmission and if delivered by mail, shall be effective upon deposit in the United States mail, postage prepaid.

15.13 No Third Party Beneficiaries. Except as expressly provided herein with respect to indemnification and Section 14.06, this Agreement is solely for the benefit of Seller and its successors and permitted assigns with respect to the obligations of Purchaser under this Agreement, and for the benefit of Purchaser and its successors and permitted assigns with respect to the obligations of Seller under this Agreement. Except as expressly provided herein with respect to indemnification, this Agreement shall not be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

15.14 Venue and Consent to Jurisdiction. Each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement shall be

brought in the United States District Court for the Western District of Oklahoma, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby irrevocably and unconditionally (a) accepts the exclusive jurisdiction of the aforesaid courts and agrees that it is and shall continue to be subject to the jurisdiction of such courts, (b) agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents, (c) waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such action or proceeding brought in any such court has been brought in any inconvenient forum, (d) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address in Section 15.12, or at such other address of which the other Parties shall have been notified, and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Law.

15.15 WAIVER OF A JURY TRIAL. EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND THE ASSIGNMENT AND ASSUMPTION AGREEMENT AND BILL OF SALE CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

15.16 No Presumption Against Drafter. Each of the Parties hereto has jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by each of the Parties hereto and no presumptions or burdens of proof shall arise favoring any Party by virtue of the authorship of any of the provisions of this Agreement.

15.17 Parent Guaranty. The obligations of Seller under this Agreement shall be guaranteed by [_____] under the Parent Guaranty from and after the Effective Date.

IN WITNESS WHEREOF, the Parties hereto have executed this Asset Purchase Agreement the day and year first above written.

**OKLAHOMA GAS AND ELECTRIC
COMPANY**

By: _____

Title: _____

[_____]

By: _____

Title: _____

EXHIBIT A
Facility Site Diagram

EXHIBIT B
Parent Guaranty

EXHIBIT C
Assumption Agreement and Bill of Sale

EXHIBIT D
Endorsement List

- [1. ALTA 3.1-06 (Zoning)
2. ALTA 8.2-06 (EPL)
3. ALTA 9.2-06 (Comprehensive)
4. ALTA 9.9-06 (Private Rights)
5. ALTA 13 (Leasehold) (if applicable)
6. ALTA 17-06 (Access)
7. ALTA 17.2-06 (Utility)
8. ALTA 18-06 (Single Tax Parcel) or ALTA 18.01-06 (Multi Tax Parcel), as applicable
9. ALTA 19-06 (Multi Contiguity) or ALTA 19.1-06 (Single Contiguity), as applicable
10. ALTA 22.1-06 (Location and Map)
11. ALTA 25-06 (Survey)
12. ALTA 26-06 (Subdivision) (if applicable)
13. ALTA 28-06 (Easement – Enforced Removal) (as to all Permitted Real Estate Exceptions)
14. ALTA 28.1-06 (Encroachments) (as to all Permitted Real Estate Exceptions)
15. ALTA 31-06 (Severable Improvements)
16. ALTA 35-06 (Minerals - Buildings)
17. ALTA 35.1 (Minerals – Improvements)
19. ALTA 36-06 Energy Project
20. Arbitration Endorsement]

